

# European union laws

[Parts of the World](#), [European Union](#)



“...judicial and legislative developments \*have+ made the \*infringement+ procedure [come] of age- from a rarely used, opaque and policy-driven procedure, it has now become a common, fairly transparent and highly technical procedure. ” Prete & Smuldres “ The coming of age of infringement proceedings” (2010) 47 CMLR 9 Has the infringement procedure finally “ come of age”? Critically outline the key features of the Article 258 TFEU procedure and relevant caselaw.

Article 258 TFEU (Formerly Art 226 EC) empowers the European Commission to deliver a reasoned opinion to a member state when it considers that the state has failed to fulfil an obligation under the treaties. The action seeks to “ fulfil an obligation under the EC Treaty” and to “ obtain a declaration that the conduct of a Member State infringes Community Law and of terminating that conduct”. If the Court of Justice of the European Union finds that the member state has failed to fulfil the obligation the member state shall be required to take the necessary measures to comply with the judgment.

Other mechanisms exist to secure the correct application of EU Law, including the principle of direct effect and primacy of EU Law. These measures permits an individual or a company to have their rights enforced before a national court on the basis of EU Law provisions, even if such provisions are not specified within the national legal system where the application is made. Article 258 TFEU can be described as a law enforcement tool against Member States. Each Member State is responsible for the applying EU Law in a manner that is full and correct.

The Court has the power to decide if a Member State is meeting its obligations that it has under the Treaties. According to statistics from the <https://assignbuster.com/european-union-laws-research-paper-samples/>

Court, approximately 200 cases are lodged before it each year. This accounts for a fraction of the suspected infringements that are investigated. The vast majority of cases are resolved through dialogue and negotiation. As such, court proceedings are considered the final step in resolving a matter where other options have failed.

Article 17(1) TEU (formerly Art 211 EC) gives the enforcement and controlling powers required by the Commission to enforce the application of EU Law by Member States. A Member State may be forced to take drastic steps including modification or rescission of national legislation or even modification of a Constitution in order to comply with a Court ruling. Financial penalties may be applied to a Member State if the state fails to comply with a Court ruling. In most circumstances, Member States do comply with the Court rulings, but they may take some time to implement such rulings, which may incur a significant financial penalty.

As Guardian of the Treaties, the Commission has improved the transparency of the infringement procedures in recent years. The procedure is objective in nature and the decision rests with the Court to decide if there has been a breach of law as alleged by the Commission. The infringement procedure begins with a request for information (so-called " 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 fulfill its obligations under EU law, the Commission may then send a formal request to comply with EU law (so-called " 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.

However, in over 90 per cent 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. If, despite the ruling, a Member State still fails to act, the Commission may open a further infringement case under Article 260 of the TFEU, with only one written warning before referring the member state back to Court.

If the Commission does refer a member state back to Court, it can propose that the Court imposes financial penalties on the member state concerned based on the duration and severity of the infringement and the size of the member state (both 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). These decisions cover many sectors; they aim at ensuring proper application of EU law for the benefit of citizens and businesses.

Before referring a Member State to the Court, the Commission first requests information from the Member State concerned and then, if necessary, formally requests the Member State to comply with EU law. Around 95 per cent of infringement cases are resolved at the administration stage, i. e. before they reach the Court. If after a ruling by the Court of Justice, a

member state still fails to act, the Commission warns the member state in writing.

In case of continued lack of appropriate action by the member state, the Commission may take the member state back to Court, and can request the Court to impose a lump sum penalty and/or a daily penalty payment on the member state concerned. This procedure is based on Article 260 of the Treaty on the Functioning of the European Union. [http://www.baltic-course.com/eng/baltic\\_states/?doc=33306](http://www.baltic-course.com/eng/baltic_states/?doc=33306) <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1422&format=HTML&aged=0&language=FR&guiLanguage=fr> [http://ec.europa.eu/eu\\_law/infringements/infringements\\_en.htm](http://ec.europa.eu/eu_law/infringements/infringements_en.htm) [http://ec.europa.eu/eu\\_law/infringements/infringements\\_decisions\\_en.htm](http://ec.europa.eu/eu_law/infringements/infringements_decisions_en.htm) [http://ec.europa.eu/eu\\_law/eulaw/decisions/dec\\_20101124.htm#ie](http://ec.europa.eu/eu_law/eulaw/decisions/dec_20101124.htm#ie) <http://www.ivoryresearch.com/sample14.php> <http://justin-santiago.blogspot.com/2009/05/article-226.html> The effectiveness of an Art 226 action is diminished by the length of time the process takes and the lack of a serious penalty.

The only result of a finding by the ECJ under Art 226 is that the Member State is in breach is a declaration to that effect. The Member State can continue to avoid complying with Community law obligations. Although documents related to the infringement proceedings is available a major source of frustration is difficulty in obtaining access to documents related to infringement proceedings. The Commission does not have enough resources to bring enforcement proceedings against member states under Article 226.

By introducing the concept of direct effect of EC law as well as indirect effect or in action for damages on the basis of the state liability doctrine, the ECJ enabled individuals and companies throughout the EU to become enforcers of Community law in the Member States without the need for Commission involvement. <http://justin-santiago.blogspot.com/2009/05/article-226.html>  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0459:EN:NOT> Articles 258 TFEU (ex Article 226 EC) and 260 TFEU (ex Article 227 EC) provide the appropriate remedies in cases where member States fail to fulfil