EU Compliance Mechanisms

The Interaction Between the Infringement Procedures, IMS, SOLVIT and EU-Pilot

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Abstract

This article investigates the role of alternative compliance mechanisms in the EU: SOLVIT, EU-Pilot and the Internal Market Scoreboard. These mechanisms are theoretically meant as complementary and practical, cost-reducing alternatives to the EU infringement procedures and national court procedures. The mechanisms aim to, through peer pressure and informal contacts, prevent citizens and businesses that encounter problems with the application of EU law from having to start time-consuming and costly court procedures. Moreover, they serve to correct infringements of EU law at an early stage without recourse to official infringement procedures by the Commission. This article discusses how alternative problem-solving mechanisms work in practice, how they fit in the EU legal system and what, if any, influence they have on the official EU infringement procedures. It will be shown how the existence of such alternative mechanisms leads to an increase in the level of absolute compliance with EU law.
1. INTRODUCTION

The correct and timely implementation of European Union (EU) law by the Member States is an essential element in upholding the Union foundations. As the Commission itself stated: “Failure to rise will weaken the foundations of the European Union. If laws are not being properly applied, European policy objectives risk not being attained and the freedoms guaranteed by the Treaties may only be partially realized.” The Commission has several options available to induce Member State compliance with EU law. The best-known option is the infringement procedure, where a non-compliant State can eventually be brought before the Court of Justice with the ultimate threat of penalties or lump-sum payments.

This article investigates the role of three alternative compliance mechanisms in the EU: The Internal Market Scoreboard (IMS), SOLVIT and EU-Pilot. These mechanisms are theoretically meant as complementary and practical, cost-reducing (in terms of capacity, time and money) alternatives to the EU infringement procedures and national court procedures. The idea behind these mechanisms is, through peer pressure and informal contacts, to prevent citizens and businesses that encounter problems with the application of EU law from having to start time-consuming and costly court procedures. Moreover, they serve to correct infringements of EU law at an early stage without recourse to official infringement procedures by the Commission. This article discusses how alternative problem-solving mechanisms work in practice, how they fit in the EU legal system and what, if any, influence they have on the official EU infringement procedures. It will be shown how the existence of such alternative mechanisms lead to increased Member State compliance with EU law.

2 In this article we do not discuss procedures concerning problems with EU law before national courts. We discuss only mechanisms that were established by the EU institutions, most notably the Commission.
2. EU COMPLIANCE MECHANISMS

In this article, “compliance mechanisms” refer to those systems set up within the European Union to induce Member State compliance with EU law. These compliance mechanisms can be seen as representatives of two compliance models: the managerial and the enforcement model. The management model, as proposed by Chayes and Chayes, is one of cooperation, where justification, discourse and persuasion are used to make states comply.\(^3\) They start from the premise that non-compliance by states is not necessarily due to deliberate defiance. The enforcement model on the other hand, as first described by Downs, Rocke and Barsoom, is based on cooperation, enforcement, and “the endogenous quality of rules”.\(^4\) In contrast to the management theory, states, as rational actors that weigh the benefits and costs of their actions against each other, might willfully choose not to comply when this suits them. In this model therefore, compliance is structured around state incentives in order to induce compliance, with the use of sanctions in the case of non-compliance.

This article views the infringement procedure as a mechanism belonging to the enforcement model (although some managerial elements are included as well, especially in the earlier stages of the procedure), while it considers the other mechanisms discussed (the IMS, SOLVIT and EU-Pilot) as more of a managerial type. This is largely due to the fact that the infringement procedures involve a harder, judicial side including the ultimate possibility of penalties, while the other procedures are more of a softer type where hard sanctions are not part of the system.

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2.1. Infringement Procedures

Art. 258 TFEU (ex 226 EC) and 260 TFEU (ex 228 EC) comprise the infringement procedures. They describe how the Commission can act when it considers a Member State has failed to fulfill an obligation under the Treaties. The procedure consists of the following stages. First, in the pre-258 phase, the Commission will investigate the circumstances of the suspected infringement through fact-finding and discussions with the Member State. Of all cases of suspected infringement, 38% is closed during this informal phase. Second, when the outcome of the first phase is not satisfactory, the Commission can decide to send a so-called letter of formal notice, which starts the formal phase of the procedures. Here the Member State is officially offered the possibility to submit its observations. During this phase, an additional 38% of the cases is closed. If again no satisfactory reply is received from the Member State, the Commission can decide to send a reasoned opinion, in which it sets out its detailed reasoning for its suspicion of an infringement. Another 13% of cases is closed during this formal phase. When the Commission, after this stage, is still not satisfied with the situation, it can decide to start the third, judicial phase and take the non-compliant Member State to the Court of Justice. The figure below shows what percentage of cases is closed (cumulatively) during each stage before the judicial phase.

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5 Art. 259 TFEU (ex 227 EC) is also part of the infringement procedures. That article applies to cases where a Member State believes another Member State has not fulfilled its obligations under the Treaties, and may therefore bring the case to the Court of Justice itself (if the Commission has decided not to do so). However, this has occurred only five times in the half century that the possibility exists, and will therefore not be discussed in this article.
**Figure 1 - Closure decisions in 2009 by stage**

![Graph showing closure decisions in 2009 by stage]

**Early Closure**

As is shown in the figure, almost 95% of all cases is closed before the start of the judicial phase, also called “early closure”. Presumably, the preliminary (formal and informal) contacts between the Commission and the Member States thus play a significant role in the prevention of judicial steps in the infringement procedures. Different explanations can be found for this occurrence, of which three are essential.

First, Member States are often simply not aware of the existence of a possible infringement situation, and will therefore try and remedy the situation when made aware by the Commission. Also, 30 to 50% of all newly detected infringement cases is caused by the non-communication of national measures transposing EU directives. When a directive has not been transposed into national law before a certain deadline, infringement procedures are automatically started. This does not mean that Member States

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6 Figure based on data taken from the 27th Annual Report on Monitoring the Application of EU Law 2009, COM (2010) 538 final, and the accompanying Statistical Annex I to III, SEC (2010) 1144 final. For this figure, as for all data in this article, the most recent statistics to be found are for the year 2009.
7 Ibid.
8 The Commission verifies the measures taken in the Member States regarding implementation every two months.
have actually not transposed the directives, but they also may have done so and not notified the Commission of this fact. In most cases, the Member State is simply late in transposing the directive. In 2010, for example, the average delay in transposing internal market directives was 5.8 months, with 0.9% of all directives for which the implementation deadline had passed not yet implemented. Of course, late implementation is by itself an infringement of EU law and can and will be subject to infringement proceedings. However, most of these types of cases – unawareness and non-communication - tend to be closed relatively quickly.

Second, Member States try to avoid the judicial part of the infringement procedures. Not only because judicial procedures are costly and time-consuming, but also because involvement in the infringement procedures before the Court of Justice can have quite a negative reputational impact for the Member State involved. A large part of the cases is based on a complaint filed by EU citizens or organizations. Although individuals do not have standing in the infringement procedures, and officially do not play any part during any of the stages, the Commission has made solving complaints a priority. As the Commission stated in 2001: “Faced with long delays or not knowing where to go, many people do not bother to complain in the first place, or simply give up. This prevents a lot of people from doing what they are entitled to by Community law. When this happens, confidence in the European Union is eroded.”

Especially cases involving citizens or organizations tend to attract attention by for example the European Parliament or the press, which adds pressure for the Commission to address the issue. Most Member States therefore prefer to remedy the situation before the start of judicial procedures.

A third reason for the resolution of infringements in the pre-judicial stages of the infringement procedures can be found in the Commission discretion. The fact that a case is closed in an earlier stage, does not

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10 Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Effective Problem Solving in the Internal Market (“SOLVIT”), COM/2001/0702 final.
necessarily mean that the infringement has actually been resolved. A Member State can still be non-compliant, but the Commission has complete discretion in deciding whether or not to pursue the case.\textsuperscript{11} Moreover, the Commission is not held to give its reasons for closing a certain case. Nevertheless, pursuant to a 1997 inquiry by the European Ombudsman, the Commission has decided it will inform complainants of its reasons for not pursuing a case.\textsuperscript{12} The involvement of complainants in infringement procedures, however, ends there. If the Commission decides to not pursue a case for, say, political reasons, it remains their prerogative.\textsuperscript{13}

\textbf{Rationale for alternatives}

The fact that 95\% of all infringement cases are closed in the pre-judicial stage does not mean that cases are solved quickly. On average, an internal market infringement procedure, for example, takes two years to be closed in the informal stage – almost half of all cases take more than two years. The judicial stage is not much quicker, here as well the average time for a Member State to comply with the Court ruling is over one and a half year. For citizens, businesses and other complainants this timeline is often too long. They will have felt the negative consequences of late or incorrect transposition during the on average two to four years that it takes for cases to be handled by the Commission in the infringement procedures. This situation is aggravated by the fact that the Commission has complete discretion in deciding which

\textsuperscript{11} This follows from the wording of Art. 258 TFEU (\textquotesingle If the Commission considers that a MS has failed to fulfill an obligation under the Treaties, it shall deliver a reasoned opinion [...]. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.' (emphasis added)), also acknowledged in e.g. Case 247/87, \textit{Star Fruit v Commission}, [1989] ECR 291, where the court stated the Commission is not obliged to commence proceedings but has a discretionary power in this regard.

\textsuperscript{12} The European Ombudsman, \textit{Annual Report for 1997}, pp 270-271, own initiative inquiry 303/97/PD.

\textsuperscript{13} This fact shows the tension that exists between the Commission’s role as a political body and an objective enforcement body, see e.g. Smith, M., ‘Enforcement, monitoring, verification, outsourcing: the decline and decline of the infringement process’, (2008) 33 \textit{European Law Review} 777-802.
possible infringements to pursue, or whether to continue with a case or close a case.

To e.g. avoid situations where a complainant has to wait for years before the infringement situation is ended, or where a complaint does – for whatever reason – not lead to a case handled by the Commission, as well as for time- and budgetary reasons, several alternative compliance mechanisms have been established by the Commission over the past decade or so. First, the Internal Market Scoreboard was designed in 1997 to inform Member States as well as the public of the infringement situation in the EU, thereby intending – through peer-pressure and the dissemination of best practices – to induce more compliance in the Member States. Second, SOLVIT was designed in 2002 as a fast, low-cost alternative dispute settlement mechanism to help citizens and businesses when they encounter problems due to misapplication of Internal Market rules.\textsuperscript{14} Through SOLVIT, many suspected infringements can be resolved quickly and effectively without direct involvement of the Commission. Third, EU-Pilot was set up in 2008 to provide solutions to problems arising from the misapplication of EU law (other than Internal Market rules), to obtain quicker and better responses to enquiries for information, and to work more closely and informally with the Member States.

\textbf{2.2. Internal Market Scoreboard}

One of the cornerstones of the European Community is the internal market and the free movement of goods, persons, services and capital. In order for the Commission, the Council and the Member States to keep a check on progress with regard to the internal market, the Internal Market Scoreboard (IMS) publishes twice-yearly reports since 1997.\textsuperscript{15} The information in these

\textsuperscript{14} It is estimated that the cost savings due to SOLVIT amounted to €128 million in 2009 (2009 SOLVIT Report, p. 6).

\textsuperscript{15} The IMS was first proposed in the Commission Communication to the European Council, “Action Plan for the Single Market”, CSE (97) 1 final, 4 June 1997.
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reports covers for example statistics on the implementation of directives (per directive and per Member State) and the amount of infringement procedures. The aim of these reports is not only to provide information, but also to induce a certain amount of peer-pressure through naming and shaming. The scoreboard (or *scoreboard* as it has also been called) provides much detailed information and rankings of Member States on most fronts. As the Commission itself stated:

“The purpose is to put greater pressure on states by way of transparency, which is one of the keys to getting member states to implement directives. It means that a member state not only sees its own position, but also that of other member states, and obviously member states do not like to see themselves at the bottom of the list.”

An example of how Member States are ranked in the IMS reports can be seen in Figure 2 below. This table shows at a glance which of the states are performing well, and which are not. Bulgaria, for example, currently performs particularly well with all indicators showing numbers below EU average, while Belgium performs quite badly with eight of the ten indicators mentioned above average.

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17 Interestingly, Belgium shows not only the largest increase in infringement cases, but also has the highest absolute number of infringement proceedings pending. Half of these cases are related to taxation issues.
A component that was recently added to the IMS is Member States’ success stories. These stories show how some Member States have been able to reduce their transposing deficit, or how they are planning to handle an existing negative situation. It relates, for example, how Portugal was able to reduce its transposition deficit in 2010 due to the introduction of ‘SIMPLEGIS’. This program intends to simplify legislation, make laws more accessible and improve law enforcement. As part of this program, the government set up a “Regulations Systems Control”, an automatic and centralized control of the transposition of EU directives. This system registers the ministry and person responsible for drafting the transposition, sends out early warnings for milestones to be reached and improves monitoring in order to foresee and solve delays and other problems regarding transposition.

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18 Partial figure taken from Internal Market Scoreboard no. 22, December 2010, p. 25. Light grey indicates numbers below EU average, dotted grey around average (+/- 10%), dark grey above average.


20 Ibid.
The idea behind the sharing of this and other success stories is that they might serve as an example for other Member States still struggling with transposing EU legislation. This sharing of “best practices”, originally applied in firms and businesses, has since long been used successfully in international organizations to inspire and instruct Member States as to how one can most effectively tackle a certain problem.\textsuperscript{21}

2.3. SOLVIT

One of the ways in which the Commission has tried to solve problems that arise for individuals and businesses from the misapplication of internal market law is SOLVIT. This project, which started in July 2002, is officially an alternative informal dispute settlement system, where the Commission is generally not involved.\textsuperscript{22} However, the Commission coordinates the network, provides the database facilities and when needed helps speed up the resolution of problems. Moreover, the Commission always retains its prerogative to start an article 258 procedure if and when it considers this is necessary. SOLVIT is thus not to be seen as a replacement of the 258 procedure.

Briefly, the system works as follows: when an individual has a complaint concerning the application of internal market rules by a Member State, he can lodge this complaint at the SOLVIT center of its own country (the

\textsuperscript{21} One example of an organization which has institutionalized the idea of best practices is the Organization for Economic Cooperation and Development (OECD). For some examples of the use of best practices in the OECD, see e.g. “OECD Best Practices for Budget Transparency”, \textit{OECD Journal on Budgeting}, 1(3), 2001, or the results from the best practices roundtables on competition policy, found online at http://www.oecd.org/document/38/0,3746,en_2649_201185_2474918_1_1_1_1,00.html.

\textsuperscript{22} In fact, an earlier version of SOLVIT existed since 1997, following the Commissions Communication “Action Plan for the Single Market” (\textit{supra}, note 10). It was established first as a network where all Member States would have a contact point where citizens and businesses could address single market problems. This network, however, did not work effectively. The Commission therefore proposed a newer, enhanced version of this network, effective as of 2002 (COM(2001)702 final). Most information on SOLVIT can be found on its website: ec.europa.eu/solvit/.
“Home” Center. It is also possible that the Commission relays a complaint it has received through other channels to the SOLVIT center, if it believes the problem could be solved in a satisfactory manner without its own involvement. The Home Center will check whether the problem does indeed concern internal market rules and if all necessary background information is complete. The case will then be automatically forwarded through an online database to the SOLVIT center in the country where the problem had occurred (the “Lead” SOLVIT Center). The two SOLVIT Centers will work together in solving the problem within a target deadline of 10 weeks. Given this short deadline, the SOLVIT centers are allowed to refuse cases that require a change in national law or other implementing provisions (SOLVIT+ cases). These cases would be too difficult to handle with informal means within ten weeks. However, many centers do sometimes accept these cases and are able to therefore also offer more structural solutions and not only solve the individual case at hand.

In 2009, the majority of cases was solved before the 10-week deadline, while only 14% of the cases eventually remained unresolved within the SOLVIT system. The biggest problem with the SOLVIT system is the amount of cases that are submitted to the centers which are outside the SOLVIT competence. In 2009, 69% of cases submitted to SOLVIT were outside its remit. This adds significantly to SOLVIT’s workload, since all of these cases do

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23 The SOLVIT Centers are usually part of the Member State’s Ministry of Economic Affairs or another government office that occupies itself with European economic and financial affairs (for a list of all SOLVIT centers, see http://ec.europa.eu/solvit/site/centres/index_en.htm). Filing a complaint (or asking advice on a certain issue) can be done very easily through the electronic form on the website of the Commission: https://webgate.ec.europa.eu/solvit/application/index.cfm?method=webform.homeform&language=en).

24 This is a huge difference compared with the infringement procedures, where the Commission endeavors to take a decision on whether or not to open infringement procedures following a complaint within 12 months (statement by the Commission on the complaint form found on the Commission website, http://ec.europa.eu/eu_law/your_rights/your_rights_forms_en.htm).


need to be examined in order to determine whether they should be handled by SOLVIT, and if not, to signpost them to a more appropriate address.27

Interestingly, the amount of new SOLVIT cases per year has increased from 180 in 2002, to 1540 in 2009. Moreover, its annual caseload is now almost equal to the total amount of newly opened new infringement cases, and now stands at circa 1540 SOLVIT cases versus 1659 opened infringement cases.28 What effect this continued increase has on the infringement procedures themselves (if any), will be discussed later in this article.

2.4. EU-PILOT

EU Member States and Commission authorities are meant to work together to ensure understanding and application of EU law.29 However, in case of the infringement procedures, this cooperation was never officially structured. The Commission nevertheless felt that, just as the SOLVIT system had shown in case of Internal Market rules, many of the implementation problems that citizens face regarding other areas of EU law could and should be solved quickly through increased initial information exchange and cooperative problem-solving.30 This is why in April 2008 the Commission launched EU Pilot: “to test increased commitment, co-operation and partnership between the

27 This problem may be solved in the near future. In 2008, the Commission published an action plan to help citizens and businesses better understand and make use of their rights in the EU. The plan includes the setting up of a single contact point (a common Single Market Assistance Services webpage), where citizens will be helped directly, or referred to the instance (e.g. SOLVIT, Eurojud, Europe Direct Network) that may best serve them. This will ensure that many cases outside SOLVIT’s remit will not go to SOLVIT, but directly to the appropriate service (Commission staff working paper – Action plan on an integrated approach for providing Single market Assistance Services to citizen and business, SEC(2008)1882).
28 This number refers to all actual SOLVIT cases, thus excluding the 69% of cases that are outside SOLVIT’s remit.
29 As follows from e.g. Art. 4(3) TEU: “Pursuant to the principle of sincere cooperation, the EU and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.”
The idea of the system is to provide solutions to problems arising in the application of EU laws, to obtain quicker and better responses to enquiries for information, as well as to work more closely and less formally with the Member States. This method would help correct infringements of EU law at an early stage wherever possible, without the need for recourse to infringement proceedings.

In 2008, 15 Member States volunteered to participate in the test-project. The way the system works is as follows. Upon receiving a complaint or of its own accord, the Commission may decide that contact with a Member State would help in resolving the problem, or might provide useful information concerning the implementation or application of EU law. The Commission will then enter the issue and all other information it has received in the Pilot database. The complaint or enquiry will subsequently be examined by the Commission and forwarded to the EU Pilot Central Contact Point of the Member State concerned. The complaint will be accompanied by the questions as identified by the Commission. Once entered into the Pilot database, the Member State has ten weeks to send a reply, preferably providing a solution to identified problems. Again through Pilot, the Commission will be informed of the proposed solution by the MS, and will evaluate whether this solution is in conformity with EU law. If the Commission decides to accept the position expressed by the Member State it will subsequently inform the complainant on the action taken, and if the complainant does not respond within four weeks with new information, the case will be closed. If the Commission is not satisfied, it can ask for more information or even more directly for a proposed solution to the identified problem.

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32 Austria, Czech Republic, Denmark, Germany, Finland, Hungary, Ireland, Italy, Lithuania, the Netherlands, Portugal, Slovenia, Sweden, Spain and the United Kingdom.
33 In fact, Pilot can be seen as an interactive database, where two parties (the Commission and the Member State) can exchange information on identified issues with EU law.
34 The Member State’s EU Pilot Central Contact Point is usually part of the State’s Ministry of Foreign Affairs, or another government office that occupies itself with European affairs (Pilot Evaluation Report, accompanying document, SEC (2010) 182, p. 2-4).
35 The issue, especially when based upon a complaint received from an individual or business, often needs to be rephrased to clearly identify the problem. To clarify the issue, or to receive a satisfactory answer or solution, the Commission will ask for more information or even more directly for a proposed solution to the identified problem.
information, reject the answer and inform the Member State that further action needs to be taken, or – in case an infringement is detected – decide to launch an infringement procedure.\textsuperscript{36}

Pilot differs from SOLVIT in two main respects: first, it does not cover issues of bad application of the law for issues regarding the internal market (which is SOLVIT’s only subject); and second, the system works directly between the Commission and the Member States. The direct involvement of the Commission remains much larger, therefore, than in the case of SOLVIT where cases are handled between the respective Member State SOLVIT centers and the complainant. When citizens or organizations are willing to reveal their identity, Pilot contacts may be directly between the Member State and the complainant. However, a copy of the Member State response is always sent to the Commission, which remains involved at every step. When the complainant wishes to remain anonymous, all correspondence goes through the Commission. With SOLVIT, all contacts always directly involve the complainant.

The Commission’s evaluation report from 2010 concluded that the system makes a positive contribution in answering enquiries and resolving problems. The project has therefore now left its test phase, and has expanded to include an additional seven Member States.\textsuperscript{37}

3. **COMPLIANCE MECHANISMS’ POSITION IN THE EU LEGAL SYSTEM**

The Commission originally established the mechanisms that we have just discussed, with a view to prevent, as well as quickly and effectively solve problems concerning the implementation and application of EU law. Section four will discuss whether and how these newer mechanisms have indeed

\textsuperscript{36} If urgency is required, the Commission may decide to launch an infringement procedure right away, without going through the steps in Pilot.

\textsuperscript{37} The remaining five Members (Greece, France, Cyprus, Luxembourg and Malta) are set to join over the course of 2011.
contributed to problem solving in the EU, and how they interact in reality with the more established, official infringement procedures. Before we do so, however, we need to establish where and how these mechanisms fit within the EU legal system. This current section will therefore discuss the aim and scope of the different mechanisms, the role of the actors involved, and how the newer mechanisms interact legally with the infringement procedures.

3.1. Aim, Scope and Relevant Actors

Infringement procedures - According to article 258 TFEU, the primary aim of the infringement procedures is to make Member States comply with and fulfill their obligations under the Treaties. The “obligations under the Treaties” cover all rules of EU law that are binding on the Member States, including both acts and omissions. In 2009, the areas in which most new infringement procedures were started were Environment (15%), Energy and Transport (15%), Justice, Freedom and Security (14%), and Internal Market and Services (13%).

Almost half of all cases originated from a complaint made to the Commission by citizens or businesses, 20% were own-initiative cases (including five petitions and parliamentary questions) and 30% were non-communication cases. Apart from the Commission and the Member States, therefore, complainants play a very important role. Anyone may lodge a complaint with the Commission, without the need to prove a personal interest in the case. Complainants can thus be private citizens, businesses, NGO’s or other entities. Once the infringement procedures have started, however, the complainant no longer stays actively involved in the

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procedures.\textsuperscript{39} The main players with regard to the infringement procedures are therefore the Commission, the Member States, and in 5\% of all cases, the Court of Justice.

\textbf{IMS -} The stated purpose of the IMS is to “\textit{first, offer a picture of the current state of the Single Market and secondly to gauge the degree to which Member States, the Council and the Commission are meeting the targets laid down in the Action Plan}”\textsuperscript{40} The IMS is therefore not officially meant to pressure Member States into complying with EU rules on the Single Market, but simply to show progress made by the Member States in this respect. It shows the state of implementation, (in)correct transposition, and non-communication as well as statistics on infringement procedures concerning breaches of single market rules. However, as stated earlier, the (intended) side effect of the rankings in the reports and the recently added success stories is inducing compliance through peer-pressure and naming and shaming. As the name indicates, the IMS covers only EU law in the area of the internal market. The only actors involved in the IMS system are the Commission and the Member States, however, the impact of the IMS reports can only be achieved by dissemination of the rankings through channels such as e.g. the press. Public naming and shaming adds greatly to the pressure felt by the Member States.

\textbf{SOLVIT -} SOLVIT was established “\textit{to help citizens and businesses when they run into a problem resulting from possible misapplication of Internal Market rules by}

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\textsuperscript{39} Until 1997, the Commission generally did not explain its reasons for discontinuing a case to the complainant. It was right in doing so, since the Commission has complete discretion in deciding to bring proceedings against a Member State (as acknowledged by the European Court of Justice in e.g. Case 431/92, Commission v Germany [1995] or Case 471/98, Commission v Belgium [2002]. However, in 1997 the European Ombudsman conducted an own-initiative inquiry focusing on the administrative procedures used by the Commission to handle complaints (The European Ombudsman, \textit{Annual Report for 1997}, pp 270-271, own initiative inquiry 303/97/PD). Based on the Ombudsman’s suggestions resulting from this inquiry, the Commission decided to start informing complainants of the reasons for the decision of closing a case. However, this is where the complainants’ involvement stops.

\textsuperscript{40} As stated in the first IMS, November 1997, p. 1.
\end{footnotesize}
public administrations in another Member State”. The idea is that through SOLVIT, misapplication of EU law is remedied in an informal, quick and effective manner. Instead of filing a complaint with the Commission, citizens and businesses (who, as stated before, account for almost 50% of all new infringement procedures) can take their inquiries for information and problems directly to the Member State. Since the Commission is still there, albeit in the background, Member States are more inclined to quickly find solutions to the problems then when citizens come to them without recourse to SOLVIT. Even more so since the Commission can still start an infringement procedure when it deems necessary. The scope of SOLVIT is narrowed to Internal Market issues only, and excludes any non-communication cases. Cases that are very complicated, or involve issues of non-conformity of national law with EU law are also referred to the Commission. Obviously, the complainant plays a very important role in this system. Contacts are directly between the Member State and the complainant, while the Commission plays a more supporting role. The most important areas where complaints were filed in 2009 were: Residence rights (38%), Social security (23%) and the Recognition of professional qualifications (15%).

**EU-Pilot** - EU-Pilot is aimed at providing solutions to problems arising in the application of EU laws and to obtain quicker and better responses to enquiries for information. Similar to SOLVIT, this system is thus also aimed at informally, quickly and effectively solving problems arising from the misapplication of EU law. The difference with SOLVIT lies in the scope of the system, which covers all areas of EU law, except the Internal Market. Here as well, non-communication cases are not included. In the first year of its existence, 60% of all cases were based on complaints, 20% were enquiries, and

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42 As stated earlier, non-communication cases account for over 30% of all infringement procedures. The Commission, however, has a separate system dealing with non-communication cases, where, once the deadline for implementation has passed, the procedure starts semi-automatically. The Commission verifies the measures taken in the Member States with regard to implementation every two months.
20% were cases started on the Commission’s own initiative. In contrast with the three other mechanisms, this system brings together all three main actors: the Commission, the Member States and the complainant. All three are actively involved from beginning until the end. The two areas where most questions and problems were entered into Pilot were Environment (36%) and Internal Market (21%). Given the scope of Pilot, however, all Internal Market questions that concerned bad application and were not subject to any formal infringement proceedings were forwarded to the SOLVIT network.

From what was just described, it can be concluded that although the stated aims of the mechanisms may differ, the intended or achieved results are quite similar. The way in which they work range from providing information to the actors involved to judicial procedures initiated by the Commission, but all systems are meant to result in increased compliance with EU law by the Member States. The scope of the systems vary but together cover all areas of EU law, with most areas covered by two systems and the Internal Market even by three (the infringement procedures, IMS and SOLVIT). Most importantly, SOLVIT and Pilot offer a channel for the complainant to not only voice their complaint, but also to stay actively involved throughout the procedure.

### 3.2. Legal basis and interaction

We saw that the newer mechanisms are intended as complementary or alternative systems to the infringement procedures, aiming to induce compliance with EU law. All these alternative mechanisms were established by the Commission, in its capacity as Guardian of the Treaties.\(^43\) We also saw

\(^{43}\) Art 17(1) TEU (ex 211 EC, as amended) confers the responsibility of the correct application of the Treaty onto the Commission:

“The Commission shall promote the general interest of the EU and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions
that all alternative mechanisms theoretically have a different aim and scope, and involve different actors. However, the infringement procedures involve all actors, all areas of EU law, and have a similar aim. We should therefore examine what their position within the EU legal system is and how these different systems interact legally.

Legal Basis

The legal basis on which IMS, SOLVIT and Pilot were founded is mainly located in Commission Communications. There is thus no formal legal basis for the mechanisms, other than article 17(1) TEU where the Commission shall ‘ensure the application of the Treaties …. [and] oversee the application of EU law’. The systems are seen as informal systems, without the need for a formal legal basis since all Member States are already under the legal obligation to implement and apply EU law correctly. Moreover, the three systems have no binding effect– if a Member State is unwilling to cooperate in these informal networks, they have the right to do so. The informal character of the procedures means that national or infringement procedures can still be started, regardless of the outcome of procedures under the alternative mechanisms. However, since they are meant as informal procedures, they should not be used while formal proceedings are already underway. The infringement procedures, with their formal legal basis in articles 258 – 260 TFEU and with enforcement capabilities including the Court of Justice imposing lump-sum or penalty payments, are of a different nature. Nevertheless, for all mechanisms the principle of sincere cooperation, as laid down in article 4(3) TEU, holds true. This means that the Member States have to take any appropriate measure to ensure fulfillment of the obligations arising out of the Treaties or resulting from the acts of the Union institutions. Cooperation in mechanisms such as SOLVIT or Pilot can be seen as one of such appropriate measures.

pursuant to them. It shall oversee the application of EU law under the control of the Court of Justice of the European Union. […]”.

44 See e.g. the comments made in the SOLVIT Report for 2004, p. 17.
Degree of Softness

To show how these four systems interact with each other, it is possible to rank them in terms of ‘softness’, as shown in the figure below.

Figure 3 – Softness of EU compliance mechanisms

The IMS is a scoreboard, a mere presentation of facts in such a manner it might induce compliance through peer pressure. SOLVIT is a more interactive system, where all actors actively look for solutions to problems that have arisen. Some pressure can be exerted by the SOLVIT centers, especially with the threat of Commission involvement in the background. It is obvious from the success stories quoted on their website and in their yearly reports that most cases concern ignorance of EU law or unwillingness to apply it on the part of national authorities. SOLVIT, by providing accurate information on EU Law, is a great help in this regard. Pilot, although on paper it looks very similar to SOLVIT, has in fact become a replacement of the informal phase of the infringement procedures.\(^{45}\) This means that the involvement of Commission and the threat of infringement procedures are no longer in the background, but a logical next step if Pilot does not provide a solution. As was shown earlier, 38% of all cases are closed during this informal stage. In terms of softness, therefore, it is clear that IMS is the softest system with no enforcement capabilities, while Pilot is probably the least soft, given its function as a portal or a first step to the infringement procedures.

\(^{45}\) See the 2009 Pilot Evaluation Report.
procedures themselves also go through stages of softness, where the formal phase gets less soft with each passing of a deadline within the phase, and the judicial phase is actually quite hard especially with the possibility of imposing sanctions.

**Alternatives or Complements?**
The fact that all systems involve the same actors, and some cover the same areas of EU law, does not mean they work as mere alternatives. They work as complementary systems, still leaving room for infringement proceedings if unsuccessful. On the other hand, once infringement proceedings have started for a certain issue, the other systems are no longer available.46 Infringement proceedings thus overrule the workings of the other mechanisms. It is in the Commission’s own interest, however, to let the complementary systems handle the issues first, given their effectiveness in terms of cost- and time reduction when they are indeed able to solve the problem. Moreover, many of the issues entered into SOLVIT or Pilot would never end up as infringement procedures anyway. One example of such a case is one of SOLVIT’s success stories of 2009 in their yearly report, where SOLVIT discovered that a Czech national employed in a Dutch company got no Dutch sick pay after falling ill at the end of his working period, because the Dutch health authorities had paid the money into the wrong bank account. Now this case, of course, would never have led to an infringement procedure.

The example just given also exemplifies how the influence of the alternative mechanisms on the infringement procedures can either be positive or neutral. Positive, since they work as complementary systems, with the same aim, scope and actors as the infringement procedures. They thus might reduce the number of infringement procedures started in these areas. Especially so since the scope of SOLVIT and Pilot is officially the misapplication of EU law, which represent 73% of all infringement

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46 The same holds true if national procedures have been started concerning the same issue.
procedures.\textsuperscript{47} A neutral influence, however, since the nature of the issues brought to SOLVIT or Pilot may differ from those subject to infringement procedures. First, since SOLVIT or Pilot complainants are not the same as those who would have brought its case to the Commission. Second, since the Commission has complete discretion in whether or not to start or continue infringement procedures. Given their time, budget and political considerations, they probably would not have made many SOLVIT or Pilot type cases the subject of infringement procedures. To determine how they interact in reality, and how effective therefore the alternative mechanisms are in terms of diminishing the number of infringement procedures, we turn to the next section.

4. \textbf{INTERACTION BETWEEN THE COMPLIANCE MECHANISMS}

Now that the previous sections have shown how the different systems work and what place they occupy in the EU legal system, we can turn to a preliminary investigation of how effective these mechanisms are. The three alternative mechanisms that were discussed in this paper are meant as alternatives or complements to the infringement procedures. Alternatives, since complainants have the option of going to SOLVIT or Pilot in order to more quickly and effectively find a solution to their problem, instead of making their issue the subject of a possible infringement procedure. Complements, since the IMS, SOLVIT and Pilot are systems that work alongside the infringement procedures to induce Member State compliance with EU law. Infringement procedures can still be commenced at any time, at the discretion of the Commission.

The previous section showed how the aim of all mechanisms is ultimately the same: achieving compliance with EU law by the Member States. To see how effective the alternative mechanisms are in terms of achieving

\textsuperscript{47} 2009 Annual Report on the Infringement Procedures.
compliance, we could use the number of infringement procedures opened yearly as a proxy. To thus determine whether these newer systems have indeed i) Had any influence on the infringement procedures, and ii) Attained their goals of leading to quick and effective problem-solving in the EU, we will here examine some of the statistics available on the four systems.

The figure below shows how many new cases are opened each year in the different mechanisms. For the IMS, since no actual cases are handled, we have taken the number of non-communication cases as a proxy, since this is the main target of the IMS scoreboard.

Figure 4 – Yearly amount of new cases

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48 As compliance is difficult to measure as such, the number of infringement procedures is often used as a proxy, see e.g. Börzel, T.A., ‘Non-Compliance in the European Union. Pathology or Statistical Artifact?’ (2001) 28 EUI Working Paper.

49 EU-Pilot was first set up in 2009, and therefore appears in this figure as one data point only. At this time, we do not yet have access for the data from 2010 or later.

50 Unfortunately, we do not have the data we need to make an accurate figure. It was only from 2001 onwards, that the Commission has provided data on the infringement procedures by sector as well as by origin of the procedure. Previous data does not provide this information by sector, only on an aggregate basis.

4.1. Some data on the infringement procedures and alternatives

To ascertain what influence the alternative systems have had on the infringement procedures, we will simply start with taking a look at the historical data regarding the infringement procedures. Figure 5 below shows the effects of the introduction of the three different systems that are discussed in the paper: IMS, SOLVIT and PILOT. This figure shows the infringement procedures that were started between 1995 and 2009 in all areas of EU law. The effects are not that obvious. However, without wanting to conclude anything about causality, one can see the following happening in this figure.52

Figure 5 - EU compliance 1995-2009 (number of infringement procedures)

Internal Market Scoreboard - After the introduction of IMS (1997), the number of infringement procedures due to non-communication by Member States went down slightly for a while. The IMS provides information on implementation of directives and the amount of infringement procedures. It could be that the peer pressure

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52 In making these remarks we have not yet taken into account any changes such as the enlargement of the Union in 1994, 2004, and 2007.
induced by this system has led Member States to address late implementation of directives and thereby prevented the start of infringement procedures.

**SOLVIT** – After the introduction of SOLVIT in 2002, the number of cases started based on complaints by EU citizens went down. This downward trend is continued until 2009, the latest data available. Since SOLVIT is meant for individuals and companies to solve their complaints through use of the SOLVIT system, this could be explained by the fact that the introduction of the SOLVIT system has led to fewer complaints by individuals to the Commission directly.

**EU-PILOT** – As we only have the data until the end of 2009, we cannot yet draw any strong conclusions on the influence of the Pilot (2008) system. Moreover, during the first year of the project, only 15 Member States were involved in the pilot project. From the little data that we have, we can see that the amount of cases based on complaint as well as non-communication cases have gone down drastically, while cases on the Commission’s own initiative show almost no change. The reduction of the amount of infringement procedures based on complaint is what we would expect to happen, given the purpose of the Pilot system. Why non-communication cases have gone down, cannot be explained by the introduction of the new system. This effect can possibly be explained by the EU enlargement in 2007 from 25 to 27 Member States, causing a rise in non-communication cases in that year, and a subsequent demise after the new Member States had time to adapt to the new legislation. We see a similar effect with the previous enlargement in 2004.

4.1.1. **First distortion: EU enlargement**

One obvious factor influencing the statistics for the infringement procedures is the number of EU members. Most notably in the above figure is the influence of the three EU enlargements (1994, 2004, and 2007). Since all new Member States had to accept and effectively implement the *acquis communautaire* on accession, it is not surprising this implementation would lead to a higher amount of infringements of EU law in the years following accession. Figure 6 below therefore shows the same analysis as we made above, but only for EU-15, thereby eliminating the effects of EU
enlargement. In the figure one can see the same effects, but somewhat more explicit, as we did in Figure 5.

**Figure 6 - EU-15 compliance 1995-2009 (number of infringement procedures)**

We still see a temporary decrease in the number of non-communication cases after the introduction of IMS, as well as a large, continued decrease in the number of cases based on complaints after the introduction of SOLVIT and Pilot. The large peaks in 2004 and 2007 have now disappeared. Instead, we observe three new peaks in procedures: 1996, 2000 and 2003, corresponding to three peaks in the same years in cases based on non-communication. These types of cases therefore, seem to be most volatile of the three. Cases detected by the Commission remain more or less stable, while cases based on complaints do fluctuate, but not nearly as much as non-communication. We come back to this anomaly later on.

### 4.1.2. Internal Market

Given the lack of data on the PILOT system due to its recent existence, it is more interesting to look at the IMS and SOLVIT. These are both systems that are targeted for legislation in the internal market area, so any effects of these mechanisms should be magnified when we look at internal market data alone. Figure 7 below shows the results for that analysis.
Unfortunately, we do not have the data we need to make an accurate figure. It was only from 2001 onwards, that the Commission has provided data on the infringement procedures by sector as well as by origin of the procedure. Previous data does not provide this information by sector, only on an aggregate basis. From figure 7 we can only conclude that in 2004 there was a notable increase in the number of non-communication cases, which can well be explained by the EU enlargement in the same year. We also see that the amount of cases based on complaints from individuals has gone down steadily since 2002, the introduction of the SOLVIT system. We do, however, not see this in such a distinct manner as we had hoped, given the systems aim and scope. Still, given the fact that the amount of cases based on own-initiative or on non-communication has remained relatively stable or even gone up (when we leave out the spike in 2004) between 2001 and 2009, while the cases based on complaints have diminished, this is an interesting result.

What we also see, is a sharp decline in the number of cases based on complaints after 2008. An explanation for this may be found in the introduction of Pilot. Although the system is not meant to target Internal Market issues, it does serve as a sort of signposting service. We saw earlier that in the first year of Pilot’s existence, 21% of all cases concerned Internal Market cases. If cases concerning bad application are submitted to Pilot, these are forwarded to the relevant SOLVIT center. However, if these complaints concern e.g. non-conformity of national legislation with EU legislation, this falls within the scope of Pilot, hence explaining
the 21%. Possibly, the handling of these types of complaints through Pilot explains the decline in Internal Market infringement cases based on complaints.

4.1.3. Second distortion: number of directives

The difficulty with basing any conclusions on the figures above, lies with the fact that other elements apart from the introduction of the compliance mechanisms may cause any and all of the changes that we observe. We have already mentioned and accounted for the distortion caused by the two EU enlargements during the course of our observations. Another problem is, however, the amount of directives that need to be implemented in the Member States. The larger the amount of directives, the larger the amount of possible infringement procedures, especially around the time of the transposition date. This might be the explanation for the peak that we observe in year 2003. In all three figures above we see a significant increase in the amount of cases based on non-communication by the Member States - the amount more than doubled in all three figures. When we look at figures 5 and 7 we could interpret this as caused by the upcoming enlargement of the EU, since the upward trend continues in 2004 as well. However, figure 6 shows us that it is in fact a single occurrence in 2003 only for EU-15.

When we take a closer look at the underlying data, we still cannot see the cause of this anomaly: While the relative number of instances of non-communication went down from year 2002 to 2003, the absolute amount of non-communication cases (the number of directives for which implementing measures had not been notified to the Commission before the transposition deadline) also went down, but only marginally. The fact that in percentages the Member States performed much better than in absolute numbers is explained by the total number of directives that were to be implemented in the respective years by the Member States. This number had gone up from a total of 1585 in 2002 to 2553 in 2003.

The figures below show the difference between non-communication cases in numbers and percentages for the Member States. As we can see in these figures, the amount of non-communication cases, in absolute as well as in relative numbers, has gone down from 2002 to 2003. So why then, while in fact the Member States
performed better in 2003 than in 2002, had the amount of infringement procedures based on non-communication almost doubled?

Figure 8 - Absolute non-communication 2002-2003 (number of directives)

In order to find the reason for the dramatic increase in infringement procedures in 2003, we should take a look at the areas of (then) Community law that were the basis for the procedures. The figure below shows where the differences lie:
In 2003, the amount of infringement procedures based on non-communication more than doubled in the area of Health and Consumer Protection as well as the Internal Market, and more than tripled for Energy and Transport. The increase in these three areas account for almost 70% of the total increase of cases between 2002 and 2003. In 2002, there were 43 directives in the area of health and consumer protection with a transposition deadline. For 23 of these 43 directives infringement procedures have been started. In 2003, there were 44 directives in the same area with a transposition deadline in that year. Of these, 30 were subjected to infringement procedures. However, for a further 9 directives with a transposition deadline in 2002, infringement procedures were also started in 2003. These directives all had a transposition deadline in November or December 2002. This is an unusual amount of directives with a transposition deadline so close to the end of the year, with the effect that for 2002, only 23 directives led to the start of infringement procedures, while in 2003, 39 directives had the same effect. If these 9 directives had had a transposition deadline earlier in 2002, the numbers would have been more equal: 31 in 2002 and 30 in 2003. If it turns out that the same facts hold true for the other areas where infringement procedures were started, this would explain the one-time anomaly in 2003.

As this detailed investigation of the 2003 peak has shown, it is very difficult to base conclusions on the mere observation of data concerning the infringement
procedures. The next paragraph will discuss what our observations can tell us, and what they cannot.

4.2. Data imperfections

The previous paragraph has shown that no clear-cut answers can be found by casual observation of the available data. Our statistical analysis has shown that some observations can be made based on aggregate data. When we looked at the data for EU-15 only, some of the interference caused by EU enlargement could be filtered out. It was impossible, however, to examine the internal market data for EU-15 alone, since the information is not freely available on that level. The data for the internal market for all EU members, theoretically interesting since this is where you would most likely see any effects of the IMS and SOLVIT, was available from 2001 onwards only. Moreover, there was no real difference between all sectors and the internal market to be seen in the figure. When we furthermore tried to determine what caused certain anomalies in the data, we found even more confounding evidence, due to the lags between non-communication and the actual start of infringement procedures. Some of our problems are thus caused by the way the available data is presented to us by the Commission, while other problems stem from practical issues such as time-lags and Commission discretion. The next sections will discuss what, given the imperfect data, we can say about the interaction between the infringement procedures and its alternatives.

4.2.1. Statistical link

First of all, there is no obvious statistical link between the two types of mechanisms. This means that the alternative mechanisms probably should be seen as complementary systems next to the infringement procedures. The SOLVIT program, for example, is frequently used and has more respondents each year. The yearly amount of SOLVIT cases is now almost equal to the amount of infringement procedures based on complaints. Nevertheless, although the amount of infringement procedures based on complaints has gone down slightly over the years since the
introduction of SOLVIT, this has not happened in the amount we would expect, given the success of SOLVIT.

If SOLVIT were an alternative for the infringement procedures, this could mean that it would be equally successful without the existence of the infringement procedures. It is highly probable, however, that the remaining possibility of an infringement procedure serves as an incentive for the Member States to deal with complaints through SOLVIT, to prevent an infringement procedure (which would be much time-consuming and costly). On the other hand, the Commission established the SOLVIT network because it does not have the time or budget to have all complaints lead to an infringement procedure. The Commission, as Guardian of the Treaties, therefore also has an incentive to have as many complaints as possible being solved through cost-reducing SOLVIT-type mechanisms. This trade-off obviously also plays a role in the interaction between the systems, but does not show as such in the data.

On the other hand, if the alternative mechanisms did not exist, more complaints would be made to the Commission. The Commission has only limited resources, and would thus have to prioritize even more than it already does. This would leave a greater opportunity for non-compliance with EU law by the Member States, since the probability of getting caught diminishes. This is of course a marginal issue, but does play a role in our investigation.

Second, even if we could establish a firm link between the two types of mechanisms, the use of the systems and the number of procedures are no indication of absolute compliance with EU law. Due to the outlined inconsistencies in the reported data and given Commission discretion, not to mention the fact that not all actual infringements are detected, the reported number of infringement procedures is no reliable indicator for compliance. However, it can tell us something about relative compliance (sectoral, over time, or between countries). Since any effect of the alternative mechanisms on the infringement procedures is necessarily relative - the effectiveness of the infringement procedures before and after the introduction of an alternative, for example - this is not a real problem.
4.2.2. Effectiveness

Now that we know the limits of our statistical analysis, we can investigate how effective the systems are. Effective not only in reaching the stated aims of inducing compliance, but also in terms of time- and cost reduction. As was stated previously, the infringement procedures seem highly effective, given the fact that 95% of all cases are closed before going to the Court of Justice, while only very rarely are cases referred to the Court of Justice under art. 260 TFEU. With a near 100% closure rate for all cases after completion of all stages, the procedure is indeed quite effective. However, to what extent the procedure also induces actual compliance with EU law in the Member States is unclear.

One of the purposes of the system is to deter future non-compliance – it is quite difficult to establish exactly whether it achieves this aim. The fact that 55% of all directives in 2008 had passed the deadline for transposition, without communication from the Member States as to their implementing measures, would indicate that the incentive to communicate measures on time is not very strong. Most of these cases are solved satisfactorily within a few months into the procedure, but it would of course be more effective if the system would have Member States comply before the procedure is actually set in motion.

The second purpose of the system is to induce compliance with EU law in Member States in general. As we noted before, however, the number of infringement procedures is a poor indicator for compliance with EU law. We will therefore be able to actually measure effectiveness on a relative basis only.

The effectiveness of the alternative mechanisms is even more difficult to gauge. The IMS, for example, works through naming-and-shaming and peer pressure. Given the softness of these factors, the influence of such mechanisms is notoriously difficult to measure. SOLVIT, on the other hand, calls itself the network for “effective problem solving”. It is true that SOLVIT provides effective solutions for many practical problems, but the effectiveness of the system as a whole has never been measured. Almost a quarter of all cases remain unresolved within the system. Moreover, the cases that are handled by SOLVIT are selected on the criterion of there

being “a good chance that it can be resolved pragmatically”\textsuperscript{54}, thereby causing selection bias. It will thus be very difficult to determine the effectiveness of such a system.

Whether Pilot is an effective system is difficult to say after such a short existence. The Commission has decided to leave the test phase and continue the mechanism indefinitely, obviously convinced of its use.\textsuperscript{55} Of all three complementary systems, Pilot is indeed the one that will probably have the largest impact on the infringement procedures. This is not surprising, however, since the Commission itself proposes to use the system as a replacement of the so-called administrative letter, the first step in the informal pre-258 phase. Pilot ensures more clarity, transparency and speed in the informal phase, thereby creating opportunities to more quickly solve problems before they reach the formal stage of the procedures. The first data we have available on the system seem indeed to corroborate this theory.

5. CONCLUDING REMARKS

This article has investigated the role of three alternative compliance mechanisms in the EU: the Internal Market Scoreboard, SOLVIT and EU Pilot. It was shown that these systems together have a similar aim, scope, and actors as the official infringement procedures. Theoretically, their effective functioning should induce compliance and thereby reduce the number of infringement procedures started each year by the Commission under article 258 TFEU. When we looked at the data available for these four systems, we found some evidence that the systems indeed reduce the number of the infringement procedures, especially so in case of SOLVIT and Pilot. However, giving the problems regarding the data available to us, and the short time Pilot has been in existence, it is difficult to prove there is an actual firm statistical link between the two types of systems.

Nevertheless, the alternative systems probably do lead to increased compliance in the EU. We established that our statistics cannot teach us much on actual compliance with EU law, since infringement procedures are a poor indicator.

\textsuperscript{54} http://ec.europa.eu/solvit/site/about/index_en.htm#how.
\textsuperscript{55} 2009 Pilot Evaluation Report.
of absolute compliance. They do not capture undetected non-compliance, nor is it clear how much non-compliance remains due to e.g. the Commission’s discretion. The effectiveness of the alternative systems, however, especially SOLVIT and Pilot, can be found precisely in a higher detection rate after their introduction. Since the number of cases entered in these systems have increased dramatically, while no parallel dramatic decrease can be seen in the infringement procedures, this probably means that different types of cases are brought to the alternative systems by different types of complainants. These complainants would probably not have submitted their complaint to the Commission, nor would the types of cases often actually have led to infringement procedures. SOLVIT and Pilot offer a more informal channel to file complaints, thereby lowering the barrier for both complainants and Member States. Although any interaction between the infringement procedures and the alternative systems is quite minimal in terms of reduction in the number of infringement procedures, the EU’s alternative compliance mechanisms thus do lead to increased absolute compliance in the EU.