

The European Union Infringement Procedure Essay

Introduction

International and regional unity is crucial since it promotes social and economic development. The European Union (EU) is one of the strongest regional unions that join member countries for the common good. The EU was formed through the Treaty on the Functioning of the European Union (TFEU) resulting from the Lisbon Treaty.

The European Union member states are obliged to obey the obligations under the treaty. The Union contributes to creating better jobs and decent social standards for all Europeans. Consequently, through its parliament, the Union formulated various legal acts like directives, treaties, and regulations. The member states must comply with the EU legal acts, and non-compliance can lead to legal suits before the EU Commission or EU court. Non-compliance with the EU legal acts leads to an infringement procedure under articles 258, 259, and 260 of the TFEU. Therefore, the infringement procedure plays a significant role in enforcing the EU law.

EU Law

The EU law is founded on democracy since the member states are given a level playground for formulating the law. The EU has seven institutions, but the parliament, EU Commission, EU Council, and the Court of Justice of the EU play a major role in formulating and enforcing the EU law. The EU council and parliament have jurisdiction to establish principles and set conditions in compliance with the union treaties. Moreover, the two institutions have the jurisdiction to consider and vote for any legal draft in public.

The EU Commission and the EU Court of Justice are involved when member states fail to comply with EU legal actions. Article 288 of the TFEU outlines five legal acts that members may comply with and act according to their provisions. Legal acts involve the various legislative acts, court judgments, and any legal object that legal scholars would consider administrative or quasi-judicial. Although the EU law supersedes the national law of European countries, the legal acts can be binding or non-binding.

Like any other legal system, the EU law has primary and secondary laws. The primary EU law is the treaties that are binding agreements among EU members. Article 288 of the TFEU provides secondary laws regulating and guiding the members. The five secondary laws are regulations, directives, decisions, recommendations, and opinions. Regulations are binding legislative acts, and EU countries must comply with them once enacted.

An example of regulation is the protection of Geographical Indications (GIs) on agricultural products. The EU regulation restricts the use of GIs in European countries. As the regulations, the directives are binding among EU members. Directives involve legal acts establishing a specific

goal without a specific execution means. Consequently, the members must decide on their preferred directive implementation.

Moreover, decisions of the EU court and Commission are binding on European countries. The decisions are often addressed to individual EU member countries, one or more specific European, or a legal entity like a corporation. For instance, in 2009, the EU Commission fined Microsoft Corp. for abusing its domination in the market. Unlike the regulations, directives, and decisions, opinions and recommendations are non-binding among EU members.

Recommendations involve official statements issued by either of the seven EU institutions. Meanwhile, opinions are used in a legal context to mean any EU institution's view on a common subject without imposing legal obligations. Therefore, failure to implement the directives, decisions, and regulations may result in an infringement procedure as provided under articles 258, 259, and 260 of the TFEU.

Infringement Procedure

The EU members are obliged to obey and implement any EU directive, regulation, and decision. An infringement procedure arises when a member state fails to implement EU legislative acts. Infringement can only arise under two circumstances: the Commission determines that a member state failed to execute EU Treaties and if the concerned state fails to comply with the Commission's opinion on the infringed matter. Therefore, the EU Commission has discretionary power to determine whether sufficient evidence is against an EU legal act breach.

An infringement case against a member state can be brought before the Commission by an individual, another member state, and other legal persons like companies. *Locus Standi* all legal entities ensure that members do not violate the union law causing discrimination against any individual. Article 258 of TFEU outlines the following sequence in an infringement proceeding: pre-litigation, litigation, and follow-up stages.

Pre-Litigation Stage

The pre-litigation is the first stage of the infringement procedure, where the Commission receives complaints from individuals or any other party with *locus standi*. Upon receiving the complaint, the Commission develops informal contact with the member state concerned to prepare the 'Letter of Formal Notice.' However, if the Commission, upon the initial infringement assessment process, is satisfied that the concerned country did not breach EU law, it develops a 'pre-closure' letter.

The concerned member countries are expected to reply to the 'Letter of Formal Notice' by explaining their position on the matter. Infringement action is commenced if the concerned member state gives an unsatisfactory reply to the Commission. According to the case of *Commission v. The Netherlands*, the Commission's discretion is as outlined in Article 258 of the TFEU. Moreover, the Court does not have jurisdiction to determine whether the Commission's power was wisely exercised.

The pre-litigation stage serves two purposes: allow the concerned member to prepare a defense, as observed in the case of *Commission v Italy* and allow the member states to comply before the matter is referred to the EU Court of Justice. If the Commission is fully satisfied that the state's non-compliance caused serious harm, an infringement action is filed. However, the action hearing and determination may take time, considering the high number of cases before the Commission.

Therefore, the Commission may request provisional measures binding from the Court. The measures prevent the concerned country from causing serious harm through non-compliance. For instance, in the case of *Commission v Poland*, the Court issued interim orders before the Polish government submitted its observations on logging in protected forests. The member states are then allowed to prepare their defense for the litigation stage.

Litigation and Follow-Up Stages

The litigation is the hearing and determination stage where the concerned European country responds to the matter before the Commission. The litigation arises if the concerned government unsatisfactorily complies with the Commission's recommendation during the pre-litigation stage. The Commission has full discretion to consider whether to file a proceeding or not.

However, the power is limited to special circumstances, like where the pre-litigation procedure took excessive duration, making it difficult for members to refute the Commission's claim. The Commission may make an informed opinion on the matter or refer it to the EU Court of Justice for determination and subsequent punishment. EU countries can defend themselves since the EU law observes the doctrine of *Audi alteram partem*. Therefore, various defenses are available to the concerned states.

Various defenses are available for concerned countries and vary from case to case. The first and common defense is denying the breach of the EU law or the obligation in question. The member state can explain to the Court the measures it has taken to implement the law in question. The concerned member state can contend that the obligation to comply is reciprocal and needs full compliance by other European countries.

In such a defense, the member state needs to show that other member countries have not complied with the EU law, and it is not an exemption. The concerned government can also use lack of jurisdiction as a defense but in limited cases. For instance, the Commission may not have exclusive jurisdiction to hear human rights cases and is required to refer the cases to the EU Court of Human Rights.

Moreover, the member state may defend itself by stating that the case lacks merit and is founded in bad faith. The defenses available for the member states must be substantiated with compliance claims. If the defenses fail, the Court declares non-compliance, and the concerned member state is fined appropriate lumpsum. The follow-up is the final stage, where the EU Court of Justice may impose a further penalty if the member state fails to comply with the law and judgment. Therefore, articles 258, 259, and 260 significantly determine an infringement action against EU countries.

Conclusion

The EU promotes economic and social development among European countries. The Union has an established EU law that supersedes the national laws of member countries. Treaties are the primary sources of EU law, while directives, regulations, decisions, opinions, and recommendations are secondary sources of law. The binding EU legislative acts include treaties, directives, regulations, and decisions.

Meanwhile, the recommendations and opinions are non-binding laws among the EU member states. Failure to comply with the EU laws can lead to an infringement action under articles 258 and 260. The infringement procedure enforces the EU law by punishing and fining non-complying member states.

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