

Course: GV251

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LT Week 3: Understanding EU Policy-Making: Implementation

PART I) The problem of non-compliance

(a) What is meant by the term ‘non-compliance’?

(b) How can we measure ‘non-compliance’? What are the advantages and disadvantages associated with each indicator?

(c) *Please discuss in groups:* How can the cross-national variation in the degree of compliance with EU law be explained?

In providing your answer, please consider: (i) the main arguments and findings discussed in the studies that were assigned as readings; (ii) the examples mentioned in the Appendix (about Greece’s non-compliance with EU environmental regulations; Hungary, Poland and the Czech Republic’s non-compliance with the Relocation Decision; and Germany and France’s non-compliance with the Stability and Growth Pact in 2003).

(d) Consider the following two pieces of evidence related to question (b), which can be found in this week’s essential readings. (i) Which explanation about the determinants of non-compliance does each piece of evidence relate to? (ii) How convincingly does each piece of evidence support the relevant explanation?

“Whether a state has the capacity to mobilize [its resources in order to ensure compliance] is captured by an index of bureaucratic efficiency and professionalism of the public service. This index consists of three components: performance-related pay for civil servants, lack of permanent tenure, and public advertising of open positions. (...)

We find a strong relation between the effectiveness component of government capacity and the number of violations [of EU law].” [Börzel *et al.* 2010]

“Many scholars argue that transposition performance is a choice that depends on the interests of member state governments. This voluntaristic view is held for instance by the enforcement approach in international relations that is informed by the realist tradition. In line with this argument, it has been claimed that directives adopted under the unanimity rule in the Council of the European Union are transposed more swiftly than decisions under the qualified majority rule. Under unanimity rule, self-interested strategic member states can veto any proposal that does not satisfy their preferences. (...) Under QMV, member states will not be able to veto a decision that is not in accordance with their preferences. (...)

However, we do not find any empirical support for this argument. Transposing measures of directives that have been decided by QMV [is] not more problematic than transposing measures based on unanimity. (...) This suggests that member state preferences are not important.” [Haverland & Romeijn 2007]

(e) Think about: “In a state of rather ‘generalized non-compliance’, the EU would no longer be perceived as a trustworthy actor either by its people or by the outside world. And once the EU is indeed seen as a ‘non-compliance community,’ decay seems a foregone conclusion; why should anyone take it seriously?” [Falkner ’13]

How important is compliance with European law for the EU’s sustainability? Apart from the rule of law, what other values lie at the foundation of the project of European integration?

PART II) Solutions to the problem of non-compliance

- (a) You have been asked by EU policy-makers to prepare a set of recommendations for the improvement of member-states' compliance with European law. Please write down and present a short summary of your findings.**

- (b) In July 2015, the European Commission created the Structural Reform Support Service (SRSS) “to help EU countries build more effective institutions, stronger governance frameworks and efficient public administrations”. One of the novelties of the SRSS is that it provides “tailor-made support on the ground,” going beyond the Commission’s usual practice of making recommendations through reports written in Brussels.**

How likely is it that this institutional innovation will improve member-states' compliance with EU law?

(Source: https://ec.europa.eu/info/departments/structural-reform-support-service_en)

- (c) Do you agree with Gerda Falkner’s recommendation below for ensuring that all member-states comply with the EU’s basic democratic values?**

“Constitutional reforms and changes concerning pillars of democratic life such as electoral and media laws should, before being voted on at the relevant national level, be checked (possibly at a later point even approved) at the EU level. For example, an ‘EU Council for Democracy and Rule of Law’ could vet all major reform projects according to basic common principles. Its composition needs in-depth consideration but representatives from the EU institutions are possible candidates as well as representatives of the national constitutional courts and the ECJ and independent experts such as political scientists and lawyers form an academic background. Possibly, this institution could become an independent agency (the dynamics of party politics need to be kept at bay) at the EP since the latter is directly legitimized by the EU’s citizens.” [Falkner 2013]

Appendix: Examples of cases of non-compliance with EU law

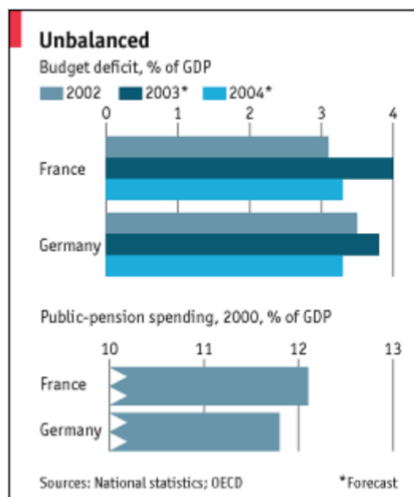
Deficits and defiance

France and Germany built the euro together. Now they are demolishing the stability pact together

Sep 2nd 2003



GERMANY and France, so long the European Union's head partnership, have become partners in crime. Last Friday, Germany confessed to the European Commission that its budget deficit for 2003 would breach the stability and growth pact for the second year running. The pact, a largely German creation, is meant to stop members of the euro area undermining the single currency through fiscal irresponsibility: countries are permitted to run deficits of no more than 3% of GDP. Germany admitted to a deficit of 3.5% last year and expects one of 3.8% this year. Not to be outdone, France on Monday owned up to a projected deficit of 4% this year, to follow a deficit of 3.1% last year. Of the two, Germany was the more repentant sinner. Hans Eichel, the German finance minister, insisted that he was still hoping to abide by the pact next year; Jean-Pierre Raffarin, the French prime minister, has already given up on that goal, according to *Les Echos*, a French newspaper.



If France and Germany do breach the pact again next year, the European Commission is supposed to ask them for an interest-free deposit of between 0.2% and 0.5% of GDP. If they breach the pact in 2005, they lose the deposit—a fine amounting to more than €4 billion for Germany and more than €3 billion for France. Both Mr Raffarin and Mr Eichel know that is not going to happen. The sticklers at the commission may apply the laws and pronounce the verdict, but the offenders know that it is their fellow finance ministers on the European Council who will mete out, or withhold, the punishment. They have plenty of wriggle room. If Germany and France are seen to be making an effort to comply, and their deficits are not too far astray, the council can vote for a reprieve.

Both Germany and France expect leniency. Jacques Chirac, France's president, has asked for a "temporary softening" of the stability pact—which amounts to saying the rules should only be applied when they are not being broken. Gerhard Schröder, chancellor of Germany, has asked the commission to be lenient and to place due emphasis on the "growth" part of the "stability and growth" pact. His pleas are faintly ironic given that the pact's original German authors added the word growth to its title only on the insistence of the French.

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Source: <http://www.economist.com/node/2031381#print>

WWF raps Greece for abuse of EU environmental law



An annual report by the local branch of the World Wildlife Fund (WWF) criticizes Greece for systematically violating the European Union's environmental rulebook, claiming that this is taking a hefty toll on the debt-wracked country's finances and sustainable future.

According to the report, Greece ranks second among its EU peers for noncompliance with EU court decisions. Greece also has the second-worst record when it comes to pending cases due to violations of the bloc's environmental legislation, the report says.

Meanwhile, WWF added, Greece has paid more than 37.3 million euros in fines for failing to comply with rulings by the European Court of Justice over dozens of illegal landfills. At the same time, the Greek state is said to be doing a poor job at collecting fines imposed for breaches of environmental regulations. Of the 183.440 million euros in fines imposed for illegal construction in 2015, authorities reportedly collected just 3.17 million, or 1.7 percent.

"We are witnessing a constant effort, by more than one government, to bypass environmental law in order to serve specific business interests and to legitimize illegalities," Dimitris Karavelas, head of WWF Greece, said on Monday. "Regrettably, because of this deficit in compliance with environmental law, Greece is constantly wasting opportunities for genuinely sustainable growth, but also money," he said.

"The message the state is sending," WWF policy chief Theodota Nantsou said, is if "you break the law, we will take care of it."

WWF Greece started issuing the annual report in 2005.

Source: <http://www.ekathimerini.com/222696/article/ekathimerini/news/wwf-raps-greece-for-abuse-of-eu-environmental-law>

Commission takes Orbán's Hungary to court

By **ESZTER ZALAN** BRUSSELS, 7. DEC 2017, 15:39

The European Commission on Thursday (7 December) stepped up pressure on the Hungarian government of Viktor Orbán over migrant quotas, NGOs and a school associated with US billionaire George Soros.

The EU executive said it was also taking Hungary, plus the Czech Republic and Poland, to court over their defiance to comply with an EU decision in 2015 to relocate refugees based on a quota. (...)

The Czech Republic, Hungary and Poland did not participate in the relocation scheme conceived in 2015 at the height of the migration crisis.

Hungary, the Czech Republic and Slovakia voted against the relocation mechanism at the time.

Hungary, along with Slovakia, challenged the 2015 decision's legality, but lost that case at the Luxembourg-based European Court of Justice in September.

"We will present our arguments to the court and hope for a positive outcome," Hungary's foreign minister Peter Szijjarto told reporters in Brussels.

"The quota decision is unfeasible, it is unenforceable within the Schengen zone [of open borders] to make migrants stay in a country designated for them," Szijjarto added.

He argued that only 25 percent of the original number of migrants to be relocated within EU countries actually have been, 'proving' that even member states that supported the scheme were not keen to accept refugees relocated from Greece and Italy.

"It is an infringement of our sovereignty that we should not be allowed to decide whom we are going to live with," he added.

Other officials added the commission's move was curious, because the scheme has already expired.

Poland's foreign minister Witold Waszczykowski said "Nothing has changed, our position remains the same – we do not agree with the relocation decisions."

But the quota program remains a key divisive issue among EU countries.

The commission has also stepped its legal probe into Hungary's strict asylum legislation.

Source: <https://euobserver.com/political/140197>