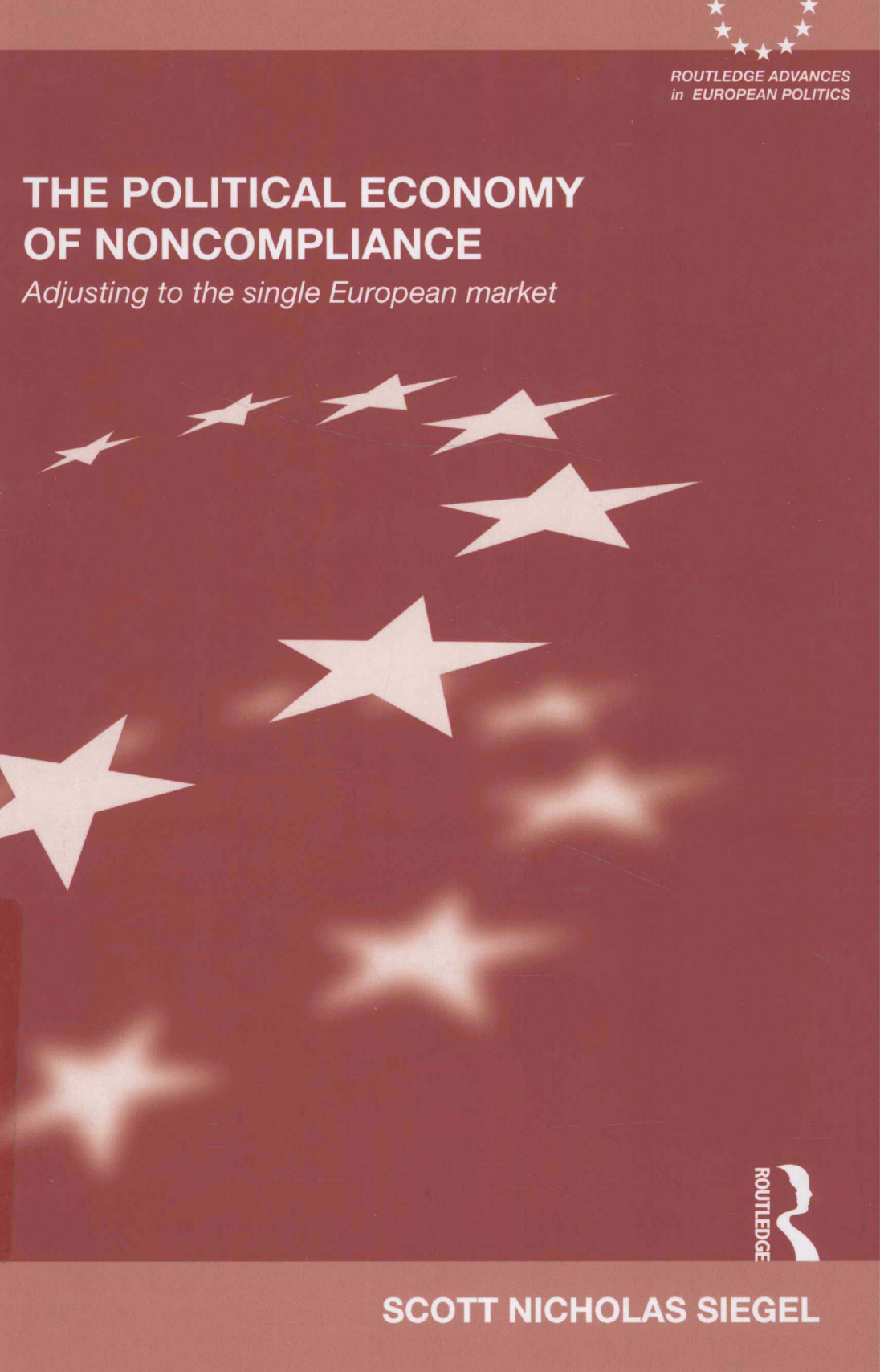
ROUTLEDGE ADVANCES
in EUROPEAN POLITICS
THE POLITICAL ECONOMY
OF NONCOMPLIANCE
Adjusting to the single European market
ROUTLEDGE
SCOTT NICHOLAS SIEGEL

# The Political Economy of Noncompliance

## Adjusting to the single European market

**Scott Nicholas Siegel**



Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2011
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Simultaneously published in the USA and Canada
by Routledge
711 Third Avenue, New York, NY 10017

*Routledge is an imprint of the Taylor & Francis Group, an informa business*



*British Library Cataloguing in Publication Data*
A catalogue record for this book is available from the British Library

*Library of Congress Cataloguing in Publication Data*
A catalog record has been requested for this book

Siegel, Scott Nicholas, 1976–
The political economy of noncompliance : adjusting to the single European market / Scott Nicholas Siegel.
p. cm.
Includes bibliographical references and index.
1. International and municipal law–European Union countries.
2. European Union countries–Politics and government.
3. European federation–Economic aspects. 4. Government aid–European Union countries. I. Title.
KJE971.5.S56 2011
341.242'2–dc22 2011012046

ISBN: 978-0-415-61585-3 (hbk)
ISBN: 978-0-203-81632-5 (ebk)

Typeset in Times New Roman
By Glyph International


Printed and bound in Great Britain by the MPG Books Group

# The Political Economy of Noncompliance

*The Political Economy of Noncompliance* explains why states fail to comply with international law.

Over the last sixty years, states have signed treaties, established international courts and other supranational institutions to achieve the benefits of international cooperation. Nowhere has this been more successful than in the European Union. European integration has produced one of the most intensely legalized regimes in the world. Yet, even in the European Union, states often fail to comply with the law. This book explores the sources of and reasons for noncompliance, and assesses why noncompliance varies across the Member States by looking at the domestic politics of complying with international law. The author uses examples from the history of economic integration in the EU in three countries and two different policy areas to demonstrate these mechanisms at work.

*The Political Economy of Noncompliance* will be of interest to students and scholars of European politics, international relations and political economy.

**Scott Nicholas Siegel** is Assistant Professor of Political Science in the Department of National Security Affairs at the Naval Postgraduate School in Monterey, CA.

## Routledge Advances in European Politics

1 **Russian Messianism**
Third Rome, revolution, Communism and after
*Peter J.S. Duncan*

2 **European Integration and the Postmodern Condition**
Governance, democracy, identity
*Peter van Ham*

3 **Nationalism in Italian Politics**
The stories of the Northern League, 1980–2000
*Damian Tambini*

4 **International Intervention in the Balkans since 1995**
*Edited by Peter Siani-Davies*

5 **Widening the European Union**
The politics of institutional change and reform
*Edited by Bernard Steunenberg*

6 **Institutional Challenges in the European Union**
*Edited by Madeleine Hosli, Adrian van Deemen and Mika Widgrén*

7 **Europe Unbound**
Enlarging and reshaping the boundaries of the European Union
*Edited by Jan Zielonka*

8 **Ethnic Cleansing in the Balkans**
Nationalism and the destruction of tradition
*Cathie Carmichael*

9 **Democracy and Enlargement in Post-Communist Europe**
The democratisation of the general public in fifteen Central and Eastern European countries, 1991–1998
*Christian W. Haerpfer*

10 **Private Sector Involvement in the Euro**
The power of ideas
*Stefan Collignon and Daniela Schwarzer*

11 **Europe**
A Nietzschean perspective
*Stefan Elbe*

12 **European Union and E-Voting**
Addressing the European parliament's internet voting challenge
*Edited by Alexander H. Trechsel and Fernando Mendez*

13 **European Union Council Presidencies**
A comparative perspective
*Edited by Ole Elgström*

14 **European Governance and Supranational Institutions**
Making states comply
*Jonas Tallberg*

15 **European Union, NATO and Russia**
*Martin Smith and Graham Timmins*

16 **Business, The State and Economic Policy**
The case of Italy
*G. Grant Amyot*

17 **Europeanization and Transnational States**
Comparing Nordic central governments
*Bengt Jacobsson, Per Lægreid and Ove K. Pedersen*

18 **European Union Enlargement**
A comparative history
*Edited by Wolfram Kaiser and Jürgen Elvert*

19 **Gibraltar**
British or Spanish?
*Peter Gold*

20 **Gendering Spanish Democracy**
Monica Threlfall, Christine Cousins and Celia Valiente

21 **European Union Negotiations**
Processes, networks and negotiations
*Edited by Ole Elgström and Christer Jönsson*

22 **Evaluating Euro-Mediterranean Relations**
*Stephen C. Calleya*

23 **The Changing Face of European Identity**
A seven-nation study of (supra)national attachments
*Edited by Richard Robyn*

24 **Governing Europe**
Discourse, governmentality and European integration
*William Walters and Jens Henrik Haahr*

25 **Territory and Terror**
Conflicting nationalisms in the Basque country
*Jan Mansvelt Beck*

26 **Multilateralism, German Foreign Policy and Central Europe**
*Claus Hofhansel*

27 **Popular Protest in East Germany**
*Gareth Dale*

28 **Germany's Foreign Policy Towards Poland and the Czech Republic**
Ostpolitik revisited
*Karl Cordell and Stefan Wolff*

29 **Kosovo**
The politics of identity and space
*Denisa Kostovicova*

30 **The Politics of European Union Enlargement**
Theoretical approaches
*Edited by Frank Schimmelfennig and Ulrich Sedelmeier*

31 **Europeanizing Social Democracy?**
The rise of the party of European socialists
*Simon Lightfoot*

32 **Conflict and Change in EU Budgetary Politics**
*Johannes Lindner*

33 **Gibraltar, Identity and Empire**
*E.G. Archer*

34 **Governance Stories**
*Mark Bevir and R.A.W Rhodes*

35 **Britain and the Balkans**
1991 until the present
*Carole Hodge*

36 **The Eastern Enlargement of the European Union**
*John O'Brennan*

37 **Values and Principles in European Union Foreign Policy**
*Edited by Sonia Lucarelli and Ian Manners*

38 **European Union and the Making of a Wider Northern Europe**
*Pami Aalto*

39 **Democracy in the European Union**
Towards the emergence of a public sphere
*Edited by Liana Giorgi, Ingmar Von Homeyer and Wayne Parsons*

40 **European Union Peacebuilding and Policing**
*Michael Merlingen with Rasa Ostrauskaite*

41 **The Conservative Party and European Integration since 1945**
At the heart of Europe?
*N.J. Crowson*

42 **E-Government in Europe**
Re-booting the state
*Edited by Paul G. Nixon and Vassiliki N. Koutrakou*

43 **EU Foreign and Interior Policies**
Cross-pillar politics and the social construction of sovereignty
*Stephan Stetter*

44 **Policy Transfer in European Union Governance**
Regulating the utilities
*Simon Bulmer, David Dolowitz, Peter Humphreys and Stephen Padgett*

45 **The Europeanization of National Political Parties**
Power and organizational adaptation
*Edited by Thomas Poguntke, Nicholas Aylott, Elisabeth Carter, Robert Ladrech and Kurt Richard Luther*

46 **Citizenship in Nordic Welfare States**
Dynamics of choice, duties and participation in a changing Europe
*Edited by Bjørn Hvinden and Håkan Johansson*

47 **National Parliaments within the Enlarged European Union**
From victims of integration to competitive actors?
*Edited by John O'Brennan and Tapio Raunio*

48 **Britain, Ireland and Northern Ireland since 1980**
The totality of relationships
*Eamonn O'Kane*

49 **The EU and the European Security Strategy**
Forging a global Europe
*Edited by Sven Biscop and Jan Joel Andersson*

**50 European Security and Defence Policy**
An implementation perspective
*Edited by Michael Merlingen and Rasa Ostrauskait*

**51 Women and British Party Politics**
Descriptive, substantive and symbolic representation
*Sarah Childs*

**52 The Selection of Ministers in Europe**
Hiring and firing
*Edited by Keith Dowding and Patrick Dumont*

**53 Energy Security**
Europe's new foreign policy challenge
*Richard Youngs*

**54 Institutional Challenges in Post-Constitutional Europe**
Governing change
*Edited by Catherine Moury and Luís de Sousa*

**55 The Struggle for the European Constitution**
A past and future history
*Michael O'Neill*

**56 Transnational Labour Solidarity**
Mechanisms of commitment to cooperation within the European trade union movement
*Katarzyna Gajewska*

**57 The Illusion of Accountability in the European Union**
*Edited by Sverker Gustavsson, Christer Karlsson, and Thomas Persson*

**58 The European Union and Global Social Change**
A Critical geopolitical-economic analysis
*József Böröcz*

**59 Citizenship and Collective Identity in Europe**
*Ireneusz Pawel Karolewski*

**60 EU Enlargement and Socialization**
Turkey and Cyprus
*Stefan Engert*

**61 The Politics of EU Accession**
Turkish challenges and central European experiences
*Edited by Lucie Tunkrová and Pavel Šaradín*

**62 The Political History of European Integration**
The hypocrisy of democracy-through-market
*Hagen Schulz-Forberg and Bo Stråth*

**63 The Spatialities of Europeanization**
Power, governance and territory in Europe
*Alun Jones and Julian Clark*

**64 European Union Sanctions and Foreign Policy**
When and why do they work?
*Clara Portela*

**65 The EU's Role in World Politics**
A retreat from Liberal internationalism
*Richard Youngs*

**66 Social Democracy and European Integration**
The politics of preference formation
*Edited by Dionyssis Dimitrakopoulos*

**67 The EU Presence in International Organizations**
*Edited by Spyros Blavoukos & Dimitris Bourantonis*

**68 Sustainability in European Environmental Policy**
Challenge of governance and knowledge
*Edited by Rob Atkinson, Georgios Terizakis and Karsten Zimmermann*

**69 Fifty Years of EU-Turkey Relations**
A Sisyphean story
*Edited by Armagan Emre Çakir*

**70 Europeanization and Foreign Policy**
State Ddversity in Finland and Britain
*Juha Jokela*

**71 EU Foreign Policy and Post-Soviet Conflicts**
Stealth intervention
*Nicu Popescu*

**72 Switzerland in Europe**
Continuity and change in the Swiss political economy
*Edited by Christine Trampusch and André Mach*

**73. The Political Economy of Noncompliance**
Adjusting to the single European market
*Scott Nicholas Siegel*

# Figures and tables

## Figures



## Tables

# Preface

This book examines the two-level game that governments must play when attempting to comply with international law. In a thoroughly globalized world, governments face serious tradeoffs. On the one hand, states participate in an international community. They cooperate with each other to solve major international problems, whether transnational terrorism, climate change or human trafficking. On the other hand, national leaders in modern democracies should be fulfilling the wishes and demands of a majority of voters. The tensions between complying with a country's international legal obligations and satisfying the will of a majority of its citizens are growing in number and in severity. Short of renegotiating international rules, governments have two choices before them. They can choose not to comply with their agreements and risk punishment by other members of the international community. Or they can choose to comply with an international rule and realize the benefits of cooperation, but then risk domestic backlash.

The debate over the role of international law and institutions in modern democracies has reached a particularly heightened stage in the European Union. Over sixty years of integration, EU rules and regulations play a significant role in the daily lives of its citizens. But even within a regime as legalized and integrated as the European Union, noncompliance occurs frequently. Whether the content of pasta or the size of budget deficits, EU law stands over the actions and policies of its Member States. Citizens and groups both within and outside the country stand ready to monitor compliance. Some groups push their governments to comply in order to make them better off. Others pull their governments away from complying to avoid significant harm. Most of the gains generating by compliance are significant, but spread across national society and over the long-term. In contrast, the costs of complying are usually concentrated among a small number of groups. These groups then mobilize to influence their governments and reach the European Court of Justice in Luxembourg. In most cases, if the ECJ's decision in the case is against the Member State, the Member State chooses to comply. The government has shown a proper amount of deference to domestic interests, but does not want to risk the losses that future cooperation would bring. But when no further cooperation appears on the horizon or the costs are high and

shared by large groups in society, Member State governments will refuse to comply.

The interaction of different levels of politics produces four different types of compliance behavior. State behavior varies from complete compliance and swift change to the status quo to outright refusal. To show these different types of behavior, five cases of noncompliance with EU law are presented. Two cases relate to the free movement of goods in the EU in traditional national industries in Germany and France. Two other cases explore noncompliance in the sensitive areas of subsidies to domestic industries. While the German government attempted to maintain a key element of *Modell Deutschland*, the British government violated EU law in order to save its last domestic auto manufacturer. Even in these key areas of national interest, these governments chose to comply. But not all legal regimes in the EU are created equal. In the case of European Monetary Union, noncompliance was almost inevitable. Although eurozone members made significant strides in meeting the criteria for membership, violations of the rules governing membership occurred frequently. If noncompliance with EMU is placed within the framework of a collective action problem, we could see that the crisis that engulfed the eurozone in 2009 and 2010 was somewhat easy to predict.

This book's topic contributes to the growing debate over the legitimacy of international law in modern democracies. National governments must carefully navigate the ship of state between the threats of punishment and retaliation for not complying with their legal obligations and being held to account for ignoring the will of a democratic majority. Opposition does not just come from the electorate. Constitutional courts, political interest groups and ideological organizations also raise strong objections to the role of international law in domestic governance. In contrast, there are groups across both the developed and the developing world that see international law and compliance with it as a force for good in the world. When domestic governing institutions are insufficient or pursuing objectively harmful policies, international law can work to change the behavior of national leaders. Basically, just as national governments are facing a tradeoff between complying or not complying with international law, governments and citizens must decide between increasing output or input types of legitimacy. Do citizens want to inhibit the performance of international institutions by increasing their democratic accountability? Or do they wish to sacrifice democratic accountability in favor of more effective ways of solving international problems? This book makes a modest attempt at outlining the nature of that debate. Yet the results of that debate will ultimately be a function of politics, which should be a point of departure for additional research related to compliance with international law.

This book originated out of a dissertation written at Cornell University. There I received the strong support of Peter Katzenstein, Jonas Pontusson, Sidney Tarrow and Christopher Way. Residency and resources at the Wissenschaftszentrum Berlin enabled me to carry out important archival research and exchange my ideas with leading scholars in the field. In particular, I would like to thank Michael Zürn and everyone in the Department of Transnational

Conflicts and International Institutions for hosting me on multiple occasions. Both technological and travel support awarded to me by the Naval Postgraduate School's Research Initiation Program and other financial sources at NPS is also greatly appreciated. Lieve Cuypers generously satisfied my sometimes urgent requests for obscure data.

I would especially like to direct my gratitude towards my colleagues, friends and family who have been so patient and understanding throughout the past few years as this project moved from inception to completion. The friendships I forged at Cornell proved to be as enduring as expected, despite long gaps in time and space. Devashree Gupta, Stephen Watts and Andrew Phillips were always there to share mutual frustrations and joys. Jeff Knopf and Robert Weiner are wonderful colleagues and friends who kept my spirits up through pleasant lunch conversations and during the long commutes. My friends in Berlin, especially Martin Binder, made sure I lived a life that was properly balanced between work and play. My parents and siblings, Charles and Barbara and Mark and Crystal, supported me through difficult stretches, even if they did not always understand why the process seemed to be dragging on without end. Finally, I wish to dedicate this book to my partner in life and love, F. Landon Clark. The completion of this project would not have been possible without his strong words of encouragement and acts of deep caring. It is to him I dedicate this book.

# Contents

# 1 Introduction

In January 2008, leaders of the 27 Member States of the European Union gathered in Berlin to mark the 50th anniversary of the Treaty of Rome. The celebration included exhibits, music concerts and speeches and closed with a fireworks display in front of the Brandenburg Gate. Although the celebration was in Berlin, because Germany was holding the EU presidency at the time, a more appropriate location could not have been chosen. Emerging from the ashes of destruction, Germany, together with France and four other countries, forged the Rome Treaty to secure a European peace that would be sustained for future generations. Integrating Germany into a European institutional framework ensured it could never threaten its neighbors again. And, therefore, many believed Europe would never be plunged back into war, avoiding the repeat of the deaths of millions. As such, the Treaty of Rome, or the EC Treaty, accomplished a key European diplomatic and geostrategic goal.

By setting the foundation stone for future cooperation, the Treaty of Rome is a remarkable historical achievement for all of Europe. The European Union today represents a degree of international economic and political cooperation unprecedented in world history. With some exceptions, most think that the EU represents a great victory for all of its citizens. But the anniversary celebration, justifiably, ignores all of the moments in which progress was stopped and those who opposed it. Among the first failures was the rejection of the European Defense Community by the French Parliament in 1954. Then General Charles de Gaulle's opposition to more supranational power for the EC led to the "empty chair" crisis in 1965. The United Kingdom's application to join was rejected twice. The Maastricht Treaty was rejected in a Danish referendum in 1992 and barely passed in France. Finally, despite widespread optimism among political elites, the Constitution failed in Holland and France in 2005. The Irish electorate rejected its successor, the Treaty of Lisbon, until a second referendum approved it in 2009.

Opposition to European integration has not just come at important historical moments. It also occurs through the frequent practice of attempting to enforce the EC Treaty and other types of EU law. The Commission, as the guardian of the Treaties, is charged with ensuring that the Member States and their citizens are adhering to EU law. The instances that it discovers when a Member State violates

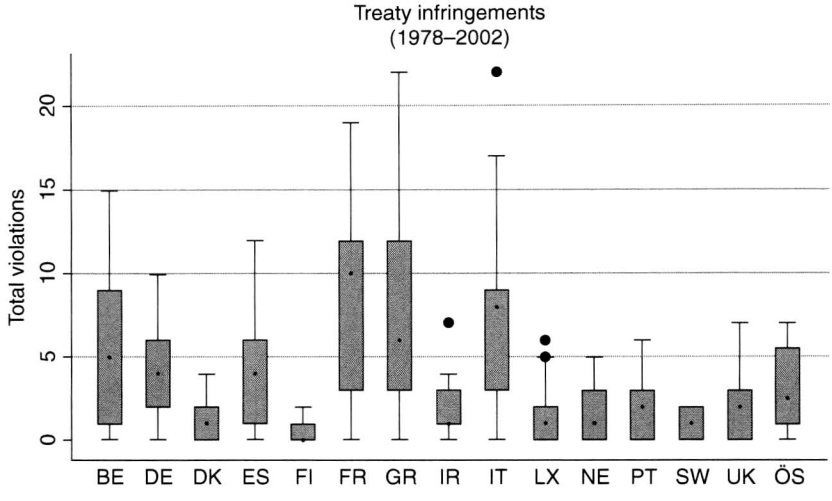


*Figure 1.1* Cross-national distribution of EU legal violations.
*Source:* European Commission Annual Reports.

EU law serve as small illustrations of opposition or reluctance of a government to integrate fully. Despite the large collective gains European integration has produced, some countries choose to maintain the status quo more often and as long as they can more than others.

Figure 1.1 shows the cross-national variation in violations of EU law the Member States have committed just in the area of the EC Treaty and regulations based on it. Some of the most supportive members of the European project have violated the EC Treaty more than others that have been more skeptical. The single dot in the shaded box area represents the median number of infringements committed each year. The shaded areas surrounding the dot show the range of violations committed each year that fall within the range of the 25th and 75th percentile. The whiskers at each end encase the number of violations that occur each year that are within one quartile of this range. Marks outside the boxed areas represent the minimum and maximum number of violations committed in this time period.

For example, even though both Italy and Greece receive a substantial amount of funds from the EU to develop their poorer regions, they commit the largest number of violations. In contrast, despite a strong antipathy to supranational authority, the United Kingdom appears to comply more often than some of the EU's strongest supporters, such as Germany or France. In addition, some countries choose to delay complying with a suspected violation more than others. If the Commission discovers or confirms that a violation has taken place and the national government either does not reply or alter its behavior within the allotted time, the infringement case is referred to the European Court of Justice. Some countries are willing to risk an adverse ruling more than others (see Figure 1.2).

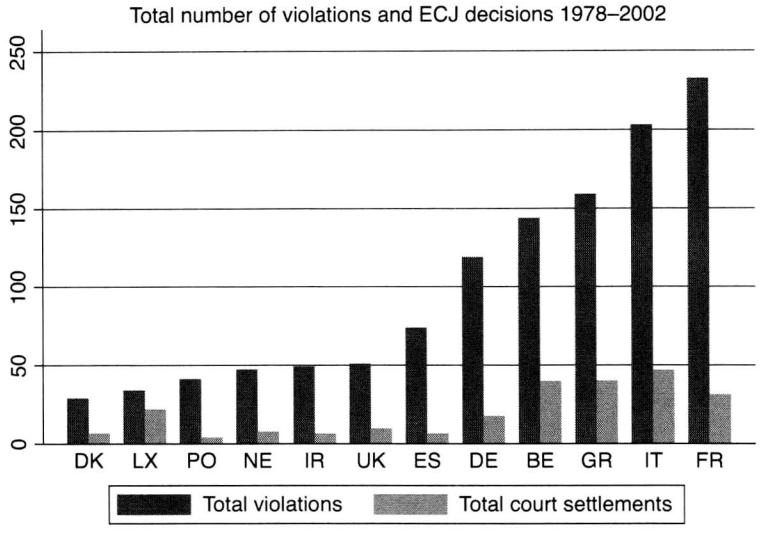


*Figure 1.2* EU legal violations and ECJ decisions.
*Source:* European Commission Annual Reports.

The aim of this book is to provide a powerful but elegant model of noncompliance to account for why violations of EU law occur and why some violations escalate and are decided by the ECJ. Thus, noncompliance not only varies among the Member States of the EU, but with how governments choose to handle violations of EU law when they do occur.

More generally, these violations also show that political opposition to European integration has always existed and continues to grow. When national leaders wished, they withheld their support for more integration. When allowed, European voters expressed their disapproval at the ballot box. However, these moments are rare. Instead, most opposition to the policies of the European Union takes place through cases of noncompliance with EU law. By studying noncompliance and opposition to the process of European integration, this book sheds more light on the losers associated with European integration compared to the almost exclusive focus on the winners to this point.

## The argument in brief

Despite the EU being one the most legalized regimes in the world, noncompliance occurs often. Although the European Commission and Court of Justice can punish states and individuals for noncompliance, violations still happen frequently. And there is a great amount of variation when they do. The number of violations committed varies across time and country. Some cases of noncompliance are settled sooner than others. Many suspected infringements

are dismissed once Commission and national officials discuss them. On other occasions, albeit rare ones, a Member State is punished in the form of economic sanctions. This rich amount of diverse political behavior calls for an explanation that is comprehensive but yet parsimonious. This book aims to account for much of this variation by providing a simple but rigorous theory for why noncompliance occurs and why some legal violations are settled sooner than others.

What are the sources of noncompliance? Why does noncompliance vary across the Member States and over time? These questions are answered by looking at the domestic politics of international law. States face numerous countervailing political pressures when trying to comply with law beyond the nation state. On one side, international institutions, courts and even other regime members will call for a country to abide by its legal commitments. On the other side stand interest groups or other actors at the domestic level who demand their national governments not to comply in order to protect some economic or political advantage. Like many other issues in international politics, the situation resembles a two-level game.[1] How national governments react to these counteracting pressures is the subject of this book.

Drawing on basic theories of collective action, I argue that compliance with international law is a public good for a country. Hypothetically, every country that belongs to an international regime benefits when each member of the regime fulfills its international legal obligations. Governments comply with international law for several reasons. First, states did not construct these agreements unless they achieve some material or social gain for their members. By complying with them, they secure these gains. Second, if there is a likelihood of more cooperation in the future, governments will comply even though they may suffer some short-term losses in exchange for long-term gains. Third, a state can begin to enjoy the benefits to its general reputation such that other states will want to cooperate with it in the future if it is perceived as having a good reputation as a strong "team player."

Whether these benefits are actually realized depends on the type of public good and how it is produced. There are always dangers of free riding and thus the under- or even non-provision of the public good. Free riding is mostly likely to happen when the public good is nonrival and nonexclusive. It is considered nonrival if one member's consumption does not affect another's. It is nonexclusive when one or more members cannot be excluded from enjoying the public good without bearing high costs. Problems of coordination build up if the regime's members are of different sizes or have different levels of interest in the production of the public good. Unless a large member can produce enough of the public good that every member will enjoy, there is significant chance that too little of the public good will be provided, or none at all. Thus, members of international regimes create institutions to monitor agreements and to ensure that violators are punished. Only when the costs of cheating exceed its benefits will states choose to comply.

International organizations must secure a certain level of compliance in order for the public good to be produced. Thus, they are awarded the powers of sanctioning possible offenders (Axelrod and Keohane 1985, Downs *et al.* 1996, Olson 1965,

Underdal 1998). They also can provide incentives for states to comply through financial or technical assistance. Whether carrots or sticks are used to secure compliance summarizes the basic difference between the enforcement and management schools of compliance (Chayes *et al.* 1998, Young 1992). While monitoring and punishment are used to increase the costs of cheating, technical and financial assistance are used to help a country realize the benefit of cooperation.

There is a long debate over which method is most effective to secure compliance. Tallberg (2002) argues compliance is most likely to happen when the tools of both schools are used. But neither school examines why one method works in some circumstances and not in others. Whether a stick or a carrot works to secure compliance depends on the source of a government's calculus to comply. When a government will shirk its international legal responsibilities and when it will surrender to the wishes of its domestic constituents depends on how it weighs the costs and benefits based on factors at home. When a state achieves the goals of cooperation, those benefits usually benefit the entire country, but the costs of complying are concentrated among a small group of people. More importantly, the origins of noncompliance remain uninvestigated. For example, if we consider a ban on the use of chemical weapons on the battlefield or in general, national militaries as well as citizens will benefit if they are not used. However, the industries that produce and sell these weapons will suffer from a decline in demand for their products. These firms are then rationally motivated to ask their governments either to cheat or to shirk their international legal responsibilities.

Because the costs of compliance are usually concentrated, those groups opposed to compliance will pressure their governments to refrain from changing the status quo. They are usually the first ones to discover what the effects of compliance will be. They have strong incentives to monitor EU legislation to see how it will affect them. A Member State's regulations may not just be discriminating against the import of goods from another Member State. They are also protecting native industries or firms from European competition. As a result, those opposed to compliance become immediately aware of what state practices do not meet their country's legal obligations because they benefit the most from noncompliance.

Those groups who oppose compliance will form associations and lobby their governments to reject changes to the status quo demanded by international institutions or other regime members. They organize opposition by publicizing their disputes with their national governments. These groups stage rallies and generate sympathy from the surrounding public. They frame their arguments with national and European officials by characterizing their disputes as a struggle between national autonomy or sovereignty and the arbitrary actions of unelected, remote and, sometimes, illegitimate international institutions. While their true motivations lie in protecting their own self-interests, blaming international institutions for demanding undesired change often generates sympathy, such as when the IMF imposed austerity measures during the Asian financial crisis of the 1990s. They also can threaten to hold their nationally elected legislators to account by working for their defeat in future elections.