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**REPORT FROM THE COMMISSION**

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

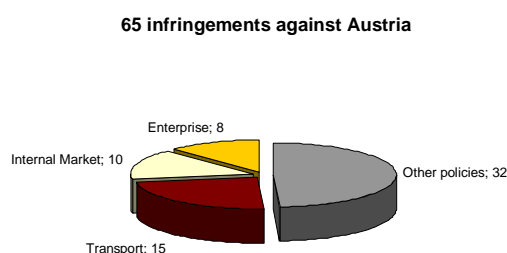
{COM(2012) 714 final}  
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# AUSTRIA

## General Statistics

With 65 open infringements at the end of 2011, Austria had the eleventh-highest number of infringements (along with the Czech Republic) among the EU-27.

However, Austria's performance is the worst in its reference group<sup>1</sup>: Bulgaria had 54 open infringements and there were 60 against Sweden. Austria closed the year with more infringements than in 2010 (57) and almost the same number as in 2009 (66). The following chart shows the three policy areas where Austria was subject most frequently to infringement procedures:



Only two Court cases were brought against Austria during 2011 (10 cases in 2010). The Commission argued that the students transport pricing system discriminated against foreigners,<sup>2</sup> and that some installations were not properly licensed under the directive on integrated air pollution prevention.<sup>3</sup> Within the reference group, one case reached the Court against each of Bulgaria and Sweden.

No decisions were taken by the Commission to refer Austria to the Court for the second time under Article 260(2) TFEU.

## Transposition of directives

The Commission opened 46 infringement procedures against Austria for late transposition of various directives in 2011. Austria faced 29 such procedures in 2010. Ranking as the 18<sup>th</sup> in the EU-27, this result is poorer for the other two Member States in the reference group.

The policy areas where Austria experienced serious challenges in transposing EU directives are transport (13 late transposition infringements), internal market & services and enterprise & industry (7 infringements in each area).

Despite the progress made by the Austrian authorities in transposing the Services Directive<sup>4</sup>, the process was still not complete more than two years after the implementation deadline. Accordingly, the Commission referred Austria to the Court with a proposal for financial sanctions (Article 260(3) TFEU).<sup>5</sup>

## Complaints

In 2011, the Commission received 97 complaints against Austria, which is the tenth-highest figure in the EU-27.

Areas with the most claimed irregularities include environment (exemptions from impact assessment, access to

justice, nature protection; 26 complaints), internal market (public procurement and professional recognition; 21), and fundamental rights (free movement of family members and double-barrelled surname registration; 11). Other complaints concerned obstacles to car registration, breach of green car procurement rules, limited access to transport services market, violation of rights to family benefits, and discriminatory taxation of foreign pensioners and workers.

## Early resolution of infringements

At the end of 2011, the Commission and the Austrian authorities were working on 102 open files in EU Pilot, including 43 new dossiers opened during 2011. Austria is among the 11 Member States whose average response time in EU Pilot (77 days) fails to meet the 10-week benchmark.

In 2011 Austria successfully closed a number of infringements launched earlier by the Commission: it has properly designated all Special Protection Areas under the Birds Directive, amended the rules on acquiring agricultural land in Vorarlberg so that rules on the free movement of capital, brought the VAT exemptions for postal services within the limits allowed by the VAT Directive, ensured equal tax treatment for domestic and foreign investments funds, and made the conditions for accessing the natural gas market transparent.

## Important judgments

The Court found once again that the reinstated traffic ban for lorries on the A12 motorway was incompatible with the free movement of goods<sup>6</sup> and the nationality condition for notaries could not be justified by the exercise of official authority.<sup>7</sup> The Court also found against the reduced VAT rate for race horses<sup>8</sup> and the discriminatory tax incentive for donations for research and development.<sup>9</sup>

In preliminary rulings handed down to the Austrian judiciary, the Court further clarified the conditions under which EU citizens' family members, who are third country nationals, may be refused the right to reside in that citizen's Member State.<sup>10</sup> It also ruled that excluding a significantly higher proportion of female pensioners than male ones from a pension adjustment scheme constitutes sex discrimination.<sup>11</sup>

## Key infringements

- Ban on internet sales of contact lenses
- Failure to ensure transparent and non-discriminatory airport charges for airlines<sup>12</sup>
- Restrictions on extended family members' rights protected by Free Movement Directive<sup>13</sup>
- Restricted access to justice in environmental impact assessment matters

<sup>1</sup> Member States with equal or close to equal voting weights in the Council; for Austria: Bulgaria and Sweden.

<sup>2</sup> [IP/10/1227](#)

<sup>3</sup> [IP/11/433](#)

<sup>4</sup> Directive [2006/123/EC](#)

<sup>5</sup> [IP/11/1283](#)

<sup>6</sup> [Commission v Austria, C-28/09](#)

<sup>7</sup> [Commission v Austria, C-53/08](#)

<sup>8</sup> [Commission v Austria, C-441/09](#)

<sup>9</sup> [Commission v Austria, C-10/10](#)

<sup>10</sup> [Dereci and others, C-256/11](#)

<sup>11</sup> [Brachner, C-123/10](#)

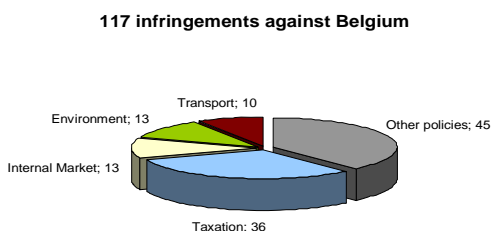
<sup>12</sup> [IP/11/1410](#)

<sup>13</sup> [IP/11/981](#)

## General Statistics

There were 117 open infringements against Belgium at the end of 2011, which is the third-worst result among the EU-27.

Belgium's performance is below average in its reference group<sup>14</sup>: Romania had 47 open infringements, Hungary 54, the Czech Republic 65, the Netherlands and Portugal 71 and 84 respectively and Greece 123. However, Belgium closed the year with fewer infringements than in 2010 (126) and 2009 (128). The following chart shows the four policy areas where Belgium was most frequently subject to infringement procedures:



Six cases were submitted to the Court against Belgium during 2011 (by contrast to the 11 submissions in 2010). The Commission contested: the discriminatory nature of the *de facto* exemption granted to Belgian (but not to EU) investment companies from interest and dividend tax,<sup>15</sup> the failure to adopt river basin management plans<sup>16</sup> and the lack of indexation of Belgian pensions when paid to certain non-resident persons.<sup>17</sup> Within the reference group, no cases were brought against Romania or Hungary; there were three against Portugal and four each against the Netherlands, the Czech Republic and Greece.

The Commission filed one case against Belgium under Article 260(2) TFEU with a request for financial sanctions due to Belgium's failure to collect and/or treat urban waste water properly in some areas of the country.<sup>18</sup>

## Transposition of directives

The Commission opened 45 infringement procedures against Belgium for late transposition of various directives in 2011. Belgium faced 14 such procedures in 2010. Ranking as 17<sup>th</sup> in the EU-27, this result is still better than for the other Member States in the reference group except for the Netherlands.

The policy areas where Belgium experienced serious challenges in transposing EU directives are transport, internal market & services (10 late transposition infringements in each area) and energy (6).

In no case in 2011 did, the Commission refer Belgium to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

In 2011, the Commission received 82 complaints against Belgium, which is the thirteenth lowest figure in the EU-27.

Areas with the most alleged irregularities include taxation (discriminating against foreign workers, inheritance and securities income; 23 complaints), environment

(inadequate impact assessments, potential damages to Natura 2000 sites, nitrates pollution and urban waste water treatment; 14), free movement of persons (blocking family reunification with non-EU nationals and registration of double barrelled surnames; 9). Complaints also invoked car registration problems, passenger rights and mutual recognition of professional qualifications.

## Early resolution of infringements

Belgium joined EU Pilot in early 2011. By the end of the year, the Commission and the Belgian authorities were working on 42 newly opened files. Belgium's average response time in EU Pilot (71 days) is only slightly above the 10-week benchmark.

Alignment of certain disputed Belgian laws with EU rules resulted in the closure of several infringements in 2011 in particular: the barriers to parallel imports of drugs were removed; unit rates for air terminal charges were notified;<sup>19</sup> the independence of the rail safety authority was ensured;<sup>20</sup> Belgian pensions were made payable to any bank account within the EU; compliance was achieved with the drinking water directive;<sup>21</sup> and two discriminatory tax regimes were adjusted (a flat-rate tax reduction available only to Flemish residents and tax deduction of interests paid to Belgian banks).<sup>22</sup>

## Important judgments

The three Belgian regions were found to have failed to lay down the necessary criteria and thresholds making projects subject to environmental impact assessment.<sup>23</sup> Belgium was also found guilty of not requiring an impact assessment for projects likely to damage Natura 2000 sites such as the *Étang de Roly*.<sup>24</sup> In addition, the Court rejected the exercise of official authority as a justification for maintaining the nationality condition for public notaries.<sup>25</sup> However, safeguarding the tax system's cohesion did justify a discriminatory tax credit that was granted only to residents moving house within Flanders.<sup>26</sup>

The Court's preliminary rulings clarified, among other things, that the mere conversion of an administrative decision into a national law does not automatically exempt a project from the requirements laid down in the Environmental Impact Assessment Directive.<sup>27</sup>

## Key infringements

- Restrictions on extended family members' rights, expulsion safeguards and hindering the issuing of entry visa for non-EU family members.<sup>28</sup>
- Non-transposition of the directive on buildings energy performance<sup>29</sup>
- Discriminatory additional taxation of certain types of income from capital<sup>30</sup>
- Discriminatory inheritance tax provisions<sup>31</sup>

<sup>14</sup> Member States with equal or close to equal voting weights in the Council; for Belgium: Romania, Hungary, the Czech Republic, the Netherlands, Portugal and Greece.

<sup>15</sup> [IP/11/422](#)

<sup>16</sup> [IP/11/438](#)

<sup>17</sup> [IP/11/165](#)

<sup>18</sup> [IP/10/835](#)

<sup>19</sup> [IP/11/1252](#) on the earlier reasoned opinion

<sup>20</sup> [IP/11/72](#) on the earlier reasoned opinion

<sup>21</sup> Directive [98/83/EC](#)

<sup>22</sup> [IP/10/1403](#) on the earlier reasoned opinion

<sup>23</sup> Commission v Belgium, [C-435/09](#)

<sup>24</sup> Commission v Belgium, [C-538/09](#)

<sup>25</sup> Commission v Belgium, [C-47/08](#)

<sup>26</sup> Commission v Belgium, [C-250/08](#)

<sup>27</sup> Boxus and others, [C-128/09](#)

<sup>28</sup> [IP/11/981](#)

<sup>29</sup> [IP 11/733](#), Directive 2002/91/EC

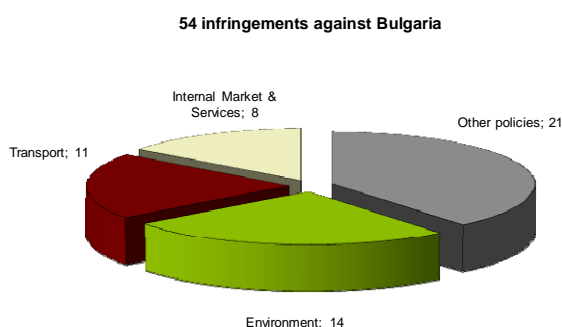
<sup>30</sup> [IP/11/1424](#)

<sup>31</sup> [IP/11/425](#)

## General Statistics

The Commission had 54 open infringements against Bulgaria at the end of 2011, which is the eleventh best result (along with Hungary) among the EU-27.

Bulgaria's performance is the best in its reference group<sup>32</sup>: Sweden had 60 open infringements Austria 65. However, Bulgaria closed the year with more infringements than in 2010 (44) and 2009 (45). The following chart shows the three policy areas where Bulgaria was most frequently subject to infringement procedures:



One case was submitted to the Court against Bulgaria during 2011 due to the non-transparent access conditions to the natural gas transmission networks<sup>33</sup>. Within the reference group, one case was submitted against Sweden and two against Austria.

No decisions were taken by the Commission to refer Bulgaria to the Court for the second time under Article 260(2) TFEU.

## Transposition of directives

The Commission opened 36 infringement procedures against Bulgaria for late transposition of various directives in 2011. Bulgaria faced 29 such procedures in 2010. Ranking as 9<sup>th</sup> in the EU-27 (with Slovakia), this result is better than for Austria but poorer than that for Sweden.

The policy areas where Bulgaria experienced serious challenges in transposing EU directives include transport (10 late transposition infringements), internal market & services (5), health & consumers and energy (4 in each).

In no case in 2011 did the Commission refer Bulgaria to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

In 2011, the Commission received 97 complaints against Bulgaria, which is the 10<sup>th</sup> highest figure in the EU-27.

Areas where the most anomalies were raised include environment (illegal activities, especially hunting, in Natura 2000 sites, poor waste management; 23 complaints) and internal market (public procurement, free movement of capital and free provision of services; 16). Further complaints were about the restricted movement right of persons with outstanding debts, the non-recognition of foreign diplomas (in particular from franchised institutions), renewable energy and energy efficiency as well as roadside inspections of commercial vehicles.

## Early resolution of infringements

At the end of 2011, the Commission and the Bulgarian authorities were working on 75 open files in EU Pilot, which is an average caseload. The Commission opened 62 new dossiers in relation to Bulgarian issues during 2011. Bulgaria is among the 13 Member States whose average response time in EU Pilot (67 days) is below the 10-week benchmark.

Bulgaria acted to eliminate a number of inconsistencies in its national law vis-à-vis EU rules, which prompted the Commission to close numerous infringements in 2011, including cases on: the non-portability of landline numbers when changing telephone operator<sup>34</sup> disproportionate restrictions on the establishment and operation of pharmacies, and the lack of transposition rules for more than 30 directives, including the one on capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies.<sup>35</sup>

## Important judgments

In a preliminary ruling in response to a request from the Bulgarian judiciary, the Court clarified that Member States may restrict the free movement of their nationals who have been convicted of a criminal offence; however, such restriction should be justified by the person's conduct, proportionate to the objective of crime prevention and subject to effective judicial review.<sup>36</sup>

## Key infringements

- Failure to control all risks to human health and the environment arising from the use of GMOs<sup>37</sup>
- Distortion of the market for broadcasting network services (prohibition of certain market players, e.g. network infrastructure owners, from applying for digital spectrum)
- Lack of transparent conditions for access to the natural gas distribution networks<sup>38</sup>
- Inadequate waste disposal installations in the municipality of Sofia

<sup>32</sup> Member States with equal or close to equal voting weights in the Council; for Bulgaria: Sweden and Austria

<sup>33</sup> [IP/11/1437](#)

<sup>34</sup> [IP/10/521](#) on the earlier reasoned opinion

<sup>35</sup> Directive [2010/76/EU](#)

<sup>36</sup> [Gaydarov, C-430/10](#)

<sup>37</sup> [IP/11/291](#)

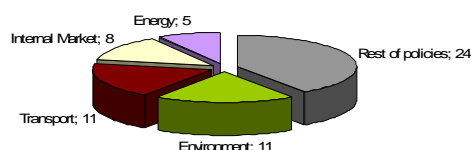
<sup>38</sup> [IP 11/1437](#)

### General Statistics

The Commission had 59 open infringements against Cyprus at the end of 2011, which ranks Cyprus 14<sup>th</sup> among the EU-27 (the median value).

However, Cyprus's performance is the worst in its reference group:<sup>39</sup> Latvia had only 23 open infringements; Malta and Estonia had 36 each, Slovenia 46, and Luxembourg 48. Cyprus closed 2011 with considerably more infringements than in 2010 (44) and 2009 (31). The following chart indicates the four areas where Cyprus was subject most frequently to infringement procedures:

59 infringements against Cyprus



One case against Cyprus was brought before the Court in 2011 (the same number as in 2010: the Commission claimed that the restrictive provisions on the acquisition of secondary residences by EU citizens, which benefited from a five-year moratorium after Cyprus' accession, should have been repealed.<sup>40</sup> Within the reference group, no cases were brought against Latvia and one each was brought against Estonia, Malta, Slovenia and Luxembourg.

In no case did the Commission refer Cyprus to the Court for the second time under Article 260(2) TFEU.

### Transposition of directives

During the course of 2011, the Commission opened 63 infringement procedures against Cyprus for late transposition of national implementing measures of various directives (compared to 44 in 2010). This substantial increase means that Cyprus ranks 25<sup>th</sup> in the EU-27 and performed worse than all Member States in the reference group.

The policy areas where Cyprus had to face particularly serious challenges in transposing EU directives are transport (12 late transposition infringements), health & consumers (11) and internal market & services (9).

In no case did the Commission refer Cyprus to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

### Complaints

The Commission received 79 complaints against Cyprus in 2011, which is the eleventh-lowest figure in the EU-27.

They were concentrated in these areas: free movement of persons (expulsion safeguards, delays in issuing residence cards; 18 complaints), environment (detrimental impact of inappropriate project assessments and improper functioning of waste facilities; 14) and indirect taxation (especially car taxes; 12). In addition, citizens warned the Commission that the authorities were refusing to recognise, for the purposes of pension rights, the periods spent in foreign service by Cypriot civil servants. Numerous complaints covered flaws in public

procurement procedures and pointed out problems in relation to the recognition of professional qualifications.

### Early resolution of infringements

Cyprus joined EU Pilot in the first half of 2011 and the Cypriot authorities were working on 23 newly opened files with the Commission in EU Pilot by the end of the year. This was the lowest EU Pilot caseload among the EU-27. Cyprus's average response time is on a par with the benchmark (70 days).

Some important infringement procedures were closed during 2011, given that Cyprus: abolished the residence condition for seafarers for access to the social security system;<sup>41</sup> adopted river basin management plans;<sup>42</sup> justified the restrictions on the establishment of pharmacies with reference to public health; and updated the national civil aviation security programme.<sup>43</sup>

### Important judgments

The Court delivered one judgment in 2011 on a public award procedure for the construction of a power station in Vassilikos. The Court declared that, on the basis of the elements made available to it, the Commission could not demonstrate that the Cypriot authorities had not treated applicants equally and had hindered the complaining applicant in resorting to legal remedies.<sup>44</sup>

### Key infringements

- The free movement of persons is restricted in particular by: disproportionately high fines and document costs; and no (or inadequate) transposition rules for the Free Movement Directive<sup>45</sup> (relating to spouses, dependants and expulsion safeguards)<sup>46</sup>
- Failure to designate sufficient Special Protection Areas for endangered and migratory birds<sup>47</sup> (only nine areas were designated out of the sixteen locations that are proven to be important)

<sup>39</sup> Member States with equal or close to equal voting weights in the Council; for Cyprus: Latvia, Malta, Slovenia, Estonia, and Luxembourg.

<sup>40</sup> [IP/11/1442](#)

<sup>41</sup> [IP/10/1210](#) on the earlier reasoned opinion

<sup>42</sup> [IP/10/1413](#) on the earlier reasoned opinion

<sup>43</sup> [IP/11/297](#) on the earlier reasoned opinion

<sup>44</sup> Commission v Cyprus, [C-2009/251](#)

<sup>45</sup> Directive [2004/38/EC](#)

<sup>46</sup> [IP/11/981](#)

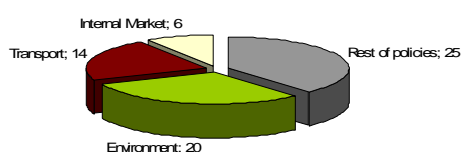
<sup>47</sup> [IP/09/1793](#)

## General Statistics

With 65 open infringements at the end of 2011, the Czech Republic had the 11<sup>th</sup> highest number of infringements (along with Austria) among the EU-27.

This performance is around average in the Czech Republic's reference group:<sup>48</sup> Romania had 47 open infringements, Hungary 54, Netherlands and Portugal 71 and 84 respectively, Belgium 117 and Greece 123. Czech Republic closed the year with more infringements than in 2010 (48) and 2009 (60). The following chart shows the three policy areas where the Czech Republic was most frequently subject to infringement procedures:

65 infringements against the Czech Republic



Four cases were taken to the Court against the Czech Republic during 2011 (by contrast to the two during 2010). The Commission contested the sales designation '*Pomazánkové máslo*' (butter spread) as the milk-fat content was not high enough to be called butter ('*máslo*') under EU law;<sup>49</sup> the failure to update biocides legislation;<sup>50</sup> the incorrect application of VAT grouping rules;<sup>51</sup> and the erroneous implementation of VAT rules for travel agents.<sup>52</sup> Within the reference group, no cases were submitted against Romania or Hungary, there were 3 cases against Portugal, 4 each against the Netherlands and Greece, and 6 against Belgium.

The Commission decided to refer the Czech Republic to the Court for the second time under Article 260(2) TFEU, with a request for financial sanctions, because of non-conformity in the implementation of the directive on occupational pension funds.<sup>53</sup>

## Transposition of directives

The Commission opened 54 infringement procedures against the Czech Republic for late transposition of various directives in 2011. The Czech Republic faced 41 such procedures in 2010. Ranking as 21<sup>st</sup> in the EU-27, this result is poorer than for the Netherlands, Belgium, Romania and Portugal but is ahead of Greece and Hungary.

The policy areas where the Czech Republic experienced serious challenges in transposing EU directives are environment (10 late transposition infringements), transport (9) and internal market & services (8).

In no case in 2011 did, the Commission refer the Czech Republic to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

In 2011, 81 complaints were received against Czech Republic, which is the twelfth-lowest figure in the EU-27.

Areas where the most irregularities were detected include employment (in particular the mandatory insurance required from labour agencies; 31 complaints), internal market (intellectual property rights and free provision of services; 10) and regional policy (fraudulent use of EU funds and discrimination in selection procedures; 8). Further complaints were about inconsistencies in the field of renewable energy, the lack of environmental impact assessment and poor urban waste water treatment.

## Early resolution of infringements

At the end of 2011, the Commission was working on 73 open EU Pilot files with the Czech authorities, a regular caseload. The Czech Republic received 30 new EU Pilot dossiers from the Commission during 2011. The average response time in EU Pilot (72 days) was slightly above the 10-week benchmark.

By taking into account the Commission's position, the Czech Republic took many necessary measures in 2011 to achieve compliance with EU law and to have the corresponding infringements closed. For example, it demonstrated improved national quality control on aviation security, modified its legislation on the sale of consumer goods and related guarantees, designated all Special Protection Areas required by the Birds Directive,<sup>54</sup> amended its public procurement rules to cover certain military purchases,<sup>55</sup> introduced equal tax treatment for domestic and foreign insurance pension schemes<sup>56</sup> and adjusted the VAT rate for race horses to comply with the VAT Directive.

## Important judgments

In a preliminary ruling, the Court interpreted the Brussels I Regulation<sup>57</sup> on the applicable jurisdiction for the Czech judiciary so that the plaintiff may launch legal proceedings before the court that has jurisdiction according to the defendant's last known place of residence, if his/her current residence is unknown; however, this court remains obliged to take all necessary steps to locate the defendant's current place of residence.<sup>58</sup>

## Key infringements

- Non-application of the working time rules to self-employed drivers
- Residence cards are issued subject to proof of accommodation; residence rights are not sufficiently explained to victims of domestic violence<sup>59</sup>
- Incomplete transposition of the Renewable Energy Directive<sup>60</sup>

<sup>48</sup> Member States with equal or close to equal voting weights in the Council; for Czech Republic: Romania, Hungary, the Netherlands, Portugal, Belgium and Greece.

<sup>49</sup> [IP/10/1224](#)

<sup>50</sup> [IP/11/591](#)

<sup>51</sup> [IP/10/795](#)

<sup>52</sup> [IP/11/76](#)

<sup>53</sup> [IP/11/290](#)

<sup>54</sup> [IP/07/938](#) on the earlier reasoned opinion

<sup>55</sup> [IP/10/1438](#) on the earlier Court referral

<sup>56</sup> [IP/10/1406](#)

<sup>57</sup> Regulation [44/2001](#)

<sup>58</sup> [Hypoteční banka, C-327/10](#)

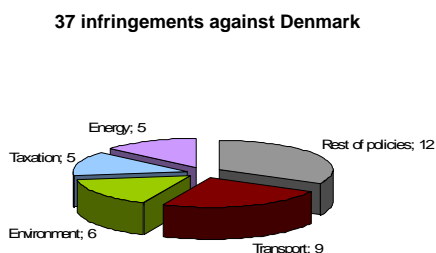
<sup>59</sup> [IP/11/981](#) and [IP/12/75](#)

<sup>60</sup> [IP 11/1446](#)

## General Statistics

The Commission had 37 open infringements against Denmark at the end of 2011, which is the fifth-best result among the EU-27.

Denmark's performance is also above average in its reference group.<sup>61</sup> Lithuania had 36 open infringements, Slovakia and Ireland 41 and 42 respectively, and Finland 55. Denmark closed the year with more infringements than in 2010 (29) and almost the same number as in 2009 (36). The following chart shows the four policy areas where Denmark was most frequently subject to infringement procedures:



Three cases were taken to the Court against Denmark during 2011 (by contrast to one case during 2010). The Commission contested: the failure to adopt river basin management plans;<sup>62</sup> the incorrect application of VAT grouping rules;<sup>63</sup> and the exit tax levied on companies relocating their headquarters to another Member State.<sup>64</sup> Within the reference group, no cases were brought against Lithuania, one case against Slovakia, and two each against Ireland and Finland.

No decisions were taken by the Commission to refer Denmark to the Court for the second time under Article 260(2) TFEU.

## Transposition of directives

The Commission opened 28 infringement procedures against Denmark for late transposition of various directives in 2011. Denmark faced 14 such procedures in 2010. Ranking as the 2<sup>nd</sup> in the EU-27 (with Estonia and Ireland), this result is the best in Denmark's reference group.

The policy areas where Denmark experienced serious challenges in transposing EU directives are transport and energy (6 late transposition infringements in each area) and health & consumers (4).

In no case in 2011 did the Commission refer Denmark to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

In 2011, the Commission received 77 complaints against Denmark, which is the tenth-lowest figure in the EU-27.

Areas where the most irregularities were complained include taxation (discriminatory taxes on cars, cross-border workers and pensions; 25 complaints), internal market (public procurement and services; 11), environment (permission for mussel dredging in Natura 2000 sites; 10). Several Danish

nationals are worried about the potential legal barriers to reunification of their family upon returning to Denmark. The Commission is also aware of concerns relating to protection from ionising radiation.

## Early resolution of infringements

At the end of 2011, the Commission and the Danish authorities were working on 84 files in EU Pilot, which counts as a medium caseload. Relatively few new dossiers (35) were opened during 2011; however, the average EU Pilot response time for Denmark (81 days) was above the 10-week benchmark.

Upon Denmark's compliance with EU law, the Commission decided to discontinue in 2011 infringements pertaining to such matters as: the ban on certain energy drinks, refusals to reimburse medical expenses incurred in another Member State, infrequent monitoring under the national programme for the quality control of civil aviation security, improper assignment of the competences of the gender equality body and non-compliance of national implementing rules with the directive on wild birds.<sup>65</sup>

## Important judgments

There were no such judgments.

### Key infringements

- Discriminatory treatment of Dutch sailing ships
- Inadequate environmental assessments under the Habitats Directive<sup>66</sup>

<sup>61</sup> Member States with equal or close to equal voting weights in the Council; for Denmark: Lithuania, Slovakia, Ireland and Finland.

<sup>62</sup> [IP/11/438](#)

<sup>63</sup> [IP/10/795](#)

<sup>64</sup> [IP/10/1565](#)

<sup>65</sup> Directive [2009/147/EC](#)

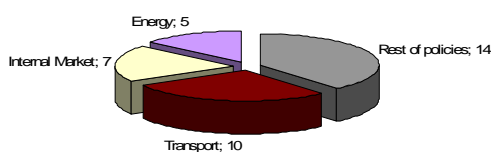
<sup>66</sup> Directive [1992/43/EC](#)

## General Statistics

The Commission had 36 open infringements against Estonia at the end of 2011, which is the second-best result (along with Latvia and Malta) among the EU-27.

Estonia's performance (along with that of Malta) is also above average in its reference group.<sup>67</sup> Latvia had 23 open infringements, Slovenia and Luxembourg 46 and 48 respectively, and Cyprus 59. Estonia closed the year with fewer infringements than in 2010 (40) but slightly more than in 2009 (34). The following chart shows the three policy areas where Estonia was most frequently subject to infringement procedures:

**36 infringements against Estonia**



One case was brought before the Court against Estonia during 2011 (a notable decrease when compared with the 7 cases submitted during 2010). Even in this case, in which the Commission claimed a lack of national laws on spatial data infrastructure,<sup>68</sup> Estonia adopted the necessary rules shortly after the case had reached the Court. Within the reference group, no cases were filed against Latvia and only each against Malta, Slovenia, Luxembourg and Cyprus.

In no case did the Commission refer Estonia to the Court for the second time under Article 260(2) TFEU.

## Transposition of directives

The Commission opened 28 infringement procedures against Estonia for late transposition of various directives in 2011. Estonia faced 21 such procedures in 2010. Ranking as the 2<sup>nd</sup> in the EU-27 (with Denmark and Ireland), this result is the second best in Estonia's reference group (Latvia performed even better).

The policy areas where Estonia experienced serious challenges in transposing EU directives are transport (9 late transposition infringements), internal market & services (8) and energy (5).

In no case in 2011 did the Commission refer Estonia to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

Estonia received the least complaints of all the Member States in 2011: just 19.

The areas with alleged irregularities include environment (for example, designation of Natura 2000 sites; 4 complaints), home affairs (such as passport controls at intra-EU borders; 4) and taxation (e.g., discriminatory taxes on foreign income; 3).

## Early resolution of infringements

At the end of 2011, the Commission and the Estonian authorities were working on 30 open files, quite a light caseload. The Commission opened 19 new EU Pilot files on Estonia during 2011. Despite the moderate caseload, Estonia's average response time in EU Pilot (72 days) is slightly above the 10-week benchmark.

Quite a few infringements were terminated during 2011 as a result of Estonia's cooperation with the Commission. Examples of such successful action include: amendments to the national rules to comply with EU consumer protection rules on advertised guarantees; the effective opening of the electricity market;<sup>69</sup> remedies for shortcomings in Estonian laws implementing the directive on integrated pollution prevention and control<sup>70</sup> and new legislation complying with the directive on capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies.<sup>71</sup>

## Important judgments

There were no such judgments.

### Key infringements

- No obligation for public authorities and transport operators to purchase clean and energy-efficient vehicles<sup>72</sup>
- Non-transposition of the directive on public procurement in the fields of defence and security<sup>73</sup>

<sup>67</sup> Member States with equal or close to equal voting weights in the Council; for Estonia: Latvia, Malta, Slovenia, Luxembourg and Cyprus.

<sup>68</sup> [IP/10/1566](#)

<sup>69</sup> [IP/06/1768](#) on the earlier reasoned opinion

<sup>70</sup> Directive [2008/1/EC](#)

<sup>71</sup> Directive [2010/76/EU](#)

<sup>72</sup> [IP/11/726](#)

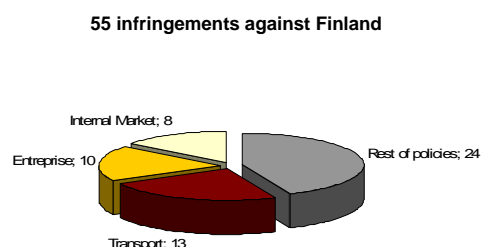
<sup>73</sup> Directive [2009/81/EC](#)



## General Statistics

The Commission had 55 open infringements against Finland at the end of 2011, which is the thirteenth-best result among the EU-27.

However, Finland's performance is the worst in its reference group<sup>74</sup>: Lithuania had 36 open infringements, Denmark and Slovakia 37 and 41 respectively, and Ireland 42. Finland closed the year with more infringements than in 2010 (42) and 2009 (37). The following chart shows the three policy areas where Finland was subject most frequently to infringement procedures:



Two Court cases were brought against Finland during 2011 (the same number as in 2010). The Commission found unacceptable the application of VAT grouping rules,<sup>75</sup> and the implementation of VAT rules for travel agents.<sup>76</sup> Within the reference group, there were no cases against Lithuania, one against Slovakia, 2 against Ireland and 3 against Denmark.

No decisions were taken by the Commission to refer Finland to the Court for the second time under Article 260(2) TFEU.

## Transposition of directives

The Commission opened 62 infringement procedures against Finland for late transposition of various directives in 2011. Finland faced 49 such procedures in 2010. Ranking 24<sup>th</sup> in the EU-27, this result is easily the poorest in Finland's reference group.

The policy areas where Finland experienced serious challenges in transposing EU directives are health & consumers (14 late transposition infringements), transport (12) and enterprise & industry (10).

In no case in 2011 did the Commission refer Finland to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

In 2011, the Commission received 46 complaints against Finland, which is the seventh-lowest figure in the EU-27.

Citizens and businesses pointed out possible errors in the areas of taxation (especially discrimination against cross-border workers; 11 complaints), internal market (particularly the free provision of services; 9) and fundamental rights (sex discrimination in pension schemes; 9). In addition complaints addressed illegal bird hunting and disputed the residence requirement as an eligibility criteria for certain social security benefits.

## Early resolution of infringements

At the end of 2011, the Commission and the Finnish authorities were working on 57 open files in EU Pilot. This is deemed a regular caseload, including the 20 new dossiers the Commission opened on Finnish issues during 2011. Finland belongs to the 13 Member States whose average response time in EU Pilot (80 days) exceeds the 10-week benchmark.

The Commission was able to close a number of infringements because Finland ensured compliance with EU law. For example, Finland broadened the scope of its personal data protection rules, achieved full compliance with the directive on waste electrical and electronic equipment,<sup>77</sup> transposed fully the directive on capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies<sup>78</sup> and applied the VAT exemption for universal postal services as required by the VAT directive.<sup>79</sup>

## Important judgments

There were no such judgments.

### Key infringements

- Failure to ensure enhanced consumer protection against errors in measuring instruments (such as household meters or petrol pumps)<sup>80</sup>
- Non-application of the working time rules to self-employed drivers
- Lack of adequate protection of the Saimaa ringed seal (freshwater subspecies, found only in the Saimaa lake system in south-eastern Finland)<sup>81</sup>
- Non-transposition of the directive on public procurement in the defence and security sector<sup>82</sup>

<sup>74</sup> Member States with equal or close to equal voting weights in the Council; for Finland: Lithuania, Denmark, Slovakia and Ireland.

<sup>75</sup> [IP/10/795](#)

<sup>76</sup> [IP/11/76](#)

<sup>77</sup> Directive [2002/96/EC](#)

<sup>78</sup> Directive [2010/76/EU](#)

<sup>79</sup> Directive [2006/112/EC](#)

<sup>80</sup> [IP/11/1110](#)

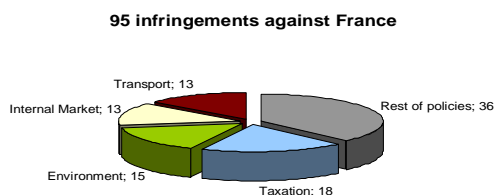
<sup>81</sup> [IP/10/523](#)

<sup>82</sup> Directive [2009/81/EC](#)

### General Statistics

The Commission had 95 open infringements against France at the end of 2011, which is the fifth-highest number (together with Poland) among the EU-27.

France's performance is average in its reference group<sup>83</sup>: at the end of 2011, Germany and the UK had 76 open infringements each, Spain had 99, and 135 were on-going against Italy. France closed 2011 and 2010 with the same number of infringements (95), which was a slight increase compared to 2009 (92). The following chart shows the four policy areas with the most frequent infringement procedures:



The Commission brought seven Court cases against France (8 during 2010), including the sector-specific tax imposed on telecommunication companies<sup>84</sup> and the non-conformity of its energy tax system with the corresponding EU directive.<sup>85</sup> Within the reference group, no cases were brought against Germany; there were 2 cases against the UK; 4 against Italy; 6 against Spain and 7 against Poland.

In no case did the Commission refer France to the Court for the second time under Article 260(2) TFEU in 2011.

### Transposition of directives

The Commission opened 42 infringement procedures against France during 2011 for late communication of national implementing measures of various directives. France faced 15 such procedures at the end of 2010. This is the twelfth-best in the EU-27 and better than all Member States in the reference group, except for Germany.

The policy areas where France experienced serious challenges in transposing EU directives are transport and internal market & services (9 late transposition infringements each) and energy (5).

In no case did the Commission refer France to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives in 2011.

### Complaints

France ranked 4<sup>th</sup> among the EU-27 in terms of total complaints (223) at the end of 2011.

Complaints focused on environment (e.g. inadequate or no impact assessments: 56); taxation (e.g. foreign charities, 'exit tax' on companies transferring their headquarters to other Member States, and the obligation on non-residents to appoint a tax representative); internal market & services (e.g. public procurement: 30). Car registration and access for non-French nationals to the CMU (sickness benefit scheme) also attracted several complaints.

<sup>83</sup> Member States with equal or close to equal voting weights in the Council; for France: the United Kingdom, Germany, Italy, Spain and Poland.

<sup>84</sup> [IP/11/309](#)

<sup>85</sup> [IP/10/1575](#)

### Early resolution of infringements

France joined EU Pilot in September 2011. By the end of 2011 the Commission had invited the French authorities to provide an opinion on 53 new EU Pilot files. This high initial caseload reflected in an average response time (84 days) above the target 10-week benchmark.

By notifying its corrected measures implementing the Free Movement Directive,<sup>86</sup> France has satisfactorily addressed the problem of repatriating Roma EU citizens. Other infringements against France that the Commission was able to close due to compliance during 2011 concerned: rules on the parallel import and repackaging of phytopharmaceutical products; VAT-rate for bundled purchases of TV, internet and telephone services; and the trading book requirements and re-securitisations for credit institutions.<sup>87</sup>

### Important judgments

Reserving access to the profession of notary to French citizens was deemed contrary to the right of establishment.<sup>88</sup> The treatment of asbestos-cement waste was found to be incompatible with the corresponding EU rules.<sup>89</sup> The lack of a programme ensuring the strict protection of the European hamster was also held to be unlawful.<sup>90</sup>

In addition, the Court's preliminary rulings guided the French judiciary in relation to the personal scope of EU product liability rules (Directive 85/374/EEC as amended)<sup>91</sup> and the discriminatory nature of granting the "bonus écologique" to demonstration vehicles registered abroad before their import to France.<sup>92</sup>

### Key infringements

- Refusal to apply EU scrapie<sup>93</sup> control measures in favour of national rules<sup>94</sup>
- Violation of EU rules on marketing wine spirits and wine distillates<sup>95</sup>
- Recovery of illegal state aid provided for the takeover of firms in difficulties<sup>96</sup>
- Refusal to grant jobseekers' allowances to non-French EU nationals
- Regulated gas prices for non-household users<sup>97</sup>
- Channel tunnel: violation of rail transport rules aimed at market opening and fair competition.<sup>98</sup>
- Failing to comply with the Energy Tax Directive<sup>99</sup> - system for taxing electricity<sup>100</sup>
- Sector-specific tax on electronic communication services<sup>101</sup>

<sup>86</sup> Directive [2004/38/EC](#)

<sup>87</sup> Directive [2010/76/EU](#)

<sup>88</sup> Commission v France, [C-50/08](#)

<sup>89</sup> Commission v France, [C-515/10](#)

<sup>90</sup> Commission v France, [C-383/09](#)

<sup>91</sup> Dutruex and Caisse primaire d'assurance maladie du Jura, [C-495/10](#)

<sup>92</sup> Bonnarde, [C-443/10](#)

<sup>93</sup> Scrapie is the "mad cow disease" equivalent for sheep and goats.

<sup>94</sup> [IP/11/601](#)

<sup>95</sup> [IP/12/179](#)

<sup>96</sup> Procedure under Article 260(2) TFEU due to France's failure to comply with the Court's judgment in the case Commission v France, [C-214/07](#)

<sup>97</sup> [IP/12/542](#)

<sup>98</sup> [IP/11/1099](#)

<sup>99</sup> Directive [2003/96/EC](#)

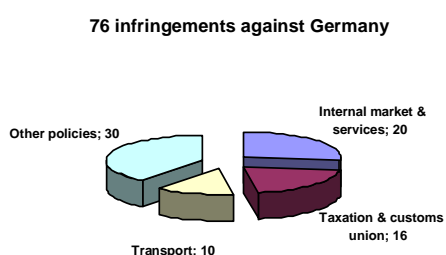
<sup>100</sup> [IP/10/1575](#)

<sup>101</sup> [IP/11/309](#)

## General Statistics

The Commission had 76 open infringements against Germany at the end of 2011, which is the eighth-highest number of infringements (along with the United Kingdom) among the EU-27.

However, Germany's performance (along with that of the UK) is the best in its reference group.<sup>102</sup> France and Poland had 95 open infringements each, Spain 99 and Italy 135. Germany closed the year with fewer infringements than in 2010 (79) and 2009 (90). The following chart shows the three policy areas where Germany was most frequently subject to infringement procedures:



No cases were brought to the Court against Germany during 2011 (by contrast to the 7 cases during 2010). Within the reference group, 2 cases were brought against the UK, 4 against Italy, 6 against Spain and 7 against Poland and France.

The Commission decided to refer Germany to the Court for the second time under Article 260(2) TFEU in the 'Volkswagen case'.<sup>103</sup>

## Transposition of directives

The Commission opened 31 infringement procedures against Germany for late communication of national implementing measures of various directives. Though Germany faced only 21 such procedures in 2010, its 2011 result is still the fifth-best in the EU-27 (with Sweden) and better than all Member States in the reference group.

The policy areas where Germany experienced serious challenges in transposing EU directives are transport (9 late transposition infringements), internal market & services (5) and home affairs (4).

The Commission referred Germany to the Court, with a request for financial sanctions (Article 260(3) TFEU), due to the late transposition of the Services Directive<sup>104</sup>, but the case has been closed following compliance by Germany. Two cases related to railway transport<sup>105</sup> were referred to the Court with a proposal for financial sanctions.

## Complaints

Germany registered the third-highest number of complaints of all the Member States in 2011 (263 complaints).

The areas with the most alleged irregularities were internal market (especially public procurement and services; 69 complaints), environment (damages to Natura 2000 sites; 47) and taxation (discrimination against cross-border workers, pension payments and dividends with cross-border elements;

40). Several complaints dealt with shortcomings in the enforcement of passenger rights, the free movement of family members, the lack of independence of the data protection supervisory body and preventive services at the workplace (such as first aid or reaction to dangers).

## Early resolution of infringements

At the end of 2011, the Commission and the German authorities were working on 193 open files in EU Pilot. This counts as the third highest caseload in the EU-27, even though a relatively modest number of new dossiers (60) were opened during 2011. Despite the numerous on-going discussions, Germany achieved an average EU Pilot response time of 65 days, which is below the 10-week benchmark.

Of the infringements eliminated by Germany during 2011, the following are worth highlighting: inclusion of foreign insurance periods when calculating old age pensions; changing the financial assets valuation rules for insurance companies to comply with EU norms; and reducing VAT exemptions for postal services to fit into the limits set by the VAT Directive.

## Important judgments

Allowing a *de facto* tax exemption for domestic dividends while taxing dividends paid to foreign shareholders was found to be contrary to the free movement of capital.<sup>106</sup> Making the grant of benefits for disabled persons conditional upon a residence in the *Land* was declared as incompatible with Regulation 1408/71.<sup>107</sup> The Court condemned Germany also for refusing the Court of Auditors to carry out verifications in the field of VAT cooperation (established by Regulation 1798/2003).<sup>108</sup>

In addition, a number of preliminary judgments guided the German judiciary in the area of justice and fundamental rights. The Court ruled that the five-year residence period, which is a condition for any permanent stay, must include terms spent in the host country before the accession of the citizen's Member State;<sup>109</sup> and that a registered partner in a same-sex life partnership is entitled to a supplementary retirement pension in the same way as a married partner.<sup>110</sup>

## Key infringements

- Trade barriers on CE-marked construction products<sup>111</sup>
- Restrictions on family members' rights protected by the Free Movement Directive<sup>112</sup>
- Inappropriate management of electricity network congestion and lack of transparency of cross-border trade data on energy<sup>113</sup>
- Late transposition of the directive on public procurement in the defence and security sector (2009/81/EC)
- Discriminatory tax rules on hidden reserves<sup>114</sup>

<sup>102</sup> Member States with equal or close to equal voting weights in the Council; for Germany: the United Kingdom, France, Italy, Spain and Poland.

<sup>103</sup> [IP/11/1444](#)

<sup>104</sup> Directive [2006/123/EC](#)

<sup>105</sup> Directives [2008/57/EC](#) and [2008/110/EC](#)

<sup>106</sup> [Commission v Germany, C-284/09](#)

<sup>107</sup> [Commission v Germany, C-206/10](#)

<sup>108</sup> [Commission v Germany, C-539/09](#)

<sup>109</sup> [Ziolkowski and Szeja, C-424/10](#)

<sup>110</sup> [Jürgen Römer v Freie und Hansestadt Hamburg, C-147/08](#)

<sup>111</sup> [IP/11/713](#)

<sup>112</sup> [IP/11/981](#)

<sup>113</sup> [IP/10/836](#) and [MEMO 10/275](#)

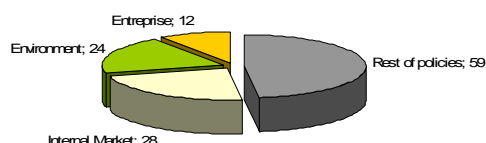
<sup>114</sup> [IP/11/1127](#)

### General Statistics

The Commission had 123 open infringements against Greece at the end of 2011. This is the second-worst result among the EU-27.

Greece's performance is also the worst in its reference group:<sup>115</sup> Romania had 47 open infringements, Hungary 54, the Czech Republic 65, the Netherlands and Portugal had 71 and 84 respectively, and Belgium 117. However, Greece closed the year with fewer infringements than in 2010 (125) and 2009 (137). The following chart shows the three policy areas where Greece was subject most frequently to infringement procedures:

123 infringements against Greece



Four Court cases were brought against Greece during 2011 (compared to the 11 cases filed during 2010). The Commission contested the failure to adopt river basin management plans;<sup>116</sup> the lack of progress in protecting Lake Koroneia (despite partial EU financing);<sup>117</sup> the investment restrictions in 'strategic companies';<sup>118</sup> and the incorrect implementation of VAT rules for travel agents.<sup>119</sup> Within the reference group, no cases were brought against Romania and Hungary; 3 cases were brought against Portugal, 4 each against the Netherlands and Czech Republic, and 6 against Belgium.

In no case did the Commission decide to refer Greece to the Court for the second time under Article 260(2) TFEU.

### Transposition of directives

The Commission opened 55 infringement procedures against Greece for late transposition of various directives in 2011. Greece had to face only 49 such procedures in 2010. Ranking 22<sup>nd</sup> in the EU-27, this result is poorer than for all the other Member States in the reference group except for Hungary.

The policy areas where Greece experienced serious challenges in transposing EU directives are health & consumers (13 late transposition infringements), transport (11) and internal market & services (8).

Despite the progress made by the Greek authorities in transposing the Services Directive<sup>120</sup>, the process could not be deemed complete even more than two years after the implementation deadline had expired. Accordingly, the Commission referred Greece to the Court with a proposal for financial sanctions.<sup>121</sup>

### Complaints

The Commission received 193 complaints against Greece in 2011, which is the sixth highest figure among the EU-27.

Areas that attracted the most complaints were internal market (especially public procurement, the free provision of services and mutual recognition of qualifications; 69 complaints), environment (damages to Natura 2000 sites and illegal landfills; 47) and fundamental rights (such as age discrimination in recruitment and retirement from diplomatic service; 16). Other complaints were about the refusal to recognise foreign diplomas for employment purposes in the public sector, food safety and the discriminatory application of the rules on minimum personal income tax for non-residents.

### Early resolution of infringements

Greece joined EU Pilot in the second half of 2011. By the end of the year the Commission and the Greek authorities were already working on 43 new EU Pilot files. Despite this high initial caseload, Greece was among the 11 Member States whose average response time in EU Pilot (63 days) beat the 10-week benchmark.

Greece has corrected several of its national rules to comply with EU law. The Commission closed cases on barriers to access in the road haulier profession, the restrictions on maritime cabotage, the absence of a national air surveillance authority, the prohibition on repacking potatoes, other fresh fruits and vegetables, the functioning of the Skalistiri landfill without proper licensing and the discriminatory tax amnesty granted to repatriated funds vis-à-vis funds held abroad.

### Important judgments

The Court found against Greece for the late transposition of the directive on compensation to crime victims and ordered it to pay a lump sum penalty of €3 million.<sup>122</sup> The use of the less transparent negotiated procedure was also found to be unjustified in a public tender concerned with urban planning and land registration even if these services were provided on a complementary basis.<sup>123</sup> The Court also refused to accept the exercise of official authority as a justification for the nationality condition for public notaries.<sup>124</sup>

In preliminary rulings, the Court found that while certain restrictions on the transporting, storing, processing and packing of dried grapes may protect the quality, they are nonetheless equivalent to measures of quantitative restrictions.<sup>125</sup> The Court also confirmed that a project must undergo an environmental assessment under the SEA Directive,<sup>126</sup> if it may have a significant effect on natural habitats or wild fauna and flora.<sup>127</sup>

### Key infringements

- Total ban on games machines (non-compliance with Court judgment despite financial sanctions)<sup>128</sup>
- Excessive working hours for doctors in public hospitals<sup>129</sup>
- Bad transposition of the directive on late payments,<sup>130</sup> outstanding debts of public bodies (including hospitals)

<sup>115</sup> Member States with equal or close to equal voting weights in the Council; for Greece: Romania, Hungary, the Czech Republic, the Netherlands, Portugal and Belgium

<sup>116</sup> [IP/11/438](#)

<sup>117</sup> [IP/11/89](#)

<sup>118</sup> [IP/11/179](#)

<sup>119</sup> [IP/11/76](#)

<sup>120</sup> Directive [2006/123/EC](#)

<sup>121</sup> [IP/11/1283](#)

<sup>122</sup> Commission v Greece, Case [C-407/09](#) and [IP/12/168](#)

<sup>123</sup> Commission v Greece, Case [C-601/10](#)

<sup>124</sup> Commission v Greece, [C-61/08](#)

<sup>125</sup> Kakavetsos-Fragkopoulou, Case [C-161/09](#)

<sup>126</sup> Directive [2001/42/EC](#)

<sup>127</sup> Syllagos Ellinon Poleodomon kai chorotakton [C-177/11](#)

<sup>128</sup> Commission v Greece, Case [C-65/05](#)

<sup>129</sup> [IP/11/1121](#)

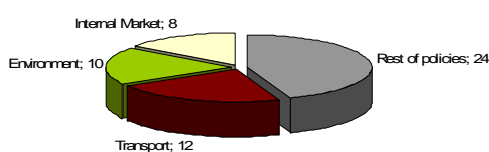
<sup>130</sup> Directive [2000/35/EC](#)

## General Statistics

The Commission had 54 open infringements against Hungary at the end of 2011, which is the eleventh-best result (along with Bulgaria) among the EU-27.

Hungary's performance is also above average in its reference group.<sup>131</sup> Romania had 47 open infringements, the Czech Republic 65, the Netherlands and Portugal 71 and 84 respectively, Belgium 117, and Greece 123. Hungary closed the year with slightly more infringements than in 2010 (53) and 2009 (50). The following chart shows the three policy areas where Hungary was subject most frequently to infringement procedures:

54 infringements against Hungary



At the end of 2011, the Commission expressed serious concerns regarding the compatibility of draft Hungarian legislation with EU law. One of these draft laws concerned the retirement age of judges, prosecutors and public notaries. Another related to the independence of the data protection supervisory authority. A third raised doubts about the independence of the Hungarian National Bank. In addition, the Commission announced that certain Hungarian draft laws had to be assessed against the core principle of an independent judiciary.<sup>132</sup>

No Court cases were brought against Hungary during 2011 (3 in 2010). Within the reference group, there were no cases against Romania, 3 against Portugal, 4 each against the Netherlands, the Czech Republic and Greece, and 6 against Belgium.

In no case did the Commission refer Hungary to the Court with a request for financial sanctions under Article 260(2) TFEU.

## Transposition of directives

The Commission opened 70 infringement procedures against Hungary for late transposition of various directives in 2011. Hungary faced 57 such procedures in 2010. Ranking 26<sup>th</sup> in the EU-27, this result is the poorest in Hungary's reference group.

The policy areas where Hungary experienced serious challenges in transposing EU directives are health & consumers (17 late transposition infringements), transport (12) and environment (8).

In no case in 2011 did the Commission refer Hungary to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

The Commission received 83 complaints against Hungary in 2011, which is the fourteenth-highest figure in the EU-27.

Areas where citizens and businesses raised the most problems include taxation (discriminative nature of sector-specific taxes in retail and telecommunications; 26 complaints) and fundamental rights (independence of the judiciary and the data protection authority, sensitive data processing and video surveillance by employer; 9). Other complaints alleged that Natura 2000 sites were not subject to adequate environmental impact assessment in connection with infrastructure developments, illegal landfills were being operated, hazardous waste treatment was deficient, and internal market rules were being misapplied especially those relating to free provision of services.

## Early resolution of infringements

At the end of 2011, the Commission and the Hungarian authorities were working on 87 open files in EU Pilot, which suggests an average caseload. 42 new Hungarian dossiers were opened in EU Pilot during 2011. The country is one of the 13 Member States whose average response time (66 days for Hungary) remains under the 10-week benchmark.

The Commission was able to close a number of infringements against Hungary in 2011 due to action to eliminate inconsistencies in its national law vis-à-vis EU rules. For example, the restrictions on foreign currency mortgages were lifted, amendments to the tax legislation granted non-discriminatory treatment to second-hand cars imported from other Member States,<sup>133</sup> an aerial power line that passed through an area protected by the Birds Directive was removed,<sup>134</sup> and the new legislation on pyrotechnic articles achieved compliance with the new EU rules.

## Important judgments

There were no such judgments.

### Key infringements

- Compatibility of laws implementing the new Hungarian constitution with EU rules especially as regards the independence of the central bank, the judiciary and the data protection supervisory authority
- Sector-specific tax on electronic communication services<sup>135</sup>
- Absence of measures on driving licences<sup>136</sup>
- Failure to meet limit values on air quality ('PM10' values) in several zones and agglomerations<sup>137</sup>

<sup>131</sup> Member States with equal or close to equal voting weights in the Council; for Hungary: Romania, the Czech Republic, the Netherlands, Portugal, Belgium and Greece.

<sup>132</sup> [IP/12/24](#) and [IP/12/222](#)

<sup>133</sup> [IP/09/1643](#) on the earlier reasoned opinion

<sup>134</sup> [IP/11/437](#) on the earlier reasoned opinion

<sup>135</sup> [IP/11/1108](#)

<sup>136</sup> [IP/11/1250](#)

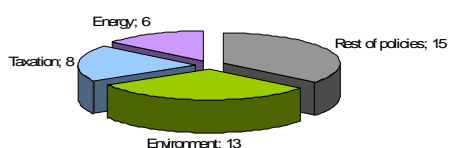
<sup>137</sup> [IP/10/1577](#)

## General Statistics

The Commission had 42 open infringements against Ireland at the end of 2011, which is the seventh-best result among the EU-27.

Ireland's performance is below average in its reference group.<sup>138</sup> Lithuania had 36 open infringements, Denmark and Slovakia 37 and 41 respectively, and Finland 55. Ireland closed the year with fewer infringements than in 2010 (58) and 2009 (98). The following chart shows the three policy areas where Ireland was most frequently subject to infringement procedures:

**42 infringements against Ireland**



Two cases were referred to the Court against Ireland during 2011 (4 cases were brought during 2010). The Commission held that the application of VAT grouping rules<sup>139</sup> and the reduced VAT rate for supplies of horses and greyhounds<sup>140</sup> were incompatible with EU rules. Within the reference group, no cases were brought against Lithuania; one case was brought against Slovakia, 2 against Finland and 3 against Denmark.

The Commission referred two Irish environmental cases to the Court against with a request for financial sanctions under Article 260(2) TFEU: one because the criteria system for making a project subject to environmental impact assessment ignored sensitive countryside features (such as wetlands, habitats and archaeological remains);<sup>141</sup> and another due to the lack of adequate checks and inspections on septic tanks for collecting domestic waste water.<sup>142</sup>

## Transposition of directives

The Commission opened 28 infringement procedures against Ireland for late transposition of various directives in 2011. Ireland faced 31 such procedures in 2010, so there has been an improvement in an area where almost all Member States' performance weakened in 2011. Ranking as 2<sup>nd</sup> in the EU-27 (with Estonia and Denmark), this result is the best in Ireland's reference group.

The policy areas where Ireland experienced serious challenges in transposing EU directives are transport (6 late transposition infringements), internal market & services (5) and energy (5).

In no case in 2011 did the Commission refer Ireland to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

The Commission received 90 complaints against Ireland in 2011 which is the thirteenth-highest figure in the EU-27.

Areas with the most alleged irregularities include environment (negative impact of infrastructural developments on Natura 2000 sites and inadequate environmental assessment; 29 complaints), fundamental rights (especially, restrictions on family members' rights, if not EU citizens; 26) and internal market (free provision of services and public procurement; 12). Additional complaints criticised discriminatory taxes on cars and inheritance, and the restricted access to special non-contributory benefits.

## Early resolution of infringements

At the end of 2011, the Commission and the Irish authorities were working on 118 open files in EU Pilot, which is a higher than average caseload. 44 new dossiers were opened on Irish issues during 2011. Ireland's average EU Pilot response time (75 days) failed to meet the 10-week benchmark.

By respecting the Commission's position, Ireland took many necessary measures in 2011 to achieve compliance with EU law. For example, it overhauled the discriminatory air travel tax,<sup>143</sup> provided for the opening of the gas and electricity markets,<sup>144</sup> amended its legislation to comply with the directive on waste originating from electronic and electric equipment<sup>145</sup> and created a new legal framework to implement the directive on postal services.<sup>146</sup> As result, the corresponding infringements were closed.

## Important judgments

The Court closed an environmental dispute by ruling that: Ireland had failed to transpose properly the impact assessment directive;<sup>147</sup> there were shortcomings in cooperation on the competent Irish authorities, which prevented the efficient performance of impact assessments; and demolition works were unduly excluded from the scope of the Irish legislation implementing the relevant directive.<sup>148</sup>

### Key infringements

- Failure to ensure animal welfare during transport as regards journey times and resting periods
- Excessive working hours for doctors in public hospitals<sup>149</sup>
- Restrictive exit tax rules for companies<sup>150</sup>
- Discriminatory tax treatment of cars leased or rented from another Member States<sup>151</sup>
- Non-transparent conditions as regards access to natural gas transmission networks<sup>152</sup>

<sup>138</sup> Member States with equal or close to equal voting weights in the Council; for Ireland: Lithuania, Denmark, Slovakia, and Finland.

<sup>139</sup> [IP/10/795](#)

<sup>140</sup> [IP/10/1576](#)

<sup>141</sup> [IP/11/168](#)

<sup>142</sup> [IP/11/592](#)

<sup>143</sup> [IP/11/734](#)

<sup>144</sup> [IP/06/1768](#)

<sup>145</sup> Directive [2002/96/EC](#)

<sup>146</sup> Directive [2008/6/EC](#)

<sup>147</sup> Directive [85/337/EEC](#)

<sup>148</sup> Commission v Ireland, Case [C-50/09](#)

<sup>149</sup> [IP/11/1121](#)

<sup>150</sup> [IP/11/78](#)

<sup>151</sup> [IP/11/1281](#)

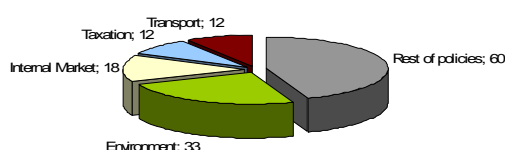
<sup>152</sup> [IP/12/52](#)

## General Statistics

The Commission had 135 open infringements against Italy at the end of 2011, which is the worst result among the EU-27.

Italy's performance is also the worst in its reference group:<sup>153</sup> Germany and the UK had 76 open infringements each, France and Poland 95 each, and Spain 99. Italy closed the year with more infringements than in 2010 (128) but fewer than in 2009 (151). The following chart shows the four policy areas where Italy was subject most frequently to infringement procedures:

135 infringements against Italy



Four Court cases were brought against Italy during 2011 (5 in 2010). The Commission contested the Italian implementation of VAT rules for travel agents;<sup>154</sup> the unjustified excess of EU air quality limit values for airborne particles ('PM10 values'),<sup>155</sup> the incorrect transposition of the First Railway Package,<sup>156</sup> and the incomplete transposition of the EU directive prohibiting discrimination in employment on the grounds of, among other, disability.<sup>157</sup> Within the reference group, no cases were brought against Germany, 2 against the UK, 6 against Spain and 7 each against Poland and France.

No decisions were taken by the Commission to refer Italy to the Court for the second time under Article 260(2) TFEU.

## Transposition of directives

The Commission opened 73 infringement procedures against Italy for late transposition of various directives. Italy faced only 55 such procedures in 2010. Ranking last in its reference group, Italy's result is also the poorest in the EU-27.

The policy areas where Italy experienced serious challenges in transposing EU directives are health & consumers (15 late transposition infringements), internal market & services (11), transport and environment (10 in each area).

The Commission referred Italy to the Court, with a request for financial sanctions (Article 260(3) TFEU), due to the late transposition of the directive modifying capital requirements for the trading book and for re-securitisations as well as the supervisory review of remuneration policies.<sup>158</sup>

## Complaints

There were more complaints submitted against Italy in 2011 than against any other Member State: 386 complaints were received by the Commission.

The areas with the most alleged irregularities include internal market (in particular, public procurement, free provision of services and recognition of professional

qualifications; 114 complaints), environment (inadequate environmental impact assessments, damages to Natura 2000 sites, illegal landfills, substandard waste management systems; 69) and fundamental rights (discriminatory access to social benefits and civil mediation; 47). The health and safety of employees at the workplace continues to generate many complaints, as does the discriminatory tax on foreign real estate and companies' exit tax. The proper functioning of electricity and gas markets was also questioned. Finally, the Commission was requested to examine discriminatory charges at an airport and certain maritime cabotage restrictions.

## Early resolution of infringements

At the end of 2011, the Commission and the Italian authorities were working on 371 open files in EU Pilot, which was the highest caseload within the EU-27. Italy also received the highest number of new EU Pilot dossiers from the Commission during 2011 (125). Despite such pressure, Italy's average response time in EU Pilot (72 days) was only slightly above the 10-week benchmark.

Italy made serious efforts in 2011 to comply with EU law, e.g.: it eliminated the obstacles to the importation and use of radio receivers; acted to recognise, from all other Member States, the certificates of origin issued for renewable electricity;<sup>159</sup> cleaned up industrial and urban waste landfills in Manfredonia and Pioltello-Rodano; brought the VAT exemptions for postal services within the limits of the VAT Directive<sup>160</sup> and abolished the discriminatory taxes on foreign investment funds. The infringements in question were thus discontinued.

## Important judgments

Because of its failure to recover illegal state aid, Italy was ordered to pay a lump sum penalty of €30 million as well as periodic penalties which can decrease proportionately to any aid remaining unrecovered.<sup>161</sup> Hunting derogations introduced in Sardinia were also deemed to go beyond the limits established by the Birds Directive.<sup>162</sup> Finally, the Court found that Italy had failed to take the necessary measures to ensure that all existing installations be subject to integrated pollution prevention control via new permits or re-verified and/or updated permits.<sup>163</sup>

## Key infringements

- Incorrect transposition of the First Railway Package
- Discriminatory rules against workers with experience and qualifications from another EU country<sup>164</sup>
- Restrictions on extended family members' rights under the EU free movement rules<sup>165</sup>
- Lack of compliance with the Energy Performance of Buildings Directive (2002/91/EC)<sup>166</sup>
- Inadequate waste management in Campania region<sup>167</sup>

<sup>153</sup> Member States with equal or close to equal voting weights in the Council; for Italy: Germany, the United Kingdom, France, Poland and Spain.

<sup>154</sup> [IP/11/76](#)

<sup>155</sup> [IP/10/1586](#)

<sup>156</sup> [IP/10/807](#)

<sup>157</sup> [IP/11/408](#)

<sup>158</sup> Directive [2010/76/EU](#)

<sup>159</sup> [IP/09/1799](#) on the earlier Court referral

<sup>160</sup> Directive [2006/112/EC](#)

<sup>161</sup> Commission v Italy, Case [C-496/09](#)

<sup>162</sup> Commission v Italy, Case [C-508/09](#)

<sup>163</sup> Commission v Italy, Case [C-50/10](#)

<sup>164</sup> [IP/11/167](#)

<sup>165</sup> [IP/11/981](#)

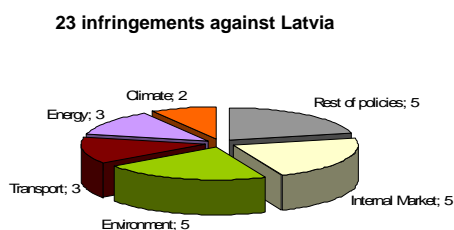
<sup>166</sup> [IP/11/1100](#)

<sup>167</sup> [IP/11/1102](#)

## General Statistics

The Commission had just 23 open infringements against Latvia at the end of 2011, which is the best result among the EU-27.

Latvia's performance is also the best in its reference group.<sup>168</sup> Estonia and Malta had 36 open infringements each, Slovenia and Luxembourg 46 and 48 respectively, and Cyprus 59. Latvia closed the year 2011 with fewer infringements than in 2010 (26) and 2009 (30). The following chart shows the policy areas where Latvia was subject most frequently to infringement procedures:



No Court cases were brought against Latvia during 2011 (none either in 2009 and 2010). Within the reference group, there was one case each against Estonia, Malta, Slovenia, Luxembourg and Cyprus.

Likewise, no decisions were taken by the Commission to refer Latvia to the Court for the second time under Article 260(2) TFEU.

## Transposition of directives

The Commission opened 24 infringement procedures against Latvia for late transposition of various directives in 2011. This is more than the 18 in 2010, but its result is still the best within its reference group and also in the EU-27.

The policy areas where Latvia experienced serious challenges in transposing EU directives are internal market & services (5 late transposition infringements) transport (4), health & consumers and energy (3 in each area).

In no case in 2011 did the Commission refer Latvia to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

Latvia was ranked second in terms of complaints received: 21 complaints in 2011.

Areas where the most anomalies were claimed include regional policy (errors in the implementation of various EU-funded regional projects; 6 complaints), internal market (especially public procurement matters; 4) and transport (for example, towage services in a Latvian port; 3).

## Early resolution of infringements

Latvia started to use EU Pilot at the beginning of 2011. By the end of the year, the Commission and the Latvian authorities were working on 30 newly opened dossiers, which is one of the lightest caseloads in the EU-27. Latvia's average EU Pilot response time (62 days) is in line with the 10-week benchmark.

Latvia has properly addressed a number of concerns regarding the compatibility of its national measures and practices with EU law. As a result, the Commission was able to put an end, for example, to the infringement relating to the incomplete transposition of the directive on waste originating from electric and electronic equipment.<sup>169</sup> In addition, a child abduction complaint demonstrated that, in matrimonial matters, the Latvian authorities apply correctly the mutual recognition and enforcement rules laid down by the 'Brussels IIA Regulation'<sup>170</sup>.

## Important judgments

In a preliminary ruling, the Court ruled that if a private company does not bear a significant share of risk under a contract signed with a public body, such contract should fall within the scope of EU rules on public procurement (in this case, Directive 2004/17/EC).<sup>171</sup>

## Key infringements

- Non-transposition of the directive on airport charges<sup>172</sup>
- Insufficient designation of Special Protection Areas for migratory and vulnerable wild bird species<sup>173</sup>

<sup>168</sup> Member States with equal or close to equal voting weights in the Council; for Latvia: Estonia, Malta, Slovenia, Luxembourg and Cyprus.

<sup>169</sup> Directive [2002/96/EC](#)  
<sup>170</sup> Regulation (EC) No [2201/2003](#)  
<sup>171</sup> Norma-A and Dekom, [C-348/10](#)  
<sup>172</sup> Directive [2009/12/EC](#)  
<sup>173</sup> [IP/07/938](#)

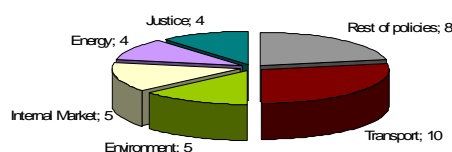


### General Statistics

The Commission had 36 open infringements against Lithuania at the end of 2011, which is the second best result (along with Estonia and Malta) among the EU-27.

Lithuania's performance is also the best in its reference group:<sup>174</sup> Denmark had 37 open infringements, Slovakia and Ireland 41 and 42 respectively, and Finland 55. However, Lithuania closed the year with more infringements than in 2010 (24) and 2009 (28). The following chart shows the five policy areas where Lithuania was subject most frequently to infringement procedures:

36 infringements against Lithuania



No Court cases were brought against Lithuania during 2011 (none either in 2009 and 2010). Within the reference group, there was one case against Slovakia, 2 each against Ireland and Finland and 3 against Denmark.

Likewise, no decisions were taken by the Commission to refer Lithuania to the Court for the second time under Article 260(2) TFEU.

### Transposition of directives

The Commission opened 34 infringement procedures against Lithuania for late transposition of various directives in 2011. Lithuania had to face only 15 such procedures in 2010. Ranking 5<sup>th</sup> in the EU-27 and 3<sup>rd</sup> in the reference group, this result is better than for Finland and Slovakia but poorer than for Denmark and Ireland.

The policy areas where Lithuania experienced serious challenges in transposing EU directives are transport (9 late transposition infringements), internal market & services and energy (5 in each area).

In no case in 2011 did the Commission refer Lithuania to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

### Complaints

The Commission received 25 complaints against Lithuania in 2011, which is the third-lowest figure in the EU-27.

Areas with most alleged failures were internal market (especially public procurement; 5 complaints), enterprise & industry (in particular the 'buy Lithuanian' campaign; 3) and information society (e.g. the proper functioning of the telecommunication authority; 3). Complainants were also concerned about the obstacles to registering the name and the surname of a child with dual nationality and the lack of permits being issued under the directive on integrated pollution prevention control.<sup>175</sup>

### Early resolution of infringements

At the end of 2011, the Commission and the Lithuanian authorities were working on 61 open files in EU Pilot, which is an average workload. The Commission has opened 28 new dossiers on Lithuanian matters. One of the 13 Member States whose average EU Pilot response time meets the 10-week benchmark in the EU-27, Lithuania's average was 62 days.

Furthermore, the Lithuanian authorities actively sought to settle a number of infringements in 2011; for example, they abolished the system of regulated electricity prices to comply with the second electricity directive<sup>176</sup> and improved the laws transposing the directive on strategic environmental impact assessment so that the public can be fully informed about new projects with a likely significant effect on the environment.<sup>177</sup> As a result, the Commission was able to halt the corresponding infringements in 2011.

### Important judgments

The Court handed down two preliminary rulings of special importance in order to guide Lithuanian courts on points of EU law. In the first, it ruled that national authorities may transliterate forenames and surnames of citizens from other Member States when issuing certificates on civil status, provided this does not cause serious inconvenience to those citizens at administrative, professional and private levels.<sup>178</sup> In the second, the Court ruled that the SEA Directive<sup>179</sup> does not allow to exempt small areas of land at local level from environmental impact assessment in a general way, without case-by-case analysis.<sup>180</sup>

### Key infringements

- Ban on registration of right-hand drive cars<sup>181</sup>
- Klaipeda State Seaport — priority right for leasing port land for the incumbent lessee<sup>182</sup>
- Lack of measures requiring individual and proportionate assessment when applying restrictions on the right to free movement for public policy and public security reasons<sup>183</sup>

<sup>174</sup> Member States with equal or close to equal voting weights in the Council; for Latvia: Estonia, Malta, Slovenia, Luxembourg and Cyprus.

<sup>175</sup> Directive [2008/1/EC](#)

<sup>176</sup> [IP/09/1035](#) on the earlier letter of formal notice

<sup>177</sup> [IP/11/306](#) on the earlier reasoned opinion

<sup>178</sup> Runevič-Vardyn and Wardyn, Case [C-391/09](#)

<sup>179</sup> Directive [2001/42/EC](#)

<sup>180</sup> Valčiukienė and Others, Case [C-295/10](#)

<sup>181</sup> [IP/11/1251](#)

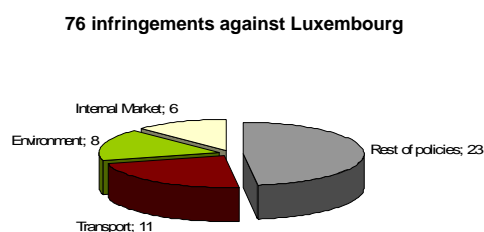
<sup>182</sup> [IP/12/636](#)

<sup>183</sup> [IP/11/981](#) and [IP/12/75](#)

## General Statistics

The Commission had 48 open infringements against Luxembourg at the end of 2011, which is the tenth-best result among the EU-27.

However, Luxembourg's performance is below average in its reference group.<sup>184</sup> Latvia had 23 open infringements, Estonia and Malta 36 each, Slovenia 46, and Cyprus 59. Luxembourg closed the year with more infringements than in 2010 (41) but fewer than in 2009 (53). The following chart shows the three policy areas where Luxembourg was subject most frequently to infringement procedures:



Only one Court case was brought against Luxembourg during 2011 (a remarkable decrease in comparison to the 8 cases brought during 2010). The Commission challenged the incorrect transposition of the First Railway Package.<sup>185</sup> Within the reference group, there were no cases against Latvia and one case each against Estonia, Malta, Slovenia and Cyprus.

The Commission decided to refer Luxembourg to the Court with a request for financial sanctions under Article 260(2) TFEU for failure to provide for the proper treatment and/or disposal of urban waste water in some areas of the country (including the capital).<sup>186</sup>

## Transposition of directives

The Commission opened 44 infringement procedures against Luxembourg for late transposition of various directives in 2011. Luxembourg had to face only 33 such procedures in 2010. Ranking as the 15<sup>th</sup> in the EU-27, this result is poorer than that of all other Member States in the reference group except for Cyprus.

The policy areas where Luxembourg experienced serious challenges in transposing EU directives are transport (11 late transposition infringements), internal market & services (7) and health & consumers (5).

In no case in 2011 did the Commission refer Luxembourg to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

The Commission received 31 complaints against Luxembourg, in 2011, which is the fourth-lowest figure in the EU-27.

Areas where the most irregularities were alleged include taxation (companies' exit tax, VAT refund, discriminatory treatment of capital gains; 20 complaints), education (discriminative access to study grants; 5) and fundamental rights (for example, refusal to grant the right of residence despite the expiry of the five-year period laid down in EU law;

3). Further complaints reported problems in recognising foreign professional qualifications and inadequate environmental impact assessments.

## Early resolution of infringements

In 2011, Luxembourg had not yet joined EU Pilot; however, the Commission and Luxembourg authorities continued making preparations for Luxembourg's participation in the project in the near future.<sup>187</sup>

Luxembourg also remedied several infringements during 2011, e.g. by opening up access to financial aid to all students who acquired the right of permanent residence under the free movement directive,<sup>188</sup> by amending its legislation to comply with the extended Seveso II Directive (on the control of major-accident hazards),<sup>189</sup> by revoking the preferential VAT rate accorded to race horses<sup>190</sup> and by eliminating the discriminatory treatment of non-resident heirs (in terms of securing the inheritance tax payment with an 'additional guarantee').<sup>191</sup> Accordingly, these procedures were terminated.

## Important judgments

The Court ruled that Luxembourg's social security laws failed to allow the reimbursement of patients' medical costs arising from laboratory analyses and tests carried out in another Member State.<sup>192</sup> The directive on the quality of drinking water was not correctly transposed as regards the information to be provided in the event of derogations from certain limit values established for drinking water.<sup>193</sup> The nationality condition could not be justified for public notaries on the ground of the exercise of official authority.<sup>194</sup>

The Court also delivered an important preliminary ruling as regards the interpretation of the Rome I Regulation<sup>195</sup> relating to the law applicable to employment contracts: for an employee who works in more than one Member State, the country where he habitually carries out his work is the one where he performs the greater part of his contractual obligations.<sup>196</sup>

## Key infringements

- Restrictive access to study grants for family members of migrant workers
- Non-transposition of the directive on public procurement in the defence and security sector<sup>197</sup>

<sup>184</sup> Member States with equal or close to equal voting weights in the Council; for Luxembourg: LV, EE, MT, SI and CY

<sup>185</sup> [IP/10/807](#)

<sup>186</sup> [IP/11/1273](#)

<sup>187</sup> Luxembourg joined EU Pilot in June 2012.

<sup>188</sup> Directive [2004/38/EC](#)

<sup>189</sup> Directive [96/82/EC](#)

<sup>190</sup> [IP/08/1812](#)

<sup>191</sup> [IP/10/794](#)

<sup>192</sup> Commission v Luxembourg, Case [C-490/09](#)

<sup>193</sup> Commission v Luxembourg, Case [C-458/10](#)

<sup>194</sup> Commission v Luxembourg, Case [C-51/08](#)

<sup>195</sup> Regulation No [593/2008](#)

<sup>196</sup> Koelzsch, Case [C-29/10](#)

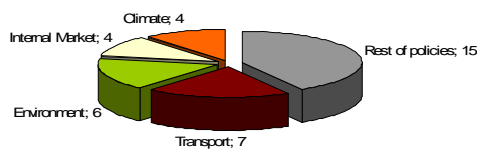
<sup>197</sup> Directive [2009/81/EC](#)

**General Statistics**

The Commission had 36 open infringements against Malta at the end of 2011, which is the second-best result (along with Estonia and Lithuania) among the EU-27.

Malta's performance (along with that of Estonia) is also above average in its reference group<sup>198</sup>: Latvia had 23 open infringements, Slovenia and Luxembourg 46 and 48 respectively, and Cyprus 59. However, Malta closed the year with more infringements than in 2010 (22) and 2009 (30). The following chart shows the four policy areas where Malta was subject most frequently to infringement procedures:

**36 infringements against Malta**



One case was brought against Malta during 2011 (none in 2010). The Commission contested the failure to adopt, under the corresponding EU directive,<sup>199</sup> ambient noise maps.<sup>200</sup> Within the reference group, there were no cases against Latvia and one each against Estonia, Slovenia Luxembourg and Cyprus.

No decisions were taken by the Commission to refer Malta to the Court for the second time under Article 260(2) TFEU.

**Transposition of directives**

The Commission opened 40 infringement procedures against Malta for late transposition of various directives in 2011. Malta faced only 19 such procedures in 2010. Ranking 11<sup>th</sup> in the EU-27, this result is better than for Slovenia, Luxembourg, and Cyprus, but poorer than for Latvia and Estonia.

The policy areas where Malta experienced serious challenges in transposing EU directives are transport (9 late transposition infringements), health & consumers (6) and internal market & services (5).

In no case in 2011 did the Commission refer Malta to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

**Complaints**

In 2011, the Commission received 38 complaints against Malta, which is the sixth-lowest figure in the EU-27.

Areas that citizens and businesses targeted with the most complaints were the free movement of persons (nationality-based discrimination in accessing public services at reduced tariffs; 9 complaints), internal market (mainly public procurement issues; 7) and car taxation (4). One complainant also alleged the abusive treatment of Natura 2000-protected sites.

**Early resolution of infringements**

In 2011, Malta had not yet joined EU Pilot; however, the Commission and the Maltese authorities continued to make preparations with a view to Malta's participation in the project in the near future.<sup>201</sup>

Malta acted to eliminate a number of inconsistencies in its national law vis-à-vis EU rules. In 2011, for example, it lifted the maritime cabotage restrictions on the ferry line between the Malta mainland and Gozo, renewed or updated the permits of all installations falling under the directive on integrated pollution prevention and control,<sup>202</sup> enacted new legislation to comply with the directive on capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies,<sup>203</sup> and amended the rules on car registration tax with a view to achieving non-discriminatory treatment of second-hand cars imported from other Member States.<sup>204</sup> These actions prompted the Commission to close the related infringements.

**Important judgments**

There were no such judgments.

**Key infringements**

- Limited access to the ground-handling market at Luqa Airport: fuel and oil handling services
- Restrictions on extended family members' rights under EU rules on free movement<sup>205</sup>
- Illegal hunting of migratory birds<sup>206</sup>
- Lack of conformity with EU public procurement rules especially as regards the directive on effective review procedures<sup>207</sup>

<sup>198</sup> Member States with equal or close to equal voting weights in the Council; for Malta: LV, EE, SI, LU and CY  
<sup>199</sup> Directive [2002/49/EC](#)  
<sup>200</sup> [IP/10/1416](#)

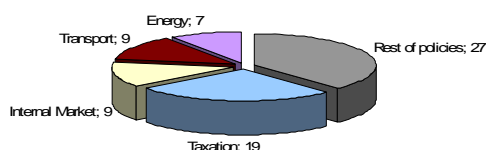
<sup>201</sup> Malta joined EU Pilot in June 2012.  
<sup>202</sup> Directive [2008/1/EC](#)  
<sup>203</sup> Directive [2010/76/EU](#)  
<sup>204</sup> [IP/08/511](#) on the earlier reasoned opinion  
<sup>205</sup> [IP/11/981](#)  
<sup>206</sup> [IP/10/1409](#)  
<sup>207</sup> Directive [2007/66/EC](#)

### General Statistics

The Commission had 71 open infringements against the Netherlands at the end of 2011, which is the tenth-highest number of infringements among the EU-27.

However, the Netherlands' performance is above average in its reference group:<sup>208</sup> Romania had 47 open infringements, Hungary 54, the Czech Republic 65, Portugal and Belgium 84 and 117 respectively, and Greece 123. The Netherlands closed the year with more infringements than in 2010 (62) and 2009 (58). The following chart shows the four policy areas where the Netherlands was subject most frequently to infringement procedures:

71 infringements against the Netherlands



Four Court cases were brought against the Netherlands during 2011 (in 2010). The Commission contested the incorrect application of VAT grouping rules;<sup>209</sup> the flawed implementation of VAT rules for travel agents;<sup>210</sup> the exit tax levied on companies which relocate their headquarters to another Member State;<sup>211</sup> and the limited employee participation in cross-border mergers.<sup>212</sup> Within the reference group, there were no cases against Romania and Hungary, 3 against Portugal, 4 each against the Czech Republic and Greece, and 6 against Belgium.

In no case did the Commission refer the Netherlands to the Court for the second time under Article 260(2) TFEU.

### Transposition of directives

The Commission opened 32 infringement procedures against the Netherlands for late transposition of various directives in 2011. The Dutch authorities faced only 18 such procedures in 2010. Ranking 7<sup>th</sup> in the EU-27, the Dutch performance is the best in the reference group.

The policy areas where the Netherlands experienced serious challenges in transposing EU directives include internal market & services (7 late transposition infringements), transport (5), enterprise & industry, and energy (4 in each area).

In no case in 2011 did the Commission refer the Netherlands to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

### Complaints

The Commission received 71 complaints against the Netherlands in 2011, which is the ninth-figure in the EU-27.

Areas with the most alleged irregularities include internal market (mainly public procurement and regulated professions; 15 complaints) and social security (non-exportability of benefits for the old and the disabled; 14). Further complaints invoked potential damage to Natura 2000 sites and the

deterioration of an estuary in the south-western Netherlands. Discrimination in the taxation group relief regime also triggered a number of complaints.

### Early resolution of infringements

At the end of 2011, the Commission and the Dutch authorities were working on 98 open files in EU Pilot, which represents a slightly above average caseload. 43 new EU Pilot dossiers were opened during 2011. The Netherlands is among the 13 Member States whose average EU Pilot response time (67 days) is in line with the 10-week benchmark.

The Dutch authorities took many necessary measures in 2011 to improve compliance with EU law and to have the relevant infringements terminated. In particular, they undertook to honour the EU's external competences and the principle of loyal cooperation after voting for a proposed bluefin tuna ban (within the Convention on International Trade in Endangered Species of Wild Fauna and Flora) that contravened the common position of the EU. They also enabled cross-border sponsoring between Dutch companies and EU-based institutions for occupational retirement provision (IORPs) as well as between EU-based companies and Dutch IORPs. They revoked discriminatory income tax rules that allowed the deduction of maintenance costs for monumental buildings only if they were located in the Netherlands.

### Important judgments

The Court ruled that the reduced VAT rate that the Dutch tax laws applied to all horses (especially pet and race horses) contravened the Sixth VAT Directive because the reduced rate of VAT was available only for animals destined to enter into the food chain.<sup>213</sup>

In addition, the Dutch judiciary received preliminary rulings in which the Court: interpreted the copyright directive<sup>214</sup> in relation to the collection of private copy levies in a case when the reproduction equipment was obtained via distance selling;<sup>215</sup> declared that the Dutch authorities were not entitled to withdraw a supplement to an invalidity benefit from third country nationals, even after their return to their home state;<sup>216</sup> and clarified the relation between the directives<sup>217</sup> on integrated pollution prevention control and national emission ceilings,<sup>218</sup> confirmed that companies transferring their place of effective management into another Member State may invoke the freedom of establishment against the Member State of incorporation (however, the latter may tax the exiting company's unrealized capital gains under certain conditions).<sup>219</sup>

### Key infringements

- Refusal of the purchasing power allowance to pensioners residing abroad
- Non-transposition of the directive on public procurement in the defence and security sector<sup>220</sup>
- Tax discrimination on donations to foreign charities<sup>221</sup>
- Discriminatory inheritance and gift tax rules<sup>222</sup>

<sup>208</sup> Member States with equal or close to equal voting weights in the Council; for the Netherlands: Romania, Hungary, the Czech Republic, Portugal, Belgium and Greece.

<sup>209</sup> [IP/10/795](#)

<sup>210</sup> [IP/11/76](#)

<sup>211</sup> [IP/10/1565](#)

<sup>212</sup> [IP/11/1422](#)

<sup>213</sup> Commission v Netherlands, Case [C-41/09](#)

<sup>214</sup> Directive [2001/29/EC](#)

<sup>215</sup> Stichting de Thuiskopie, Case [C-462/09](#)

<sup>216</sup> Akdas and Others, Case [C-485/07](#)

<sup>217</sup> Directives [2008/1/EC](#) and [2001/81/EC](#)

<sup>218</sup> Stichting Natuur en Milieu and Others, Case [C-165/09](#)

<sup>219</sup> National Grid Indus, [C-371/10](#)

<sup>220</sup> Directive [2009/81/EC](#)

<sup>221</sup> [IP/11/429](#)

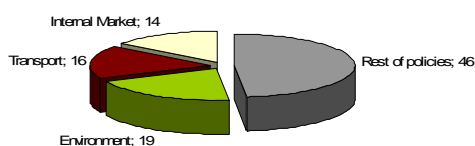
<sup>222</sup> [IP/11/1425](#)

### General Statistics

95 infringements were open against Poland at the end of 2011, which is the fifth-worst result among the EU-27.

Poland's performance (along with that of France) is average in its reference group.<sup>223</sup> Germany and the UK had 76 open infringements each, Spain 99, and Italy 135. Poland closed the year with more infringements than in 2010 (91) but slightly fewer than in 2009 (97). The following chart shows the three policy areas where Poland was subject most frequently to infringement procedures:

95 infringements against Poland



Seven Court cases were brought during 2011 (9 in 2010). The Commission challenged the failure to investigate all possible risks in implementing the directive on genetically modified (GM) organisms control;<sup>224</sup> the adoption of a general ban on GM animal feed;<sup>225</sup> the further exemptions from the strict EU protection system for wild birds;<sup>226</sup> the *de facto* ban on registering cars with right-hand drive;<sup>227</sup> and the mistaken implementation of VAT rules for travel agents.<sup>228</sup> Within the reference group, there were no cases against Germany, 2 against the UK, 4 against Italy, 6 against Spain and 7 against France.

The Commission did not refer Poland to the Court for the second time under Article 260(2) TFEU.

### Transposition of directives

The Commission opened 44 infringement procedures against Poland for late transposition of national implementing measures (2010: only 39). Ranking 15<sup>th</sup> in the EU-27 (with Luxembourg), this result is better than for the UK and Italy but poorer than for France, Spain and Germany.

The policy areas with the most serious transposition challenges are transport (10 infringements), internal market & services (9) and energy (6).

Poland was brought to the Court, with a request for financial sanctions (Article 260(3) TFEU), due to the late transposition of 3 directives: (1) on modifying the capital requirements for the trading book<sup>229</sup> (2) on ambient air quality<sup>230</sup> and (3) on the marine strategy framework.<sup>231</sup>

### Complaints

206 complaints were launched against Poland in 2011, which is the fifth-highest figure in the EU-27.

The areas most concerned are: environment (inadequate impact assessment and management plans, damage to Natura 2000 sites, non-compliant water projects and programmes; 43 complaints), free movement of persons (conditions for obtaining registration certificates, extended family members' rights; 36) and agriculture (e.g. wrong information on temporary exceptional support measures; 27). Other areas were: discriminatory airport charges, public procurement, food safety, and employment in the public sector.

### Early resolution of infringements

Poland joined EU Pilot at the beginning of 2011. At the end of 2011 there were 78 newly opened files, a high initial caseload. Nevertheless, Poland kept its average EU Pilot response time (65 days) within the 10-week benchmark.

Poland's willingness to resolve cases at an early stage helped to close many files in 2011. For instance: national rules were completed or modified in order to comply with EU rules on environment (public participation in authorisation of projects, access to justice), sale of consumer goods (validity of non-compliant guarantees), package travel (protection against organiser's insolvency), equal treatment (material scope of relevant directives<sup>232</sup>, prohibition of victimisation and harassment, rights of disabled persons), transport (approval of imported 'Class 66' locomotives, 'small' airports' security standards<sup>233</sup>), health (registration requirements for imported medical devices) and taxation (late reimbursement of VAT). On the internal gas market, importers can now access the Yamal pipeline and are no longer required to store gas in Poland.<sup>234</sup>

### Important judgments

The Court ruled that Poland had failed to protect all species of naturally occurring birds and to define correctly the conditions under which derogation may be granted from the Birds and Habitats Directives.<sup>235</sup> It also found against Poland for not transposing into its national law in time a vital directive for the competitiveness of the European automotive industry.<sup>236</sup>

In addition, the Court provided guidance to the Polish judiciary by interpreting, for example, the regulation on national courts' cooperation in evidence-taking<sup>237</sup> as regards reimbursing the expenses of a witness examined by the requested court.<sup>238</sup>

### Key infringements

- Failure to comply with the Court judgment outlawing the total ban on GM seed<sup>239</sup>
- Restrictions on the right to free movement of extended family members<sup>240</sup>
- Regulated prices on the wholesale gas market<sup>241</sup>
- Unjustified exclusion criteria in public procurement law and insufficient defence rights for any excluded undertaking

<sup>223</sup> Member States with equal or close to equal voting weights in the Council; for Poland: Germany, the United Kingdom, France, Spain and Italy

<sup>224</sup> [IP/11/293](#)

<sup>225</sup> [IP/11/292](#)

<sup>226</sup> [IP/11/171](#)

<sup>227</sup> [IP/11/1111](#)

<sup>228</sup> [IP/11/76](#)

<sup>229</sup> Directive [2010/76/EU](#)

<sup>230</sup> Directive [2008/50/EC](#)

<sup>231</sup> Directive [2008/56/EC](#)

<sup>232</sup> Directive [2000/43/EC](#) and Directive [2000/78/EC](#)

<sup>233</sup> [IP/11/187](#) on the earlier reasoned opinion

<sup>234</sup> [IP/10/945](#) on the earlier reasoned opinions

<sup>235</sup> Commission v Poland, Cases [C-192/11](#) and [C-46/11](#)

<sup>236</sup> Commission v Poland, [C-311/10](#)

<sup>237</sup> Regulation No [1206/2001](#)

<sup>238</sup> Artur Weryński v Mediatel 4B spółka z o.o., Case [C-283/09](#)

<sup>239</sup> Commission v Poland, [C-165/08](#)

<sup>240</sup> [IP/11/981](#)

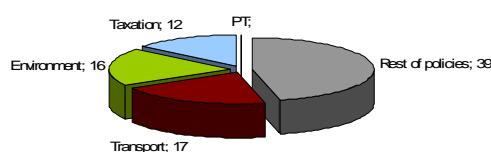
<sup>241</sup> [IP/11/414](#)

### General Statistics

The Commission had 84 open infringements against Portugal at the end of 2011, which is the seventh-worst result among the EU-27.

Portugal's performance is average in its reference group<sup>242</sup>: Romania had 47 open infringements, Hungary 54, the Czech Republic and the Netherlands 65 and 71 respectively, Belgium 117 and Greece 123. However, Portugal closed the year with fewer infringements than in 2010 (98) and 2009 (100). The following chart shows the three policy areas where Portugal was subject most frequently to infringement procedures:

84 infringements against Portugal



Three Court cases were brought against Portugal during 2011 (10 in 2010). The Commission challenged the incorrect implementation of VAT rules for travel agents;<sup>243</sup> the failure to adopt river basin management plans;<sup>244</sup> and the unjustified excess of EU air quality limit values for airborne particles (“PM10 values”).<sup>245</sup> Within the reference group, there were no cases against Romania and Hungary, 4 each against the Netherlands, the Czech Republic and Greece, and 6 against Belgium.

No decisions were taken by the Commission to refer Portugal to the Court for the second time under Article 260(2) TFEU.

### Transposition of directives

The Commission opened 50 infringement procedures against Portugal for late transposition of various directives in 2011. Portugal had to face only 41 such procedures in 2010. Ranking 20<sup>th</sup> in the EU-27, this result is poorer than for the Netherlands, Belgium and Romania but is still ahead of the Czech Republic, Greece and Hungary.

The policy areas where Portugal experienced serious challenges in transposing EU directives are transport and internal market & services (10 late transposition infringements in each area) and health & consumers (9).

In no case in 2011 did the Commission refer Portugal to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

### Complaints

The Commission received 92 complaints against Portugal in 2011, which is the eleventh-highest figure in the EU-27.

Areas that attracted the most complaints from the public include environment (insufficient impact assessment of some

dams causing serious consequences and damage to Natura 2000 sites; 22 complaints) and fundamental rights (refused entry into Portugal on the grounds of posing a threat to public security; 18). Other complaints pointed out the discriminatory capital gains tax on real estate, the requirement to appoint a fiscal representative for non-residents, and the restricted access to the ground-handling market at an airport in southern Portugal.

### Early resolution of infringements

At the end of 2011, the Commission and the Portuguese authorities were working on 153 open files in EU Pilot, one of the higher caseloads in the EU-27. The Commission opened 46 new dossiers on Portuguese issues during 2011. Portugal managed this workload successfully: its average EU Pilot response time (60 days) counts as one of the best within the EU-27.

Portugal also remedied a number of infringements during 2011, e.g. by carrying out a proper revision on the expired construction authorisation for a tourist resort located in a site of community importance (Costa Sudoeste / Montinho da Ribeira), by procuring notebooks and internet services for students, teachers and trainees by means of an open tender rather than a direct award<sup>246</sup> and by eliminating discriminatory tax rules as regards outbound dividends (i.e., paid to foreign companies)<sup>247</sup> and non-residents' income.<sup>248</sup> These procedures were therefore terminated.

### Important judgments

The Court ruled that the Portuguese legislation in the field of reimbursement of non-hospital medical care provided in another Member State, which does not involve the use of major and costly equipment, is in breach of the Treaty provisions guaranteeing the free movement of services.<sup>249</sup> Portugal's 2005 tax amnesty laws (i.e., reduced tax on financial assets repatriated to Portugal from abroad, if they are, or are reinvested into, securities issued by the Portuguese State), the obligation to appoint a fiscal representative and the rules on the taxation of dividends paid to foreign pension funds were all found incompatible with the free movement of capital.<sup>250</sup>

### Key infringements

- Inadequate transposition of the directive on distance marketing of financial services<sup>251</sup>
- Ground-handling market<sup>252</sup>
- Illegal disposal of hazardous waste in an old mine near Oporto
- Energy Tax Directive —derogation for the taxation of electricity<sup>253</sup>

<sup>242</sup> Member States with equal or close to equal voting weights in the Council; for Portugal: Romania, Hungary, the Czech Republic, the Netherlands, Belgium and Greece.

<sup>243</sup> [IP/11/76](#)

<sup>244</sup> [IP/11/438](#)

<sup>245</sup> [IP/10/1586](#)

<sup>246</sup> [IP/11/83](#)

<sup>247</sup> [IP/10/662](#)

<sup>248</sup> [IP/10/300](#)

<sup>249</sup> Commission v Portugal, [C-255/09](#)

<sup>250</sup> Commission v Portugal, Cases [C-20/09](#), [C-493/09](#) and [C-267/09](#)

<sup>251</sup> [IP/12/50](#)

<sup>252</sup> [IP/11/588](#)

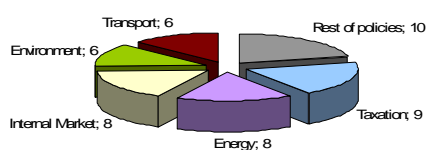
<sup>253</sup> [IP/11/590](#)

## General Statistics

The Commission had 47 open infringements against Romania at the end of 2011, which is the ninth-best result among the EU-27.

Romania's performance is the best in its reference group:<sup>254</sup> Hungary had 54 open infringements, the Czech Republic and the Netherlands 65 and 71 respectively, Portugal 84, Belgium 117, and Greece 123. However, Romania closed the year 2011 with more infringements than in 2010 (36) and 2009 (32). The following chart shows the five policy areas where Romania was subject most frequently to infringement procedures:

**47 infringements against Romania**



No Court cases were brought against Romania during 2011 (none in 2010 either). Within the reference group, there were no cases against Hungary, 3 cases against Portugal, 4 each against the Netherlands, the Czech Republic and Greece, and 6 against Belgium.

Likewise, no decisions were taken by the Commission to refer Romania to the Court for the second time under Article 260(2) TFEU.

## Transposition of directives

The Commission opened 46 infringement procedures against Romania for late transposition of various directives in 2011. Romania had to face the same number of such procedures in 2010. Ranking 18<sup>th</sup> in the EU-27, this result is poorer than for the Netherlands and Belgium but is still better than for Portugal, the Czech Republic, Greece and Hungary.

The policy areas where Romania experienced serious challenges in transposing EU directives include health & consumers (10 late transposition infringements), transport and internal market & services (7 in each area).

In no case in 2011 did the Commission refer Romania to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

The Commission received 130 complaints against Romania in 2011, which is the eighth-highest figure in the EU-27.

Areas where the most potential errors were reported include taxation (discriminatory treatment of permanent establishments, tax relief for research and development expenses and excise duties; 44 complaints), environment (inadequate impact assessment, degradation of Natura 2000 sites by infrastructure projects; 18) health & consumers (food safety and animal welfare; 12). Other complaints were about the refusal to pay pensions to EU citizens who had worked in

Romania. Finally, the allocation of agricultural funds and subsidies triggered several investigation requests from citizens.

## Early resolution of infringements

Romania joined EU Pilot at the beginning of 2011. By the end of the year, the Commission and the Romanian authorities were working on 64 newly opened cases, which suggests a weighty initial caseload. With an average EU Pilot response time of 67 days, Romania is among the 13 Member States which managed to stay within the 10-week benchmark.

Romania remedied a number of infringements during 2011, e.g. by modifying its laws on water policy to comply with the water framework directive<sup>255</sup> (especially the rules on river basin districts and management plans, public consultation and control measures) and by cancelling the tender procedure for public works in the Craiova power plant due to procedural deficiencies which violate public procurement legislation.<sup>256</sup>

## Important judgments

Concerning the insufficient designation of Special Protection Areas, the Court found that the letter of formal notice did not sufficiently identify the grievance in the reasoned opinion and the Commission's referral was dismissed<sup>257</sup>.

### Key infringements

- Restrictive access to the natural gas transmission networks<sup>258</sup>
- Insufficiently open gas and electricity markets due to the regulated prices schemes<sup>259</sup>
- Negative impact of tourism development on the environment in Sulina (Danube Delta)<sup>260</sup>
- Non-transposition of the data retention directive<sup>261</sup>

<sup>254</sup> Member States with equal or close to equal voting weights in the Council; for Romania: Hungary, the Czech Republic, the Netherlands, Portugal, Belgium and Greece.

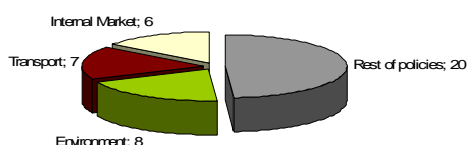
<sup>255</sup> Directive [2000/60/EC](#)  
<sup>256</sup> Directive [2004/17/EC](#)  
<sup>257</sup> Commission v Romania, [C-522/09](#)  
<sup>258</sup> [IP/11/1437](#)  
<sup>259</sup> [IP/11/414](#)  
<sup>260</sup> [IP/11/92](#)  
<sup>261</sup> Directive [2006/24/EC](#)

### General Statistics

The Commission had 41 open infringements against Slovakia at the end of 2011, which is the sixth-best result among the EU-27.

Slovakia's performance is average in its reference group<sup>262</sup>: Lithuania had 36 open infringements, Denmark 37, Slovakia and Ireland 41 and 42 respectively, and Finland 55. Slovakia closed the year with more infringements than in 2010 (38) but fewer than in 2009 (49). The following chart shows the three policy areas where Slovakia was subject most frequently to infringement procedures:

41 infringements against Slovakia



One Court case was brought against Slovakia during 2011 (2 in 2010). The Commission argued that the landfill site near Žilina did not have the documentation required by EU waste rules.<sup>263</sup> Within the reference group, there were no cases against Lithuania, 2 each against Ireland and Finland, and 3 against Denmark.

No decisions were taken by the Commission to refer Slovakia to the Court for the second time under Article 260(2) TFEU.

### Transposition of directives

The Commission opened 36 infringement procedures against Slovakia for late transposition of various directives in 2011. Slovakia faced only 14 such procedures in 2010. Ranking 9<sup>th</sup> in the EU-27 (with Bulgaria), this result is poorer than for all other Member States in the reference group except for Finland.

The policy areas where Slovakia experienced serious challenges in transposing EU directives are transport, internal market & services (7 late transposition infringements in each area), health & consumers, energy, and justice and fundamental rights (4 in each area).

In no case in 2011 did the Commission refer Slovakia to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

### Complaints

The Commission received 63 complaints against Slovakia in 2011, which is the eighth-lowest figure in the EU-27.

Areas with the most alleged irregularities include consumer protection (in particular, unfair terms in consumer credit contracts; 27 complaints), environment (inadequate impact assessment of projects affecting Natura 2000 sites and illegal hunting; 9) and social security (non-exportability of annual pension supplement; 8). Further complaints called for Commission investigations in relation to public procurement procedures and insurance law.

### Early resolution of infringements

At the end of 2011, the Commission and the Slovak authorities were working on 42 open files in EU Pilot, which is well below the average caseload in the EU-27. The Commission invited Slovakia to give its opinion in 32 new EU Pilot dossiers during 2011. Slovakia achieved the best average EU Pilot response time (57 days) among the Member States.

Slovakia acted to eliminate a number of inconsistencies in its national law vis-à-vis EU rules. In 2011, the Commission was able to close, for example, infringements contesting the incorrect transposition of the water framework directive (especially as regards river basin management plans and revision of protected areas), the unjustified use of restricted procurement for legal services relating to the construction of the D1 motorway<sup>264</sup> and the discriminatory tax deduction granted to supplementary pension insurance contributions only if paid to Slovak schemes.

### Important judgments

The Court's preliminary ruling gave guidance in relation to the Aarhus Convention on the availability of effective judicial protection.<sup>265</sup>

#### Key infringements

- Failure to comply with EU rules on consumers' collective interest under the Injunctions Directive (2009/22/EC)<sup>266</sup>
- Non-conformity with EU requirements of the national rules on the use of GMOs
- 

<sup>262</sup> Member States with equal or close to equal voting weights in the Council; for Slovakia: Lithuania, Denmark, Ireland and Finland.

<sup>263</sup> [IP/11/177](#)

<sup>264</sup> [IP/09/1470](#)

<sup>265</sup> [Lesoochránárske zoskupenie, C-240/09](#)

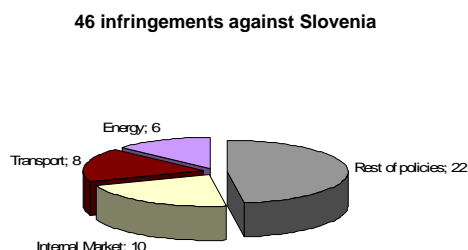
<sup>266</sup> [IP/12/184](#)



### General Statistics

The Commission had 46 open infringements against Slovenia at the end of 2011, which is the eighth-best result among the EU-27.

However, Slovenia's performance is less than average in its reference group<sup>267</sup>: Latvia had 23 open infringements, Estonia and Malta 36 each, Luxembourg 48, and Cyprus 59. Slovenia closed the year with more infringements than in 2010 (33) and 2009 (25). The following chart shows the three policy areas where Slovenia was subject most frequently to infringement procedures:



One Court case was brought against Slovenia during 2011 (3 in 2010). The Commission concluded that the Slovenian rules on complementary health insurance unjustifiably restricted the freedom of establishment (by requiring a resident representative for insurers based outside the country) and the free movement of capital (by prohibiting the distribution of profits to the shareholders).<sup>268</sup> Within the reference group, there were no cases against Latvia and one each against Estonia, Malta, Luxembourg and Cyprus.

No decisions were taken by the Commission to refer Slovenia to the Court for the second time under Article 260(2) TFEU.

### Transposition of directives

The Commission opened 43 infringement procedures against Slovenia for late transposition of various directives in 2011. Slovenia faced only 30 such procedures in 2010. Ranking 13<sup>th</sup> in the EU-27 (with Spain), this result is poorer than for Latvia, Estonia and Malta but is still ahead of Luxembourg and Cyprus.

The policy areas where Slovenia experienced serious challenges in transposing EU directives are transport (8 late transposition infringements), internal market & services, and enterprise & industry (7 in each area).

In no case in 2011 did the Commission refer Slovenia to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

### Complaints

The Commission received 33 complaints against Slovenia in 2011, which is the fifth-lowest figure in the EU-27.

Complaints targeted especially environment (imperfect impact assessments and screenings, lack of or poor-quality permits for activities with high pollution potential, sub-standard landfills; 11 complaints) and internal market (free provision of services, insurance and public procurement; 9). Several complaints contested the academic recognition of foreign

diplomas, including certificates issued by franchised institutions.

### Early resolution of infringements

At the end of 2011, the Commission and the Slovene authorities were working on 67 open files in EU Pilot, which is an average caseload. The Commission initiated relatively few new EU Pilot dossiers vis-à-vis the Slovene authorities. Slovenia's average EU Pilot response time, 67 days, remains under the 10-week benchmark.

Furthermore, the Slovene authorities created a new legal framework to address the shortcomings in the transposition of the directive on end-of-life vehicles,<sup>269</sup> amended the country's consumer protection laws to cover the scope of goods covered by the relevant EU directive,<sup>270</sup> and to provide in more detail for commercial guarantees, and extended the VAT exemption for universal postal services and postal stamps to the degree required by the VAT directive.<sup>271</sup> As a result, the corresponding infringements were terminated in 2011.

### Important judgments

The Court had to decide on a disagreement between Slovenia and the Commission pertaining to air quality. It declared that Slovenia had failed to comply with the EU's air quality standards for dangerous airborne particles known as PM10 for the years 2005 to 2007.<sup>272</sup>

#### Key infringements

- Operation of several landfills falling short of EU requirements
- Inadequate transposition of the directive on injunctions to protect consumers' collective interest<sup>273</sup>
- Maintaining nationality condition for access to study grants
- Late transposition of the directive relating to public procurement in the defence and security sector<sup>274</sup>

<sup>267</sup> Member States with equal or close to equal voting weights in the Council; for Slovenia: Latvia, Estonia, Malta, Luxembourg and Cyprus.

<sup>268</sup> [IP/11/181](#)

<sup>269</sup> Directive [2000/53/EC](#)

<sup>270</sup> Directive [1999/44/EC](#)

<sup>271</sup> Directive [2006/112/EC](#)

<sup>272</sup> Commission v Slovenia, [C-365/10](#)

<sup>273</sup> Directive [2009/22/EC](#)

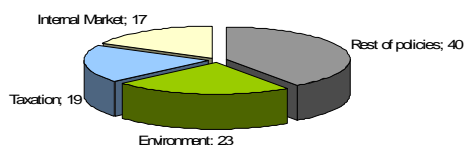
<sup>274</sup> Directive [2009/81/CE](#)

### General Statistics

99 infringements were open against Spain at the end of 2011, which is the fourth-worst result among the EU-27.

Spain's performance is below average in its reference group.<sup>275</sup> Germany and the UK had 76 infringements each, France and Poland 95 each, and Italy 135. However, Spain closed the year with fewer infringements than in 2010 (109) and 2009 (129). The following chart shows the three policy areas where Spain was subject most frequently to infringement procedures:

99 infringements against Spain



Six Court cases were brought against Spain during 2011 (the same number as in 2010). The areas concerned included the sector-specific tax imposed on telecommunication companies;<sup>276</sup> the incorrect implementation of VAT rules for travel agents;<sup>277</sup> the reduced VAT rate for medical equipment;<sup>278</sup> and the exit tax of companies relocating their headquarters to another Member State.<sup>279</sup> Within the reference group, there were no new cases against Germany, 2 against the UK, 4 against Italy and 7 each against Poland and France.

The Commission filed a case to the Court with a request for financial sanctions (Article 260(2) TFEU) as the Basque Provinces' incompatible state aid had not been recovered.<sup>280</sup>

### Transposition of directives

43 infringement procedures were opened against Spain for late transposition of various directives (in 2010: 44), which is an average performance. Ranking 13<sup>th</sup> in the EU-27 (with Slovenia), this result is better than for Poland, the UK and Italy, but poorer than for France and Germany.

The policy areas where Spain experienced serious transposition challenges are health & consumers (17 infringements), internal market & services (7) and energy (5).

The Commission did not refer Spain to the Court with a request for financial sanctions under Article 260(3) TFEU.

### Complaints

In 2011, Spain ranked second with regard to the number of complaints (306).

The areas most concerned are environment (inadequate impact assessment and water management, damage to Natura 2000 sites; 97 complaints), internal market (e.g. free provision of services and professional recognition; 46) and fundamental rights (e.g. mistreatment of persons in detention and delays in issuing residence cards; 40). Other complaints concerned

discriminatory taxes on inheritance, gifts and capital gains realised on real estate, the European Health Insurance Card and animal welfare rules in a slaughterhouse.

### Early resolution of infringements

At the end of 2011, 365 files were open in EU Pilot, the second-highest caseload in the EU-27. Spain also received the second-highest number of new EU Pilot dossiers during 2011 (113). Accordingly, Spain's average EU Pilot response time (82 days) was substantially above the 10-week benchmark.

The Commission closed a few infringements against Spain because compliance with EU law was reached. For instance, the Spanish authorities repealed the geographical indication "Viñedos de España" (the names of Member States can only exceptionally be protected). The Spanish transposition of the directive on insurance against civil liability<sup>281</sup> was corrected so that the national guarantee fund covers damages caused by stolen or violently obtained cars of all origins. Minor inconsistencies in the rules implementing the directive on distance marketing of financial services<sup>282</sup> (e.g., scope of the consumer's withdrawal right) were eliminated. Postal services' VAT exemption was also aligned with the VAT directive.<sup>283</sup>

### Important judgments

The Court ruled that Spanish law was contravening the freedom of establishment as regards certain restrictions on opening shopping centres.<sup>284</sup> Other rulings concern the operation of an open-cast coal mine without a full impact assessment and protective measures under the EIA and Habitats Directives,<sup>285</sup> and the failure to establish, adopt and apply conservation priorities and measures to prevent the deterioration of habitats in the Macaronesian biogeographical region.<sup>286</sup>

The Spanish judiciary received guidance from the Court's preliminary rulings in relation to police and judicial cooperation in criminal matters. The Court ruled that a mandatory stay away injunction may be maintained in domestic violence cases, even if the victim wishes to restart cohabitation with the offender.<sup>287</sup>

### Key infringements

- Non-compliance with the directive on buildings' energy performance<sup>288</sup>
- Free movement of persons: granting the right of residence for third country family members<sup>289</sup>
- Refusal to issue European Health Insurance Card to persons insured under regional schemes<sup>290</sup>
- Animal welfare at slaughter<sup>291</sup>
- APIE monopoly granted by Spanish Port legislation
- Authorisation for supplementary private transport<sup>292</sup>
- Sector-specific tax on electronic communication services<sup>293</sup>

<sup>275</sup> Member States with equal or close to equal voting weights in the Council; for Spain: Germany, the United Kingdom, France, Poland and Italy.

<sup>276</sup> [IP/11/309](#)

<sup>277</sup> [IP/11/76](#)

<sup>278</sup> [IP/11/605](#)

<sup>279</sup> [IP/10/1565](#)

<sup>280</sup> [IP/10/1544](#)

<sup>281</sup> Directive [2009/103/EC](#)

<sup>282</sup> Directive [2002/65/EC](#)

<sup>283</sup> Directive [2002/65/EC](#)

<sup>284</sup> Commission v Spain, [C-400/08](#)

<sup>285</sup> Commission v Spain, [C-404/09](#)

<sup>286</sup> Commission v Spain, [C-90/10](#)

<sup>287</sup> Magatte Gueye, [C-483/09](#)

<sup>288</sup> [IP/11/1447](#)

<sup>289</sup> [IP/11/981](#)

<sup>290</sup> [IP/11/1118](#)

<sup>291</sup> [IP/11/1092](#)

<sup>292</sup> [IP/11/611](#)

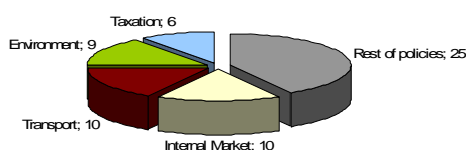
<sup>293</sup> [IP/11/309](#)

## General Statistics

The Commission had 60 open infringements against Sweden at the end of 2011, which is the twelfth-highest number of infringements among the EU-27.

Sweden's performance is average in its reference group<sup>294</sup>. Bulgaria had 54 open infringements, and Austria 65. Sweden closed the year with more infringements than in 2010 (53) and 2009 (58). The following chart shows the four policy areas where Sweden was subject most frequently to infringement procedures:

**60 infringements against Sweden**



One Court case was brought against Sweden during 2011 (4 in 2010). The Commission concluded that the Swedish transposition of the directive on distance marketing of consumer financial services was incorrect.<sup>295</sup> Within the reference group, there were no cases against Bulgaria and 2 against Austria.

The Commission referred Sweden to the Court under Article 260(2) TFEU with a request for financial sanctions for failure to implement the directive on data retention.<sup>296</sup>

## Transposition of directives

The Commission opened 31 infringement procedures against Sweden for late transposition of various directives in 2011. Sweden faced only 21 such procedures in 2010. Ranking 5<sup>th</sup> in the EU-27, this result is better than for the other two Member States in the reference group.

The policy areas where Sweden experienced serious challenges in transposing EU directives are internal market & services (9 late transposition infringements), transport and energy (5 infringements in each area).

In no case in 2011 did the Commission refer Sweden to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## Complaints

The Commission received 91 complaints against Sweden in 2011, which is the twelfth-highest figure in the EU-27.

Areas that attracted the most complaints include environment (especially illegal wolf hunting; 22 complaints), taxation (for example, inheritances, capital gains and excise duties; 13) and internal market (public procurement, free provision of services and professional recognition; 12). Further complaints covered public health, passenger rights and road safety.

## Early resolution of infringements

At the end of 2011, the Commission and the Swedish authorities were working on 84 open files; this was a similar caseload to many other Member States. The Commission opened a relatively small number of new Swedish EU Pilot dossiers during 2011 (29). Sweden's average response time in EU Pilot (81 days) remained above the 10-week benchmark.

By taking into account the Commission's position, Sweden took many necessary measures in 2011 to achieve compliance with EU law and to have the corresponding infringements closed. For example, Sweden remedied its waste legislation to comply with the directive on end-of-life vehicles<sup>297</sup> and abolished a number of restrictions applicable to foreign branches (e.g. mandatory establishment, naming restrictions and obligation to appoint a resident agent).<sup>298</sup>

## Important judgments

The Court had to rule on a disagreement between Sweden and the Commission over air quality. Sweden was found to have failed to comply with the EU's air quality standards for dangerous airborne particles known as PM10 for the years 2005 to 2007.<sup>299</sup>

### Key infringements

- Free movement of persons: inconsistencies with EU law in procedural safeguards in the event of expulsion of EU citizens and their family members and in issuing entry visas and residence cards for third country family members<sup>300</sup>
- Wolf hunting practices inconsistent with EU nature protection directives<sup>301</sup>
- Incorrect application of EU law governing the working time of self-employed drivers<sup>302</sup>
- Distance marketing of financial services<sup>303</sup>

<sup>294</sup> Member States with equal or close to equal voting weights in the Council; for Sweden: BG and AT

<sup>295</sup> [IP/11/98](#)

<sup>296</sup> [IP/11/409](#)

<sup>297</sup>

Directive [2000/53/EC](#)

<sup>298</sup>

[IP/11/1125](#)

<sup>299</sup>

Commission v Sweden, [C-479/10](#)

<sup>300</sup>

[IP/11/981](#)

<sup>301</sup>

[IP/11/732](#)

<sup>302</sup>

Directive [2002/15/EC](#)

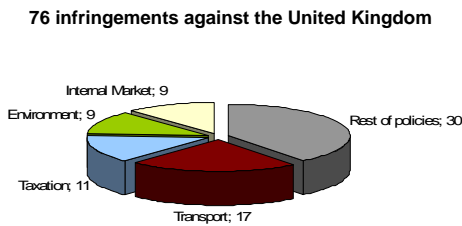
<sup>303</sup>

[IP/11/98](#)

**General Statistics**

The Commission had 76 open infringements against the UK at the end of 2011. This is the eighth-highest number of infringements among the EU-27 (ranking equal with Germany).

However, the UK’s performance (along with that of Germany) is the best in its reference group:<sup>304</sup> France and Poland had 95 open infringements each, Spain 99, and Italy 135. The UK closed the year with more infringements than in 2010 (72) but fewer than in 2009 (98). The following chart shows the four policy areas where the UK was subject most frequently to infringement procedures:



The Commission brought two Court cases against the UK during 2011 (only one in 2010): one because of the prohibitively high costs of challenging licences issued to industrial plans with potential effect on the environment;<sup>305</sup> the other due to allowing the inclusion of economically passive holding companies in VAT groups.<sup>306</sup> Within the reference group, there were no cases against Germany; 4 against Italy, 6 against Spain and 7 each against Poland and France.

No decisions were taken by the Commission to refer the UK to the Court for the second time under Article 260(2) TFEU.

**Transposition of directives**

The Commission opened 57 infringement procedures against the UK for late transposition of various directives in 2011. The UK faced only 35 such procedures in 2010. Ranking 23<sup>rd</sup> in the EU-27, this result is worse than that of all Member States in the reference group except for Italy.

The policy areas where the UK experienced serious challenges in transposing EU directives are transport (13 late transposition infringements), internal market & services (11) and enterprise & industry (9).

In no case in 2011 did the Commission refer the UK to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

**Complaints**

The Commission received 192 complaints against the UK in 2011, which is the seventh-highest result among the EU-27.

Most of the alleged irregularities were in relation to the free movement of persons (delays in issuing residence permits, requiring a visa from EU citizens’ family members, restrictive calculation of presence period for the purpose of permanent residence, and discrimination on racial, ethnic or religious grounds; 57 complaints). Citizens and businesses frequently reported problems in the areas of internal market (public procurement and professional recognition; 31 complaints) and

environment (inadequate impact assessment of fishing and wind-farm activities; 29). Disabled persons’ limited access to sickness benefits and the conditions for receiving jobseeker’s allowance generated a number of objections, too.

**Early resolution of infringements**

At the end of 2011, the Commission and the UK authorities were working on 192 open files, which was the fourth-highest caseload in the EU-27. The Commission forwarded 69 new EU Pilot dossiers to the UK authorities during 2011. These figures called for a strong response from the UK, which managed to keep its average EU Pilot response time (66 days) within the 10-week benchmark.

The Commission was able to terminate infringements in 2011 because the UK adopted new anti-discrimination laws and modified its practices on issuing residence documents to EU citizens and their family members, amended its laws to comply with the Drinking Water Directive,<sup>307</sup> and corrected its tax rules in three areas (VAT exemptions of postal services, income tax exemption for resident seafarers, and real estate tax discounts for students studying in England or Wales).

**Important judgments**

The Court delivered important preliminary rulings during 2011 relating to residence rights and access to social security benefits.

In particular, the Court ruled that short-term incapacity benefit in youth must be deemed as an invalidity benefit under EU law; thus, it cannot be reduced or withdrawn when claimed by persons residing outside the Member State that pays the benefit.<sup>308</sup> The Court also held that although the Free Movement Directive does not apply to a Union citizen who has never exercised her right to free movement, Article 21 TFEU protects such person against national measures which would deprive her of her essential rights as a Union citizen (including free movement).<sup>309</sup> The Court declared that an EU citizen who resided in the host Member State with a valid residence document (granted under earlier laws) but without meeting the residence conditions cannot rely on such periods to acquire permanent residence right; and that periods before 30 April 2006 cannot be taken into account when calculating the five-year stay leading to permanent residence.<sup>310</sup>

**Key infringements**

- ‘Right to reside test’: discrimination against UK-resident EU nationals in relation to rights to certain social benefits<sup>311</sup>
- Free movement of persons (e.g. special residence documents for workers from new Member States; excessively broad detention rights and no coverage in public health-care scheme)<sup>312</sup>
- Non-transparent access conditions to the natural gas transmission networks<sup>313</sup>
- Channel tunnel: violation of rail transport rules aimed at market opening and fair competition<sup>314</sup>

<sup>304</sup> Member States with equal or close to equal voting weights in the Council; for Spain: DE, ES, FR, PL and IT  
<sup>305</sup> [IP/11/439](#)  
<sup>306</sup> [IP/10/795](#)

<sup>307</sup> Directive [98/83/EC](#)  
<sup>308</sup> Stewart, [C-503/09](#)  
<sup>309</sup> McCarthy, [C-434/09](#)  
<sup>310</sup> Dias, [C-325/09](#)  
<sup>311</sup> [IP/11/1118](#)  
<sup>312</sup> [IP/11/981](#)  
<sup>313</sup> [IP/10/836](#)  
<sup>314</sup> [IP/11/1099](#)

