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Non-compliance in the European Union: pathology or statistical artefact?

Tanja A. Börzel

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ABSTRACT Does the European Union have a compliance problem? This article argues that we have simply no evidence that the EU suffers from a serious compliance deficit which is claimed by the European Commission and academics alike. First, there are no data that measure the actual level of non-compliance in the EU member states. Second, the statistics published by the European Commission, which allow us to compare non-compliance between the different member states, are often not properly interpreted. If we control for changes in the Commission's enforcement strategy, on the one hand, and the rising items of legislation to be complied with as well as member states that have to comply, on the other hand, the level of non-compliance in the EU has not significantly increased over time. Moreover, non-compliance varies significantly and is focused on four particular member states that account for up to two-thirds of all violations of Community law.

KEY WORDS Compliance; enforcement; implementation; infringements; leader-laggard; 'southern problem'.

INTRODUCTION

Does the European Union (EU) have a compliance problem? The European Commission as well as the academic literature have denounced a growing compliance deficit, which is believed to be systemic or pathological to the EU (Krislov *et al.* 1986; Weiler 1988; Snyder 1993; Mendrinou 1996; Tallberg 1999). European policy-makers and academic scholars alike base their assessments on statistics published in the Annual Reports on Monitoring the Application of Community Law. According to these data, the Commission has opened more than some 15,700 infringement proceedings against the member states since 1978. In recent years, it received an annual average of 1,000 complaints from citizens, companies, and non-governmental organizations about violations of Community law. And the European Court of Justice (ECJ) has been asked to rule on about eighty infringement cases each year for the last decade. These figures are impressive and indeed might suggest that the EU suffers from serious compliance problems.

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By contrast, this article argues that we have little evidence that member state non-compliance with Community law is a systemic or pathological problem. If put into proper context, existing data indicate that the level of non-compliance is rather modest and has remained stable over time. The allegedly growing compliance deficit in the EU does not so much reflect a lack of willingness or capacity of the member states to obey European law but is mainly the product of statistical artefacts. In order to develop this argument, the article proceeds in two steps. It starts by asking some critical questions about the data used as evidence for systemic non-compliance with Community law. I argue that the statistics published by the Commission are no indicator for the actual level of non-compliance. Nor can we simply use them as measures of relative non-compliance for changes across time, member states, or policy sectors because the data are not always complete and sometimes inconsistent. The second part of the article revisits the empirical evidence on the compliance deficit of the EU. I demonstrate that, if measured against a constantly growing body of legislation in force and an expanding number of member states, the level of non-compliance is modest and has remained stable, or even declined. This is particularly true if we additionally control for political factors, such as changes in the enforcement strategy of the Commission. Finally, non-compliance varies significantly and is focused on only four particular member states that account for up to two-thirds of all infringements. The article concludes with a plea for more systematic research on the sources of member state non-compliance with Community law.

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ASSESSING MEMBER STATE COMPLIANCE WITH COMMUNITY LAW

EU infringement proceedings as a proxy for non-compliance

The only comprehensive data on member state non-compliance with Community law are provided by the Annual Reports of the Commission on the Monitoring of the Application of Community Law. Since 1984, the Commission reports each year on the actions it took against violations of European legislation.

Article 226 EC grants the European Commission the right to initiate infringement proceedings against member states that have failed to fulfil a Treaty obligation. There are five *types of infringements*, which can occur in the implementation of Community law and against which the Commission may take action (see Figure 1):

1 *Violations of Treaty Provisions, Regulations, and Decisions ('violation')*
Treaty Provisions, Regulations, and Decisions are directly applicable and, therefore, do not have to be incorporated into national law.[1] Non-compliance takes the form of not or incorrectly applying and enforcing European obligations as well as of taking, or not repealing, violative national measures.

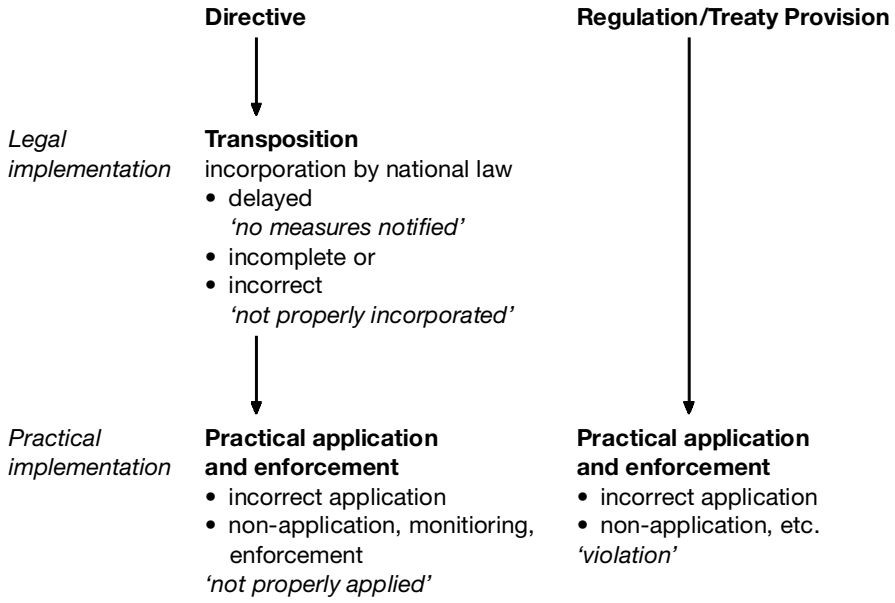

Figure 1 Infringements in the implementation process of Community law

2 *Non-transposition of Directives ('no measures notified')*
Directives are not directly applicable, as a result of which they have to be incorporated into national law. Member states are left a choice as to the form and methods of implementation (within the doctrine of the *éffet utile*, which stipulates that the member states have to choose the most effective means).[2] Non-compliance manifests itself in a total failure to issue the required national legislation.

3 *Incorrect legal implementation of Directives ('not properly incorporated')*
The transposition of Directives may be wrong. Non-compliance takes the form of either incomplete or incorrect incorporation of Directives into national law. Parts of the obligations of the Directive are not enacted or national regulations deviate from European obligations because they are not amended and repealed, respectively.

4 *Improper application of Directives ('not properly applied')*
Even if the legal implementation of a Directive is correct and complete, it still may not be practically applied. Non-compliance involves the active violation of taking conflicting national measures or the passive failure to invoke the obligations of the Directive. The latter also includes failures to enforce Community law effectively, that is, take positive action against violators, both by national administration and judicial organs, as well as make adequate remedies available to the individual against infringements which impinge on her rights.

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5 *Non-compliance with ECJ judgments ('not yet complied with')*
Once the ECJ finds a member state guilty of infringing Community law, the member state is finally obliged to remedy the issue. Non-compliance refers to the failure of member states to execute Court judgments, which establishes a violation of Community law.

The proceedings specified in Art. 226 EC Treaty (ex-Art. 169) consist of six subsequent *stages* (see Figure 2).

1 *Suspected infringement*
Suspected infringements refer to instances in which the Commission has some reasons to believe that a member state has violated Community law. Such suspicions can be triggered by different sources:

- *complaints* lodged by citizens, corporations, and non-governmental organizations
- *own initiatives* of the Commission
- *petitions* and *questions* by the European Parliament
- *non-communication* of the transposition of Directives by the member states.

2 *Formal Letter of Notice (Art. 226)*
The Formal Letter of the Commission delimits the subject matter and invites the member state to submit its observations. Member states have between one and two months in which to respond. Unlike their name suggests, Formal Letters are not part of the official proceedings. The Commission considers them as a preliminary stage, which serves the purpose of information and consultation, and affords a member state the opportunity to regularize its position rather than bringing it to account (Commission of the European Communities 1984: 4–5).[3] Consequently, Formal Letters are only made official if they refer to cases where member states have not communicated the transposition of Directives within the given time limit and the Commission automatically opens proceedings.

3 *Reasoned Opinion (Art. 226)*
The Reasoned Opinion is the first official stage in the infringement proceedings. The Commission sets out the legal justification for commencing legal proceedings. It gives a detailed account of how it thinks Community law has been infringed by a member state and states a time limit, within which it expects the matter to be rectified. The member states have one month in which to respond.

4 *Referral to the ECJ (Art. 226)*
The ECJ Referral is the last means to which the Commission can resort in cases of persistent non-compliance. Before bringing a case before the ECJ, the Commission usually attempts to find some last-minute solutions in bilateral negotiations with the member state.

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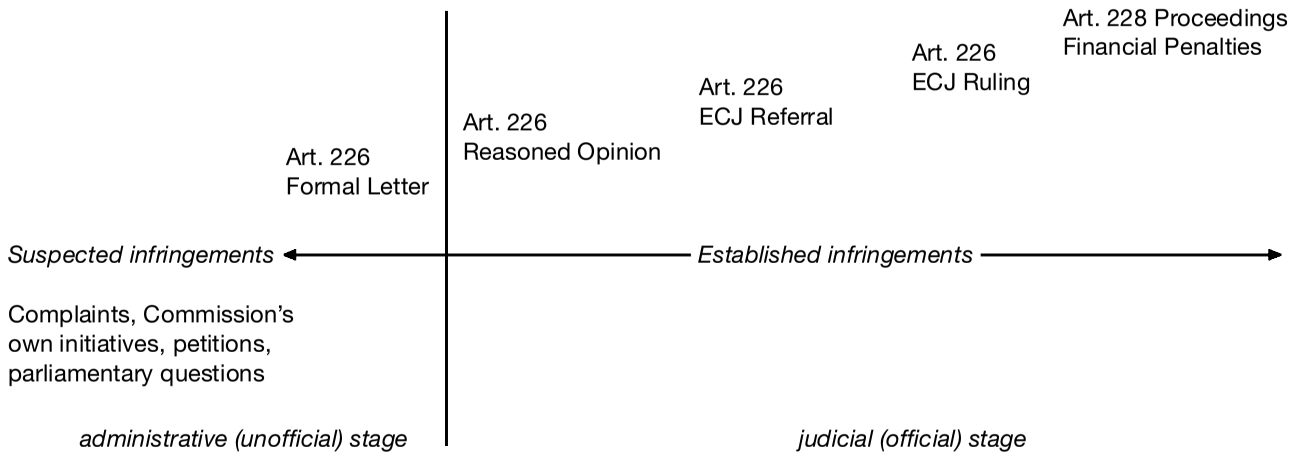

Figure 2 The infringement proceedings and its different stages

5 *ECJ Judgment (Art. 226)*
The ECJ acts as the ultimate adjudicator between the Commission and the member states. First, it verifies whether a member state actually violated European law as claimed by the Commission. Second, it examines whether the European legal act under consideration requires the measures demanded by the Commission. And, finally, the Court decides whether to dismiss or grant the legal action of the Commission.

6 *Post-litigation Infringement Proceedings (Art. 228)*
If member states refuse to comply with an ECJ judgment, the Commission may open new proceedings for post-litigation non-compliance (Art. 228 EC, ex-Art. 171). Since 1996, it can ask the ECJ to impose financial penalties, either in the form of a lump sum or a daily fine, which is calculated according to the scope and duration of the infringement as well as the capabilities of the member states.[4]

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The number of infringements within the different stages is usually taken as an indicator of member state non-compliance with Community law. Such inferences are not without problems, though. There are some good reasons to question whether infringement proceedings qualify as valid and reliable indicators of compliance failure.

Strictly speaking, we have no data which would allow us to draw any valid conclusion about whether the EU has a compliance problem. Infringement proceedings are *no indicator* of the *actual* or *absolute* level of non-compliance in the EU. They only cover a fraction of the violations of Community law in the member states. The jurisprudence of the ECJ under the preliminary ruling procedure of Art. 234 (ex-Art. 177) already indicates that many cases of non-compliance occur without being caught by the Art. 226 procedure. Unfortunately, we have no means of estimating the cases of unrevealed non-compliance. Therefore, infringement proceedings can only serve as indicators of *relative* non-compliance. They may allow us to compare the level of non-compliance across time, policy sectors, and member states – but only if we can assume that the non-compliance cases prosecuted by the EU constitute a random sample of all non-compliance cases that occur. There are two major reasons which could lead us to question the representativeness of the infringement data. First, the Commission is not able to systematically monitor compliance with Community law. And, second, the Commission may not disclose all the cases in which it took action against infringements of Community law.

The problem of unrevealed non-compliance

Infringement proceedings only cover cases of non-compliance which have been detected by the Commission itself or have been brought to its attention by citizens, companies, or interest groups. The detection rate is rather high for the failure to transpose Directives into national law. Non-transposition accounts for more than two-thirds of all infringement cases opened. The chances of

disclosure significantly decrease, however, when it comes to complete and correct transposition, practical application and enforcement of European policies. Given the limited resources of the Commission, it largely depends upon member states reporting back on their implementation activities,[5] on costly and time-consuming consultancy reports, or on information from domestic actors on these stages of the implementation process. Commission officials can make on-site visits, but such spot-checks tend to be time-consuming, politically fraught, and can be blocked by member states. They are usually no more than 'fact-finding missions' to clarify certain points rather than investigate instances of suspected non-compliance. Societal monitoring is therefore the most important source of information. It may vary significantly between member states owing to different degrees of social mobilization and respect for law. A country whose citizens are collectively active and law-abiding could generate more complaints than a member state whose citizens show little respect for the law and are less inclined to engage in collective action. Yet, the distribution of complaints across member states shows that societal activism *per se* is not the issue (see Table 1). Population size seems to be more important. The five biggest member states – Germany, France, the UK, Italy, and Spain – are the home of more than 75 per cent of the European population and account for about 69 per cent of the complaints lodged in the last eighteen years. At the same time, the numbers of complaints originating

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Table 1[6] Member states compared by population and infringement stages, 1983–99

	% of EU population	*Average % of complaints**	*Average % of Formal Letters*
		Administrative (informal) phase	
Germany	21.9	11.9	7.8
France	15.7	16.8	10.3
UK	15.7	9.9	6.6
Italy	15.3	12.9	11.6
Spain	10.6	17.6	10.1
Netherlands	4.2	3.5	5.9
Greece	2.8	10.5	11.3
Belgium	2.7	5.1	8.4
Portugal	2.6	4.5	10.8
Denmark	1.4	2.6	4.5
Ireland	1.0	3.8	6.5
Luxembourg	0.1	0.9	6.2
EU		8.3	8.3

Sources: column 1: National Accounts, OECD, Paris, 1999; columns 2, 3: Annual Reports on the Monitoring of the Application of Community Law, 1984–99.
* The figures for the complaints are only an approximation since the Annual Reports do not provide consistent data on complaints (see below).

in Germany and the UK are lower than we would expect given their population size. Spain, by contrast, has an unusually high share of complaints compared to the other big four. The same is true for Greece within the group of less populated states, which accounts for a much bigger share of complaints than the Netherlands or Denmark, for instance. Both Spain and Greece show a lower degree of societal activism than their northern counterparts of similar population size (Eder and Kousis 2001). It could be argued that southern societies have a certain distrust of their state institutions as a result of which they resort to the EU for assistance (Pridham and Cini 1994). However, neither Italy nor Portugal really fits this explanation.

Another factor, which may lead to an unequal disclosure of non-compliance with Community law, is linked to the availability of reliable data. Member states may lack the necessary administrative capacity to verify whether European legislation is successfully applied and complied with. Monitoring water and air quality, for instance, requires an adequate technical and scientific infrastructure. In the absence of comprehensive and reliable monitoring data, neither the member states nor their citizens nor the Commission are able to assess compliance with European air and water pollution control Directives. Yet, member states with high monitoring capacities, such as Denmark and the Netherlands, show a low number of complaints, while those with weaker administrative and scientific infrastructures, like Greece and Spain, find themselves at the upper end of the list (Table 1). Moreover, it has been argued in the literature that it is the very lack of monitoring capacity in some (southern) member states which, among other factors, accounts for their high number of infringements (Pridham and Cini 1994; Hooghe 1993).

In sum, there are no obvious factors which appear to bias the disclosure of non-compliance towards certain member states.

The problem of incomplete and inconsistent data

The infringement data published by the Commission are both incomplete and not always consistent. First, the Commission has repeatedly changed the way in which it reports data. Suspected infringements are a case in point. From 1982 to 1991, their numbers are indicated by two different figures: complaints and own investigations by the Commission. Between 1992 and 1997, the Commission provides only one figure, which neither refers to complaints alone nor to the Commission's own investigation, nor does it equal the aggregate of the two. Since 1998, the Commission has reported three figures – complaints, own investigations, and non-communication of the transposition of Directives, whereby it remains unclear whether the third category has been newly introduced or was included in one of the two other categories in the past. A comparison of suspected infringements across time is further impaired because, since 1995, the Commission has counted parliamentary questions and petitions as complaints or own investigations. Similar problems arise when it comes to the reporting of infringement cases by policy sectors, since they have

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been redefined several times across the years. Thus in 1992 Directorate-General (DG) III changed its name from 'Internal Market and Industrial Affairs' to 'Industry', as a result of which the number of complaints in this sector dropped dramatically from 382 in 1992 to 34 in 1993. Futhermore, some data are not provided at all or only for a limited number of years. Transposition rates have been included in the Annual Reports as late as 1990. Since 1998, figures for suspected infringements are merely given by member state, unlike in previous years where they were also provided by policy sector. Established infringements, finally, are jointly reported by policy sector *and* member states only in the Tenth Annual Report for the years 1988 to 1992 (Commission of the European Communities 1993: 165 ff.). And in 1992 the Commission also stopped reporting Court Judgments. Since 1999 cases in which Directives are not transposed in time are no longer an integral part of the raw data. They are still individually listed but with one major piece of information missing – the stage of the proceedings they reached.

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Second, and more importantly, the reported data show some inconsistencies. For any given year, the Annual Reports of the Commission provide two types of data. Aggregate data summarize the number of infringement proceedings classified by the different stages, member states, policy sectors, and types of infringement. The 'raw' data list the individual infringement cases, which are to make up the aggregate data. A research team at the European University Institute entered all the individual cases into a database (see below), which allows for a comparison of the aggregate and the raw data, revealing some serious 'mismatches'. The raw data only comprise about one-third of the Letters actually sent since Letters are only individually listed if they refer to cases of non-transposition of Directives.[7] The aggregate data for Reasoned Opinions and Court Referrals do not equal the sum of the individually listed cases either. The aggregate data report 5,762 Reasoned Opinions sent by the Commission between 1978 and 1999. But the seventeen Annual Reports list only 4,241 individual Reasoned Opinions for these years; some 26.4 per cent of the cases are missing. The same inconsistencies can be found for ECJ Referrals, where about 37.9 per cent of the cases are not listed (1,593 to 990). The explanation of the poor fit between aggregate and raw data lies in the reporting methods: unlike in the aggregate data, only those cases are included in the raw data that are still open at the end of the year reported. If the Commission had sent a Reasoned Opinion in January and the case was closed in July because the member state rectified the violation, the case features in the aggregate but not in the raw data. In 1999, for example, 122 out of 438 cases, in which the Commission had sent a Reasoned Opinion, were closed or merged with similar cases. Most of them (104) refer to the delayed transposition of Directives.[8]

While the (changing) reporting methods of the Commission may render cross-time comparisons more difficult, the ranking of the member states with respect to their non-compliance records does not change significantly within the two different data sets (see Table 1). Spain and Portugal are the only

exceptions. Their relative performance in the category of ECJ Referrals looks better in the raw than in the aggregate data because both countries take great pains to avoid cases entering the judicial stage of the infringement proceedings.[9]

While the Commission seems to report all cases in which it initiated proceedings, it could still refrain from opening proceedings in the first place, and moving from one stage to the next, respectively. The Commission has considerable discretion in deciding whether and when to open proceedings and to move from one stage to the next (Evans 1979; Audretsch 1986). In principle, the Commission prefers quiet negotiations and bargaining to formal sanctions in order to induce compliance (Snyder 1993). It considers an official opening of Art. 226 proceedings only 'when all other means have failed' (Commission of the European Communities 1991: 205). The great majority of cases are indeed settled in bilateral exchanges with national authorities during the administrative stage – only one-third of the letters result in Reasoned Opinions and hence become official. The sending of a Formal Letter is already preceded by written exchanges and meetings between the Commission and the member state on an informal level. The political discretion of the Commission in deciding whether and when to open official proceedings can cause a voluntaristic bias in the sample. This might be all the more true since Art. 130r(4) of the Treaty attributes the primary responsibility for implementing EU policies to the member states. It has been argued that the principle of decentralized enforcement of Community law leaves the Commission, which does not enjoy any direct political legitimation, in a weak and 'invidious position' (Williams 1994). Thus, the Commission may treat some member states more carefully than others because they are more powerful; for example, they make significant contributions to the EU budget or dispose of considerable voting power in the Council, or their population is very 'Eurosceptic' and the Commission is careful to avoid upsetting public opinion in these member states by officially shaming them for non-compliance with Community law (Jordan 1999).

Yet, the relative ranking of the member states in the different proceedings does not reveal such bias (see Table 2). Germany and France, the two member states which contribute most to the EU budget and possess considerable bargaining power in the Council, figure prominently in the higher stages of the proceedings.[10] So does France, which belongs to the 'big three', too, and has been one of the driving forces of European integration, together with Germany. In Denmark and the UK, public and élite support for European institutions is among the lowest in all member states, only topped by Austria and Sweden, which recently joined the EU.[11] Denmark does indeed perform best across all stages. The British record, however, is more mixed.

In sum, Commission data on member state infringements of Community law suffer from some problems, which should caution us against their use as straightforward indicators of non-compliance with Community law. At the same time, the Commission data are the only statistical source available. There is no international organization, or even national state, which provides such

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Table 2 Ranking of member states at the stages of Reasoned Opinions and ECJ Referrals, 1978–99[12]

Formal Letters	*Reasoned Opinions*	*ECJ Referrals*	*ECJ Judgments*
Italy	Italy	Italy	Italy
Greece	Greece	Belgium	Belgium
Portugal	Portugal	Greece	Greece
France	France	France	Germany
Spain	Belgium	Germany	France
Belgium	Spain	Luxembourg	Spain
Germany	Germany	Spain	Netherlands
Ireland	Ireland	Ireland	Ireland
UK	Luxembourg	Portugal	Luxembourg
Luxembourg	UK	Netherlands	UK
Netherlands	Netherlands	UK	Denmark
Denmark	Denmark	Denmark	Portugal

Source: see Table 4.

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comprehensive information on issues of non-compliance. The infringement database compiled by the European University Institute comprises some 6,200 infringement cases, which the Commission *officially* initiated in the last thirty years. Since the Commission does not fully report Formal Letters, the database only contains the individually listed cases of Reasoned Opinions and subsequent stages. The cases are classified by infringement number, member state, policy sector, legal basis (celex number), legal act, type of infringement, and subsequent measures taken by the Commission. The database is organized into two different datasets. The first dataset reports a case by all the stages it went through after a Reasoned Opinion was issued. Thus, we are able to trace its 'history'. The second dataset includes each case by the highest stage it reached before termination or withdrawal. Unlike the aggregate data in the Annual Reports, each case is only counted once and not several times as a Letter, Reasoned Opinion, ECJ Referral, etc. These data can serve as an important indicator for *relative* non-compliance as long as we carefully control for potential selection bias.

Non-compliance with Community law – a statistical artefact

For the last ten years, the European Commission has been denouncing a growing compliance deficit, which it believes threatens both the effectiveness and the legitimacy of European policy-making (Commission of the European Communities 1990, 1993, 1999). While some scholars argue that the level of compliance with Community law compares well to the level of compliance with domestic law in democratic liberal states (Keohane and Hoffmann 1990: 278; Neyer *et al.* 1999), many consider EU member state non-compliance as

a serious problem that is systemic and pathological (Krislov *et al*. 1986; Weiler 1988; cf. Ludlow 1991; Snyder 1993; From and Stava 1993; Mendrinou 1996; Tallberg 1999).

The negative assessments are based on the increasing numbers of Formal Letters, Reasoned Opinions, and ECJ Referrals which the member states have been facing over the last thirty years. By contrast, I demonstrate in the next section that the level of non-compliance has remained rather stable.

Revisiting the evidence on member state non-compliance with Community law

1 *Suspected infringements*
Given the inconsistencies in the reported data (see above), we cannot compare the evolution of complaints, the Commission's own initiatives, parliamentary questions, etc. over time. Suspected infringements are no reliable indicator of non-compliance.

2 *Transposition rates*
Since 1990, the Commission reports the Directives implemented by the member states as a percentage of the Directives to be implemented. The transposition rate is an indicator of the timely incorporation of Directives into national law. Not only has average transposition always been high (above 90 per cent), it has improved over the years, from an average of 91 per cent in 1990 to an average of 95 per cent in 1999 (see Chart 1).

The 'laggards' – Italy, Portugal, and Greece – in particular, who ranged well below the Community average in 1990, have made significant progress in catching up with the other member states since the mid-1990s (see Table 3). The range between member states decreased from 20 per cent in 1991 to 5 per cent in 1999. The upward trend is even more remarkable

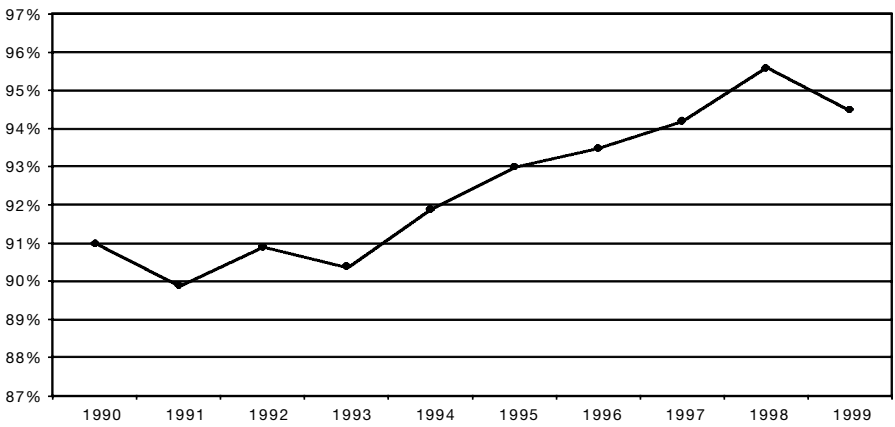

Chart 1 Average transposition rates for the EC 12, 1990–9

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Table 3 Transposition rates by member state, 1990–9

	Belgium %	*Denmark* %	*FRG* %	*Greece* %	*Spain* %	*France* %	*Ireland* %	*Italy* %	*Luxembourg* %	*NL* %	*Portugal* %	*UK* %	*EU* %
1990	92	97	95	85	94	94	91	82	90	93	84	95	91
1991	88	97	93	90	92	95	89	77	87	90	86	95	90
1992	91	96	90	88	90	93	91	89	88	93	89	93	91
1993	91	95	89	88	90	90	89	89	91	92	89	92	90
1994	90	98	91	87	91	92	92	88	94	94	97	89	92
1995	90	98	93	90	93	93	93	89	93	97	90	96	93
1996	93	98	94	91	95	92	93	90	94	97	92	94	94
1997	92	97	94	93	95	94	94	93	94	96	94	94	94
1998	95	98	97	94	97	94	96	94	94	97	95	96	96
1999	95	97	95	92	96	94	94	94	93	96	93	95	95

Source: Annual Reports, 1990–9.

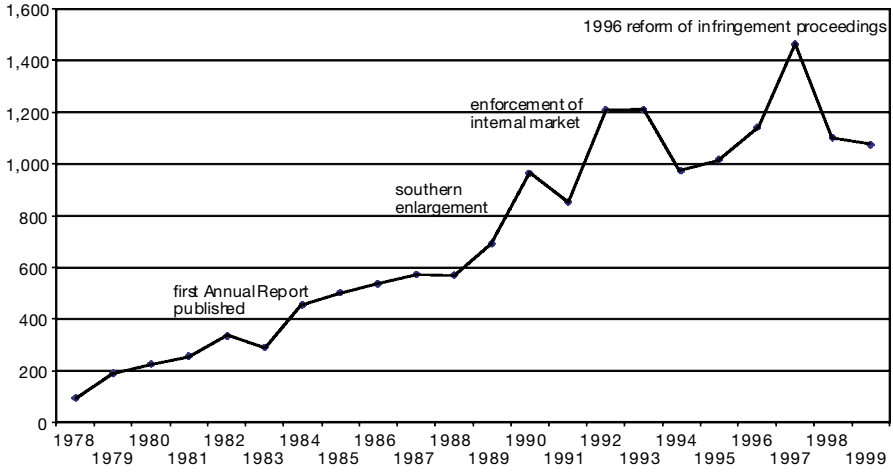

Chart 2 Total number of infringement proceedings opened for the EC 12, 1978–99

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if we consider that the number of Directives to be implemented has grown by 70 per cent, from 885 in 1990 to 1,505 in 1999. If one can speak of transposition problems at all, they relate to issues of timing – member states often need longer than the time provided by the Directives (usually two years) to incorporate them into national law.

3 *Established infringements*
The total numbers have significantly increased for all stages of the infringement proceedings. While the Commission opened 227 proceedings in 1980, the numbers more than quadrupled in 1990 (964). They peaked in 1997 with 1,461 and have hovered around 1,100 ever since (see Chart 2). The same trends can be observed for Reasoned Opinions and ECJ Referrals.

But these numbers contain several statistical artefacts. First, the Commission adopted a more rigorous approach to member state non-compliance in the late 1970s (Mendrinou 1996: 3). Likewise, the Commission and the ECJ pursued a more aggressive policy of enforcement in the early 1990s in order to ensure the effective implementation of the internal market programme (Tallberg 1999). Not surprisingly, the numbers of opened infringement proceedings increased dramatically twice, in 1983/84 by 57 per cent and again in 1991/92 by 40 per cent. Second, the southern enlargement in the first half of the 1980s (Greece, 1981, Spain and Portugal, 1986) led to a significant increase in infringement proceedings opened once the 'period of grace', which the Commission grants new member states, had expired. From 1989 to 1990, the number of opened proceedings grew by 40 per cent (223 cases), for which

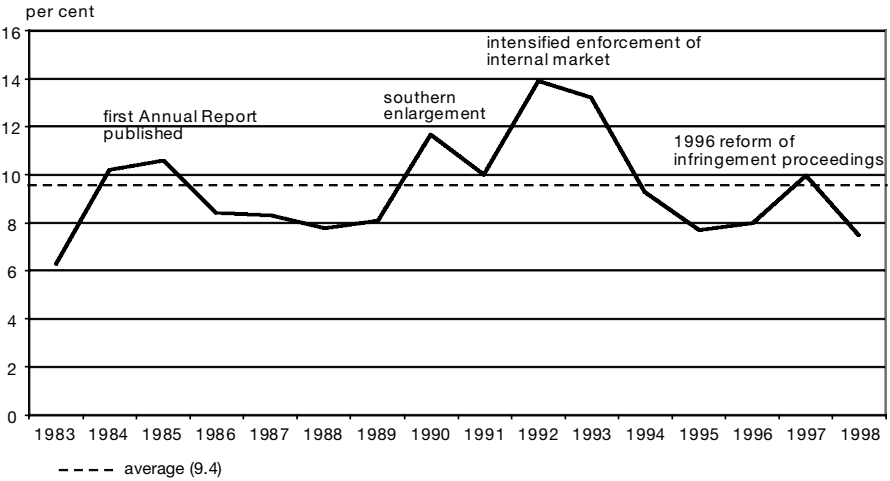

Chart 3 Total number of infringement proceedings opened in relation to violative opportunities for the EC 12, 1983–98

Spain, Portugal, and Greece hold exclusive responsibility. The three countries account for 249 new cases, while the numbers for the other member states remained more or less stable. The last significant increase of 28 per cent in 1996/97 was not the result of the northern enlargement (Sweden, Austria, Finland, 1995). In 1996, the internal reform of the infringement proceedings restated the 'intended meaning' (*sense véritable*) of the Formal Letters as mere 'requests for observations' (*demandes d'observation*) rather than warnings from the Commission.[13] Avoiding accusations, Letters were to be issued more rapidly than before. And indeed, the number of Letters sent increased significantly after the reform had been implemented. Third, infringement numbers as such, even compared across years, do not say much about changes in the level of non-compliance. They have to be measured against the numbers of legal acts which can be potentially infringed as well as the number of member states which can potentially infringe them. The number of legal acts in force has more than doubled since 1983 (from 4,566 to 9,767)[14] and five more member states have joined since then. If we calculate the number of infringement proceedings opened as a percentage of 'violative opportunities'[15] (number of legal acts in force times member states) for each year, the level of non-compliance has not increased (see Chart 3).

It should be clear by now that the data published by the Commission in its Annual Reports do not support any of the claims about rising compliance problems in the EU. First, the level of non-compliance has decreased rather than increased if we control for the growing number of violative opportunities as well as for changes in the enforcement strategy of the Commission. Second, the level of non-compliance in the EU hardly indicates a compliance problem,

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systemic or otherwise. Each social or political system faces instances of norm violation. Rather than merely counting cases of non-compliance, we therefore have to determine a threshold after which the observed level of non-compliance is considered as a serious problem for a community. This study measures infringements of Community law in relation to violative opportunities, which assumes that each rule can only be violated once per year per member state. In 1998, for instance, the Commission opened around 1,100 infringement proceedings. Compared to a minimum of 146,500 violative opportunities, are these figures really an indicator of compliance problems? The actual level of non-compliance is probably much higher than indicated by the 1,100 infringement proceedings opened. So is the number of violative opportunities. This is precisely the reason why I argue that the official infringement data do not tell us much about whether the EU faces a compliance problem or not.

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On leaders and laggards in the European Union

While the overall level of non-compliance does not appear to be excessive and has remained stable, it varies significantly between member states (see Table 4).

Table 4 Leaders and laggards of compliance with Community law

	Art. 226 Formal Letters %	*Art. 226 Reasoned Opinions* %	*Art. 226 ECJ Referrals* %	*Art. 226 ECJ Judgments* %	*Delayed Compliance with ECJ Judgments* %
Italy	11.6	16.0	22.2	30.4	24.6
Greece	11.3	12.7	13.7	12.8	11.7
Portugal	10.8	11.1	12.7	0*	1.7
France	10.3	11.1	12.3	7.5	8.7
Belgium	8.4	10.0	7.5	15.9	18.3
Spain	10.1	8.1	6.8	6.6	8.7
Germany	7.8	7.8	6.1	10.6	10.0
Ireland	6.6	6.4	6.1	3.9	4.6
Luxembourg	6.2	6.3	5.0	3.5	3.8
UK	6.6	4.5	3.5	2.7	2.9
Netherlands	5.9	4.4	2.8	3.9	3.3
Denmark	4.5	1.6	1.3	2.2	1.7
EU average	8.3	8.3	8.3	8.3	8.3

Sources: columns 2–4: aggregate data of the Annual Reports; column 5: EUI database on member state compliance with Community law (www.iue.it/ Rsc/ Rsc_tools); column 6: data from the Annual Reports.[16]

* There are no ECJ Judgments for Portugal listed in the Annual Reports, whereas we find six cases of delayed non-compliance with ECJ Judgments; aggregate data on ECJ Judgments are only available from 1978 to 1992.

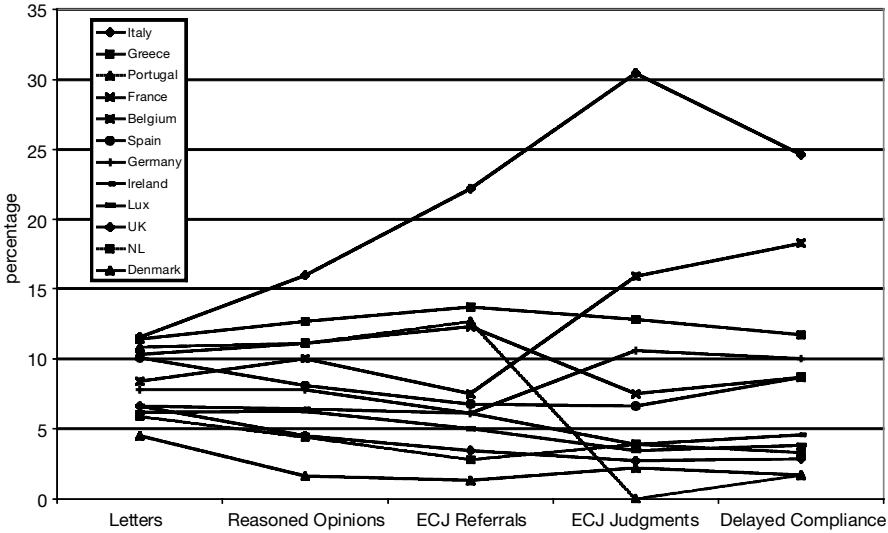

Chart 4 Member state non-compliance across infringement stages for the EC 12, 1978–99

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At the opening stage, which is still unofficial, the difference between member states is modest and ranges between 4.5 per cent (Denmark) and 11.6 per cent (Italy). In the subsequent, official stages the initial range of 7.1 per cent starts to widen. It doubles for Reasoned Opinions (14.4 per cent), climbs another 6.5 per cent to 20.9 per cent for ECJ Referrals and reaches a maximum of 30.4 per cent for ECJ Judgments. However, leaving aside Italy as an extreme outlier, the variance becomes less pronounced (see Chart 3). It begins with a 5.4 per cent for Letters and progressively rises to 8.3 per cent for Reasoned Opinions, 10.9 per cent for ECJ Referrals and 13.7 per cent for ECJ Judgments, to culminate in 15.4 per cent for Delayed Compliance with ECJ Judgments.

The majority of the member states show a relatively 'decent' level of non-compliance. Five countries – Denmark, the Netherlands, the UK, Luxembourg, and Ireland – remain well below the Community average of infringements, while Spain and Germany oscillate around it. The only member states which show a consistent pattern of non-compliance are Italy, France, Belgium, and Greece. Portugal's initial performance is also rather poor but improves significantly when entering the judicial stage. The same applies to France, which remains, however, among the 'top laggards'. This group is led by Italy, whose non-compliance record almost makes it a class of its own! Italy is followed by Greece, whose record remains consistently bad, and Belgium, whose performance even deteriorates with each stage. The share of Italy, France, Belgium, and Greece in the different infringement stages starts with a modest 37.8 per cent

of the Letters but then progressively rises to 49.8 per cent of Reasoned Opinions and 55.7 per cent of ECJ Referrals, only to reach 66.6 per cent of ECJ Judgments and 63.6 per cent of the cases of Delayed Compliance with ECJ Judgments.

CONCLUSIONS

Despite the widely held assumption, which is shared equally by European policy-makers and students of European integration, we have little evidence that the EU suffers from a serious compliance deficit. While the size of a deficit may largely depend on the normative standpoint of the observer and the criteria used (Hill 1997), there is simply no statistical data that would allow us to assess whether member states systematically violate Community law. The statistics published by the Commission in its Annual Reports provide only indicators for relative changes in non-compliance across time, member states, or policy sectors. If we control for changes in the Commission's enforcement strategy, on the one hand, and the rising number of legislative acts to be complied with, as well as member states that have to comply, on the other hand, the level of non-compliance has not significantly increased over time.

If we wish to take the infringement data as an indicator for a compliance deficit in the EU at all, the problem is focused on only four member states, among which Italy is the lonely leader. Interestingly enough, the four laggards do not conform to the conventional wisdom, which perceives non-compliance as a predominantly 'southern problem' (for a critical review of the literature, see Börzel 2000). Only two – Italy and Greece – qualify as parts of southern Europe. The other two southern member states, Portual and Spain, show no symptoms of the so-called 'Mediterranean syndrome' (La Spina and Sciortino 1993), which allegedly renders southern European countries incapable of effectively implementing European law. Nor do the four laggards fit any of the other common explanations for non-compliance and ineffective implementation, since they differ in almost any respect considered to be relevant in the compliance literature (cf. Börzel, forthcoming). For example, while Italy and Greece have a reputation for administrative lethargy and clientelism, France has often served as an example for a professional and effective bureaucracy. The Italian and Belgian regions hold strong responsibilities in the implementation of EU law. France and Greece, by contrast, are unitary states where subnational authorities play only a subordinate role. Moreover, the three other federal states in the EU, Germany, Spain, and Austria, score much lower on non-compliance. Likewise, Greece is one of the poorest member states, whereas Italy and France belong to the largest economies in Europe – together with Germany and the UK, which have a much better compliance record. Non-compliance patterns in the EU do not lend themselves to an easy explanation. Joseph Weiler's statement of almost ten years ago, that our knowledge concerning member state compliance with Community law resembles a 'black hole' (Weiler 1991: 2463), remains largely unchallenged. Despite a rich body of

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implementation studies, there is little systematic, theory-guided research able to generate generalizable explanations of (non-)compliance. Earlier works provided documentation, albeit sophisticated, rather than explanations of compliance failure (e.g. Azzi 1985; Krislov *et al.* 1986; Siedentopf and Hauschild 1988; Bennett 1991). More recent implementation studies have become more ambitious and strive to develop theoretical models of compliance. But they often suffer the problem of too many variables and too few cases; they focus on the implementation of one or two sectoral policies, frequently in the area of environment and social policy, in three or four countries, usually including Great Britain, France, and Germany (e.g. Héritier *et al.* 1996; Knill 1998; Duina 1999; Börzel 2000). The more than 6,200 cases of member state infringements of Community law individually listed in the Annual Reports and compiled in a database of the European University Institute provide the very first opportunity to systematically test competing explanations of non-compliance in a quantitative study. The data still do not allow us to draw inferences about the actual level of non-compliance in the EU. But they provide a random sample of the official infringement cases. And it is the only data we have.

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NOTES

1 Treaty Provisions and Regulations are generally binding and directly applicable, while Decisions are administrative acts aimed at specific individuals, companies, or governments for which they are binding.
2 ECJ Fédéchar *v.* High Authority, C-8/55; ECJ Van Gend en Loos, C-26/62.
3 But note that, according to the view of the ECJ, the Letter defines the object at issue in any subsequent court proceedings. As a result, the Commission is not allowed to include additional points during subsequent stages, even if it later discovers new infringements.
4 The basic amount of the fine is multiplied by a factor n, taking into account the GDP of a member state and its number of votes in the Council. The 'n' for Luxembourg, for instance, is 1 and for Germany 26.4 (OJ C 63, 28 February 1997).

5 Only Denmark, Finland, and Sweden regularly report to the Commission on the measures taken to transpose EU Directives into national law (Jordan 1999: 80).
6 In order to compare states, which differ in their years of membership, I 'standardized' their scores. First I divided the number of complaints, Letters, etc. of the different member states by their years of membership. Second, I added up these average scores and made the sum equal 100 per cent. Finally, I calculated the percentage of the average scores.
7 The reports do list a few hundred other Letters because, for political reasons, the Commission sometimes decides to make a Letter public. Moreover, some Directorates-General are less faithful to the Commission's policy of not disclosing cases of improper incorporation and application.
8 Interview in the enforcement unit of the Secretariat General of the Commission, Brussels, 26 April 2001.
9 Interviews in the enforcement unit of the Secretariat General and the Legal Service of the Commission, Brussels, 25/26 April 2001.
10 In the 1990s, Germany provided 28.2 per cent and France 17.5 per cent of the EU budget (Bundesministerium für Wirtschaft, January 2000, unpublished document).
11 See 'Initial Results of Eurobarometer Survey No. 54 (Autumn 2000)', European Union, Brussels, 8 February 2001.
12 Finland, Austria, and Sweden are excluded because they only joined the EU in 1995. They are still in the adaptation phase and the incorporation of the comprehensive *acquis communautaire* into national law is not fully concluded. Most of their infringement cases refer to the delayed transposition of Directives. Therefore, their infringement records may be above average in the earlier stages.
13 Internal document of the Commission, unpublished.
14 I am thankful to Wolfgang Wessels and Andreas Maurer for providing me with the annual numbers of legislation in force.
15 I owe this term to Beth Simmons.
16 I am grateful to Lisa Conant for providing me with the data.

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