

(Non-)Compliance, EU Commission Enforcement and Differing National Responses

by

Miriam Hartlapp

Social Science Research Center Berlin

hartlapp@wz-berlin.de

Presentation at the EUSA Ninth Biennial International Conference,
Austin, Texas, 31 March–2 April 2005

<http://www.mpifg.de/socialeurope>

This document contains the summary of a text that will be published as Chapter 11 of the following co-authored book:

Complying with Europe
EU Harmonisation and Soft Law
in the Member States

by

Gerda Falkner
Oliver Treib
Miriam Hartlapp
Simone Leiber

Draft version, spring 2004

(forthcoming, Cambridge University Press 2005)

11 The EU Commission and (Non-)Compliance in the Member States

Summary

What happens when member states do not comply with EU law? To answer this question, the role of the EU Commission as guardian of the treaties demands particular attention, especially the instruments it may employ, and the enforcement policy it actually pursues, against member states that violate binding EU rules. Our qualitative data on how fifteen member states have transposed a sample of six EU social policy Directives allows us to confront the Commission's enforcement policy with the "real" amount of domestic transposition failures. We thus challenge the approach taken by much of the existing literature, which looks at the tip of the iceberg only by restricting itself to the analysis of available data on EU infringement procedures.

This allows us to reject or validate some of the most dominant assumptions in this literature about the *logics* of Commission enforcement policy. We show that enforcement often does not take place at all or does not take place in a consistent manner when compared to the Commission's own rules. Moreover, we demonstrate that the Commission heavily focuses on non-notification rather than on incorrect transposition. One of the explanations is that infringement procedures are constrained by the length and complexity of the Commission's internal procedures. Although our data suggest significant diversity in the treatment of different member states, we argue that this is not the result of political favouritism but of the necessity to prioritise some cases over others under the conditions of administrative overload. Our sample shows that these prioritisations often follow different Directives. It seems that the choice is made largely by the responsible unit and depends on its workload, the complexity of the Directive, and the overall importance attached to the respective policy. Furthermore, we show that neither the general level of labour law protection, nor the level of misfit with pre-existing national policies, nor opposition during the negotiations determine the Commission's enforcement policy – even though the last factor does have some influence.

Finally, we discuss kick-start, acceleration and correction as different effects that infringement procedures had in the implementation processes under scrutiny.

Overall we conclude that infringement proceedings as they are practised today are a rather inadequate instrument for assuring compliance, even though the situation would be even worse if there were none at all.

If you are interested in receiving draft chapters for feedback, please contact (falkner@ihs.ac.at). Related articles on specific sub-topics can be found on our project homepage: <http://www.mpifg.de/socialeurope>.



Complying with Europe EU Harmonisation and Soft Law in the Member States

Gerda Falkner

Oliver Treib

Miriam Hartlapp

Simone Leiber

Cambridge University Press 2005

What does EU law truly mean for the member states? Do they abide or don't they? This book presents the first encompassing and in-depth empirical study of the effects of 'voluntaristic' and partly 'soft' EU policies in the member states. The authors examine 90 case studies across a range of EU Directives and shed light on burning contemporary issues in political science, integration theory, and social policy. They reveal that there are major implementation failures and that, to date, the European Commission has not been able adequately to perform its control function. While all countries are occasional non-compliers, some quite frequently put their domestic political concerns above the requirements of EU law. Others neglect these EU obligations as a matter of course. This innovative study answers questions of crucial importance for politics in theory and in practice, and suggests how implementation of EU law can be fostered in the future.

For further information, please consult our website:

<http://www.mpifg.de/socialeurope>

Complying with Europe

EU Harmonisation and Soft Law in the Member States

Gerda Falkner, Oliver Treib, Miriam Hartlapp, Simone Leiber

Cambridge University Press 2005

- 1 Introduction: Flexible EU Governance in Domestic Practice
- 2 Theorising the Domestic Impact of EU Law: The State of the Art and Beyond
- 3 EU Social Policy Over Time: The Role of Directive
- 4 The Employment Contract Information Directive: A Small But Useful Social Complement to the Internal Market
- 5 The Pregnant Workers Directive: European Social Policy Between Protection and Employability
- 6 The Working Time Directive: European Standards Taken Hostage by Domestic Politics
- 7 The Young Workers Directive: A Safety Net with Holes
- 8 The Parental Leave Directive: Compulsory Policy Innovation and Voluntary Over-implementation
- 9 The Part-time Work Directive: A Facilitator of National Reforms
- 10 Voluntary Reforms Triggered by the Directives
- 11 The EU Commission and (Non-)Compliance in the Member States
- 12 Beyond Policy Change: Convergence of National Public-private Relations?
- 13 Implementation Across Countries and Directive
- 14 Why Do Member States Fail to Comply? Testing the Hypotheses Suggested in the Literature
- 15 Three Worlds of Compliance: A Typology
- 16 Conclusions: Myth and Reality of 'Social Europe'

Paperback available: <http://www.cambridge.org/catalogue/search.asp>