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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 30 November 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: 29th Annual report on monitoring the application of EU Law
- Commission staff working document
= situation per member state

Delegations will find attached Commission document SWD (2012) 400 final.

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Brussels, 30.11.2012
SWD(2012) 400 final

COMMISSION STAFF WORKING DOCUMENT

SITUATION PER SECTOR

Accompanying the document

REPORT FROM THE COMMISSION

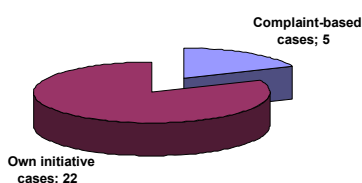
**29th ANNUAL REPORT ON MONITORING THE APPLICATION OF EU LAW
(2011)**

{COM(2012) 714 final}
{SWD(2012) 399 final}

General statistics

In the area of agriculture and rural development, 27 infringements were open at the end of 2011. This was the thirteenth-highest number of cases among the Commission's 20 reporting policy areas. The table below shows the distribution of these cases according to their origin:

27 infringements relating to EU laws on agriculture



The Commission launched 34 new infringement procedures in 2011. 20 Member States seem to have violated the EU's exclusive competences by passing resolutions in the OIV,¹ which called into question both the EU's exclusive competences and the loyal cooperation principle (Article 4(3) TEU). And France may have contravened EU rules on wine by authorising the sale of spirit drinks with labels referring to 'wine', though these drinks were distilled from by-products of winemaking.²

The Commission brought a Court case against the Czech Republic for extending the sales designation '*pomazánkové máslo*' (spreadable butter) to products not complying with the EU laws on minimum milk-fat and maximum water content for butter.³

In two agriculture cases, the Commission could not confirm by the end of 2011 that Member States had complied with an earlier Court judgment condemning their measures. In the first case, the Commission monitored whether Portugal had reimbursed (with interest) the charges it had deducted from the amounts received by beneficiaries from the structural funds.⁴ In the second, the Commission brought an action against Italy for the incorrect implementation of the Directive on cocoa and chocolate products.⁵

Late transposition of directives

Member States had to transpose the directive on fruit juices⁶ by 1 January 2011. The Commission initiated infringements against 11 Member States due to late and/or partial transposition of this Directive. Following rapid Member State compliance, the Commission was able to close all procedures by the end of 2011.

Complaints handling

There were 86 new complaints on agricultural issues during 2011 (up from 58 in 2010). Of the 69 complaints processed by the Commission, 25 resulted in pre-infringement discussions with the Member State concerned.

Complaints mainly targeted the following issues: protected designations (wine and spirits); temporary exceptional support measures (fruits and vegetables); and milk designations and milk quotas (animal products). Several complainants questioned the compatibility of national provisions with the 'full payment

clause'⁷ as well as the selection by national authorities of the beneficiaries of payments and support measures.

Own-initiative cases

The infringement procedures that were launched against 20 Member States in parallel because of their resolutions in the OIV were based on the Commission's own findings. In addition, the use of protected geographical indications and Member States' labelling rules are often subject to pre-infringement enquiries by the Commission.

Early resolution of potential infringements

The Commission opened 32 new files in EU Pilot on agricultural matters and processed 24 dossiers during 2011. In 21 instances, the Commission accepted the Member States' explanations or undertakings. There were still 16 open files in EU Pilot related to the agricultural sector by the end of last year.

The EU agricultural disputes that were resolved without a Court procedure in 2011 included the repeal of Greek laws prohibiting the repackaging of potatoes (incompatible with the principle of free movement of goods) and the abolition of Spanish rules on the geographical indication '*Viñedos de España*' (Member State names may be protected only in exceptional cases).

Prominent judgments

In 2011, the Court delivered no judgments on EU agricultural law under the Articles 258 and 260 TFEU procedures.

However, preliminary rulings from the Court gave guidance on: the conditions when beneficiaries of support may be considered as obstructing on-the-spot checks;⁸ and the registration of a trade mark that contains such geographical indication with which it cannot comply.⁹

Further information available at:

http://ec.europa.eu/dgs/agriculture/index_en.htm

¹ [Organisation internationale de la vigne et du vin](#).

² [IP/12/179](#).

³ [IP/10/1224](#).

⁴ Commission v Portugal, [C-83/04](#).

⁵ Commission v Italy, [C-47/09](#).

⁶ Directive [2009/106/EC](#).

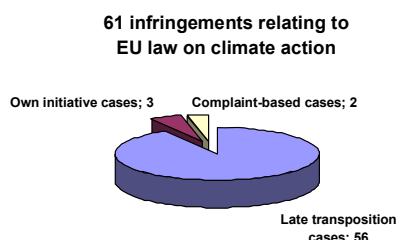
⁷ The aid coming from the EU directly to producers may not be subject to deductions due to national, regional or local rules.

⁸ [Marija Omejc, C-536/09](#).

⁹ [Bureau National Interprofessionnel du Cognac, C-4/10](#) and [C-27/10](#).

General statistics

The Commission managed 61 open infringement cases in the area of climate action at the end of 2011, which is the tenth-highest caseload among the 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:



In 2011, the Commission opened 38 new infringement cases in this area, mostly due to late transposition.

None of the climate action cases reached the stage of referral to the Court during 2011.

Likewise, there were no Court judgments in 2011 which the Commission had to follow up in order to ensure Member States' compliance.

Late transposition of directives

Of the 38 new cases, 35 infringement cases had to be opened during 2011 because there were no or only partial national implementing rules.

The Directive on the geological storage of carbon dioxide¹⁰ was not transposed in time by 26 Member States. A further nine late transposition infringements had to be initiated due to delays in notifying national implementing rules for the Directive on fuel quality.¹¹ Although a few Member States did then notify their implementing rules, none of these infringements could be closed by the end of 2011.

Complaints handling

The Commission received six complaints on climate matters during 2011. They concerned directives on the geological storage of carbon dioxide and on the greenhouse gas emission allowance trading scheme, and the regulation on various fluorinated greenhouse gases.¹² One of the complaints has been transferred to EU Pilot.

The Commission also received a petition from the European Parliament relating to an exploration project for carbon capture and storage in France, which was followed up by contacts via EU Pilot.

Own-initiative cases

The Commission sent letters of formal notice to Malta, Luxembourg and Italy for the bad application of the regulation on various fluorinated greenhouse gases.¹³

The Commission did not receive implementing measures from some Member States by the initial deadline under the decision on the allocation of free emission allowances to stationary installations covered by the EU Emission Trading Scheme. As a result, the Commission has opened a horizontal investigation in EU Pilot involving 18 Member States.

Early resolution of potential infringements

The Commission opened 21 climate change files in EU Pilot during 2011 (one complaint and 20 own-initiative files), bringing the number of active EU Pilot cases in the climate action area to 23. Of these, two dossiers were processed in 2011. One assessment was positive. The Commission rejected the explanation provided by the Member State in the other case. 21 climate action files were open at the end of 2011.

The Commission closed two on-going infringement cases against Romania and Bulgaria as they had completed their yearly greenhouse gas emission statements. The Commission also closed an infringement case against Spain, having been reassured by the Member State about effective monitoring of fuel consumption and release of CO₂ emission in line with the directive.¹⁴ An infringement procedure against Luxembourg was closed as its authorities fulfilled the requirements of the regulation on various fluorinated greenhouse gases by adopting the necessary certification and training measures for companies and personnel working with such gases.

Prominent judgments

The Court delivered no material judgments in 2011 or preliminary rulings relevant to the application of EU law by the Member States in the area of climate action.

Further information available at:
http://ec.europa.eu/clima/news/index_en.htm

¹⁰ Directive [2009/31/EC](#).

¹¹ Directive [2009/30/EC](#).

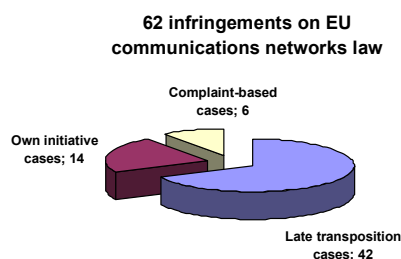
¹² Regulation [842/2006](#).

¹³ More detailed overview in [IP/12/415](#) (Malta and Italy).

¹⁴ Directive [1999/94/EC](#).

General statistics

The Commission had 62 open infringement cases in the area of communications networks, content and technology at the end of 2011, making this the ninth-highest caseload among the 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:



In addition to the 45 new infringements initiated in this area during 2011, the Commission stepped up its efforts against sector-specific taxes on telecommunication service providers, on the grounds that they are incompatible with the administrative charges allowed by EU rules: Hungary received a reasoned opinion¹⁵ and both France and Spain were referred to the Court.¹⁶

Three Member States had to comply with earlier Court judgments in order to avoid financial sanctions under Article 260(2) TFEU. The judgments in question related to: the 'must-carry' rules¹⁷ and incorrect implementation of the Universal Services Directive¹⁸ under Belgian law; the imposition of retail tariffs for high-speed internet access without market analysis in Poland;¹⁹ and the incorrect implementation of the Universal Services Directive under Portuguese law.²⁰

Late transposition of directives

39 infringements had to be opened during 2011 because there were no or only partial national implementing rules in the area of communications networks.

In 2011, the transposition deadline expired for two key directives that modernise the regulatory framework for electronic communications: (1) infringements had to be launched against 20 Member States due to the late transposition of the Citizens' Rights Directive,²¹ (2) as regards the transposition of the Better Regulation Directive,²² 19 Member States had failed to notify their national measures by the deadline. However, this poor transposition record had improved by the end of 2011 for both directives.

A further eight late transposition infringements were closed under the Audiovisual Media Services Directive²³ (AVMSD) as Member States notified their national implementing measures.

Complaints handling

The Commission received 32 complaints on matters relating to communication networks during 2011, well down on 2010 (49 incoming complaints). National telecommunication rules

provoked the most complaints from citizens and organisations in 2011.

The Commission processed 40 complaints in this policy field last year. Half of the files were closed with the Commission's full response to the complainant (21). By contrast, 16 complaints on communications networks were transferred to EU Pilot for Member States to react on them.

There was no petition or question from the EP or MEPs that would have triggered an infringement procedure under EU law on communications networks.

Own-initiative cases

The Commission has increasingly used the EU Pilot in order to screen implementation issues regarding EU laws on electronic communications (e.g. radio spectrum, consumer protection including privacy). Another initiative was launched to detect implementation concerns surrounding the Audiovisual Media Services Directive (AVMSD).

Early resolution of potential infringements

The Commission opened 61 new EU Pilot files on electronic communications issues during 2011 and processed 31 files in this period. 27 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (87 % success rate). Early resolution prevented a few potential infringements on radio spectrum management and on the '112' European emergency number. 51 EU Pilot files remained open by the end of last year.

Significant infringements on electronic communications were closed before Court proceedings in 2011 as Latvia, Lithuania Romania and Slovenia ensured the independence of their respective national regulatory authorities.²⁴

Prominent judgments

The Court found that Spanish rules tolerated the broadcasting of advertising spots in excess of the time limits set by the Directive on television broadcasting activities (89/552/EEC).²⁵

In a preliminary ruling, the Court interpreted the concept of 'incitement to hatred on grounds of race, sex, religion or nationality' in the context of the Directive on television broadcasting activities.²⁶

Further information available at:

http://ec.europa.eu/dgs/connect/index_en.htm

¹⁵ [IP/11/308](#) and [IP/11/1108](#).

¹⁶ [IP/11/309](#).

¹⁷ *Commission v Belgium*, [C-134/10](#).

¹⁸ *Commission v Belgium*, [C-222/08](#).

¹⁹ *Commission v Poland*, [C-545/08](#).

²⁰ *Commission v Portugal*, [C-154/09](#).

²¹ Directive [2009/136/EC](#).

²² Directive [2009/140/EC](#).

²³ Directive [2010/13/EU](#).

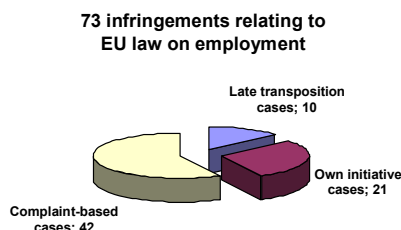
²⁴ For example, [IP/11/412](#).

²⁵ *Commission v Spain*, [C-281/09](#).

²⁶ *Commission v Poland*, [C-244/10](#).

General statistics

The Commission managed 73 open infringement cases on employment matters in 2011 – the seventh-highest number of cases among the 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:



Among the 37 new infringements launched by the Commission, Luxembourg received a letter of formal notice because its study grants are subject to a residence condition for migrant workers and their children. The Dutch purchasing power allowance (an old-age benefit) may also be contrary to EU rules to the extent that it is not 'exportable'.

The Commission decided to refer four cases to the Court last year, including nationality-based discrimination on the index-linking of pensions in Belgium;²⁷ the preferential treatment afforded by the law of an Italian province to residents applying for public sector posts;²⁸ and non-conformity in the Dutch implementation of employee participation provisions in the event of cross-border mergers.²⁹

There was only one employment case where the Commission was not able to confirm Member State compliance with a Court judgment: Germany should abolish the residence condition for granting benefits for the blind, the deaf and the disabled³⁰ if it does not want to be exposed to financial sanctions under Article 260(2) TFEU.

Late transposition of directives

17 infringements had to be opened during 2011 because there were no or only partial national implementing rules on employment matters. 10 late transposition infringements remained open in this policy area by end-2011. 15 infringements were initiated due to lack of or incomplete Member State notifications under the Directive on temporary agency work.³¹

Complaints handling

The Commission received 269 complaints during 2011, well down on 2010 (321). In the area of free movement of workers, most of the complaints concerned access and working conditions in the public sector, which is a persistent problem area. Rules on many kinds of social security benefits provoked complaints: pensions, special non-contributory benefits, restrictive access to statutory health insurance and residence / presence conditions for sickness benefits for disabled. In the area of health and safety, complaints concerned mainly incorrect national provisions or ineffective application of preventive services, training and responsibilities of the employer. The Commission processed 260 employment complaints last year, notably those relating to working time. They included especially the files that had been closed without

further steps due to the Commission's full response to the complainant (183) or its lack of competence (7). 26 employment complaints were transferred to EU Pilot so that Member States could react to them.

Petitions from the European Parliament led to infringement proceedings against Greece for the inadequate recognition of foreign professional experience in its public sector; and against Italy due to the incorrect transposition of the workplace health and safety rules³² into its national law.

Own-initiative cases

In the area of health and safety at work, own-initiative cases are most frequently linked to the continuous monitoring of the framework directive on health and safety at work (as Member States are continuously making amendments to their national legislation in this field) and the high-risk sectors (e.g. fishing, construction).

Early resolution of potential infringements

The Commission opened 35 new files in EU Pilot during 2011 and processed 59 dossiers in this period. 47 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (80 % success rate). 56 files remained open in EU Pilot by the end of 2011.

Concerning ongoing infringement cases, there was major progress, with the closure of 16 infringements on working time.

Prominent judgments

The Court confirmed that EU citizens are able to enjoy their rights of free movement in the EU without comprising their social security protection. Requiring a condition of past presence of the claimant in the State to the exclusion of any other relevant element to establish a genuine link between the claimant and the social security system of that Member State is contrary to EU law.³³ The Court also ruled that the working time directive does not prevent national law limiting the accumulation of annual leave by setting up a carry-over period, which, once expired, terminates the right to paid leave.³⁴

Further information available at:
<http://ec.europa.eu/social/home.jsp>

²⁷ [IP/11/165](#).

²⁸ [IP/11/1269](#).

²⁹ [IP/11/1422](#).

³⁰ Commission v Germany, [C-206/10](#).

³¹ Directive [2008/104/EC](#).

³² Directive [89/391/EEC](#).

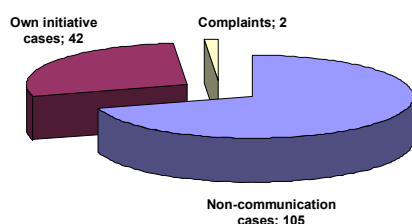
³³ Lucy Stewart, [C-503/09](#).

³⁴ KHS AG, [C-214/10](#).

General statistics

The Commission had 149 open infringements in the area of energy at the end of 2011. This was the fifth-highest number of cases among the Commission's 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:

149 infringements relating to EU law on energy



Almost all the 122 new infringements were due to the late transposition of energy directives by Member States.

The Commission decided to refer three energy-related matters to the Court, a Spanish case related to shortcomings in the transposition of the directive on the energy performance of buildings³⁵ and Bulgarian and Romanian cases related to lack of compliance with the requirements of the Gas Regulation.³⁶

Despite making significant progress, Belgium was still under possible financial sanctions under Article 260(2) TFEU at the end of 2011 due to the only partial implementation of two Court judgments³⁷ concerning the Second Energy Package (Directives 2003/55/EC and 2003/54/EC).

Late transposition of directives

121 infringements had to be opened in the area of energy during 2011 because there were no or only partial national transposition rules in all key energy sectors. Member States have been making rather slow progress with the transposition of energy directives: 105 such cases remained open by the end of 2011.

The Third Energy Package³⁸ caused the most transposition problems in Member States; 38 infringements had to be launched against 19 Member States. No Member State was able to transpose the directive on renewable energy³⁹ in time; accordingly, 27 infringements were launched. Finally, the directive on nuclear safety⁴⁰ has triggered infringements against 12 Member States due to missing or partial transposition.

Complaints handling

The Commission received 57 complaints on energy matters during 2011, a slight increase in comparison with 2010 (50 incoming complaints). Complaints concentrated on the Third Energy Package and the renewable energy legislation. The Commission processed 42 energy complaints. It provided most complainants with a full response (27). By contrast, 11 complaints on energy issues were transferred to EU Pilot so that Member States could examine the problem.

Own-initiative cases

The Commission continued investigating the conformity of national transposition rules with EU energy law. In particular, the Commission pursued infringements against several Member States which have incorrectly implemented the Second Energy Package and the directive on buildings' energy performance.

Early resolution of potential infringements

The Commission opened 24 new EU Pilot files on energy issues during 2011 and processed 23 dossiers in this period. The Commission accepted the explanations or undertakings of the Member State concerned in 20 cases (87 % success rate). 43 energy files remained open in EU Pilot by the end of 2011.

Major infringements that were resolved before Court proceedings included the Polish rule obliging gas importers to maintain stocks in home facilities;⁴¹ and the refusal of the Italian authorities to recognise guarantees of origin from other Member States for the purposes of renewable electricity production.⁴²

Prominent judgments

The Court issued two preliminary rulings of special importance. In the first case, it gave guidance on the conditions and limits of state intervention in the internal energy market. The Court found that the Italian regime on tender obligations of essential installations was compatible with the EU laws on the electricity market and dispatching services as long as these rules pass the proportionality test, which the national courts must carry out.⁴³ In the second case – an Italian law imposing an absolute ban on wind turbines (beyond self-consumption) in a Natura 2000 site (without an impact assessment) – the Court ruled that the ban was not necessarily contrary to the aim of the directive on renewable energy, provided that the national law complies with the principles of proportionality and non-discrimination.⁴⁴

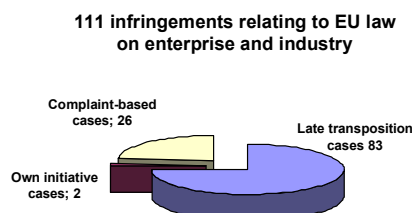
Further information available at:
http://ec.europa.eu/dgs/energy/index_en.htm

³⁵ Directive [2009/21/EC](#).
³⁶ Regulation [1775/2005](#) (replaced by Regulation [715/2009](#)).
³⁷ Commission v Belgium, [C-475/08](#) and [C-474/08](#).
³⁸ Directives [2009/72/EC](#) and [2009/73/EC](#).
³⁹ Directive [2009/28/EC](#).
⁴⁰ Directive [2009/71/Euratom](#).

⁴¹ [IP/10/945](#).
⁴² [IP/09/1799](#).
⁴³ Enel Produzione SpA, [C-242/10](#).
⁴⁴ Azienda Agro-Zootecnica Franchini, [C-2/10](#).

General statistics

The Commission had 111 open infringement cases in the area of enterprise & industry by the end of 2011. This is the sixth-highest number of cases among the 20 reporting policy areas. The table below shows the distribution of these cases as per their origins:



Applying the Treaty provisions on the free movement of goods continued to represent the bulk of the infringement work. The 125 new infringements involving enterprise & industry matters in 2011 included two letters of formal notice to Greece due to the incorrect implementation of the late payment directive;⁴⁵ and an infringement against Italy due to the incorrect application of the construction products directive.⁴⁶

The Commission decided to bring three enterprise & industry cases before the Court: one against Greece because of the obstacles to market bake-off products;⁴⁷ and two other cases against Poland and Lithuania due to their ban on registering cars with the steering wheel on the right.⁴⁸

The Commission urged the Greek authorities to fully comply with the second Court judgment in order to halt the payment of daily penalties imposed by the Court due to the total ban on games machines.⁴⁹

Late transposition of directives

In the area of enterprise & industry, 117 infringements had to be opened during 2011 because there were no or only partial national implementing rules for various directives.

Fifteen infringements had to be initiated due to late transposition of the toy safety directive⁵⁰, but all of them were closed before the end of 2011. A further 19 infringements were launched due to the delayed transposition of the directive on the transfer of defence-related products;⁵¹ however, nine Member States had notified their implementing measures before the end of the year, thus allowing the Commission to close these infringements once the measures had been assessed. The directives amending the legislation in the automotive sector⁵² generated 23 late transposition infringements altogether, with 11 of them still open at the end of 2011.

Complaints handling

The Commission received 124 complaints in the area of enterprise & industry during 2011, a moderate decrease over 2010 (156 incoming complaints).

The vast majority of complaints continued to target the Treaty provisions on the free movement of goods,⁵³ especially

in the motor vehicles sector (registration, taxes, etc.), pharmaceutical products and foodstuffs and food supplements.

The Commission processed 117 enterprise and industrial complaints last year. Most files (66) were closed without further action following the Commission's full response to the complainant. 35 complaints were transferred to EU Pilot so that Member States could react to them.

No petition or question arrived from the EP or MEPs that would have triggered an infringement procedure.

Own-initiative cases

Only a small number of own-initiative cases were launched.

Early resolution of potential infringements

The Commission opened 35 new EU Pilot files on enterprise & industry matters during 2011 and processed 42 dossiers in this period. 35 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (83 % success rate). 48 files remained open in EU Pilot by the end of last year.

Major infringements in this policy area that were settled without litigation before the Court included three procedures against France on adaptations to the regulatory framework for phyto-pharmaceutical products; and one procedure against Denmark to lift the total ban on the sale of certain energy drinks.

Prominent judgments

The Court passed two important judgments in the field of enterprise & industry in 2011. In the first, it ruled against the sectoral driving ban imposed by Austria for heavy goods vehicles on its A12 motorway.⁵⁴ In the second, it ruled on Poland's failure to transpose the framework directive on the approval of motor vehicles.⁵⁵

Further information available at:

http://ec.europa.eu/enterprise/index_en.htm

⁴⁵ Directive [2000/35/EC](#).

⁴⁶ Directive [89/106/EEC](#).

⁴⁷ [IP/11/1415](#).

⁴⁸ [IP/11/1111](#) and [IP/11/1251](#).

⁴⁹ Commission v Greece, [C-65/05](#) and [C-109/08](#).

⁵⁰ Directive [2009/48/EC](#).

⁵¹ Directive [2009/43/EC](#).

⁵² Directives [2010/62/EU](#), [2010/52/EU](#), [2010/22/EU](#) and [2010/19/EU](#).

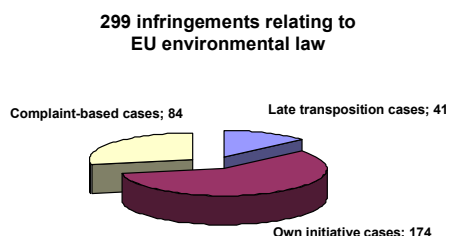
⁵³ Articles [34-36 TFEU](#).

⁵⁴ Commission v Austria, [C-28/09](#).

⁵⁵ Commission v Poland, [C-311/10](#).

General statistics

Most of the active infringement cases in 2011 (299) were in the environment field among the 20 reporting policy areas. The following table shows the origins of these cases:



114 new environmental infringements were initiated during 2011. The Commission decided to submit 18 environmental cases to the Court, including four referrals for the late adoption of river basin management plans under the water framework directive,⁵⁶ three referrals due to the lack of Integrated Pollution Prevention and Control (IPPC) permits for factories⁵⁷, and two referrals for non-compliance with PM10 limit values.⁵⁸ Still, many infringements remained open due to non-compliance with IPPC permits and PM10 values.

By the end of 2011 56 Court judgments still awaited full implementation by Member States. The Commission is monitoring closely the actions taken by Member States which, in some cases, take a certain time to ensure full compliance. One of the key challenges is the correct implementation of EU waste law. In 2011 a second referral was decided in three cases, against Ireland (two cases on improper checks on septic tanks and insufficient impact assessment legislation) and Luxembourg (inadequate urban waste water treatment).⁵⁹

Late transposition of directives

58 infringements were opened during 2011 because of late transposition of environmental directives.

In particular, the Commission launched infringement cases against 23 Member States for failure to transpose the waste framework directive in good time.⁶⁰

Poland was referred to the Court with a request for financial sanctions under Article 260(3) TFEU⁶¹ due to the late transposition of the directives on ambient air quality⁶² and marine strategy framework.⁶³

Complaints handling

The Commission received 604 complaints on environmental matters during 2011, a slight decrease in registered files over 2010 (669 incoming complaints).

The three sectors receiving the most complaints were nature protection (±200), waste (±100) and water (±60). 605 environmental complaints were processed last year. Nearly two thirds of them (395) were closed with a full response, while 149 were transferred to EU Pilot for Member States to react.

Two infringement cases (against Greece and Cyprus) and 27 bilateral discussions were launched by the Commission upon petitions and questions from the European Parliament and

MEPs, most of them (18) invoking nature protection and environmental impact policy issues.

Own-initiative cases

The Commission systematically monitors correct transposition of key environmental directives especially in the sectors of waste, impact assessment and water and all new EU legislation. Most of the Commission's own initiative cases are related to the environment.

Bad application of EU environmental *acquis* by the Member States also triggered infringements, for example: failure to close all sub-standard landfills, non-compliance with EU air quality standards (PM10); violation of hunting rules or derogation conditions; tolerating installations without IPPC permits; lack of river basin management plans.

Early resolution of potential infringements

The Commission opened 358 new environmental files in EU Pilot during 2011 and processed 399 dossiers in this period. 350 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (88 % success rate). 335 environment files remained open in EU Pilot by the end of 2011.

In 2011, important cases were closed due to Member State compliance, e.g. the corrections made in Polish law increased the compliance with the environmental impact assessment rules and the Czech authorities correctly designated special protection areas for birds.⁶⁴

Prominent judgments

The Court delivered four major environmental rulings in 2011. It confirmed that Ireland incorrectly transposed the environmental impact assessment directive,⁶⁵ and ruled against Spain for lack of conservation measures in the Macaronesian bio-geographical region.⁶⁶ Two important judgements interpreted the Environmental Impact Assessment Directive. In the first the Court ruled that this directive did not apply to projects that had been adopted by a specific legislative act, if the directive's objectives have been achieved in the law-making process.⁶⁷ The second confirmed that NGOs may contest a decision on a project's environmental effects by relying on rules protecting only the general public interest (without defending individual interests).⁶⁸

Further information available at:

http://ec.europa.eu/dgs/environment/index_en.htm

⁵⁶

[IP/11/438](#).

⁵⁷

[IP/11/305](#), [IP/11/433](#) and [IP/11/593](#).

⁵⁸

[IP/11/435](#) and [IP/11/596](#).

⁵⁹

[IP/11/168](#), [IP/11/592](#) and [IP/11/1273](#).

⁶⁰

Directive [2008/98/EC](#).

⁶¹

[IP/11/1434](#).

⁶²

Directive [2008/50/EC](#).

⁶³

Directive [2008/56/EC](#).

⁶⁴

[IP/07/938](#).

⁶⁵

Commission v Ireland, [C-50/09](#).

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Commission v Spain, [C-90/10](#).

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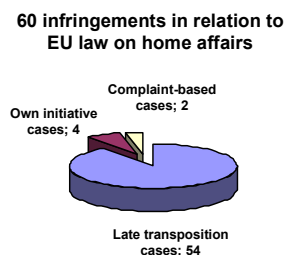
Boxus and Others, [C-128/09](#).

⁶⁸

Trianel, [C-115/09](#).

General statistics

The Commission had 60 open infringement cases in the area of home affairs at the end of 2011. This is the eleventh-highest number of cases among the 20 reporting policy areas, broken down as follows:



The 78 new infringements initiated by the Commission in relation to home affairs included three cases against Germany, Romania and the Czech Republic on the data retention directive.⁶⁹ In October 2011, the Commission sent a reasoned opinion to Germany and Romania.⁷⁰

The Court had already ruled against Greece, Ireland, Sweden and Austria due to their failure to transpose the same directive.⁷¹ In the absence of compliance with the judgment, the Commission decided to refer Sweden to the Court for the second time under Article 260(2) TFEU with a request for financial penalty.⁷² Austria made significant progress on complying with the judgment by the Court. After adoption of national legislations transposing the directive, the proceedings against Greece and Ireland were closed.

Late transposition of directives

76 infringements had to be opened during 2011 because there were no or only partial national implementing rules for directives.

Member States had to transpose key home affairs directives in 2011. However, 20 of them missed the deadline for the Blue Card directive;⁷³ 20 infringements each were launched due to the late transposition of the directive on employer sanctions⁷⁴ and of the return directive⁷⁵; and 13 such infringements were launched under the critical infrastructures directive.⁷⁶

Complaints handling

The Commission received 123 home affairs complaints during 2011, a significant increase over 2010 (72 incoming complaints). Most complaints concerned visa policy ('unfair' visa imposition on third-country nationals, visa facilitation agreements with Eastern Partnership countries and Russia). Of the 73 complaints processed, more than half (44) were closed after a full reply had been sent to the complainant. 10 complaints were transferred to EU Pilot so that Member States could react to them.

The Commission launched investigations upon a petition from the European Parliament on the functioning of the EU-

Russia Visa Fee Waiver Agreement, which was later closed due to the compliance of the Member State. Investigations on the application of the Long-Term Residents Directive⁷⁷ in a Member State were still open at the end of the year.

Own-initiative cases

The Commission launched investigations against five Member States in order to examine whether their border measures (obstacles to fluid traffic flow, camera surveillance and the application of carrier's liability on intra-Schengen flights) were compatible with the Schengen Borders Code. The investigations were still open by the end of the year.

Commission investigations regarding the use of phallometric testing in asylum procedures were closed as the Member State concerned ceased the practice.

Early resolution of potential infringements

The Commission opened 19 new home affairs files in EU Pilot in 2011. It processed ten dossiers in this period; six of them with a positive result, i.e. the explanations or undertakings of the Member State were accepted (60 % success rate). 22 home affairs files remained open in EU Pilot by the end of last year.

Two infringement proceedings could be closed without the need to refer the Member States to the Court: France removed the obstacles to fluid traffic flow at its internal borders with Belgium, Spain and Luxembourg⁷⁸; and Austria amended its laws on foreign students' access to the labour market in order to make it compatible with the Students Directive.⁷⁹

Prominent judgments

Two preliminary rulings from the Court clarified the extent to which the Return Directive allows national laws to criminalise irregular stays in a Member State. In principle, imprisonment may not be imposed on the sole ground that a person remains on the territory of a Member State contrary to a leave order,⁸⁰ however, the unjustified illegal stay may lead to such sanction, if the person concerned was subject to the return procedure.⁸¹

Further information available at:

http://ec.europa.eu/dgs/home-affairs/index_en.htm

⁶⁹ Directive [2006/24/EC](#).

⁷⁰ [IP/11/1248](#) (the reasoned opinion to the Czech Republic was sent in March 2012).

⁷¹ Commission v Greece, [C-211/09](#), Commission v Ireland, [C-202/09](#), Commission v Sweden, [C-185/09](#) and Commission v Austria, [C-189/09](#).

⁷² Commission v Sweden, [C-270/11](#).

⁷³ Directive [2009/50/EC](#).

⁷⁴ Directive [2009/52/EC](#).

⁷⁵ Directive [2008/115/EC](#).

⁷⁶ Directive [2008/114/EC](#).

⁷⁷ Directive [2003/109/EC](#).

⁷⁸ Regulation [562/2006](#).

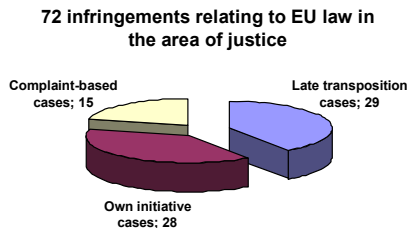
⁷⁹ Directive [2004/114/EC](#).

⁸⁰ PPU – El Dridi, [C-61/11](#).

⁸¹ Achughbabian, [C-329/11](#).

General statistics

The Commission had 72 open infringement cases in this area at the end of 2011. This was the eight-highest number of cases among the 20 reporting policy areas, broken down as follows:



Out of 87 new infringements initiated in the area of justice, 12 concerned a general action against 12 Member States relating to citizens' rights to free movement.⁸² In addition, infringements were launched concerning the draft Hungarian legislation on the retirement age of judges and prosecutors, and on the independence of the data protection supervisory authority and of the judiciary.

The Commission referred two cases to the Court claiming that the Belgian doorstep selling ban on goods or services in excess of € 250 breached the directive on unfair commercial practices⁸³, and contesting the Italian laws for failing to grant reasonable accommodation at work to disabled persons.

In the only case where a Member State did not comply with a previous Court judgment,⁸⁴ Commission action led Germany to take measures to ensure the independence of its data protection supervisory authority in order to avoid financial sanctions under Article 260(2) TFEU.

Late transposition of directives

71 infringements were opened because there were no or only partial national rules transposing justice directives.

In particular, 19 Member States missed the transposition deadline for the directive on mediation in civil and commercial matters⁸⁵ (but only four received reasoned opinions). 15 Member States failed to transpose the directive on timeshares⁸⁶ on time, but almost all took action by the end of 2011.

Complaints handling

The Commission received 433 complaints on justice matters during 2011, a slight decrease over 2010 (456 incoming complaints). Justice complaints covered all policy areas, especially the right to free movement (residence cards, family members' rights, and expulsions), discrimination and consumer protection (unfair contract terms and practices, faulty products). Citizens are increasingly raising fundamental rights issues, such as manifestations of racism and xenophobia or access to justice. The first Annual Report on the Charter of Fundamental Rights⁸⁷ serves also as guidance for complainants on how the rights and freedoms in the Charter are protected.

The Commission processed 524 justice complaints last year. In most cases, the Commission delivered a full response to complainants (338). Ten complaints were transferred to EU Pilot for Member States' reaction.

Upon petitions and questions from the European Parliament and MEPs, the Commission launched two

infringements against the UK (on visa requirements and the acquisition of permanent residence by EU citizens from new Member States) and three preliminary investigations (on issuing civil status certificates in view of same-sex marriages or partnerships, on storage of biometric data in travel documents and on residence right for third-country family members of EU citizens).

Own-initiative cases

Besides the above general action against 12 Member States, the Commission verified the correctness of national transposition measures for the anti-discrimination and unfair commercial practices directives.⁸⁸

Early resolution of potential infringements

The Commission opened 54 new files in EU Pilot and processed in total 59 files in 2011. In 48 cases, the Commission accepted the Member States' explanations or undertakings (81% success rate). By end 2011, 62 files remained open in EU Pilot.

Concerning the repatriation of Roma, the action taken by France ensured compliance with the free movement directive. Other infringements settled out of Court included the cases on belated delivery of residence documents in the UK and the non-enforceability of a judgment issued by an Italian court in Latvia in a case of child abduction.

Prominent judgments

Greece had to pay a penalty of € 3 million for the late transposition of the directive on compensation to crime victims.⁸⁹

In preliminary rulings, the Court held that: a derogation from the unisex rule in individuals' insurance premiums and benefits is invalid as of end 2012;⁹⁰ Member States cannot take measures forcing EU citizens to leave the EU;⁹¹ they are obliged to respect the Charter of Fundamental Rights when implementing EU law.⁹²

Further information available at:
http://ec.europa.eu/justice/index_en.htm

⁸² [IP/11/981](#) and [IP/12/75](#).

⁸³ [IP/11/1096](#).

⁸⁴ [Commission v Germany, C-518/07](#).

⁸⁵ [Directive 2008/52/EC](#).

⁸⁶ [Directive 2008/122/EC](#).

⁸⁷ [Report](#) on the Application of the EU Charter of Fundamental Rights.

⁸⁸ Directives [2000/43/EC](#), [2000/78/EC](#) and [2005/29/EC](#).

⁸⁹ [Commission v Greece, C-407/09](#) and [IP/12/168](#).

⁹⁰ [Association Belge des Consommateurs Test-Achats, C-236/09](#).

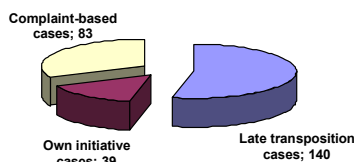
⁹¹ [Ruiz Zambrano, C-34/09](#).

⁹² [N. S. and Others, C-411/10](#) and [C-493/10](#).

General statistics

The Commission was managing 262 open infringement cases in the area of internal market & services by the end of 2011. This is the third-highest caseload among the 20 reporting policy areas, broken down as follows:

262 infringements relating to EU law on the internal market & services



The 228 new internal market infringements launched by the Commission during 2011 included letters of formal notice against Malta (due to incorrect transposition of the directive on new public procurement remedies), Poland (on the possibly unjustified exclusion criteria in the national procurement law), and the UK (public bids for software submitted to the Office of Government Commerce).

Four Member States were referred to the Court due to internal market infringements: Greece (restricted investment in strategic companies),⁹³ Italy (the state's special rights under the privatisation law),⁹⁴ Cyprus (restrictions on buying secondary residences)⁹⁵ and Slovenia (incorrect transposition of the Third Non-Life Insurance Directive).⁹⁶

There were 28 internal market infringements at the end of 2011 where the Court had ruled against the Member States but they had not complied with the judgments. Depending on the Member States' progress in implementing these judgments, financial sanctions under Article 260(2) TFEU may be requested by the Commission.

Late transposition of directives

198 infringements were initiated during 2011 due to no or only partial national implementing rules in the internal market area.

In particular, 23 infringements were initiated under each of the following three key directives: one on defence and security procurement,⁹⁷ another on the powers of the European Supervisory Authorities for Banking, Insurance, Pensions, and Securities,⁹⁸ and a third implementing the UCITS IV rules.⁹⁹ Besides, infringements were pursued against the three Member States which had still not transposed the Services Directive.¹⁰⁰

Efforts had to be maintained at a very high level in the financial services sector (due to a new wave of directives) and in the field of public procurement.

Complaints handling

The Commission received 530 complaints on internal market matters during 2011, a slight decrease over 2010 (597 incoming complaints).

Public procurement, freedom to provide services, freedom of establishment and regulated professions (mutual recognition of diplomas) attracted the most complaints in 2011.

The Commission processed 531 internal market complaints last year. Many of them (378) had been followed up and closed with the Commission's full response to the complainant. 97 complaints had been transferred to EU Pilot for Member States to consider.

Own-initiative cases

The Commission's 39 own-initiative infringements covered problems in the areas of public procurement, free provision of services, insurance and pensions and free movement of capital.

Early resolution of potential infringements

The Commission opened 128 new internal market files in EU Pilot during 2011 and processed 188 dossiers in this period. 168 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (89 % success rate). 129 internal market files remained open in EU Pilot by the end of last year.

The internal market developments taken during 2011 before a Court ruling included the adoption of a new Czech law on the public procurement of certain goods to be used in the military sector;¹⁰¹ the decision of the Portuguese authorities to organize a public tender for the supply of notebooks to students and teachers;¹⁰² the elimination of the ban on foreign currency mortgages by Hungary; and the new Austrian laws on agricultural land acquisition in Vorarlberg.

Prominent judgments

In a series of judgments, the Court found that the nationality requirement imposed on public notaries was incompatible with the Treaty.¹⁰³ However, the Court dismissed a Commission action against Spain because the contracts within the framework of 'integrated action programmes' in the Valencian Community did not aim primarily at the performance of works that required public tendering.¹⁰⁴ By contrast, the Court found that several Spanish restrictions on the opening of hypermarkets in certain areas were contrary to the freedom of establishment.¹⁰⁵

Further information available at:

http://ec.europa.eu/dgs/internal_market/index_en.htm

⁹³ [IP/11/179](#).

⁹⁴ [IP/11/1443](#).

⁹⁵ [IP/11/1442](#).

⁹⁶ [IP/11/181](#).

⁹⁷ Directive [2009/81/EC](#).

⁹⁸ Directive [2010/78/EU](#).

⁹⁹ Directive [2009/65/EC](#).

¹⁰⁰ Directive [2006/123/EC](#).

¹⁰¹ [IP/11/1440](#).

¹⁰² [IP/11/83](#).

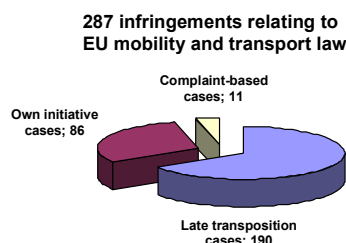
¹⁰³ Court press release no. [50/11](#).

¹⁰⁴ Commission v Spain. [C-306/08](#).

¹⁰⁵ Commission v Spain. [C-400/08](#).

General statistics

The Commission had 287 open infringement cases in the area of mobility and transport at the end of 2011. This is the second-highest number of cases among the 22 reporting policy areas. The following table shows the distribution of these cases according to their origins:



284 infringements were initiated in relation to transport issues during 2011, including two general actions: one against 22 Member States for their bilateral air services agreements with Russia¹⁰⁶, and another involving 12 Member States for excluding self-employed drivers from the scope of the drivers' working time directive (2002/15/EC).

Five transport-related infringements were referred to the Court in 2011. In particular, Italy and Luxembourg were claimed to have improperly implemented the First Railway Package.¹⁰⁷

In the only transport-related case where Member State compliance with a previous Court judgment was still lacking, Spain made significant efforts to follow the Court ruling¹⁰⁸ on service provision in ports of general interest (harbour dues).

Late transposition of directives

The 12 transport-related directives with transposition deadline in 2011 triggered 240 infringements because there were no or only partial national implementing rules. By the end of the year, 190 late transposition infringements remained open.

Late transposition of the directive on driving licences¹⁰⁹ called for infringement procedures against 20 Member States. 21 late transposition infringements were started under the airport charges directive¹¹⁰ and another 15 under the directive on ship owners' insurance against maritime claims.¹¹¹

The Commission decided to refer to the Court two further cases with a proposal for financial sanctions under Article 260(3) TFEU: both cases are related to railway transport and are against Germany.¹¹²

Complaints handling

The Commission received 65 complaints on mobility and transport matters during 2011, a notable decrease over 2010 (93 incoming complaints).

Most of the complaints claimed a violation of passenger rights, especially the rights of air passengers. The road safety sector likewise attracted numerous complaints, in particular on driving licence matters.

The Commission processed 76 transport complaints last year. Most files were closed without further steps due to the

Commission's full response to the complainant (48). Nine transport complaints were transferred to EU Pilot so that Member States could react to them.

No petition or question arrived from the EP or MEPs that would have triggered an infringement procedure under EU transport law.

Own-initiative cases

Both general actions highlighted in the first section (bilateral air services agreements with Russia and self-employed drivers) were started at the Commission's own initiative. In addition, the Commission launched infringements against five Member States on bad application of quality control rules in the civil aviation security sector.

Early resolution of potential infringements

The Commission opened 170 new mobility and transport files in EU Pilot during 2011 and processed 58 dossiers in this period. 37 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State (64 % success rate). 129 mobility and transport files remained open in EU Pilot at the end of last year.

Significant infringements in the field of transport that the Commission was ready to close upon Member States' compliance in 2011 included the dispute on the Irish air travel tax;¹¹³ the discriminatory treatment of 'Class 66' locomotives by Polish authorities; and the Greek rules restricting the freedom to provide services related to maritime cabotage.

Prominent judgments

The Court did not hand down any major judgment in the transport field in 2011. Judgments are awaited on a series of cases relating to the First Railway Package.

Further information available at:
http://ec.europa.eu/transport/index_en.htm

¹⁰⁶

[IP/11/186](#).

¹⁰⁷

A detailed description is available [here](#).

¹⁰⁸

Commission v Spain, [C-18/09](#).

¹⁰⁹

Directive [2006/126/EC](#) (recast).

¹¹⁰

Directive [2009/12/EC](#).

¹¹¹

Directive [2009/20/EC](#).

¹¹²

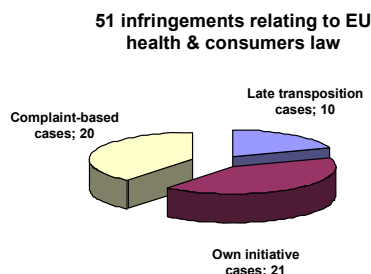
Directive [2008/57/EC](#) and Directive [2008/110/EC](#).

¹¹³

[IP/11/734](#).

General statistics

The Commission had 51 open infringement cases in the area of health & consumers at the end of 2011. This is the twelfth-highest number of cases among the 20 reporting policy areas, which broke down according to origin as follows:



The 174 new infringements that the Commission launched in the field of health & consumers in 2011 included actions due to the non-cooperation of German customs services with the Food and Veterinary Office and the incorrect Slovak and Slovene transposition of the directive that protects consumers' interests with injunctions.¹¹⁴

The Commission decided to refer five disputes to the Court on points of EU health & consumer law in 2011: the Polish ban on genetically modified (GM) feed¹¹⁵ and the incorrect transposition of the directive on the contained use of GM micro-organisms;¹¹⁶ the French refusal to apply the decision on scrapie,¹¹⁷ and the incorrect Italian and Swedish transpositions of the directive on distance marketing of financial services.¹¹⁸

In six cases, Member States failed to comply by the end of 2011 with a Court judgment condemning their measures. To avoid penalties under Article 260(2) TFEU, Greece has to apply correctly the regulation on animal by-products not intended for human consumption,¹¹⁹ improve animal welfare¹²⁰ and increase its control resources;¹²¹ and Poland has to abolish its ban on GM seed varieties.¹²²

Late transposition of directives

164 infringements were opened during 2011 due to no or only partial national transpositions in the health & consumers area.

Of the key policy instruments in this field with transposition deadline in 2011, 19 Member States failed to notify their national transposition measures for the directive on the sustainable use of pesticides.¹²³ The directive on derogations for the marketing of fodder plant seed mixtures triggered late transposition infringements against 14 Member States.

Complaints handling

The Commission received 99 complaints on health & consumers matters during 2011, a slight decrease over 2010 (121 incoming complaints).

Complaints targeted the public health, food safety and animal welfare sectors.

The Commission processed 130 health & consumers complaints last year. Most of the files (79) were closed with the Commission's full response to the complainant. 36 complaints

were transferred to EU Pilot so that Member States could react to them.

At the initiative of the European Parliament, the Commission investigated six petitions, claiming an infringement of EU rules on animal by-products, plant health, pet transport, medical devices, public health and food safety.

Own-initiative cases

Two general actions were prepared in the health & consumers field during 2011: one aimed at monitoring compliance with the prohibition on rearing laying hens in un-enriched cages,¹²⁴ the other targeted the correct transposition of the directive on protecting consumers' interests with injunctions. In addition, sustained efforts were necessary to ensure the proper transposition of directives on consumer protection and GM organisms.

Early resolution of potential infringements

The Commission opened 63 new EU Pilot files on health & consumers matters during 2011 and processed 86 dossiers in this period. 67 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (78 % success rate). 94 files remained open in EU Pilot by the end of last year.

Of the infringements in this field that were closed without Court proceedings in 2011 it is useful to note the corrections made by the Czech Republic, Ireland and the United Kingdom to comply with the directive on the contained use of GM micro-organisms;¹²⁵ similar efforts were made by the Netherlands, Spain and Slovenia to achieve correct transposition of the directive on distance marketing of financial services.¹²⁶

Prominent judgments

The Court ruled that Portugal and Luxembourg have to refund the costs of non-hospital medical care¹²⁷ and medical biology analyses,¹²⁸ respectively, when done in another Member State.

The Court dismissed the French application for the partial annulment of the TSE Regulation¹²⁹ by confirming that determining what risk is deemed unacceptable for society is a policy choice and not a court decision.¹³⁰

Further information available at:
http://ec.europa.eu/dgs/health_consumer/index_en.htm

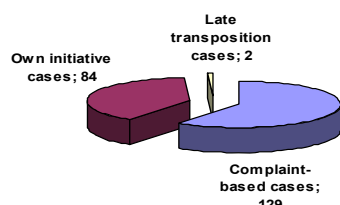
¹¹⁴ [IP/12/184](#).
¹¹⁵ [IP/11/292](#).
¹¹⁶ [IP/11/293](#).
¹¹⁷ [IP/11/601](#).
¹¹⁸ [IP/11/1091](#) and [IP/11/98](#).
¹¹⁹ *Commission v Greece*, [C-248/08](#).
¹²⁰ *Commission v Greece*, [C-416/07](#).
¹²¹ *Commission v Greece*, [C-331/07](#).
¹²² *Commission v Poland*, [C-165/08](#).
¹²³ [Directive 2009/128/EC](#).

¹²⁴ [Directive 1999/74/EC](#).
¹²⁵ [Directive 2009/41/EC](#).
¹²⁶ [Directive 2002/65/EC](#).
¹²⁷ *Commission v Portugal*, [C-255/09](#), [IP/08/1517](#).
¹²⁸ *Commission v Luxembourg*, [C-490/09](#), [IP/08/1517](#).
¹²⁹ [Regulation 999/2001](#).
¹³⁰ *France v Commission*, [T-257/07](#), [IP/11/601](#).

General statistics

The Commission was managing 215 open infringement cases in the taxation area at the end of 2011. This is the fourth-highest number of cases among the 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:

215 infringements relating to EU taxation law



In addition to the 80 new tax cases initiated during 2011, the Commission delivered reasoned opinions to Ireland and Spain due to their tax rules on leased or rented cars.¹³¹

The Commission decided to take 23 tax cases to the Court last year, including referrals against nine Member States for incorrectly applying the special VAT margin scheme for travel agencies;¹³² and against Spain for its discriminatory tax on inheritance and gifts.¹³³

In 16 tax cases, the Commission was unable to confirm that Member States had complied with the Court judgment condemning their measures. These Member States might be exposed to financial sanctions under Article 260(2) TFEU.

Late transposition of directives

38 infringements had to be opened during 2011 because there were no or only partial national implementing rules in the area of taxation. Thanks to rapid compliance, only two such cases remained open by the end of last year.

As a particular example, the transposition of VAT refund rules¹³⁴ into national law required particularly serious efforts from national authorities. Even though 12 infringements had to be launched because of partial or no notifications by the deadline (end of 2010), the Commission was able to close all cases by mid-2011.

Complaints handling

The Commission received 411 complaints on taxation matters during 2011. This is a notable increase over 2010 (375 incoming complaints) and is probably due to the fact that some Member States introduced tax measures during the financial crisis that were questionable under EU law.

Tax-related complaints echo the public opinion that car registration taxes are contradictory to the idea of an internal market.¹³⁵ Many citizens' complaints concerned discriminatory taxation of cross-border workers. And many complaints concern Member States' double taxation treaties.

The Commission processed 384 tax complaints last year. This included especially the files that had been closed without further steps due to the Commission's full response to the complainant (244) or its lack of competence (6). 70 tax complaints were transferred to EU Pilot so that Member States could react to them.

In all tax issues raised by the European Parliament in complaints or petitions during 2011, the Commission had already engaged in discussions with the Member State.

Own-initiative cases

Because of their potential impact on the EU's own resources, the Commission closely scrutinises tax exemptions. It also monitored the correct application of the Court's case law on the leasing and use of company cars. Discriminatory taxes on inheritance and gifts as well as 'exit taxes' (payable when companies' headquarters or individuals' residences are transferred) continue to trigger many own-initiative cases.

Early resolution of potential infringements

The Commission opened 169 new tax files in EU Pilot during 2011 and processed 94 dossiers in this period. 70 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State (74 % success rate). 117 tax files remained open in EU Pilot by the end of last year.

Significant tax problems that were resolved during the formal infringement procedure included the discriminatory tax amnesty in Greece¹³⁶ and the VAT exemption granted for postal services in Spain, Austria, Finland, Italy and Slovenia.

Prominent judgments

The Court confirmed that a reduced VAT rate could not be applied to the sale of race-horses¹³⁷. A German dividend tax was also judged to be contrary to the free movement of capital¹³⁸ because it was higher on dividends that were paid to foreign companies than those due on dividends paid to domestic companies.

Further information available at:
http://ec.europa.eu/taxation_customs/index_en.htm

¹³¹ [IP/11/1281](#).
¹³² [IP/11/76](#) and [IP/11/716](#).
¹³³ [IP/11/1278](#).

¹³⁴ Directive [2010/66/EU](#).

¹³⁵ The Council did not support the Commission's 2005 proposal for a Directive abolishing car registration taxes.

¹³⁶ [IP/11/161](#).

¹³⁷ *Commission v the Netherlands*, [C-41/09](#); *Commission v Austria*, [C-441/09](#) and *Commission v Germany*, [C-453/09](#).

¹³⁸ *Commission v Germany*, [C-284/09](#).

General developments

In 2011, the Commission detected 309 anomalies in the area of traditional own resources and set 67 VAT reservations¹³⁹. Subsequently, 844 accounting actions for traditional own resources and 185 for VAT were generated for potential corrective payments (principal amounts and belated interest) by Member States. Most of the newly detected anomalies were solved at an early stage in bilateral discussions with Member States, including senior-level management meetings, or in the Advisory Committee on Own Resources.

However, a letter of formal notice was sent to Portugal because it changed its GNI data for a period subject to a Commission reservation without adjusting the GNI- and VAT-based contributions to be paid to the EU budget accordingly.

Prominent judgments

The Court passed two important judgments in the field of financial programming and the budget in 2011. In the first case, it held that the Court of Auditors cannot be hindered by Member States in conducting audits of VAT cooperation mechanisms between Member States, as they are linked to

the EU's own resources.¹⁴⁰ In the second case, the Court held Member States financially responsible for administrative errors (such as the acceptance of customs declarations which do not state the real weight of the imported goods), which result in the loss of traditional own resources for the EU budget.¹⁴¹

Follow-up of Court judgments

The Commission referred several infringements to the Court because of loss of traditional own resources related to the importation of military and dual-use goods by seven Member States (Denmark,¹⁴² Finland,¹⁴³ Germany,¹⁴⁴ Greece,¹⁴⁵ Italy,¹⁴⁶ Portugal¹⁴⁷ and Sweden¹⁴⁸). While all Member States concerned paid the principal amount after the judgments, they still owed the EU the belated interest, which amounted to approximately € 300 million. The Commission requested data from these Member States in order to calculate the accurate amounts of belated interest. By the end of 2011, all the Member States paid the amounts of interest due to the EU budget.

Further information available at:
http://ec.europa.eu/dgs/budget/index_en.htm

¹³⁹ Regulation [1553/1989](#) and Regulation [1150/2000](#).

¹⁴⁰ Commission v Germany, [C-539/09](#).
¹⁴¹ Commission v Portugal, [C-23/10](#).
¹⁴² Commission v Denmark, [C-461/05](#).
¹⁴³ Commission v Finland, [C-284/05](#).
¹⁴⁴ Commission v Germany, [C-372/05](#).
¹⁴⁵ Commission v Greece, [C-409/05](#).
¹⁴⁶ Commission v Italy, [C-387/05](#) and [C-239/06](#).
¹⁴⁷ Commission v Portugal, [C-38/06](#).
¹⁴⁸ Commission v Sweden, [C-294/05](#).

General developments

In 2011 a key priority for the Commission in the area of compliance with competition rules were the substantial spectrum resources (the ‘digital dividend’) freed up by the introduction of digital terrestrial television broadcasting. This provides an opportunity to authorise further television channels and increase competition and consumer choice. The Commission continued investigating several Member States that have assigned parts of the ‘digital dividend’ to incumbent operators under procedures which do not appear, *prima facie*, to be based on transparent, objective and non-discriminatory criteria.

Accordingly, the Commission sent a letter of formal notice to Bulgaria because the national law that governed the tenders for the assignment of the digital terrestrial broadcasting spectrum potentially violates the directives on electronic communications¹⁴⁹ and the competition directive.¹⁵⁰ In addition, a reasoned opinion was sent to France requiring it to allocate digital TV broadcasting frequencies in a non-discriminatory fashion.¹⁵¹

Follow-up of State aid decisions

Ordering a Member State to recover incompatible State aid following a Commission decision and Court judgment under Article 108 TFEU constitutes an important component of the infringement work in the area of competition. These proceedings are governed by Article 260(2) TFEU, which means that the Commission may request financial sanctions against the defaulting Member State.

One of the infringement procedures against Spain regarding the fiscal aid schemes in the three Basque Provinces (Álava, Guipúzcoa and Vizcaya) was closed since the entire aid plus recovery interest had been recovered from all beneficiary companies.

Prominent judgments

The Court ruled against Italy because of its failure to recover illegal State aid for employment under training and work experience contracts and imposed a lump sum penalty of € 30 million as well as periodic penalties, which can decrease proportionately to any aid still unrecovered.¹⁵²

Further information available at:

http://ec.europa.eu/dgs/competition/index_en.htm

¹⁴⁹ Directives [2002/21/EC](#) and [2002/20/EC](#).

¹⁵⁰ Directive [2002/77/EC](#).

¹⁵¹ [IP/11/1115](#).

¹⁵² Commission v Italy, [C-496/09](#).

Verifying compliance with Court judgments

In the field of EU law related to maritime affairs and fisheries the following developments are worth noting:

The Court ruled against Spain finding that it did not carry out sufficient controls on landings and marketing of undersized fish and did not take the necessary repressive action against those acting in breach of the corresponding EU rules.¹⁵³ The Spanish authorities have notified the Commission the measures they have taken in order to apply the judgment. The Commission carried out an inspection in late 2011 to verify whether these measures were being fully implemented. The results were under assessment at the end of 2011.

The Court found that France breached the EU rules relating to the restricted use of driftnets by not monitoring the relevant fishing activities sufficiently thoroughly and not enforcing the corresponding rules properly.¹⁵⁴ The Commission has launched a procedure to verify the correct application of the Court judgment. It was found that the French authorities had introduced legislative, administrative and control measures for the purpose of ensuring full compliance with the EU rules. The French authorities indicated that they had strengthened their national

regulatory framework on driftnets and tightened up their checks. The Commission's on-site inspections confirmed the effectiveness of these measures; the infringement procedure was therefore closed in 2011.

Non-compliance with Court judgments

The Court ruled against Italy for failing to apply effectively the EU rules restricting the use of driftnets and failing to control the corresponding fishing activities.¹⁵⁵ In response to the Commission's inquiry, the Italian authorities provided information on the measures they had taken in order to comply with the judgment. However, the subsequent Commission inspections concluded that those measures were not satisfactory; it therefore maintained the infringement procedure against Italy by sending a letter of formal notice under Article 260(2) TFEU.¹⁵⁶

Further information available at:

http://ec.europa.eu/dgs/maritimeaffairs_fisheries/index_en.htm

¹⁵³ Commission v Spain, [C-189/07](#).
¹⁵⁴ Commission v France, [C-556/07](#).

¹⁵⁵ Commission v Italy, [C-249/08](#).
¹⁵⁶ [IP/11/1088](#).

General remarks

In the area of regional policy, the number of complaints received by the Commission over recent years has increased considerably. Accordingly, the number of EU Pilot files on regional policy is also significant. However, with many complaints still at the preliminary investigation phase, the Commission did not open any infringement procedures in this area in 2011.

Complaints handling

The Commission registered 92 new complaints in 2011. Even if 137 were submitted in 2010, the number of complaints has increased by around 65% since 2009.

Complainants typically claimed that their application for financial support had been erroneously rejected or that certain projects were not in line with EU law (especially environmental or public procurement rules) or that the projects selected for co-financing suffered from other defects (e.g. poor performance of installations).

The Commission processed 53 complaints related to regional policy in 2011. Several files were closed without further steps due to the Commission's response to the complainant (22) or its lack of competence (14). Eleven complaints were transferred to EU Pilot so that Member States could react to them.

The European Parliament submitted eight petitions to the Commission in relation to regional policy. Some of them were not related to projects co-financed by the EU; for the rest, there was no evident breach of EU law.

Own-initiative cases

The Commission opened an EU Pilot file against a Member State as a preparatory step for a possible infringement procedure for non-cooperation (Article 4(3) TEU) in the closure of the projects co-financed by the Cohesion Fund for the programming period 2000-2006. An assessment of the Member State's response was pending at the end of 2011.

Early resolution of potential infringements

The Commission opened 11 new files in EU Pilot during 2011 and processed 13 dossiers in this period. 12 processed files had a positive assessment, i.e. the Commission accepted the explanations or the undertakings made by the Member State concerned (83 % success rate). 14 regional policy files remained open in EU Pilot by the end of last year.

Prominent judgments

Five judgments¹⁵⁷ were handed down by the Court on regional policy issues in 2011. In all of these, Member States had appealed against Commission decisions ordering financial correction measures due to irregular public procurement procedures and/or ineligible expenditures in various projects co-financed by the European Regional Development Fund.

Further information available at:

http://ec.europa.eu/regional_policy/index_en.cfm

¹⁵⁷

Provincie Groningen and Provincie Drenthe v Commission, [T-69/09](#); the Netherlands v Commission, [T-70/09](#); Portugal v Commission, [T-387/07](#); Caixa Geral de Depósitos, SA v Commission, [T-401/07](#) and Greece v Commission, [T-81/09](#).

Education and Culture

In the area of EU legislation related to education and culture, five infringement procedures were open at the end of 2011.

The Commission closed two procedures following compliance by Member States during 2011.

In one case, a UK university was charging higher fees for its distance learning courses if the student was a resident outside the UK. Following the intervention of the Commission, the university agreed to limit the additional charges to no more than could be justified by objective reasons (such as the extra cost of running examination centres in other countries).

In the other case, Germany eliminated the restriction making study grants available only for residents who wished to follow distance learning courses at German institutions. They extended the grant's availability to distance learning courses offered by foreign institutions so long as the foreign studies fulfilled all other support conditions.

Enlargement

In this area there is one case worthy of particular mention: An earlier Court judgment had ruled that the Netherlands was charging disproportionately high fees for issuing residence permits for Turkish nationals who had acquired the right of residence.¹⁵⁸ The Dutch authorities aligned the fees charged for

provisional residence permits and residence permits issued to Turkish citizens with those charged for similar documents issued to EU citizens. The Commission is examining whether these measures are sufficient to fully comply with the judgement.

Statistics on Europe

With regard to legal obligations on Member States to provide sound statistics to the Commission, the following case is worthy of mention: The Commission sent a reasoned opinion to Greece because it appeared that Greece had failed to provide the Commission with data on its government deficit and debt for the purposes of the Excessive Deficit Procedure. To deal with the problems raised by the Commission, Greece had to review its legislation and administrative structure. It adopted a law on the Hellenic Statistical System and established the independent Hellenic Statistical Authority, which were significant steps forward. However, the Commission also has to monitor the effective implementation of the new Greek legislation.

Further information available at:

http://ec.europa.eu/dgs/agriculture/index_en.htm

¹⁵⁸

Commission v the Netherlands, [C-92/07](#).

