

Enforcement of EU Law

Introduction to EU Law

Fall Semester 2020

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Sources of EU Law & addressees

➤ To whom are (the particular sources of) EU Law addressed?

Upon whom is it binding?

1. Member states
2. Individuals (NP, LP)
3. EU itself and its institutions

EU as a “head without a body and limbs”

- due to the limited competences of the EU, the supranational system of enforcement is imperfect
- dichotomy of EU Law enforcement
 - National bodies (administrative and judicial)
 - EU Law bodies (dtto)

- **A general rule:**
 - **Against a MS = the EU**
 - **Against an individual = national bodies**
 - **Against the EU = EU itself (CJEU), or mechanisms and bodies under international law (!) , or even national courts**

Enforcement of EU Law against a MS

-- Art. 4(3) TEU:

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

Infringement procedure (Arts. 258-260 TFEU)

- 1. Commission**
- 2. (another MS)**
- 3. CJEU**

Art. 258 TFEU (the Commission)

Informal enquiry by the Commission



Formal letter to a MS



MS responds



MS fails to respond (2ms)



? ?



? ?

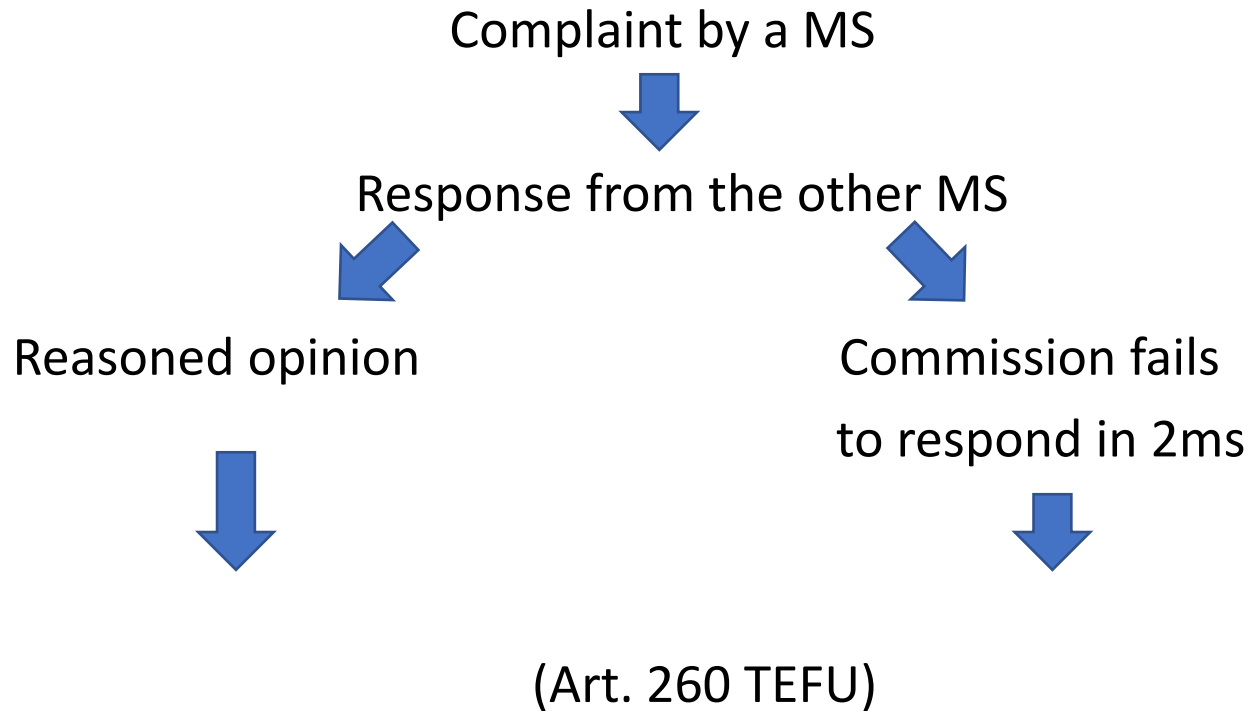


reasoned opinion



Art. 259 TFEU (MS x MS)

- Extremely rarely used



Art. 260 TFEU (the Court of Justice)

- Action filed by the Commission
 - The CJEU investigates the case, hears both parties and decides whether there has been a breach of EU law or not
 - -> „1st judgement“ (declares the infringement)
- If the MS does not comply with the judgement, the Commission may file another action and ask to Court to impose a fine upon the MS
 - -> „2nd judgement“ (imposes a financial sanction)
 - The CJEU is bound by the Commission's proposal
- Art. 260 (3) TFEU !

Sanction imposed by the Court of Justice

- *Ultima ratio* instrument for penalization of a Member States for its breach of EU law
- **Monetary** form !
 - Penalty payment
 - Lump-sum payment
 - or combination of both
- Criteria:
 - Seriousness of a breach
 - Duration
 - „N-factor“ (national GDP)
- https://ec.europa.eu/atwork/applying-eu-law/docs/c_2015_5511_en.pdf

Enforcement of EU Law against a MS II

Specific (nonjudicial) procedure under Art. 7 TEU

- in case of a serious breach of fundamental values upon which the EU is founded, as referred to under Art. 2 TEU

„The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. „

1. **The Council** may decide (by 4/5 majority vote), after obtaining a consent by the European Parliament, that there is *a clear risk of a serious breach by a Member State of the values referred to in Article 2.*

- a **reasoned proposal** by min. 1/3 of MS, or by EP, or Commission
- before taking a determination, the Council **shall hear the MS** in breach
- the Council shall regularly verify that those grounds continue to apply

2. **The European Council** (acting by unanimity), after obtaining a consent by the European Parliament and after inviting the MS to submit its observations, may determine the *existence of a serious and persistent breach by a MS of the values referred to in Article 2.*

- proposal by 1/3 of the MS or by the Commission

3. Afterwards, **the Council** (by a qualified majority), may decide to suspend certain rights deriving from the application of the Treaties to the Member State in question, *including the voting rights of the representative* of the government of that Member State *in the Council.*

- the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.
- the Council may decide (by QM) to vary or revoke those measures in response to changes in the situation which led to their being imposed.

Enforcement of EU Law against a MS III

- by an individual

- No direct action against a MS in hands of an individual under EU Law
 - national courts of that particular state

How is the effectiveness of EU law ensured?

- Art. 19(1) para. 2 TEU
- Principles of direct effect and supremacy of EU law
- Indirect effect
- Liability of a MS for damage caused by the breach of EU law to an individual („Francovich liability“)

State Liability :

Francovich et al v. Italy (C-6/90+C-9/90)

- Italy failed to implement a directive (*Case 22/87 Commission v Italy*)
- Dir. 80/987 – minimum standard protection (financial guarantees) for employees in case of insolvency of their employer
- Direct effect of the directive ?
- "*sufficiently precise and unconditional*" - as regards the person entitled as well as the content of the guarantee, but not as regards the institution liable for the guarantee
- => **liability of a Member State** for loss or damage caused by breach of its obligations under Community law

Liability of a State – conditions:

- 3 conditions established by the Francovich case:
 1. result prescribed by the directive should entail the grant of rights to individuals
 2. it should be possible to identify the content of those rights on the basis of provision of the directive
 3. existence of a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties

State Liability II:

Brasserie du pêcheur v. Germany

[1996]

- Applies to all forms of breach of EU Law
- case background: German 1952 Biersteuergesetz – breach of Art. 30 TEEC (Art. 34 TFEU)

CJEU's ruling:

- a prior ruling by the ECJ not a precondition for liability !
- MS liability flows from the principle of effectiveness of EU law
- Analogy with the liability of the EU itself (expressly established by the Treaty)
- Where a MS acts in a field of wide discretion, it will be liable to an individual for breach of EC law provided:
 - (1) *the rule of law infringed is intended to confer rights on individuals;*
 - (2) *the breach is **sufficiently serious**;*
 - (3) *there is a **direct causal link** between the breach and the damage*
- **reparation of losses must be adequate** to the damage suffered by an individual, (up to the national court); the decision must not be less favorable as the same decisions already ruled in national cases

State liability III:

For what acts is a State liable?

- Breach of **any obligation** under EU law
- No matter whether by virtue of active breach or by omission, intention or negligence is irrelevant as well
- => **strict liability**
- Action or failure to act not just of a legislative power, but also executive, as well as judicial power !!!
 - **Köbler v. Austria (2003)**
 - *MS is liable even for a breach of EU law caused by that State's courts of last instance*
 - *Only in „the exceptional case where the court has manifestly infringed the applicable law“ (= deliberate disregard of EU law)*
- Even for action of individuals (“acts attributable to a State”)
 - **Commission v. France (“Spanish strawberries” case)**
 - **Schmidtberger v. Austria**

Enforcement of EU law against an individual

- In principle: national authorities of MS (judicial, administrative)
- Binding effect of EU law and principles of its application !

- An obligation of an individual may stem from:

- the Treaty
- a regulation or a decision
- directly from a directive ? never!

-> few exceptions:

- ! Breach of EU competition rules (the Commission, General Court, CJ)