12-1-1988

Member State Implementation of European Economic Community Legislation and Judgments

Ellen F. McCauley

Follow this and additional works at: http://lawdigitalcommons.bc.edu/iclr

Part of the Legislation Commons

Recommended Citation

This Notes is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College International and Comparative Law Review by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact nick.szydlowski@bc.edu.
Member State Implementation of European Economic Community Legislation and Judgments

I. INTRODUCTION

The European Economic Community (EEC) was established March 25, 1957 under the Treaty of Rome to encourage trade and economic development among the member states of the Community. ¹ The Treaty outlined the general principles of operation of the Community and provided an organization and framework for it, including a legislative body and a court to interpret rules and resolve disputes.²

It should be noted that although certain EEC regulations and decisions became immediately effective throughout the Community, many require implementation by the member states. This Note will consider the circumstances under which member states must implement specific types of EEC actions.

After defining EEC regulations, directives, and decisions, the Note will examine such areas as time limitations for the implementation of EEC actions, the defense by member states that their failure to implement EEC actions results from internal difficulties, the effect of the implementation of requirements that are more stringent than those mandated by the EEC, and actions that the EEC can take to ensure implementation of its decisions.

The Note will conclude that the EEC does not require member states to implement all EEC actions, since constitutions and legislation of the states may already contain principles of EEC law sufficiently specific to make superfluous additional legislation. When implementation is required, however, such implementation must be timely and cannot be stricter than what EEC law requires. Internal difficulties of member states in meeting EEC requirements are not a defense for failure to implement, and the EEC can, after a reasonable time period, enforce implementation by bringing suit against member states.

² See generally EEC Treaty, supra note 1.
II. GENERAL REQUIREMENTS

Certain Community laws take direct effect. Such laws are capable of granting rights to individuals in member states. Moreover, the national courts of the member states must uphold such laws.3

The Court of Justice of the European Communities has developed a standard to use in determining if a Community law must be given direct effect. According to the standard, the law must be unambiguous, unconditional, and must operate independently of additional action by EEC or national authorities.4 Consequently, if the provision merely sets forth a general objective, it is ambiguous and a court of law cannot regard it as a legal rule.5 Unconditionality, according to the European Court’s definition, means being independent of a judgment or discretionary action within the control of a national authority.6 The European Court has modified this principle of independence by stating that the provision will take direct effect even if the member state has not implemented it through its own legislation by the time limit set by Community law.7 Further legislative implementation by a member state is necessary for those EEC provisions that do not meet the requirements for direct effectiveness.8

III. EEC REGULATIONS, DIRECTIVES, AND EUROPEAN COURT DECISIONS

The EEC Treaty does not state that provisions of the Treaty are directly effective.9 The authors of the Treaty may have assumed that national courts

---

3 T. Hartley, The Foundations of European Community Law 185 (1981). The most common practice is one in which a private individual in a member state invokes Community law against a public authority in that state, ordinarily the central government. Occasionally, however, a private individual invokes Community law against another individual, or the state enforces Community law against a private individual. Id.


5 Id.


7 Id. Mr. Hartley states, for example,

If the Community provision states that the rights it grants will come into effect when further action of a legislative or executive nature has been taken by the Community or the Member States, it would seem reasonable to hold that it cannot have direct effect until that action is taken. In accordance with its general policy, however, the European Court has sought to whittle this requirement down to its very minimum. It has done this by laying down a rule that if the Community provision gives a time-limit for its implementation, it can become directly effective if it is not implemented by the deadline. . . .

In practice, this modification of the original rule to a large extent nullifies it, since almost all Community provisions requiring further action contain a time-limit. In such cases, the only consequence of the requirement is that direct effect is postponed until the deadline has passed.


9 T. Hartley, supra note 3, at 197.
would decide such issues according to national laws. Article 189 of the EEC Treaty describes the following types of legally significant actions: EEC regulations, EEC directives, and EEC decisions.

A. EEC Regulations

EEC regulations set forth general rules that are binding at the EEC and national levels. Article 189 of the EEC Treaty states that an EEC regulation is directly applicable in all the member states. The European Court interprets "directly applicable" to mean that the promulgation of an EEC regulation results in the incorporation of such a regulation into the legal system of each member state. As a result of the direct applicability of EEC regulations, the effectiveness of such regulations does not depend on implementation by member states. The court ensures that EEC regulations apply as provisions of EEC law, instead of provisions of national law, by making it improper for member states to take action to implement the EEC provision. This ruling, however, has been subject to various exceptions. For example, where the terms of an EEC regulation are vague, national measures for the provision's detailed application are permissible.
These measures are required to be compatible with the provisions of the EEC regulation at issue.19

B. EEC Directives

According to Article 189, EEC directives are binding only with respect to the result they achieve.20 Thus, member states may choose the form and method of implementation.21 The authors of the EEC Treaty did not intend EEC directives to be directly effective.22 Based on three reasons, however, the European Court has held that EEC directives can in some cases be directly effective.23 First, the court stated that denying such directives direct effect would be incompatible with the binding effect attributed to a directive in Article 189.24 This argument, however, may be refuted in that a directive could be fully binding by member states at the inter-state level without being enforceable by private individuals in national courts.25 Second, the court held that the directive would be more effective if individuals could invoke the measures before the national courts.26 Finally, the court decided that Article 177 of the EEC Treaty gave the court jurisdiction to make preliminary rulings on the validity of EEC acts, including EEC directives as well as EEC regulations and EEC decisions.27

An EEC directive cannot be directly effective before the time limit for its implementation has expired.28 Although member states may choose the form or method to implement an EEC directive, the European Court can severely restrict this discretionary power.29 Accordingly, the area of choice regarding the form of the implementation depends on the objective of the EEC directive.30 If, for example, absolute uniformity in legislation among member states is necessary, then each member state must implement the EEC directive in exactly the same form.31

one in which the codification of the law in a particular area could give a complete statement of relevant legal rules. Id.

19 Id.
20 EEC Treaty, supra note 1, at art. 189.
21 T. Hartley, supra note 3, at 82.
22 Id. at 204.
24 Id.
25 Id.
26 Id.
27 Id.
28 T. Hartley, supra note 3, at 211.
30 Id.
31 Id.
C. Decisions of the European Court

Under Article 189, judgments of the European Court are binding on the particular person appearing before the court.32 This article does not address, however, the applicability of European Court decisions on persons not involved in the particular case before the court.33 Moreover, the European Court has held that EEC decisions can, in some cases, impose obligations on citizens beyond those before the court.34 The court has not clearly established when a decision is directly effective.35

IV. Implementation of EEC Legislation and Judgments by Member States

Member states are not required to implement all EEC legislation and judgments. The implementation of EEC directives, for example, does not necessarily require that each member state initiate legislative action.36 The existence of a general principle of constitutional or administrative law may make implementation of a directive by specific legislation unnecessary.37 To avoid the necessity of promulgating legislative acts, however, the principles contained in the existing constitutional or administrative law must guarantee that the national government apply the EEC directives fully.38 Where the purpose of the EEC directive is to create individual rights, the legal position stemming from those principles must be made precise and clear.39 The principles embodied in the law must make interested persons fully aware of their rights and their opportunities in order to rely on such principles before the national courts of member states.40 This awareness is particularly important in instances in which EEC directives give rights to nationals of other member states.41 Otherwise, the nationals of other member states may be unaware of their rights under EEC law.42

32 EEC Treaty, supra note 1, at art. 189.
35 T. Hartley, supra note 3, at 217.
37 Id.
38 Id.
39 Id.
40 Id.
41 Id. at 16,242.
42 Id.
In *Commission of the European Communities v. Germany*, for example, the European Court found that West Germany failed to adopt EEC directives concerning the recognition of diplomas and other evidence of formal qualifications of nurses from other member states. The court held that the West German principle of equal treatment and the national health care laws of West Germany were insufficient to guarantee full compliance with the EEC directives. The court further reasoned that the German law empowered West German authorities to assess the equivalence of nurses’ training in individual cases. Consequently, the court held that the law did not give nationals of other member states the right to pursue a profession in nursing in Germany based solely on a diploma.

The European Court rejected the West German argument that the incorporation of provisions of a West German treaty concerning certification of nurses replaced the need to further implement the EEC directive. The court ruled that such a treaty did not conform to the provisions of the EEC directive, nor did German administrative practice provide an acceptable solution.

In another case, also involving the Commission and West Germany, the European Court examined a series of EEC directives concerning equal treatment in employment and West Germany’s implementation of them. The court found that the EEC directives that applied to employment in public service were necessarily general in application given the nature of the principle of equal treatment. According to the court, the EEC directives that set forth the principle of equal treatment were implemented by the West German constitution. The court asserted that the constitution affirmed the principles of equality of men and women before the law, and expressly included exclusion of discrimination based on sex and guaranteed equal access to employment in public services for all nationals. The West German provisions included the possibility of instituting a proceeding within the existing West German judicial system. The court concluded that further legislation would not be required. According to the court, the EEC directive that gave member states the option of excluding

---

43 Id. at 16,243.
44 Id. at 16,242.
45 Id.
46 Id.
47 Id. at 16,243.
48 Id.
50 Id. at 16,227
51 Id.
52 Id.
53 Id.
54 Id.
certain occupational activities did not mean that member states must implement the option in a particular manner.\textsuperscript{55}

Despite this reasoning, the European Court in the second case held that the three EEC directives in question did impose a duty on member states to compile a complete listing of occupations that were excluded from equal treatment.\textsuperscript{56} A West German provision authorizing that an employer may not advertise offers of employment that are not neutral with regard to sex was not sufficient to implement this regulation.\textsuperscript{57} The court found that the West German regulation was adopted instead to give effect to the overall principle of equal treatment.\textsuperscript{58} The court concluded that West Germany had failed to meet fully this requirement.\textsuperscript{59}

V. TIME LIMIT REQUIRED FOR IMPLEMENTATION

In addition to implementation issues concerning EEC legislation and judgments, such implementation, if necessary, must also be accomplished in a timely fashion. Article 171 of the EEC Treaty does not include a time limit within which a member state must comply with a specific judgment.\textsuperscript{60} In \textit{Commission of the European Communities v. Italian Republic}, the European Court held that a member state must implement disputed EEC legislation immediately after an EEC judgment finds that it has failed to fulfill its treaty obligations.\textsuperscript{61} The court found that the Italian Republic unreasonably delayed in its compliance with the judgment.\textsuperscript{62}

VI. INTERNAL DIFFICULTIES AS DEFENSE TO NON-IMPLEMENTATION

According to the European Court, a member state may not plead provisions, practices, or circumstances existing in its internal legal system to justify failure to comply with an EEC directive.\textsuperscript{63} In another case also involving the Commission and the Italian Republic, Italy argued that the EEC directive pertaining to the annual accounts of certain types of companies was exceedingly complex, and consequently would require Italy to amend its Civil Code.\textsuperscript{64} The European
Court, however, rejected Italy's argument concerning its internal legal problems and ruled that the Italian Republic had failed to fulfill its obligations under the provisions of the EEC Treaty. The court also rejected a similar defense that concerned Italy's failure to implement an EEC directive that would harmonize the procedures for the export of EEC goods.

VII. IMPLEMENTATION OF REQUIREMENTS THAT ARE MORE STRINGENT THAN THOSE REQUIRED BY THE EEC

The implementation of requirements stricter than those that the EEC requires does not constitute sufficient discharge of obligations by member states. This is particularly so if such implementation results in protectionism or discrimination against other member states. In Commission of the European Communities v. French Republic, the European Court found that the French rules for approval of postal franking machines constituted an impediment to imports, contrary to Article 30 of the EEC Treaty. The court therefore concluded that France had failed to fulfill its obligations under the EEC Treaty.

In Rederij L. de Boer v. Produktschap, the European Court examined two national measures of a member state. The first measure restricted participation in a quota system to fishermen capable of processing herring. The second measure required fishermen to process herring in a prescribed manner.

The EEC regulation that governed the fishermen's ability to participate in the quota system specifically allowed member states themselves to determine how to implement the regulation. Accordingly, the court held that a member state's regulations that established a fishery resources conservation system and fixed provisional quota allocations did not preclude rules adopted by trade organizations of a member state which provided that only those fishermen whose vessels were equipped for salting and gutting herring were licensed to fish.

The national law that required the fish to be gutted and salted or deep frozen

---

65 Id.
68 Id.
69 Id.
70 Id.
72 Id. at 16,622.
73 Id.
74 Id. at 16,621.
75 Id. at 16,622.
on board the vessel, however, was contrary to the EEC regulation that empowered only produce organizations of the member state to adopt marketing rules. The court held that the EEC regulation on production and marketing precluded a member state from adopting such restrictive rules governing the treatment and processing of fish.

VIII. Actions the EEC Can Take to Ensure Implementation

If the first attempt by a member state to implement the European Court's judgment fails to resolve the matter, compliance with EEC law may require a second hearing before the court. In Commission of the European Communities v. Italian Republic, the court found that the amendment by the Italian legislature did not comply fully and precisely with an earlier EEC judgment. According to Article 169 of the EEC Treaty, a matter may be brought before the court only if the member state has not complied with the previous opinion within the time period laid down by the European Commission. In another case, Commission of the European Communities v. Italian Republic, the court dismissed the case because the Italian government denied that it had continued to require reloading animals onto railways after the expiration date prescribed by an earlier opinion of the court.

IX. Conclusion

The EEC does not require member states to implement all its legislation and judgments. Legislation by the EEC, particularly its regulations, may have a direct effect and automatically grant rights to individuals who reside in the member states. Member state constitutions and legislation may already contain principles of EEC law that are specific enough to make additional legislation by member states unnecessary. If these conditions do not prevail, implementation by member states is necessary.

A member state must implement legislation immediately after the court gives its judgment. A member state cannot plead internal difficulties as a defense to non-implementation. Furthermore, member states cannot implement corre-

---

76 Id.
77 Id.
79 Id.
81 Id.
sponding legislation that is stricter than EEC law. Such legislation frequently results in protectionism or discrimination against fellow member states. Finally, the EEC can enforce implementation by bringing suit against the member state, but only after the expiration of a reasonable time period that has been set by the Commission.

Ellen F. McCauley