



LETTER TO THE EDITOR

Though in need of reform, the watchdog is still watching

The Commission remains guardian of the treaties, but oversight rules must be reconsidered.



Has the European Commission really loosened its approach to controlling member countries' compliance with EU law? | Emmanuel Dunand/AFP via Getty Images

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In "[The curious case of the EU's disappearing infringements](#)" (January 13), R. Daniel Kelemen and Tommaso Pavone brilliantly shed light on a crucial and under-debated part of

the European Union's regulatory machinery. But has the European Commission really loosened its approach to controlling member countries' compliance with EU law? Their premise warrants a closer look.

While it is true that EU infringement proceedings have been less frequent in recent decades, the numbers do not tell the full story. The Commission also has "soft" ways of exercising its role as "guardian of the treaties."

Let's take the case of Italy, for example. There, a complex mixture of requests for information, informal inspections, package meetings and administrative letters (not really of a Valentine's variety) allow the Commission to take the pulse of national compliance with EU law on a daily basis. This underground flow of diplomatic and/or administrative relations — which takes place in different ways in other member countries as well — may look opaque and questionable, but it is far from ineffective. But effective and constant though it may be, it eludes any official statistics.

What's more, the claim that the European Commission has relaxed its use of formal infringement procedures is not entirely true, especially since President Ursula von der Leyen took office. Even during the first COVID-19 lockdown in Italy, the Commission paused only briefly before taking action to initiate infringement procedures. Taking a somewhat severe posture, it particularly focused on the protection of citizens' rights in times of pandemic disease.

For the sake of clarity, thorough and accurate enforcement has been an essential part of the development of European integration over the years, and so it should remain. And to this end, the authors suggest insulating the enforcement function of the Commission from its policymaking role.

The idea is intriguing and well established in the academic and political debate. Yet, its implementation looks highly problematic, requiring the revision of the existing treaties.

It is not unreasonable to assume that the Commission would accept this loss of technical function only together with a proportional enhancement of its political role. And it is not likely that many member countries would accept this idea.

In light of this, it is our view that a complete discussion on the infringement procedure must also address other and more challenging issues.

Foremost among these is the Commission's excessive discretion in the management of infringement proceedings. The Commission has no obligation whatsoever to open, continue or close a proceeding. The purpose of this is to shield the Commission from for

with member countries but it also runs the risk of seriously compromising its efficiency and acceptance by society.

Another danger is that each procedure has the potential to last for an indefinite time period and, what's worse, outlast long periods without any activity from either party. The length of proceedings has a clear practical impact on pecuniary sanctions as well, which are often imposed long after the first calling.

In one case concerning waste management in Campania, for example, Italy was handed a pecuniary sanction eight years after proceedings were opened, and at least a decade after the events that caused the violation. It has now been paying the same fine for seven years, despite significant progress being made to address the situation. To what extent will a penalty of this kind be perceived as legitimate by a government and a population that are working hard to tackle the issue?

Finally, there is also the case of proceedings not always being closed as soon as the violation is over. This happens when the Commission fears that similar infringements may arise again or when it waits for all the members under investigation to become simultaneously compliant. But if the opening of an infringement proceeding is perceived as shaming, then the member country should have the right to have this dishonor lifted as soon as the violation is over.

We believe that a credible reform to enhance the infringement procedure in the short term is possible. To start with, attention should be drawn to the discretionary powers of the Commission and the length of proceedings, as addressing these issues would not even require a treaty amendment. And doing so would undoubtedly strengthen the system of EU law enforcement.

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