

THE "STANDARD" ADMINISTRATIVE PROCEDURE FOR SUPERVISING AND ENFORCING EC LAW: EC TREATY ARTICLES 226 AND 228

ALBERTO J. GIL BRÁÑEZ*

I

INTRODUCTION

Although the Treaty Establishing the European Community¹ ("EC Treaty" or "Treaty") has created several procedures for combating Member States' breaches of European Community ("EC") law, the European Commission ("Commission") enforcement procedure under EC Treaty Articles 226 and 228 is still the most far-reaching and most commonly used. This Article examines the Commission's policy and strategy in enforcement proceedings under these provisions and attempts to discover the predominant European model, if such a model exists, for enforcing and supervising EC law. Although this Article will concentrate mainly on the administrative phase under Article 226, some reference will also be made to the judicial phase, when the Commission sues a Member State before the European Court of Justice (the "ECJ" or the "Court") under Article 228, since Article 226 cannot be understood without Article 228.² Although much has been written on Commission enforcement, new developments and some procedural aspects merit its reassessment.³ Thus, this Article ulti-

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1. TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Nov. 10, 1997, 1997 O.J. (C 340) 185 [hereinafter EC TREATY].

2. Under Article 228, the Commission may ask the ECJ to order a penalty payment or lump sum from a Member State that has failed to take measures necessary to comply with a final judgment finding it in breach. Moreover, as it is broadly known, the ECJ has allowed individuals to apply to national courts for damages to compensate for infringements of Community law by Member States or for failure to transpose directives (the "Francovich doctrine"). The prospect of fines under Article 228 gives the administrative complaint procedure in Article 226 special strength.

3. The bibliography on Article 226 procedure is broad. See, e.g., H. AUDRETSCH, SUPERVISION IN EUROPEAN COMMUNITY LAW: OBLIGANCE BY MEMBER STATES OF THEIR TREATY OBLIGATIONS: A TREATISE ON INTERNATIONAL AND SUPRA-NATIONAL SUPERVISION (2d rev. ed., 1996); ALLENDE CARR ESCOBAR, *El procedimiento por infracción del Derecho Comunitario*, in *DERECHO COMUNITARIO* 155 (1993); ALBERTO GIL BRÁÑEZ, THE ADMINISTRATIVE SUPERVISION AND ENFORCEMENT OF EC LAW: POWERS, PROCEDURES AND LIMITS (1999) [hereinafter GIL BRÁÑEZ, ADMINISTRATIVE SUPERVISION]; JEAN-VICTOR LÉVEL, *Le rôle de la Commission dans la procédure en manquement selon la jurisprudence récente de la Cour de justice*, in *DU DROIT INTERNATIONAL AU DROIT DE L'INTÉGRATION* LÉVEL AMICORIN PIERRE PÉCAUTORE 387 (1987); ALFONSO MATTEIA, *Le Marché unique européen: Ses règles, son fonctionnement* 68-1 (2d ed., 1990); G. VANDERBRANDEN & A. BAKAN, *CONTENTIEUX COMMUNAUTAIRE* 97 (1977); ALAN DASHWOOD

Enforcing Ec Law

Miroslava Scholten



Enforcing Ec Law:

The Enforcement of EC Environmental Law Pål Wennerås, 2007-08-16 It is widely accepted that the future development of environmental law depends not on further legislation but on more effective enforcement Within the EC legal system the conventional view is that the enforcement deficit is due to the fact that the environment is distinct from other fields of Community law EC environmental law normally does not confer rights on individuals and may therefore not be judicially enforced in the same manner as rules concerning the internal market competition and gender discrimination The Enforcement of EC Environmental Law explores and challenges this assumption Drawing from constitutional aspects of EC law the author examines to what extent the general case law on procedures and remedies may be transposed to the field of environment whilst at the same time taking stock of the existing environmental case law and the distinctive features of environmental legislation In a critical exposition and assessment of 50 years of jurisprudence by the European Court of Justice as well as recent legislative developments the author explores the potential of enforcement of environmental law through law suits by individuals as well as the European Commission By demonstrating that the environment is not so different from other fields of law in terms of rights and remedies the book provides not only new insights to the enforcement of EC environmental law but also to the central characteristics of Community constitutional law **Enforcement of European Union Environmental Law** Martin Hedemann-Robinson, 2007-03-12 Offering a detailed legal account of the various legal arrangements at EU level this book is an ideal reference tool for practitioners and legal scholars As well as examining the principle sources of EU environmental law enforcement it also contributes to the legal and political debates that surround the subject Spanning three parts the author examines and assesses the practical impact of the legal arrangements at EU level that are used for the purpose of upholding EU environmental norms Providing a comprehensive account of the current state of EU environmental law enforcement and developments affecting it Enforcing European Union Environmental Law focuses on the principal sources of EU environmental law enforcement examining the role of the European Commission the possibilities for private law enforcement the responsibilities of Member State national authorities An essential read for those studying researching and working in the areas of environmental and European Union law **Enforcing EC Law** Josephine Steiner, 1995 EC law now extends over a wide range of human activity creating rights and obligations for individuals as well as for member states These rights may be invoked and obligations challenged by individuals before their national courts The purpose of this book is to outline the principles and problems governing the award of remedies for branches of Community law principally before domestic courts and tribunals It addresses both the academic and practical aspects concerning the protection of Community rights by domestic courts which now play a major role in the enforcement of EC law Josephine Steiner has also written Textbook on EC Law **Standing to Enforce European Union Law before National Courts** Hilde K Ellingsen, 2021-03-25 Access to court has long been recognised as an essential element of a Union based on the rule

of law This book asks how can Member States ensure that their rules on standing guarantee that right The book answers this question by analysing the requirements of EU law from two angles first the effective protection of Union rights second the effectiveness of Union law per se With detailed case law examination the book formulates an autonomous Union law doctrine of standing based on the principle of effective judicial protection It then goes further setting out an effectiveness test of Member States enforcement mechanisms to ensure that EU law is rendered operative in practice This is a rigorous study on a question of immense importance

The Enforcement of EU Law Stine Andersen, 2012-11-29 Examining the European Commission's current range of practices for exercising control over the meaning and implementation of EU law this book provides a comprehensive analysis of centralised EU enforcement It describes the different practices available analysing their effectiveness and discussing the Commission's role in ensuring compliance

Research Handbook on the Enforcement of EU Law Miroslava Scholten, 2023-09-06 This comprehensive Research Handbook investigates the success of EU law enforcement processes Going beyond traditional analyses of administrations and courts in isolation it focuses on the increased cooperation seen between national and EU authorities and on the widening variety of means used to enhance compliance with EU norms

Understanding European Union Law 2/e Karen Davies, 2003-10-06 European Union law is now a core subject for both the Bar Council and the Law Society and it is vital that all law students equip themselves with a sound understanding of the EU legal system This book looks at the main themes of EU law in a logical progressive manner giving the reader an understanding of EU law concentrating on how and especially why the law has developed as it has In addition a number of issues presently facing the EU are also considered such as enlargement and the prospect of a comprehensive written constitution Understanding European Union Law is both an introduction for students new to EU law and an essential addition to revision for the more accomplished including important tips on how to approach examination questions It is also essential reading for students on business studies courses

The Enforcement of EU Law and Values András Jakab, Dimitry Kochenov, 2017-04-07 It is clear that the current crisis of the EU is not confined to the Eurozone and the EMU evidenced in its inability to ensure the compliance of Member States to follow the principles and values underlying the integration project in Europe including the protection of democracy the Rule of Law and human rights This defiance has affected the Union profoundly and in a multi faceted assessment of this phenomenon The Enforcement of EU Law and Values Ensuring Member States Compliance dissects the essence of this crisis examining its history and offering coping methods for the years to come Defiance is not a new concept and this volume explores the richness of EU level and national level

examples of historical defiance the French Empty Chair policy the Luxembourg compromise and the FP crisis in Austria and draws on the experience of the US legal system and that of the integration projects on other continents Building on this legal political context the book focuses on the assessment of the adequacy of the enforcement mechanisms whilst learning from EU integration history Structured in four parts the volume studies 1 theoretical issues on defiance in the context of multi

layered legal orders 2 EU mechanisms of *acquis* and values enforcement 3 comparative perspective on law enforcement in multi layered legal systems and 4 case studies of defiance in the EU

Regulation, Enforcement and Governance of Environmental Law Richard Macrory, 2008

EU Law Enforcement Stefano Montaldo, Francesco Costamagna, Alberto Miglio, 2021-02-22 The existence of a structured enforcement system is an inherent feature of national legal orders and one of the core elements of State sovereignty The very limited power to issue sanctions has often been deemed a gap in the EC legal order Over the years the situation has progressively changed The Union's institutional setting is growing in complexity and a variety of agencies has been or is expected to be endowed with law enforcement responsibilities In addition the so called competence creep has led the EU to play an increasingly prominent role in several areas of EU law enforcement including the issuing of sanctions This book examines these developments focusing on both the general features of the EU legal order and the analysis of key substantive areas such as banking and monetary union environmental law and data protection The work thus presents a general framework for understanding EU sanctioning based on structural features and general legal principles Part I develops an analytical framework tracking the most significant evolutive patterns of EU sanctioning powers Part II adopts a more practical approach focusing on specific issues and policy areas The book bridges a gap in existing literature and sheds new light on the relationship between the exercise of *jus puniendi* and the evolution of EU integration

New Directions in the Effective Enforcement of EU Law and Policy Sara Drake, Melanie Smith, 2016-04-29 The EU is faced with the perpetual challenge of guaranteeing effective enforcement of its law and policies This book brings together leading EU scholars in law politics and regulation to explore the wealth of new legal and regulatory strategies practices and actors that are emerging to complement the classic avenues of central and decentralized enforcement The contributors evaluate the traditional dual vigilance framework of enforcement before examining networked enforcement from theoretical empirical and legal perspectives They assess innovations in key EU policy fields such as the environment consumer protection competition freedom security and justice and economic governance This multi disciplinary book will be of use to students and academics in law political science regulation and public policy It will also interest policy makers in EU institutions national administrations and courts engaged in the implementation and enforcement of EU law and policy

Compliance and the Enforcement of EU Law Marise Cremona, 2012-03-15 The EU has long faced difficulties in ensuring compliance with its legal provisions and as a result has developed sophisticated enforcement techniques that penetrate deep into the law and politics of member states This book gathers leading experts to assess the legal procedures and political mechanisms at work in the EU to promote compliance

Private Enforcement of EU Law Before National Courts Folkert Wilman, 2015-09-25 Private Enforcement of EU Law before National Courts successfully illustrates how legal actions brought by private parties can be instrumental in strengthening compliance with EU law Through a detailed examination of selected EU legislation across the fields of procurement intellectual property rights consumer protection and

competition law Folkert Wilman compares various remedies and procedures in which private parties have been utilised in the redress of grievances under EU law An essential reference work for practicing lawyers acting before domestic courts in matters of EU Law this timely publication offers new insights into private enforcement as a supplementary enforcement instrument and offers clarity on how such a tool impacts on contractual remedies procedural issues and the role of judicial review

Effective Enforcement of EU Labour Law Zane Rasnaca, Aristeia Koukiadaki, Niklas Bruun, Klaus Lörcher, 2022-08-11 This book by the ETUI Transnational Trade Union Rights Expert Network analyses enforcement as a key element making EU labour law effective or ineffective Enforcement is the key ingredient that makes rights effective and ensures compliance It can make or break a legal system Despite this enforcement of EU labour law has received little scholarly attention in recent decades and has rarely been examined in a comprehensive way This book aims to fill this gap Intended for academics and practitioners alike the book adopts a threefold approach to examine this issue First of all it explores the idea of effective enforcement and sets out the wider context in which EU labour law enforcement takes place Secondly it analyses how enforcement operates in particular areas including non discrimination health and safety information and consultation rights and the rights of migrating workers Thirdly it critically assesses the role of specific actors in particular collective actors like trade unions as well as whistle blowers and the European Labour Authority and settings public procurement economic and monetary policy regulated by EU law Drawing on the insights produced by these analyses the book concludes by proposing a comprehensive Draft for a Model Directive on Effective Enforcement of EU Labour Law as an inspiration for policy development and scholarly debate in this area

Understanding European Union Law Karen Davies, 2009-06-02 An excellent introduction to EU law for students new to the discipline and acting as an essential revision aid for the more experienced this new edition has been fully revised and updated The author an experienced lecturer at undergraduate level examines the main themes of EU law in a logical and progressive manner Focusing on how and why the law has developed as it has this book provides readers with a thorough understanding of EU law including a number of issues presently facing the EU such as enlargement and the prospect of a comprehensive written constitution Student friendly it comprises a wide range of pedagogical features including summaries comprehensive tables of cases and legislation a list of abbreviations a glossary of important terms helpful tips on how to approach essay and exam questions Broad in scope and highly accessible *Understanding European Union Law* is essential reading providing a solid foundation for students new to EU law business as well as being a useful revision aid for those more familiar with the topic

EU Law in the UK Sylvia de Mars, 2020 How does EU law work in the real world What is the legal reality behind the Brexit debates How will law in the UK change now the country has left the EU *EU Law in the UK* Provides a Fresh Engaging and Relatable Account of EU Law It Covers All the Core Areas of EU Law Taught on Undergraduate Courses with a Post Brexit Perspective Interwoven Throughout Book jacket

[Complete EU Law](#) Elspeth Berry, Matthew J. Homewood, Barbara Bogusz, 2017 Titles in the

Complete series offer students a carefully blended combination of the subject's concepts, cases and commentary. A combination which encourages critical thinking, stimulates analysis and promotes a complete understanding.

Enforcing European Community Rules Christopher Harding, Bert Swart, 1996. The main aim of this study is to consider the problems which arise from the enforcement of European Community policies and rules and in particular to examine the impact on national systems of law and procedure of this body of enforcement activity.

European Union Law Margot Horspool, 2000. This work seeks to clarify what is regarded as a complex and difficult area of law. It explains from first principles what the law of trusts is about and provides an understanding of the academic controversies surrounding it.

EU Competition Law. Optimum Enforcement Methods Against EU Cartel Participants Ronan Garvey, 2020-06-17. Essay from the year 2019 in the subject Law Civil Private Trade Anti Trust Law Business Law grade 82.00 University College Cork course LLB language English abstract. This paper is concerned with optimising the enforcement of European Union Competition Law against cartels participants. A critique of Directive 2014/104 and its main shortcomings will begin this paper. Investigation then launched into role of national competition authorities in the Union arguing that enhanced member state cooperation and full transposition of draft Directive 2019/1 ECN will deter cartel activity. Final point concerns individual liability against the company agents behind cartels how corporate fines imposed by European Commission fail to deter individuals against continued cartel participation.

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Table of Contents Enforcing Ec Law

1. Understanding the eBook Enforcing Ec Law
 - The Rise of Digital Reading Enforcing Ec Law
 - Advantages of eBooks Over Traditional Books
2. Identifying Enforcing Ec Law
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Enforcing Ec Law
 - User-Friendly Interface
4. Exploring eBook Recommendations from Enforcing Ec Law
 - Personalized Recommendations
 - Enforcing Ec Law User Reviews and Ratings
 - Enforcing Ec Law and Bestseller Lists
5. Accessing Enforcing Ec Law Free and Paid eBooks
 - Enforcing Ec Law Public Domain eBooks
 - Enforcing Ec Law eBook Subscription Services
 - Enforcing Ec Law Budget-Friendly Options
6. Navigating Enforcing Ec Law eBook Formats

- ePub, PDF, MOBI, and More
- Enforcing Ec Law Compatibility with Devices
- Enforcing Ec Law Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Enforcing Ec Law
 - Highlighting and Note-Taking Enforcing Ec Law
 - Interactive Elements Enforcing Ec Law
- 8. Staying Engaged with Enforcing Ec Law
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Enforcing Ec Law
- 9. Balancing eBooks and Physical Books Enforcing Ec Law
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Enforcing Ec Law
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Enforcing Ec Law
 - Setting Reading Goals Enforcing Ec Law
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Enforcing Ec Law
 - Fact-Checking eBook Content of Enforcing Ec Law
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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