

Brussels, 7 March 2012

## **Hungary – infringements: Commission takes further legal steps on measures affecting the judiciary and the independence of the data protection authority, notes some progress on central bank independence, but further evidence and clarification needed**

On 1 January, a new Constitution and a number of cardinal laws entered into force in Hungary. The European Commission immediately conducted a full legal analysis of the final versions of the new provisions and their compatibility with European Union Treaties and decided to launch three accelerated infringement procedures. Accordingly, three letters of formal notice were sent on 17 January to the Hungarian Government [[IP/12/24](#), [MEMO/12/12](#)]. Within a deadline of one month, 17 February 2012, the Hungarian government sent its formal replies to the Commission. Following a thorough legal analysis, the European Commission has decided on further steps.

In two areas Hungary failed to comply with the EU Law: the retirement age of judges – which would lead to the anticipated retirement of 274 judges and public prosecutors in Hungary – and the independence of the country's data protection authority. The European Commission therefore decided today to send two reasoned opinions – the second stage under EU infringement procedures after which the matter may be referred to the Court of Justice of the European Union.

In two other areas, the independence of the central bank and further aspects concerning the independence of the judiciary, the Commission sent two administrative letters demanding further clarifications.

### **Retirement age of judges**

Hungary has failed to provide an objective justification for reducing the mandatory retirement age for judges, prosecutors and public notaries from 70 years to 62 years within a time span of only one year. EU rules on equal treatment in employment ([Directive 2000/78/EC](#)) prohibit discrimination at the workplace on grounds of age, which also covers a reduction of the retirement for one profession without an objective justification. Following the Commission's letter of formal notice of 17 January, Hungary only proposed a clause that would allow to extend in individual cases the retirement age of a judge to beyond 62 if the judge passes a review by the National Judicial Council of his 'professional and medical aptitude'. This proposal does not comply with EU law because such extensions may be arbitrary, apply only in individual cases and they do not remove the Commission's main concern: the difference in treatment of judges with other professions.

## **Independence of the data protection supervisory authority**

Hungary decided to create a new National Agency for Data Protection, replacing the previous Data Protection Commissioner's Office as of 1 January 2012. The legislation prematurely terminated the regular six-year term of the Data Protection Commissioner, who was appointed in 2008.

The Commission initially had three concerns about the independence of the data protection authority. Under the EU's Data Protection Directive ([Directive 95/46/EC](#)), Member States have to establish a supervisory body, which acts in complete independence, to monitor the application of the Directive. Hungary has satisfied one of the Commission's concerns by showing that there was proper consultation of the 'former' Data Protection Commissioner before the legislation was adopted.

However, the Commission remains concerned about two other important issues, which were already included in the letter of formal notice of 17 January and which are now the basis for the reasoned opinion:

- The premature termination of the Data Protection Commissioner's six-year term. Hungary has not provided any valid arguments as to why there are no interim measures allowing the former Data Protection Commissioner to stay in office until the end of his term, which ends in 2014. This is a violation of the personal independence of the data protection authority;
- The possibility for the President – following a proposal from the Prime Minister – to dismiss the new supervisor on too broad and vaguely defined grounds. Hungary has proposed measures to address this concern, but they have not been formally adopted.

## **Independence of the judiciary**

In its administrative letter, the Commission is seeking further clarifications about the independence of the country's judiciary. The Commission has asked for explanations relating to the powers attributed to the President of the National Judicial Office, particularly the President's powers to designate a court in a given case and the transfer of judges without consent.

The Commission also raised concerns with regard to potentially systemic deficiencies in Hungary's justice system. Hungary is reminded that national courts act as "Union courts" whenever they apply EU law, and therefore need to satisfy minimum standards of independence and effective judicial redress.

## **Independence of the national central bank**

On the independence of the Hungarian Central Bank, the Commission needs further clarification from the Hungarian authorities and asks the government to quickly flesh out their commitments. Hungary announced that it would settle some of the issues.

The Commission is asking the Hungarian authorities to communicate the draft legislation substantiating their commitments at the same time as they consult with the European Central Bank. Hungary is also invited to confirm that it stops the practice of systematically issuing official press releases criticising monetary policy decisions of the Hungarian Central Bank. Hungary is further asked to inform the Commission and the ECB on the new procedural steps it intends to take in order to consult the ECB in a systematic and timely way on any draft legislative provision in its field of competence, including the forthcoming draft law.

On the salary scheme applied to the Governor of the Central Bank, the information obtained by the Commission points to the wage regime being targeted at the Governor as a tool to exercise pressure and a breach of independence of the Central Bank. The Commission invited the Hungarian authorities to clarify their statements on the effects of the salary scheme applied to the public sector.

## **Infringements: Frequently Asked Questions**

### **What are the different steps in the infringements procedure?**

Article 258 of the Treaty on the Functioning of the European Union (TFUE) gives the Commission, as guardian of the Treaties, the power to take legal action against a Member State that is not respecting its obligations under EU law.

The infringement procedure begins with a request for information (a "letter of formal notice") to the Member State concerned, which must be answered within a specified period, usually two months.

If the Commission is not satisfied with the information and concludes that the Member State in question is failing to fulfil its obligations under EU law, the Commission may then send a formal request to comply with EU law (a "reasoned opinion"), calling on the Member State to inform the Commission of the measures taken to comply within a specified period, usually two months.

If a Member State fails to ensure compliance with EU law, the Commission may then decide to refer the Member State to the Court of Justice of the European Union. However, in around 95% of infringement cases, Member States comply with their obligations under EU law before they are referred to the Court. If the Court rules against a Member State, the Member State must then take the necessary measures to comply with the judgment.

In the specific case of Member States that have failed to implement Directives within the deadline agreed by the EU's Council of Ministers and the European Parliament, the Commission may request the Court to impose a financial penalty on the Member State concerned the first time the Court rules on such a case. This possibility, introduced by the Lisbon Treaty, is laid down in Article 260 (3) of the TFEU.

### **What happens if a Member State does not comply with Court's ruling?**

If, despite the first ruling, a Member State still fails to act, the Commission may open another infringement case under Article 260 of the TFEU, with only one written warning before referring the Member State back to the Court.

If the Commission does refer a Member State back to the Court, it can propose that the Court imposes financial penalties on the Member State concerned based on the duration and severity on the infringement and the size of the Member State. There are two elements:

- A lump sum depending on the time elapsed since the original Court ruling;
- And a daily penalty payment for each day after a second Court ruling until the infringement ends.

### **Who decides on penalties in the end?**

Financial penalties are proposed by the Commission and the Court may modify these amounts in its ruling.

## **What is the Commission's role?**

The Commission is the guardian of the Treaties. It is his role and obligation to ensure the protection of the public interest. The procedure is governed by the Treaty (steps, time limits). This may involve taking Member States to the Court of Justice of the European Union.

The decision to open infringement proceedings against a Member State is taken by the College. This decision is based on accurate and unbiased legal analysis conducted by the Commission services on the documents and information submitted by the parties and on any complaints.

The decisions of the Commission on infringements are collected once a month in an overall process involving different policies. These decisions are made public.

For current statistics on infringements in general, see:

[http://ec.europa.eu/community\\_law/infringements/infringements\\_en.htm](http://ec.europa.eu/community_law/infringements/infringements_en.htm)

See also : [IP/12/222](#)