Contemplating compliance: European compliance mechanisms in international perspective
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Comparative Conclusions Part II
This Part has described and analyzed the set-up and functioning of the EU infringement procedures and three alternative EU compliance mechanisms. Conclusions were drawn as to their effectiveness in inducing compliance with the rules of the European Union. The aim of this comparative conclusion at the end of part II on EU compliance mechanisms is to briefly summarize the most salient points made in the previous chapters, and in doing so compare the findings for the four mechanisms and draw conclusions.

First of all, it was found that the infringement procedures – evolving, modified and added to over the years – are quite effective in inducing compliance with EU law. The early phases of the procedure in particular play an important role, as most cases are closed during that time. Only 5% of all cases make it to the judicial phase. This confirms the importance of managerial-type efforts, such as take place in the administrative phase. The introduction of sanctions and the simultaneous application of lump-sum as well as penalty payments are thought to have added to the procedures’ effectiveness. Not only may they have a deterrence effect in the earlier stages, they also could shorten the duration of non-compliant behavior.

Over the years, the infringement procedures have gradually developed into a harder system, with more transparency, less room for Commission discretion and the added element of sanctions. This broadening of the enforcement side of the system has had a positive effect on compliance with EU law over the years. On the other hand, the hardening of the system has gone hand in hand with an increased focus on the managerial phases of the mechanism. Member States, not wanting to be “punished” by the application of hard enforcement elements, will try and solve issues concerning alleged non-compliance in an earlier phase. The deterrent effect of the enforcement side of the system increases the need for the management side. In terms of the compliance pyramid, the two bottom steps of the pyramid of prevention and monitoring have been expanded so as to provide a broader base for the upper two steps of a legal system and sanctions.

The importance of the managerial elements is even more obvious from the introduction of alternative compliance mechanisms. Although not all systems that were analyzed earlier have the same direct aim of increasing compliance with EU law, the eventual outcome of the procedures must be in conformity with EU law. These systems, although not meant as replacements of the infringement procedures, partly function as an alternative mechanism and partly as a complementary route to compliance.

The IMS, through transparency, naming-and-shaming, ranking and peer pressure, pushes Member States toward compliance. SOLVIT offers quick and effective solutions to problems encountered by citizens and businesses in the internal
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market. EU Pilot also aims to resolve issues in a timelier manner and thereby reinforce the management of the existing procedures. Given the fact that all three procedures have the same ultimate effect of inducing compliance, as well as a similar scope and participating actors as the infringement procedures, it is clear that there will be some interaction between the four mechanisms. It was found that although there is no obvious statistical link between the infringement and alternative mechanisms, and the underlying data for statistical analysis are not unambiguous, the tentative conclusion can be drawn that the introduction of the newer systems has indeed influenced the functioning of the infringement procedures. For all three mechanisms, albeit to different extents, the number of infringement procedures has decreased permanently since their introduction.

When all four systems are examined together, some differences are found when analyzing the compliance elements. Although the expected behavior, the character of the obligations and the element of discretion are the same for all four mechanisms, the IMS is the only system not really taking unintentional behavior into account. This means that managerial-type efforts should play a larger role in EU Pilot, SOLVIT and the infringement procedures than in IMS. This explains why the effect of IMS on the functioning of the infringement procedures is quite small, as it depends almost fully on management elements such as peer pressure and transparency. Almost fully, since the possibility of the application of an infringement procedure always looms in the background. Since the IMS targets non-implementation of directives, where a semi-automatic procedure including a fast-track sanction option exists for non-communication cases, there is quite a strong enforcement element available as a back-up. If IMS does not have the intended effect, therefore, recourse can and will be taken to the infringement procedures.

A comparison of the extent to which the four studied mechanisms work effectively is difficult to make. Is EU Pilot less effective than SOLVIT in inducing compliance, since SOLVIT has a solution rate of 80% while EU Pilot has a closure rate of only 68%? Is the IMS not effective, since its effect on compliance cannot be quantified at all? And are the infringement procedures effective given the fact that only 5% of all cases reach the judicial phase, and in the end compliance with court judgments is reached in all cases? Of course these types of conclusions cannot be drawn merely on the basis of the statistics available. However, it is possible to analyze how the mechanisms influence each other’s functioning.

The interaction that was shown to exist between the functioning of the infringement and the alternative procedures is an important element in inducing compliance with EU law. On the one hand, it is difficult to draw conclusions on the exact influence of the alternative systems on the effectiveness of the infringe-
ment procedures. It is, for example, a matter of speculation what number of cases now solved by SOLVIT would have gone on to become infringement procedures based on complaints. It is also unclear which part of these SOLVIT cases concerns a similar problem as under existing infringement procedures, which could thus have been solved simultaneously in one case under the Article 258 procedure.

On the other hand, the total amount of possible infringement cases has been reduced by the introduction of the alternative systems, thereby releasing Commission resources to focus on those cases that fall outside the alternatives’ remit or that beg special attention. Moreover, the alternative procedures have increased the detection rate of non-compliant behavior by appealing to a different audience than under the infringement procedures. *Vice versa*, the effectiveness of the alternative procedures is influenced to a great extent by the existence of the enforcement possibility of the infringement procedures. It is precisely the interaction between the managerial type systems and the enforcement procedures that explains the effective functioning of all four. In terms of the compliance pyramid, not only the managerial bottom steps of the front side of the pyramid have been expanded, but those of the other sides as well. The alternative mechanisms, on the other hand, may not include the enforcement-type upper two steps of the pyramid, but can rely on the mere existence of the legal system and sanctions contained in the infringement procedures. If needed, a switch from the alternative side to the front side can thus always be made.

The next chapters turn toward an evaluation of compliance mechanisms in other international organizations. Of course, the findings for the EU may not be comparable to compliance mechanisms in other international organizations. Aside from the fact that the EU is quite unique in the existence of a supranational Guardian of the Treaties, differences exist as to the character of the underlying obligations, the role of the element of discretion and many other things. Nevertheless, the interaction between the systems in those organizations, or the lack thereof, also offers an explanation for the effectiveness of their compliance mechanisms in a fashion similar to the findings for the EU.