Does euroscepticism influence compliance and enforcement of EU law in the member states?

Toshkov, D.D.; Rauchegger, C.; Wallerman, A.

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Pre-print of a chapter for the edited volume
'Challenges to EU Law in the Member States', Hart Publishing

Dimiter Toshkov

Robert Schuman Centre for Advanced Studies, European University Institute&
Institute of Public Administration, Leiden University

d.d.toshkov@fgga.leidenuniv.nl

http://www.dimiter.eu

Second Draft. Last revised: *10 November 2018*

Acknowledgements

A previous version of this chapter was presented at the conference 'Challenges to EU Law and Governance in the Member States', European University Institute, Florence, 8 June 2018. I am grateful to Clara Rauchegger, Anna Wallerman, and an anonymous reviewer for useful comments on the draft. The data used in this chapter has been collected with the support of the Netherlands Organization for Scientific Research, VENI Grant number 451-11-023.

Introduction

Contesting European integration is not a new phenomenon. Historically, the establishment and progressive institutionalization of the European Union (EU) has had to overcome significant skepticism and outright resistance from powerful social groups and political actors across the continent. Yet, the challenge of Euroscepticism has become especially acute in the second decade of the XXIst century, with shifting levels of public support for the EU, the imminent exit of the UK from the union (as of late 2018), a rising number of openly Eurosceptic parties in governments across Europe, and high-profile conflicts between the European Commission, on the one hand, and Italy, Hungary and Poland, on the other.

The conflicts with Hungary and Poland are especially alarming, even if not the most politically salient yet, because of the challenge to the rule of law within the EU that they pose. The EU is a community of law, and its impact is mostly exercised through rules and regulations, rather than money or raw power. Therefore, conflicts centered on the rule of law and the application of EU rules can undermine the very basis of the EU. Moreover, the effects of such conflicts can quickly spillover to block the decision-making machinery of the EU, as in many areas supermajorities are still neededfor the EU to act. And they can drive further alienation from and public dissatisfaction with 'Brussels'.

Against this background, it is quite important to consider the possible influence of Euroscepticism on compliance and enforcement of EU law. Compliance, broadly conceived, includes the transposition of EU directives in national legislation, as well as the practical implementation (application) of EU legal acts, and the process of enforcement of these acts by national authorities. EU-level enforcementis about the monitoring and enforcement of national implementation and the sanctioning of noncompliant behavior of the member states by the EU institutions.

Daily compliance with individual EU regulations lacks the salience of broad political conflicts over European integration, and the enforcement of individual EU directives rarely reaches the high media profile of conflicts over the budget or migration policy. Yet, individual compliance shortcomings can quick accumulate to a systematic failure of the EU legal system, and by extension, of the EU as a whole. Therefore, if Euroscepticism influences significantly levels and forms of noncompliance, it will have another, more circumvent and subtle, mechanism to derail the process of European integration.

One can easily imagine reasons why Eurosceptic countries and governments should exhibit systematically worse compliance behavior than their counterparts with more pro-European governments and societies. After all, not only would they be expected to oppose the advance of Europeanization in general, but would also be more likely to oppose particular EU policies and pieces of legislation. At the same time, one can also muster good arguments why Euroscepticism should*not* be able to affect compliance significantly: policy implementation remains largely outside the interest of politicians, and enforcement is negotiated and adjudicated in an institutional environment where expert opinions and legal arguments are supposed to dominate over partisan claims and political concerns. So the question whether Euroscepticism affects compliance with EU law needs to be settled empirically.

This chapter reviews existing studies and analyzes original data to answer this empirical question, after unpacking the theoretical arguments sketched above at greater length in the next section. The review covers studies of transposition and implementation of EU law. The analysis of original data is focused on the infringement procedures – the main tools at the disposal of the EU to enforce compliance with its rules. In addition to the oft-studied number of infringement cases that are opened against different member states, I focus on two additional aspects related to the conduct of the infringement procedures –the share of opened cases that are settled (before they

reach adjudication) and the share of adjudicated cases that the member states win at court (at the expense of the Commission).I relate each of these three aspects to the Euroscepticism of the member state governments in power and national public opinion for the period 2004-2015, and I seek evidence for influence of these two forms of Euroscepticism on the patterns of infringement procedures using statistical methods of analysis.

To clarify, this chapter presents a *positive*empirical analysis of the relationships between Euroscepticism and compliance with EU law, rather than a *normative* treatment of the connection between the two or a *legal* analysis of compliance with particular pieces of legislation. The advantage of this positive empirical approach is that it can reveal an effect of Euroscepticism in the patterns of aggregate data; an effect that would not be visible, or would be impossible to prove, when one looks at individual cases or on the basis of direct evidence from the parties involved in the enforcement process.

The results from the analysis suggest that there is no systematic empirical evidence that Euroscepticism, both in its public and party-political manifestations, affects the patterns of enforcement of EU law. If anything, it appears from the data that higher public and government support for the EU is associated with *more* infringement cases at the Court of Justice of the European Union (CJEU), with more judgments on infringement cases delivered, and with a higher share of wins for the member states from the judgments. But these associations are likely driven by general and unrelated trends in the development of infringement procedures and Euroscepticism. Nevertheless, even if we discount the positive association between Euroscepticism and compliance that we find in the data, there is no evidence for a negative one.

Euroscepticism and compliance: theoretical considerations

This section of the chapter unpacks the theoretical considerations related to the possible influence of Euroscepticism on compliance with EU law. To start with, it is useful

torehearse the general reasons why individual member states might not want to comply with the rules and regulations agreed upon collectively by the EU.

Capabilities and willingness for (non)compliance with EU law

The existing social-scientific literature typically distinguishes between two broad sets of reasons for (non)compliance with EU law: one related to capacities and another related to willingness and incentives (e.g. Börzel 2001).Administrative and other capacities, including available human and financial resources, have been well-established as important factors influencing the transposition and implementation of EU rules, and we need not review the details of their influence in this chapter (see Treib 2014, Toshkov 2010 for reviews). However, we should note that capacity is not completely exogenous from general willingness to comply. Countries and governments that consider compliance with the EU laws important as a goal in its own right will invest in building the necessary institutions and capacities, and countries that do not consider compliance important will fail do so. Hence, the effect of capacity on compliance is only partly independent from the effect of willingness. As a result, one cannot make a clear distinction between voluntary (based on willingness) and non-voluntary (based on limited capacities) noncompliance.

Why would member state not be willing to comply with EU law?

What are the sources of member states' willingness to avoid compliance? Before we zero-in on the possible influence of Euroscepticism, we have to consider the broader context of incentives related to compliance in a multi-level system of governance. Not all incentives for member states' noncompliance need to be derived from systemic distrust of the EU. First, in many policy areas member states can be outvoted during the decision-making stage, therefore facing a situation where they have to apply legal acts with which they have (openly) disagreed with for substantive reasons. Second, as the

period between proposal, adoption, transposition, and ultimately implementation of EU law can be quite long, the government that has supported the adoption of a directive might not be the same government that would have to implement it, even within the same country. Third, and relatedly, the ministry that has been leading in the negotiation of the adoption of a regulation might not be the same ministry that is charged with application of that same regulation, even within the same government. Fourth, even if a government is in principle in favor of the provisions of a new common policy, it might still face incentives to comply less then fully once the policy is adopted. Individual governments might have incentives to *free-ride* on the efforts of the others in order to spare the costs but bear the benefits of the common policy. As we know from the classic analyses of collective action problems (Hardin 1968, Ostrom1990), such incentives can quickly unravel cooperation, because the dominant strategy of each government is not to comply, even if collectively all governments can agree about the desirability of the policy. (Of course, collective action problems arise only in certain types of situations and from a particular combination of incentives. Nevertheless, it can be argued that in many areas of EU involvement, such as environmental protection, fisheries, competition policy, etc. the threat of collective action problems and free-riding is endemic. Indeed, the whole process of European integration can be interpreted as one massive collective action problem.)All in all, there are good reasons to expect that in many cases national governments might not *want* to comply fully and on time with EU laws and policies, even if in principle they support the EU and the process of European integration.

How does Euroscepticism enter the calculus of willingness to comply? By Euroscepticism we mean systemic, generalized distrust of the EU and its institutions and opposition to the principle and practice of European integration. Euroscepticism can take different forms (Szczerbiak and Taggart 2008, Vasilopoulou 2009, Leruth et al. 2017) and can be expressed both at the societal level, as manifested in public opinion and attitudes, and at the level of political parties, as manifested in party positions and

actions. Both societal and party-level Euroscepticism might be related to the willingness to comply. First, Eurosceptic parties would be more likely to oppose particular pieces of EU legislation, because of concerns about the increasing reach of EU laws and policies. Second, they would be less likely to value timely and correct compliance as goals in their own right. Third, Eurosceptic politicians, civil servants, and other public officials might obstruct the daily practical implementation of EU rules through actions and inaction that is hard to monitor, detect, and correct. Fourth, Eurosceptic parties would actually benefit by engaging in open conflicts with the EU institutions over compliance, as this gives them the chance to portray themselves as defenders of their nations and to signal their opposition to the EU. Fifth, a Eurosceptic public might be less likely no notify national compliance failures to the EU institutions, obstructing a crucial mechanisms for compliance and enforcement. Before we jump to the conclusion that, because so many good theoretical reasons exist for Euroscepticism to increase noncompliance, then this must be the case, we have to consider the EU institutional framework for enforcing laws and policies.

Institutions for enforcing EU law and opportunities for noncompliance

When it comes to the *opportunities* of national governments to shirk on commitments made in Brussels, there are several important ones to consider. Frist, EU legal acts, and directives in particular, typically allow for considerable amounts of discretion, which member states can use to accommodate national interests, legal traditions, and political concerns (Steunenberg and Toshkov 2009). Some forms of discretionary space result from formal exceptions, derogations, or transitionary periods. Others arise from ambiguous language or lack of detail. Moreover, the *boundaries* of discretion might be unclear, so that it is not obvious whether a national interpretation is compatible with the provisions of the EU legal act or not. Second, often there are considerable delays between the adoption of an EU legal act and the date in which the act itself or the

national transposition measures need to enter into force. These delays provide opportunities to member states to 'drag their feet' with implementing the EU rules and to delay their effects.

In addition to discretion and delays, the most important opportunity for (temporary) noncompliance is offered by the relatively weak system of institutions that the EU possesses to *monitor and enforce* the implementation of its rules. The EU enforcement system might be considered strong when compared to other international organizations, but it is much weaker than the enforcement systems in unitary and federal states. It is intrinsically hard to 'police' the implementation of tens of thousands of legal acts in 28 different countries, each with its own legal system, administrative structures, and language. And it is even more so given the very limited capacity of the European Commission, which is the designated as the 'guardian of the Treaties' (Smith 2009). In light of the huge information asymmetry between the Commission, as the principal, and the national governments, as the agents of EU policy implementation, there is a good chance that a transgression at the national level will go unnoticed or that there will be a considerable amount of time between the Commission detects the noncompliance, during which the member state will be spared the cost of implementation (see the European Court of Auditors' landscape review from 2018 for an overview of the Commission's enforcement tools).

Even if and when the Commission detects a possible infringement, the enforcement process just starts, and it can take a long time before the member states are faced with any tangible sections for their noncompliant behavior. The first infringement procedure (under article 258 of TFEU) has several stages and at the end of it, even if an infringement is declared by the CJEU, the member states face no financial or other material sanctions as such yet. Only after a second ruling on a separate procedure under article 260 of TFEU, financial sanctions (as a lump sum and periodic payments) can be imposed on the member state.

In addition to the long period and many hurdles that the enforcement process must pass through before the threat of financial sanctions becomes imminent, the infringement procedures offer plenty of opportunities to 'negotiate' compliance. Before a case gets decided by the CJEU, the Commission has considerable discretion in deciding whether to open a formal procedure, whether (and when) to escalate the process to the next stage, and whether to refer the case to the CJEU. In this phase of the process, sometimes called 'management' or 'negotiation' (Tallberg 2002),the Commission tries to ascertain not only the state of national implementation, but also the reasons for noncompliance and the constraints that the member states face.

In the Commission's understanding, going to court and imposing financial penalties is only a weapon of last resort. The EU has also created additional institutional mechanisms, like SOLVIT and EU Pilot (see http://ec.europa.eu/internal_market/scoreboard/) that aim to support the voluntarily resolution of conflicts over the implementation of EU law even before the infringement procedure is officially evoked. To sum up, the lengthy enforcement procedure in which the 'enforcer' has far-reaching discretion (and faces little accountability) in how to handle a suspected infringement provides ample opportunities for member states unwilling to comply to try to negotiate their way out of sanctions or simply to drag their feet until faced with a judgment under article 260 TFEU.

It is interesting to consider what would happen if a member states fails to comply with a judgment under article 260 TFEU, i.e. refuses to pay the financial penalties. Although such a possibility has not materialized so far, even though in several cases member states have been ordered to pay fines until compliance has been achieved, it is not completely clear what the options available to the EU to enforce compliance with the judgments of the CJEU are. Andit is even less clear what the political consequences of employing such options (for example, withholding payments from the EU budget) would be.

A failure to comply, even after a judgment under article 260 TFEU, might result not only from the obstinacy of a member state (unwillingness), but from a real physical inability (lack of capacity) to do so. That would put the national government in an unfortunate situation where it has to pay a periodic fine, but cannot, even with the best will in the world, comply with the EU rule (for example, about bringing air quality above a certain standard.) Clearly, such a situation would be bad for the member state, but also for the EU, which would be seen as irrational and vindictive for punishing a country for something that is outside of its control. This puts the Commission in a precarious position where it needs to decide whether a member states has the capacity but lacks to willingness to comply or the member states faces real obstacles in complying. In the first case, referral to the CJEU might help and be even necessary, but in the second case, 'negotiation' and support might be better strategies. Of course, this strategic calculus is clear to the member states as well, which can try to exploit the uncertainty to their gain by exaggerating the difficulties they face in compliance.

Other relevant aspects of the enforcement system relate to the audience costs of pursuing infringement cases (i.e. the bad publicity for the EU resulting from having open conflicts with the member states), the fact that infringement procedures are not single-shot but repeated interactions (i.e. the Commission needs to worry about its long-term reputation as an agent of enforcement), and issue linkages between the enforcement and decision-making stage (i.e. the Commission 'negotiating' compliance with existing legal acts while simultaneously trying the win the support of the member states for new legislation). All these aspects provide leeway for national governments that lack the willingness to comply with EU laws and policies to delay or avoid compliance, to engage in lengthy negotiations and legal battles over infringements, and to link up compliance issues to more general conflicts over decision making and the overall course of European integration.

Of course, delays and incorrect transposition and implementation need not results from an outright refusal to comply, but only from an incentive to push the boundaries of discretion to their limits.But even if a more Eurosceptic government is more likely to want to interpret the text of the EU legal act, that might still lead to noncompliance,as adapting the text of a directive takes time and can run into deadlock created by the relevant national actors(cf. Haveralnd 2000).

Overall, if we, justifiably, can expect that the more Eurosceptic governments and societies are, the less willing would they be to comply with EU laws and policies, the EU system of multi-level governance offers ample opportunities for such effects to play out.

When we consider how such effects will manifest themselves in empirical data, however, we face a complication. Since the processes of compliance and enforcement are strategic, meaning that the relevant actors do not decide independently but in anticipation of the other actors' moves, it is not straightforward to detect different conflict patterns in data (FjelstulandCarrubba 2018, KönigandMäder2014). As one example, consider a government that needs to implement a directive that it has openly opposed during the decision-making stage, because of general Euroscepticism and substantive policy concerns. Obviously, this government will be expected to try to delay or avoid compliance. But precisely because these incentives are obvious, the Commission will be expected to monitor closely the government's actions and promptly pursue enforcement actions against the member state. Which might actually lead to timely compliance, if the government, which anticipates the Commission's diligence,would have been deterred by the enforcement actions. As a result, even if the high incentives for the government to shirk on compliance would have been there, that would not necessarily show up in the data as an additional, or a more lengthy, infringement procedure. It might actually lead to a quicker than average referral to the

CJEU, if an infringement is started, as the Commission would be less likely to suspect limited capability as the reason for compliance shortcomings.

The strategic nature of compliance can lead to another selection effect that can mask the influence of Euroscepticism on compliance (cf.FjelstulandCarrubba 2018). If the Commission anticipates that a Eurosceptic government will fight harder and be less likely to budge when faced with an infringement procedure, the Commission might refrain from starting infringements in the first place and be more likely to settle the case before it reaches a judgement by the court. That would lead to Eurosceptic countries having fewer infringement cases opened and fewer judgments delivered, but not because they are more complaint. Note, however, that the logic of this selection effect implies that when infringement cases against Eurosceptic government *do* reach the judgement stage, the Commission is likely to win a higher percentage of the judgments.

Are there constraints on political influence on compliance?

In addition to the strategic aspects of enforcement, there are other reasons why the political preferences of national governments, and Euroscepticism in particular, might have no discernable impact of implementation and compliance. Typically, policy implementation is of no interest to politicians. In most cases, the issues are too technical and mundane, and there are no political points to be scored. While decision making often attracts the attention of the media, policy implementation rarely does. The policy implementation stage, including the drafting of national transposition measures, is the realm of bureaucrats and legal experts, where politicians rarely venture and, in the rare cases that they do, quickly lose interest.

Moreover, the implementation of EU law is often in the hands of civil servants and experts that are part of dense cross-national networks of public officials that have institutionalized forums for exchange of information and 'best practices' (Andonova and Tuta 2014, Scholten 2017). Such forums are used by the EuropeanCommission to

support compliance with EU laws, for example by issuing technical guidelines or sharing data on national performance. National officials participating in such networks are deeply socialized in the shared ethos of the profession and quite insulated from direct political pressures at home. As a result, any push for noncompliance by politicians in the member states' capitals would be filtered through the actions of civil servants that care about their reputation in the eyes of their peers from other countries as well. Relatedly, policy implementation nowadays often involve a host of European and national agencies as well (Versluis and Tarr 2013), and such organizations are even further out of reach from direct influence of politicians and public pressure.

When it comes to the conduct of the infringement procedures, while in principle ministers and the cabinet can decide on how the country should react (amend legislation, initiate more costly implementation action, or go to the next stage of the infringement procedures), the details of following the national strategy are again in the hands of civil servants and legal experts. The exchange of information between the Commission and the member states can involve highly technical matters and/or complicated legal issues, which politicians lack the expertise and patience to follow closely. The discourse during the infringement procedures is based on legal arguments and expert opinions, not on political claims, which reduces the scope for influence of government and public preferences.

To put all these theoretical considerations together, it is clear (a) that there are plenty of reasons to expect why governments might have incentives to delay and avoid compliance, and (b) that the EU system of enforcement allows opportunities for doing so. Yet, (c) there are also considerations that lead us to expect that even when national governments espouse Eurosceptic preferences, these might not be easy to translate into noncompliance, as policy implementation and enforcement are strategic and rather insulated from political interest and control. Therefore, it remains essentially an empirical question which of these considerations would prevail in practice and whether

one can detect the influence of Euroscepticism on compliance in empirical data. The next sections of this chapter attempt to do so, by reviewing the existing empirical literature on compliance and by an original analysis of infringement data.

Euroscepticism and compliance: The empirical evidence

Literature review: transposition and implementation

The empirical analysis of the possible influence of Euroscepticism on different aspects of compliance with EU law already has quite a long history (for a searchable online overview of the empirical literature on EU implementation, see https://eif.univie.ac.at/eif_implementation/). In an early study, LampinenandUusikyla (1998) found a negative but not statistically significant effect of public attitudes towards the EU on transposition rates in a study covering all policy sectors and 12 member states for the period 1990-1995. Bergman (2000) examined the influence of public support for EU membership on the implementation performance of the (then 15) member states of the EU for the period 1996-1998, and found evidence for a *negative and significant* effect, contrary to expectations (implying that less public support leads to fewer infringements). Mbaye (2001) also found evidence for a negative and significant effect examining data on the initiation of infringement procedures.

These results, however, was not confirmed in subsequent studies. Börzel et al. (2007, 2010), as well as Siegel (2006) found no effect of public support for EU membership on the occurrence of infringement procedures. Similarly, Kaeding (2006) found no effect of the same variable on transposition timelines in a study covering all directives in one policy sector – transport, in five countries over a period of almost 50 years. The same conclusion was reached by Steunenberg and Rhinard (2010), who examined an even larger sample of transposition cases in four policy areas.In a recent article, Williams (2016) argues that 'member state governments do slow transposition in response to higher aggregate public Euroskepticism.'Zhelyazkova et al. (2018) conclude

that societal EU support does not affect the *'[national] implementers' outperformance of national legislation*' (i.e. the implementing agents did not go further in compliance than the national transposition texts).

While all these studies examined the influence of *public* support for the EU, another set of empirical analyses focused on the possible impact of the European integration preferences of the political parties in government. Jensen (2007) found a positive but not significant effect of pro-EU government positions on compliance, looking at infringement procedures in the field of social policy for the EU-15 during the period 1978-2000. The same conclusion was reached by Linos (2007) looking at a similar sample but with a focus transposition timeliness rather than infringements.Zhelyazkova et al. (2017) find that "*high EU support by the party of the prime minister is not sufficient to ensure compliance [in low-capacity countries] and low support cannot disrupt day-to-day administrative practices in the implementation process [in high-capacity member states]*".Kaya (2018) finds a positive but not robustly significant effect of the EU support of the party of the prime minister on correct transposition.

Interestingly, there is much stronger evidence that more pro-European governments were better in transposing EU legislation during the period of preparations for the Eastern enlargement of the EU. While all former communist states from Central and Eastern Europe achieved remarkable success in transposing the huge body of EU legislation prior to their accession to the EU in 2004 and 2007, it turned out that even within this group, governments with more EU supportive positions transposed better and faster (Hille and Knill 2007, Toshkov 2007a, Toshkov 2008, Zubek and Staronova 2010).

To summarize, with the exception of the period of enlargement for the acceding countries, there is no evidence that more Eurosceptic governments are associated with worse compliance outcomes. And, on balance, the results from the existing literature do

not lend credence to the hypothesis that public support for the EU is related to the compliance performance of the member states, either across countries or over time.

It is also relevant that scholars who looked whether expressed disagreement with a directive (e.g. a vote against the adoption of the directive in the Council of Ministers) leads to worse compliance, find no consistent evidence (cf. Thomson 2010, Thomson et al. 2007, Zhelyazkova and Torenvlied 2009, Konig and Mader 2013).

Analysis of infringement patterns

To complement the review of existing studies, this chapter offers an original empirical analysis of the possible impact of Euroscepticism on data generated by the infringement procedures. The focus of the analysis is on the period 2004-2015 and it covers all member starts of the EU (without Croatia, Cyprus, and Malta due to data availability).

Three aspects of the infringement procedures are analyzed: the total number of cases per country per year that reach the CJEU, the total number of judgments on infringement procedures delivered, and the share of wins for the member states, i.e. judgments in which the case is decided partly or fully in favor of the member states. Data on these variables is extracted from the CURIA database (https://curia.europa.eu) (for details, see Toshkov 2016).

Two aspects of Euroscepticism are taken into account. The first one is public attitudes. This is measured as the percentage of people who tend to trust the European Commission from all respondents in a country. The variable is measured yearly and comes from the Standard Eurobarometer surveys of public opinion in the EU (the surveys are available at http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm). The choice to focus on trust in the European Commission is based on the fact that the Commission is the central body in the system of enforcement. In practice, attitudes towards the different EU institutions and the EU in general are very highly correlated, so the precise choice does not matter that much.

The second aspect of Euroscepticism that is take into account is government ideological positions on the pro/anti EU dimension. These positions are measured as the weighted average of the pro/anti EU positions of the parties in government in a country in each year. The party positions themselves are derived using text analysis of the party manifestos, as made available from the Manifesto project (Lehmann et al. 2018)

The method of analysis used is multiple linear regression of each aspect of infringements on both public and government EU support (the two are not highly correlated, as it turns out). Multiple linear regression summarizes the relationship between a dependent (response) variable and a set of independent (predictor, covaraite) variables by fitting a linear equation to the observed data (for a modern introduction to statistical methods for data analysis, see Gelman and Hill 2014). Some of the reported statistical models also include state- and year-level control variables. Including such control variables can remove bias and clarify the relationships between the variables of interest when working with time-series cross-sectional data, as the one at our disposal. In principle, the dependent variables are bounded and not normally distributed, so that a negative binomial rather than a linear specification of the regression models might have been more appropriate. But in practice the results are quite similar to the ones based on the linear regressions, therefore the latter are preferred due to easier interpretation.

Table 1 reports the results from the estimation of the linear regression models of the total number of infringement cases registered at the CJEU. In *Model 1a* only public and government EU support are entered as covariates. The estimated effects of these variables are positive, implying that higher public and government EU support are associated with a higher number of infringement cases. This is contrary to the expectation that more Eurosceptic government and countries will be associated with more infringements. The positive coefficients are robust to the inclusion of state dummies, and actually more than double in size (cf. *Model 1b*). This implies that once

the average cross-country differences in their number of infringement cases are taken into account, the effects of public and government support are even stronger and more precisely estimated.

Table 1. *Linear regression models of* ***total number of infringement cases*** *registered against a member state for the period 2004-2015 per country per year. Raw coefficients with standard errors in parentheses. Significance codes: *** 0.001 ** 0.01 * 0.05 ` 0.10.*

Variable	**Model 1a**	**Model 1b**	**Model 1c**	**Model 1d**
(Intercept)	*0.29 (2.03)*	*-12.60 (2.60)****	*17.00 (2.74)****	*1.61 (3.74)*
Public EU support	0.14 (0.04)***	0.38 (0.04)***	-0.01 (0.04)	0.21 (0.05)***
Government EU support	0.52 (0.32)	1.08 (0.33)**	0.11 (0.28)	0.67 (0.32)*
State controls	/	yes	/	yes
Year controls	/	/	yes	yes
Adj. R-squared	0.06	0.54	0.32	0.62

However, when we include time dummies that take into account common trends across the countries in the year, the effects of EU support disappear (cf. *Model 1c*). This suggests that the effects of these variables are driven by their contemporarious changes across the countries. That is, the general decline in trust in the European Commission and the general decrease of governmental EU support over the period of study coincide with a general decline in the number of infringement procedures registered at the court (see Figure 1). But the forces that lead to these parallel time trends can have very different causes.

For example, the decline in infringement procedure cases at the court is driven to a large extent by the lower number of new legislative acts adopted and the institutionalization of mechanisms such as SOLVIT and EU Pilot. Hence, despite the

regression results, we should not conclude thathigh EU support causes countries to receive more infringement cases.

Figure 1. Trends in infringement procedures and EU support (2004-2015).

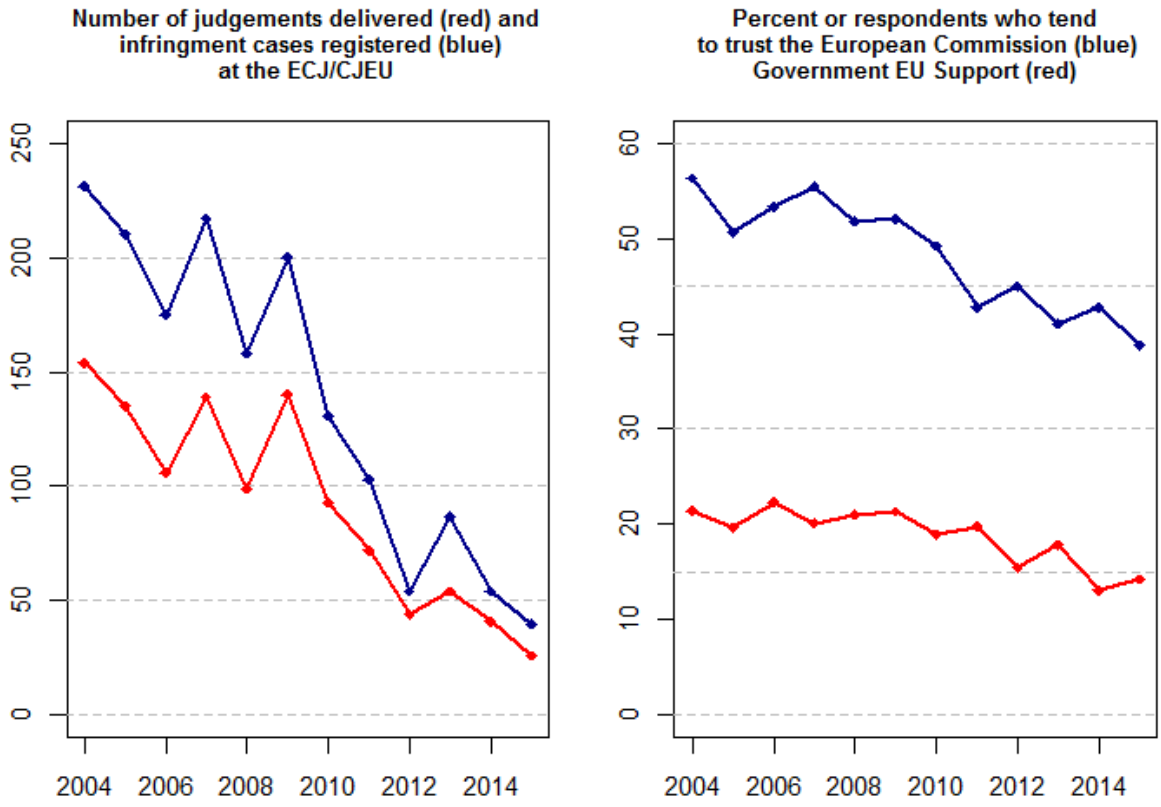

Table 2 looks at the number of judgments on infringement cases delivered. It is necessary to examine this variable separately since there is a large share of cases which are filed but withdrawn before the court decides, either because the member state has complied or some other kind of settlement has been reached. The result of the regressions again suggest positive effects of EU support on the number of judgments on infringement cases received by a member state. These positive effects are estimated as large and more significant once state dummies are included in the model.

Table 2. *Linear regression models of* ***total number of judgments on infringement*** *cases received by a member state for the period 2004-2015 per country per year. Raw coefficients with standard errors in parentheses. Significance codes: *** 0.001 ** 0.01 * 0.05 ` 0.10.*

Variable	**Model 2a**	**Model 2b**	**Model 2c**	**Model 2d**
(Intercept)	*1.85 (1.04)*	*-5.81 (1.86)***	*13.50 (1.89)****	*5.06 (2.69)*
Public EU support	0.05 (0.03)*	0.21 (0.03)***	-0.05 (0.03)`	0.07 (0.04)`
Government EU support	0.37 (0.22)	0.68 (0.24)**	0.10 (0.19)	0.39 (0.23)`
State controls	/	yes	/	yes
Year controls	/	/	yes	yes
Adj. R-squared	0.02	0.49	0.29	0.57

But in a similar fashion to the models of the total number of cases in Table 1, once time controls are introduced, the positive effects disappear, and, in fact, public EU support gets a significant (at the 0.10 level) negative effect.

This pattern of results implies that the time dimension of the data drives a strong positive correlation between EU support and the number of judgments received. But as explained above, this could well be due to time trends that push the time series in the same direction but have completely unrelated causes. At the same time, the cross-country variation that is brought to light once we control for the time trends suggests a negative correlation between public EU support and the number of infringement judgments. In other words, once the general trends of declining number of judgments and increasing Euroscepticism are filtered out, countries with more Eurosceptic publics are likely to get a higher number of judgments on infringement cases in a year.

Table 3. *Linear regression models of* ***the share of wins on infringement cases****by a member state for the period 2004-2015 per country per year. Raw coefficients with standard errors in parentheses. Significance codes: *** 0.001 ** 0.01 * 0.05 ` 0.10.*

Variable	**Model 3a**	**Model 3b**	**Model 3c**	**Model 3d**
(Intercept)	*0.49 (0.09)****	*0.56 (0.17)***	*0.23 (0.13)`*	*5.06 (2.69)*
Public EU support	-0.005(0.002)**	-0.006 (0.002)**	-0.001 (0.002)	0.003 (0.003)
Government EU support	0.005 (0.014)	-0.006 (0.022)	0.008 (0.012)	0.005 (0.020)
State controls	/	yes	/	yes
Year controls	/	/	yes	yes
Adj. R-squared	0.03	0.06	0.19	0.25

The final set of models looks at the share of court judgments on infringement cases that are fully or partly in favor of the member state (Table 3). Without controlling for time, public EU support has a significant negative association with the share of cases that the member states win. This would seem to suggest that countries with higher Euroscepticism would be more successful at court. But again, this association disappears once year dummies are included, so it is likely driven by common time trends rather than cross-section variation between the countries.

Conclusion

This chapter set out to evaluate the evidence for a possible effect of Euroscepticism on the patterns of compliance with EU law in Europe. It argued that this question needs to be settled empirically, since one can have reasonable theoretical considerations that suggests why Eurosceptic governments and countries might want to avoid and delay compliance, but also why they can be constrained in systematically doing so.

The review of the empirical literature that was presented identified a large number of studies that had looked at the problem since the late 1990s. But the findings of this literature are inconclusive and, overall, do not provide evidence for a connection between either public or government support for the EU and various indicators of compliance, such as transposition timeliness and correctness, implementation failures, or infringement procedures.

The results from the original empirical analysis of infringement data supports this view. I find no systematic empirical evidence that public and government Euroscepticism affect the patterns of enforcement of EU law. In fact, when unadjusted for time trends, the data shows that higher public and government support for the EU is associated with more infringement cases at the CJEU, more judgments on infringement cases delivered, and a higher share of wins for the member states from the judgments. But these associations are likely driven by general trends in the development of infringement numbers and Euroscepticism that are largely independent.But whatever our interpretation of this *positive* association between Euroscepticism and compliance in the data, it does not support the hypothesis that there is a *negative* effect in reality.

For the moment, we can only speculate why at the aggregate level there is no discernable systematic negative effect of Euroscepticism on compliance and enforcement. One fact to note is that while Eurosceptic governments often fail to comply and end up in infringement procedures, Europhile governments do that just as well. Noncompliance is not a phenomenon reserved for Eurosceptic member states.

A second relevant reason to consider is that some of the most Eurosceptic governments in Northern Europe have professional, efficient administrations and strong 'cultures of compliance' that insulate the transposition and daily application of EU law from political pressures. This relates to the idea, discussed in the theoretical section, that EU compliance is typically the province of bureaucrats, embedded in dense transnational networks in which experts play a big role and politicians rarely venture.

A third possible partial explanation of the 'null' results of the analysis is the type of measures of Euroscepticism used. Popular support for the EU in some of the countries the newspapers portray as Eurosceptic, such as Hungary and Poland, is actually quite high. And party Euroscepticism is not always captured well in their manifestos – the texts on which the measure used in the empirical analyses was based.

The selection effect mentioned in the theoretical section of this chapter could also account to some extent for the empirical patterns found in the analysis. If the Commission is more careful in picking its battles with more Eurosceptic member states, that can explain why such governments face fewer infringements and judgments. But the selection effect is not really consistent with the finding that more Eurosceptic governments win a higher share of the infringement cases on which the CJEU delivers a judgment (or, at least, win as much as more EU supportive governments). If the Commission was especially careful when selecting cases to bring to the court when facing a Eurosceptic government, it should win a higher, and not a lower, share of these cases.

Future research should examine whether there are differences in the types of infringements that Eurosceptic and Europhile member states get. It could be that Eurosceptic member states end up in more infringement cases about incorrect application rather than delayed transposition, as the latter is easier to monitor. In addition, the infringements by Eurosceptic member states could be concentrated in areas where the EU is expanding its reach, such as justice and home affairs, rather than in areas where it has long-established presences, such as the internal market. More generally, social scientists and legal scholars should examine more closely the actual *mechanisms* through which Eurosceptic government and public can influence (or not) compliance and enforcement of EU law.

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