

COMPATIBILITY WITH EU LAW IN CENTRAL AND EASTERN EUROPE



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Abstract

This study presents the issue of the application of the infringement procedure and its impact on ensuring compatibility with EU law in Central and Eastern Europe. Its main research goal is to show the basic mechanisms of the functioning of the indicated procedure, the trends related to its use in the context of the European integration process and numerical data. The structure of the work, which includes three chapters, is subordinated to this idea: (1) Infringement procedure as an instrument for the implementation of EU law in Member States – general approval; (2) Reasons and trends of applying the infringement procedure against the countries of Central and Eastern Europe; (3) Conflict proceedings against Central and Eastern states – topics and numbers.

Keywords: compatibility with EU law, violation of EU law, infringement proceedings, European Commission, Central and Eastern Europe, EU Member States

1. Introductory Remarks

One of the foundations and conditions of the European Union's existence is the need for its Member States to implement and comply with the law laid down by its institutions. This necessity stems from the logic of the organisation and is related to ensuring coherence and harmony in its functioning and further development. At its

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core is the assumption of systemic regulation at supranational level of a number of areas of economic and social life covered by the EU agenda. Central to this is the idea that

The single market, but also the community of principles and values beyond the purely market aspects of integration, requires a single, coherent legal framework. The legal systems of the Member States must work as an interconnected system.¹

Guided by the above-mentioned necessity, the EU treaties introduce a number of legal instruments through which the EU institutions can exert effective influence on the Member States and force them to adapt their institutional and legal systems to the requirements arising from the *acquis communautaire*. The existence of such tools come from the rich experience of European integration² and aims to create mechanisms for the central coordination of the implementation of EU regulations. It gives the relevant institutions a real opportunity to seek compliance of national legislation with European Union legislation. It is enough for them to perceive a breach of treaty obligations by a Member State, and the right to take legal action automatically on their side. Undoubtedly, concerning the existence of such a complex and extensive structure as the EU legal system and, at the same time, taking into account the individual states' pursuit of their own autonomous policies (and the related temptations), the use of such institutional mechanisms must be considered a necessity. Only in this way can the coherence of the European legal space be preserved and the Union as a legal and political community strengthened as a result.

The use of these instruments may transpire in various situations. This includes, for example, the refusal by national authorities to implement a Union directive or its incorrect or late implementation, the adoption of legislative measures that are not in line with Union law, the failure to adopt such measures resulting in a breach of Union law, the application of national provisions by public authorities in a manner contrary to Union law, the incorrect application of Union law, etc.

It should be noted that actions of non-implementation or faulty implementation of the *acquis communautaire* on the part of Member States may have various origins. Sometimes they involve a refusal to implement due to their particular national interests or axiological barriers, and occasionally they are the result of the incorrect transposition of certain norms into the national legal order, erroneous interpretation or even complete disregard. In this respect, the reasons may vary extensively.

Among the instruments indicated above, particular attention should be paid to the infringement procedure. This procedure is widely applied to all Member States of the European Union. This, of course, also applies to the Central and Eastern European

1 Popowski, 2018.

2 The first case concerning non-compliance was decided by the Court of Justice of the EU on 19 December 1961, i.e. at the time of the creation of the forerunner of the European Union, the European Economic Community, in 1958. On 19 December 1961; Johansson and Larsson, 2022, pp. 1–18.

countries, which, since joining the European Union, have had to address the challenges arising from its practical application. As experience to date has shown, although the use of this instrument by European institutions in their relations with these countries is, for the most part, an effective means of correcting and shaping national legislation, it is also sometimes a source of tension and conflict. The solutions imposed on the authorities of these countries are not always welcomed; on the contrary, they sometimes provoke resistance. This chapter aims to present trends and statistics related to the use of infringement proceedings against Central and Eastern European countries. It also serves to highlight the importance of these proceedings in shaping relations between EU institutions and countries in this region.

2. Infringement Procedure as an Instrument for the Implementation of EU Law in Member States – General Approach

The infringement procedure regulated by Arts. 258–260 of the Treaty on the Functioning of the European Union is at the forefront of the mechanisms in question. Due to the subject of this paper, it is worth presenting its basic premises.

By its very nature, the infringement procedure is a tool to force a Member State to respect the rules of EU law. By utilising the procedure,

the European Commission pursues legal action against Member States for failing to comply with their obligations under EU law. These decisions, covering various sectors and EU policy areas, aim to ensure the proper application of EU law for the benefit of citizens and businesses.³

This is precisely the purpose of the procedure initiated.

The indicated procedure consists of two phases. The first is pre-litigation, that aims to reach an amicable settlement of the relevant case. The second involves court proceedings and applied when previous efforts have failed.

The European Commission plays a key role in the pre-litigation phase. It is the Commission that is competent to examine if a Member State has failed to fulfil one of its Treaty obligations and take action accordingly. As noted in the literature, for the European Commission – the ‘guardian of the treaties’ – this possibility is a particularly important instrument of political power. As a result, the Commission gains the ability to discipline the governments of Member States that do not recognise or comply with the norms of Community law.⁴ When mentioning the important role

³ European Commission, 2025.

⁴ Höreth, no date.

played by the Commission, it should be remembered that the essence of the procedure in question is a dialogue between the Commission and a given Member State, aimed at exchanging opinions and presenting possible ways to remedy the existing situation. It is only the failure of this dialogue that triggers steps aimed at applying institutional coercion.⁵

The only exception, when it comes to initiating the procedure, is the procedure specified in Art. 259 of the Treaty on the Functioning of the European Union. In this case, the entity initiating the proceedings is a Member State that is acting against another Member State. As the provision states *in concreto*, ‘any Member State may bring a case before the Court of Justice of the European Union if it considers that another Member State has failed to fulfil one of its obligations under the Treaties’; before a Member State brings an action against another Member State alleging a breach of an obligation incumbent on it under the Treaties, it should bring the matter before the Commission.

As for the details of the procedure specified in Art. 258 of the Treaty on the Functioning of the European Union, it should be emphasised that the Commission has, in principle, a discretionary right to initiate infringement proceedings. As soon as it receives information that a specific violation has occurred, it is faced with the possibility of taking actions specified in Art. 258 of the Treaty on the Functioning of the European Union. The final decision in this regard rests entirely with the Commission. It is not important on whose initiative the Commission acquires the relevant knowledge (sources of information include – in addition to the Commission’s own findings – e.g. – np. complaints from private individuals, a parliamentary question, petitions filed with the Petitions Committee of the European Parliament; complaints filed with the European Ombudsman; cases referred to the CJEU through the referral procedure of Art. 267 TFEU,⁶ media information, press reports, etc.).⁷ Either way, the Commission remains the decision-maker. As emphasised in the scientific literature,

In practice, a proposal to launch such proceedings emanates from the Directorate or Directorates General concerned, after consultation with the Legal Service and the Secretariat General of the Commission. Once such a proposal is made by the competent services, it goes to the political level. The members of the cabinets of the different Commissioners may reach a consensus (or, in the more sensitive cases, a consensus may be reached at the level of the chefs at a ‘HEBDO’ meeting), in which case the matter will be presented as part of the ‘A points’ on the agenda of the College of Commissioners.⁸

5 Radivojević and Raičević, 2017, p. 172; See also: Augustyniak, 2014, p. 794.

6 De Schutter, 2017, p. 10.

7 Borissova, 2007, p. 9.

8 De Schutter, 2017, p. 14.

In some cases, upon receiving information about a violation, it may be necessary to use Art. 258 of the Treaty on the Functioning of the European Union. The Commission will then be obliged to take action in this manner. This is pointed out by Łukasz Augustyniak, who says:

Such a situation occurs when a Member State does not notify in the national Database of implementing measures, the measures transposing a specific directive within the deadline specified therein, without indicating its full transposition. Such an omission will result in the system integrated with this database automatically generating a list of unimplemented directives when reviewing transposition measures (once every two months), and a letter of formal notice will be sent to the Member State, constituting the first stage of the procedure referred to in Art. 260, Section 3 FEU.⁹

When initiating infringement proceedings, the European Commission is guided by the suspicion that a specific Member State has failed to fulfil its obligations. It does not matter whether the infringement was the result of an act or omission of that state.¹⁰ Neither the moment of occurrence of the detected infringement, nor the legal issue to which the infringement relates is important (the literature refers to treaty-based infringes, legislation-based infringements and charter-based infringements).¹¹ In all these cases, Art. 258 of the Treaty on the Functioning of the European Union opens the possibility for the Commission to react to a perceived infringement. However, it is debatable whether this procedure is only suitable for investigating incidental cases of failure to fulfil obligations or whether it can also be used to address systemic breaches.¹² The admissibility of this last variant is indicated by Kim Lane Scheppele, who clearly supports the recognition of the Commission's authority to counteract structural (general and continuous) deficiencies using this instrument. According to the author, such an approach has a chance to work, especially in a situation when the Commission is faced with problems related to a

⁹ Augustyniak, 2014, p. 751.

¹⁰ Taborowski, 2019, p. 218.

¹¹ De Schutter, 2017, pp. 28–33.

¹² Taborowski, 2019, p. 233.

violation by a given Member State of the principle of the rule of law established by Art. 2 of the Treaty on European Union.¹³

From a formal point of view, the procedure begins when the Commission sends a letter of formal notice to a Member State. However, it must be remembered that before taking this step ‘the Commission develops informal contacts with the national authorities of the Member State concerned, in order to obtain all the information required (...)’.¹⁴ It does this either in order to find a common solution for both sides or to prepare its position.

In the letter of formal notice, the Commission requests further information from the Member State and presents formal allegations relating to the alleged infringement. Additionally, in accordance with established political practice, it sets a deadline for taking a position on the matter and taking an appropriate response from the national authorities. As a rule, this period is two months, although individual notifications may have exceptions in this respect. If a Member State covered by the infringement procedure responds in an unsatisfactory manner and thus does not meet the expectations of the European Commission, then the Commission becomes empowered to issue the so-called reasoned opinion. This document contains the final scope of the allegations brought against a given country and at the same time indicates the deadline within which the Member State should eliminate the detected violation.¹⁵ For national authorities, this means that, taking into account

13 As K.L. Schelle argues for the purposes of this thesis: ‘(...) the infringement procedure created in arts. 258 and 260 of the Treaty on the Functioning of the European Union (TFEU). The Commission could signal systemic breach of fundamental Treaty obligations by a Member State by bundling a group of specific alleged violations together to argue before the Court of Justice of the European Union (CJEU) that the infringement of EU law in a Member State is not minor or transient, but systemic and persistent. Unlike the usual infringement procedure in which narrowly focused elements of Member State action are singled out for attention one at a time, a systemic infringement procedure would identify a pattern of state practice that, when the individual elements are added up, constitute an even more serious violation of a Member State’s fundamental EU obligations than the individual elements, taken separately. It is this pattern that would give rise to the finding of a systemic breach’. And further in another study: ‘A systemic infringement action could put the various pieces of the puzzle together as a coherent whole under art. 2 TEU to enable the Commission to demonstrate that the specific issue (e.g. the lowering of the judicial retirement age) is connected to a larger pattern (e.g. a set of sudden changes to the way that judges are appointed, promoted, demoted and disciplined in Hungary). This set of legal changes could then be presented as evidence of a systemic threat to judicial independence which itself is a crucial component of the rule of law as protected by art. 2 TEU. A systemic infringement action under an art. 2 TEU banner would then enable the Court of Justice to assess systemic violations, which would be necessary for establishing a threat to the basic values of the treaties’; Scheppele, 2013; However, Kochenov and Pech raise reservations about this interpretation. The authors point out that ‘art. 7 TEU does refer explicitly to the values laid down in art. 2 TEU and to that extent, it may be argued that art. 2 TEU comes within the *lex specialis* of art. 7 TEU and as such, cannot be used to trigger legal actions outside of this framework. In other words, art. 2 TEU cannot be relied upon by the Commission to initiate an infringement action under art. 258 TFEU’. So, as it can be seen, this issue is not undisputed. Kochenov and Pech, 2015, p. 520.

14 De Schutter, 2017, p. 11.

15 Craig and de Búrca, 2011, p. 418.

the Commission's position, they must restore the legal situation. If they fail to fulfil this obligation, they risk a complaint being brought against them to the Court of Justice of the European Union. Although the Commission does not have to use this measure, there is generally no reason to prevent it from being used if considered an appropriate solution to the problem.

It is worth adding that the practice of initiating infringement procedures is permanent and cyclical. Each month, the European Commission announces a package of infringements against specific Member States and thus takes legal action. Experience to date shows that all Member States must take into account several or several dozen such proceedings against them each year.

In the event of a decision to take legal action, the European Commission will only submit a complaint after the deadline set in the reasoned opinion.¹⁶ It does so pursuant to Art. 258 of the Treaty on the Functioning of the European Union, which states that if a Member State does not comply with the opinion within the deadline set by the Commission, it may refer the case to the Court of Justice of the European Union.

In the complaint, the Commission formulates allegations against a given Member State, which usually constitute a repetition of the allegations contained in the reasoned opinion (it is possible to limit the content of these allegations, but they cannot be extended to include allegations that were not considered in the pre-litigation phase). In this way, it determines the scope of the dispute between them, and in effect indicates what specific infringement is to be resolved.¹⁷ As a rule, the Commission has the right to withdraw a submitted complaint if, during the ongoing proceedings, the Member State concerned takes corrective actions and restores the situation in accordance with EU law. However, there is no requirement for the Commission to act automatically in this respect, as it may as well – if it deems it appropriate – maintain the complaint. As the Court's case-law notes,

One reason for allowing the Commission to maintain its action in such circumstances is that the subsequent judgement may be of substantive interest as establishing the basis of a responsibility that a Member State can incur as a result of its default, as regards other Member States, the Community or private parties.¹⁸

During ongoing court proceedings, it is the Commission's responsibility to prove that the infringement has actually taken place (it therefore bears the burden of proof).¹⁹ The Member State against which the complaint has been brought thus maintains a defensive position and its procedural role is only to provide arguments challenging the Commission's claims. If the Court agrees with the Commission's

¹⁶ Taborowski, 2019, p. 220.

¹⁷ Augustyniak, 2014, pp. 753–754.

¹⁸ *Commission v. Italy*, Judgment of 7 February 1973 (EU:C:1973:13), para. 11, Case 39/72.

¹⁹ Radivojević and Raičević, 2017, p. 174 (with the case law cited therein).

position, it will establish an infringement on the date of issuing the reasoned opinion. It is therefore irrelevant if in the meantime the Member State has implemented appropriate measures and eliminated the alleged inconsistency with EU law.²⁰

A judgement of the Court which indicates a breach of obligations under EU law is obviously enforceable. As established case law shows, the starting date in this respect is the day of announcement of the judgement,²¹ and the end date is determined by the so-called reasonable deadline (the deadline is set by the Commission in its reasoned opinion).²²

The issue of the effectiveness of the implementation of the judgement by a Member State is assessed by the Commission, which has the authority to do so as a consequence of the instruments at its disposal. If the Commission considers that a Member State has not taken measures to comply with a judgement of the Court, it may, acting pursuant to Art. 260, Section 2 of the Treaty on the Functioning of the European Union – refer the case to the Court of Justice of the European Union, after having given that country the opportunity to submit its observations. In doing so, the Commission shall indicate the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate under the circumstances.

The Tribunal adjudicating on the case finally issues a decision in which it agrees or disagrees with the Commission's position. If, like the Commission, the Tribunal finds that the national authorities have not complied with the decision, it imposes a lump sum or periodic penalty payment on the Member State; these sanctions may be applied both individually and jointly. The admissibility of this last variant is controversial from the aspect of the literal wording of Art. 260, Section 2 of the Treaty on the Functioning of the European Union, argues the Court itself. In one of the judgements, it indicates that judges have in this respect

(...) a wide scope of discretion in imposing financial sanctions, and the fact that in some cases only one of the penalties was imposed, and in others both penalties were imposed jointly, does not in itself constitute a violation of the principle of equality, because the type of sanctions and their amount depend on the circumstances of a specific case (...).²³

Additionally, the Commission, acting pursuant to Art. 260, Section 3 of the Treaty on the Functioning of the European Union, has the right to bring an action before the Court if it finds that a Member State has failed to fulfil its obligation to notify the measures taken to transpose a directive adopted in accordance with the legislative procedure. In that complaint, the Commission shall indicate if it

20 Taborowski, 2019, p. 221.

21 Kilbey, 2007, p. 743.

22 See Sikora, 2011.

23 Augustyniak, 2020, p. 12.

considers it appropriate, the amount of the lump sum or periodic penalty payment to be paid by the state concerned. The Tribunal deciding the case assesses the validity of the Commission's demands, including the application of the indicated sanctions. If it decides to impose them (it does not have to), it acts within the limits of the amount indicated by the Commission. Moreover, it determines the day when the payment obligation imposed by the judgement becomes effective.²⁴ The literature on the subject notes that in the event of finding only a breach of the obligation to submit an appropriate notification by a Member State, without, however, failing to fulfil the obligation to transpose the directive itself, 'the Court should probably consider only finding a failure without imposing any sanctions on the Member State that fails to meet its obligations'.²⁵

It is also worth emphasising that the sanctions used by the Court of Justice of the European Union: a lump sum and a financial penalty are a form of economic pressure aimed at persuading a given Member State to remedy the identified infringement. Therefore, by definition, they are not intended to compensate for any damage caused by the Member State concerned and, at least formally, they remain devoid of any elements of political assessment.²⁶

The periodic penalty payment, which is an amount charged in principle for each day of delay in implementing a judgement of the Court,²⁷ is calculated by multiplying the base rate expressed for each Member State separately in Euro by the coefficient 'n' and also by the seriousness coefficients (from 1 to 20) and duration (from 1 to 3).

When setting financial penalties, the Court is required to take into account the principle of proportionality. This principle, developed in the case law of the Court, is applied when the circumstances of the case require it. As the Court emphasises,

(...) in order for a financial penalty to be appropriate to the particular circumstances of the case and proportional to the infringement, the amount must take into account the progress made by the defendant Member State in implementing the judgement.²⁸

It also assumes that '(...) the amount of the periodic penalty payment may be reduced by taking into account the gradual implementation of the judgement'.²⁹

A lump sum is a different amount, which is an amount calculated in advance for each Member State individually. The existence of a lump sum means that states cannot pay below this amount, regardless of the gravity of the infringement. As the Commission states in its Communication on this issue, setting a minimum rate in this case allows '(...) to avoid the imposition of purely symbolic penalties that do not

24 Radivojević and Raičević, 2017, pp. 186–188.

25 Wahl and Prete, 2014, p. 186.

26 Compare: Górká, 2006, pp. 61–75.

27 Póthorak, 2012, p. 283.

28 Judgment of the CJEU of 25 November 2003, *Commission of the European Communities v. Kingdom of Spain*, C 278/01.

29 Order of the CJEU of 11 July 2013, *Italian Republic v. European Commission*, C-496/09.

have a deterrent effect, which may lead to undermining the authority of the Court rather than strengthening it'.³⁰ The lump sum is the product of the base amount and the Member State's ability to pay ratio.³¹ The Commission may also request the Court of Justice to impose a lump sum on a daily basis. In such a situation, it proposes

that the Court should fix the amount of the lump sum by multiplying the daily rate by the number of days in which the failure to fulfil obligations was due, starting from the date of delivery of the judgement under Art. 226 until the date on which the deficiency was eliminated, or – if this did not happen – until the date of delivery of the judgement under Art. 228.³²

3. Reasons and Trends of Applying the Infringement Procedure Against the Countries of Central and Eastern Europe

As mentioned earlier, ensuring compliance of the legal orders of the Member States and the European Union remains conditional on the desire to strengthen the European Union as a political and legal organisation. There is no doubt that if Europeans want to tighten the framework of transnational cooperation and express interest in further expanding the ties connecting them, they must strive to ensure that the EU legal space is as tight as possible and that individual countries adapt their actions to the normative rules of the *acquis communautaire*. Activities in this field are certainly a key factor in the integration process and serve to remove existing barriers. The development of the European Union and its gradual transformation into an increasingly homogeneous entity depends on their implementation.

Of course, the process of implementation and proper application of European Union law may encounter – and in practice often encounters – certain difficulties. After all, it is impossible to expect that in the organisation of 27 countries it will proceed uninterrupted and be fully successful in every case. This is all the more justified because Europe has always been characterised by the diversity and strong legal individualism of its Member States. The resulting barriers still, to this day, have a negative impact on the implementation of EU law at the national level.

Problems related to the implementation of EU law naturally also concern the countries of Central and Eastern Europe, which have joined the Union relatively

30 Point 20 of the Commission Communication – Application of Art. 228, SEC/2005/1658/, SEC(2005) 1658.

31 See Świątek and Tkaczyński, 2015, pp. 270–271.

32 Point 21 of the Commission Communication – Application of Art. 228, SEC/2005/1658/, SEC(2005) 1658.

recently. These countries – like all other members – face their own internal difficulties, and at the same time, when pursuing specific policies, they often prioritise and serve their own interests. Therefore, resistance may sometimes arise in their actions when it comes to introducing specific solutions and, consequently, problems with adapting their own legislation to that of the European Union.

When talking about the countries of Central and Eastern Europe in the context of ensuring compliance of the law of Member States with EU law, we cannot forget about the long path these countries have taken after the fall of communism to join the European Union. Aspiring to be part of this organisation, they undertook a huge effort in the 1990s to transform their own legal order and reorient it towards modern free market democracies. This process took place in close cooperation with European Union institutions and was carried out with the systemic and permanent involvement of both parties. It resulted in profound transformations, which meant the rejection of outdated solutions of the socialist period and the adoption of regulations consistent with EU law. Of course, in each case it was individual and its goal was to properly shape the legislation of specific countries. However, it cannot be ignored that due to the common historical heritage, including the most recent experiences of the region in this part of Europe, it largely encountered the same problems and faced similar obstacles. This inevitably facilitated actions taken by EU institutions and national authorities.

As is known, the accession negotiations of the indicated countries were in all cases a complete success. The degree to which national legislation was compatible with EU law was praised, stating that candidates from Central and Eastern Europe were up to the challenge. There were differences in this respect, but they were not significant enough to affect the ability of countries with the lowest level of implementation to obtain membership. Peter Hill and Christopher Knill wrote eloquently about this recently, emphasising that

Those countries that had applied for membership of the European Union (EU) during the 1990s have undergone transformation of unprecedented scope and speed in order to bring their economic and political structures in line with EU standards. This implied far-reaching reforms of legislation, administration and macroeconomic policies. Most scholars agree that this process has been driven by the conditionality of EU membership and its prospective gains for the candidate countries. However, the candidate countries have not carried out reforms at a steady pace and with equal success. Both between countries and across time, variation has occurred in the implementation of the *acquis communautaire*.³³

Fulfilment of the obligations to harmonise national orders with European law, which resulted in gaining membership in the Union in 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia) and 2007 (Bulgaria,

33 Hill and Knill, 2006, p. 532.

Romania), respectively. (Bulgaria, Romania), opened a new phase in the operation of freshly acceded Member States and thus brought new challenges in terms of the need to seek compliance of the national law with the European Union law. From that moment on, these states – like the other countries of the so-called ‘Old Fifteen’ – took on the permanent burden of shaping the legal system already as part of the community. This entailed staying active in several areas. They included specifically: adapting their legislation to European law in the areas covered by the transition periods, introducing, on an ongoing basis, solutions appearing in the EU legal system and requiring implementation, developing further national orders towards their alignment with the requirements and standards flowing from EU law, exercising caution in the process of drafting their own regulations so as not to violate Community rules, implementing the rulings of the Court of Justice of the European Union forcing changes in national legislation, and finally refraining at the level of institutional actions from manifestations of law application in a manner in conflict with EU law.

Naturally, the steps taken in this regard have not been without problems or difficulties. Although, for the most part, they showed goodwill on the part of the states in question and evidenced a commitment to the legal integration process of the Union, some of them were judged by the EU institutions to be incompatible with European law and consequently subjected to infringement procedures. This was already evident in the period immediately following accession. As Lora Borissova notes, the infringement procedure was of crucial importance to the new Member States, and also

(...) of high relevance to the candidate countries that have applied for accession to the EU. On the one hand, they have to adopt the whole *acquis* upon accession with only few transitional periods granted in a limited number of areas. New Member States have already submitted a large number of transposition notifications to the Commission. On the other hand and despite their huge efforts, new Member States experience considerable difficulties in implementing directives and other EC legislative instruments. The process of implementation is a challenging stumbling block for all new Member States.³⁴

The situation did not change either in the next course of European integration, i.e. already after the adoption of the Lisbon Treaty. Problems related to failure to comply with the European law continued to arise, in more than one case triggering an infringement procedure. The predominant cases were – as before – those determined by difficulties in implementing directives, although these were compounded – and this was undoubtedly a novelty – by cases based on axiological, social, cultural and constitutional differences (i.e. those dividing the liberal West from the conservative East). The latter were generally the result of tensions between the European

34 Borissova, 2007, p. 5.

Commission and individual Member States and involved the deliberate pursuit by national authorities of their own policies. They often resulted from the pursuit of their own interests and at the same time to defend their own point of view in certain issues. This was clear evidence that efforts to ensure the compatibility of national law with European Union law did not necessarily have to take place in an atmosphere of consensus; on the contrary, they can give rise to numerous and serious animosities in relations between Member States and the European Union.

We could see it clearly in some of the cases to which Hungary, Poland, the Czech Republic and Slovakia were parties. These countries, in the context of numerous infringement proceedings initiated against them (sometimes against several of them simultaneously in the same cases), clearly resisted the Commission's requests, evading the obligation to adapt their legislation or the practice of their public institutions to the recommendations proposed by the Commission, or, alternatively, fulfilling this obligation with great reluctance. Their attitude resulted in the Commission's actions ending with different results and at different stages of the infringement procedure.

In the case of Hungary, for example, there have been very high-profile situations where this procedure was triggered in the context of accusations by the European Commission of violating the rule of law and the rights of sexual minorities,³⁵ restriction of media freedom,³⁶ undermining the independence of the Hungarian

35 For example in 2021 the Commission opened infringement procedure against Hungary concerning the adopted law, which in particular prohibits or limits access to content that promotes or portrays the so-called 'divergence from self-identity corresponding to sex at birth, sex change or homosexuality' for individuals under 18; and a disclaimer imposed on a children's book with LGBTIQ content. As stated in the Commission Press Release on this matter: 'On 23 June 2021, Hungary published a law that lays down a number of restrictive and discriminatory measures; in particular, it prohibits or limits access to content that propagates or portrays the so-called 'divergence from self-identity corresponding to sex at birth, sex change or homosexuality' for individuals under 18. The protection of minor is a legitimate public interest which the EU shares and pursues. However, in this case Hungary has failed to explain why the exposure of children to LGBTIQ content as such would be detrimental to their well-being or not in line with the best interests of the child'; see European Commission, 2021.

36 For example in 2021 the Commission launched an infringement procedure against Hungary, following the Hungarian Media Council's decisions to reject Klubradio's application on the use of radio spectrum on highly questionable grounds. In this case the Commission took the position '(...) that the decisions of the Hungarian Media Council to refuse renewal of Klubradio's rights were disproportionate and non-transparent and thus in breach of EU law'. The Commission also considered '(...) that the Hungarian national media law has been applied in a discriminatory way in this particular case'; see European Commission, 2022.

judiciary,³⁷ violation of the principles of European migration law³⁸ or limiting the principle of democracy and the electoral rights of EU citizens (such as the right to respect for private and family life, the right to protection of personal data, the freedom of expression and information, the freedom of association, the electoral rights of EU citizens, the right to an effective remedy and to a fair trial).³⁹ In the case of Poland, such situations mainly included disputes with the European Commission relating to the reform of the justice system, in which a key allegation was made of violating the

- 37 For example in 2012 the Commission opened an infringement procedure against Hungary regarding the constitutional reform in the context of the problem of judiciary independence. This is what the Commission's official statement on this matter says: 'Hungary has failed to provide an objective justification for reducing the mandatory retirement age for judges, prosecutors and public notaries from 70 years to 62 years within a time span of only one year. EU rules on equal treatment in employment (Directive 2000/78/EC) prohibit discrimination at the workplace on grounds of age, which also covers a reduction of the retirement for one profession without an objective justification. Following the Commission's letter of formal notice of 17 January, Hungary only proposed a clause that would allow to extend in individual cases the retirement age of a judge beyond 62 if the judge passes a review by the National Judicial Council of his 'professional and medical aptitude' and within the limit of a pre-determined annual quota. This proposal does not comply with EU law because such extensions may be arbitrary, apply only in individual cases and they do not address the Commission's main concern: the transitional periods must be sufficiently long to protect the judges' legitimate expectations and avoid the contradictory effect of a sudden drop (in 2012) and then a slow rise (as from 2014) of the mandatory retirement age'; see European Commission, 2012.
- 38 In 2015 the Commission opened an infringement procedure against Hungary concerning its asylum law, to be exact – the adopted Hungarian asylum legislation. The Commission assessed the Hungarian legislation in some instances as incompatible with EU law (specifically, the recast Asylum Procedures Directive (Directive 2013/32/EU) and the Directive on the right to interpretation and translation in criminal proceedings (Directive 2010/64/EU)); see European Commission, 2015. In 2017 the Commission launched an infringement procedure against Hungary (as well as against Poland and the Czech Republic) for non-compliance with their legal obligations on relocation. The allegations raised concerned violations of two Council Decisions in September 2015 (Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601), in which Member States committed to relocate persons in need of international protection from Italy and Greece. This concerned specifically the temporary emergency relocation legislation established in two Council Decisions in September 2015 (Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601), in which Member States committed to relocate persons in need of international protection from Italy and Greece. The reason for initiating the procedure was that 'Despite the confirmation by the Court of Justice of the EU of the validity of the relocation scheme in its ruling of 6 September, the Czech Republic, Hungary and Poland remain in breach of their legal obligations. The replies received were again found unsatisfactory and three countries have given no indication that they will contribute to the implementation of the relocation decision'.
- 39 For example in 2024 the Commission started an infringement procedure after determining that the Hungarian, newly established legislation – Defence of National Sovereignty, which was adopted by the Hungarian Parliament on 12 December 2023 and has been in force since 22 December 2023, violated 'several provisions of primary and secondary EU law, among others the democratic values of the Union; the principle of democracy and the electoral rights of EU citizens; several fundamental rights enshrined in the EU Charter of Fundamental Rights, such as the right to respect for private and family life, the right to protection of personal data, the freedom of expression and information, the freedom of association, the electoral rights of EU citizens, the right to an effective remedy and to a fair trial, the privilege against self-incrimination and the legal professional privilege'; see European Commission, 2024.

principle of independence of the judiciary,⁴⁰ although there were also high-profile cases of discrimination against sexual minorities⁴¹ and migration law.⁴² Finally, in the case of the Czech Republic and Slovakia, cases of violation of the rights of national

40 For example in 2019 the Commission launched an infringement procedure against Poland regarding the new law on the judiciary of 20 December 2019, which entered into force on 14 February 2020; As highlighted in the Commission press release: ‘The new law on the judiciary undermines the judicial independence of Polish judges and is incompatible with the primacy of EU law. Moreover, the new law prevents Polish courts from directly applying certain provisions of EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the Court of Justice. After carrying out an analysis of the legislation concerned, the Commission concluded that several elements of the new law violate EU law’; see European Commission, 2020; Also in 2019 the European Commission launched an infringement procedure regarding the new disciplinary regime for judges. As it was emphasised in the press release: ‘The Commission considers that Poland failed to fulfil its obligations under art. 267 of the Treaty on the Functioning of the European Union (TFEU), which enshrines the right of courts to request preliminary rulings from the European Court of Justice. As developments in Poland show, the new disciplinary regime allows for judges to be subject to disciplinary proceedings for the content of their judicial decisions. This includes decisions to refer questions to the Court of Justice. As judges are not shielded from being exposed to disciplinary sanctions for exercising this right enshrined in art. 267 TFEU, the new regime creates a chilling effect for making use of this mechanism. The functioning of the preliminary reference mechanism – which is the backbone of the Union’s legal order – requires national courts to be free to refer to the European Court of Justice any question for a preliminary ruling that they consider necessary, at whatever stage of the proceedings’; see European Commission, 2019.

41 In 2019 the Commission launched an infringement procedure against Poland regarding LGBT discrimination as ‘(...) the Polish authorities failed to fully and appropriately respond to its inquiry regarding the nature and impact of the so-called ‘LGBT-ideology free zones’ resolutions adopted by several Polish regions and municipalities’. The Commission adopted in this regard that ‘(...) several Polish municipalities and regions adopted resolutions on the creation of so-called ‘LGBT-ideology free zones’. The Commission is concerned that these declarations may violate EU law regarding non-discrimination on the grounds of sexual orientation. It is therefore necessary to carry out a detailed analysis of the compatibility of the resolutions with EU law. In order to complete this assessment, the Commission needs adequate and comprehensive information from the Polish authorities’; see European Commission, 2021.

42 Similarly to the infringement procedure initiated against Hungary in 2017.

minorities, specifically the Roma minority,⁴³ have become known – covered by the infringement procedure.

In the case of Hungary and Poland, particular emphasis should be placed on the significant evolution that has taken place in the European Commission's use of infringement proceedings in cases concerning judicial reforms carried out in these countries. While initially, in the context of the first disputes with Hungary, the actions taken in this regard were '(...) based on a narrow understanding of the procedure of Art. 258 TFEU, which the Commission considered, could only be used to tackle national measures falling squarely within the scope of EU law', in other words '(...) the official reaction of the Commission at the time was to see the Hungarian problem merely as an issue about the correct application of EU law',⁴⁴ but later, when similar Polish cases appeared alongside the Hungarian ones, these actions took on a different character, i.e. they moved towards a 'values-protection' strategy, which consisted in the fact that '(...) the Commission has started using much more 'direct' infringement actions, based explicitly on Art. 19 TEU, which protects the independence of the judiciary, or on the Charter of Fundamental Rights'.⁴⁵ This decision proved to be beneficial from the Commission's point of view, bringing the expected results, i.e. forcing the countries in question to make certain concessions.

When mentioning the above cases, it is worth being mindful of the fact that resorting to the infringement procedure in these types of disputes has had and still has rather negative consequences. There is no doubt that in the eyes of many inhabitants

43 For example in 2014 the European Commission launched infringement proceedings against the Czech Republic and in 2015 against Slovakia, as the authorities of these countries did not – according to the Commission – fulfil their obligations to provide all children with equal access to education. These governments were specifically accused of actions that caused Roma children to be overrepresented in separate classes or schools for pupils with mental/physical impairments or severe developmental or behavioural disorders). In one of the studies on this matter we read: 'The European Commission has expressed its resentment that almost seven years after the landmark decision of *D.H. and Others v. Czech Republic*, the Czech Republic continues to be in breach with the EU anti-discrimination law and still maintains the socially and politically embedded structures of discrimination against Romani children. De facto there are no effective tools and mechanisms of implementation and enforcement introduced to tackle the forms of discrimination in education at state level. In February 2015, in response to the above, the parliament amended the Schools Act and announced, as a new Action Plan, a set of tools and measures to further the issue of integrated education and to provide equal access to quality education for Romani children. The implementation of the reform package – which involves the following measures: 'strengthened monitoring of the work of the psychological assessment centres by the Czech School Inspectorate; the introduction of mandatory attendance of the last grade of kindergarten; and the abolition of the educational programme for pupils with mild mental disabilities with a view to their being integrated into mainstream education' – will come into force in September 2016'; Brassói, 2016.

44 Bonelli, 2022, p. 31.

45 Bonelli, 2022, p. 33.

of Central and Eastern Europe, accustomed to their own legal and political traditions, this procedure may appear as an instrument not only for eliminating violations of the law and guaranteeing its uniform application throughout the Union, but also providing the possibility of excessive interfering with the sovereignty of individual Member States and, as a result, leading to an imbalance between what results from treaty obligations and what constitutes the inviolable sphere of a given state's internal affairs. This applies especially to cases where the indicated procedure is used to enforce compliance with EU law regulations that are described in an imprecise manner or refer only to axiology. It is in these situations that conflicts most often arise, causing strong resistance on the part of the Member States, and it is in them that they become the greatest source of controversy regarding the permissible limits of the European Union's encroachment on the area of state sovereignty. It is obvious that where there are possibilities of a very flexible interpretation of the content of the law and at the same time the preferred EU values conflict with national values, there may be differences of opinion and, as a result, insubordination of the Member State. Such a probability increases especially when the European Commission conducting the infringement procedure, reaching for controversial legal bases and losing sight of the local specificity of a given Member State, enters into a confrontation with governments far from its political line. Consequently, the said insubordination becomes a completely real scenario.

The indicated method of using the infringement procedure, which involves putting Member States under pressure and imposing a specific agenda on them, may paradoxically lead to effects different than those intended. Contrary to the intentions of the Commission, which seeks to strengthen the Community both politically and legally, it may cause dysfunctions in the functioning of the Union and even trigger disintegration tendencies within it. The greatest threat in this respect concerns – obviously – the relations between the Member States of Western Europe and the Member States of Central and Eastern Europe. The risk of conflicts and frictions between both groups of countries is undoubtedly the highest – due to the differences between them.

4. Infringement Proceedings Against Central and Eastern States – Topics and Numbers

The procedures initiated against the member states of Central and Eastern Europe over the last twenty years concerned various violations and covered several thematic areas. On average, each year each country had to deal with a dozen or several dozen proceedings, which – depending on the attitude of the national authorities and their assessment by the European Commission – were finalised with appropriate decisions at individual stages. A full picture of the activities undertaken in this area in each

country is presented by the figures below. They cover the period between 2004–2024 (in the case of Bulgaria and Romania – 2007–2024, and in the case of Croatia – 2013–2024) and are the result of the application of the following criteria: (1) type of infringement: bad application of directives, bad application of regulations, Treaties and decisions, non-communication of transposition measures for directives, non-conformity of transposition for directives, (2) policy area: agriculture and rural development, budget, climate action, communication, communications networks, content and technology, competition, defence industry and space, digital services, economic and financial affairs, education, youth, sport and culture, employment, social affairs and inclusion, energy, environment, Eurostat, financial stability, financial services and capital markets union, health and food safety, human resources and security, internal market, industry, entrepreneurship and SMEs, justice and consumers, legal service, maritime affairs and fisheries, migration and home affairs, mobility and transport, neighbourhood and enlargement negotiations, regional and urban policy, Secretariat-General, structural reform support, taxation and customs union, trade, (3) decision type: letter of formal notice, additional letter of formal notice, reasoned opinion, additional reasoned opinion, referral to Court, (4) financial sanctions.

4.1. Type of Infringement

Country	Bad application of directives	Bad application of regulations, Treaties and decisions	Non-communication of transposition measures for directives	Non-conformity of transposition for directives
Czechia	121	171	1457	220
Estonia	53	83	919	176
Hungary	200	196	1177	226
Latvia	108	94	961	173
Lithuania	89	90	687	141
Poland	268	253	1324	322
Slovakia	139	176	876	197
Slovenia	154	114	1221	163
Bulgaria	199	140	926	175
Romania	196	157	1267	141
Croatia	62	59	361	92

Table No. 1 (own study)

4.2. Policy Area

Country	Agriculture and Rural Development	Budget	Climate Action	Communication	Communications Networks, Content and Technology	Competition	Defence Industry and Space	Digital Services	Economic and Financial Affairs	Education, Youth, Sport and Culture	Employment, Social Affairs and Inclusion	Energy	Environment	Eurostat	Financial Stability, Financial Services and Capital Markets Union
Czechia	15	0	14	0	65	16	7	0	2	0	70	114	322	0	77
Estonia	2	0	15	0	51	6	2	0	2	0	33	83	232	1	70
Hungary	13	0	19	0	59	7	3	0	2	0	41	107	257	2	48
Latvia	9	0	14	0	72	8	2	0	0	0	26	97	170	0	89
Lithuania	0	0	9	0	54	2	0	0	2	0	25	90	144	0	66
Poland	2	2	36	0	110	10	6	0	2	4	32	147	330	0	100
Slovakia	4	2	20	0	65	13	6	0	3	2	40	95	253	3	51
Slovenia	6	0	15	0	58	8	4	0	10	0	38	98	305	2	97
Bulgaria	9	0	24	0	69	9	2	0	4	0	22	97	261	0	96
Romania	11	2	30	0	72	4	0	0	0	0	42	120	411	0	112
Croatia	0	0	7	0	32	3	0	0	5	0	18	60	109	0	67

Table No. 2–1 (own study)

Country	Health and Food Safety	Human Resources and Security	Internal Market, Industry, Entrepreneurship and SMEs	Justice and Consumers	Legal Service	Maritime Affairs and Fisheries	Migration and Home Affairs	Mobility and Transport	Neighbourhood and Enlargement Negotiations	Regional and Urban Policy	Secretariat-General	Structural Reform Support	Taxation and Customs Union	Trade
Czechia	342	0	367	120	0	0	84	255	0	0	0	0	99	0
Estonia	149	0	225	65	0	0	74	159	0	0	0	0	62	0
Hungary	330	0	337	75	1	0	101	259	0	0	0	0	133	5
Latvia	186	0	288	65	0	2	67	149	0	0	0	0	89	2
Lithuania	59	0	204	64	0	2	75	168	0	0	0	0	39	4
Poland	262	0	419	131	1	4	99	313	0	0	0	0	157	0
Slovakia	141	0	256	90	0	2	64	237	0	0	0	0	40	0
Slovenia	174	0	339	91	0	5	98	227	0	0	0	0	75	1
Bulgaria	120	0	187	99	0	10	104	234	0	0	0	0	87	6
Romania	189	1	299	91	3	10	85	178	0	0	0	0	97	4
Croatia	26	0	46	47	0	8	36	91	0	0	0	0	19	0

Table No. 2–2 (own study)

4.3. Decision Type

Country	Letter of formal notice	Additional letter of formal notice	Reasoned opinion	Additional reasoned opinion	Referral to Court	Referral to Court (non-communication)	Letter of formal notice post-ruling	Additional letter of formal notice post-ruling	Second referral to Court	Postponement of Court referral	Restart of Court referral	Modified financial sanctions	Interim measures requested to the Court	Partial withdrawal from Court	Closure	Reasoned opinion inter-state complaint
Czechia	768	21	245	14	48	4	4	0	1	1	0	0	0	0	863	0
Estonia	497	7	160	5	29	4	0	0	0	0	0	0	0	0	529	0
Hungary	781	18	193	10	37	4	9	0	1	1	0	1	0	0	743	1
Latvia	540	20	149	3	9	4	0	0	0	0	0	1	0	0	610	0
Lithuania	446	12	104	4	7	1	1	0	0	0	0	0	0	0	432	0
Poland	826	26	358	21	103	26	12	1	0	2	0	1	0	1	789	1
Slovakia	561	20	160	8	30	4	1	0	1	2	0	0	0	0	601	0
Slovenia	685	18	210	9	20	13	3	0	2	0	0	0	0	0	692	0
Bulgaria	638	23	170	9	23	14	2	0	1	0	0	1	0	0	559	0
Romania	781	29	181	9	15	10	2	0	1	1	0	1	0	0	731	0
Croatia	257	6	79	2	6	7	1	0	1	2	0	0	0	0	213	0

Table No. 3 (own study)

4.4. Financial Sanctions

Country	Financial sanctions
Czechia	1
Estonia	0
Hungary	1
Latvia	1
Lithuania	0
Poland	2
Slovakia	1
Slovenia	3
Bulgaria	0
Romania	2
Croatia	0

Table No. 4 (own study)

5. Conclusions

The infringement procedure has been widely used in the countries of the Eastern and Central European region that joined the European Union in 2004, 2007 and 2013. The scope of its use has covered various cases and various violations of law observed by the bodies of the European Union. In the period immediately after accession, the subject of such proceedings were primarily difficulties in implementing directives and other EC legislative instruments. In the period following the entry into force of the Lisbon Treaty, the number of proceedings based on axiological, social, cultural and constitutional differences (i.e. those dividing the liberal West from the conservative East) has increased. In some cases, the application of the infringement procedure has caused tensions in relations between the European Union and nation-states. This was a clear signal that this procedure, although in principle aimed at ensuring the desired compatibility of EU and national law, may sometimes have negative effects.

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