

The tops are (un)able and the bottoms are (un)willing: determinants of the EU members' non-compliance with the European Union law

Abstract

The process of harmonization of national legislation with the European Union law extremely differentiates the pool of EU member states. There is a steady trend towards the emergence of states that normally comply with the EU law with minimum violations (Tallberg and Jönsson 2001; Goetz 2004; Börzel et al. 2010), as well as countries that show failures in this process almost every year (Pollack 1997; Thomson 2007; Börzel 2010). In this research I study non-compliance in the EU through the perspectives of the structural-actor and consociational approaches. For the structural-actor approach, the reason for the compliance failures in some countries is that they are not able to follow the Brussels' guidelines due to a lack of necessary economic, administrative and bureaucratic resources, which brings us back to the main principles of state capacity. At the same time, it is worth stressing that the structural-actor approach divides state capacity into two levels: the "upper" and the "lower". The "upper" level means the country's ability to participate in the bargaining process at the level of supranational institutions and build coalitions to push its agenda (Kaeding & Selck 2005; Lewis 2003; Winkler 1998). The "lower" level focuses on the basic economic, administrative and bureaucratic resources and the mechanisms of their distribution and allocation at the national level in order to achieve compliance. The consociational approach, in turn, considers the reasons for non-compliance with the EU law through the prism of state autonomy: states can violate the EU law not only because of the lack of respective resources, but because of the inability to reach a compromise on the compliance agenda. The major determinants of low state autonomy are the conflicts between the ruling elites and the key veto actors: opposition parties, regional elites and various interest groups. It follows that some states violate EU law intentionally, while the difficulties of the process of compliance for others are determined by the objective reasons of structural-economic nature. This dichotomy of the EU member and candidate states strategies towards the compliance agenda is called *voluntary* and *involuntary* non-compliance, respectively (Börzel, Hofmann, and Sprungk 2004a; Maniokas 2009).

This study analyzes 25,516 cases of violation of the European Union law by 28 Member States from May 1993 to May 2018. I strive to determine the group and individual country determinants of differentiation in the pool of member countries by the total number of the EU law violations as well as their types: (1) notification failures, (2) incomplete transpositions, (3) incorrect implementations and (4) improper applications. As a key method of analysis, multilevel logistic regression is used, where factors of the coalition role and voting strategies are used as the group level, and GDP per capita (PPP), polarization of the parliament, fragmentation of the party system, regional strategies and quality of governance are used as individual country attributes. The analysis demonstrates that all individual attributes of member countries are significantly

related to all four quartiles of the outcome, which rank states depending on the number of violations during the period under review: from the smallest share of violated directives (Q1) to the largest share of violated directives (Q4). One of the group-level factors, voting strategies, also demonstrates its significant relation to all quartiles of the outcome. This research helps to better understand the reasons for the failures of some states and the success of others in the field of compliance with the European Union law, and give way for the level of the national decision-making in the future research.