

NO. 1 BESTSELLING REVISION SERIES

# EU LAW

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### Answer guidelines

#### Approaching the question

This question asks about the ‘institutional balance’ within the EU, and the quote refers to a system of checks and balances operating between these institutions.

This is intended to allow you to analyse the relationship between the institutions and the way in which they are able to monitor or supervise each other. You should bear in mind all the discussion about the powers of the institutions, where they have the ability to monitor each other, and how problems may be dealt with. This is as much about the overall context and system that these institutions operate in, and it is important not to get bogged down in just relaying a list of facts about each institution in turn.

Significantly, the question includes a quote from 2002, and asks you to consider the extent to which the institutional balance may have changed. This therefore requires you to consider the development of the EU through the Lisbon Treaty.

#### Important points to include

To answer this question, you need to consider the following:

- Basic make-up of the institutions mentioned in the question, and who they represent.
- Powers of those institutions, and how they are able to use them in a supervisory capacity, including:
  - (a) European Parliament’s power of censure over the Commission;
  - (b) Requirement for the Council and Commission to report to the Parliament;
  - (c) Power of appointment of the Commission of the Council, and the power of approval of those appointments by the Parliament;
  - (d) Standing of the institutions to take action under judicial review against any of the other institutions;
  - (e) Effect of the recognition of the European Council as an EU institution in the Lisbon Treaty; and
  - (f) An analysis of how this impacts upon the operation of the EU institutions, especially with regard to how this may influence their decision-making.
- You should also take into account the effect that the new office of President of the European Council, along with the new treaty recognition of the European Council, might have upon your answer to this question. Has the balance shifted away from any of the other institutions?

### Impress your examiner

This question will require a certain amount of recall of information about the powers and duties of the institutions, but, in order to make your answer rise above one which merely repeats this information, you need to think about how what you

know about the institutions allows you to analyse the relationship between them. Therefore, you need to think about how the elements of supervision between the institutions might lead to an overall 'balance' between them, and how the power to make legislation is shared amongst them.

## Key further reading

Key articles/reports	How to use	Related topics
Dashwood, A. and Johnson, A. (2004) The institutions of the enlarged EU under the regime of the constitutional treaty. <i>Common Market Law Review</i> , 41(6): 1481.	To examine the changes to the institutions brought about recently	Relationship between the EU and the Member States
Lang, J.T. (2006) Checks and balances in the European Union: the institutional structure and the 'Community Method'. <i>European Public Law</i> , 12(1): 127.	To evaluate the checks and balances system in the EU between the institutions	Accountability of the institutions Judicial Review
Peterson, J. and Bomberg, E. (1999) <i>Decision-Making in the European Union</i> . New York: Palgrave Macmillan.	To evaluate the system of decision-making between the institutions	Judicial Review
Puetter, U. (2014) <i>The European Council and the Council: New Intergovernmentalism and Institutional Change</i> . Oxford: Oxford University Press.	To evaluate the way in which institutional reform has happened over time in the EU	Intergovernmentalism and supranationalism in the EU

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## Articles 258–260 TFEU

### Enforcement actions against Member States

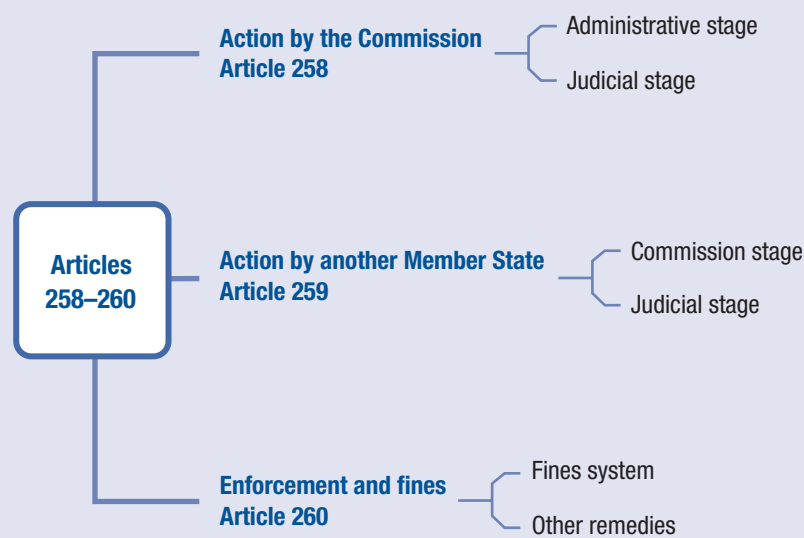
#### Revision checklist

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Essential points you should know:

- The purpose of enforcement actions against Member States, and their importance in ensuring the efficient functioning of the EU
  - The substance and procedure of actions to be taken under Articles 258 and 259 TFEU
  - The exercise of discretion by the Commission regarding Article 258 TFEU
  - Circumstances where Member States pursue an action under Article 259 TFEU
  - The importance of the penalties available under Article 260 TFEU
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# Topic map



# Introduction

**An important part of the functioning of the EU is the enforceability of its laws.**

Previously (in Chapter 2) we examined the Institutions' involvement in making law and (in Chapter 1) the EU's status in the legal systems of its Member States. However, at some point, whether it be deliberate or accidental, Member States run into problems of non-compatibility or conflict with EU law. We have seen a bit of the issue this creates (in Chapter 1) from the perspective of what happens at national level, regarding the enforceability of EU law by citizens and the need for direct effect, but there are also consequences at EU level.

In such situations, there are mechanisms involving the European Commission and the Member States, which ensure that the conflict is resolved in the interests of the European Single Market and integration. There is a fairly straightforward procedure for dealing with infringements; this chapter reviews the procedure for bringing enforcement proceedings and the principles that such an action must abide by and discusses the reasons behind the procedure and its use. The procedure itself is fairly mechanistic, but the important thing to remember is what the procedure is trying to achieve. The focus here is more upon resolving problems and ensuring compliance than it is on punishing Member States that have failed in their obligations under EU law.

This procedure is one of the key aspects of the EU that makes it different from other international organisations, because it means that there is robust enforcement of the law. This can be a tricky issue when dealing with States that have signed up to international obligations: they do not always stick to them! However, the mechanism described here is important for the continued existence of the rules governing the EU's Single Market.

## Assessment advice

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### Essay questions

This area is rather descriptive – there is a procedure for enforcing law against the Member States – and it has not tended to be an area which is as appropriate for essay questions as it is for problem questions. However, where there are essays, they may cover areas of the procedure such as, for example, the Commission's exercise of its discretion in using Article 258, or the effectiveness of the fines system in Article 260. These types of questions do not merely require you to regurgitate information in the exam, but rather require you to think critically about the procedure and its operation.

## Problem questions

This area of law is one which can be combined with others in such a question, mainly because the problem itself could cover a substantive area of EU law, like free movement of goods or workers, but because of the nature of the problem (if it is caused by a Member State) then Articles 258–260 may help you to explain how it may be practically resolved. Therefore, it would not be unusual for a question to have elements of this area as part of its solution, even though it does not appear to cover this topic.

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## Purpose of Articles 258–260 TFEU

The procedure in Articles 258–260 TFEU is there to ensure that where Member States are not complying with EU law, there is an effective system of ensuring that they do comply. This has three elements to it:

- Responsibility and powers as ‘watchdog’ given to the EU Commission.
- Power given to all Member States to take action where they see it is appropriate.
- System of fines to back up the system where necessary.

The way in which this system is put into practice is through a two-stage process:

- Action taken by, or in front of, the Commission.
- Cases taken to the CJEU either by the Commission or by another Member State.

One other way in which Member States can be liable for their failure to enact EU laws in their own systems is through the doctrine of direct effect and also through the principle of State liability for non-implementation (discussed in Chapter 1). These actions are different from Articles 258–260 actions, because they can be pursued by individuals, and Articles 258–260 cannot. The emphasis is also different as direct effect is about giving effect to the law despite the actions of the Member State and, through the use of State liability for non-implementation, individuals can be compensated for damage which comes directly from the State’s failure. Articles 258–260 are about pursuit of Member States for non-compliance (and where necessary punishment of the Member State) to ensure that it rectifies the problem, rather than compensation for individuals. They are two different ways in which action against Member States can be taken where they are not complying with EU law – the procedures under Articles 258–260 are similar, but one action is taken by the Commission, the other by another Member State.