Non-compliance and the Power of Special Interests

– Work in progress, comments most welcome –

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Abstract

While variation in domestic institutions can explain the initial responsiveness of governments to the demands of the special interests that benefit from non-compliance, I show in this paper that the political weight of these interest groups determines the persistence of violations of European law. It is the political weight of domestic special interest groups benefiting from the non-compliant policy status quo that explain delays in change towards policies consistent with EU law. We observe long and escalating infringement proceedings when opportunistic governments can maximize their political support function by providing influential economic sectors with continued non-compliance. This argument helps us to understand intra-country variation, i.e., why the same EU member state governments respond differently when getting caught and prosecuted for violations of European law in some cases than in others. The argument is supported by empirical evidence from binary and multinomial response as well as duration models that analyze member states' decisions to comply in distinct ways: decision to comply before infringement cases reach the European Court of Justice (ECJ), decision to comply within a reasonable period of time (one year from the issuing of a reasoned opinion and from a court ruling), time-to-compliance from the initiation of infringement proceedings to their termination, and the number of stages of the official infringement proceedings that a case reaches before finally being settled.

Non-compliance and the Power of Special Interests

Strawberry fields forever
Living is easy with eyes closed
The Beatles

On December 9, 1997, the European Court of Justice ruled on case C-265/95. It found in favor of the European Commission that the French Government had "failed to fulfill its obligations under Article 30, in conjunction with Article 5, of the Treaty and under the common organizations of the markets in agricultural products [as it had failed] to adopt all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed" (European Court of Justice 1997). The French government was found guilty of having turned a blind eye on the de facto trade barriers to imports of Spanish strawberries resulting from the actions of private individuals. While French farmers were coercing French wholesalers to exclusively sell French agricultural products at inflated prices and were vandalizing produce imported from other member states, the French Minister for Agriculture stated in 1995 that "he in no way contemplated any intervention by the police in order to put a stop to it" (European Court of Justice 1997) – and he kept his word.

In spite of this ruling, even though the history of violent actions by French farmers against strawberry imports could be traced back to before Spain joined the then European

Economic Community in 1986, and despite the Commission's best enforcement and monitoring efforts in the years before and following the judgment,[1] it took until July 2005 for this case to be finally terminated. This is not to say that the French government did not occasionally claim that it had taken legal steps against some of its more violent farmers and that it had implemented procedures to remedy any disruptions to intra-EU trade. For instance, it provided financial compensation to foreign producers affected by the French farmers' actions. However, as the European Union does not provide member states with the option to buy their way out of compliance (Morrison 1994),[2] France fundamentally violated its obligations under what is now article 36 TFEU and the old article 5 TEC for two decades and failed to implement the changes required by the ECJ ruling for almost 8 years.

[1] The Commission had already been in contact with the French government since the mid-1980s before initiating formal compliance proceedings (1994/4466) under article 258 TFEU on July 19, 1994. It issued a reasoned opinion (SG(95)D/5798) on May 5, 1995, and further referred the case to the ECJ on August 4, 1995 (European Commission 1998). After the Court's judgment in December 1997, the Commission continued to monitor the practical implementation of the judgment and repeatedly reminded the French authorities of their treaty obligations.

[2] The legality, costs, and benefits of allowing members of international agreements to engage in 'efficient breach' (cf. Holmes (2009) for a seminal definition) has been extensively discussed in the context of the World Trade Organization and its Understanding on Rules and Procedures Governing the Settlement of Disputes, better known as the Dispute Settlement Understanding (Bello 1996, Schwartz and Sykes 2002, Bown and Pauwelyn 2011). However, research into efficient breach is not limited to the WTO (Trachtman and Dunoff 1999, Guzman 2005).

Why did France hold out so long in this particular case, but caved to European enforcement pressures in a similar case about spare parts for French cars in just over a year? Both cases were about import restrictions on Spanish products and violations of article 36 TFEU. They were both prosecuted at around the same time, but the French government only defied the European Commission in one of them. What explains this variation in the persistence of non-compliance in these French cases, but more generally, why is it that the compliance behavior of EU member state varies between them and within them in the face of escalating infringement proceedings?

While I previously focused on the decisions of EU member states to violate articles 28, 30, 34, and 36 TFEU (cf. Hofmann 2012), this paper investigates what happens after member states have been caught and infringement proceedings initiated. I previously highlighted that governments in member states with domestic institutions that provide lobbying opportunities to special interest groups have a significantly higher propensity to 'sell' initial infringements on trade-related treaty provisions. While these initial violations are relatively cheap and governments are happy to collect campaign contributions and other forms of political support in exchange for protecting import-competing industries, the cost-benefit calculations of EU governments can change once official infringement proceedings have been initiated. In the face of adjudication and enforcement, the mounting reputational, legal, and financial costs of continued non-compliance will lead at least some governments sometimes to reconsider their violation decisions.

Building on the theoretical model developed in Hofmann (2012), I argue that the political weight of special interests determines the persistence of violations of European law. It is the political weight of the domestic pressure groups benefiting from the non-compliant policy status quo that explains whether non-compliance persists or compliance is established or restored once the European Commission sends a reasoned opinion to a non-compliant member state or escalates infringement proceedings by referring the case to the European Court of Justice. Once the costs of non-compliance start to rise, opportunistic governments have to take a second look at how to best maximize their political support function. This leads them to abandon some import-competing industries, but also to provide continued violations of articles 28, 30, 34, and 36 TFEU to larger, powerful, and well organized economic sectors. This is why we observe intra-country variation, i.e., why the French government responded differently when getting caught and prosecuted for violating the same European laws in the *Barriers to Imports of Spanish Strawberries* (1994/4466) and *Seizure of Spare Parts in Transit, Protection of Designs and Models* (1997/4239) cases. As farmers are politically important to the French government, they were able to exert more influence than the manufactures of spare car parts. The agricultural sector received longer lasting protection from Spanish competitors due to its militancy and size.

Following a discussion of the official European infringement proceedings beyond the reasoned opinions-stage and the development of the argument outlined above, I present empirical evidence that supports my theoretical claims. Using binary and multinomial response as well as duration models, I analyze thousands of decision by EU 15 governments to succumb to mounting compliance pressure. In particular, I look at the decision to comply before infringement cases reach the European Court of Justice, the decision to comply within a reasonable period of time

(one year from the issuing of a reasoned opinion and from a court ruling), the time-to-compliance with a decision by the ECJ, the overall duration of infringement proceedings from their initiation to termination, and the number of stages of the official infringement proceedings that a case reaches before finally being settled. Overall, there is strong evidence that infringement cases that benefit influential interest groups are more protracted. If the winners of non-compliance can provide many votes and contributions, governments fight harder and longer to defend their rents.

Infringement Proceedings beyond Reasoned Opinions

European infringement proceedings consist of multiple stages. However, most of the theoretical and empirical work to date has only focused on one particular stage, the stage where the European Commission sends a reason opinion to the non-compliant member state. To analyze and understand the duration and escalation of infringement cases, it is important to take a closer look at the stages of the EU's compliance mechanism.

Just like other international organizations, the European Union has adopted an elaborate mechanism to monitor and enforce compliance with its rules and regulations, and the official infringement proceedings share many features with the dispute settlement mechanisms of other organizations (Smith 2000). Just like the WTO's Dispute Settlement Understanding, the European infringement proceedings can be sub-divided into – broadly speaking – a consultation, adjudication, and enforcement stage (cf. Table 1). Infringement proceedings start out in a fairly informal way. Export-oriented industries or other actors negatively affected by member states'

violations of EU law sound their alarms, members of the European parliament ask the European Commission to conduct compliance investigations, the Commission uncovers potential violations on its own initiative, member states fail to notify the Commission of the transposition of new European legislation into national legislation, etc. Once the European Commission is aware of potential infringements on EU law, it engages the suspected member state in an informal dialogue. This includes sending a so-called formal letter that informs the member state of the Commissions suspicion. Just like the WTO encourages its members to engage in consultations in the shadow, but without the involvement of the law (Busch and Reinhardt 2000), the Commission tries to clarify misunderstandings and solve minor compliance problems without involving the European Court of Justice, i.e., without moving on to the adjudication stage. While no reliable data are available on these early consultations between the European Commission and a suspected member states, it is widely assumed that a majority of cases gets already solved before they reach the first official stage (Börzel 2001).

If cases cannot be settled in this informal way, the European Commission follows article 258 TFEU protocol and issues a reasoned opinion in which it provides a detailed explanation of the reasons that have led it to conclude that the member state has failed to fulfill its legal obligations. While reasoned opinions take infringement cases to another level of formality, there is still room for negotiated conflict resolution. The member state is provided with a reasonable period of time to fulfill its obligations under the treaties before consultation turns into adjudication. Only if the member state lets this period of time pass without establishing compliance, will the Commission bring the matter before the Court of Justice. Referring a case to the ECJ escalates infringement proceedings to another level. At the adjudication stage the Court

decides whether the member state has truly failed to fulfill its obligations, and the member state is required to take the necessary measures to comply with the judgment.

Table 1 (Infringement Proceedings and Dispute Settlement) about here

Only one out of every three cases in which the European Commission sent a reasoned opinion reaches the adjudication stage. This is not surprising as the governments of member states have a number of incentives to settle their infringement cases before they reach the Court. Being officially accused or even convicted of non-compliance comes at a price. There are reputational costs vis-à-vis other members of the European Union (Downs and Jones 2002), there are domestic audience costs due to the visibility of Court cases and the media attention they receive, and adjudication itself is costly as the bills of high-priced lawyers need to be covered. Furthermore, it might be easier to negotiate a (mutually) beneficial settlement at the consultation stage than to leave the outcome of infringement proceedings to the European Court of Justice. Finally, the Court's rulings cannot be appealed. Unlike the WTO's dispute settlement mechanism, which includes an explicit appeals process, European infringement proceedings do not offer the possibility to appeal the judgment handed down by the European Court of Justice, making going to court an even bigger gamble. While this might explain why the ECJ never gets to see 2 out of 3 infringement cases, there is still the question of why member states accept this gamble in 1 out of 3 cases. What distinguishes the cases that get settled at the consultation stage from those that make it to and through adjudication?

A court ruling or panel report alone does not guarantee compliance. Both the European Union and the WTO therefore have an enforcement stage build into their respective compliance mechanisms. Violating the outcome of the adjudication process by refusing to comply with the judgment of the European Court of Justice or a panel or Appellate Body report has to be costly for the non-compliant member state. The European Union's enforcement proceedings are specified in article 260 TFEU and follow similar steps as the article 258 TFEU proceedings. However, this time the ECJ does not only decide whether a member state is complying or not, but has the right to impose financial penalties.[3] The imposed lump sum or penalty payments typically do the trick. While there are a few cases where member states temporarily continued to violate European law and paid the associated penalties instead of changing their compliance behavior,[4] most member states surrender and accept their defeat after being convicted twice – first for violating EU law and then for not acting upon the Court's original judgment. So, while all infringement cases come to an end, the question remains why it takes some longer and more

[3] As is show in Table 1, the WTO's enforcement stage differs in at least two important ways from the EU's article 260 TFEU proceedings. The decision of whether or not a member state has complied with the finding from the adjudication stage is separated from the decision to impose penalties. The size and type of penalties is decided separately through arbitration. In addition, the WTO does not impose its own penalties. While the European Commission and the European Court of Justice can impose a lump sum or penalty payment on the recalcitrant member state, the WTO allows the parties that are negatively affected by continued non-compliance to retaliate against the convicted member state with their own protectionist trade measures.

[4] For instance, infringement case 1984/0445 lead to France being ordered on July 12, 2005, to pay 316,500 Euro for each day it failed to comply with the Court's previous ruling that it needed to change its fisheries policies to comply with European legislation (European Court of Justice 2005). Compliance was only established by November 2006.

stages of the infringement proceedings than others, why we observe both between-member state and within-member state variation.

Managing and Enforcing Duration and Escalation

The existing EU compliance literature tries to answers these questions about the duration and escalation of infringement proceedings within the same enforcement and management framework that I already discussed in the context of initial violations and the initiation of infringement proceedings. Before turning once again to the political economy literatures of regulation (Stigler 1971, Peltzman 1976) and protection (Grossman and Helpman 1994) and developing my own argument about the impact of domestic politics on the persistence of non-compliance with EU legislation, I take another look at the two theoretical camps that dominate the literature on compliance in the EU.

The enforcement approach assumes that countries intentionally choose to violate international norms and rules because of the net costs of compliance. Therefore, supporters of the enforcement approach argue that non-compliance can only be prevented or overcome by increasing its material and reputational costs (Martin 1992, Downs, Rocke, and Barsoom 1996, Dorn and Fulton 1997). Increasing external constraints by establishing and strengthening the institutionalized monitoring, adjudication, and sanctioning mechanisms of international regimes and organizations can help with altering the cost-benefit calculations of states. While the likelihood of being detected and punished increases the anticipated costs of non-compliance (Martin 1992, Fearon 1998), political and economic power can significantly mitigate the extent to which countries are affected by and sensitive to such costs (Garrett, Kelemen, and Schulz

1998, Horne and Cutlip 2002). Following the argument of Robert O. Keohane and Joseph S. Nye (1977) on power and interdependence, countries are most sensitive if they lack political or economic power and are dependent on future goodwill and cooperation of others. Hence, less powerful member states of the EU are more likely to comply swiftly when faced with enforcement pressure by the European Commission and the ECJ as they are more sensitive to material and immaterial sanctions (Garrett, Kelemen, and Schulz 1998, Börzel, Hofmann, and Panke 2012).[5]

Unlike the enforcement approach, the management school of thought assumes that non-compliance is not intentional and the consequence of cost-benefit calculations, but happens inadvertently or is caused by a lack of capacity and domestic institutional constrains. Even countries that are willing to comply may be prevented from doing so if the capacity to comply is absent (Chayes and Handler Chayes 1993, Young 1994, Weiss Brown and Jacobsen 1998). However, what constitutes capacity is somewhat contested. The literature does not uniformly specify it and its operationalizations differ substantially. Resource-centered approaches define capacity as a state's ability to act, i.e., the sum of its financial, military, and human resources, but also the ability to pool and coordinate these resources and to mobilize and channel them into the compliance process (cf. Przeworski 1990; Simmons 1998; Guzman and Simmons 2005). Neo-institutionalist approaches, in contrast, argue that the domestic institutional structure influences the degree of a state's capacity to act and its autonomy to make decisions. For instance, veto

[5] Christian B. Jensen (2007) also makes the argument that the powerful EU member states can resist the supranational authority of the European Commission and European Court of Justice, but his empirical findings contradict this claim.

players can block the implementation of international rules and reduce the capacity of a state to make the necessary changes to the status quo (Alesina and Rosenthal 1995, Tsebelis 2002, Putnam 1988). Hence, less developed EU member states and those with elaborate systems of checks and balances cannot be expected to swiftly change domestic policies and to comply with ECJ judgments. While there is only limited evidence for the effect of capacity on compliance with ECJ rulings (Börzel, Hofmann, and Panke. 2012), most transposition studies report strong support for both the resource-centered and neo-institutionalist approaches. Both material and institutional constrains affect how long it takes for European directives to be legally transposed into national legislation (Berglund, Gange, and van Waarden 2006, Kaeding 2006, Thomson 2007).

The Power of Special Interests

While I do not dispute that member states ability to resist the Commission and the ECJ's enforcement efforts have an effect on member states' behavior and that lacking capacity can constrain the ability of governments to comply with European legislation and ECJ rulings, I draw once again on domestic interest groups to explain the timing of member states' decisions to comply and the variation in time-to-compliance across infringement cases.

Decisions about compliance are centralized in the hands of a reelection-minded government. In line with the standard political economy literature (Persson and Tabellini 2002, Drazen 2000, Mueller 2003), I assume that politicians are primarily interested in winning the next election and less worried about later repercussions (Alesina and Tabellini 2004). As politicians need political support to succeed in upcoming elections, they are open to the influence

of organized interest groups that can provide them with campaign contributions, votes, or both (Stigler 1971, Peltzman 1976, Grossman and Helpman 1994). In exchange for votes and contributions, governments act as the suppliers of such protectionist policies as prolonged violations of treaty obligations.

When it comes to deciding on whether or not to change the policies that are inconsistent with European law, governments weight the costs and benefits of such actions. In line with the theoretical argument developed and tested in Hofmann (2012), the political support that special interest groups provide in exchange for continued violations of EU law goes in the benefits column of governments' cost-benefits spreadsheets. However, this time there are additional entries in the costs column. I already discussed some of these entries above. Getting caught up in European infringement proceedings can come with a large financial and political price tag. There are the reputational and domestic audience costs, the (opportunity) costs of litigation, and the penalties that can be imposed by the European Commission and the ECJ for particularly long lasting and grievous non-compliance cases.

What is more, not all domestic interest groups are interested in violations of the same European legislations. So when trying to maximize their political support function and maximize the total mix of votes and contributions, governments have to decide on when to provide which group with what policy. They find themselves once more on the other side of a common agency problem where the different interest groups simultaneously and independently attempt to influence the government as their common agent (Bernheim and Whinston 1986). While we know that the equilibrium of such a situation is "a set of contribution schedules such that each

lobby's schedule maximizes the aggregate utility of the lobby's members, taking as given the schedules of the other lobby groups" (Grossman and Helpman 1994: 836), it is much less clear what this means in the context of rising non-compliance costs and mounting pressure by the European enforcement agencies. I claim that how much each group actually gets depends on its political importance to the government and its ability to provide enough contributions and votes to make it worthwhile for the government to bear the cost of long-lasting and escalating infringement cases.

To better understand the situation that interest groups and governments find themselves in when dealing with the questions of whether or not to cave in to the European Commission and ECJ, it is helpful to think about the difference between initial violations and ongoing infringements on EU law. I previously discussed the political economy of initial violations of articles 28, 30, 34, and 36 TFEU (cf. Hofmann 2012). Depending on the access that domestic political institutions provide, governments are willing to provide violations of EU law in exchange for political support. As initial violations are cheap, governments implement illegal policies even if pressure groups are small and can only provide limited campaign contributions. In fact, I highlighted how the collective action problem involved in organization, mobilization, and lobbying can favor smaller special interest groups (Olson 1965). Even though many import-competing industries are relatively small and disregarding their demands would lead to a greater good for a greater number of people, their strong incentives for lobbying turn them into a reckonable force fighting for protection and non-compliance.

As long as non-compliance stays undetected and compliance is not enforced, governments have few reasons not to provide interest groups with protection. This logic changes once infringement proceedings are initiated and start to move to the adjudication or even enforcement stage. Now, the government has to take the costs of these escalating infringement proceedings into consideration. While all the interest groups that demand continued protection successfully lobbied for initial violations of EU law, the government now has to decide which of these well-organized groups it wants and can afford to support even in the face of rising costs of violations. Where small pressure groups could previously count on their advantages at overcoming problems of collective action, being organized is now no longer enough to catch the attention of the government. As politicians ultimately set policies according to their own welfare concerns, the special interests benefitting from violations of EU law must carry enough political weight to warrant the government's continued attention.

This is consistent with the argument by Sam Peltzman (1976) that governments are conservative about providing favors to special interests when doing so comes with political costs and risk. It is also in line with Gary S. Becker's (1983) expansion of the collective action approach that being small might be beautiful, but that it takes the ability to deliver votes and financial support to truly influence the government. These theoretical claims are also supported by empirical evidence on U.S. trade policy (Hansen 1990, Hansen and Prusa 1997, Marvel and Ray 1983). If industries want to influence trade policy, they have to overcome the collective action problem first. However, once protection is provided, the duration of protection becomes a function of the industries' power and political weight.

From this discussion, I can derive the hypothesis that the survival-maximizing governments of EU member states will be responsive to the domestic interest groups that benefit from ongoing non-compliance only if these groups wield enough political strength. In the context of violations of articles 28, 30, 34, and 36 TFEU, European governments privilege economic sectors and translate their policy preferences for protection into persistent non-compliance and resistance against increasing compliance pressures only if these sectors can provide substantial votes and contributions. I expect that larger political influence can buy extended protection. Powerful sectors that benefit from infringements of EU law are more likely to be supplied with ongoing non-compliance than sectors that are less important to the government.

Hypothesis: The larger the political weight of the domestic industries at the center of a particular infringement case, the longer the government provides protection (in the form of continued infringements on European legislation) in the face of escalating infringement proceedings.

The more powerful the interest groups are that benefit from extended protection, the less likely it is that a member state decides to comply before the cases reach the ECJ or within a reasonable period of time. More political power also increases the time-to-compliance with a decision by the ECJ, the overall duration of infringement proceedings from their initiation to termination, and the number of stages of the official infringement proceedings that a case reaches before finally being settled.

Research Design

Having developed the argument that special interest groups can turn their political influence into extended protection, I now turn to putting this argument to the empirical test. Following a discussion of the data, I turn to the operationalization of the two central variables, i.e., the political weight of the domestic industries and the length of non-compliance with European law. In the section on Analysis and Results, I present strong empirical evidence in support of my hypothesis. Domestic industries that can offer or threaten to withhold more votes and contributions receive longer lasting protection. For them, member state governments are willing to take infringement cases to the adjudication and enforcement stages of the European Union's official infringement proceedings and to defy the European Commission and ECJ's enforcement pressure.

Response Variable

There are multiple variants of the response variable *Continued Infringements*$_{i,t}$ as there are various ways in which the length, duration, or escalation of infringement proceedings can be measured. However, before turning to the operationalization of the individual variables, it is important to note one major difference between continued infringements and the infringements variable used in other EU compliance studies (cf. Hofmann 2012). The typical response variable is the annual aggregate of violations of articles 28, 30, 34, and 36 TFEU and other European laws per member state. Accordingly, the unit of analysis in the regressions using this response variable is the member state-year. To test the hypothesis developed in this paper however, I have to look at individual infringement cases. The violations at the center of these cases are obviously

committed by EU member states in a particular year, but the unit of analysis is the individual case.

Out of the information that is included in my compliance dataset of 9610 cases, I can create four types of covariates. The first variant is a binary variable that asks whether or not a case has been terminated before it reaches the adjudication stage. Cases that reach the European Court of Justice (or in which the ECJ makes a ruling) are coded as one, all other cases are coded as zero. The case on French restrictions on imports of Spanish strawberries is coded as one, as it was referred to the Court on August 4, 1995. On the other hand, a German case about liquor labeling (1991/4782) receives a zero as the German government decided to comply with articles 28 TFEU and the Commission's reasoned opinion before the case could reach the adjudication stage. As mentioned when describing the EU's infringement proceedings earlier in this paper, only about 1 out of every 3 cases reaches the ECJ. All others are settled at the stage of reasoned opinion.

The second type of operationalization takes its cue from article 258 TFEU, which mentions that the European Commission should provide member states with a reasonable period of time to comply following the delivery of a reasoned opinion. While no detailed information on the exact length of this period is available, one year tends to constitute enough time for member states to take and implement the necessary actions to bring their national laws or practices in line with EU legislation. Therefore, the variable measures whether or not a member state restores or establishes compliance within one year of the date of the reasoned opinion. The third variant of the response variable measures the actual time it takes member states to cave in to enforcement

pressure. It measures the number days from the initiation of infringement proceedings to their termination. The amount of variation on this variable is huge. While some cases are settled almost instantaneously, e.g., when non-compliance was simply due to oversight or a minor misunderstanding, others drag on for years. In fact, a few cases have lasted more than a decade before being terminated. One of them is the strawberry case, which lasted ten years and two month from the time the reason opinion was sent to when France finally removed its illegal barriers to trade.

Finally, the fourth variant counts the number of stages a case passes through before it is settled. Cases in which the accused member state accepts the Commission's reasoned opinion right away are coded as one. Cases that are passed on to the ECJ are coded as two. If the ECJ makes a ruling the case is coded as three, and so on. While measures of duration similar to variant three are common in transposition studies,[6] it is this fourth version of my continued infringements variable that has most frequently been used in compliance studies (Jensen 2007, Börzel, Hofmann, and Panke 2012).

Independent of the exact operationalization of the dependent variable, the expectation is that larger political weight of the domestic industries that benefit from violations of EU law will increase the probability that cases last longer and escalate to later stages of the infringement proceedings. If the domestic interest group is influential, 'its' cases should reach the European Court of Justice, its government should let the reasonable period of time pass without taking any

6 Cf. König and Luetgert (2008), Kaeding (2008), Borghetto and Franchino (2010), and many more.

compliance action, and the infringement proceedings should last years and make it to the later stages, such as the imposition of penalties.

Covariates

The one covariate of interest in this paper is the political weight of the domestic industries. How can it be operationalized and measured? Here I follow in the footsteps of trade policy scholars, such as Jong-Wha Lee and Phillip Swagel (1997), Wendy L. Hansen and Thomas J. Prusa (1997), and Daniel Y. Kono (2009).[7] While there is a wide range of *Political weight*$_{i,t-1}$ indicators, the two most frequently used ones are sectoral employment as a percentage of total employment and a sector's contribution to the overall GDP or value added (also in percent). Other direct measures of political weight include industrial concentration and unionization rates (Marvel and Ray 1983). Finally, there are indirect measures. The most famous of these indirect measures is malapportionment, i.e., the unequal distribution of representatives in parliament. The idea behind such an indirect measure is that malapportionment tends to favor rural districts, which in turn should provide agricultural interests with more and disproportionate political influence (Samuels and Snyder 2001).[8]

[7] Cf. Baldwin (1989) for a general discussion of factors of political influence as used in economics and the political economy literature.

[8] Cf. Broz and Maliniak (2010) for an excellent study on how malapportionment and the empowerment of rural sectors of the economy affect compliance with international environmental regimes.

While I use several of these measures for robustness checks, e.g., sectoral value added using Organization for Economic Cooperation and Development (2012) data, that support my general findings,[9] I focus specifically on sectoral employment as an indicator of political weight and the ability of a sector to provide governments with votes, contributions, and other forms of political support in exchange for continued infringements. This is not only because of the variable's prominence in the existing trade policy literature, but because excellent data on sectoral employment are available from the International Labor Organization (2012). However, using these data requires a matching of the sector at the center of the infringement case and the sector's employment numbers from the LaborSta database (ILO 2012). I do this in two ways, by matching the ILO's *International Classification by Status in Employment* with the Directorate General responsible for the case as well as the chapters of the Directory of European Union Legislation in Force (cf. Table 2).

Table 2 (*Matching EU and ILO Data*) about here

For instance, to identify the political weight of the interest groups benefiting from an Italian infringement that is prosecuted by the Directorate General for Agriculture and Rural Development, I use information from ILO on employment in the agriculture, hunting, and forestry sector. For the other variant of this influence measure, I identify to which chapter of the Directory a violated legal act belongs and then use ILO data once more to identify the political

[9] For instance, I used the malapportionment measure to predict the duration of agricultural versus enterprise and industry cases and found that member states with higher levels of malapportionment do indeed favor their agricultural sector by providing it with longer lasting non-compliance.

weight of the sector involved. For instance, I match an infringement case involving a Dutch violation of a directive from the energy chapter (chapter 12) with data on employment in the electricity, gas, and water supply sector in the Netherlands.

The control variables are all measured at the country level, i.e., do not discriminate between individual industries. They are two power indicators, two capacity variables, and the institutional variable *Access Points*$_{i,t-1}$. The first power indicator account for the economic power of a member state that allows it to defy the European Commission and ECJ's enforcement pressure (Martin 1992, Moravcsik 1998, Steinberg 2002). I use the log of the real $GDP_{i,t}$ in constant 1995 US$ to measure economic power. Data for this covariate come from the World Bank (2012). The idea is that it influences the sensitivity towards the material costs of escalating infringement proceedings. The second power indicator measures direct EU-specific political power. The *Shapley Shubik index*$_{i,t}$ measures the proportion of times a member state is pivotal (and can, thus, turn a losing into a winning coalition) under qualified majority voting in the Council of Ministers (Shapley and Shubik 1954, Rodden 2002). Politically powerful member states can afford to resist enforcement pressure longer than weaker member states as they are less vulnerable to losses in reputation and can (threaten to) cause havoc in the decision-making process if not handled with kids gloves by the Commission and the European Court of Justice.

To test for the influence of capacity on continued compliance, I include two – one economic and one political – capacity indicators in my empirical models. *GDP per capita*$_{i,t}$ is a measure of a member state's economic wealth and the pool of economic resources that it can draw on to ensure rapid compliance (Brautigam 1996, Knill and Tosun 2009). The data also

come from the Word Bank (2012). To test the argument that weak, incompetent, and ineffective bureaucracies are to blame for member state's continued infringements on European legislation, the second capacity variable is an indicator of bureaucratic quality from the World Bank's *Worldwide Governance Indicators* (Kaufmann, Kraay, and Mastruzzi 2010) that measures the independence, professionalism, accountability, and transparency of the civil service. Member states with a good bureaucracy should be able to mobilize the resources needed to respond to the escalation of infringement proceedings even when those resources are scarce. Capacity should keep infringement proceedings short and prevent them from escalating to the enforcement stage.

The final control that is included in the regression tables below is the institutions index developed by Sean D. Ehrlich (2009). *Access Points*$_{i,t-1}$ measures the standardized number of policy-makers that represent a distinct constituency and have independent power in the area of trade policy. Other than in Hofmann (2012), I do not expect this variable to have a significant effect. After all, all the infringement cases involve special interest groups that have already successfully accessed domestic policy makers. When it comes to continued infringements, the question is what these interest groups can make out of the access they have.

Analysis and Results

Having discussed the operationalization of my covariates, response variables, and controls, I can now turn to analyzing the effect of interest group power on the duration and escalation of

infringement proceedings. The main findings are presented in Table 3.[10] Overall, there is strong empirical support for my argument that the political weight of the domestic industries at the center of a particular infringement case determines how long governments provide protection in the form of continued violations of European law. The political weight coefficient is significant and has the expected sign in all models. The same holds true for all the controls.

Table 1 (*Political Weight and Continued Infringements*) about here

To better appreciate the real impact that powerful special interest can have, it is worth taking a look at Figures 1 and 2. The first of these two figures simply compares the overall predicted survival patterns of agricultural and manufacturing (enterprise, industrial policy, and internal market)-related cases when holding all other variables constant at their mean. It is obvious that agricultural cases tend to last longer than non-agricultural cases. However, that is not as interesting as what we can see in Figure 2. Here, I look at variation within individual sectors. It clearly shows that the sectoral employment has a substantial impact on the duration of infringement cases. If the political weight of the domestic industries at the center of a case is

[10] All the empirical models were estimated with the statistics software package StataMP 12.1. Depending on the variant of the response variable, I estimate these models with either probit, ordered probit, or survival regression (Wooldridge 2001). Problems of heteroscedasticity were counteracted by the use of robust standard errors with clustering on member states (Wooldridge 2001, White 1980). All models were estimated with and without sectoral and year of initiation fixed effects. This did not affect the overall findings.

small, compliance is established or restored much faster than when the special interests have the power to provide votes and contributions to the government.

Figure 1 (*Duration between Sectors*) about here

Figure 2 (*Duration within Sectors*) about here

Conclusion

In this paper I have developed the argument that the political importance of special interest groups is key to understanding why survival-maximizing governments only provide some groups with continued protection in the face of long and escalating infringement proceedings. Testing this claim with data on thousands of individual infringement cases, I have found overwhelming empirical support. As the cost of non-compliance increases, governments cannot and do not want to provide every interest group that has managed to access the government with the lasting violations it desires. However, even in the light of enforcement pressure by the European Commission and European Court of Justice, sectors with a large number of employees that can provide votes and industries that are big enough to be able to make substantial financial campaign contributions receive favorable treatment. 'Their' infringement cases are dragged on for years and escalate beyond the consultation stage.

While my analysis has moved beyond a blunt cross-country comparison, there is room for even more detailed analyses. For instance, I have treated all agricultural cases the same. However, there might be a difference between the political influence of strawberry growers and

pig farmers. While taking my analysis to the sectoral level is a clear step forward when compared to previous studies (cf. Börzel, Hofmann, and Panke 2012), the next step is just as clear – moving to the level of the individual infringement case and paying even closer attention to whom continued infringements provide concentrated benefits and what they have to provide governments with to have them stand strong in the face of costly infringement proceedings.

Table 1: Infringement Proceedings and Dispute Settlement

	European Union	**WTO**
Consultation		
	Complaints, petitions, etc.	Request for consultations
	Formal letter	Consultations
	Reasoned opinion	
Adjudication		
	ECJ referral	Request for panel
	ECJ ruling	Panel report
		Appellate review and report
Enforcement		
	Reasoned opinion	
	ECJ Ruling	Implementation panel
		Arbitration
	Lump sum or penalty payment	Retaliation

Table 2: Matching EU and ILO Data

DG	Directory	ILO
Agriculture	Chapter 3: Agriculture	Agriculture, Hunting, and Forestry
Fisheries, maritime affairs	Chapter 4: Fisheries	Fishing
Enterprise, Industry	Chapter 13: Industrial policy and internal market	Manufacturing
Transportation, energy	Chapter 12: Energy	Electricity, Gas, and Water Supply
Transportation, energy	Chapter 7: Transport policy	Transport, Storage, and Communications
Education, culture, audiovisual	Chapter 16: Science, information, education, and culture	Education
Employment, social affairs Health, consumer protection	Chapter 15: Environment, consumers and health protection	Health and Social Work

Table 3: Political Weight and Continued Infringements

	(1)	(2)	(3)	(4)
	Reaches ECJ	**Exceeds reasonable time**	**Duration of proceedings**	**Number of stages**
	Probit	*Probit*	*Weibull*	*Ordered probit*
Political weight$_{i,t-1}$	0.11**	0.09**	0.10***	0.33*
	(0.05)	(0.05)	(0.04)	(0.18)
GDP$_{i,t-1}$	0.19***	0.31***	0.34***	0.12***
	(0.07)	(0.06)	(0.05)	(0.02)
GDP per capita$_{i,t-1}$	-0.00***	-0.00***	-0.00***	-0.05***
	(0.00)	(0.00)	(0.00)	(0.02)
Shapley Shubik index$_{i,t-1}$	2.10***	1.28**	1.33***	1.09***
	(0.55)	(0.51)	(0.51)	(0.37)
Bureaucratic quality$_{i,t-1}$	-0.30*	-0.44***	-0.41**	-0.46**
	(0.17)	(0.17)	(0.19)	(0.22)
Access Points$_{i,t-1}$	0.15	0.07	0.01	0.45
	(0.15)	(0.31)	(0.19)	(0.42)
Constant	4.12***	3.29**	3.87**	3.62**
	(0.77)	(1.34)	(1.60)	(1.46)
Observations	6294	6294	6294	6294

Robust standard errors (clustered on member states) are in parentheses. *p < 0.1, **p > 0.05, and ***p > .01 (two-tailed).

Figure 1: Duration between Sectors

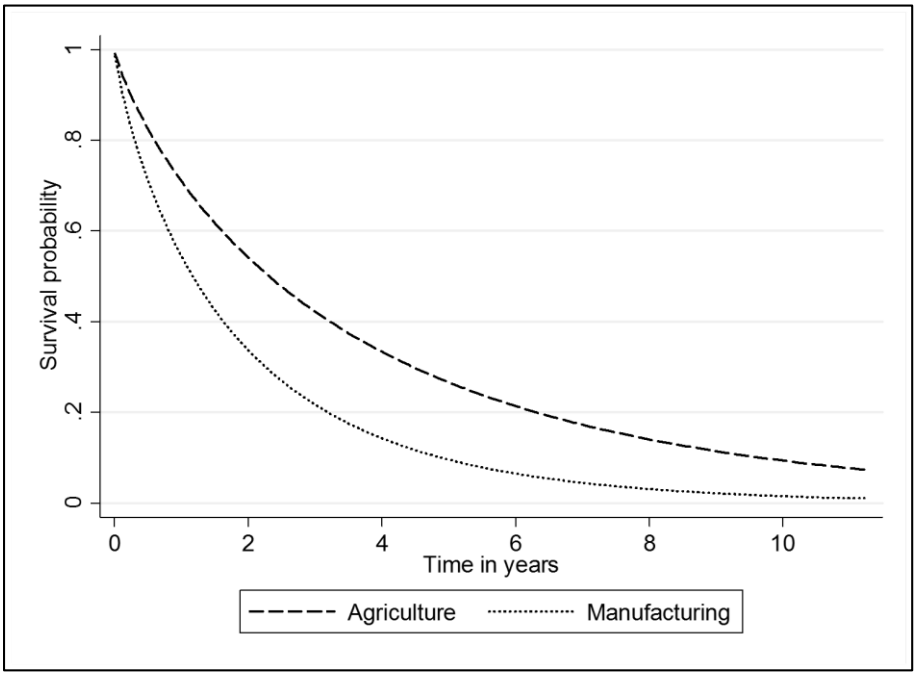

Figure 2: Duration within Sectors