# 7. Enforcement by the Commission: Art 258 & 260 (the Infringement Proceedings)

EU Law 2230/ 3145

EUROPE
EUROPEAN UNION
EU Member States
EU New Members 2004
EU New Members 2007
EU Candidates
EFTA Member States
© Nations Online Project
Greenland Sea
Reykjavik
ICELAND
Norwegian Sea
Faroe Islands
(DENMARK)
Atlantic Ocean
Hammerfest
Murmansk
Kiruna
Oulu
SVERIGE
SWEDEN
SUOMI
FINLAND
Trondheim
NORGE
NORWAY
Sundsvall
Gulf of Bothnia
Tampere
Helsinki
St. Petersburg
Bergen
Oslo
Gavle
Stockholm
Tallinn
ESTONIA
RUSSIA
Moscow
Aberdeen
North Sea
Goteborg
Riga
LATVIA
Belfast
Edinburgh
ÉIRE
IRELAND
Newcastle
DANMARK
DENMARK
Copenhagen
Baltic Sea
LITHUANIA
Vilnius
Dublin
Liverpool
Russia
Kaliningrad
Minsk
Celtic Sea
UNITED KINGDOM
Cardiff
Rostock
Gdansk
BELARUS
NETHERLANDS
Hamburg
Hannover
Berlin
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Warsaw
London
Amsterdam
DEUTSCHLAND
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English Channel
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Le Havre
LUXEM-BOURG
Frankfurt
Prague
CZECH REPUBLIC
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Lviv
UKRAINE
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SLOVAKIA
Strasbourg
Bratislava
Nantes
Munich
Vienna
Österreich
Austria
Budapest
MOLDOVA
Chisinau
Odessa
FRANCE
Bern
Switzerland
HUNGARY
Cluj-Napoca
Geneva
Pecs
Bordeaux
Lyon
Ljubljana
SLOVENIA
Zagreb
CROATIA
ROMANIA
Bay of Biscay
Milan
Venice
BOSNIA AND HERZEGOVINA
Constanta
Black Sea
Bilbao
Belgrade
Bucharest
Varna
Porto
ANDORRA
Marseille
Florence
Sarajevo
SERBIA
BULGARIA
PORTUGAL
Madrid
ITALIA
ITALY
Adriatic Sea
MONTENEGRO
Sofia
Lisbon
Barcelona
Podgorica
Skopje
MACEDONIA
Istanbul
ASIA
ESPAÑIA
SPAIN
Rome
Tirana
ALBANIA
Thessaloniki
Valencia
Naples
Tyrrhenian Sea
TURKEY
Sevilla
Cagliari
Ελλας
GREECE
Aegean Sea
Malaga
Ionian Sea
Mediterranean Sea
Patrai
Athens
Palermo
250 Km
250 Mi.
AFRICA
CYPRUS
Valletta
MALTA
CRETE

# The ‘ecology’ of enforcement

生态学

- The *acquis communitaire:* the Treaties plus binding law (regulations, directives and decisions)
- Compliance: Varies across MS and sector
- Problem: from non-implementation to poor application (*AB v. Home Office)*
- Management modes: Command and control to ‘co-administration’ , governance networks

# Article 13 TEU

- ‘The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the member states, and ensure the consistency, effectiveness and continuity of its policies and actions.’
  - Institutions include (the Commission, EP, CM, EC, CJEU)
  - Does CJEU ‘serve’ the interests of EU citizens?

    (does the court dilivery justice ?)

# The European Commission

- ‘Guardian of the Treaties’ - Article 17 TEU:
  - 1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union[…]

Treaties

CJEU

- Enforcement procedures for competition law; single market law

# DIRECT CENTRALISED ENFORCEMENT UNDER ARTICLES 258 – 260 TFEU

Art 258 – Commission v MS

259 – MS v MS

260 – the fine system

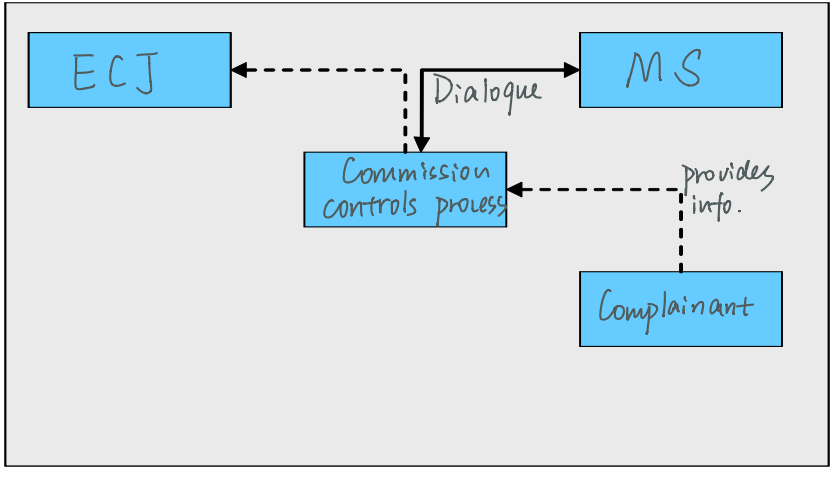
# Original model of enforcement

1957 → today

**Article 258 TFEU**

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.



# Infringement procedure

- **Article 260 TFEU**
  - 1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.
  - If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.
  - If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

← giving the opportunity

Advantages

- Most cases resolved without going to court (95% solved at informal inquiry stage)
- Serves its purpose
- Fines act as a deterrent
- Art. 278 and 279 complement the process

Disadvantages:

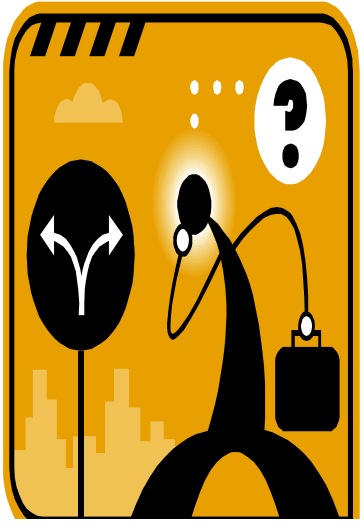
- Defences rarely succeed
  - Re. Tachographs: Commission v UK (1979)
- Individuals cannot bring a case or have a loss remedied.
  - But: Direct effect
    - Van Gend en Loos (1963)
- Commission has limited resources
- Commission has discretion on whether to proceed to the judicial stage
  - Case 7/71 Commission v France (1971)
  - Case C-96/89 Commission v Netherland (1991)

# 3 'worlds' of compliance

unavoidable internal events

**DELAY**

**INDIFFERENCE**



the MS took very little interest in implementing EU law

(bad faith)

**NEGLECT**

(cbc they always thought national law is better)

# 258 (1) TFEU

‘If the Commission considers that a Member State has failed to fulfill an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.’

- Late, incomplete or incorrect transposition of a Directive:
  - Just 4 member states met the deadline to transpose Directive 2004/35/EC on environmental liability on prevention and remedying of environmental damage

# Art 258 Pre-Litigation Phase

- Bilateral discussions & information gathering by Commission
- Formal notice letter initiating proceedings; MS provide observations
  - Average time = 24 months (C-530/11 = 29 months)
- Commission issues reasoned opinion – time frame set out
- Referral decision/ decision to withdraw

# Addressing transposition neglect (coercion)

## Art 258 (2) TFEU

'If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter **may** bring the matter before the Court of Justice.'

- Bilateral (Cmmn v MS) & multi-level procedure (ECJ ruling/MS application)

- In 2018, the Commission closed:
- 355 infringements after sending letters of formal notice;
- 219 cases after sending reasoned opinions;
- 18 cases after deciding to refer the case to the Court b before submitting the application
- 19 cases following a Court judgment.

- No guarantee of compliance eg. *Francovich*

# Article 260 TFEU

- **Lisbon Treaty Amendments:**
  - 1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.
  - If the Commission considers that the Member State concerned has not taken the necessary measures **to comply with the judgment of the Court** , it may bring the case before the Court **after** giving that State the opportunity to submit its observations. It shall specify the amount of the **lump sum or penalty payment** to be paid by the Member State concerned which it considers appropriate in the circumstances.
  - If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

# Art 260(2) rulings

裁决

- C 304/02 Commission v France:
  - ‘general and persistent’ breach => penalty payment of EUR 57, 761, 250 AND lump sum of EUR 20 000 000
- C-119/ 04 Commission v Italy:
  - Only penalty payment requested
  - No penalty payment or lump sum
- 2011: 2 CJ rulings (C -407/09 Commission v Greece (€3m lump sum); C- 496/09 Commission v Italy (€30m lump sum)
- 2012: 3 CJ rulings
  - C-374/11 Commission v Ireland (waste) - lump sum payment: € 2,000,000; daily penalty: € 12,000 per day;
  - C-279/11 Commission v Ireland (lump sum payment: € 1,500,000);
  - C-610/10 Commission v Spain (state aid) - lump sum payment: € 20,000,000; daily penalty: €50,000 per day)

# C-374/11 *Commission v Ireland*

- 1. By its application, the European *Commission requests the Court* to:
- – declare that, by *failing to take the necessary measures to comply with the judgment of the Court* of 29 October 2009 in Case C-188/08 Commission v Ireland concerning the failure of Ireland to fulfil its obligations under Council Directive 75/442/EEC of 15 July 1975 on waste ...Ireland has failed to fulfil its obligations under Article 260 TFEU;
- – order Ireland to pay to the Commission a **lump sum of EUR 4 771.20** multiplied by the number of days between the date of delivery of the judgment in Case C-188/08 Commission v Ireland and the date of the judgment in the present case (or the date of full compliance with the judgment in Case C-188/08 Commission v Ireland , if such compliance occurs while the present case is pending);
- – order Ireland to pay to the Commission a **daily penalty payment of EUR 26 173.44** from the date of judgment delivered in the present proceedings to the date of compliance by Ireland with the judgment in Case C-188/08 Commission v Ireland...

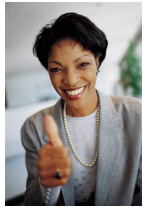
# C-610/10 *Commission v Spain*

- – order the Kingdom of Spain to pay the Commission, from the date on which judgment is delivered in the present case until the judgment in Commission v Spain is complied with, a **daily penalty payment in the amount of EUR 131 136** for the delay in complying with the judgment in Commission v Spain ;
- – order the Kingdom of Spain to pay the Commission, from the date of the judgment in Commission v Spain until the date on which judgment is delivered in the present case or the date on which that Member State puts an end to the infringement, **a lump sum in an amount calculated by multiplying a daily amount of EUR 14 343** by the number of days over which the infringement has continued;

# Art 260 (2) cont.

- 2013: 5 rulings
  - Commission v Belgium, C-533/11 (lump sum payment: €10,000,000; penalty: € 859,404 for each six-month period of non-compliance with the judgment under Article 258 TFEU)
  - Commission v the Czech Republic, C-241/11 (lump sum payment: € 250,000; no daily penalty)
  - Commission v Luxembourg, C-576/11 (lump sum payment: € 2,000,000; penalty: € 2,800 for each day of non-compliance with the judgment under Article 258 TFEU)
  - Commission v Sweden, C-270/11 (lump sum payment: €3,000,000; no daily penalty)
  - Commission v Germany, C-95/12 (**no penalties**)
- 2018: 2 cases to the CJ

# Transposition Delay



concern with secural safety for individuals using online services

- Better Regulation Directive & Citizens Rights Directive (consumer rights in personal data online and privacy)
  - Deadline in May 2011
  - Full implementation by 7 MS (incl. UK)
  - Partial implementation in 16 MS -> Reasoned Opinion from the Commission

# Lisbon Treaty Amendments II

- Article 260(3) TFEU: late transposition of Directives (LTI)
  - When the Commission brings a case before the Court .. on the grounds that the MS has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the MS concerned which it considers appropriate in the circumstances
- Financial penalties without CJEU judgement
- Encourage timely transposition , not to punish
- Cannot be used for non-legislative directives (Art 290 & 291)
  - Former procedure: 1st referral to CJ under Art 258 and 2nd referral to CJ under Art 260(2). only for legislative directives.

# Art 260(3) usage

- 2011 = 9 decisions: daily penalties from 45k to 215K Euro
- 2012 = 35 decisions involving 12 Member States
  - Poland (10)
  - Slovenia (5)
  - the Netherlands and Finland (4 each)
  - Belgium  and Cyprus (3 each)
  - Germany, Bulgaria, Slovakia, Luxembourg, Portugal and Hungary (1 each)
- 2013 = 14 referrals (9 MS)
- Daily penalty: from € 4,224 to € 315,036.54
- No lump sum payments as yet requested = speedy compliance not punishment?
- 2018 = 23 cases