Contemplating compliance: European compliance mechanisms in international perspective
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Comparative Conclusions Part III
The previous chapters have discussed several compliance mechanisms in three selected international organizations in order to draw more robust conclusions about the effectiveness of compliance mechanisms in the EU. Although the three organizations differ to a great extent in their set-up and functioning, as well as in the character of the underlying obligations, some comparative conclusions can be drawn as to their effective functioning due to the application of the compliance pyramid and the model of effectiveness as developed in part I. This section briefly presents some of the differences and similarities of the compliance mechanisms, with a view to evaluating these differences in light of the effectiveness model and to drawing final conclusions on their effective functioning.

The most important difference between the three organizations under analysis in the previous chapters is the character of the underlying obligations. The OECD is almost entirely based on soft law, where changing the mindset of the Member States and introducing new ideas through information sharing, transparency, peer review and discussions can be seen as the objective of the peer review mechanism, rather than inducing compliance with hard obligations. Member State involvement is thus of the utmost importance in the OECD. The OECD has no enforcement system, and the top two steps of the compliance pyramid, so to speak, are entirely absent.

The WTO compliance mechanisms, on the other hand, seek to adhere entirely to hard obligations under WTO law. The DSU is characterized by intergovernmentalism, the importance of the element of discretion, and the dispute settlement character; it has no primary objective of safeguarding common interests, and subsequently there is a preference for settling disputes in the early stages of the process. The bottom two steps of the pyramid are thus represented in the DSU and play an important role. On the other hand, the upper two steps are also available in the shape of a legal (quasi-judicial) system and the possibility for sanctions in the shape of compensation or retaliation. Given the fact that the DSU is not meant to protect common interests, but rather to settle disputes, the bilateral character of the sanction is a logical consequence.

The TPRM, then, is set apart completely from the dispute settlement side, and dispute settlement cannot be used to back up the findings of the peer review system. Although it is set up similarly to the OECD peer review systems, its functioning is not equally effective. This is partly due to the fact that the system aims at adherence to hard obligations, but is not backed by an enforcement system. Conversely, the absence of a functional link between the TPRM and the DSU has a negative effect on the effectiveness of the peer review mechanism. Moreover, several critiques regarding the level of naming-and-shaming, active dissemination and a lack of follow-up on previous recommendations make the TPRM less
effective in inducing compliance compared to the OECD, where these elements are much more rigorously applied. The broadening of the pyramid base through the introduction of the TPRM is not functional to the extent that a cross-over from the soft to the hard side is impossible.

The IMF, finally, has compliance mechanisms in place to oversee adherence to both hard and soft obligations. The Article IV consultations provide a managerial system intended to induce compliance with partly hard obligations, without a real possibility of enforcement back-up. The possibility for sanctions exists, but is not considered practicable and hardly applied. Moreover, the existence of the Balance of Payments Programs provides for an incentive to comply with the recommendations made under the peer review mechanisms, but this leads to unbalanced application biased towards developing Member States. In the IMF, therefore, there is a broad managerial base to the pyramid as represented by the bottom two steps of prevention and monitoring. The top of the pyramid, on the other hand, is very small as compared to the bottom. Given the existence of both hard and soft mechanisms in the IMF, an interplay between a managerial system and an enforcement mechanism is logical. The balance, however, is missing in the organization.

A soft mechanism such as exists in the OECD does not function as effectively in organizations where the underlying obligations are not, or not only, of a soft character. The absence of a procedural link between the WTO’s DSU and TPRM renders the TPRM ineffective, while the results of the TPRM cannot be used to increase the effectiveness of the bottom steps of the pyramid in the DSU. In the IMF such a link between the hard and the soft system does exist, but given the limited capacity of the enforcement side of the pyramid the effects of this element are quite limited.

It is now obvious that two elements play an important role in the effective functioning of compliance mechanisms in international organizations: 1. a correct match between the character of the underlying obligations and the compliance mechanisms; and 2. the possibilities for interaction between the different mechanisms within one organization. The next section will now evaluate what these findings can say about the effectiveness of the compliance mechanisms in the EU, and to what extent these comparative conclusions can have a more general application.