Petition 0625/2004

The Commission's observations

In their last two communications, the Commission services informed the Committee on Petitions that the Commission decided on 16 October 2014 to refer Sweden to the Court of Justice of the EU in relation to Swedish legislation for gambling services (one decision relates to online betting services and the other one to online poker games). However, the referral decisions have not been executed to date.

As also communicated in the communication of December 2015, in the meantime, the long-awaited reform of the gambling market with an introduction of a licensing system has started in Sweden. The Commission services are following this process with high interest and look positively at these developments. The results of the review process, including a legislative proposal, should be available by March 2017, with the aim of implementing the new legislation in 2018.

Conclusion

The Commission continues to examine the legal situation in Sweden in relation to gambling to ensure compliance with EU law, also in view of the ongoing reform of the gambling market in Sweden.

Petition 169/2007

The Commission's observations

The Commission has launched an infringement procedure against Spain for not complying with the requirement to submit a noise action plan to public consultation for the airport of Madrid-Barajas.

Petition 0265/2007

The Commission's observations

The Commission has launched an infringement procedure against Spain for not complying with the requirement to prepare and submit a noise action plan for the agglomeration of Gijón.

The EU legislation on greenhouse gas emissions from steel plants is covered by the EU Emissions Trading System. This system provides that installations have to surrender allowances corresponding to each ton emitted. Since each allowance has an economic price, this system implies that there is a cost for emitting greenhouse gases.

EU legislation does not provide for any specific limit on the amount of CO_2 that a plant can emit, as long as the operator of the plant buys and surrenders the corresponding amount of allowances. The reason why there are no plant-specific limits is that CO_2 emissions as such are not causing local health or environmental impacts.

Petition 0169/2008 (and petitions 569/2006 and 382/2007)

The Commission's observations

The petitions concern the application of Maltese rules to prevent the overlapping of a Maltese pension with a civil servant's pension granted by the United Kingdom. Based on Maltese legislation, persons receiving both benefits have their Maltese pension reduced by the amount of the UK pension.

The infringement procedure against Malta

The Commission considered the Maltese legislation contrary to EU rules on the coordination of social security systems and, as it already informed the European Parliament in 2010, it started an infringement procedure against Malta.

In 2014, the Commission referred Malta to the Court of Justice of the European Union for infringing EU rules (Case C-12/14).

Based on Article 9 of Regulation (EC) No 883/2004 on the coordination of social security schemes, each Member State makes a declaration every year ("Article 9 Declaration"), indicating, among other issues, the schemes which are covered by this Regulation. The Commission considered that the UK civil servants' schemes are covered by EU rules on social security coordination even if they are not listed in the UK Article 9 declaration.

However, even though the Advocate General followed the reasoning of the Commission, the Court dismissed the action. It considered that it follows from the principle of sincere cooperation (Article 4(3) of the Treaty on European Union) that every Member State carries out a proper assessment of its own social security regimes and, if necessary, following that assessment, declares them as falling within the scope of the Regulation. The Court of Justice held that declarations made by Member States listing the schemes covered by EU rules on social security coordination create a presumption that the listed schemes are covered by the said rules, and any schemes which are not listed are outside the scope of those rules.

The Court considered that Member States must take into consideration declarations submitted by other Member States and, as the UK special schemes were not listed in its Article 9 declaration, Malta must take into consideration this declaration and not apply the coordination rules to those schemes.

The Court did not pronounce itself on the qualification of the UK special schemes concerned and if they are or not social security schemes covered by the Regulation.

The new approach after the ruling of the Court in case Commission/Malta

In the ruling mentioned above, the Court gave the Administrative Commission for the coordination of social security systems[1] an increased role in solving any issue following an alleged non-reporting or inaccurate listing of a benefit in an Article 9 Declaration.

[1] Based on Article 71 of Regulation (EC) No 883/2004, the Administrative Commission for the coordination of social security systems is attached to the European Commission and is made up of a governrnental representative of each of the Member States. It deals with all the administrative questions and questions of interpretation arising from the provisions of the Regulation.

In the meeting of the Administrative Commission on 19-20 October 2016, the Commission drew the attention of all delegations to the correct assessment of national schemes as being crucial for the application of the social security coordination rules. If a scheme is listed in the said declaration, all the rules provided in the Regulation have to be applied both by the reporting State and by all the other Member States. Therefore, all Member States were asked to carefully reassess their Article 9 Declarations in order to make sure that they are correct and complete.

At the same meeting, the Administrative Commission agreed to address disputes over the material scope of the Regulation in case of doubt.

Conclusion

In light of the findings of the Court of Justice in the case *Commission/Malta*, mentioned above, the Commission will discuss the qualification of the UK schemes in the Administrative Commission and will keep the European Parliament and the petitioner informed of the outcome of the discussions.

Petition 1353/2011

The Commission's observations

The petitioner continues to send the Commission information on the waste management project for Yambol.

The issues referred to by the petitioner are not new and have been thoroughly assessed by the Commission services.

It should be recalled that following a complaint submitted by the petitioner with regard to the waste management project for Yambol, the Commission has concluded that the issues raised do not breach the applicable EU environmental law and has duly communicated its conclusions to the petitioner.

The petitioner raises again the issue of identification of sites for landfills, for which the Commission is not competent. This issue falls within the remit of the national authorities.

Similarly, the issues of construction control, road dust and monitoring of any unforeseen environmental effects also fall in the remit of respective competent authorities at national or regional level.

Furthermore, from the information provided by the petitioner, it appears that there is an ongoing appeal before the national courts against an environmental decision taken by a regional competent authority. Given the ongoing appeal, the Commission policy, as endorsed by the Parliament[1], is to refrain from intervening as long as national procedures are pending.

Conclusions

The Commission cannot intervene as there is no indication that the relevant environmental *acquis* requirements have been breached. Nothing in the information provided by the petitioner leads to a different conclusion. Moreover, the case is pending before the national courts.

[1] COM (2010) 538 final

Petition 0145/2012

The Commission's observations

The petition was updated with information on the Kittilä gold mine operated by Agnicio-Eagle Mines. The petitioner expresses concerns about effluents from a tailings pond of this mine. These effluents contain arsenic and antimony and are released into peat land close to the mine. Following the passage through this peat land, the effluents are discharged into the river Seurujoki. Furthermore, the petition points out releases of waste water into this river following the leakage of a tailings pond of this mine.

The management of extractive waste may include releases of effluents to the environment, provided that the provisions of relevant EU and national legislation are met.

According to the Directive on the management of waste from extractive industries[1], Member States must ensure that the operator takes all measures necessary to prevent or reduce as far as possible any adverse effects on the environment and human health brought about as a result of the management of extractive waste. The measures must be based, inter alia, on the best available techniques. Competent authorities have to update permit conditions where there are substantial changes in the operation of the waste facility or the waste deposited, on the basis of monitoring results or inspections carried out and in the light of the information exchange on substantial changes in best available techniques[2].

According to the Water Framework Directive[3], Member States are required to take the necessary steps to ensure a good quality of surface and ground waters, and to prevent any deterioration of this quality. In particular, they should identify river basin specific pollutants, i.e. pollutants that are discharged in significant quantities in a river basin or sub river basin, and set environmental quality standards (EQS) for them. (River basin specific pollutants should be listed in the second River Basin Management Plan to be reported by Finland to the European Commission). It is the responsibility of the competent authority to set emission limit values in the effluents, where appropriate, to ensure that the concentration of the pollutant in the aquatic environment doesn't exceed the corresponding EQS. Competent authorities are also responsible for checking that the operator respect these emission limit values, if any.

Conclusion

The petitioner points out that the emissions from the Kittilä mine contain arsenic and antimony. However, the information provided does not include specific evidence of lack of compliance of the operating permit of this mine with the requirements of EU legislation.

It is the task of the national competent authorities to ensure that the operating permit meets the requirements of EU legislation and that the conditions in the permit are effectively implemented.

[1] Directive 2001/21/EC, OJ L 102, 11.4.2006
[2] http://susproc.jrc.ec.europa.eu/activities/waste/index.html

[3] Directive 2000/60/EC OJ L 327, 22.12.2000

Petitions 359/2012 and 559/2012

The Commission's observations

In their latest submission, the petitioners claim that the Spanish Government intends to grant further authorizations for drilling projects in the area, should any company have an interest in undertaking this activity. It is, however, not possible to infer that there are indications of an infringement of EU law from merely alleged intentions of the competent authorities in Spain.

The projects referred to in these petitions have been abandoned by the developer and no development consent has been granted for any new similar project in the area. For these reasons, the Commission cannot give any follow-up to these petitions.

Petition 1281/2012

The Commission's observations

The Commission refers to its earlier communication where it considered, in the context of its pending infringement proceedings, the application of German rules on fixed prices of medicinal products subject to prescription sold by pharmacies located in other Member States as a measure having equivalent effect to quantitative restrictions on imports in the sense of Article 34 of the Treaty on the Functioning of the European Union (TFEU), as it may impede access to the German market of prescription medicines sold by these foreign pharmacies. The Commission further reserved its final position vis-à-vis the justification of the measure by the German authorities under Article 36 TFEU until the delivery of the judgment of the Court of Justice of the European Union (CJEU) in case *Deutsche Parkinson Vereinigung*, C-148/15.

The CJEU delivered its judgment in the above-mentioned case on 19 October 2016. The CJEU confirmed the Commission's view. It held that the German legislation is not an appropriate means to achieve the objective of the protection of human health and life. More concretely, the CJEU held that the German legislation is not an appropriate means to ensure the safe and high-quality supply of medicinal products to the German population by seeking to ensure that mail order pharmacies do not engage in ruinous price competition which would result in the closure of traditional pharmacies, especially in rural or underpopulated areas. The German legislation is consequently not justified under Articles 34 - 36 TFEU.

Conclusion

The Commission will invite the German authorities to inform the Commission on the follow-up they intend to take as a consequence of the above-mentioned judgment.

Petitions 0051/2013 and 0085/2013

The Commission's observations

In view of the development consent granted on 15 March 2016 for the gas storage project named "Marismas Occidental", the Commission asked the Spanish authorities to provide updated information on the state of play of the different gas storage projects in the Doñana area.

The Spanish authorities have confirmed that, out of the four projects concerned, only the one mentioned above has been administratively authorized. However, this decision has been challenged before national Courts, and the proceedings are still pending.

Conclusion

In light of the current status of these projects and in view of the pending appeal proceedings mentioned above, the Commission is not in a position to follow up this petition.

Petition 2547/2013

The Commission's observations

The Commission considers that the relevant EU legislation (the so-called Third Energy Package) provides a high degree of autonomy to the regulatory authorities of the Member States to determine the cost elements in the end-user electricity prices. The Electricity Directive (2009/72/EC) only provides general guidance regarding the procedures for determining and approval network tariffs in the Member States.

Nevertheless, Directives on the Energy efficiency (EED - 2012/27/EU) and on the Renewable Energy (RED - 2009/28/EC) contain certain measures regarding the impact of these cost elements on network and energy efficiency (e.g. Art.15 of the EED on the impact of network tariffs on the overall system efficiency and energy efficiency, and Art. 16 of the RED on integration of renewable energy sources).

Given that by the end of 2013, the cumulative electricity tariff deficit had reached 30 billion euros in Spain, the Spanish electricity market reform was inevitable. Main components of the tariff deficit stemmed from the support of renewable resources, the support for capacity mechanism and the support for the regulated fix element of end-user consumer price, which affects 80% of the electricity consumers in the country. The latter regulated item has been phased out and this is the main reason behind the significant increase in the end-user electricity price.

The Commission considers that the Spanish electricity market reform, adopted in 2013, has addressed the network tariff deficit by introducing the principle of balanced budget.

According to the new policy initiative on the electricity market design, national regulatory authorities shall continue to play a key role determining network distribution tariffs, and - in the view of the Member States - decisions on electricity distribution systems should remain under national competence.

The general principles on electricity network tariffs should be determined by the European policy initiative on the new electricity market design, in order to ensure fair distribution of costs and benefits among users, including the time-proportional network usage tariffs. National regulatory authorities should determine more precise requirements in order to assure the transparency of network tariffs.

Petition 2657/2013

The Commission's observations

In its previous communication, the Commission informed the Committee on Petitions about the measures proposed by France as a follow-up to the ruling of the Court of Justice of the European Union (CJEU) in case C-623/13, *de Ruyter*, EU:C:2015:123.

The new French law which changes the allocation of the levies concerned into two special funds financing non-contributory benefits entered into force on 1 January 2016.

The Commission is in close contact with French authorities in order to clarify all the technical aspects regarding this law and to make sure it complies with the EU law.

A decision on the infringement procedure has not been taken yet.

Conclusion

The Commission will keep the Committee on Petitions informed about the progress of the infringement procedure against France.

Petition 0240/2014

The petition

The petitioner mainly contends that EU Member States, whose national football federations are part of UEFA (Union of European Football Associations), are breaching European Union law by applying and tolerating several UEFA Regulations (mainly the UEFA Club Licensing and Financial Fair Play Regulations, read together with other related Regulations). He considers that the measures adopted on the basis of the UEFA Club Licensing and Financial Fair Play Regulations severely impede the free provision of services and free competition, given that they are not suitable to guarantee the attainment of the stated objective of improving the economic capacity of football clubs and protecting their financial stability; and that they are not necessary and completely disproportionate, notably because they give no justification for encroaching on the rights of clubs and individual players by subjecting them to a number of prohibitions (i.e. club disqualification from European competitions) and extremely high economic penalties which are neither proportionate to their conduct nor consistent with the alleged breach of derivative obligations. In his view, the Regulations in dispute violate the principle of proportionality as they restrict and control companies in an unjustified and disproportionate way, seriously affecting the entrepreneurial freedom of their principals. The petitioner equally considers that UEFA operates as a company as it is an association of national business associations; and that it imposes practices which perpetuate the dominance of economically powerful clubs and obstruct weaker clubs from competing in equal situations.

The petitioner alleges that the Regulations in dispute violate the general principle of legality and the principles of legality and proportionality of criminal offences and penalties as laid down in Article 49 of the Charter of Fundamental Rights of the European Union (Charter), given that they do not contain a system of penalties corresponding to each type of unlawful conduct; such a system would make it possible to determine *a priori* the penalty to be imposed for a given conduct and to evaluate *a posteriori* whether or not the penalty imposed is lawful. The petitioner also contends that the UEFA Rules and Regulations in dispute infringe Treaty provisions on the freedom to provide services, in particular as regards the penalties listed in the UEFA Disciplinary Regulation, which range from a warning through to a withdrawal of a licence. In this regard, the petitioner focuses mainly on two disciplinary measures: the imposition of a fine and the penalty of exclusion from competitions, and bases his arguments on several cases adjudicated by the Court of Arbitration for Sport (CAS). The petitioner essentially argues that the penalties applied by UEFA are clearly disproportionate and excessively severe, and points out in particular that the exclusion from competitions could always be replaced by a less restrictive measure and that the absence of a specific predetermination or graduation of the penalty (fine) gives the penalty issuer (UEFA) complete freedom to impose the penalty (fine) it sees fit thereby evading the principle of legal security.

The petitioner equally contends that the provisions in dispute are in breach of the right to effective judicial protection laid down in article 47 of the Charter. He notes in this regard that, pursuant to the aforementioned UEFA Regulations, for a football club from any Member State to participate in any prestigious competition at European level it must first renounce its ordinary jurisdiction and submit to that of the CAS in Lausanne, Switzerland; furthermore, in accordance with the provisions of the UEFA Statutes and UEFA Disciplinary Regulations, disciplinary decisions can only be appealed through the CAS. Consequently, the petitioner

claims that football clubs as companies are denied the possibility laid down in EU law to request a reference to the Court of Justice of the European Union (CJEU) for a preliminary ruling on the compatibility with EU law of a given piece of legislation, as CAS is a court of arbitration which, according to the case-law of the CJEU, cannot make reference for a preliminary ruling. Moreover, CAS awards can only be challenged in Switzerland whose courts cannot make such references. The petitioner therefore considers that the provisions seek to place rules and decisions outside the control of the CJEU, particularly since the inescapable jurisdiction of the CAS entails the aforementioned violation of the principle of legality. The petitioner claims that these provisions also violate the principle of effectiveness as defined by the CJEU in its case law, as he considers that the mandatory declaration to submit to CAS arbitration makes it impossible for clubs seeking to participate in cross-border competitions to exercise their rights and actions under EU law.

The petitioner further alleges that the provisions in question are in violation of the right to property as guaranteed by Article 17 of the Charter, which corresponds to Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The petitioner considers that the tight control imposed by UEFA on the clubs affects their right to enjoy ownership of legally acquired property thus preventing them from using the economic rights to which they are entitled.

The Commission's observations

At the outset, the Commission points out that the petitioner has also raised these issues by lodging an official complaint with the Commission for an alleged breach of EU law by a Member State. He has already received a full reply to this complaint.

The alleged infringement of the freedom to provide services

In any event, the Commission recalls that article 56 of the Treaty on the Functioning of the European Union (TFEU) requires not only the elimination of all discrimination against providers of services on grounds of nationality or the fact that they are established in a Member State other than that where the services are to be provided, but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit, impede or render less advantageous the activities of a provider of services established in another Member State where he lawfully provides similar services (judgment in *Jyske Bank Gibraltar*, C‑212/11, EU:C:2013:270, paragraph 58 and the case-law cited). Furthermore, Article 56 TFEU precludes the application of any national rules which have the effect of making the provision of services, within the meaning of Article 57 TFEU, between Member States more difficult than the provision of services purely within one Member State (judgments in *Cipolla and Others*, C‑94/04 and C‑202/04, EU:C:2006:758, paragraph 57, and *Commission v Belgium*, C‑296/12, EU:C:2014:24, paragraph 29).

In the case of fines, the Commission recalls that the Court has held that EU law '*sets certain limits in that area as regards the control measures which it permits the Member States to maintain in connection with the free movement of goods and persons. The administrative measures or penalties must not go beyond what is strictly necessary, the control procedures must not be conceived in such a way as to restrict the freedom required by the Treaty and they must not be accompanied by a penalty which is so disproportionate to the gravity of the infringement that it becomes an obstacle to the exercise of that freedom*' (see judgment in

Casati, C-203/80, EU:C:1981:261, paragraph 27). However, even supposing that this case law could be applied to the present situation, it must be underlined that the Court has equally held that, in cases where the penalties do not hinder in any way the exercise of that freedom, the severity of such penalties is not a matter for assessment under EU law (see, by analogy, the judgment in *Banchero*, C-387/93, EU:C:1995:439, paragraphs 60-61). In the present case, since the UEFA Rules and Regulations in dispute are applicable to all clubs and their purpose is not to regulate the conditions under which such clubs may provide their services, the Commission considers that any restrictive effects that such fines might have on the freedom of such clubs to provide services are too uncertain and indirect for that fine to be regarded as being capable of hindering that freedom (see, by analogy, judgment in *Pelckmans Turnhout*, C‑483/12, EU:C:2014:304, paragraph 25), given that the penalties do not hinder in any way the provision of services by football clubs from a certain Member State in other Member States, but merely seek to dissuade such clubs from not complying with the rules laid down in the Financial Fair Play Regulations (see, by analogy, judgment in *Banchero*, EU:C:1995:439, paragraph 60). The Commission therefore takes the view that claims that the fines imposed on clubs under the UEFA Rules or Regulations in dispute are manifestly disproportionate cannot be further assessed under EU law.

As regards the disciplinary measure of exclusion from UEFA club competitions, the Commission notes that clubs against which such measures are taken are not as such barred from providing services in other EU Member States (for instance they could still participate in friendly matches with clubs from other Member States) or from conducting cross-border business (agreeing on transfers or loans of players to clubs in other EU Member States etc.). Furthermore, under the relevant UEFA Rules and Regulations, the disciplinary measure of exclusion is not automatically taken against all clubs found in breach of the UEFA Club Licensing and Financial Fair Play Regulations (other less restrictive measures may be taken), and the aforementioned UEFA Rules and Regulations also allow for the suspension (in whole or in part) of such a measure (for a specific period of time or until the occurrence of a specified event). It follows that it cannot be argued that the inclusion of such a measure in the list of disciplinary measures laid down in the UEFA Disciplinary Regulations is in itself an unjustified restriction on the freedom to provide services.

Alleged violation of EU competition rules

The Commission notes that the petitioner's claims are based on an alleged failure of a Member State and its national authorities to ensure that national sporting federations comply with the EU competition rules. The petitioner has lodged a complaint with the Commission pursuant to Article 7 of Regulation 1/2003 regarding the aforementioned UEFA Rules and Regulations. The Directorate-General for Competition has added that complaint to the existing file AT.40217, which contains all the complaints filed by football supporters against UEFA's Financial Fair Play Rules. The Commission is currently investigating the issues raised in those complaints. Once the investigation has been carried out, the Commission may choose between opening proceedings against UEFA or rejecting the complaints. As in any investigation, the Commission cannot provide a precise timeframe or comment on the file, due to the confidential nature of the investigation.

With regard to the petitioner's allegations under the Charter of Fundamental Rights

The Commission first recalls that the Court has consistently stated that the Charter's provisions are addressed to the Member States only when they are implementing EU law

(judgment in *Texdata Software,* C‑418/11, EU:C:2013:588, paragraph 71). As such, the Charter, pursuant to Article 51(2) thereof, does not extend the field of application of EU law beyond the powers of the European Union or establish any new power or task for the European Union, or modify powers and tasks as defined in the Treaties (see judgment in *Åkerberg Fransson*, C‑617/10, EU:C:2013:105, paragraphs 17 and 23).

To further clarify this issue, the Court has held that '*the concept of 'implementing Union law', as referred to in Article 51 of the Charter, presupposes a degree of connection between the measure of EU law and the national measure at issue which goes beyond the matters covered being closely related or one of those matters having an indirect impact on the other'* (see the judgment in *Julián Hernández and Others*, C‑198/13, EU:C:2014:2055, paragraph 34). Furthermore, the Court has equally found '*that fundamental EU rights could not be applied in relation to national legislation because the provisions of EU law in the subject area concerned did not impose any obligation on Member States with regard to the situation at issue in the main proceedings*' (see the judgment in *Siragusa*, Case C-206/13, EU:C:2014:126, paragraph 26). This conclusion holds particularly true in connection with the field of sport, as under Article 165 TFEU, the Union only '*contributes to the promotion of European sporting issues*' and may only adopt incentive measures or recommendations.

Furthermore, '*the mere fact that a national measure comes within an area in which the European Union has powers cannot bring it within the scope of EU law, and, therefore, cannot render the Charter applicable*' (judgment in *Julián Hernández and Others*, EU:C:2014:2055, paragraph 36). It follows that, where a legal situation does not come within the scope of EU law, the provisions of the Charter relied upon cannot, of themselves, form the basis of an assessment under EU law (see, by analogy, *Pelckmans Turnhout*, C‑483/12, EU:C:2014:304, paragraph 20). In the *Meca-Medina* ruling, the Court had stated that '*if the sporting activity in question falls within the scope of the Treaty, the conditions for engaging in it are then subject to all the obligations which result from the various provisions of the Treaty. It follows that the rules which govern that activity must satisfy the requirements of those provisions, which, in particular, seek to ensure freedom of movement for workers, freedom of establishment, freedom to provide services, or competition* (judgment in *Meca-Medina and Majcen v Commission*, C-519/04 P, EU:C:2006:492, paragraph 28).

For the purpose of addressing the petitioner's claims, it follows from the above that the provisions of the Charter may be relied upon if it were established that the measures and practices concerned could be regarded as implementing Union law within the meaning of Article 51(1) of the Charter.

As regards EU rules on freedom to provide services, the Commission has already observed that these rules do not seem to be affected by the contested measures and practices. In the absence of any links with the scope and application of relevant EU rules, the measures and practices in question cannot be regarded as implementing EU rules on freedom to provide services within the meaning of Article 51(1) of the Charter. Therefore, the Commission is not in a position to comment on the fundamental rights issues raised by the petitioner from this angle.

Since, pursuant to a consistent case-law of the CJEU, the general principles of EU law must be observed by any national legislation which falls within the scope of EU law or which implements that law (see judgment in *Siragusa*, C-206/13, EU:C:2014:126, paragraph 34), the Commission considers that the above considerations apply equally to the petitioner's claims

based on an alleged breach of a general principle of EU law, such as for instance the general principle of proportionality.

Conclusion

In the light of the above, at this stage, the Commission is not in a position to conclude that any breach of EU law within the context of this petition has been committed.

Petition 0373/2014

The petition

The petitioner, a British citizen who has been residing in the Balearic Islands (Spain) for 15 years wishes to register his de facto partnership with the Regional authorities.

According to Article 2(2) of the *Regional Law 18/2001, of 19 December 2001*[1] obtaining regional citizenship appears to be a necessary precondition to register a de facto partnership in the Balearic Islands.

However, although Article 14 of the Spanish Civil Code establishes that regional citizenship may be acquired by Spanish citizens in a number of different ways (e.g. by birth, adoption, residence, etc.), non-Spanish EU citizens appear to be unable to obtain regional citizenship unless they first acquire Spanish citizenship.

The Commission's observations

Non-Spanish EU citizens are unable to obtain regional citizenship and are thus hindered from registering a de facto partnership in the Balearic Islands unless one of the partners holds Spanish citizenship.

Given the above, the rules applied by the Spanish authorities concerning the registration of de facto partnerships in the Balearic Islands are likely to constitute discrimination on the grounds of nationality.

The Commission contacted the Spanish authorities which have indicated that *Law 18/2001, of 19 December 2001* will be modified in order to allow non-Spanish EU citizens who are habitually resident in the Balearic Islands to register their de facto partnership.

The Commission will request the submission of a draft legislative proposal and a calendar for its adoption.

Conclusion

The Commission will verify the adoption of the necessary changes to *Law 18/2001 of 19 December 2001.*

[1] Ley 18/2001, de 19 de diciembre, de parejas estables.

Petition 1288/2014

The Commission's observations

The Commission considers it important to promote the full participation of EU citizens in the democratic life of the EU. However, the Commission has no general powers to intervene with the Member States in the field of elections.

Article 20(2)(b) of the Treaty on the Functioning of the European Union gives EU citizens who have moved to a Member State other than that of their nationality the right to vote and stand in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as the nationals of that State. However, the EU has no general competence regarding the procedures for voting in national elections. Laying down the arrangements for, and organising national elections in the Member States, falls within the competences of each Member State. Furthermore, provided that they effectively guarantee the right to vote in elections to the European Parliament, and subject to the provisions of the Act concerning the election of the members of the European Parliament by direct universal suffrage,[1] Member States remain free to organise elections to the European Parliament.

Conclusion

In light of this, and on the basis of the information provided by the petitioner, it is not possible to establish any violation of EU law in this case.

[1] OJ L 278, 8 October 1976, p. 5.

Petition 1373/2014

The Commission's observations

The Commission has launched an infringement procedure against Spain for not complying with the requirement to prepare and adopt a noise action plan for the agglomeration of Bilbao because, at this point in time, the action plan is still being drafted.

Petition 1405/2014

The Commission's observations

The processing of personal data by public authorities is subject to the national rules transposing Directive 95/46/EC[1] (hereafter "the Directive").

Under the Directive, personal data must be processed fairly and lawfully, collected for specified, explicit and legitimate purposes, and not further processed in a way that is incompatible with those purposes. The personal data must be adequate, relevant and not excessive in relation to the purpose for which they are collected and further processed as well as not kept longer than is necessary for the purposes (Article 6 of the Directive). Article 7 of Directive 95/46/EC contains an exhaustive list of legitimate grounds for data processing; these include processing to which the data subject has unambiguously given his consent, processing which is necessary for compliance with a legal obligation to which the controller is subject, processing which is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller or in a third party to whom the data are disclosed, or processing necessary for purposes of the legitimate interests pursued by the data controller.
Before obtaining the personal data, the controller must provide the data subject with information, such as the identity of the data controller and the purpose (or purposes) of processing for which the data are intended (Article 10 and 11 of the Directive).

The Directive also lays down various rights which can be relied on by data subjects. In particular, Article 14 (a) of the Directive stipulates that the data subjects are, in certain cases, conferred with the right to object at any time on compelling legitimate grounds relating to their particular situation to the processing of data relating to them, save where otherwise provided by national legislation. If the objection is justified, the processing instigated by the data controller may no longer involve those data.

Member States must ensure the transposition of the Directive into national law and set up independent data protection authorities. The national data protection authorities are responsible for monitoring the application of the national provisions transposing the Directive.

Without prejudice to the powers of the European Commission as guardian of the Treaties, the supervision and enforcement of data protection legislation falls within the competence of national authorities, in particular the data protection supervisory authorities and courts.

Conclusion

The Commission services informed the petitioner about her rights and advised her to lodge a complaint with the Spanish data protection supervisory authority if she believed that the processing of her personal data is not in compliance with the requirements set out in the Directive and the Spanish data protection legislation implementing it.

[1] Directive 95/46/EC of the European Parliament and of the Council of 24.10.1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281 of 23.11.1995, p. 31.

Petition 1802/2014

The Commission's observations

The Commission has examined the additional material provided by the petitioner on 3 March 2016 and concludes that it contains no elements that would change the Commission's initial position expressed in its communication of 30 March 2016 in which the Commission considered that, in the absence of EU competence in the matter, the Commission was not in a position to pursue this petition any further.

Petition 2046/2014

The Commission's observations

This petition concerns an individual case of alleged bad application of the Industrial Emissions Directive[1] which does not point to any structural problem in Spain.

The redress mechanisms provided by the Directive constitute the fastest and most efficient manner to solve any issue related to the granting of a permit for an industrial installation.

Moreover, the provisions of the Directive granting access to a preliminary review procedure before an administrative authority, and to a review procedure before a court of law or another independent and impartial body established by law to challenge the legality of decisions relating to the granting of a permit are correctly transposed into Spanish law and should be used by the petitioner.

Conclusion

The petitioner has failed to provide any information suggesting that they have made use of the redress mechanisms provided for by the Directive. Therefore, the Commission will not give any further follow-up to this petition and invites the petitioner to use the national means of redress available under the Spanish legislation transposing the Industrial Emissions Directive.

[1] Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) Text with EEA relevance - OJ L 334, 17.12.2010, p. 17–119

Petitions 2582/2014 and 0019/2015

The Commission's observations

The EIA Directive[1] requires that Member States ensure that, before consent is given, projects likely to have significant effects on the environment are made subject to an assessment with regard to their effects. Such assessment is mandatory for the projects listed in Annex I to the Directive, such as the construction of lines for long-distance railway traffic.

From the available information, it appears that the original project was indeed made subject to an EIA procedure in 2009. However, it should also be borne in mind that, for the projects listed in Annex II, Member States shall determine, through a case-by-case examination or by setting thresholds or criteria, whether the project shall be made subject to an assessment. Annex II to the EIA Directive includes "any change or extension of projects listed in Annex I, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment".

The construction of high-speed railways in the region of Murcia has been supported in the past by the European Regional Development Fund (ERDF). Moreover, additional projects will be co-financed in the region during the period 2014-2020 in the framework of the Mediterranean corridor railway and in line with the new Transport European network (TEN-T). However, support by ERDF to projects related to the access of the high-speed railway to the city of Murcia is not expected (including the underground section crossing the city).

It is important to note that the Spanish Authorities announced in January 2016 that the railway section that has motivated the current petition will finally run underground, which is in line with the original idea. They also indicate that they will cancel the awarded contract linked to the modification of the project[2].

The Commission has contacted the Spanish authorities to ask for further clarifications on how the provisions of the EIA Directive have been taken into account in this case.

Conclusion

The Commission is currently assessing the reply submitted by the Spanish authorities. After its assessment, the Commission will decide on the most suitable avenues to ensure the correct application of the relevant provisions of EU environmental law, and in particular of the EIA Directive.

[1] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance - OJ L 26, 28.1.2012, p. 1–21

[2] http://www.murciaaltavelocidad.es/index2.php?s=noticias&f=noticias

Petition 2715/2014

The Commission's observations

The petition was recently debated, in the presence of the Commission, at the meeting of the Committee on Petitions on 10 October 2016.

Annex I of the Treaty on the Functioning of the European Union (TFEU) sets out the products that are subject to the provisions of Articles 39-44 of the TFEU, on the Common Agricultural Policy. This Annex covers, amongst others, Chapters 7 and 20 of the Harmonized System, including:

- Truffles when treated as fresh, chilled, frozen, dried or provisionally preserved - either in sliced, chopped form or powdered as in flavouring materials - are covered under headings 07.09, 07.10, 07.11 and 07.12 of the Harmonized System (HS) of Chapter 7 ('Edible vegetables and certain roots and tubers'). (For more details see "General" in the Harmonized System Explanatory Notes to Chapter 7).

- Truffles, when treated beyond the above treatments allowed for in Chapter 7 above, are covered under headings 20.01 and 20.03 of the HS of Chapter 20 ('Preparations of vegetables, fruits, nuts and other parts of plants').

Regulation (EU) No 1308/2013[1] applies to products under headings 07.09, 07.10, 07.11 and 07.12 of the HS, covered by its part IX (Fruit and vegetables sector) and under headings 20.01 and 20.03 of the HS covered by its part X (Processed fruit and vegetable products sector). The Combined Nomenclature codes for these products are, for instance, 0709 59 50 (fresh or chilled truffles), 0712 39 00 (other dried mushrooms and dried truffles)[2] and 2003 90 10 (truffles, prepared or preserved otherwise than by vinegar or acetic acid), respectively.

Conclusion

Truffles are covered by Annex I of TFEU as agricultural products under Articles 39-44 of the TFEU on the Common Agricultural Policy. They are also covered by Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products.

[1] Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products, OJ L 347, p. 671, 20.12. 2013.

[2] Commission Implementing Regulation (EU) No 2015/1754 of 6 October 2015, OJ L 285, p. 1-926, 30.10. 2015 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.285.01.0001.01.ENG&toc=OJ:L:2015:285:TOC

Petition 0092/2015

The Commission's observations

The petitioner argues that "cardiac surgery" is not a new medical specialist category and should have been introduced to the Directive already in 2005. It is important to clarify that the wording of "new medical specialties" as provided by in Article 26 of the Directive refers to additional categories of medical specialisations that were previously not covered by point 5.1.3. of the Directive, regardless of whether they existed or not in some Member States.

The petitioner also argues that, in his view, under the specialist category "thoracic surgery" Member States should display their specialisations also in cardiac surgery. The Commission explained in its communication of 27 January 2016 that amendments to this point of Annex V are based on national notifications. Moreover, the Professional Qualification Directive does not provide a list of activities for each category of specialisations. Naturally, there are differences amongst Member States also in terms of the regulation of the activities linked to the thoracic or cardiac surgery professions.

Accordingly, it is not in the competence of the Commission to list national specialist titles under a certain category (thoracic surgery in this case) without the relevant national notification.

The Commission also explained in its previous communication the possibility to add cardiac surgery as an additional specialist category to the Directive. To complete this procedure and prepare for the relevant delegated act, at least 12 Member States shall notify to the Commission their relevant national specialist programmes meeting the harmonised requirements. To date, the Commission has not received a sufficient number of notifications from Member States to move this process forward.

Conclusion

Therefore, the Commission's assessment would not change on the basis of these arguments. The petitioner might consider contacting the relevant members of the Group of Coordinators[1] for further clarifications on the national regulations of his specialisation and its possible inclusion into Annex V of the Directive.

[1] http://ec.europa.eu/growth/single-market/services/free-movement-professionals/policy_en

Petition 0721/2015

The Commission's observations

The Commission understands that the "4 stage plan" had been the basis for the "Masterplan Salt" on which the management plan and the action programme "Salt" 2015 – 2021 for the Weser river basin are based. These two documents have been adopted by the "Weser Ministerkonferenz" on 18 March 2016.

The Commission services are currently analysing these documents in the framework of the infringement procedure against the Federal Republic of Germany for failure to comply with the Water Framework Directive in the Weser river basin.

Petition 0789/2015

The Commission's observations

The petitioner has been writing regularly to the Commission since September 2015. In all his correspondence he repeats the same accusations directed towards Polish consular offices in Belarus, as well as to the Polish Ministry of Foreign Affairs and President Donald Tusk in his previous capacity as Prime Minister of the Polish government.

The petitioner raised three separate issues which he wanted the Commission to investigate. The Commission is not in a position to provide an answer on the matter related to the alleged fraud concerning the issuing of national (long-stay) visas by the Polish consulate in Belarus, as this is a matter of exclusive national competence. The Commission is also not competent to deal with the issue of alleged assassinations. The Commission informed the petitioner of the need to address these issues to - respectively - the competent Polish authorities, and to the law enforcement/judicial authorities competent regarding the alleged assassination.

As regards the issues linked to the common visa policy, namely to the alleged 'visa fraud' occurring in Polish consulates in Belarus, the Commission investigated the matter, as it concerns the application of EU law in the visa policy area. The Commission has provided answers to the petitioner on several occasions.

In particular, replies were sent to the following letters:
- letters addressed to the President of the European Commission, Mr. Jean-Claude Juncker, of 25 September, 21 October, 17 November, 8 December, 17 December, 18 December 2015, as well as of 22 February, 13 March, and 3 April 2016;
- letter addressed to the High Representative of the Union for Foreign Affairs and Security Policy, Ms. Federica Mogherini of 6 October 2015;
- letter addressed to the Commissioner for Migration and Home Affairs, Mr. Dimitris Avramopoulos, of 3 April 2016.

The Commission's reply dated 17 December 2015[1] explained that the European Commission had been aware of the problems linked to the use of a system for booking appointments in Polish consulates in Belarus, and had been in contact with both the Polish and Belarusian authorities in order to remedy this situation. Following the analysis conducted by Commission services, it was concluded that the Polish consulates in Belarus issue visas in compliance with the procedures set out in the Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas. The Commission informed the petitioner that following the European Commission's analysis of the situation, nothing indicated the existence of any illegal or corrupt activities by Polish officials in relation to the issuing of visas in the Polish consulates in Belarus.

The Commission's reply dated 26 January 2016[2] confirmed that it had already provided replies to petitioner's previous letters to the President of the European Commission of 25 September, and 21 October, on 17 December 2015 to the address indicated in all correspondence with European Institutions.

[1] ARES(2015)5925685 of 17 December 2015
[2] ARES(2016)423097 of 26 January 2016

The Commission's reply dated 23 February 2016[1] re-confirmed the replies provided to the questions repeatedly posed by the petitioner. The two above-mentioned replies concerned also letter of 17 November 2015 addressed to President Juncker, as well as the letter of 6 October 2015, addressed to High Representative of the Union for Foreign Affairs and Security Policy, Ms. Federica Mogherini. The Commission informed the petitioner that it considered that the replies already sent presented a comprehensive picture of the situation concerning the problems linked to the use of the system for booking appointments in Polish consulates in Belarus. As regards the petitioner's request for compensation for damages payable to the government of Belarus and to the non-governmental organisation which he is heading, namely the Foundation RENESANS.BY, the Commission informed the petitioner that he was free to take any legal action which he might consider appropriate.

As none of the arguments in the petitioner's letter of 22 February 2016 and e-mail of 13 March 2016 provided elements to justify a re-evaluation of the above conclusions, the Commission therefore reiterated and confirmed what has been indicated in its replies to the Petitioner dated 17 December 2015, January 26, and 23 February 2016.

The Commission, in accordance with the Code of Good Administrative Behaviour for staff of the European Commission in their relations with the public, informed the petitioner on 18 March 2016[2] that it was possible for the Commission to discontinue the exchange of correspondence with any person who has been provided with the Commission's consistent position and who repeatedly raises issues already addressed without providing any new relevant arguments.

On 18 April 2016, Director for Migration and Mobility in Directorate General for Migration and Home Affairs, Ms. Belinda Pyke, replied to the e-mail correspondence of 3 April 2016, addressed to the President of the European Commission, Mr. Jean-Claude Juncker, and to the Commissioner for Migration and Home Affairs, Mr. Dimitris Avramopoulos. In her letter[3] she fully confirmed the content of the letter on the discontinuation of correspondence dated 18 March 2016 and signed by Ms. Yolanda Gallego-Casilda Grau, Head of Unit Visa Policy in DG HOME. She reiterated that none of the arguments in the e-mail sent by the petitioner on 3 April 2016 provided elements allowing for the re-evaluation of the conclusions already shared.

Following this exchange, on 1 July 2016 the petitioner wrote a letter on the same issues to the First Vice-President of the Commission, Mr. Frans Timmermans. Given that no new facts were presented in that letter, the Commission has decided not to answer it, given the previous decision on discontinuation of correspondence, communicated to the petitioner on 18 March 2016 and confirmed on 18 April 2016.

Conclusion

The petitioner alleges irregularities without providing the details necessary to investigate them. The Commission received only isolated complaints regarding this issue, which provided no evidence of a systematic violation of EU law. The Commission has, however, investigated the issue of the difficulty to obtain an appointment in Polish consulates in Belarus in 2012 and 2015. The Commission analysed the compliance of the Polish appointment system in place in

[1] ARES(2016)935826 of 23 February 2016
[2] ARES(2106)1367361 of 18 March 2016
[3] ARES(2016)1824067 of 18 April 2016

Belarus with the deadline for scheduling an appointment set out in Article 9(2) of the Visa Code. The investigation confirmed the existence of irregularities. However, it was established that the Polish authorities were taking the necessary steps to remedy the situation. The opening of visa application centres run by the external service providers in Belarus substantially improved the access of visa applicants to lodge their visa applications.

Given that the Commission services have no proof of the alleged existence of a criminal network selling Schengen visas in Belarus, as explained in the Commission's replies to the petitioner dated 17/12/2016, 26/01/2016 and 23/02/2016, and taking into account that the petitioner failed to present any new facts that could alter the results of the Commission's investigation, the Commission decided to discontinue correspondence with the petitioner and informed him about this decision on 18 March and 18 April 2016.

Petition 0867/2015

The Commission's observations

The two Council Decisions on relocation adopted in September 2015[1] provide for the relocation of 160,000 asylum seekers in clear need of international protection from Italy and Greece to other EU Member States. This is binding EU law. As part of its efforts to accelerate the implementation of these decisions, the Commission, among others, sent administrative letters to the Member States in February, August and October 2016, increased the frequency of the meetings of the Resettlement and Relocation Forum, the Friends of Hotspots and the Liaison Officers for relocation, and strengthened its support to Italy and particularly Greece.

In the Seventh Report on Relocation and Resettlement[2] published on 9 November 2016, the Commission confirmed the positive trend observed in the previous months despite a setback in October due to the specific circumstances during the reporting period, which should be of a temporary nature and are explained in the report. In total 6,925 people (5,376 from Greece) have been relocated. However, for the positive trend to be strengthened, an acceleration of relocation efforts is needed in order to meet the obligations foreseen under the two Council decisions. The measures to be taken by the Member States and other stakeholders to accelerate implementation are included in the Report. In particular, to ensure the effective implementation of the two Council Decisions on relocation, the Commission calls on Member States:

- to pledge and relocate regularly and in accordance with the size of their allocation;
- to accelerate the response time to relocation requests to meet the 10 working days target set in the relocation protocols and share information regarding reasons for rejections via the secured channel offered by Europol;
- to increase their reception capacities to accommodate the relocation applicants, including unaccompanied minors, in accordance with their allocation;
- to nominate experts to respond to the European Asylum Support Office's (EASO) various calls, ensuring longer deployments and more senior and specialised profiles;
- for those Member States that have not made any pledge or have not relocated anyone, to do so without delay.

For their part, Greece and Italy should continue increasing their processing capacity. Greece should also establish urgently the remaining relocation centres and Italy implement the arrangements agreed with Europol and the first relocations of unaccompanied minors. The Commission continues to closely monitor and report on the implementation of the two Council decisions on relocation and, as guardian of the Treaties, reserves the right to take action, including where appropriate infringement procedures, against those Member States not complying with their obligations.

[1] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece; Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

[2] COM(2016) 720 final

In close coordination with Member States, EU agencies, International Organisations and Non-Governmental Organisations, the Commission closely monitors the situation on the ground in Greece and continues to support the national authorities, in terms of financial assistance[1] and human resources deployment.

Significant funding has been made available to Greece to guarantee the development of adequate reception facilities with humane living conditions for irregular migrants and applicants for international protection, as well as for vulnerable populations, including children. The objective is to develop specific assistance schemes, dedicated areas and to ensure the transfer to more adequate sites on the mainland. In addition, as of 22 July 2016, a total of 142 EASO experts were deployed in Greece, assisting in provision of legal information, pre-registration, registration, relocation, and admissibility assessment[2].

In case of resettlement, i.e. the admission of displaced third-country nationals or stateless persons in need of international protection to a Member State from a third country in order to get international protection, Member States agreed on 20 July 2015 to resettle, together with Dublin associated States, 22 504 displaced persons in need of international protection from third countries. As of 9 November, 11,852 people have been resettled under the scheme. As the implementation of the resettlement pledges under this scheme, which includes also resettlement under the EU-Turkey Statement of 18 March 2016, is on track, the Commission has called on the Member States to continue delivering on their resettlement commitments.

In May 2016, the Commission also proposed a reform of the Dublin system[3] in order to include a corrective allocation mechanism that would provide for allocations from a Member State which is responsible for a disproportionate number of asylum applications to other Member States, based on a reference key. This proposal is under negotiation by the co-legislators.

More generally on child protection, in its Communication of 10 February 2016 "On the State of Play of Implementation of the Priority Actions under the European Agenda on Migration"[4], the Commission set out a number of actions on the protection of children in migration, that are now being implemented[5]. Furthermore, the 2016 European Forum on the rights of the child will focus entirely on the protection of children in migration.

In the identification of appropriate durable solutions for individual refugee children, the Commission and the Member States are guided by Article 21 of the UN Convention on the rights of the child, and General Comment No 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, which defines the parameters for the use of intercountry adoption in Section VII(e).[6]

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[1] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/factsheet_managing_refugee_crisis_eu_financial_support_greece_update_22_july_en.pdf.

[2] COM (2016) 231 final "First Report on the progress made in the implementation of the EU-Turkey Statement", p. 5; COM(2016) 349 final "Second Report on the progress made in the implementation of the EU-Turkey Statement", p. 2.

[3] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin_reform_proposal_en.pdf

[4] COM(2016) 85 final

[5] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_06_en.pdf

[6] http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf

Conclusion

As regards the relocation of asylum applicants from Greece to other Member States, the Commission will continue to closely monitor and report on the situation in order to ensure that all Member States act in accordance with their obligations. Further information concerning the latest developments on this issue is provided on the web-site of the Directorate General for Migration and Home Affairs (DG HOME): http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm.

As regards adoption, in terms of immediate reception, the Commission is focusing on the quality of reception and care, including foster care, as provided for in Article 24 of the Reception Conditions Directive,[1] the parameters for the use of adoption for refugee children being rather limited as described above.

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.180.01.0096.01.ENG&toc=OJ:L:2013:180:TOC

Petition 0882/2015

The Commission's observations

Migration management is a shared responsibility among EU Member States and requires a common European policy. This is why in May 2015 the European Commission presented the *European Agenda on Migration* setting out the steps to be taken by the EU to better manage migration and the tools necessary for Member States to do so. The Agenda encompassed both immediate steps to respond to the refugee crisis as well as long term measures to ensure a robust common European policy for the future.

Since then, the EU has taken a series of measures to implement the Agenda and equip Member States with the necessary tools. This joint response has proven to significantly reduce the number of irregular arrivals in the EU and improve migration management.

In July 2015, the EU adopted a European Resettlement Scheme. The objective of the scheme is to prevent the recourse of migrants to criminal networks of smugglers and traffickers and ensure legal and safe pathways to enter the EU. A total of 10,695 people have been resettled until 26 September 2016[1]. In order to ensure legal pathways to the EU in the future, the EU is currently negotiating the Standard Operating Procedures for a Voluntary Humanitarian Admission Scheme with Turkey.

In September 2015, the EU further adopted two Decisions to relocate 160,000 asylum seekers from Italy and Greece, to assist them in dealing with the pressures of the refugee crisis. Since its launch in September 2015, a total of 5651 people have been relocated[2]. The efforts of Member States have resulted in strengthened security, close to 100 % fingerprinting and substantial acceleration of relocation transfers.

Another important measure to reduce the number or irregular crossings is the EU-Turkey Statement of 18 March 2016. The Statement has led to a substantial fall of both irregular crossings of migrants from Turkey to Greece and the loss of life at sea. The average daily arrival has been reduced to 85 persons per day since June 2016, in comparison to over 10,000 people arriving on one single day in October 2015.[3] A total of 578 people have been returned under the Statement[4]. The EU and its Agencies such as the European Asylum Support Office and Europol have provided expertise and advice logistics, materials and staff to Greece. To support the Greek authorities as well as international organisations and NGOs operating in Greece in managing the refugee and humanitarian crisis, the Commission has awarded over €353 million in emergency assistance since the beginning of 2015.[5] To address the needs of refugees and host communities in Turkey, a Facility for Refugees in Turkey has been set up. The Facility focusses on humanitarian assistance, education, migration management, health,

[1] COM(2016) 636 final: Sixth report on relocation and resettlement, p. 13.
[2] COM(2016) 636 final: Sixth report on relocation and resettlement, p. 2.
[3] Delivering on migration and border management: Commission reports on progress made under the European Agenda on Migration, European Commission - Press release, 28 September 2016.
[4] COM(2016) 634 final: Third Report on the Progress made in the implementation of the EU-Turkey Statement, p. 5,
[5] COM(2016) 634 final: Third Report on the Progress made in the implementation of the EU-Turkey Statement, p.7.

municipal infrastructure, and socio-economic support and manages a total of €3 billion for 2016 and 2017[1].

Further immediate action was taken by the EU by setting up hotspots in Greece and Italy in order to ensure the fingerprinting of all migrants, the prompt selection and relocation of asylum applicants, the establishment of adequate reception capacities, the swift return, voluntary or forced, of people not in need of international protection and the improvement of border management. Staff of Frontex and the European Asylum Support Office has been deployed to these hotspots to support national authorities. The European Commission has further provided emergency funding and is providing €474 million for migration and border management.

The EU has also taken appropriate measures regarding internal borders in accordance with the Schengen Border Code. In May 2016, the Council of the EU issued a recommendation allowing for the continuation of temporary internal border control in exceptional circumstances at specific borders in five Schengen States, including Germany[2]. Proportionate temporary border controls should be maintained for a maximum period of six months to adequately address the threat to public policy and internal security related to secondary movements of irregular migrants. On 11 November 2016, the Council of the EU recommended a prolongation of controls for a period of three months.[3] The EU's objective, however, is to return to a normally functioning Schengen area as soon as possible.

Apart from these short-term measures, the EU has come up with a series of proposals to address migration in the long run:

The EU has initiated an extensive reform of the Common European Asylum System. The reform will concern the criteria and mechanisms for determining the Member State responsible for examining an application for international protection[4], and the standards for the reception of applicants[5], the qualification of persons for international protection[6] and the procedure for international protection[7]. Moreover, the Commission has made proposals regarding the use of the EU database Eurodac for the comparison of fingerprints and to identify persons illegally staying in the EU[8], to strengthen the European Asylum Support

[1] COM(2016) 634 final: Third Report on the Progress made in the implementation of the EU-Turkey Statement, p.10.
[2] 2016/0140 (NLE): Council Implementing Decision setting out a Recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.
[3] 2016/0347 (NLE): Council Implementing Decision setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.
[4] COM(2016) 270 final: Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast).
[5] COM(2016) 465 final: Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast).
[6] COM(2016) 466 final: Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.
[7] COM(2016) 467 final: Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.
[8] COM(2016) 272 final: Proposal for a Regulation of the European Parliament and of the Council on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of regulation (EU) No

Office[1] and to establish a Union Resettlement Framework[2]. To improve the framework for legal migration, the EU is currently revising the EU's Visa Code.

A number of actions have been taken to improve the management and protection of external borders of the EU. Within only one year, the EU has set up the European Border and Coast Guard Agency which was officially launched on 6 October 2016. The Agency will closely monitor the EU's external borders and work together with Member States to quickly identify and address any potential security threats to the EU's external borders. The EU has also come up with several proposals in order to improve the management of the EU's external borders through the use of IT measures. These concern the reinforcement of checks against relevant databases at external borders[3], the establishment of a system to register entry and exit data of persons crossing the external borders of Member States[4], the evolution of the Schengen Information System, the establishment of an EU Travel Information and Authorisation System and improving the interoperability of information systems. All of these measures will contribute to strengthen control at the EU's external borders.

Reducing the incentives for irregular migration is crucial for ensuring that people no longer leave their countries to reach Europe by dangerous means and often in the hands of criminal networks. The EU has therefore reinforced its external policy and cooperation with third countries on migration. To name just a few measures, the EU agreed on action plans with countries along the Eastern-Mediterranean and Western Balkan route and with the African Union. In June 2016, a new Migration Partnership Framework has been established with the objective of mobilising and focussing EU action and resources in external work on managing migration. The first five compacts with key third countries of origin and transit in Africa have already been concluded under this Framework. Moreover, EU Migration Liaison Officers will shortly be deployed to key countries.

Conclusion

The Commission has initiated a series of measures to respond to the crisis situation in the Mediterranean and reduce the influx of migrants. The Commission will continue to implement these measures, monitor their implementation by Member States and EU Agencies and provide support. Several legislative proposals have been tabled by the Commission and the Commission stands ready to further support the co-legislators with a view to their speedy adoption.

604/2013 for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes.

[1] COM(2016) 271 final: Proposal for a Regulation of the European Parliament and of the Council on the European Union agency for Asylum and repealing Regulation (EU) No 439/2010.

[2] COM(2016) 468 final : Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council.

[3] COM/2015/0670 final: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 562/2006 as regards the reinforcement of checks against relevant databases at external borders.

[4] COM(2016)194/F1: Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing external borders of Member States of the European Union and determining the conditions for access to the EEs for law enforcement purposes and amending Regulation (EC) No. 767/2008 and Regulation (EC) No 1077/2011.

Petition 0892/2015

The Commission's observations

As a preliminary remark, the Commission would like to inform the European Parliament that in parallel, and subsequent, to this petition, the petitioner introduced two complaints with the European Commission on the same subject, i.e. the request for verification of civil status documents and the refusal to issue visas to his family members. Both complaints were closed due to the explanations by the German authorities on the requirements to have civil status documents verified and the changes to the information on the website of the embassy (see hereinafter point 1) and considering the individual circumstances of the decision taken with regard to the situation of the petitioner (see hereinafter point 2) .

- *Verification of civil status document:*

Article 21(1) of the Treaty on the Functioning of the European Union stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. The respective limitations and conditions are to be found in Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States[1].

As provided in Article 5(2) of the Directive, Member States may, where the EU citizen exercises the right to move and reside freely in its territory, require the family member who is a non-EU national to have an entry visa. As confirmed by the Court of Justice of the European Union[2], such family members have not only the right to enter the territory of the Member State but also the right to obtain an entry visa for that purpose. Member States must grant such persons every facility to obtain the necessary visas which must be issued free of charge as soon as possible and on the basis of an accelerated procedure.

As this right is derived from the family ties only, the host Member State may require family members applying for an entry visa to present their valid passport, a proof of family ties and a proof that the EU citizen is (or will be) exercising Treaty rights in the host Member State.

However, the right to obtain an entry visa as the family member of an EU citizen exercising free movement rights is not unconditional. EU law enables Member States to prohibit family members of an EU citizen from entering their territory where they represent a risk to the requirements of public policy, public security or public health within the meaning of Chapter VI of the Directive or in the event of abuse or fraud as laid down in Article 35 of Directive 2004/38/EC.

The burden of proof for being beneficiary of the Directive rests with the EU citizens and their family members. Even though they generally benefit from the assumption that the documents which prove their status as beneficiary are authentic and correct, this assumption does not exclude that a Member State that has specific and reasonable doubts in this regard may request the applicants to disprove this suspicion. It depends on the circumstances of each case what this may entail.

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1 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20110616:EN:PDF

2 Judgment of the Court of 31 January 2006 in case C-503/03 *Commission v Spain* (Rec. 2006, p. I-1097)

Where a national authority has suspicions regarding the authenticity of the issuing authority and the correctness of the data appearing on a document, it may indeed ask for the documents to be notarised, legalised or verified. In this case, the applicant – who has to prove that s/he benefits from free movement law - may be asked to pay the costs for it. However, the suspicion must be specific in that it concerns the document(s) in a specific individual case because it would be disproportionate if a Member State would automatically and generally require verification and/or legalisation of documents on the family links in all cases.

In view of the information that the petitioner had been given by the German embassy and that could also be found on their website, namely that *all* relevant Ugandan civil status documents accompanying a visa application had to be verified concerning genuineness, correctness of content and if they were issued in accordance with then valid Ugandan law, the Commission contacted the German authorities in an EU Pilot procedure.

The German authorities informed the Commission that under German law each national authority to which a foreign record is submitted has the discretionary power to determine whether the foreign record is deemed authentic without further proof. In the specific case of a visa application at an embassy, the German authorities informed the Commission that the embassy would only ask for verification in case of doubts about a foreign record's authenticity in an individual case but not systematically. The factsheet on the website of the German Embassy 'Requirements for EU/EEA family reunion' was corrected to adequately reflect the discretionary power[1].

- *Visa refusal:*

The above rules on the rights of family members to enter a Member State and to obtain a visa resulting from Directive 2004/38/EC are correctly transposed into German law.

Therefore, and as the host Member State may require family members applying for an entry visa only to present their valid passport, a proof of family ties and a proof that the EU citizen is (or will be) exercising Treaty rights in the host Member State requiring additional documents for a visa application, such as airline return tickets, health insurance, and proof of financial resources would also seem to be contrary to German law that correctly transposes the respective provisions of the Directive.

Where national law correctly transposes EU law, the jurisprudence of the Court of Justice of the European Union requires the Commission to prove by means of sufficiently documented and detailed proof the existence of an administrative practice contrary to EU law which must be, to some degree, of a consistent and general nature. Such an offending administrative practice of a consistent and general nature cannot be established on the basis of an isolated case.

However, the Commission's services had some concerns as to compliance with EU free movement law of the reasoning of the German authorities' refusal to grant the visas to the family members, as it was presented by the petitioner, notably in so far as the German embassy seemed to have refused the visa applications at least in part on suspicions of abuse, and/or seemed to have considered them to be long-term visa applications under national law rather than short-term visa applications under the Directive.

[1] http://www.kampala.diplo.de/contentblob/4527752/Daten/5452456/19_05_15_Requirements_Freizuegigkeit.pdf

The Commission, however, has no indications that the petitioner's experience is not an isolated case. Therefore, refusing to issue the visas to his family members is not sufficiently indicative of an administrative practice of a consistent and general nature contrary to EU law, which is, however, what the Commission would have to prove if it wanted the Court of Justice to rule against a Member State for breach of EU law. Against this background, and as only a national court can overturn a decision to refuse to issue a visa, the Commission provided the petitioner with the following remarks that may be of assistance in view of a national court case against the visa refusal decision.

Suspicion of abuse: When refusing the visas, the German embassy seemed to suspect that, on the one hand, the petitioner as the EU citizen from whom the family members would derive the right of entry to Germany would not remain in Germany but would return to the Netherlands with the family members. On the other hand, they seemed to suspect that even if he remained in Germany, he would not meet the conditions to enjoy a right of residence there. Such considerations as justification to refuse the visa are not covered by Article 35 of the Directive.

Application for short-term visa under the Directive or national long-term visa: EU citizens have the right of residence in another Member State for a period of up to three months *without any conditions* other than the requirement to hold a valid identity card or passport. To this unconditional right corresponds the general right of their non-EU family members to be issued with a short-term entry visa covering these three months if there is no public order threat or abuse or fraud. While it is true that the right of residence for more than three months in another Member State is not unconditional[1], and while it is also true that the Member State can require the EU citizen to show that s/he meets these conditions of residence, the Member State can only request this at the end of the first three months of residence. If the EU citizen does not meet the conditions then, s/he does not have a right of residence and the Member State may ask him/her to leave the Member State and can expel him/her. However, under no circumstances can a Member State refuse an EU citizen entry and residence during the first three months on the grounds that it suspects that the EU citizen will after the first three months not meet the conditions to continue to have a right of residence.

This same logic also applies to visas for the EU citizen's family members who derive their right to enter and reside in a Member State from the EU citizen. Where a Member State requires the non-EU family members to have an entry visa to accompany or join an EU citizen, this only concerns the first three months[2]. After three months in the host Member State, the Directive provides that the non-EU national family member accompanying or joining an EU citizen has the right to reside in the host Member State for a period of longer than three months with the EU citizen, provided that the EU citizen has a right of residence, and for this the family member has to apply for a residence card as the family member of an EU citizen. Again, it is only at this point in time that the Member State may examine whether the conditions for a right of residence of the EU citizen – and implicitly also of the family members - are met. If they are not met, the Member State may refuse the residence card and ask the EU citizen and his/her family members to leave the Member State and can expel them. However, the Member State cannot refuse to issue the family members of a mobile EU citizen

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1 An EU citizen must be either a worker or self-employed person in the host Member State; or have sufficient resources not to become a burden on the social assistance system of the host Member State and have comprehensive sickness insurance cover in the host Member State,

2 confirmed by the Court of Justice in case C-157/03 Commission vs Spain

with a short-term visa for the first three months claiming that they expect that after three months they may not fulfil the conditions to have a right of residence as the EU citizen from whom they derive it may not meet the conditions to have a right of residence.

Therefore it is also contrary to the system established by the Directive when a Member State obliges the non-EU family members of mobile EU citizens to apply for a national long-term visa, or when "re-interpreting" the short-term visa application into a national long-term visa application. Such a request or re-interpretation towards a national visa, that is only granted when national entry conditions are met, essentially makes Directive 2004/38 inapplicable and thus disregards the very substance of the primary and individual right of EU citizens to move and reside freely within the territory of the Member States and of the derived rights enjoyed by those citizens' non-EU national family members. As such, it refuses to recognise a right expressly regulated in Directive 2004/38 for the benefit of persons who meet the conditions laid down by that Directive.

Conclusion

The German authorities informed the Commission that verification of Ugandan civil status will only be requested for visa applications in individual cases where there are doubts about a record's authenticity. Such non-systematic verification is in line with the Directive, according to which a Member State may ask for verification of civil status documents in case of reasonable doubts.

Moreover, the decision to refuse to issue a visa to the petitioner's family members seems to have been based on grounds contrary to Directive 2004/38/EC in so far as it was based on suspicion of abuse, and also in so far as it 're-interpreted' the short-term visa application into a national long-term visa application. But, as the relevant provisions of Directive 2004/38/EC are correctly transposed into German law, and as the Commission services are not aware of similar cases, such an isolated case of incorrect application of national provisions that correctly transpose EU free movement law does not allow the Commission to prove to the degree required a breach of EU free movement law if it wanted the Court of Justice to rule against a Member State. Under these circumstances, national courts are best placed to examine the refusal to grant an entry visa. The Commission provided the petitioner with arguments that he could use in a national procedure.

Petition 1033/2015

The Commission's observations

Over the last years, the Commission has stressed, for instance in its seventh bi-annual report on the functioning of the Schengen area[1] covering the period from 1 November 2014 to 30 April 2015, that it maintains its full support for Romania becoming part of the area without controls at internal borders.

Nevertheless, according to Article 4(2) of the Act of Accession of Romania, the required decision for the putting into effect of all parts of the relevant Schengen acquis must be taken by the Council with unanimity of the Member States in respect of which the relevant provisions have already been put into effect and of the representative of Romania. This unanimity in the Council has not yet been reached. The Commission does not have a formal role in this process.

[1] COM (2015) 236 final

Petition 1428/2015

The Commission's observations

Union law on the recovery of maintenance is contained in Regulation No 4/2009[1] (hereinafter 'the Regulation'). The scope and objectives of the Regulation are based on the principle of mutual trust between the Member States' legal systems. The Regulation therefore focuses on the cross-border elements of recovery of maintenance proceedings by laying down common rules to determine which Member State's courts are competent to deal with a case, which national law applies, rules on the recognition and enforcement in one Member State of a judgment on maintenance given in another Member State and rules on cooperation between Member State authorities.

The procedure for the enforcement of a maintenance claim does not fall under Union competence. These matters, governed by national law, are the sole responsibility of the Member States. The law of the Member State of enforcement governs the procedures to have a judicial decision issued in one Member State enforced in another Member State.

The Commission contacted the UK Central Authority and was informed that the petitioner's case was transferred in July 2016 from the court which had initially handled the petitioner's application to the West London Magistrates Court after finding out that the debtor had moved his residence to the London Area. The Commission was also informed that UK national law requires that the debtor be heard in order for the petitioner's maintenance decision to be enforced and that this procedure also applies for the enforcement of national maintenance decisions. Since then, one hearing for the enforcement of the decision was scheduled for 14 July 2016 but was not held as the debtor failed to appear at the hearing. Due to this failure of the debtor to appear, a hearing was scheduled for 15 November 2016 and the debtor was notified of this by way of bailiff. The debtor was also informed that if he failed to attend this hearing, a warrant might be issued for his arrest. The Polish Central Authority was informed of these two hearings.

Based on the foregoing, the Commission considers that the UK Central Authority has undertaken appropriate steps to contact and find the debtor and ensure the enforcement of the Polish decision. As a result, the Commission does not find that the UK Central Authority has infringed Regulation No 4/2009 in the handling of his case.

In order to facilitate the implementation of the Regulation, the Commission organises bilateral meetings of national Central Authorities in the framework of the European Judicial Network (EJN) in Civil and Commercial matters. These meetings enable authorities to find practical solutions to problematic cases. The Commission will hold a meeting of the EJN on maintenance matters in April 2017. The petitioner could request the Polish Central Authority to meet the UK Central Authority bilaterally on that occasion should her case remain unresolved.

Conclusion

The Commission finds no evidence of an infringement of Union law and cannot therefore intervene in the petitioner's case.

[1] OJ L 7, 10.1.2009, p.1.

Pétition 0019/2016

La pétition

La pétitionnaire est représentante d'une fédération syndicale de salariés en France. Elle dénonce les conséquences de la pratique des franchisés de l'entreprise McDonald's en France qui consiste à créer une société par restaurant. Il en résulte qu'un franchisé exploitant 4 restaurants sera donc gérant de 4 sociétés qui dans les faits, d'après la pétitionnaire, comptent chacune moins de 50 salariés équivalent temps plein. Or, en droit français, la désignation d'un délégué syndical et la mise en place d'un comité d'entreprise sont obligatoires dans les entreprises comptant au moins 50 salariés équivalent temps plein. Par conséquent, la structure des franchisés de McDonald's en France permettrait de faire échec à la désignation de délégués syndicaux et à la mise en place de comités d'entreprise. La pétitionnaire mentionne la possibilité, sous certaines conditions, de faire reconnaître l'existence d'une "unité économique et sociale", mais indique que cette reconnaissance doit se faire en justice et souligne la lourdeur de la procédure.

Par ailleurs, s'agissant des restaurants exploités directement par la société McDonald's France, dans lesquels les seuils légaux pour la désignation de délégués syndicaux et la mise en place d'un comité d'entreprise sont plus facilement atteints, la pétitionnaire indique que "lorsqu'une représentation syndicale devient trop gênante dans un restaurant", la société McDonald's France a pour pratique de transférer l'établissement en question à un franchisé, entraînant la disparition de la représentation syndicale au sein du restaurant concerné.

Enfin, la pétitionnaire estime que la "double structure" de McDonald's en France, dont 83,9% des restaurants seraient exploités par des franchisés et 16,1% directement par des filiales de McDonald's France, entraîne l'absence de conditions de travail uniformes dans les restaurants de l'enseigne McDonald's, les salariés des restaurants exploités directement par des filiales de McDonald's France bénéficiant généralement de conditions, notamment salariales, plus favorables, en conséquence des négociations entre l'employeur et la représentation syndicale.
La pétitionnaire se réfère en particulier aux droits à la représentation syndicale et à la négociation collective garantis par plusieurs textes internationaux et mentionne spécifiquement les articles 12, 28 et 31 de la Charte des droits fondamentaux de l'UE, qui ont trait respectivement à la liberté de réunion et d'association, au droit de négociation et d'actions collectives et à des conditions de travail justes et équitables.

Observations de la Commission

La Commission observe que la pétition ne contient pas d'allégation selon laquelle une ou plusieurs dispositions du droit français ou une pratique constante des autorités françaises seraient contraires au droit de l'Union.

La pétitionnaire met essentiellement en cause la structure organisationnelle des restaurants de l'enseigne McDonald's en France et, en particulier, les conséquences de la coexistence d'une majorité de restaurants franchisés et d'établissement exploités directement par des filiales de la société McDonald's France. Or, cette situation, de même que la possibilité de constituer des sociétés distinctes pour la gestion de plusieurs restaurants, n'est régie par aucune disposition du droit de l'Union et relève exclusivement de la compétence nationale.

S'agissant des conséquences de la situation décrite par la pétitionnaire sur la représentation syndicale et les conditions de travail des salariés de l'enseigne McDonald's en France, la pétitionnaire relève l'existence en droit national d'une procédure permettant de faire reconnaître, sous certaines conditions, l'existence d'une "unité économique et sociale" entre plusieurs sociétés juridiquement distinctes et, ainsi, d'atténuer les effets du morcellement des structures de l'enseigne McDonald's sur la représentation syndicale et les conditions de travail de ses salariés. La pétitionnaire mentionne la lourdeur de cette procédure en se référant au grand nombre de franchisés de McDonald's en France, mais ne fournit pas d'élément tendant à démontrer que cette procédure serait en pratique ineffective.

Par ailleurs, il convient de souligner qu'en vertu de l'article 51, paragraphe 1, de la Charte des droits fondamentaux de l'UE, ses dispositions s'adressent aux Etats membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union. Or, il n'apparaît pas que les questions soulevées par la pétitionnaire se rapportent à la mise en œuvre de dispositions spécifiques du droit de l'Union. Enfin, la pétition se réfère à plusieurs textes internationaux tels que la Déclaration Universelle des Droits de l'Homme de 1948 et plusieurs Conventions de l'Organisation Internationale du Travail. Ces textes cependant ne font pas partie du droit de l'Union. Par conséquent, la Commission, en tant qu'Institution de l'Union, n'a pas de compétence pour examiner dans quelle mesure ils seraient ou non respectés.

Conclusion

Etant donné que la pétitionnaire ne soutient pas qu'une ou plusieurs dispositions de droit français ou une pratique des autorités publiques françaises enfreindraient le droit de l'Union, la Commission n'a pas de compétence pour intervenir dans le cas présent.

La Commission invite la pétitionnaire à user le cas échéant des voies de recours disponibles dans le système administratif et juridictionnel français.

Petition 0020/2016

The petition

The petitioner, a trade union representative, believes that employers in the restaurant business abuse their ability to employ staff on a part-time basis and use it to avoid complaints. The petitioner also criticizes a new Belgian law (of 16.11.2015) that created the so-called "flexi-jobs" in the hotels, restaurants and catering (Horeca) sector. These "flexi-jobs" would have many disadvantages, for the society in general and for the workers in particular. Under Belgian "flexi-jobs" contracts, employers only have to sign a framework contract with employees, but do not have to specify a number of hours or a time schedule. The subsequent employment contract does not need to be in writing, this would put the workers in a very weak position. Also, flexi-jobs have always to be fixed-term contracts. The petitioner refers to several pieces of international and EU law and in particular the Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

The Commission's observations

A. Regarding the fact that part-time workers under a flexi-job contract, as opposed to full-time workers, do not benefit from a right to minimum pay and a fixed working time and salary, the Commission recalls that clause 4 of the Framework Agreement annexed to the Part-Time Directive[1] provides that:

> *In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds.*

In the O'Brien case[2] which concerned English judges, the Court of Justice of the European Union (CJEU) stated as a point of departure for its assessment of the comparability that "*it must be examined whether the failure to grant a retirement pension to part-time judges remunerated on a daily fee-paid basis means that they are treated in a less favourable manner than full-time workers in a comparable situation"*. Regarding the criteria laid down in the definition of comparable worker the court stated that *"It must be held that those criteria are based on the content of the activity of the persons concerned."*

In the Wippel case[3] a part-timer worker claimed that she should, under the non-discrimination principle, be entitled to a specified number of hours, a time schedule and a predetermined salary like her full-time colleagues in the establishment. The CJEU however ruled that the employment relationship of a part-time worker who works under such a contract, but leaves the worker the choice of whether to accept or refuse the work offered by the employer, is not a comparable situation to that of full-time workers who are obliged to work for the whole working time without the possibility of refusing work.
As regards fixed-term work, the CJEU has stated that the concept of objective reasons requires the unequal treatment at issue to be justified by the existence of *"precise and concrete factors, characterizing the employment condition to which it relates, in the specific*

[1] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ L 014, 20/01/1998 p. 9 – 14).
[2] Case C-393/10, O'Brien, EU:C:2012:110
[3] Case C-313/02 Wippel

context in which it occurs and on the basis of objective and transparent criteria in order to ensure that that unequal treatment in fact responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose"[1].
"Those factors may result, in particular, from the specific nature of the tasks for the performance of which fixed-term contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State"[2]. Similar considerations must, by analogy, be applied as regards the non-discrimination principle of the part-time directive.
Part-time workers on flexi-job contracts performing the same or similar work as full-time workers may, for example as regards the right to minimum pay, be considered to be in an comparable situation to workers on ordinary full-time contracts. Such a difference in treatment would then only be permissible if justified by objective reasons.
B. Regarding the Belgian law of 16.11.2015 that created the so-called "flexi-jobs" in the Horeca sector, the Commission observes that, according to the terms of the law, the framework contract shall only mention the identities of the parties, the modalities (method and notice) according to which the flexi-job is proposed to the employee by the employer, a short description of the work and the basic salary. The subsequent genuine employment contract can be in writing or verbal.
Therefore, in the case of a verbal employment contract, it appears that the employee at stake, on the basis of the law of 16.11.2015 only, might not receive in writing all the information he/she should receive as listed by Article 2 of the Directive 91/533/EEC[3]. However, the Commission is aware that in Belgium most of the information prescribed by this Directive is given to the employees by the periodic salary slip, the 'personal count' and the 'work rules' to be displayed at the workplace.

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[1] Case C-307/05, *Del Cerro Alonso,* EU:C:2007:509, para. 58.
[2] Joined cases C-302/11 to C-305/11, *Valenza*,, ECLI:EU:C:2012:646
[3] Article 2 of Directive 91/533/EEC:
Article 2 - Obligation to provide information
1. An employer shall be obliged to notify an employee to whom this Directive applies, hereinafter referred to as 'the employee', of the essential aspects of the contract or employment relationship.
2. The information referred to in paragraph 1 shall cover at least the following:
(a) the identities of the parties;
(b) the place of work; where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;
(c) (i) the title, grade, nature or category of the work for which the employee is employed; or
(ii) a brief specification or description of the work;
(d) the date of commencement of the contract or employment relationship;
(e) in the case of a temporary contract or employment relationship, the expected duration thereof;
(f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
(g) the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;
(h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;
(i) the length of the employee's normal working day or week;
(j) where appropriate;
(i) the collective agreements governing the employee's conditions of work;
or
(ii) in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded.
[…]"

Nevertheless, the fact that flexi-jobs (which are necessarily fixed-term contracts) are not necessarily in writing, contrary to the general Belgian regime for fixed-term contracts, raises an issue. The Commission will contact the Belgian authorities in order to obtain clarifications on how the employees at stake are informed in writing of "the expected duration" of their employment relationship.

On the issue of working time, the Directive 91/533/EEC mentions that employees must be notified of "the length of the employee's normal working day or week". This legal obligation cannot be implemented as such where working time is flexible as there is, in this hypothesis, no normal working day or week. Nevertheless, the Commission is of the opinion that, where flexible working time is concerned, the written information given to the employees should at least confirm that the working time is flexible and also specify the modalities according to which the working time schedule will be transmitted to them. As mentioned above, the Belgian law of 16.11.2015 requires this information to be included in the framework contract.

Conclusion

The Commission will contact the Belgian authorities in order to ascertain that employees under flexi-jobs contracts receive in writing a confirmation of the expected duration of their employment relationship and that workers on flexi-contracts are not discriminated as regards their employment conditions, in particular with regard to pay.

Petition 0021/2016

The petition

The petitioner criticises McDonald's for its abuse of zero-hour contracts in the UK. The contracts are supposed to make it easier for workers to supplement their income if they so wish, but they are becoming more common and are weakening workers' rights, as they have no guaranteed working hours and must be available to work at all times. The petitioner lists the abuses against employees which could arise from that type of contract. Additionally, zero hour contracts would not generally provide for an "employee" status under UK law, so they do not qualify for higher levels of employment protection which are only available to employees. They would generally not benefit from maternity pay, redundancy payments and the right to claim for unfair dismissal.

The petitioner believes that zero-hour contracts breach EU law, among others Article 3 of the Treaty on European Union (TEU), Articles 9 and 13 of the Treaty on the Functioning of the European Union (TFEU), and Directive 2000/78/EC, as well as the Charter of Fundamental Rights of the European Union, ILO Convention No 87 and the OECD Guidelines for Multinational Enterprises.

The Commission's observations

There are no rules at EU level specifically regulating the issue of zero-hour contracts. Member States are free to lay down national rules banning or regulating the use and/or abuse of such contracts. Indeed, labour law directives only lay down a safety net of minimum requirements that EU countries have to comply with and Member States may maintain or introduce more protective measures for workers.

Nevertheless, Member States must ensure that, where they do allow such contracts, the latter comply with the relevant provisions of EU law.

"Zero-hour workers" have to be considered as workers under EU law as they work under the direction of a manager and receive remuneration for that work. Indeed, in accordance with the settled case-law of the Court of Justice of the European Union, the essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he receives remuneration, the legal characterisation under national law and the form of that relationship, as well as the nature of the legal relationship between those two persons, not being decisive in that regard[1].

In view of this definition, it has to be concluded, for instance, that the Working Time Directive[2] applies to zero-hours workers[3] and imposes on the one hand that workers are subject to the minimum rest periods and the maximum working times provided therein and, on the other hand that they are entitled to paid annual leave in proportion to the time worked[4].

[1] See case C-216/15, judgement of 17 November 2016, *Ruhrlandklinik*, pt 27 and the case-law cited.
[2] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9–19.
[3] See case C-428/09, judgement of 14 October 2010, *Union Syndicale Solidaires Isère*, pt. 28.
[4] See notably joined cases C-229/11 and C-230/11, judgment of 8 November 2012, *Alexander Heimann and Konstantin Toltschin v Kaiser GmbH*.

More globally, and based on case law[1], the Commission is of the opinion that the definition of a worker quoted above must be retained for the purpose of the application of EU social provisions in general.

In this regard, zero-hours workers should also be protected by the Maternity Protection Directive (Directive 92/85[2]) which provides for maintenance of a payment to, and/or entitlement to an adequate allowance that shall be at least equivalent to sick pay (see Article 11 of this Directive).

However, regarding Directive 2000/78/EC[3], the Commission has no indication that it is not properly transposed in the UK and that zero-hours workers cannot rely on these provisions before UK competent authorities, including the courts.

As to the question of remuneration, in accordance with Article 153(5) TFEU, the matter of pay is not within the scope of EU labour law directives and is left to the competence of the Member States. This question is therefore not regulated by EU law and the above-mentioned directives.

Conclusion

According to the information received from the petitioner, it seems that zero-hour workers fulfil their tasks under the direction of a manager and receive remuneration for that work. The EU social legislation therefore applies to them. The Commission will therefore make further enquiries.

[1] See case C-216/15, judgement of 17 November 2016, *Ruhrlandklinik*; see also case C- 393/10, judgement of 1st March 2012, *O'Brien*.
[2] Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ L 348, 28.11.1992, p. 1-8.
[3] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. OJ L 303, 2.12.2000, p. 16 22.

Petition 0037/2016

The Commission's observations

The European Commission recognises the important role financial and other cooperatives play in terms of contributing to the economic, social, and sustainable development of the European Union and to boosting growth and job creation. The Commission has looked at the cooperative business model in the past and noted its limited cross-border dimension due to the locally oriented activities of cooperatives. This orientation enables cooperatives to support growth and economic and social development at regional and local level. Hence, the Commission has seen the development of the cooperative enterprise predominantly in the realm of Member States' competences.

With the Regulation on the Statute for a European Cooperative Society (SCE) adopted in 2003[1], the Commission has pursued the objective of encouraging cross-border and transnational activities of the cooperative enterprise. The 2012 Report on the application of the Regulation noted the relative lack of success of the SCE legal form attributing it to the strong local character of cooperatives, their operation within national borders and reliance on national laws.

The EU pays particular attention to and monitors the risks of financial exclusion. In 2014, it adopted a Directive on Bank Accounts (2014/92/EU)[2] which introduces the right to a basic payment account for every EU citizen regardless of his or her financial situation and place of residence. The Directive became applicable on 18 September 2016.

As part of the Capital Requirements Regulation and Directive (CRR/CRD IV) review and following the call for evidence, the Commission is also looking at the possibility of simplifying reporting and disclosure obligations, as well as capital requirements calculations for smaller savings and cooperative banks. Such simplification would lead to a more proportionate application of banking rules.

In addition, the Capital Markets Union (CMU) project will be of benefit to financial cooperatives as it includes measures to develop and promote alternative funding channels such as venture capital (e.g., EuVECA proposal) and decrease SME dependence on bank financing. Financial cooperatives can take advantage of these channels to diversify their sources of funding.

The CMU project is not focused on supporting any specific business model. Rather it aims to improve the access to finance for businesses across the EU and diversify their sources of funding. In this respect, the implementation of the CMU Action Plan will contribute to strengthening the economic resilience of financial cooperatives by opening up new funding channels for them.

Recently, the Commission announced an increase of the SME window of the European Fund for Strategic Investments (EFSI) by EUR 500 million[3], for the benefit of SMEs and mid-cap companies in all Member States. This additional money was transferred from the EFSI's Infrastructure and Innovation window to the SME window. The EU guarantee under the EFSI

[1] OJ L207, 18.8.2003, p.1-24.
[2] OJ L257, 28.8.2014, p.214-246.
[3] http://europa.eu/rapid/press-release_MEMO-16-2983_en.htm

will be used to develop new products and top up InnovFin and COSME loan guarantee instruments, and the EU Programme for Employment and Social Innovation (EaSI). As the EaSI's third axis supports access to micro-finance and social entrepreneurship, this is expected to increase the availability and accessibility of micro-finance for micro-enterprises and social enterprises[1].

This guarantee will be available in the coming years as the European Commission has recently made a proposal to extend EFSI until 2020 in order to further boost investment, avoid disruptions in financing and assure project promoters that they can still prepare projects even after the initial investment period.

The Commission recognizes that entrepreneurship education needs to embed and promote the concept of social enterprise, and that the cooperative model can provide an excellent way to introduce young people to an entrepreneurial experience when they are still at school or at university. The Entrepreneurship Competence Framework (EntreComp)[2] - adopted by the Commission in June this year as part of the New Skills Agenda for Europe - acknowledges that value-creating activities can take different forms and have different structures of ownership, including the cooperative model.

In the context of the Entrepreneurship 2020 Action Plan, in 2015 the European Parliament decided to initiate a Pilot Project aiming at tackling youth unemployment and helping young people to create cooperative forms of enterprises. Educational institutions (secondary schools and universities) are encouraged to ensure that the cooperative form of enterprises is adequately covered in the curriculum. As a response to the European Parliament's initiative, the Commission launched a call for proposals ("Reduction of youth unemployment and the setup of co-operatives") and is currently evaluating the project proposals it received. The planned starting date for the actions of the two winning proposals is 1 January 2017.

[1] http://ec.europa.eu/social/main.jsp?catId=1084&langId=en

[2] https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/entrecomp-entrepreneurship-competence-framework

Petition 0068/2016

The Commission's observations

The petitioner considers that the municipality has proven to be incompetent to handle requests for the licensing of mink farms since it ignores in its decisions relevant EU and Danish legislation. In particular, the petitioner considers that the municipality's decisions do not comply with the EU legislation and in particular with:

- Regulation (EU) No 1143/2014 (the Regulation) on the prevention and management of the introduction and spread of invasive alien species
- Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)
- Directive 2009/147/EC on the conservation of wild birds (Birds Directive).

The petitioner wrongly assumes that the entry into force of the Regulation on invasive alien species has brought an obligation to shut down mink farms across the EU. This Regulation provides for a set of measures to be taken across the EU in relation to those species that will be included on a list of invasive alien species of Union concern. A prerequisite for including any species on the Union list is a risk assessment in line with the requirements under Article 5(1) of the Regulation. Furthermore, a species shall be included on the Union list only if it meets all criteria under Article 4(3) of the Regulation, with due consideration of the elements under Article 4(6). A risk assessment was not available for the American mink at the time when the first Union list was adopted; therefore the American mink could not be considered for inclusion on this first list. Consequently, at the moment the Regulation does not provide any legal basis for taking any action at EU level in relation to mink farms. Furthermore, it should be noted that a potential future inclusion of the American mink on the Union list would not mean that farming would be banned. Member States would still be able to grant permits for the continuation of farming, subject to certain conditions and to a prior authorisation by the Commission as stipulated under Article 9 of the Regulation.

The petitioner also claims that by its decisions the municipality ignores and breaches the Habitats and Birds Directives, particularly by allowing the mink farms to be established close to protected areas and in particular the Natura 2000 site, Odense Fjord DK008X075[1].

The Commission recalls that the primary responsibility for the practical application of EU law lies with the competent authorities of the Member State at local, regional or national level. The Commission only has competence to investigate breaches of EU law and it can therefore not take action in relation to alleged breaches of national law. The Commission also has the burden of proof to show that EU law has indeed been breached. The Commission can therefore only take action in cases where there are clear indications of a breach, corroborated by clear evidence. The Commission also does not have competence to intervene in national proceedings.

On 22 December 2015, the petitioner submitted a complaint on the same topic to the Commission. However, the complaint was closed in April 2016 as the Commission was not able to identify a violation of EU legislation.

[1] http://natura2000.eea.europa.eu/#

The petitioner claims that the local authorities have not referred to the above-mentioned Directives when taking their decisions on mink farms (or the extension of mink farms). However, EU law does not require that Directives are explicitly referred to in decisions taken by the Member States' authorities. It is up to the national authorities to apply the relevant applicable legislation which may or may not include EU legislation. It should be kept in mind that Directives are transposed into national legislation and thus the requirements of the Directives are already included in the national legislation.

The petitioner also claims that the procedures followed by the municipality in adopting its decisions have not respected his rights to be consulted or to appeal the adopted decisions. Finally, the petitioner alleges that the municipality's board responsible for the decisions is unacceptably closely linked to the mink industry. Moreover, he wishes that the EU would be more involved in the processing of permits. The available information does not contain information indicating a breach of EU law. As stated above, the Commission does not have the competence to intervene in national proceedings. In addition, it appears that the competent national bodies are investigating the petitioner's complaints and thus the Commission could not intervene.

Conclusion

There is currently no legal base to justify the Commission taking action in relation to this petition and, in any case, the available information does not suggest a breach. This is primarily a matter for the competent national authorities of the Member State. Indeed, it appears that national competent bodies are already investigating the petitioner's complaints.

Petition 0174/2016

The Commission's observations

As regards noise pollution, EU legislation (Directive 2002/49/EC relating to the assessment and management of environmental noise[1]) does not set any limit or target values, but leaves the possibility for the Member States to set any noise limit or target value they deem useful or necessary. Given that the Directive does not prescribe any noise limits or target values itself, the enforcement of any such noise limit or target value set at national level remains the sole responsibility of the Member State concerned. Consequently the Commission cannot intervene if an exceedance of any such limit or target value is at stake.

Article 7 of Directive 2002/49/EC requires the Member States to draw up strategic noise maps. Article 8 of the same Directive requires them to make noise action plans, based on the strategic noise maps. As regards such action plans, the Member States' authorities need to comply with the requirements laid down in Annex VI of the Directive. This Annex provides for the action plans to include data on any noise-control programmes that have been carried out in the past and noise-measures in place. Member States shall also ensure that the public is consulted about proposals for action plans. Furthermore, the Directive requires the authorities to review and if needed revise the noise maps and action plans. It must be emphasised that the Commission cannot impose certain noise management measures in noise action plans, nor require the authorities to maintain all the measures they had initially included in the first action plan.

As regards air pollution, EU law does set limit values for concentrations of certain pollutants in Directive 2008/50/EC, amongst which for PM_{10} (particulate matter or fine dust) and NO_2 which is typically emitted by traffic (mainly by diesel vehicles). The obligation to respect the limit values prescribed by Directive 2008/50/EC is an obligation of result. Where such limit values are exceeded, the Member States must adopt an action plan, containing appropriate measures so that the period of exceedance can be kept as short as possible (article 23, paragraph 1). Again, given the margin of discretion available to the authorities, the Commission cannot impose specific measures in these plans, such as the construction of a bypass, as requested by the petitioner.

Conclusions

Based on the information available at this stage, the Commission cannot identify any breach of EU legislation.

It could be useful to suggest to the petitioner that he may turn to the national court. In fact, it seems that citizens and NGOs (Umwelhilfe) have successfully brought cases before the national courts to request the authorities to take whatever measure is needed to stop the exceedances (cases in München, Düsseldorf), although the Commission has no further details.

[1] OJ L 189, 18.7.2002

Petition 0179/2016

The petition

The petitioner alleges that, according to a new national law adopted in Italy, municipalities with more than 20,000 inhabitants are responsible for carrying out the assessments of implications under Article 6(3) of the Habitats Directive[1], for a number of works/projects. According to the petitioner, this would allow existing buildings to be extended and would cause harmful environmental effects to Natura 2000 sites.

The Commission's observations

The new legal provisions mentioned by the petitioner state that, in order to boost local investments, it will be up to the municipalities with more than 20,000 inhabitants to carry out the procedure under Article 6(3) of the Habitats Directive (assessment of implications of new plans and projects on Natura 2000 sites). This would apply to some works/projects considered as minor, such as maintainance works, building restructuring, including those with an increase of the volume or area up to 20% of the existing ones. The regional authorities may decide to maintain this responsibility for themselves.

This type of works and projects are not forbidden as such, in or near Natura 2000 sites, as long as they are compatible with the conservation of the habitats and species for which the sites have been designated. It is the responsibility of each Member State to ensure that plans or projects that are likely to have significant effects on Natura 2000 sites are subject to an assessment under Article 6.3 of the Habitats Directive. Nevertheless, every Member State may decide how best to organise its internal procedures and competences in relation to the above-mentioned tasks and obligations.

The Commission has produced several guidance documents on the subject[2] to clarify the implications of the Article 6(3) provisions and to promote best practice in their implementation.

Conclusion

Based on the information contained in this petition, the European Commission cannot detect any breach of EU environmental legislation by the Italian authorities.

[1] Directive 92/43/EEC, OJ L 206, 22.7.1992, p. 7
[2] http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

Petition 0189/2016

The petition

The petitioner considers that the German law of 10 December 2015 establishing the mandatory data retention obligation for traffic data (Gesetz zur Einführung einer Speicherpflicht und einer Höchstspeicherfrist für Verkehrsdaten) is not in accordance with EU law. In particular, he considers that the fundamental rights of EU citizens are breached by the provisions of the law related to the independent judicial supervision and the processing of sensitive data.

The Commission's observations

On 8 April 2014, the Court of Justice of the European Union (CJEU) declared void the Directive 2006/24/EC *on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC*[1].

Directive 2006/24/EC being void, national data retention laws, such as the German Law of 10 December 2015 at issue, fall however under the scope of Directive 2002/58/EC *concerning the processing of personal data and the protection of privacy in the electronic communications sector*. Articles 5, 6 and 9 of Directive 2002/58/EC lay down the rules applicable to the processing by providers of publicly available electronic communications services in public electronic communications networks of traffic and location data generated by using such services. Such data must be erased or made anonymous when no longer needed for the purpose of the transmission of a communication, except for the data necessary for billing or interconnection payments. Subject to consent, certain data may also be processed under certain conditions, in particular for the purpose of marketing electronic communications services and the provision of value added services.

Article 15(1) of Directive 2002/58/EC sets out the conditions under which Member States may restrict the scope of the rights and obligations provided for, among others, in Article 5, Article 6, and Article 9 of that Directive. Any such restrictions must be necessary, appropriate and proportionate within a democratic society to safeguard national security (i.e. State security), defence, public security or the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communications systems. To this end, Member States may, *inter alia*, adopt legislative measures providing for the retention of data for a limited period justified on the grounds listed above. All such measures shall be in accordance with the general principles of the Union law, including those of the EU Charter of Fundamental Rights.

There are currently three cases pending before the CJEU concerning the compatibility of data retention rules of Sweden, the United Kingdom and Greece[2] with Directive 2002/58. In the first two cases, the Advocate General's opinion was given on 19 July 2016.

Conclusion

[1] Joined cases C-293/12 & C-594/12.
[2] Joined cases C-203/15 and C-698/15 and case C-475/16.

The Commission considers that it is appropriate to await the rulings of the CJEU in the pending cases referred to above, which are closely related to the subject matter of the petition.

Petition 0194/2016

The Commission's observations

A main objective of EU policies, notably the Common Agriculture Policy (CAP) and the EU energy policy is to promote a sustainable, low-carbon and climate friendly economy.

In line with this objective, the CAP pays particular attention to the enhancement of the environment and the sustainable management of natural resources in agriculture. For reaching this objective different instruments and measures are provided in the two Pillars of the CAP.

Firstly, under the first pillar of the CAP, support is provided in the form of direct payments largely decoupled from production and linked to eligible hectares. In addition, there is a simplified and more targeted cross-compliance system, representing the basic layer of environmental requirements and obligations to be met by farmers under the CAP.

Secondly, as of 2015, the CAP has integrated three greening practices beneficial for the environment and climate[1]. The aim is to enhance the sustainability of agriculture in the European Union. One of the three greening practices is crop diversification, which helps limit monocultures in the EU. About 75% of the total arable land in the EU is subject to the crop diversification requirement (certain farm types, notably organic farms and very small farms are exempted).

Thirdly, the rural development policy offers a flexible and diversified toolbox to support a broad range of actions to enhance the environment and promote sustainable farming systems according to the specific needs of the different countries and regions. These include the agri–environmental-climate measures, organic farming, Natura 2000 areas, forestry measures and investments. The 2014-2020 Rural Development Programmes provide support for the conversion and maintenance of organic farming on 10.1 million hectares, agri-environment-climate friendly management practices on 32.7 million hectares as well as strengthened and streamlined support through investments, grants and annual payments for forestry activities.

This whole set of complementary policy instruments is accompanied by related training measures and other support from the Farm Advisory System, insights gained from the Innovation Partnership and applied research, which should help farmers to implement appropriate solutions for their specific conditions.

Furthermore, Member States must comply with EU environmental legislation, such as Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, and Directive 2009/147/EC on the conservation of wild birds.

As regards the use of maize for the purpose of biogas production, the Commission shares the view that biogas is most advantageous when it is produced from wastes and residues, including manure. However, it is recognised that producing biogas solely from manure or other wastes/residues is not always practicable, and many existing facilities require the use of dedicated crops, most notably silage maize. While this may reduce the greenhouse gas performance of the biogas produced, it increases the quantity of gas produced and the economic viability of the process. This goes along with the need to respect the rules of crop

[1] Regulation (EU) No 1307/2013, OJ L 347, 20.12.2013, p. 608.

diversification in agriculture. However, excluding large monocultures from supplying biogas plants does not appear practicable at this stage.

Conclusion

The Commission is of the opinion that it is not possible to comply with the petitioner's request.

From a regulatory perspective and in the context of the CAP simplification, the Commission does not see the need to act, as the EU policies and legislation provide numerous instruments to promote sustainable farming practices in the EU.

Petition 0195/2016

The Commission's observations

The EU provisions on food information to consumers are laid down in Regulation (EU) No 1169/2011[1]. This Regulation provides the basis for the assurance of a high level of consumer protection in relation to food information ensuring consumers' health and interests. It provides a basis for final consumers to make informed choices and to make safe use of food, whilst ensuring the smooth functioning of the internal market.

Regulation (EU) No 1169/2011 requires a list of mandatory particulars to be provided for all foods intended for the final consumer and mass caterers. Mandatory particulars, such as the name of the food and the list of ingredients, together with other mandatory indications, allow consumers to know the nature, composition and other characteristics of the food.

The list of ingredients shall include all the ingredients of the food, in descending order of weight, as recorded at the time of their use in the manufacture of the food. Ingredients shall be designated by their specific name[2], where applicable, following the rules concerning the name of the food.

In relation to the labelling of food additives, those must be designated in the list of ingredients by the name of one of the categories listed in Regulation (EU) No 1169/2011, Annex VII, part C (e.g. colour, preservative, flavour enhancer), followed by their specific name or, if appropriate, E number. In all cases, this obligation allows for clear information of the role of the additives in the food. In addition the Commission would like to note that additives with numbers from E 160-163 are deriving from a natural source, e.g. Carotenes (E 160a), Paprika extract (E 160c), beetroot red (E 162). Flavourings must also be clearly identified by terms such as "flavouring" or a more specific reference. Flavourings can be described as "natural"; however, this must be done in accordance with Regulation (EC) No 1334/2008[3].

Conclusion

Regulation (EU) No 1169/2011 already provides a harmonized framework for the provision of food information to consumers.

New mandatory food information requirements should only be established if and where necessary, in accordance with the principles of subsidiarity, proportionality and sustainability.

The Commission considers that the existing EU provisions on mandatory indications such as the name of the food and the list of ingredients (including additives), together with other mandatory indications, already provide adequate information on the nature, composition and the characteristics of the food in order to allow consumers to make informed choices and to make safe use of food.

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[1] Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, (OJ L 304, 22.11.2011, p. 18).

[2] Regulation (EU) No 1169/2011, Article 18(2).

[3] Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods, (OJ L 354 31.12.2008, p. 34).

Petition 0197/2016

The Commission's observations

The petitioner lists a number of threats and alterations which, in her view, affect the Natura 2000 sites ES0000337 *Parque Natural del Estrecho* (in particular in the area of Playa de los Lances), ES6120006 *Marismas del Río Palmones*, ES6120003 *Estuario del río Guadiaro* and ES6120008 *La Breña y Marismas del Barbate*.

The Commission notes that these four sites have been designated by the Spanish authorities as sites which are part of the Natura 2000 network. The Spanish authorities shall therefore, in accordance with the Habitats Directive[1], take appropriate steps to avoid the deterioration of natural habitats as well as a significant disturbance of the species for which the sites were designated.

The concerns raised by the petitioner in relation to the sites *Parque Natural del Estrecho* and *Marismas del Río Palmones* were already examined by the Commission in the framework of complaints CHAP(2014)02461 and CHAP(2007)4549. Both investigations were closed by the Commission, in the absence of evidence of a breach of EU environmental legislation. The current petition does not provide any new relevant element in relation to these sites that would change the previous conclusions of the Commission in this regard.

As regards the sites *Estuario del río Guadiaro* and *La Breña y Marismas del Barbate*, the petitioner refers to a number of activities carried out in these sites (construction of a port, a road and a wooden path; introduction of allochthonous plant species; human access; drainage; urbanization; landfill; construction of a water channel; polluting intensive agriculture activities; and further possible urban projects) that would, in her view, cause a deterioration of the sites.

The Commission would like to clarify that the development of projects and activities in Natura 2000 areas is not *per se* prohibited under the Habitats Directive. The Commission does not possess detailed information about the nature and characteristics of the activities referred to by the petitioner. The information provided does not show evidence of deterioration of the natural habitats or significant disturbance to the species for which these Natura 2000 sites were designated, as a result of the ongoing activities. Therefore, the Commission cannot identify a breach of EU legislation as regards the issues raised in the petition.

The petitioner is also concerned about the fact that the wetland of La Janda has not been protected as a nature protected area, despite its consideration as Important Bird Area (IBA) by Birdlife international. Under the Birds Directive, Member States are obliged to designate all the most suitable sites as Special Protection Areas (SPAs) to conserve wild bird species, on the basis of objective and verifiable scientific criteria. In the past, the European Commission assessed the sufficiency of the Spanish terrestrial SPA network and, in light of the insufficiencies identified, launched an infringement procedure against Spain (C-235/04). As a result, the Court of Justice of the European Union declared that Spain had failed to fulfil its obligations under Article 4(1) and (2) of the Birds Directive, by failing to classify as SPAs the most suitable territories of adequate size and of sufficient number to offer protection to all the species of birds listed in Annex I of the Directive, as well as the migratory species not covered

[1] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992)

by that annex, in several autonomous communities including Andalusia. When implementing this court ruling, the competent Spanish authorities enlarged the SPA network, including in the territory of Andalusia. The Commission assessed these modifications and concluded that the enlarged SPA network fulfilled the obligations laid down in Article 4 of the Birds Directive and entirely implemented the CJEU judgement.

In light of the above, and in light of the information provided in the petition, the Commission does not have evidence of gaps in the SPA network in Spain that would require the designation of La Janda as part of the Natura 2000 network.

Finally, as regards the petitioner's call for protection of wetlands in Morocco, this can only be established by the Moroccan authorities.

Conclusion

In light of the information provided by the petitioner, the Commission does not possess any evidence pointing to a breach of EU legislation in relation to the issues raised.

Petition 0199/2016

The Commission's observations

It is not clear from the petition which benefits are being considered. The petitioner could be referring to *the social pension for persons without means* granted by Italy based on its Law No 153 of 30 April 1969 or to the Italian *social allowance* granted based on Law No 335 of 8 August 1995. Both benefits are considered as special non-contributory cash benefits (SNCBs) based on Regulation (EC) No 883/2004 on the coordination of social security systems[1].

According to Article 70 of the Regulation, the SNCBs have characteristics both of social security benefits and of social assistance. They are intended to provide supplementary cover against the social security risks (such as old-age, invalidity) and to guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned[2].

SNCBs are financed exclusively from compulsory taxation intended to cover general public expenditure. The conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary.

Such benefits are listed in Annex X to Regulation (EC) No 883/2004. Both Italian benefits mentioned above are listed therein. According to the Regulation, the SNCBs are provided in the Member State in which the persons concerned reside, at the expense of this Member State.

Due to their specific nature, the Regulation also expressly provides that the benefits are not exportable. The Court of Justice of the European Union constantly confirms that the EU legislator can adopt measures limiting the exportability of these benefits[3] and that such measures are not contrary to the Treaty.

Conclusion

No infringement of EU law could be identified based on the information provided.

[1] OJ L 166, 30.04.2004, p. 1.

[2] SNCBs could also grant specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned, but this is not the case for the two Italian benefits concerned.

[3] Case C‑20/96, *Snares*, EU:C:1997:518, paragraph 41; Case C-286/03, *Hosse*, EU:C:2006:125, paragraph 25.

Petition 0204/2016

The Commission's observations

The answer to the petitioner's question depends on whether access to the teacher's profession is regulated or not, and whether his qualification would be accepted in the first case, which depends on the legislation of the host Member State.

The profession of teacher is regulated in Italy in the sense of Directive 2005/36/EC. This means, that one needs a certain qualification to access to or to pursuit the exercise of the teacher's profession. The following situations can thus be distinguished:

a) The person is considered as a fully qualified teacher in Italy by the Italian authorities and wishes to exercise in a country where the teaching profession is regulated. In this case, the person will benefit from the general recognition system described in the revised Directive 2005/36/EC. The authorities of the host Member State will have to decide on the access of the person to the teaching profession within four months maximum, on the basis of an attestation of competence provided by the Italian authorities. The host Member State's authorities will either fully recognize the person's qualification, or in case of substantial differences between their training requirements and those of Italy, they will offer a range of compensatory measures to the degree holder consisting either in a period of adaptation or an aptitude test.

b) The person is not considered as a fully qualified teacher by the Italian authorities and wishes to exercise in a country where the teaching profession is regulated. In such a case, Directive 2005/36/EC does not apply. However, the situation is covered by the Treaty on the functioning of the European Union through its art. 45 on the free movement of workers, if the person is going to be salaried (see among others the reasoning of the European Court of Justice in the cases *Vlassopoulou* C-340/89 and *Morgenbesser* C-313/01). The Directive applies by analogy. The ITP qualification should be taken into account as well as his/her professional experience. However, the precise value to be given to that qualification would be determined by the host Member State's competent authorities (see European case law *Brouillard* C-298/14 and *Vandorou* C-422/09). The person can demonstrate this way that he/she has knowledge that is lacking, or if the information provided by the person is considered as insufficient, he/she will have to compensate the substantial differences, and compensation measures should be proposed by the host Member State's authorities.

c) The person, owner of an ITP qualification, wishes to exercise in a country where the teaching profession is not regulated. In this case, access to the profession is normally not restricted and it is up to the potential employer to decide. However, principles regarding freedom of movement of persons as specified in the European Treaties should be respected.

Conclusion

The petitioner is advised to address the national contact point, i.e. the assistance centre, of the country where he intends to move in order to get more detailed information. The list of assistance centres can be found on the following web page:
http://ec.europa.eu/growth/single-market/services/free-movement-professionals_en

Petition 0223/2016

The Commission's observations

Regulation (EU) No 508/2014 of 15 May 2014 on the European Maritime and Fisheries Fund (EMFF)[1] is designed to provide financial support for implementing the Common Fisheries Policy of the European Union as also agreed by the Member States and the European Parliament. The main objective of the Common Fisheries Policy is to achieve sustainable fisheries by 2020. Therefore, among other measures, it is essential to keep the size and composition of the European fishing fleet in balance with the available fishing opportunities. Consequently, European financial support should focus on areas where the biggest impact on reaching these objectives can be realised. In this sense the EMFF does not finance the purchase of vessels as a general rule.

The EMFF, nevertheless, seeks to make fisheries more attractive for young fishermen through facilitating their initial establishment which can be financially challenging. In current economic circumstances, young people indeed experience difficulties in getting the necessary funding for their business projects in the fisheries sector. Such transition among generations is, however, much needed to enhance the competitiveness of the sector which is characterized by an ageing workforce. For this reason, under Article 31(3), the EMFF may support the first acquisition of a fishing vessel under certain conditions, among them being the condition that the fishermen should be less than 40 years old. This measure has been integrated in the EMFF regulation during the negotiations as proposed by the co-legislators, namely the European Parliament and the Council. The measure represents a continuity of support as similar support for young fishermen was available under the European Fisheries Fund from 2007-2013[2].

For the financial support to be viable, it should also be made conditional upon the acquisition of the necessary skills and competencies.

Conclusions

It is not foreseen to change the EMFF Regulation 508/2014 at this juncture.

[1] Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council **,** OJ L 149, 20.5.2014, p. 1

[2] Art. 27(2) of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund.

Petition 0232/2016

The Commission's observations

Article 21(1) of the Treaty on the Functioning of the European Union (TFEU) stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. The respective limitations and conditions are to be found in Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

EU citizens residing in the Member State of their nationality cannot benefit from the rights granted to EU citizens who exercised the above right and moved to another Member State. However, the Court of Justice of the European Union (CJEU)[1] extended privileges primary EU law confers on EU citizens exercising their right to move and reside freely in the host Member State also to those EU citizens who return to their home Member State after having exercised their right and resided in another Member State.

According to the CJEU, the Directive applies *by analogy* where EU citizens return, with their family members, to their Member State of origin. The CJEU ruled that this means that the conditions for granting a derived right of residence to non-EU family members should not, in principle, be more strict than those provided for by the Directive for the grant of a derived right of residence to non-EU family members in the host Member State.

In order to comply with the provisions of EU law on free movement of EU citizens, as interpreted by the CJEU, the UK brought into force Regulation 9 of the Immigration (European Economic Area, EEA) Regulations 2006, as amended.

Regulation 9 extends the rights granted in the UK to non-UK EU citizens and also to UK nationals on the condition that the UK national is residing in an EEA State as a worker or self-employed person or was so residing before returning to the UK.

The Commission considers that the case law of the CJEU covers all EU citizens, regardless of the capacity in which they resided in the host Member State before the return and the capacity in which they will reside in the Member State of their nationality upon return[2].

In June 2013 the Commission initiated infringement proceedings against the UK under Article 258 of the TFEU for failure to transpose EU law on free movement of EU citizens on returning nationals correctly.

Conclusion

Infringement proceedings against the UK with respect to the personal scope of beneficiaries of case law on returning nationals are ongoing.

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1 Judgments of the Court in case C-370/90 *Singh*, C-224/98 *D'Hoop*, C-109/01 *Akrich*, C-291/05 *Eind* and C-456/12 *O and B*.

2 This interpretation would appear to be supported by judgment of the Court of Justice in case C-456/12 *O and B* that was given after the Commission launched infringement proceedings.

Petition 0242/2016

The Commission's observations

According to article 165 of the Treaty on the Functioning of the European Union, the Union contributes to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting Member States' responsibility "for the content of teaching and the organisation of education systems and their cultural and linguistic diversity."

The offer of free language courses is a policy choice to be taken by each single Member State and thus falls outside the competence of the Commission.

However, the Commission attaches great importance to language learning at all ages, as it is the indispensable premise to a dynamic and socially inclusive society. To make freedom of movement a reality, it encourages all Member States to provide citizens with many opportunities of learning other languages in addition to their mother tongue - be they languages spoken in other countries and regions, or languages of locals with different linguistic backgrounds.

The Commission notes that, while online courses cannot replace face-to-face language lessons, free online Welsh language courses are indeed offered by the Open University[1] and smartphone apps[2].

Conclusion

The Commission has no competence concerning the issue mentioned in the petition.

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1 http://www.open.edu/openlearn/languages/welsh/croeso-beginners-welsh/content-section-0 See also 'Say Something in Welsh' https://www.saysomethingin.com/welsh/course1/intro and the BBC pages http://www.bbc.co.uk/wales/learning/learnwelsh/

2 For a choice of available apps see http://cymraeg.gov.wales/Apps?tab=apps&lang=en

Petition 0246/2016

The Commission's observations

On the basis of the documents received from the Region of Lombardy, the Commission notes that a decision on the project which forms the object of this petition has not yet been made by the competent Italian authorities. According to those documents, which describe in detail the steps and timeframe of the procedure for the decision under Italian law, it appears that a decision will be made on the project within 150 days from the date of 23 April 2016 (i.e. the date when the project was publicised in newspapers).

Conclusion

As stated in the initial communication concerning this petition, when taking a decision in response to the authorisation request for the construction of a disposal facility for used tyres in Retorbido, it is up to the Italian competent authorities to ensure that the relevant EU and national legislation is abided by. The Commission cannot act before a decision concerning the authorisation is made by the Italian competent authorities.

Petition 0270/2016

The Commission's observations

The Commission was not aware of the situation described by the petitioner. The petition refers to a possible breach of the Birds[1] and Habitats[2] Directives, the Aarhus Convention/Environmental Impact Assessment Directive[3] and the Air Quality Directive[4].

With regard to the provisions of the Birds and Habitats Directives, it should be noted that new developments, including quarries, are not automatically excluded in Natura 2000 areas. Instead, the Directives require that new plans or projects are undertaken in such a way that they do not adversely affect the integrity of the Natura 2000 site. Article 6 of the Habitats Directive lays down the procedure to be followed for authorising plans and projects that are likely to have a significant effect on a Natura 2000 site and the Commission has published a guidance document on the subject to assist the non-energy extractive industries.[5] The Order for the designation of the Besaparski Ridove SPA (BG0002057) [6] indeed provides *inter alia* a ban on the authorisation of new quarries on the site, but this ban does not cover situations where the authorisation procedure has already been initiated or where the quarry already existed, which seems to be the situation in the present case.

The Commission is not aware of any significant negative impact on the Natura 2000 site Besaparski Ridove SPA (BG0002057) resulting from the operation of the quarry in question. According to the information available to the Commission services, it appears that the investment proposal for the quarry in Kurtovo Konare has been subject to a full Environmental Impact Assessment pursuant to the EIA Directive and an Appropriate Assessment according to the requirements of Article 6 of the Habitats Directive.

The EIA decision[7] states that 55% of the territory of the concession was 'brownfields' and it is in its nature a further development of an old quarry. According to this decision, public access to the EIA report has been ensured for the residents of the municipality of Kurtovo Konare and a meeting for public consultation was also held – a record of the latter has been provided to the authorities. An appropriate assessment (AA) of the possible impacts on Besaparski Ridove and Besaparski Vazvishenia SPAs is annexed to the EIA report. The conclusion of the assessment is that the investment proposal is not likely to have a significant adverse impact on the protected areas. The EIA decision prescribes a number of obligatory mitigation measures to be followed by the operator.

As regards the air pollution in the region, according to the information available to the Commission, apart from being in breach of the limit values for PM_{10} (dust) in all air quality

[1] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010)
[2] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992)
[3] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1)
[4] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008)
[5] http://ec.europa.eu/environment/nature/natura2000/management/docs/neei_n2000_guidance.pdf
[6] Published in the national OJ No 106 of 12.12.2008
[7] Available at: http://plovdiv.riosv.com/main.php?module=info&object=info&action=view&inf_id=76

zones[1], Bulgaria has reported a decrease of PM_{10} concentration for the period 2013-2015 at the monitoring points in closest proximity to the quarry (Pazardjik and Plovdiv). This means that there is no legal evidence to assume that the operation of the quarry has led to an increase of the PM_{10} pollution in the relevant air quality zones.

As far as the allegation that the concession has been unlawfully granted without tender, the very limited information provided by the petitioner in this respect does not allow the Commission to conclude that the legal set up at issue is related to "concessions" in the sense of the EU Public Procurement Directives. In view of the presented facts, it seems that the economic activity is performed on the basis of "authorisations" providing for access to an economic activity (operation of a quarry). The activity at issue seems to have been taken up on the economic operator's own initiative, without any contracting authority having set in advance specific requirements for their performance, going beyond the general legal framework and leading to a legally enforceable obligation for the economic operator to perform that activity. Therefore, the Commission services cannot establish the existence of a "concession" which would require that a public tender has to be held under the EU public procurement rules.

Conclusion

Taking into account the publicly available information, the petition does not provide sufficient evidence to allow the Commission services to identify any breach of EU environmental law and public procurement law and to follow the issue further.

[1] Bulgaria has already been taken to Court by the Commission for this reason (case C-488/15). However, this issue is not directly linked to the present petition.

Petition 0276/2016

The Commission's observations

Wide-ranging species of EU interest such as the Eurasian lynx, the wolf and the brown bear are protected under EU nature legislation[1] and the ecological connectivity of their habitats needs to be ensured as an important measure to enable populations of these species to thrive.

The Commission is aware of the concerns expressed about the possible impact on wildlife arising from razor wire fences installed along the borders of some EU Member States and is monitoring the measures taken to ensure that EU nature legislation is respected. The Commission also encourages Member States to cooperate in cross-border conservation efforts.

Conclusion

The Commission cannot issue any decision banning such fences. The implementation of EU nature legislation, including specific measures necessary for the conservation of those species, is a primary responsibility of the Member States.

[1] Birds Directive 2009/147/EC, OJ L 020, 26.1.2010, p.7, and Habitats Directive 92/43/EEC, OJ L 206, 22.7.1992, p.7

Petition 0288/2016

The Commission's observations

The petition concerns the Hungarian Act CLXXXV of 2012 on waste ('*Waste Act*') which entered into force on 1 January 2013.[1] The Waste Act transposed the Waste Framework Directive[2] into national law, while other changes relate, *inter alia*, to the activities of waste management companies. In the latter respect, solely waste management companies recorded and qualified by the National Waste Management Agency may compete on the municipalities' public procurement procedures and only companies in public ownership/control can provide waste management services to the public.

After having received complaints concerning the Waste Act in Hungary, the Commission conducted an investigation in order to identify possible violations of EU law. Article 345 of the Treaty on the Functioning of the European Union (TFEU) preserves the competence of Hungary to take decisions concerning the system of property ownership, but subject to the requirements of EU law (see Joined Cases C-204/12 to C-208/12 *Essent*, paras. 36 to 38). However, no infringement of the freedom of establishment (Article 49 TFEU), the freedom to provide services (Article 56 TFEU), the free movement of capital (Articles 63 to 66 TFEU) and/or the competition rules (Article 106 TFEU) could be found, and thus no further action was considered necessary.

Conclusion

As regards the provisions of the Waste Act concerning waste sorted for recycling, the Commission is currently finalising its assessment in terms of the principle of free movement of goods (Article 35 TFEU).

[1] On 29 December 2011, Hungary notified (2011/0676/HU) the draft law to the Commission in accordance with *Directive 98/34/EC of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services* (OJ L 204, 21.7.1998). Within the notification procedure, the Commission did not object the measure.

[2] *Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives*, OJ L 312, 22.11.2008.

Petition 0294/2016

The Commission's observations

The legal framework of the sugar restructuring fund[1] provides for the following as regards its implementation:

- Article 5(1) of Council Regulation (EC) No 320/2006 states that "Member States shall decide on the granting of the restructuring aid";
- Article 5(4) of the same Council Regulation states that "Member States shall monitor, control and verify the implementation of the restructuring aid as approved by it";
- Article 14(3) of Commission Regulation (EC) No 968/2006 states that "The actions and measures provided for in a national restructuring programme shall be implemented by 30 September 2011";
- Article 22b of the same Commission Regulation[2] states that "Expenditure shall only be eligible for Community funding if it has been paid by the Member States to the beneficiary by 30 September 2012 at the latest"
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On the basis of the information provided by the petitioner, the project to build a structure for the processing and storage of fruit and vegetables was never carried out. On the other hand, the project to build a biomass installation to produce electricity with wood coming from within a distance of 80 km has been prepared and is currently under the authorization procedure.

As provided in the legal framework of the sugar restructuring fund, it is up to the Member States to ensure, for both projects, the correct implementation of the restructuring plan. Nevertheless, the Commission performs regular audits to ensure that Member States implement the Union's law correctly and, if appropriate, it applies financial corrections.

The petitioner also fears that this factory risks polluting the air with its emissions and uses substantial quantities of water putting a strain on water resources for other purposes.

On the basis of Directive 2011/92/EU[3], it is up to the Member State to decide to submit the installation in question to an environmental impact assessment before issuing an authorization and a plan to limit the emissions using the best available techniques (Directive 2010/75/EU[4]). The petition is related to a specific situation which should be addressed at national level. Indeed, the national administrative and/or judicial bodies – being closer to the actual situation and having primary responsibility for ensuring compliance in particular situations – have the

[1] Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy, OJ L 58, 28.2.2006
and
Commission Regulation (EC) No 968/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community, OJ L176, 306.2006

[2] As amended by Commission Regulation (EU) No 1204/2009 of 4 December 2009, OJ L323, 10.12.2009.

[3] OJ L 26, 28.1.2012

[4] OJ L 334, 17.12.2010

appropriate means to examine the petitioner's concerns and to provide a solution if they are found justified[1].
Those affected by environmental damage or those having an interest in public decisions that could lead to environmental damage (including environmental NGOs meeting any relevant requirements under national law), have the right to ask the competent national authorities responsible for the implementation of the national rules transposing Directives 2011/92/EU and 2010/75/EU to take the necessary action in order to enforce the relevant legal requirements. They are also entitled to appeal against the decision of the competent public authority before a Court or another independent and impartial body. This is particularly the case under Article 11 of Directive 2011/92/EU and Articles 24-25 of Directive 2010/75/EU, which include specific provisions on access to justice.

Conclusion

The Commission is of the opinion that the petitioner should address the competent national authorities to present his concerns regarding the sugar restructuring project as the implementation of the above-mentioned Regulations and Directives falls under the competence of the Member States.

[1] For more information on national administrative and judicial review mechanisms, please consult: https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-en.do?init=true. Please be aware that the information is provided by the Member States.

Petition 0298/2016

The Commission's observations

The Commission would like to refer to its reply to petitions 0694/2013 and 0971/2012 which contained similar requests.

Most of the issues raised in the petition with regard to the management of stray dog populations are not under EU competence.

However, the Commission has supported the work of the World Organisation for Animal Health (OIE) to develop guidelines for the control of stray dog populations.

The welfare of animals during transport is a multidimensional issue which cannot be solved by simply imposing a limit on the transport time. This is why the Commission has been consistently helping Member States to improve the enforcement of the various aspects concerned.

Although the enforcement and daily implementation of EU legislation[1] remains primarily under the responsibility of Member States, the Commission will continue to support them in this process by facilitating regular technical meetings of the National Contact Points dedicated to animal welfare during transport[2].

In addition, the Commission has launched a 3-year pilot project to develop and disseminate best practices for animal transport[3]. The project aims to develop guidelines on best practices and to improve cooperation amongst Member States in order to achieve greater harmonisation of the implementation of existing rules, and thereby improve animal welfare conditions during transport.

Furthermore, the Commission will audit several Member States on animal transport at the end of 2016 and the beginning of 2017 focussing, in particular, on live export to non-EU countries.

Conclusion

The welfare of stray dogs is not governed by EU rules and remains under the responsibility of the Member States.

The Commission does not envisage revising the current EU legislation on animal transport but will continue to assist Member States in their efforts for its better enforcement.

[1] Council Regulation (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 3, 5.1.2005, p.1).

[2] This network has been established on the basis of Article 24 of Regulation 1/2005 which requires mutual assistance and exchange of information between Member States and contact points to facilitate these exchanges.

[3] http://ec.europa.eu/dgs/health_consumer/funding/call_sanco_2014-g3-006_en.htm

Petition 0302/2016

The Commission's observations

The resolution of Hypo Group Alpe Adria AG follows the Austrian resolution regime as established by the BaSAG. In the resolution of Hypo Group Alpe Adria AG the Austrian Financial Market Authority (FMA) bailed-in creditors and shareholders with the aim of reducing the burden on taxpayers.

As regards the claim that Austria imposed higher national taxes following the bail-out of the Kommunalkreditbank or the Volksbanken, and the question of the personal liabilities of Austrian politicians and whether they have personally underwritten any debt, none of these subjects fall under the Commission's competence, but should be addressed at the national level.

Conclusion

There is no further action to be taken by the Commission. The new legislative framework of the Bank Recovery and Resolution Directive and the enhanced supervision under the Single Supervisory Mechanism were introduced to prevent and mitigate the effects of possible future banking crises and to limit the exposure of taxpayers.

Petition 0323/2016

The Commission's observations

The petitioner calls upon the European Union to recognise and accept the "Display" label from the Display project as a substitute for the European Voluntary Certification Scheme, which is currently under development by the Commission in accordance with Article 11(9) of Directive 2010/31/EU on the energy performance of buildings (EPBD).

Energy Performance Certificates need to be based on the energy performance of buildings as determined in accordance with Article 3 and Annex I of the EPBD. These provisions require that the "energy performance of a building shall be determined on the basis of the calculated or actual annual energy that is consumed in order to meet the different needs associated with its typical use [*i.e.* without the effects of behavioural aspects] and shall reflect the heating energy needs and cooling energy needs […], and domestic hot water needs".

The "Display" label is a web-based tool built on the total - measured or billed - annual energy consumption of buildings. It is, therefore, potentially a good tool to disclose the actual annual energy consumption of buildings, which, as specified in Article 11(1) of the EPBD, can come as additional information. However, the "Display" label does not reflect the energy performance of the building, as defined in Article 2(4) of the EPBD because it does not consider the different energy needs (heating, cooling, hot water and lighting) and the typical use of the building.

Conclusion

The "Display" label cannot be considered as a substitute of the European Common Certification Scheme, as described in Article 11(9) of the EPBD, because it does not include an assessment of the energy performance of buildings.

Petition 0340/2016

The Commission's observations

The Commission was not aware of the situation described by the petitioner. According to the publicly available information, on 29 September 2016, the local government of Stara Zagora authorised the mayor to take the necessary steps to amend the general and the detailed spatial plans in their part covering the Bedechka city park[1].

It seems that the applicable provisions of the EU environmental law could be found in the Birds[2] and Habitats[3] Directives (BD and HD respectively), and the Strategic Environmental Assessment (SEA) Directive[4]. However, the petitioner does not refer to specific grievances or breaches of EU law.

First of all, it should be recalled that the national administrative and/or judicial bodies – being closer to the actual situation and having primary responsibility for ensuring compliance with EU law in particular situations – have the appropriate means to examine the concerns of the petitioner and to provide a solution if these are found justified.

The Bedechka City Park is not designated as a Natura 2000 site and therefore the provisions of Article 6 of the HD for new plans and projects do not apply. If the site is indeed important for EU protected species, the applicable provision of the BD would be Article 5, according to which Member States shall take the requisite measures to establish a general system of protection for all species of naturally occurring birds in the wild state. In addition, according to Article 12 of the HD, Member States shall take the requisite measures to establish a system of strict protection for animal and plant species of community interest in need of strict protection as listed in Annex IV of the HD, if occurring on the site in question[5].

In relation to the adoption of a general spatial plan, it should be noted that such plans and their amendments should undergo the necessary procedures envisaged in the SEA Directive including, *inter alia*, public consultations. The available information shows that these procedures are still to take place.

Finally, with regard to the allegations related to land property and possible conflict of interests, it is not in the Commission's remit to interfere. According to Article 345 of the treaty on the Functioning of the European Union (TFEU), the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership.

Conclusion

The petition does not provide specific grievances and evidence to allow the Commission services to identify any breach of EU environmental law and to follow the issue further.

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[1] http://www.starazagora.bg/images/stories/municipal_council/decisions_2015-2019/13/Prepis_-521.pdf

[2] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010)

[3] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992)

[4] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001)

[5] http://ec.europa.eu/environment/nature/conservation/species/guidance/pdf/guidance_en.pdf

Petition 0358/2016

The Commission's observations

It follows from Article 355(3) of the Treaty on the Functioning of the European Union that Gibraltar falls within the territorial scope of the European Union, since it is a European territory for whose external relations the United Kingdom is responsible. In consequence, any secondary legislation based on the Treaty applies in full to Gibraltar.

The failure to mention Gibraltar specifically in the Directive is of no importance once it is accepted that the obligations created by the directive apply to the whole territory of the European Union. If the directive applies in Gibraltar, it is necessary to interpret its terms in such a way as to give it effect in that territory. That can be done only by understanding the reference to the United Kingdom as including territories for whose external relations that Member State is responsible, i.e. Gibraltar.

Under these terms, the expression "companies incorporated under the law of the United Kingdom" is to be construed as including companies incorporated under the law of Gibraltar. Similarly, the expression “corporation tax in the United Kingdom” is to be read as including the corporation tax levied in Gibraltar, in so far as it is a tax truly having the characteristics of a corporation tax having regard in particular to the nature of such a tax.

Conclusion

The Commission services conclude that Directive 2011/96/EU, as any other piece of secondary legislation in the area of direct taxation, does apply in Gibraltar. On the basis of the information provided by the petitioner, it can be concluded that the alleged omissions in the Directive can be addressed by understanding that the expression "companies incorporated under the law of the United Kingdom" is to be read as including companies incorporated under the law of Gibraltar, and the expression “corporation tax in the United Kingdom” is to be read as including the corporation tax levied in Gibraltar, in so far as it is a tax truly having the characteristics of a corporation tax.

Petition 0361/2016

The Commission's observations

Protocol n. 29 on the system of public broadcasting in the Member States, attached to the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU), recognises the Member States' freedom to define, organise and finance public service broadcasting. The said Protocol states that the Member States are competent "*to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest.*"

Within the limits of this provision, Member States are free to determine the form, conditions and modalities of the public funding of their broadcasting systems. This is also confirmed in the 2009 Broadcasting Communication[1]. The Commission's role is to verify, under Article 106(2) TFEU, that the State funding does not affect competition in the common market in a disproportionate manner. The Commission assessed in depth the public financing of public service broadcasting in Germany and approved it by decision in 2007[2].

Based on the information available to the Commission, by virtue of the German Interstate Broadcasting Treaty and the German Broadcasting Fee Interstate Treaty, Germany introduced a new system of licence fee collection for public service broadcasting which took effect on 1 January 2013.

As recognised in primary Union law, namely the aforesaid Protocol, it is within the Member States' competence to determine the form, conditions and modalities of public funding of their broadcasting systems. The changes to the licence system do not seem to alter the substance of the aid measure as it was assessed by the Commission in the above-mentioned State aid case.

Freedom of expression constitutes one of the essential foundations of our democratic societies, enshrined in the Charter of Fundamental Rights of the European Union. However, according to Article 51(1) of the Charter of Fundamental Rights, its provisions are addressed to the Member States only when they are implementing Union law. On the basis of the information provided by the petitioner, it does not appear that in the matter referred to, the Member State concerned is implementing EU law. It is thus for that Member State to ensure that its obligations regarding fundamental rights - as resulting from international agreements, and in particular from the European Convention on Human Rights as well as from its national constitution - are respected. Therefore, the Commission is not in a position to comment further on the fundamental rights issues raised by the petition.

For these reasons, the Commission is not in a position to take action regarding the issue raised by the petitioner.

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[1] Communication from the Commission on the application of State aid rules to public service broadcasting, OJ C 257, 27.10.2009, p. 1–14, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC1027(01):EN:NOT

[2] State aid E 3/2005 (ex- CP 2/2003, CP 232/2002, CP 43/2003, CP 243/2004 and CP 195/2004) – Financing of public service broadcasters in Germany, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_E3_2005

Petition 0372/2016

The Commission's observations

The Water Framework Directive (WFD) 2000/60/EC[1] establishes requirements to achieve good status of water bodies, prevent their deterioration and protect associated ecosystems. Among other things, it determines that Member States must identify and analyse existing pressures on water bodies (e.g. abstractions for different uses) and significant impacts (e.g. impact on the ecological status of rivers, overexploitation of aquifers etc.).

Several EU-funded projects, mission reports of the Committee on Petitions and scientific articles highlighted the vulnerability of the Ebro Delta and existing environmental problems due to anthropogenic pressures and climate change effects, which include coastal regression, subsidence, salinization or effects in wetlands[2] and dependent species.

It is for the competent Spanish water authorities to determine the measures needed to achieve the objectives of the Directive and ensure their compliance. The establishment of environmental flows is certainly a necessary measure in situations of intensive water use, but it is for the Member State to determine their calculation, application and link with the good status, as well as the prioritization of water resources uses. A guidance document elaborated under the Common Implementation Strategy for the WFD[3] can assist in this process[4].

The Spanish authorities have submitted to the Commission the updated Ebro River Basin Management Plan (RBMP). The results of the evaluation of all RBMPs of the EU and the status of the WFD implementation will be published in a report issued by the Commission no later than 2018, as provided in Article 18(1) of the WFD.

Conclusion

The Commission refers to the report issued in 2015 on the first Spanish RBMPs[5], which highlights the need to ensure that established ecological flows guarantee good ecological status and ensure the achievement of objectives of water-dependent protected habitats and species. The Commission also invites the petitioner to consult the aforementioned report to be issued on the evaluation of all EU updated RBMPs, and highlights again the responsibility of Member States in applying all the necessary measures to achieve the good ecological status of water bodies.

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[1] OJ L 327, 22.12.2000, p.1.
[2] See for instance: Life project Mitigation and adaptation measures to climate change in the Ebro Delta.
[3] http://ec.europa.eu/environment/water/water-framework/objectives/implementation_en.htm
[4] https://circabc.europa.eu/sd/a/4063d635-957b-4b6f-bfd4-b51b0acb2570/Guidance%20No%2031%20-%20Ecological%20flows%20%28final%20version%29.pdf
[5] http://ec.europa.eu/environment/water/water-framework/pdf/4th_report/MS%20annex%20-%20Spain.pdf , informal translation into Spanish available at http://ec.europa.eu/environment/water/water-framework/pdf/4th_report/MS%20annex%20-%20Spain_es.pdf

Petition 0378/2016

The Commission's observations

The sites ES0000292 Loma la Negra-Bárdenas and ES0000171 El Plano-Blanca Alta, partially overlapping the Bárdenas Reales firing range, have been designated as Special Protection Areas (SPA) under the Birds Directive[1]. Furthermore, the site Bárdenas Reales (ES2200037) is a Site of Community Importance (SCI) under the Habitats Directive[2].

The Commission would like to clarify that there is no a priori presumption against military activities inside Natura 2000 sites. However, for these sites, Member States are required to avoid the deterioration of natural habitats, as well as significant disturbance of the species for which these areas were designated.

In light of the concerns raised by several parliamentary questions about the conservation status of the Natura 2000 sites associated with this firing range, the Commission requested in 2013 information from the Spanish authorities about the compliance of the activities carried out in this firing range with the protection of the habitats and species of community interest for which these Natura 2000 sites were designated.

According to the information provided by the Spanish authorities, the firing range of Bárdenas Reales has been in operation since 1951. The information available, including in particular the results of the environmental surveillance carried out for the site, does not point to any deterioration of the protected habitats or significant disturbance of the protected species due to the military exercises taking place in the area. The Commission does not have any indication that the military activities carried out in this firing range would have negative effects on the Natura 2000 sites concerned and has therefore not identified any breach of the Habitats Directive in this case.

The protection of this area as a UNESCO Biosphere Reserve and as a Natural Park under national legislation lies outside the Commission's competence.

Conclusion

On the basis of the available information, the Commission cannot identify any breach of EU environmental law in this case.

[1] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20/7, 26.1.2010)

[2] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992)

Petition 0385/2016

The Commission's observations

Directive 2002/49/EC relating to the assessment and management of environmental noise (hereafter: the Directive) requires the preparation of noise maps and the preparation of action plans for agglomerations and major roads, railways and airports. The Directive also applies to noise from sites of industrial activities such as those listed in Annex I of Directive 2010/75/EC. The Directive does not set any limit or target values – it remains for the Member States to set any noise limit or target value they deem useful or necessary. Racing areas, unless identified as industrial activities by the Member State, are not covered by the Directive.

Conclusion

Based on the information available at this stage, the Commission cannot identify any breach of EU legislation.

Petition 0399/2016

The Commission's observations

As regards the allocation of applicants for international protection, in May 2016 the Commission proposed for the recast of the "Dublin III" Regulation[1] a corrective allocation mechanism in order to ensure a fair sharing of responsibility between Member States and the swift access of applicants to procedures for granting international protection in situations where a Member State is confronted with a disproportionate number of applications. It should mitigate any significant disproportionality in the share of asylum applications between Member States. The Member State which benefits from the corrective mechanism shall transfer the applicant to the Member State of allocation and shall also transmit the applicant's fingerprints in order to allow security verification in the Member State of allocation. The aim is to prevent any impediments to allocation as experienced during the implementation of the relocation decisions. [2] Following the transfer, the Member State of allocation will perform the Dublin check to verify whether there are primary criteria, such as family in another Member State, which apply in the case of the applicant. Where this is the case, the applicant will be transferred to the Member State which would then be responsible for examining the application.

The allocation mechanism will ensure that families are allocated together, but does not distinguish between categories of applicants. However, Member States are obliged to take into account the specific situation of vulnerable persons on their territory such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation. The proposal for a recast of the Reception Conditions Directive[3], which was presented by the Commission in July 2016, includes more detailed rules for assessing, determining, documenting and addressing applicants' special reception needs as soon as possible and throughout the reception period. This includes the need for the personnel of the relevant authorities to be adequately and continuously trained, and an obligation to refer certain applicants to doctors or psychologists for further assessment.

The best interests of the child shall be a primary consideration for Member States. This includes specific conditions for unaccompanied minors, such as suitable accommodation. Before any transfer of unaccompanied minors is carried out, it must be clarified that such specific conditions in the receiving Member State will be fulfilled. The Commission proposed stricter time limits - five working days from the moment the application was made - for the Member States to assign a guardian to represent and assist an unaccompanied minor, and also

[1] Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM(2016) 270 final.

[2] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece; Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

[3] Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), COM(2016) 465 final.

that the number of unaccompanied minors that guardians may be in charge of should not render them unable to perform their tasks.

As regards the registration of asylum applications, the Commission proposed for the recast of the Dublin III Regulation an automated system that will allow for the registration of all applications and the monitoring of each Member State's share in all applications. When an application is lodged, the Member State shall register that application in the automated system which will record each application under a unique application number. As soon as a Member State has been determined to be the Member State responsible for the individual application, this will also be included in the system. Thus the system will indicate in which Member State the applicant is obliged to be present.

Conclusion

The proposal for the recast of the Dublin III Regulation aims to make the Dublin system more effective, in order to ensure a quicker determination of Member States' responsibility for examining an asylum application and a fair sharing of responsibilities among Member States. The proposals presented by the Commission are currently in the legislative procedure for adoption by the European Parliament and the Council. The Commission remains hopeful that an agreement will be reached in the near future.

Petition 0412/2016

The Commission's observations

Ireland changed its system for the periodic motor tax as of 1 July 2008. The objective was to encourage the use of smaller, cleaner, fuel-efficient cars in the fight against climate change by reducing the emissions of CO_2 from cars in order to help protect the environment and improve local air quality. Private cars first registered after 1 July 2008 are taxed according to their CO_2 emissions. Private cars first registered between 1 January and 30 June 2008 are taxed on the lesser motor tax rate based on engine size (cubic centimetre) or on CO_2 emissions. Private cars registered before 1 January 2008 will continue to be taxed on engine size. All cars within the same category, whether first registered in Ireland or abroad, are treated in the same way, which means that there is no discriminatory taxation of vehicles from other Member States.

Against this background, there are no indications that Ireland is in breach of EU law as suggested by the petitioner. Consequently, the Commission is not able to take any further action as regards the petition.

Petition 0419/2016

The Commission's observations

Regarding the deposits resulting from the excavation works within the project site, Directive 2008/98/EC[1] on waste (Waste Framework Directive WFD) excludes from its scope waste uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site

As regards backfilling, this is explicitly accepted by Article 11(2) (b) of WFD as a recovery operation. Article 2(6) of Commission Decision 2011/753/EU establishing rules and calculation methods for verifying compliance with the targets set in Article 11 (2) of WFD states that 'backfilling' means a recovery operation where suitable waste is used for reclamation purposes in excavated areas or for engineering purposes in landscaping and where the waste is a substitute for non-waste materials'. It should be stressed that one of the conditions of this definition is that the operation concerned meets the recovery definition of Article 3(15) WFD, which has to be assessed depending on the specific circumstances of the project works in the light of the objectives set out by WFD.

The petitioner invokes the proximity principle to claim that the excavation waste should be taken to recycling facilities located 4km and 5 km away from the project site instead to the quarry which is at a distance of 9 km. On this issue, the Commission is of the opinion that this principle is not in itself an absolute requirement and should not be interpreted in a way that would prevent the best environmental outcome. Regardless, the distances concerned do not seem to be relatively significant. Finally, as the petitioner has not provided sufficient information to the Commission to enable it to ascertain whether the recycling facilities have the sufficient capacity and are appropriate for this waste stream, the Commission raises doubts as regards the feasibility of the option favoured by the petitioner.

All in all, while the waste hierarchy as laid down in Article 4 of WFD applies as a priority order in waste management where recycling is a preferred option to recovery (backfilling), specific waste streams are allowed to depart form the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

Conclusion

It would not be appropriate, at this stage, to take action at EU level while the Hellenic Parliament is pursuing an investigation into the matter. In parallel, the petitioner should pursue this matter before the competent local authorities and, if necessary, make use of the legal remedies available under national law.

[1] OJ L312, 22.11.2008, p.3.

Petition 0425/2016

The Commission's observations

The European Commission is not in a position to take any action in this matter. The definition of health policy, and the organisation and delivery of health services and medical care are the responsibility of the Member States, as well as the management of health insurance and the allocation of resources assigned for this purpose according to Article 168 of the Treaty on the Functioning of the European Union.

Therefore, the Commission is not in a position to take any action in this matter.

Petition 0430/2016

The Commission's observations

The production of energy and of cement are activities covered by Directive 2010/75/EU on industrial emissions[1] (IED) and relevant installations have to be operated in accordance with a permit based on Best Available Techniques (BAT), including emission limit values for polluting substances and suitable emission monitoring requirements.

Given the limited information provided by the petitioner, the Commission is not in a position to verify whether the installations mentioned in the petition, i.e. the Endesa energy plant in Almeria and the LafargeHolcim cement plant in Carboneras, have breached the IED and/or whether the relevant competent authorities have taken appropriate action to address such breach.

The Commission stresses that the IED, which has been transposed into the national legal order of Spain, includes important provisions on access to information, public participation in permitting procedures and access to justice, enabling citizens to ask for administrative or judicial review to challenge decisions, acts and omissions. Moreover, the Directive includes also provisions on inspections including the obligation for Member States to establish inspection plans and programs for routine inspections and granting the possibility for citizens to ask for non-routine inspections in case of serious environmental complaints regarding the operation of industrial installations.

Given that the IED requires Member States to implement administrative and judicial review procedures to address pollution problems caused by activities falling within its scope, the petitioner is encouraged to make use of them as the most suitable remedy for the alleged irregularities.

Finally, it is also worth noting that, in order to prevent negative effects of air pollution on health and the environment at local level, EU air quality standards - local concentration limit values for the air pollutants which are the most harmful to health - are set out in the EU Ambient Air Quality Directive, AAQD (2008/50/EC)[2]. These standards have to be respected in all Air Quality Zones in the European Union. The installations which are the object of the petition are located in Carboneras and Almeria, which are included in "Air Quality Zone ES0116-Zona Carboneras" and "Air Quality Zone ES0123-Nuevas zonas rurales". In 2015, these two zones exceeded the ozone target value and ozone long term objective. However, the zones did not exceed the EU air quality standards (set under the AAQD) for any of the pollutants covered by the IED. This would imply that the competent authorities would not be required to set additional measures for the industrial installations covered by the IED (on top of those normally required under the IED), in view of addressing local air pollution.

Conclusion

Under these circumstances, at this stage, the Commission will not give further follow-up to this petition.

[1] OJ L 334, 17.12.2010, p. 17.
[2] OJ L 152, 11.6.2008, p. 1.

Petition 0438/2016

The petition

The petitioner states that Denmark does not comply with its obligations under EU law and under the Bern Convention on the Conservation of European Wildlife and Natural Habitats because the residents of the Faroe Islands, who are Danish nationals, continue to voluntarily kill long-finned pilot whales on the occasion of hunts called "grind" and because Denmark deploys navy vessels to halt any intervention in these whale hunts.

The petitioner considers that, although the Faroe Islands do not form part of the European Union and although they constitute a self-governing region, in practice Denmark administers the islands in the fields of policing, defence and foreign affairs policy and the currency. Moreover, all trade with EU countries is also conducted via the Danish Foreign Ministry. As a consequence, Denmark should comply with EU law and its international obligations under the Bern Convention.

The Commission observations

The EU has strict legislation for the protection of all cetaceans, but according to the EU Treaties, EU law does not apply on the territory of Faroe Islands. As explained in reply to PQ E-2160/2014 and E-6926/2016, the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), the Bonn Convention and the Convention on International Trade in Endangered Species (CITES) also do not apply to the Faroe Islands. The hunting of pilot whales is also currently not regulated in the context of the International Convention for the Regulation of Whaling. The hunting of pilot whales is legal in the Faroe Islands.

Conclusion

The Commission has no possibility to intervene directly in this case, as EU law is not applicable to the activities carried out in the Faroe Islands by the Royal Danish navy and police in connection with this hunt.

Petition 0457/2016

The Commission's observations

Adoption is not regulated at EU level.

At international level, the issue is dealt by the 1993 Hague Convention on Inter-country Adoption[1], which reinforces the UN Convention on the Rights of the Child (Art. 21) and seeks to ensure that inter-country adoptions are made in the best interests of the child and with respect for his or her fundamental rights. It also seeks to prevent the abduction, the sale of, or traffic in children. Adoption of adults is not regulated by this Convention.

Apart from any rights and obligations deriving from the above Convention, the regulation of adoption is in the competence of EU Member States. Therefore, Luxembourg will apply its national conflict of laws rules to determine which law governs the adoption envisaged by the petitioner.

On the basis of the information provided by Luxembourg on the E-Justice portal, pursuant to Article 370 of the Civil Code, the law applicable to adoption is the law of the State of nationality of the adopter[2]. This means that, in the present case, it is Dutch law that will apply. This information is consistent with that contained in the link mentioned by the petitioner in her petition[3].

Conclusions

In the light of the above, the Commission informs the petitioner that it cannot intervene in her case, as the issue is not within EU competence.

[1] 98 States are already Party to the 1993 Hague Convention, including all EU Member States.
[2] https://e-justice.europa.eu/content_which_law_will_apply-340-lu-fr.do?init=true&member=1#toc_3_4_2
[3] http://www.guichet.public.lu/citoyens/de/famille/parents/adoption/adoption-simple/index.htm

Petition 0475/2016

The Commission's observations

The European Union has not signed or ratified the European Convention for the Protection of Pet Animals referred to in the petition. This convention has been concluded within the context of the Council of Europe, and the Union is not a party to it. Therefore, the provisions of that Convention do not form part of the Union law and the Commission does not have the competence to monitor the compliance of Member States with the Convention.

The welfare and management of stray animal populations is not governed by EU rules and remains the sole responsibility of the Member States.

Conclusion

The Commission advises the petitioner to contact the Bulgarian authorities under whose competence the animal welfare problems referred to in the petition fall.

Petition 0483/2016

The Commission's observations

The production of steel is an activity covered by Directive 2010/75/EU on industrial emissions[1] (IED) and relevant installations have to be operated in accordance with a permit based on Best Available Techniques (BAT), including emission limit values for polluting substances and suitable emission monitoring requirements. Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall be included in the permit, without prejudice to other measures which may be taken to comply with environmental quality standards.

Given the limited information provided by the petitioner, the Commission is not in a position to verify whether the installation mentioned in the petition, i.e. Arcelor Mittal in Dąbrowa Górnicza, has breached the IED and/or whether the relevant competent authorities have taken appropriate action to address such a breach.

It should however be noted that, in order to prevent negative effects of air pollution on health and the environment at local level, EU air quality standards, i.e. local concentration limit values for the air pollutants which are the most harmful to health, are set out in the EU Ambient Air Quality Directive (AAQD, 2008/50/EC)[2]. These standards have to be respected in all Air Quality Zones in the European Union.

Dąbrowa Górnicza is included in air quality zone PL2401 Aglomeracja Katowice. According to the 2015 reports, this zone exceeded in 2015 the NO_2 annual limit value, the PM_{10} annual and daily limit values, the $PM_{2.5}$ limit value, the target value for B(a)P and the target value and the long term objective for ozone. The Commission has referred Poland to the Court of Justice of the European Union (application to Court on 15 June 2016) for non-compliance with the PM_{10} limit values set in the Air Quality Directive in a number of air quality zones, including PL2401. An infringement procedure has also been launched, by letter of formal notice of 26 February 2016, in view of addressing exceedances of NO_2 limit values in a number of air quality zones, also including PL2401.

As such, the necessary measures will have to be taken by the Polish authorities to put an end to these breaches of air quality standards. This will imply setting appropriate emission limit values in permits of installations which are likely to contribute to the exceedances, and ensuring strict implementation thereof.

The Commission stresses that the IED, which has been transposed into the national legal order of Poland, includes important provisions on access to information, public participation in permitting procedures and access to justice, enabling citizens to ask for administrative or judicial review to challenge decisions, acts and omissions. Moreover, the Directive includes provisions on inspections including the obligation for Member States to establish inspection plans and programmes for routine inspections and granting the possibility for citizens to ask for non-routine inspections in case of serious environmental complaints regarding the operation of industrial installations.

[1] OJ L 334, 17.12.2010, p. 17
[2] OJ L 152, 11.6.2008, p. 1

Given that the IED requires Member States to implement administrative and judicial review procedures to address pollution problems caused by activities falling within its scope, the petitioner is encouraged to make use of them as the most suitable remedy for the alleged irregularities.

Conclusion

Under these circumstances, at this stage, the Commission will not give further follow-up to this petition.

Petition 0541/2016

The petition

The petitioner draws the Commission's attention to the effect of the Romanian national rules on identification and registration of owned dogs.

According to the petitioner, the Romanian national rules on identification and registration of owned dogs provide that "*only dogs that have been identified and registered will be vaccinated against rabies…*" Veterinary practitioners have been assigned the role of implanting transponders and registering animals in the Register of Dogs with Owners (RDO) and in the database of the National Sanitary Veterinary and Food Safety Authority (NSVFSA) prior to administering the first injection of the rabies vaccine. In addition, vaccination against rabies is mandatory, and the administration of the vaccine and the vaccine itself are free of charge as well as the registration in the NSVFSA database. Despite those provisions, the petitioner claims that the implantation of transponders and registration in the RDO are wrongly subject to the payment of a fee to veterinary practitioners.

As a result, only 30% of owned dogs would be vaccinated against rabies and at the current rate of vaccination, 12 years would be necessary to cover the entire population of owned dogs, putting public health at risk. The petitioner considers that the Commission should therefore intervene in accordance with Article 13 (animal protection) and Article 168 (public health) of the Treaty on the Functioning of the European Union.

Moreover, the petitioner believes that the Commission should address the possible misuse of EU funds allegedly allocated to fight against rabies in the framework of the EU-approved programme for the control and eradication of rabies in Romania.

Finally the petitioner presents a detailed proposal to address the issue described above.

The Commission's observations

EU law[1] requires that dogs and cats are to be marked by the implantation of a transponder or by a clearly readable tattoo applied before 3 July 2011, and vaccinated against rabies only when they cross EU borders for non-commercial or trade purposes. Member States may apply similar rules under national legislation in order to address specific problems of the movement of dogs and cats on their territory.

Moreover, the rabies eradication programmes subject to EU co-funding do not include any measure related to the identification, registration or vaccination against rabies of dogs in

[1] Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 (OJ L 178, 28.6.2013, p. 1). http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0576&from=EN
Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC (OJ L 268, 14.9.1992, p. 54). http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01992L0065-20141229&qid=1477468546719&from=EN

Romania. Consequently, no diversion of EU funds from the eradication programme has been detected for these measures.

Conclusion

Given the above, the Commission cannot support the petition.

Petition 0575/2016

The Commission's observations

EU legislation has been developed over the years to protect farm animals. Several legislative acts have been adopted to ensure the welfare of animals kept on farms (a general Directive and specific Directives for laying hens, broilers, calves and pigs) as well as during transport and in slaughterhouses. In this respect, EU animal welfare rules are amongst the most comprehensive in the world. These minimum rules should ensure that farm animals kept within the EU are treated properly and not caused unnecessary pain, suffering or injury irrespective of the size of the holding.

It is primarily the Member States' responsibility to properly enforce EU rules and also to adopt rules on penalties that are effective, proportionate and dissuasive.

In addition, the EU has introduced rules that specifically target practices which are deemed problematic with regard to the natural behaviour and needs of animals. For example, the ban on barren cages for laying hens has applied since 2012 and likewise in 2013 the group housing of sows was implemented for all EU farms. In both cases the Commission has dedicated significant efforts to ensure uniform application of EU law in all Member States. More information on the Commission's initiatives in this field can be found on its website: http://ec.europa.eu/food/animals/welfare/index_en.htm

Furthermore, enforcement of the current EU animal welfare rules is the priority in this area, for example through dedicated actions to ensure compliance with the rules on the provision of manipulable material and avoidance of tail-docking in pigs.

Conclusion

The Union has an important set of rules to protect animals used for production purposes in the context of breeding, transport and slaughter. In recent years, the Commission has dedicated significant resources to make the EU one of the most advanced regions of the world for animal welfare. The Commission will continue to assist the Member States in their efforts to properly and fully apply the legislation.