EU Law

Topic 5
Enforcement Actions Against Member States
Learning Outcomes

• **Aim**
  • To enable all students to develop their knowledge of the Enforcement Actions Against Member States

• **Objectives**
  • By the end of this session the student should be able to...(TSSBAT)
  • Explain what Enforcement Actions are
  • Identify what actions may be taken against Member States
  • Apply Articles 258, 259 & 260 TFEU
Quick recap

• Last week we considered Indirect Effect, Direct Effect, Horizontal and Vertical Direct Effect

• Flashcards are a great way to revise
European Communities Act 1972, s.2(1)  

Article 4 (3) TEU

Revision Tip  

Article 260(1) TFEU

Article 258 TFEU
What are Enforcement Actions?

• Action taken against a MS that has failed to fulfil its Treaty obligations

• Who enforces the Actions? ECJ ‘the court’

• Preliminary Rulings – There is a risk the MS may interpret EU Law into national law incorrectly, to this end, they may ask for advice from the ECJ. This advice is a ‘Preliminary Ruling’

• Vassilios Skouris, from Greece, was elected President of the Court of Justice in 2003.
A MS’s Failure to Fulfil its Treaty Obligations

• **Failure** may encompass one or more of the following:

• An *action (think verb!)* by a MS incompatible with EU law

• **Adoption** of a *legislative act contrary to EU law*
  – (Fictitious) e.g. Scientology Act 2011

• **Express refusal** to fulfil an obligation imposed by EU law; or from

• A *failure to act* – e.g., non-implementation of an EU Directive within the prescribed time limit
Breach of Obligations

• Before a breach can occur, the obligation must be a “pre-existing, specific and precise obligation”.

• The breach may be in respect of:
  – A Treaty provision;
  – Binding secondary legislation; or
  – A General Principle of EU law.
Action by the Commission under Art. 258 TFEU

If commission considers MS failed to fulfil obligation, commission delivers a ‘reasoned opinion’. This ‘opinion’ MUST be complied with (if it is not the commission will no doubt refer the matter to the ECJ)
Art. 258 TFEU: Two-stage procedure

• **1. Administrative stage:**

  • *Informal* – fact finding: MS is under a duty to cooperate with the Commission: *Case C-375/92, Commission v Spain*;

  • *Formal* – Letter of formal notice – an essential procedural requirement: *Case 51/83, Commission v Italy*;

  • *Reasoned Opinion* – 3rd & final pre-litigation stage.
2. Judicial Stage

• National governments appear before the ECJ as defendants – irrespective of “... the organ of the State whose action or inaction constitutes a failure, even if it concerns an institution which is constitutionally independent” – Case 77/69, Commission v Belgium.

• That a breach has been terminated is no bar to the Commission continuing an Art.258 TFEU action: Case 7/61, Commission v Italy.
Defence?

- Practically non-existent!
- “The philosophy of Art.258 TFEU requires that the defaulting Member State put an end to the violation of EU law as soon as possible, and thus some defences recognized under public international law have been rejected by the ECJ” (Kaczorowska, 2nd ed. 2010, p403)
Art.259 TFEU: Enforcement actions by another Member State

- Only arises if Commission hasn’t delivered an opinion after 3 months or decides not to take action;
- Complainant MS must still pursue action through the ECJ – no other form of dispute resolution is permissible.
- *Case 141/78, France v UK* – practically only noteworthy case on Art.259 TFEU
- IN ITS JUDGMENT OF 4 OCTOBER 1979 THAT BY BRINGING INTO FORCE ON 1 APRIL 1977 ‘THE FISHING NETS (NORTH-EAST ATLANTIC) ORDER 1977’, THE UNITED KINGDOM HAD FAILED TO FULFIL ITS OBLIGATIONS UNDER THE EEC TREATY
Sanctions

• Sanctions may be imposed on the defaulting MS under Art.260 TFEU
Case C-304/02, Commission v France

• Established that the ECJ had the jurisdiction to impose BOTH a penalty payment AND a periodic payment in the same case.

• Penalty payment (‘one-off’) of €20M; and

• Periodic payment of €57M every six months until the breach was terminated.
Duties imposed on MS’s

- **Art.4(3) TEU** (ex Art.10 EC) provides that:
- 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 Community. The MS’s shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardize the attainment of the Union’s objectives.
State Liability and Natural Persons

• No standing under Arts.258-259 TFEU;

• Member States can be responsible for unlawful acts of its citizens: Case C-265/95, Commission v France (French citizens were attacking French shops/Lorry Drivers for selling/transporting other MS goods)

• Natural persons can pursue state liability under Cases C-6 & C-9/90, Francovich (compensation, state liability) as modified by Factortame (No.3). (P.195 Foster)
Quick Quiz courtesy of Law Express

• In order to facilitate your learning of Arts.258- 260 TFEU, follow Gill, the rabbit 😊
How did you do?

- Check your answers with your peer
What you should have learnt today

• TSSBAT;
• Give a reasoned account of Enforcement Actions against Member States
• Provide the relevant Articles in relation to Enforcement Actions
• Be confident in citation of a cases/article/acts in support of your argument and apply them to the facts
• Extra:
• Some links you may find helpful/interesting are embedded in the slides. Click on any image for further information
• The Record: Europe http://news.bbc.co.uk/1/hi/uk_politics/8718628.stm
• Treaty of Lisbon http://news.bbc.co.uk/1/hi/world/europe/6901353.stm

• Read ahead for next week (Section B)
  • Check www.StretLaw.com for details and prepare!