

Can International Institutions Help States to Comply with International Law? Encouraging Evidence from the European Union's Pilot Program

Abstract

Do policy solutions exist that can help member states comply with international law? We answer this question by examining a management school solution for noncompliance — proper rule interpretation. In this article, we provide the first causal evidence of this management school solution to noncompliance by showing that European Union (EU) Pilot — a program designed to facilitate negotiations between member states and the European Commission before formal infringement proceedings through clarifying rule interpretation — improved the infringement procedure's efficiency. By resolving accidental noncompliance with EU Pilot, the Commission has streamlined the process of implementing of EU law by using the formal infringement procedure to pursue strategic noncompliance instead of accidental violations.

International institutions use pretrial bargaining procedures to resolve disputes over non-compliance with international law (e.g., [Gilligan, Johns and Rosendorff 2010](#); [König and Mäder 2014](#)). Pretrial bargaining helps international monitoring institutions to settle easy cases (i.e., cases involving accidental noncompliance) before going to court and frees up docket space for hard cases (i.e., cases involving intentional noncompliance), where courts are most needed to resolve disputes. However, pretrial bargaining can be time-consuming and inefficient (e.g., [Kim 2008](#)). Preparing effective counter-offers is a resource-intensive task, and governments typically have little incentive to prioritize pretrial proceedings. Delays in pretrial bargaining cause delays in the resolution of noncompliance cases, depriving stakeholders of the benefits of international law. Thus, the efficiency of pretrial bargaining directly impacts on-the-ground policy outcomes.

In this article, we ask a simple question: How can international institutions improve the efficiency of pretrial bargaining, thereby improving compliance with international law? We analyze the effectiveness of a specific institutional feature — used by the European Union (EU) — to make pretrial procedures more effective: structured dialogue during the policy implementation process.¹ By facilitating better communication between a monitoring institution and member state governments early in the policy implementation process, structured dialogue helps governments to avoid accidentally violating international law, preventing cases involving accidental noncompliance from entering into the formal infringement procedure. This process frees up valuable resources that monitoring institutions can allocate to resolving cases that involve strategic noncompliance. By reducing the total volume of cases that governments have to process, it also makes it easier for member states to efficiently respond to inquiries and prepare counter-offers. By this logic, can structured dialogue improve the efficiency of pretrial bargaining?

¹ Scholars are broadly interested in how the design of dispute-settlement institutions condition their effectiveness (e.g., [Koremenos, Lipson and Snidal 2001](#); [Carrubba 2005](#); [Rosendorff 2005](#); [Johns 2012](#)).

We answer these questions using causal evidence from the EU. The EU has a centralized monitoring system with a multi-step, pretrial infringement procedure in which member states bargain with the European Commission over settlements in noncompliance cases. If the parties cannot reach an agreement, the Commission can refer cases to the Court of Justice of the European Union (CJEU). Recent studies have shown that the infringement procedure is effective at resolving noncompliance, within political constraints (e.g., [König and Mäder 2014](#)). However, the infringement procedure is also extremely inefficient (pretrial bargaining can take years), undermining the Commission’s ability to correct noncompliance. In 2008, the Commission rolled out a new initiative called EU Pilot to address this problem. This program created a structured dialogue between EU member states and the Commission during the policy implementation process to help prevent accidental noncompliance before it happens.

By evaluating the effectiveness of EU Pilot, we provide the first causal evidence of a proposed management school solution to noncompliance — proper rule interpretation. The management school argues that noncompliance with international law is often accidental — a product of governments misinterpreting rules or lacking administrative capacity (e.g., [Borghetto, Franchino and Giannetti 2006](#); [Börzel 2003](#); [Giuliani 2003](#), [Hille and Knill 2006](#); [Haverland 2000](#); [Jensen 2007](#); [Mbaye 2001](#); [Sedelmeier 2008](#); [Ziller and Siedentopf 1988](#)). Management scholars advocate solutions to noncompliance that improve communication, build capacity, and avoid unnecessary sanctions. Structured dialogue promotes proper rule interpretation by improving communication between the Commission and EU member states about what constitutes a violation of EU law.

To show that structured dialogue can improve the efficiency of pretrial dispute-settlement procedures, we use a difference-in-difference-in-differences (DiDiD) design to estimate the causal effect of EU Pilot on the efficiency of the Commission’s infringement procedure (i.e., the time it takes the Commission to process a case). We also provide evidence for the causal mechanism — that structured dialogue prevents cases involving accidental noncompliance

from entering into the formal infringement procedure. Our findings have a clear policy implication: monitoring institutions, including the Commission, should invest in policy initiatives aimed at facilitating better communication with member state governments early in the dispute-settlement process.

Substantive Context: The EU Pilot Program

We examine the effectiveness of structured dialogue in the context of the EU’s formal infringement procedure. The Commission uses this procedure to prosecute noncompliance with EU law by member states. Figure 1 shows the stages of the procedure. If the Commission believes a member state is not complying with an EU directive (the primary legislative instrument in the EU), it can initiate an infringement case by sending a letter of formal notice (LFN), asking the member state to respond to the alleged noncompliance (Article 258 TFEU). If the Commission is not satisfied with the member state’s response, it can send a reasoned opinion (RO), explaining in greater detail the member state’s noncompliance. If the Commission is still not satisfied with the member state’s response, it can refer the case to the Court of Justice of the European Union (CJEU) — thus ending the pre-litigation phase and starting formal litigation. The Court will then issue a binding ruling. When member states do not comply with the Court’s ruling, the Commission can repeat this process (Article 260 TFEU), but a second round is very rare.

The Commission can launch two types of infringement cases: non-communication cases and non-conformity cases. When the EU enacts a directive, member states have to implement it (a process called transposition). Directives specify a deadline by which all member states must transpose them. Member states are required by law to notify the Commission when they have done so. If a member state misses a transposition deadline, the Commission will open a non-communication case. If a member state does transpose a directive by the deadline, but does so incorrectly, the Commission can open a non-conformity case.

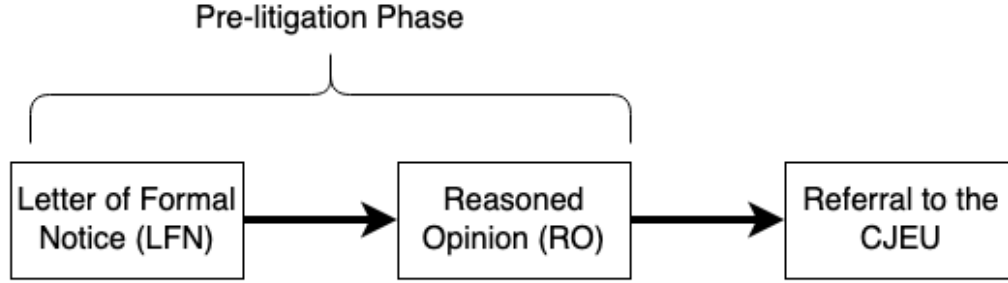


Figure 1. This figure shows the stages of the infringement procedure.

Since the infringement procedure is a multi-stage process, the Commission can infer the cause of an infringement from a member state’s responses and manage the case accordingly. For example, the Commission uses the LFN stage to screen out accidental noncompliance (Fjelstul and Carrubba 2018). However, this screening process can be extremely inefficient. In 2007, for example, the average case was approximately 460 days, leaving the Commission with a backlog of over 2,800 infringement cases. The Commission routinely complains (in its annual reports on the infringement procedure) that this inefficiency undermines its ability to monitor and enforce EU law. Figure 2 plots the backlog of infringement cases day-by-day from 2005 through 2019. The backlog peaked in 2005 and 2007 (over 2,800 cases) and has generally decreased since.

The Commission’s proposed solution to this inefficiency problem is the EU Pilot program — a form of structured dialogue. The purpose of EU Pilot is to facilitate better communication between the Commission and member states. The way the program works is very simple: the Commission uses an online database and communication tool to discuss the implementation of EU directives with government agencies in the member states during the implementation process to identify and head-off potential infringements before they happen. If the Commission thinks a member state is misinterpreting a directive or not implementing a directive correctly, it can use EU Pilot to give the member state an opportunity to clarify and offer advice and guidance, if necessary. The goal of the program is to avoid the need to open formal infringement cases.

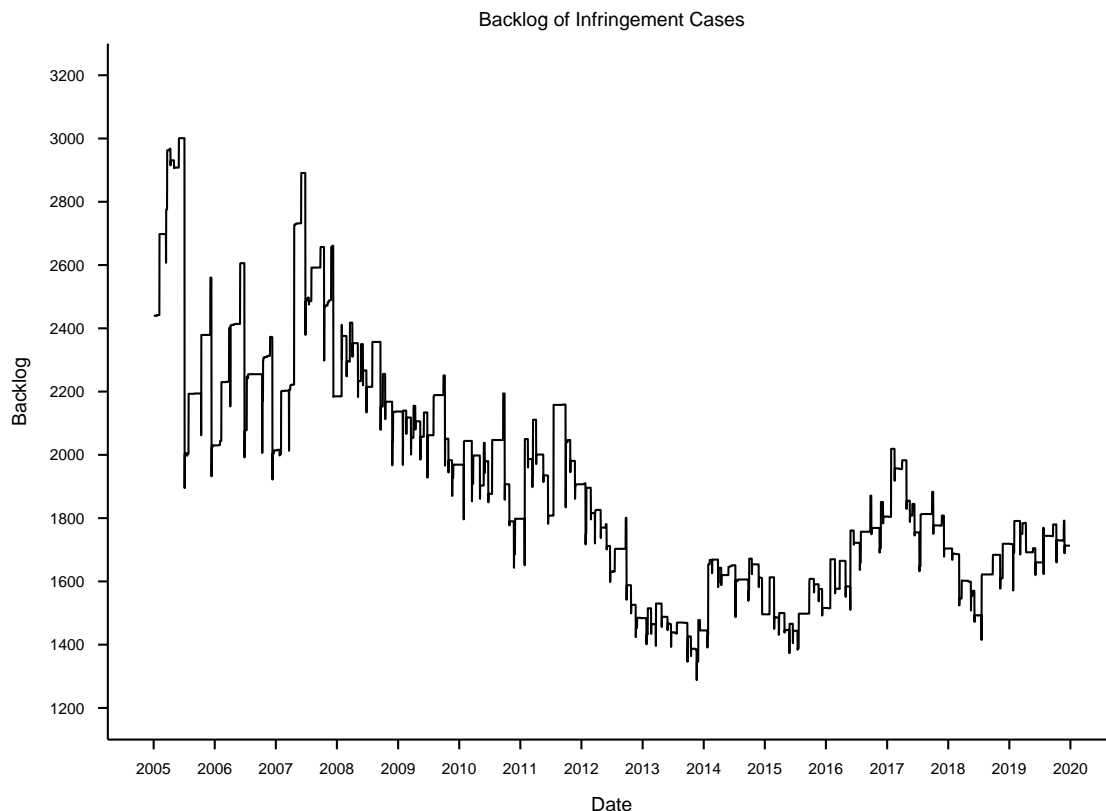


Figure 2. This figure shows the day-by-day backlog of Commission infringement cases from 2005 through 2019. Peaks occurred in 2005 and 2007, when there were over 2,800 active cases. The backlog has improved somewhat over time, but there are rarely fewer than 1,600 active cases. See the data section for details on the sample.

However, EU Pilot only applies to non-conformity cases, as structured dialogue is more impactful in non-conformity cases than non-communication cases. As the Commission explains, “Non-communication cases are registered directly and only in the infringement database NIF, as they are clear-cut cases for which the use of EU Pilot would not provide added value.”² Non-communication cases, on the other hand, launch automatically if a member state misses a transposition deadline. The Commission simply informs the member state that a directive was not transposed by the required deadline. In non-conformity cases, the Commission must explain why the member state transposed a directive incorrectly and the member state must respond to the Commission’s legal arguments. As such, a greater likelihood of miscommunication and misunderstanding exists in non-conformity cases that

² The 2010 Commission report on EU Pilot.

could delay the resolution of the case. We leverage the fact the EU Pilot only applies to non-conformity cases to estimate the causal effect of the EU Pilot program on the efficiency of the Commission’s infringement procedure.

Management School Explanations for Noncompliance

There is an extensive debate in the literature on the EU about why EU member states violate EU law, with different schools of thought pointing to different ways of reforming the infringement procedure (e.g., [Beach 2005](#); [Carrubba 2005](#); [Chayes and Chayes 1993](#); [Downs, Rocke and Barsoom 1996](#); [Tallberg 2002](#)). Management school theorists argue that noncompliance is primarily accidental (e.g., [Borghetto, Franchino and Giannetti 2006](#); [Börzel 2003](#); [Giuliani 2003](#), [Hille and Knill 2006](#); [Haverland 2000](#); [Jensen 2007](#); [Mbaye 2001](#); [Sedelmeier 2008](#); [Ziller and Siedentopf 1988](#)), while enforcement school theorists argue that noncompliance is primarily intentional (e.g., [Börzel 2000](#); [Falkner et al. 2005](#); [König and Mäder 2013](#); [Luetgert and Dannwolf 2009](#); [Thomson 2007](#); [Zhelyazkova 2012](#)). Constructivists, meanwhile, argue that noncompliance is a function of normative beliefs over rule obedience (e.g., [Checkel 2001](#); [Dworkin 1986](#); [Finnemore and Sikkink 1998](#); [Hurd 1999](#); [Hurrell 1993](#); [Risse, Ropp and Sikkink 1999](#)). While these schools are not mutually exclusive (e.g., [Börzel et al. 2010](#); [Carrubba and Gabel 2017](#); [Tallberg 2002](#)), our argument evaluates a management school solution to noncompliance.

Management school explanations pinpoint three factors causing noncompliance with EU law: domestic policy coordination complications and veto points impeding transposition of EU directives (e.g., [Chayes and Chayes 1993](#); [Dimitrova and Steunenberg 2000](#); [Haverland 2000](#); [Lampinen and Uusikylä 1998](#); [Mbaye 2001](#); [Steunenberg 2006](#); [Windhoff-Héritier, Kerwer and Knill 2001](#)), misfits between EU directives and existing policies causing implementation trouble for domestic administrative institutions (e.g., [Duina 1997](#); [Börzel 2000](#); [Héritier 1996](#); [Knill and Lenschow 1998](#); [Knill 1998](#)), and limited administrative capacity

generally (e.g., [Bursens 2002](#); [Coyle 1994](#); [Pridham 1994](#); [Ziller and Siedentopf 1988](#)). In addition to diagnosing these factors causing noncompliance, management scholars proscribe capacity building, proper rule interpretation, and transparency by international organizations as solutions to member state noncompliance (e.g., [Chayes and Chayes 1993, 1995](#); [Chayes, Chayes and Mitchell 1998](#); [Keohane and Levy 1996](#); [Levy, Keohane and Haas 1993](#); [Tallberg 2002](#); [Young 1992, 1999](#)).

Consistent with the management school’s proscriptions, the Commission has designed the EU Pilot program to help itself and member states “communicate and clarify the factual and legal background of problems arising in relation to the conformity of national law with EU law or the correct application of EU law.”³ In other words, EU Pilot attempts to solve implementation problems outside the formal infringement procedure by improving rule interpretation. The Commission explains the program is “a first step to try to resolve problems, so that, if possible, formal infringement proceedings are avoided.”⁴ By facilitating proper rule interpretation, we expect EU Pilot to prevent potential infringements from making it to the formal procedure, allowing the Commission to allocate resources across fewer cases and reducing the duration of infringement cases. In our empirical analysis, we will focus on the LFN stage of the infringement proceeding, as this is the only stage that all cases go through. This theoretical logic leads us to a set of empirical expectations:

Hypothesis 1. The average duration of the LFN stage will be shorter for member states participating in EU Pilot than for member states not participating in EU Pilot.

Hypothesis 2. The relationship in Hypothesis 1 will be stronger for non-conformity cases, which are eligible for EU Pilot, than for non-communication cases, which are not eligible for EU Pilot.

The Commission has publicly identified a specific mechanism by which it expects EU Pilot to operate: by facilitating better communication between itself and member states, EU Pilot

³ The 2010 Commission report on EU Pilot.

⁴ The 2010 Commission report on EU Pilot.

resolves easy cases (due to accidental noncompliance) before they reach the infringement procedure’s LFN stage, reducing the Commission’s caseload. With fewer open cases at any one time, responsiveness should improve because member states are allocating the same resources across fewer tasks. In short, EU Pilot allows the Commission to be more selective about the infringement cases that it launches against member states — it only needs to pursue cases that it cannot resolve through EU Pilot.

Many studies have suspected that the Commission is strategic about which cases it prosecutes without rigorously theorizing this selection process or offering quantitative evidence (e.g., [Börzel 2003](#); [Hartlapp and Falkner 2009](#); [Mbaye 2001](#); [Steunenberg and Rhinard 2010](#); [Thomson 2007](#)). One mechanism guiding case selection is that the Commission chooses to pursue cases that it expects to win in court,⁵ but we propose a complementary mechanism. We argue the Commission is strategically selecting out of easy cases (i.e., cases it knows it would win if referred to the court) by resolving them through EU Pilot without the formal infringement procedure. The Commission thereby simultaneously increases member states’ responsiveness, by reducing member states’ opportunity costs of responding to inquiries and making counter-offers, and reallocates its own resources to other cases.

If this mechanism is at work, it means that the remaining cases, that do make it through EU Pilot and into the formal infringement procedure, are the hard cases (involving to intentional noncompliance). [Fjelstul and Carrubba \(2018\)](#) find that member states wait to settle cases involving intentional noncompliance until the RO stage, as there is always positive probability that the Commission will drop the case at the LFN stage. The empirical implication of this causal mechanism is that the cases that do make it to the infringement procedure post-EU Pilot are less likely to resolve at the LFN stage and more likely to resolve at the RO stage.

⁵ The most recent empirical evidence shows that the Commission drops cases when it does not expect to win at the court or does not expect a member state to comply with an adverse court ruling ([König and Mäder 2014](#)). The Commission will only pursue cases when noncompliance is sufficiently severe and the probability of *ex post* compliance (i.e., the joint probability of winning a case before the Court and the probability the member state complies with the Court’s adverse ruling) is sufficiently high.

Hypothesis 3. The probability that an infringement case resolves at the LFN stage will be lower for member states participating in EU Pilot than for member states not participating in EU Pilot.

Hypothesis 4. The probability that an infringement case resolves at the RO stage will be higher for member states participating in EU Pilot than for member states not participating in EU Pilot.

We do not expect EU Pilot to have any effect on the likelihood that disputes over non-compliance are resolved pre-litigation (i.e., pre-referral to CJEU). [Fjelstul and Carrubba \(2018\)](#) find that member states will settle cases involving strategic noncompliance at the RO stage to avoid a costly court case.⁶ Building on this insight, we do not expect EU Pilot to change member states' strategic behavior at the RO stage. By preventing accidental non-compliance, which is usually resolved during the LFN stage, EU Pilot helps cases reach the RO stage more quickly and, thus, helps the Commission to process more infringement cases. Nonetheless, if member states participating in EU Pilot expect to lose a case upon referral to the CJEU, they will still opt to reach a settlement with the Commission in the RO stage. Put differently, while cases are more likely to reach the RO stage because of EU Pilot, they should not be more likely to reach the CJEU — rendering the probability a case resolves in the pre-litigation phase writ large relatively unchanged post-EU Pilot.

Hypothesis 5. EU pilot will not affect the probability that cases will resolve during the pre-litigation phase of the infringement procedure.

⁶ Specifically, they provide empirical evidence that intentional and unintentional noncompliance are both common in the EU. This finding has implications for the mechanism by which structured dialogue might improve the efficiency of pretrial bargaining. Structured dialogue between EU member states and the Commission during the implementation process should help prevent accidental noncompliance before it happens, reducing the number of LFNs that the Commission has to manage. Thus, by reducing the number of incoming LFNs, structured dialogue should allow the Commission to spend less time on screening at the LFN stage and more time on resolving intentional noncompliance at the RO stage. This mechanism should then reduce the number of cases that are referred to the Court, which should help the Court to process its docket of cases more efficiently.

Data and Measurement

To estimate the effect of EU Pilot on member state compliance with EU law, we need data on the progression of Commission infringement cases and on member state participation in EU Pilot. We create a comprehensive dataset of Commission infringement cases that includes every case between January 1, 2002 and December 31, 2019 in which the Commission made any formal decision.⁷ We code the date of each decision (LFN, RO, etc.) made by the Commission. We also code the plaintiff, the directorate-general of the Commission that managed the case, and whether the case was a non-communication case or a non-conformity case. Again, non-communication cases are those in which a member state has allegedly failed to implement a directive by the specified date, whereas non-conformity cases are those in which a member state has allegedly implemented a directive incorrectly. We only analyze complete cases — cases where we observe the LFN, the closing of the case, and all steps in between. There are 18,965 cases that meet these criteria.

EU Pilot officially started on April 15, 2008. Figure 3 shows the 15 original participants: Austria, Czech Republic, Denmark, Germany, Finland, Hungary, Ireland, Italy, Lithuania, Netherlands, Portugal, Slovenia, Sweden, Spain, and the United Kingdom. All of these member states volunteered to participate in the program. Participation expanded in waves over the next four years. The Commission treated non-participants the same as before the creation of EU Pilot: “For Member States which are not yet participating to EU Pilot, pre-infringement correspondence still happens by classical administrative means.”⁸ Thus, it is clear that cases involving non-participants were not subject to treatment.

In March 2010, the Commission invited the remaining member states to join. By the end of 2010, three more had accepted the invitation: Bulgaria, Estonia, and Slovakia. The program expanded multiple times in 2011. Belgium, Poland, Latvia, and Romania joined in January, followed by Cyprus in March. France and Greece joined in September. The last

⁷ Every action in every infringement case is published online in a [Commission database](#).

⁸ See COM(2007)502.

two — Luxembourg and Malta — joined in June 2012. Croatia joined when it acceded to the EU in 2013.

We evaluate whether structured dialogue can improve the efficiency of pretrial bargaining procedures by estimating causal effect of EU Pilot on the duration of the LFN stage of the Commission’s infringement procedure. As shown in Figure 2, the Commission’s backlog does decrease over time, but whether EU Pilot contributed to this decrease is an open question. Perhaps, over the same period, noncompliance improved or the Commission became more lenient. We estimate the effect of EU Pilot using a difference-in-differences design and find that it substantially decreases the duration of the LFN stage in non-conformity cases. We also design a test to uncover the causal mechanism — that structured dialogue improves efficiency by resolving cases due to accidental noncompliance outside of the formal infringement procedure. This means the remaining cases that do enter the formal procedure are more likely to be a result of intentional noncompliance.

Difference-in-Differences Analysis

The fact member states joined EU Pilot in stages creates an opportunity to estimate the program’s effect using a difference-in-differences (DiD) design. Member states volunteered to participate during the initial trial period. Since participation was not randomized, and member states self-selected into the program, systematic differences may exist between participants and non-participants. The volunteers may be more responsive on average, making the program look more effective, or less responsive on average, making the program look less effective. Our DiD design addresses this issue by controlling for any difference between the pre-treatment and post-treatment periods and for any differences between participants and non-participants.

Our sample includes all infringement cases in which the Commission sends a LFN after May 1, 2004 (the date of the EU’s enlargement into central and eastern Europe) and which the Commission closes before March 1, 2010, when the second wave of member states joins.

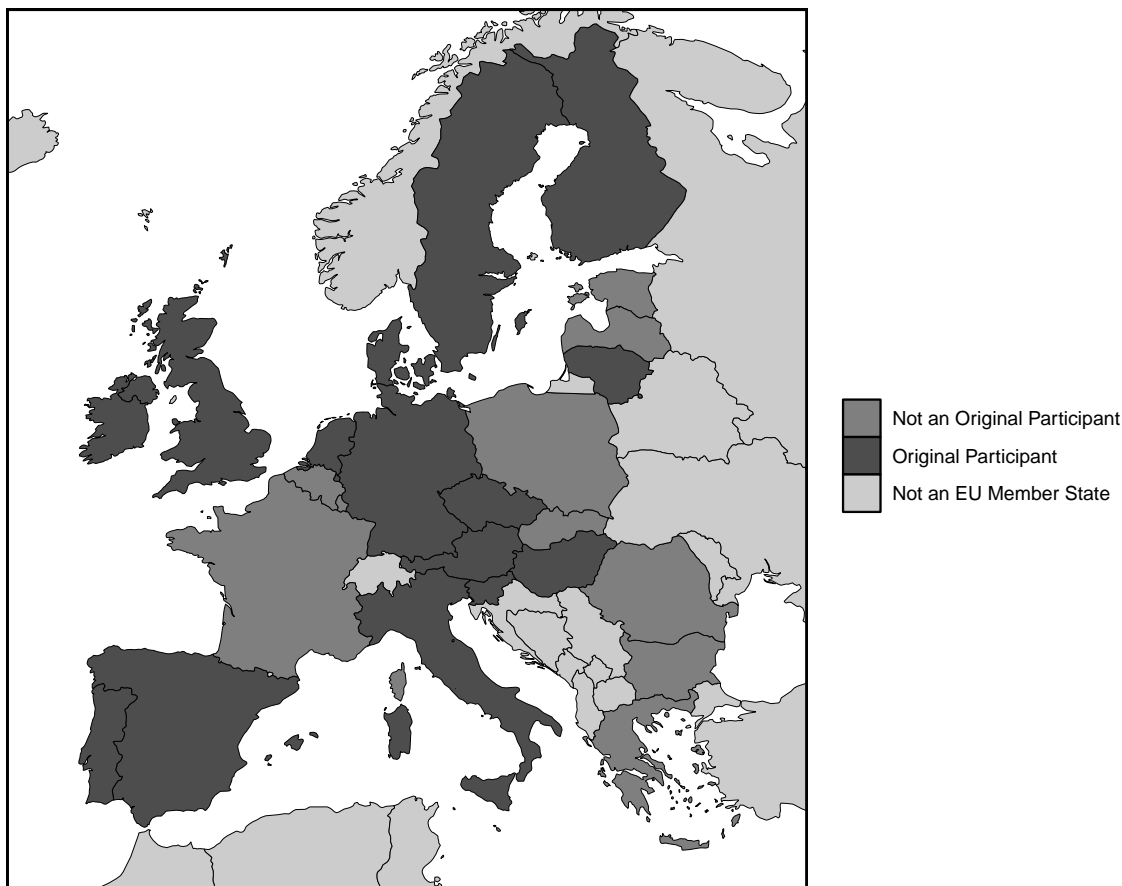


Figure 3. This map shows the 15 original participants in EU Pilot, which started on April 15, 2008. Several more member states joined in 2010 and the remaining joined by 2012.

This start date is arbitrary (although it makes sense to start the sample after the 2004 accession so the composition of the sample remains stable), but our results are robust to moving that date forward or backward. There are 4,131 observations in the sample. The treatment group consists of cases involving participants ($PILOT = 1$) and the control group consists of cases involving non-participants ($PILOT = 0$). The pre-treatment period runs from May 1, 2004 to April 15, 2008. All observations in which the Commission sent a LFN during this period are coded as pre-treatment observations ($PERIOD = 0$). The post-treatment period runs from April 16, 2008 to March 1, 2010. Similarly, all observations in which the Commission sent an LFN during this period are coded as post-treatment observations ($PERIOD = 1$). There are 3,191 control observations ($PILOT = 0$) and 3,851 treated observations ($PILOT$

= 1). And there are 6,059 pre-treatment observations (PERIOD = 0) and 983 post-treatment observations (PERIOD = 1).

The outcome variable, DURATION, is the number of days from the date the Commission sends an LFN to the date the Commission concludes the first stage in the infringement procedure by sending an RO (if the Commission chooses to pursue the case further) or by closing the case (if it chooses not to pursue it further). Again, we focus on the LFN stage because the LFN stage is the only stage that all cases go through. The Commission decides whether to move a case to the second stage (the RO stage) based on whether the member state’s response to its LFN is satisfactory. This selection process is complex and could confound our results if we were to look instead at the full duration of the case. Our results are all robust to taking the natural log of DURATION.

To test Hypothesis 1, we model DURATION as a function of the interaction of PILOT and PERIOD, including constituent terms. The average was 243 days and the median was 202 days. We estimate the effect of EU Pilot on the duration of the first stage by OLS using the following model:

$$\text{DURATION}_i = \alpha + \beta_1(\text{PILOT}_i) + \beta_2(\text{PERIOD}_i) + \beta_3(\text{PILOT}_i \times \text{PERIOD}_i), \quad (1)$$

where i indexes the infringement case. We estimate heteroskedasticity-robust standard errors. The parallel trends assumption in this DiD analysis is that the time trend in case duration for participants is the same as the time trend in case duration for non-participants. This assumption could be violated if participating member states tried to become more responsive over this period independently from their participation in EU Pilot.

In our base specification (Table 1, Model 1), we find that EU Pilot reduces the duration of the LFN stage by approximately 36 days ($\beta = -36.488$; $p < 0.01$). The average duration of cases decreased substantially from the pre-treatment period to the post-treatment period. Either compliance improved or the Commission became more lenient, or both. Figure 4 shows

Table 1. EU Pilot: DiD Analysis

	Model (1)	Model (2)	Model (3)	Model (4)	Model (5)
PILOT	35.591*** (4.809)	29.480*** (6.131)	97.885*** (23.432)	−21.841 (52.734)	76.210*** (22.531)
PERIOD	−52.036*** (5.561)	−54.613*** (9.215)	−38.970*** (9.016)	−57.352*** (5.723)	20.749* (11.822)
PILOT × PERIOD	−37.772*** (7.956)	−35.409*** (12.180)	−49.623*** (11.596)	−28.715*** (8.178)	−28.064** (11.082)
WORKLOAD		−1.024*** (0.180)	0.617*** (0.206)		−0.037 (0.219)
<i>Constant</i>	234.366*** (2.897)	247.232*** (4.934)	247.440*** (26.958)	269.341*** (27.616)	1,625.668*** (24.860)
Observations	7,042	4,008	4,008	7,042	4,008
R ²	0.027	0.027	0.154	0.228	0.245
Member state FEs	No	No	Yes	No	Yes
DG FEs	No	No	Yes	No	Yes
Member state × DG FEs	No	No	No	Yes	No
Year FEs	No	No	No	No	Yes

Notes: OLS models with robust standard errors. Dependent variable is the duration of the LFN stage (in days). * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

the duration of the first stage in cases involving participating member states is longer than in cases involving non-participating states. As such, it is not the case that the relatively more responsive member states selected into the program. The average post-treatment predicted duration of treated cases is nearly identical to the average post-treatment duration of untreated control cases. In short, the member states volunteering for EU Pilot were less responsive on average and EU Pilot brought them up to the same level of responsiveness as non-participating states.

We estimate several other specifications. First, we add a control for the workload of member state agencies with respect to infringement cases (Table 1, Model 2). For each case, we calculate the number of open cases involving that member state in the same policy area when that case was launched (WORKLOAD). Second, we include member state and policy area fixed effects (Table 1, Model 3). We use the directorate-general managing the

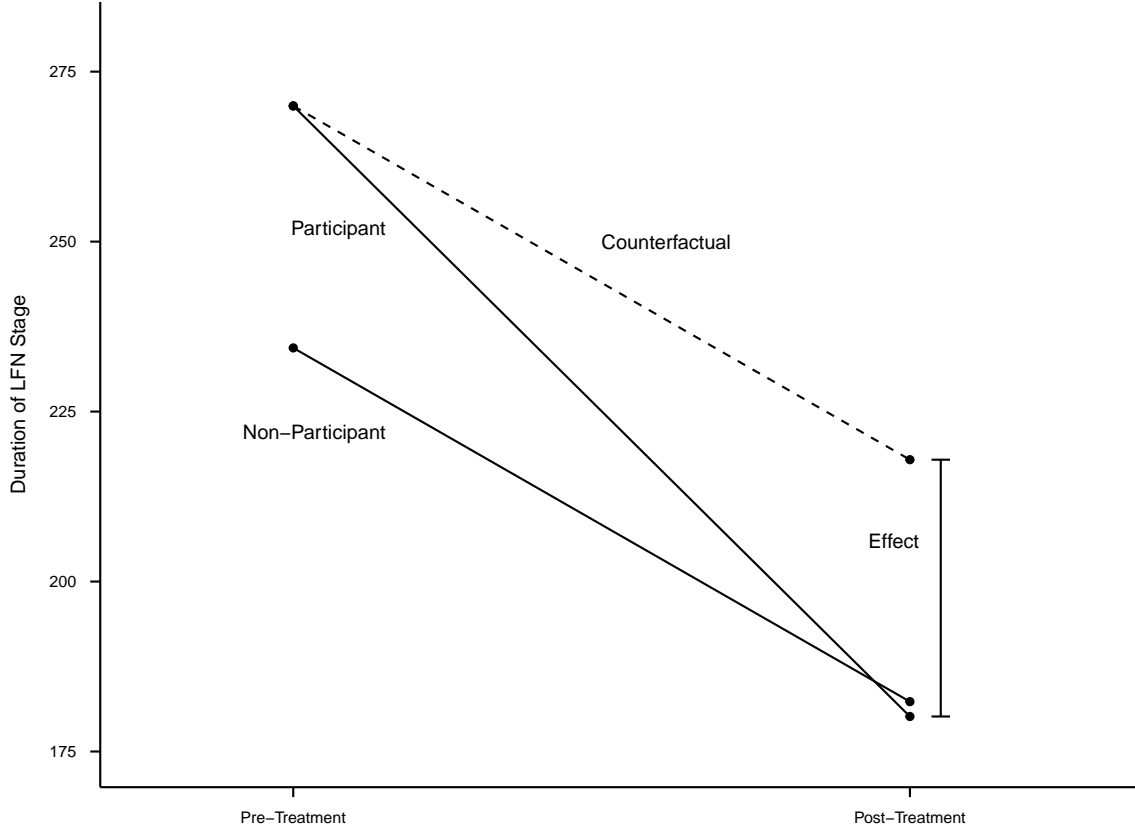


Figure 4. This plot shows the estimated effect of EU Pilot on the duration of the LFN stage based on our base specification.

case as an indicator of the policy area. This controls for any variation in policy preferences or administrative capacity across member states and across directorates-general and may influence which cases member states are willing or able to resolve and which cases the Commission is willing to prosecute.

Third, we include fixed effects for each combination of member state and directorate-general (Table 1, Model 4).⁹ This controls for variation in member states' preferences with respect to compliance across policy areas. It is likely that member states, for domestic political reasons, care more about avoiding compliance in some policy areas than others. It is also likely member states' administrative capacity varies across policy areas due to domestic political priorities, which affects the structure of their budget. On the Commission's side,

⁹ We omit WORKLOAD from this specification because it varies by member state and directorate-general.

the willingness of directorates-general to prosecute noncompliance against any particular member state may depend on the political preferences and calculations of each directorate-general’s Commissioner.

As shown in Table 1, our results are robust across these specifications. The magnitude of the estimated effect varies between a 28 and 49 day improvement in response time. The results are also robust to including year fixed effects, which control for any time trends (Table 1, Model 5).

Difference-in-Difference-in-Differences Analysis

According to the Commission, only non-conformity cases are eligible for EU Pilot.¹⁰ However, our DiD analysis does not take this into account. Next, we take advantage of the fact that EU Pilot applies to some cases (non-conformity cases) and not others (non-communication cases) to assess potential violations of the parallel trends assumption in our DiD analysis. Specifically, we use non-communication cases as internal controls for non-conformity cases. We re-estimate the treatment effect using a difference-in-difference-in-differences (DiDiD) estimator, where the third difference is between non-conformity cases and non-communication cases. This makes our estimate robust to violations of the parallel trends assumption in which the trend applies to both types of infringement cases.

The parallel trends assumption in our DiD analysis could be violated if participants in EU Pilot are improving their compliance behavior at the same time as the program is going into effect. It could look like the program is effective when, in fact, it is not actually doing anything. It is plausible that this is occurring because cases involving the member states that

¹⁰ All non-conformity cases are eligible for EU Pilot, regardless of whether they originate from complaints or own-initiative investigations. The 2010 report on EU Pilot provides a succinct explanation of how each is handled: “Complaints/Enquiries are registered first in CHAP [the system that EU citizens can use to file complaints], and then transferred to EU Pilot for the participating Member States if the Commission needs to obtain further factual or legal information or to provide the Member State in question with an opportunity to submit a solution complying with EU law. If no solution complying with EU law is found, the cases are subsequently transferred into the infringement database NIF... The Commission’s own initiative (ex-officio) cases start in EU Pilot for participating Member States and, subsequently, if they could not be solved, they are transferred into the infringement database NIF.”

Table 2. EU Pilot: DiDiD Analysis

	Model (1)	Model (2)	Model (3)	Model (4)	Model (5)
PILOT	−3.368 (2.593)	1.128 (3.713)	20.058 (19.125)	−173.181*** (55.692)	26.242 (19.027)
PERIOD	−40.944*** (4.640)	−52.552*** (7.516)	−41.841*** (7.939)	−33.296*** (5.011)	−11.605 (11.558)
NON-CONFORMITY	−3.860 (6.225)	−8.140 (9.486)	−9.414 (10.086)	−4.400 (6.784)	−0.656 (10.043)
PILOT × PERIOD	176.152*** (10.371)	179.152*** (14.279)	171.740*** (13.813)	162.223*** (10.335)	167.201*** (13.953)
PILOT × NON-CONFORMITY		0.091 (0.163)	0.481** (0.192)		−0.122 (0.202)
PERIOD × NON-CONFORMITY	89.219*** (14.797)	85.981*** (21.252)	83.182*** (20.381)	89.334*** (14.641)	62.060*** (19.685)
PILOT × PERIOD × NON-CONFORMITY	−81.037*** (15.766)	−50.614** (22.212)	−57.615** (22.391)	−90.748*** (15.980)	−67.765*** (22.306)
WORKLOAD	−72.325*** (21.294)	−80.199*** (30.510)	−94.657*** (30.895)	−65.383*** (21.776)	−73.409** (30.072)
<i>Constant</i>	198.103*** (1.843)	200.223*** (3.946)	218.003*** (23.481)	232.014*** (19.125)	1,408.650*** (28.793)
Observations	7,042	4,008	4,008	7,042	4,008
R ²	0.290	0.282	0.333	0.389	0.378
Member state FEs	No	No	Yes	No	Yes
DG FEs	No	No	Yes	No	Yes
Member state × DG FEs	No	No	No	Yes	No
Year FEs	No	No	No	No	Yes

Notes: OLS models with robust standard errors. Dependent variable is the duration of the LFN stage (in days). * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

volunteered to participate in EU Pilot took longer to resolve, on average, than cases involving member states that did not volunteer, possibly indicating a preference among participants for improving their response times.

If participants in EU Pilot are improving their compliance behavior over the same period as the program is going into effect, it is likely that their response times will improve for both

non-communication cases and non-conformity cases. Any policy reforms aimed at improving response times should affect both types of cases because, within a given policy area, the same administrative units in the national bureaucracy are responsible for handling responses in both types of cases. The assumption we make with our DiDiD analysis, then, is that whatever trend is affecting response rates for non-communication cases, among EU Pilot participants, is also affecting response rates for non-conformity cases, among EU Pilot participants. In other words, we are no longer assuming (as we do in our DiD analysis), that response rates for participants change over time in the same way as they do for non-participants.

To estimate a DiDiD model, we interact NON-CONFORMITY, which is coded 1 if the case is a non-conformity case and 0 if the case is a non-communication case, with PILOT and PERIOD. We include all constituent terms. The effect of EU Pilot on the duration of the first stage in non-conformity cases is the coefficient on the triple-interaction term. In all specifications, we estimate heteroskedasticity-robust standard errors.

In our base specification (Table 2, Model 1), we find EU Pilot decreases the average duration of the first stage in non-conformity cases by 81 days ($\beta = -81.037$; $p < 0.01$). Consistent with Hypothesis 2, this estimate is substantially larger than our DiD estimate of 37 days. This difference is not surprising given the fact that the DiD model pools the effect of EU Pilot on non-conformity cases, where the program should have an effect, and non-communication cases, where it should not have an effect. We conduct the same robustness checks as in our DiD analysis above (Table 2, Models 2-5). The results are robust across all of these alternative specifications. The magnitude of the estimated effect of EU Pilot in this set of models varies between a 50 and 90 day improvement in response time. Since the average duration of the LFN stage for cases in the sample is 243 days, this effect is substantively large. In sum, our findings indicate EU Pilot is effective at increasing member states' responsiveness during the LFN stage.

Causal Mechanism

Our DiD and DiDiD tests provide causal evidence that EU Pilot has increased the efficiency of the Commission’s infringement procedure, but these tests do not help us to identify the causal mechanism directly. If EU Pilot is reducing the number of incoming non-conformity cases by helping member states and the Commission avoid accidental noncompliance, the direct implication is that the cases that do enter the procedure should tend to be the ones that are harder to resolve — those involving strategic noncompliance. [Fjelstul and Carrubba \(2018\)](#) find that if a member state is going to settle a case involving strategic noncompliance, it will wait until the RO stage, as positive probability exists the Commission will drop the case after the LFN stage. As such, we expect EU Pilot to decrease the probability that a case will resolve at the LFN stage (Hypothesis 3) and to increase the probability that a case will resolve at the RO stage (Hypothesis 4). We do not expect EU pilot to affect the probability cases will resolve pre-litigation (Hypothesis 5).

To test the empirical implications of the causal mechanism, we estimate an additional set of DiDiD models using as outcome variables whether the case is settled during the first stage (the LFN stage), whether the case is settled during the second stage (the RO stage), and whether the case is settled pre-litigation. We estimate a linear probability model by OLS. We include member state and directorate-general fixed effects. If EU Pilot works as expected, the treatment effect of the program on settlement at the LFN stage should be negative and the treatment effect of the program on settlement at the RO stage should be positive. Consistent with our expectations, we find that EU Pilot cases are approximately 12 percent less likely to end at the LFN stage (Table 3, Model 1) and 13 percent more likely to end at the RO stage (Table 3, Model 2). This is consistent with Hypotheses 3 and 4. Consistent with Hypothesis 5, we find no evidence that EU Pilot affects the probability that disputes are settled pre-litigation (Table 3, Model 3).

These findings suggest that EU Pilot works according to the mechanism posited by the Commission — by resolving accidental non-conformity cases before they enter the formal

Table 3. Causal Mechanism

	Model (1)	Model (2)	Model (3)
PILOT	−0.094*** (0.035)	0.077** (0.033)	−0.017 (0.017)
PERIOD	0.079*** (0.022)	−0.022 (0.021)	0.058*** (0.007)
NON-CONFORMITY	0.049* (0.029)	−0.073*** (0.027)	−0.024** (0.011)
PILOT × PERIOD	−0.032 (0.023)	0.044** (0.022)	0.012 (0.014)
PILOT × NON-CONFORMITY	0.086*** (0.028)	−0.071*** (0.027)	0.015 (0.016)
PERIOD × NON-CONFORMITY	0.163*** (0.040)	−0.157*** (0.037)	0.006 (0.015)
PILOT × PERIOD × NON-CONFORMITY	−0.126** (0.053)	0.134*** (0.051)	0.008 (0.019)
<i>Constant</i>	0.993*** (0.054)	0.007 (0.051)	1.000*** (0.015)
Observations	7,042	7,042	7,042
R ²	0.108	0.065	0.050
Stage	First (LFN)	Second (RO)	Pre-Litigation
Member state FEs	Yes	Yes	Yes
DG FEs	Yes	Yes	Yes

Notes: Linear probability models with robust standard errors. Dependent variable is whether a case is resolved at the indicated stage. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

infringement procedure. Overall, our empirical evidence indicates that clarifying rule interpretation through pretrial bargaining in the form of EU Pilot is an effective solution to increase the efficiency of the EU's formal infringement procedure, improving member state compliance with EU law.

Conclusion

In this paper, we assess whether structured dialogue improves the efficiency of pretrial bargaining by reducing the opportunity costs for member states to prepare counter-offers. Implemented in stages starting in 2008, EU Pilot formalized previously *ad hoc* discussions between the Commission and EU member states. Through this structured dialogue, member states and the Commission can more effectively communicate case facts in non-conformity cases, the member state can more effectively communicate why they believe they are in compliance (if they disagree with the Commission’s position), and the Commission can more effectively communicate the steps the member state needs to take to come into compliance with the directive (if the Commission still believes there is an infringement).

Using a DiDiD design, we find that EU Pilot significantly improves the efficiency of pretrial bargaining: Cases are resolved approximately 90 days quicker, on average, under EU Pilot. We also provide evidence of the causal mechanism — structured dialogue prevents accidental noncompliance, which reduces the number of cases that reach pretrial procedures. By reducing the relative scarcity of time, structured dialogue lowers the opportunity costs of bargaining, incentivizing defendants to make initial counter-offers more quickly. In other words, it shortens the LFN stage. This mechanism results in cases reaching the RO stage faster, which is the stage at which member states are likely to settle cases that involve strategic noncompliance (the RO stage is the last opportunity to avoid a costly court case). This mechanism also helps the Commission correct poor implementation more quickly, reducing the period of time during which there is a compliance deficit.

Our research design uncovers a crucial insight for addressing noncompliance: structured dialogue is a viable policy solution to improve the efficiency of bargaining in pretrial dispute-settlement procedures without resorting to sanctioning mechanisms. If EU Pilot is successfully preventing easy infringement cases from reaching the formal infringement procedure, it raises new questions about the nature of the cases that reach the LFN, RO, and referral stages. Cases that reached the Court before EU Pilot were already a subset of the cases

that were not resolved by the RO stage. Cases that make it all the way through the litigation process are cases in which the Commission and the member state could not reach a settlement (i.e., cases involving intentional noncompliance) and cases that the Commission is confident it can win.

In addition, unlike some domestic constitutional courts, the CJEU does not control its docket (i.e., the CJEU cannot refuse to hear a case), so the handling of infringement cases by the Commission directly affects the CJEU's caseload. If the Commission launches fewer infringement cases post-EU Pilot, fewer infringement cases may reach the Court. The Court's caseload has increased dramatically in recent years, and plans are in place to expand the size of the Court to help manage this caseload. As such, fewer infringement cases could make a significant difference in the Court's workload and the time it spends on each dispute.

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