

**Voluntary Report** – Voluntary - Public Distribution

**Date:** November 24,2020

**Report Number:** E42020-0089

**Report Name:** The EU Infringement Procedure

**Country:** European Union

**Post:** Brussels USEU

**Report Category:** Trade Policy Monitoring

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**Report Highlights:**

In EU law, the European Commission is responsible for monitoring whether EU regulations are applied correctly and on time. If a Member State fails to implement EU legislation, the Commission can launch the so-called “infringement procedure” to remedy the situation.

## General Information:

Under the [Treaty on the Functioning of the European Union](#) (TFEU), one of two treaties forming the constitutional basis of the European Union (EU), the European Commission is responsible for monitoring whether EU laws are applied correctly and on time. In this role, the Commission is referred to as the 'Guardian of the Treaties'. To that end, [article 258](#) of the TFEU stipulates:

*“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.”*

Therefore, according to the Treaty, the Commission may take legal action, called an ‘infringement procedure’, against a Member State that fails to implement EU law. If the Member State does not comply, the Commission is allowed to take the issue to the European Court of Justice (ECJ), which in certain cases can impose financial penalties.

## How does the Commission open an infringement procedure?

There are several ways for the Commission to open an infringement procedure. The Commission itself through special investigations can open a procedure against one Member State. Citizens, businesses, non-governmental organizations (NGOs) or other organizations can also file complaints against any Member States whether directly with the Commission or through the European Parliament’s [Committee on Petitions](#).

In 2019, the Commission directly registered 3,525 new complaints. The three Member States against which the Commission received the most complaints were Spain (542 complaints), Italy (375) and Germany (319). Out of these 3,525 complaints, the Commission opened an infringement procedure for 150 cases. Through petitions, the European Parliament can also alert the Commission about breaches of EU law. In 2019, the Parliament sent 144 petitions to the European Commission, most of them (58) regarding the environment.

Before the Commission opens a formal infringement procedure against an EU Member State, it can use the ‘[EU Pilot dialogue](#)’. The EU Pilot is a mechanism for informal dialogue between the Commission and the Member State concerned on issues relating to potential non-compliance with EU law. It was set up to quickly resolve potential breaches of EU law at an early stage.

## The infringement procedure step by step

When a Member State does not take measures to fully implement EU law, the Commission may launch a formal infringement procedure. The procedure follows a number of steps laid out in EU law, each ending with a formal decision:

1. The Commission sends a *letter of formal notice* requesting further information to the Member State concerned, which must send a detailed reply within a specified period, usually 2 months.

2. If the Commission concludes that the Member State is failing to fulfil its obligations under EU law, it may send a *reasoned opinion*: a formal request to comply with EU law. It explains why the Commission considers that the country is breaching EU law. It also requests that the country inform the Commission of the measures taken, within a specified period, usually 2 months.
3. If the Member State still doesn't comply, the Commission may decide to refer the matter to the Court of Justice.
4. If the Court finds that a Member State has breached EU law, the national authorities must take action to comply with the Court judgment.
5. If, despite the Court's judgment, the Member State still doesn't rectify the situation, the Commission may refer the country back to the Court. When referring an EU country to the Court for the second time, the Commission proposes that the Court impose financial penalties.

### **A concrete example: animal welfare for laying hens**

EU [Directive 1999/74/EC](#) laying down minimum standards for the protection of laying hens entered into force in January 2012 after a 12 year transition period. The aim of this Directive is to improve the condition of rearing of laying hens by prohibiting the use of the traditional barren cage in favour of enriched cages. Even after the long transition period, many Member States had not transposed the Directive into national law or were not enforcing the rules. Therefore, the Commission decided to launch an infringement procedure:

1. On January 26, 2012, the EU Commission started infringement procedures against 13 Member States by sending a *letter of formal notice* to Belgium, Bulgaria, Greece, Spain, France, Italy, Cyprus, Latvia, Hungary, the Netherlands, Poland, Portugal and Romania.
2. On June 21, 2012, the EU Commission dropped charges for Bulgaria, Latvia and Romania and decided to follow the infringement procedure for Belgium, Greece, Spain, France, Italy, Cyprus, Hungary, the Netherlands, Poland and Portugal by sending a *reasoned opinion*.
3. On April 25, 2013, the EU Commission estimated that Italy and Greece were still not in compliance with the Directive and decided to refer these Member States to the EU Court of Justice. Both Member States were condemned by the Court of Justice.

### **Criticism against the infringement procedure**

While the infringement procedure can be an efficient tool to ensure that EU laws are applied correctly and on time, the Commission enjoys a wide discretion whether or not and when to commence infringement proceedings or to refer a case to the Court. This discretionary power of the Commission is the subject of criticism by stakeholders and civil society.

One example is the decision of the Commission not to launch an infringement procedure after France decided to ban bisphenol A in food contact materials in 2015. There was a complaint made by the trade association PlasticsEurope to the EU against this ban but the Commission did not launch an

infringement procedure. According to an [internal note](#) that was made public, the European Commission opted not to proceed actions against France because of disagreements between internal departments. The Commission's Directorate-General for Health and Food Safety (DG SANTE) argued against the action and the case was put on hold.

**Attachments:**

No Attachments.