Twitter Thread by Steve Peers



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Latest EU infringement proceedings - includes possible return to EU court to request fines re Polish forest protection and Hungarian law on NGOs; also includes environmental law, racism hate speech law, European Arrest Warrant

Some highlights from the infringement proceedings: details of the Commission allegations about failure to apply EU criminal law on racism and xenophobia, which includes Holocaust denial

throughout the EU. The Belgian and Bulgarian legal frameworks do not ensure that the racist and xenophobic motivation is taken into account by national courts as an aggravating factor for all crime committed, therefore failing to ensure hate crimes are effectively and adequately prosecuted. Bulgaria has failed to transpose correctly the criminalisation of specific forms of hate speech, which incite violence or hatred, namely the public condoning, denial or gross trivialisation of international crimes and the Holocaust. The Polish criminal legal framework fails to transpose correctly hate speech inciting to racist and xenophobic violence and restricts the scope of the criminalisation of incitement to hatred. Additionally, Poland has incorrectly transposed the criminalisation of specific forms of hate speech, by omitting the conduct of gross trivialisation of international crimes and the Holocaust and by restricting the criminalisation of the denial and condoning of those crimes only to cases where such crimes were committed against Polish citizens. The Finnish and Swedish

The Commission alleges that three Member States have tried to shelter their own citizens from the application of European Arrest Warrants

between EU Member States. To ensure the proper functioning of the European arrest warrant, it is essential that all Member States fully and correctly incorporate all provisions of the Framework Decision into their national law. **Cyprus, Germany** and **Sweden** have failed to do so, in particular by treating their nationals more favourably in comparison to EU citizens from other Member States or providing additional grounds for refusal of warrants not provided for in the Framework Decision. This is why the Commission decided today to send letters of formal notice to these three Member States. They have two months to take the necessary measures to address the identified shortcomings. Otherwise, the Commission may decide to send a reasoned opinion. The Commission sent a letter of formal notice to Ireland in October 2020 and to Austria, Czechia, Estonia, Italy, Lithuania and Poland in December 2020. The Commission continues with its assessment on the completeness and correctness of the transposition of the Framework Decision in other Member States. More information about the European arrest warrant is available here.

Conversely the Commission claims that three Member States don't correctly apply EU law on presumption of innocence.

The Directive strengthens Member States' trust in each other's criminal justice systems and thus facilitates mutual recognition of decisions in criminal matters. The Commission considers that **Estonia, Finland** and **Poland** have only partially transposed the Directive with some provisions not reflected in national legislation at all. In particular, the Commission has identified shortcomings in relation to public references to guilt, for example, when public authorities prematurely or falsely refer to a person as being guilty in public statements, and the availability of appropriate measures if this happens. These three Member States have two months to respond to the letters of formal notice; otherwise, the Commission may decide to send reasoned opinions. More details about the Directive can be found in this factsheet.

The Commission alleges that Hungary voted against the EU position on drugs policy in the United Nations re cannabis

Drug policy: Commission launches infringement procedure against HUNGARY for voting against Union position in UN Commission on Narcotic Drugs

The Commission decided today to open an infringement procedure by sending a letter of formal notice to **Hungary** for failure to follow the Union position when voting on the World Health Organisation recommendations on cannabis and cannabis-related substances at the United Nations Commission on Narcotic Drugs in December 2020. The Union position - adopted by the Council in November 2020 - is binding on EU Member States, who have to vote accordingly in the Commission on Narcotic Drugs, in line with Article 218(9) TFEU. Hungary voted contrary to the Union position twice during the vote on the WHO recommendations. Cannabis remains a drug subject to international control. The WHO recommendations aimed to ensure that cannabis and cannabis-related substances are subject to the most relevant international control reflecting current scientific and medical knowledge. Hungary now has two months to reply to the

This was a particularly close vote to downgrade cannabis; the Hungarian vote nearly flipped it: https://t.co/R5xJSBwRFc

The Dude is unimpressed



Asylum and the pandemic: the Commission alleges that Hungary breached asylum procedures law. The allegation is obviously correct, unless there's an unwritten exception re public health in the law.

Migration: Commission calls on HUNGARY to respect EU asylum law

The Commission decided today to send a reasoned opinion to **Hungary** concerning legislation, adopted in the context of the coronavirus pandemic, that the Commission considers unlawfully restricts access to the asylum procedure. According to the legislation, before being able to apply for international protection in Hungary, non-EU nationals must first make a declaration of intent stating their wish to apply for asylum at a Hungarian Embassy outside the European Union and be issued with a special entry permit for that purpose, delivered at the discretion of the Hungarian authorities. The Commission considers that new asylum procedures set out in Hungarian law are in breach of the Asylum Procedures Directive interpreted in light of the Charter of Fundamental Rights of the European Union. On 30 October 2020, the Commission sent a letter of formal notice to Hungary concerning the new legislation. The

Commission triggers process to go back to court to impose fines against Hungary re anti-NGO law

The Commission is sending a letter of formal notice to **Hungary** for failing to comply with the ruling of the Court of Justice of the European Union (CJEU) in Case C-78/18 Commission v Hungary. This is an infringement procedure based on Article 260 (2) TFEU, meaning that the Commission can refer the matter back to the Court and ask for financial sanctions, after giving the Member State the opportunity to explain itself. In its ruling of 18 June 2020, the Court found the Hungarian law on NGOs ("Transparency Act") to be in breach of EU rules on the free movement of capital (Article 63 TFEU) and the fundamental rights to protection of personal data and freedom of association, protected by the EU Charter of Fundamental Rights. In particular, the Court highlighted that the right to freedom of association constitutes one of the essential bases of a democratic and pluralist society and includes the rights of civil society organisations to seek, secure and utilise resources. The Court concluded that the

And also triggers process to go back to court to apply fines against Poland re nature protection

In its judgment of 17 April 2018 the Court ruled against Poland for failing to ensure that the forest management plan for the Białowieża Forest District would not adversely affect the integrity of the Natura 2000 sites. Poland had also failed to establish the necessary conservation measures for the protected species and habitats, and to guarantee the strict protection of protected species and of birds regarding their deliberate killing or disturbance, or the deterioration or destruction of their breeding sites or nests in the Białowieża Forest District.

Poland has still not fully complied with the ruling. Most importantly, Poland has not repealed and replaced the annex to the forest management plan for the Białowieża Forest District, introduced in 2016, with measures which would preserve the integrity of the site, ensure conservation and protect the species and habitats. Actions