How Long to Compliance? Escalating Infringement Proceedings and the *Diminishing* Power of Special Interests

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Abstract

Previous research has shown that some European governments are more responsive to the demands of special interests that benefit from non-compliance with European Union law. However, what determines intra-member state variation and the persistence of violations? I argue that the political weight of interest groups can explain delays in changes from the non-compliant status quo to policies consistent with European legislation, and long and escalating infringement proceedings are the result of opportunistic governments maximizing political support by providing particularly influential special interests with continued non-compliance. This argument is empirically supported by a variety of models that analyze member states' decisions to comply before infringement cases reach the Court of Justice of the European Union, the time-to-compliance from the initiation of official infringement proceedings, and the number of stages of these proceedings that a case reaches before finally being settled.

Keywords

compliance, infringement proceedings, special interests, member states, European Commission, Court of Justice of the European Union, European Union

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On December 9, 1997, the Court of Justice of the European Union (CJEU) 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" (Court of Justice of the European Union 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" (Court of Justice of the European Union 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 monitoring and enforcement efforts in the years before and following the judgment, it took until July 2005 for this case to be finally terminated.[1] This is not to say that the French government did not

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[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,

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 (EU) does not provide member states with a legal option to buy or compensate their way out of compliance (Morrison 1994), 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 CJEU ruling for almost 8 years.

Why did France hold out so long in this particular case, but 'caved' to European enforcement pressure 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 and CJEU 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 there is a rich literature on the decisions of member states to violate EU law (Mastenbroek 2005; Toshkov 2010; Angelova et al. 2012), I investigate what happens after member states have been caught and infringement proceedings been initiated. While initial

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and further referred the case to the CJEU 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.

violations are relatively cheap and governments happy to collect campaign contributions and other forms of political support from even small anti-compliance interests in exchange for non-compliance, the cost-benefit calculations of EU governments change once official infringement proceedings have been initiated. In the face of adjudication and enforcement, the mounting political, reputational, legal, and financial costs of continued non-compliance lead most governments to reconsider their violation decisions most of the time.

I argue that the political weight of special interests determines the persistence of violations of European legislation. 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 CJEU. Once the costs of non-compliance start to rise, opportunistic governments have to take a second look at how to best maximize political support. This leads them to abandon most interest groups, but also to provide continued violations to a small number of particularly powerful and well organized interests. This is why we observe intra-country variation, i.e., why the French government responded differently when being caught and prosecuted for violating the same EU 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 few protectionist manufactures of spare car parts within the broader, pro-compliance manufacturing sector. Farmers received longer-lasting protection from Spanish competitors due to their 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 over 1,000 decision by EU governments to succumb to mounting compliance pressure. In particular, I look at the decision to comply before infringement cases reach the CJEU, 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 compelling evidence that infringement cases that benefit influential special interests are more protracted. As costs and pro-compliance pressure rises, governments only fight hard and long to defend the concentrated rents of those winners of non-compliance that can provide many votes and contributions.

Infringement Proceedings beyond Reasoned Opinions

European infringement proceedings consist of multiple stages. While most of the quantitative work has focused on the stage where the European Commission sends a reason opinion to the non-compliant member state (Toshkov 2010), it is important to take a closer look at all the stages of the EU's compliance mechanism to understand the duration and escalation of infringement cases.

The EU 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 international organizations (Smith 2000). The European infringement proceedings can be sub-divided into – broadly speaking – a consultation, adjudication, and enforcement stage. Infringement proceedings start out in a fairly

informal way when actors that are negatively affected by member states' violations of EU law, e.g., exporting firms, and other pro-compliance constituencies 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, or member states fail to notify the Commission of the transposition of new European legislation. Once the European Commission is aware of potential infringements, 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 World Trade Organization 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 CJEU. 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 are resolved before they ever reach the adjudication stage (Börzel 2001).

If cases cannot be settled this 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 remains obstinate will the Commission bring the matter before the CJEU. Referring a case to the CJEU escalates infringement proceedings to another level, where 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.

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 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 is increasing pressure from pro-compliance interests, there are reputational costs vis-à-vis other members states (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 due to the legal transaction costs involved. Furthermore, it might be easier to negotiate a (mutually) beneficial settlement at the consultation stage than to leave the outcome to the CJEU. Finally, the Court's rulings cannot be appealed, making going to court an even bigger gamble. While this might explain why the CJEU 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?

As court rulings alone do not guarantee compliance, violating the outcome of the adjudication process by refusing to comply with the judgment of the CJEU has to be costly for the non-compliant member state. The EU therefore has an enforcement stage build into its compliance mechanisms, which is specified in article 260 TFEU. While following similar steps as the article 258 TFEU proceedings, this time the CJEU does not only decide whether a member state is complying or not, but has the right to impose financial penalties that typically do the trick. While there are cases where member states temporarily continue to violate European legislation and pay the associated penalties instead of changing their compliance behavior, 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 (Falkner

2018).[2] So, while all infringement cases come to an end, the question remains why it takes some longer and more 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 commonly used in the context of initial violations and the initiation of infringement proceedings (Tallberg 2002).

Similar to the argument developed below, 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 (Downs et al. 1996). 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

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[2] 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 (Court of Justice of the European Union 2005). Compliance was finally established by November 2006.

countries are affected by and sensitive to such costs (Horne and Cutlip 2002). It is this aspect of the enforcement approach that EU scholars have focused on when testing the effects of such variables as votes in the Council of the European Union or the size of member state economies on compliance outcomes. Following the argument of Keohane and Nye (1977) on power and interdependence, countries are assumed to be most sensitive if they lack political or economic power and are dependent on future goodwill and the 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 CJEU as they are more sensitive to material and immaterial sanctions (Garrett et al. 1998, Börzel et al. 2012, Jensen 2007).

Unlike the enforcement approach, the managerial 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). 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 (Przeworski 1990; Simmons 1998). 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 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 CJEU judgments. While there is only limited evidence for the effect of capacity on compliance with CJEU rulings (Börzel et al. 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 et al. 2006; Kaeding 2006; Thomson 2007).

The (Diminishing) Power of Special Interests

While I do not dispute at all that member states ability to resist the Commission and the CJEU'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 CJEU rulings, I draw on domestic interests 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), I assume that 'myopic' politicians primarily care about winning the next election and are less worried about later repercussions. As politicians need political support to succeed in upcoming elections, they are open to the influence of organized interests that can provide them with campaign contributions, votes, or both (Stigler 1971; Peltzman 1976). In exchange for votes and contributions, governments act as the suppliers of such policies as the prolonged violation of EU treaty obligations.

When it comes to deciding on whether or not to change the policies that are inconsistent with European legislation, governments weight the costs and benefits of such actions. The political support that special interests provide in exchange for continued violations goes in the benefits column of governments' cost-benefits spreadsheets. However, there are also entries in the costs column. As already discussed 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 and transaction costs of litigation, and the penalties that can be imposed by the CJEU in particularly long lasting and grievous non-compliance.

What is more, not all domestic interest demand violations of the same EU laws. There are narrow non-compliance interests as well as pro-compliance constituencies (Dai 2005). 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 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 to the European Commission and CJEU, it is helpful to think about the difference between initial violations and ongoing infringements on European legislation. Depending on the access that domestic political institutions provide (Ehrlich 2011), 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 special interests are small and can only provide limited campaign contributions. In fact, the collective action problem involved in organization, mobilization, and lobbying can favor smaller groups that receive concentrated benefits from non-compliance (Olson 1965).

As long as non-compliance stays undetected and compliance is not enforced, governments have few reasons not to supply special interests with violations of European legislation. 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 groups that demand continued violations successfully lobbied for initial infringements of EU law, the government now has to decide which of these groups it wants and can afford to support even in the face of rising costs of violations. Where smaller 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 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 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 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 a long line of empirical research on U.S. trade policy (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 political weight in the face of international and domestic pro-free trade pressure.

From this discussion, I derive the hypothesis that the survival-maximizing governments of EU member states will only be responsive to the domestic interests benefitting from ongoing non-compliance if these groups wield enough political strength and power. Over the course of escalating infringement proceedings, European governments start privileging broader, pro-compliance constituencies and only translate the policy preferences of narrow interests into persistent non-compliance and resistance against increasing compliance pressures if anti-compliance firms or industries can provide substantial votes and contributions. I expect that only larger political influence can buy extended violations. Politically important actors benefiting from infringements of EU law are more likely to be supplied with ongoing non-compliance, while the violations of narrow, less powerful special interests more quickly 'fall victim' to enforcement pressure and a general pro-compliance consensus.

Hypothesis: The larger the political weight of the domestic special interest group at the center of a particular infringement case, the longer the government provides

continued violations of European legislation in the face of escalating infringement proceedings.

In other words, when the special interest groups that benefit from extended non-compliance are small and less politically powerful, governments are more likely to comply before the cases reach the CJEU. The same holds true when there are large, politically important pro-compliance interests, whose power also decreases the time-to-compliance from infringement proceedings' initiation to termination as well as the number of stages of the official infringement proceedings that a case reaches before finally being settled.

Testing Special Interest Power

Having developed the argument that influential special interests can turn their political weight into extended non-compliance, 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 EU law. In the section on *Analysis and Results*, I present compelling empirical evidence in support of my hypothesis. Only domestic interests that can offer or threaten to withhold substantial amounts of votes and contributions receive longer lasting violations while the influence of broad, pro-compliance interests increases as the EU's official infringement proceedings escalate. Member state governments may find it beneficial to provide initial violations to narrow interest groups, but they are less inclined to continue protecting their rents and take their infringement cases to the adjudication and enforcement stages as the European Commission and CJEU's enforcement pressure mounts.

Continued Infringements

There are multiple variants of the response variable 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 variables most frequently used in other quantitative EU compliance studies. The typical response variable aggregates annual violations of European legislation per member state (Toshkov 2010). Accordingly, the unit of analysis in these studies is the member state-year. To test the hypothesis developed above, however, I have to look at individual infringement cases. The violations at the center of these cases have obviously been 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 the compliance dataset (Börzel & Knoll 2012), I create three 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 CJEU* 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, only about 1 out of every 3 cases (32.6%) reaches the CJEU. All others are settled at the reasoned opinion stage.

The second variant of the response variable measures the actual time it takes member states to cave to enforcement pressure in the number of days from the initiation of infringement

proceedings to their termination. The amount of variation on this *Time-to-compliance* variable is dramatic. 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.

Figure 1 about here

Figure 1 captures some of the variation on the time-to-compliance measure. While the average infringement case lasts for a bit more than 1.4 years, some infringement proceedings are closed in under a month, and others drag on for over a decade. When grouping the cases by member states, it becomes apparent that Germany (DE), Spain (ES), and Greece (GR) are responsible for some of the more extreme outliers in terms of duration. Together with those of Italy (IT), German and Greek infringement proceedings also last the longest on average. Belgium (BE), Denmark (DN), and the Netherlands (NL) stand out for having the smallest number of cases, but only Belgium has settled all of them in under two years. Portugal (PR) and Greece are the only member states with over 300 violations of EU law. When the cases are grouped by sectors and policy areas, most cases fall under single market & enterprise/manufacturing (MA), agriculture (AG), the environment (EN), and transportation & energy (TE). While some of the longest lasting instances of non-compliance belong to the group of environmental cases, fisheries (FI) and education & research (ER)-related proceedings actually take the longest time to be settled with an average of over 2 years.

The third and final type of operationalization 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 CJEU are coded as two. If the CJEU makes a ruling the case is coded as three, and so on. While measures of duration similar to variant two are fairly common in transposition studies (König and Luetgert 2008; Kaeding 2008; Borghetto and Franchino 2010), this third version of the continued infringements variable has only been used in a few compliance studies (Jensen 2007, Börzel et al. 2012).

Independent of the exact operationalization of the dependent variable, the expectation is that larger political weight of the group that benefit from violations of EU law will increase the probability that cases last longer and escalate to later stages of the infringement proceedings. Only if a domestic special interest group is particularly influential should 'its' cases reach the CJEU and infringement proceedings last longer and make it to the later stages before the government takes any compliance action.

Power and Controls

The one covariate of interest is the political weight of domestic special interests. Unfortunately, there is no direct way to measure the influence of the groups that favor non-compliance. While a qualitative study can trace the power that farmers exerted over the French government's compliance decision in the strawberry case, this is not possible for the entire EU and more than 30 years of infringement proceedings. Unlike in the United States, systematic, quantitative data on lobbying and campaign contributions across states and time is simply not available in Europe. However, there is a workaround. Instead of focusing on the narrow special interests

that demand continued non-compliance, we can collect information on a group of powerful actors that support compliance – European exporters. Not only have exporters a strong interest in an integrated, functioning, and rule-based European economy (Gilligan 1997; Handley 2014), but are more productive and have more employees than firms with an exclusively domestic focus (Bernhard and Leblang 1999; Osgood 2016). In short, where pro-compliance exporters are numerous and strong, the power of the domestic groups that receive rents from ongoing non-compliance diminishes substantially.

How can the political weight of exporters be operationalized and measured? I follow in the footsteps of comparative and international political economy scholars of trade, trade disputes, and dispute settlement that use industry-level exports as an indicator of political weight of exporters (Kono 2009; Poletti, De Bièvre, & Hanegraaff 2016). This variable proxies the ability of pro-compliance constituencies to provide governments with votes, contributions, and other forms of political support in an effort to mitigate the influence of the narrow special interests that demand continued violations of European legislation. Accordingly, higher values of *Pro-compliance power$_{i,t,k}$* in US\$ should lead to shorter periods of non-compliance and less escalation of infringement proceedings as the influence of the groups demanding ongoing non-compliance is overpowered by the political weight of powerful export industries.

Excellent data on industry-level exports are available from the United Nations (2018) for all EU member states and in some cases as far back as the 1960s. However, using these data requires a matching of infringements cases and exports from the UN Comtrade Database. I do this by assigning two-digit-level *Harmonized Commodity Description and Coding System* codes to the Directorate-General (DG) responsible for the case. For instance, to identify the political weight of the exporters opposing continued violations in cases prosecuted by the

European Commission's DG for Maritime Affairs and Fisheries, I use Comtrade data on exports of fish and crustaceans, mollusks, and other aquatic invertebrates (HS Commodity Code 03). Exports of nuclear reactors (84) and railways, vehicles, aircraft, and ships (86-89) are matched with energy and transport cases.

The control variables are all measured at the country level. The two power indicators and three capacity variables follow from the theoretical discussion of *Managing and Enforcing Duration and Escalation* above. An additional institutional variable gets at the ease of special interest lobbying. The first power indicator account for the economic power of a member state that allows it to defy the European Commission and CJEU's enforcement pressure (Martin 1992; Moravcsik 1998; Steinberg 2002). I use the log of the real $GDP_{i,t}$ in US\$ to measure economic power. Data for this covariate come from the World Bank (2018). 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 the European Union (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, can (threaten to) cause havoc in the decision-making process, or even push for treaty revisions if not handled with kids gloves by the Commission and the CJEU (Garrett et al. 1998).

To test for the influence of capacity on continued compliance, I include three – one economic, one bureaucratic, and one institutional – capacity indicators in my empirical models. *GDP per capita$_{i,t}$* (Word Bank 2017) 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 (Knill and Tosun 2009). 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 a *Bureaucratic quality$_i$* index that measures performance related pay for civil servants, lack of permanent tenure, and public advertising of open positions (Mbaye 2001; Auer et al. 1996). 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. The third capacity indicator are *Veto players$_{i,t}$* (Henisz 2002), which can preclude the necessary policy change for compliance, making infringement proceedings longer and leading them to escalate beyond the consultation stage.

The final control that is included in the analysis is an institutions index developed by Ehrlich (2011). *Access Points$_{i,t}$* measures the standardized number of policy-makers that represent a distinct constituency and have independent power in a policy area. Unlike veto players that can actively reduce the institutional capacity for policy change, access points do not themselves delay compliance. They empower narrow special interests by granting them access and the opportunity to influence domestic policy makers. Of course, opening the access door may become harder under rising enforcement pressure, with a negative interacting effect between access points, broader pro-compliance support, and governments' compliance decisions.

Analysis and Results

Having discussed the operationalization of my covariates, response variables, and controls, I 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 1. Models 1 and 2 analyze the odds that the European Commission escalates cases to the adjudication stage, model 3 estimates the effects of the covariates on the time-to-compliance, and model 4 presents results on the odds that cases reach the later stages of the official infringement proceedings. Due to the different measurement levels of the response variables, regression for binary, ordinal, and survival data was used to estimate the various coefficients.

Overall, there is strong empirical support for my argument that the strength of the domestic interests at the center of a particular infringement case determines how long governments provide continued violations of EU law. The coefficients for the political pro-compliance power of exporters have the expected sign and are highly statistically significant across all models. The more the industries matched to a case export, the lower that odds this case will make it to and beyond the CJEU and the faster it will be settled. Only when exporters are week, few, and far between do governments decide to remain obstinate in the face of escalating infringement proceedings and rising pressure to comply. These findings are highly robust to the use of various methods of analysis, sample restrictions (e.g., with vs. without environmental cases), and model specification.[3]

What is more, the power of pro-compliance constituencies lock some of the doors that access points provide to special interest groups. While access points facilitate lobbying for ongoing non-compliances in three out of four models, including the interaction effect with pro-compliance power in model 2 shows that the broader interests of exporters undermine the

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[3] All models were estimated with and without DG fixed effects and fixed effects for member
    states and the years infringement proceedings were initiated.

effects of access on the odds that cases will make it to the CJEU. A consistent, but slightly different interpretation of the finding is that exporters are not just able to lock out groups interested in reaping the concentrated benefits of ongoing non-compliance, but can use access points to successfully promote their own, pro-compliance agenda among domestic policy makers.

With respect to the other control variables testing the enforcement and managerial approaches, I find a mixed bag of expected or no results. As expected, larger member states comply worse across the stages of the infringement proceedings, and efficient bureaucracies lead to faster compliance. However, the coefficients for the share of pivotal votes in the Council of the European Union, GDP per capita, and veto players are mostly not statistically significant. Some even point in the wrong direction. For the Shapley Shubik index, this might be due to it simply being what it was designed to be – a measure of member states' ability to influence and shape the making of European legislation rather than to resist enforcement pressure.

Table 1 about here

To better appreciate the real impact that powerful special interest can have, it is worth taking a look at Figure 2. Comparing the predicted survival patterns of agricultural and manufacturing cases while holding all other variables constant at their mean, it becomes obvious that the average case progresses similarly in both groups. More than one third of cases is settled within a year, member states comply with another third of cases by the end of the second year, and only a fraction of infringement proceedings makes it beyond the 1,000-day mark. However, that is where the similarities end. There is a clear separation in the survival rates of manufacturing cases with or without pressure from exporters. As pro-compliance

power increases, governments are far less willing to provide special interest groups with long-lasting non-compliance, just like in the French spare car parts case. This is clearly not the case for agricultural cases. The overlapping survival functions indicate that variation in exporters' pro-compliance pressure does not affect whether governments continue to cater violations of EU law to narrow special interests. The French strawberries case lasted for over a decade independent of the broader interests of French agricultural exporters.

Figure 2 about here

Moving beyond this specific case, answering the question of what makes the agricultural sector different may be beyond the scope of this study, but it will be worth revisiting it with better quantitative data on the political weight of anti-compliance groups or a qualitative, in-depth approach that can paint a more detailed picture of the influence of special farming interests across specific infringements and EU member states. What is clear for now is that special interest groups have a substantial impact on the duration of infringement cases unless they are opposed by powerful pro-compliance constituencies. If the political weight of the domestic groups at the center of a case is small, compliance is established or restored much faster than when these special interests have the power to provide substantial amounts of votes and contributions to their government.

Conclusion

In the theoretical section, I developed the argument that the political weight of special interest is key to understanding why the survival-maximizing governments of EU member states only

provide some groups with continued violations of EU law in the face of long and escalating infringement proceedings and increasing enforcement pressure by the European Commission and CJEU. Testing this claim with data on over 1,000 individual infringement cases, I found strong empirical support. As the cost of violations increases, governments have to reconsider their non-compliance decisions. Instead of catering to the narrow special interest groups that desire lasting violations, governments give in to the power of broader pro-compliance interests. Specifically, the odds of governments abandoning the non-compliant status quo and shifting to policies consistent with European legislation increase as the political influence of exporters in the sectors or policy areas affected by a violation increases. In short, only special interests that can provide large number of votes and are big enough to make substantial financial contributions receive favorable treatment once infringement cases escalate beyond the consultation stage of the EU's official infringement proceedings.

While this study of the escalation and duration of infringement proceedings has moved beyond the more common theoretical debate on enforcement and management and empirical cross-country comparisons, there is room for follow-up research. *Pro-compliance power* is only a very indirect proxy for the political weight of special interests. Just like other studies of the influence of special interests on trade and other European and domestic policies, I have been hampered by the lack of systematic data on lobbying and campaign contribution in Europe. One way forward could be in-depth analyses of individual infringement cases – just like the French strawberry case – for 'smoking guns' of special interest group pressure on member state governments to stay obstinate and delay compliance in the face of costly infringement proceedings. In the absence of an angle for experimental research, qualitatively processes tracing might also get us closer to establishing causality. While my analysis shows

that we can observe the broad empirical implications of my hypothesis, it remains an observational study.

In addition to improvements for the study at hand, I also believe that it offers opportunities or avenues for new research. The differences I found between the effects of special interests on the duration of infringements proceedings between agricultural and manufacturing cases still needs to be explored at the sectors- and policy area-level or even the level of the individual infringement case. After all, not all cases within agriculture are the same. What is also not the same are the dispute resolution and enforcement mechanisms of international organizations. While I developed the theoretical argument on special interest influence and the escalation and duration of infringement cases with the EU in mind, there is no reason why it should not be tested in other institutional settings. We might well find additional interesting variation in where, when, how, and why governments bow to the power of broad pro-compliance interests or continue to provide narrow groups with concentrated benefits in the face of rising costs of non-compliance. That variation wants to be explained.

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Figure 1: Time-to-compliance across Policy Areas and Member States

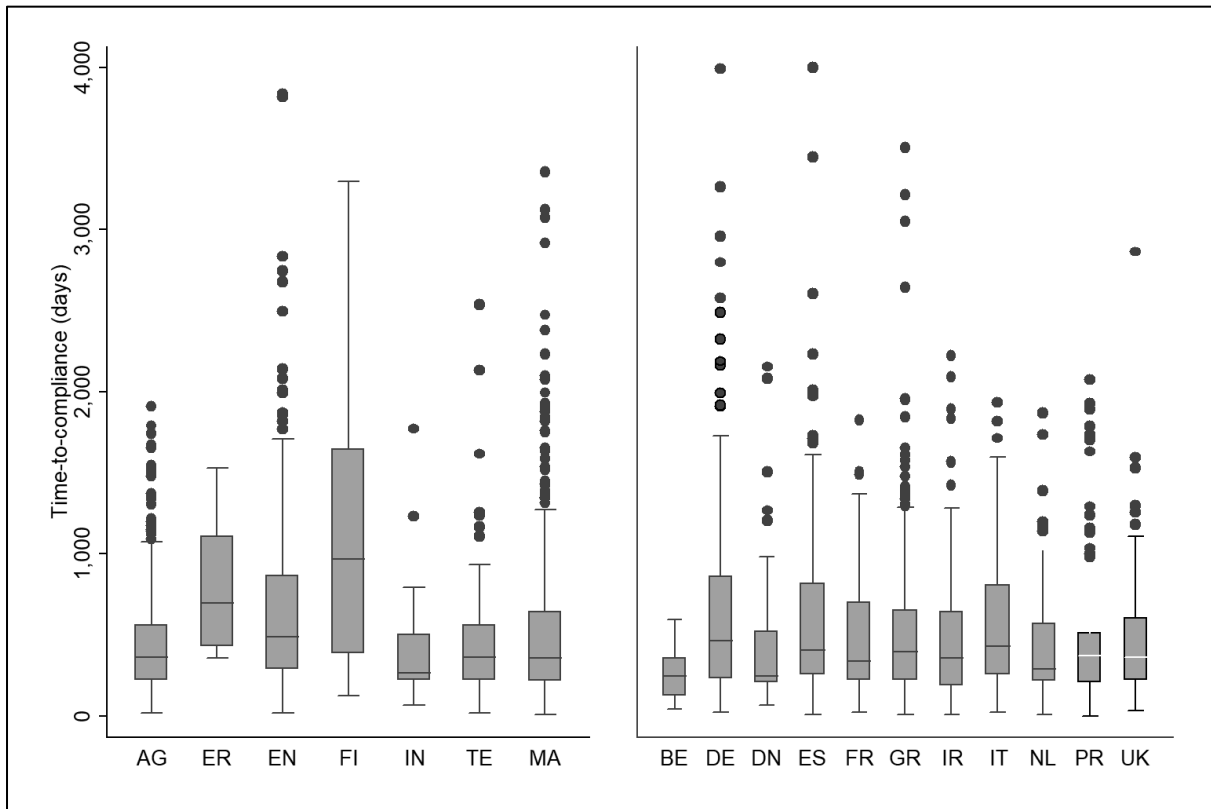## Table 1: Political Weight and Continued Infringements

	(1)	(2)	(3)	(4)
	Reach the CJEU	**Reach the CJEU**	**Time-to-compliance**	**Number of stages**
	Logit	*Logit*	*Cox*	*Ordered logit*
Pro-compliance power	-0.00994***	-0.00685**	0.00272**	-0.0105***
	(0.00219)	(0.00255)	(0.000949)	(0.00211)
GDP	1.352***	1.298***	-0.260*	1.507***
	(0.387)	(0.299)	(0.121)	(0.322)
Shapley Shubik index	-0.136	-0.136	0.00586	-0.152*
	(0.0854)	(0.0697)	(0.0251)	(0.0715)
GDP per capita	0.0143	0.0163	-0.0130	0.00244
	(0.0302)	(0.0237)	(0.0104)	(0.0263)
Bureaucratic quality	-1.212***	-1.245***	0.261***	-1.166***
	(0.182)	(0.151)	(0.0297)	(0.173)
Veto players	1.498	0.761	-0.643	1.988*
	(1.009)	(0.999)	(0.379)	(0.989)
Access Points	0.139*	0.222*	-0.0452	0.169**
	(0.0685)	(0.0864)	(0.0257)	(0.0609)
*Access Points * Pro-compliance power*		-0.00357*		
		(0.00144)		
Constant	0.185	0.563		
	(1.135)	(1.022)		
Cut 1				-0.184
				(1.036)
Cut 2				0.597
				(1.086)
Cut 3				2.519*
				(1.087)
Cut 4				4.860***
				(1.430)
Observations	1156	1156	1152	1156

Clustered standard errors in parentheses. DG fixed effects not reported. *p < 0.1, **p > 0.05, and ***p > .01 (two-tailed).

Figure 2: Political Weight and Time-to-compliance between and within Sectors