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► **To cite this version:**

Marc-Olivier Déplaude. Diluting the law: Time and the production of compliance with European environmental standards. *Review of Agricultural, Food and Environmental Studies*, 2023, 104 (2), pp.193-216. 10.1007/s41130-023-00197-3 . hal-04091333

HAL Id: hal-04091333

<https://hal.science/hal-04091333>

Submitted on 6 May 2024

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Diluting the law: Time and the production of compliance with European environmental standards

Marc-Olivier Déplaude¹ 

Received: 5 September 2022 / Accepted: 19 April 2023 / Published online: 4 May 2023
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Abstract

As of the 1980s, the European Court of Justice and infringement proceedings have become important instruments for the European Commission to encourage Member States to comply with European environmental law. This article examines how such compliance is achieved, through a case study of the infringement proceedings against France relating to the contamination of several rivers containing nitrates in the 1990s–2000s. It shows that compliance with European environmental law can be analysed as the result of a process during which the meaning of European norms and the modes of compliance with said norms are debated. This, being a lengthy process, gives actors the opportunity to play with time, particularly with a view to obtaining new extensions and renegotiating the interpretation and conditions of the application of norms. This may result in a gradual dilution of the rule of law, in as much as its modes of application can be made considerably more flexible.

Keywords Environmental law · Compliance · Time · Agricultural pollution · European Union · France

Introduction

In April 2022, the European Court of Justice (ECJ) condemned France for non-compliance with directive 2008/50/EC on ambient air quality and cleaner air for Europe. The Paris urban area and the Fort-de-France agglomeration in Martinique had pollution levels of fine particles smaller than 10 µm in diameter (known as “PM10” particles) that exceeded authorised limits. The ECJ ruled that France had not taken effective measures to reduce this pollution. Like other Member States also infringing the directive, France was required to adopt new provisions or risk being subject to financial penalties.

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Referral to the Court of Justice is the final stage in the infringement proceedings that the European Commission can initiate against Member States when they fail to properly transpose or apply European law. From the late 1980s onwards, it became an important instrument for the European Commission to encourage Member States to comply with European law—and with environmental law in particular. This desire to combat the so-called “implementation deficit” within the EU (Mastenbroek, 2005) led to two major developments. First of all, the number of infringement proceedings initiated each year by the Commission against Member States not complying with European law rose considerably, increasing from 569 new proceedings initiated in 1988 to 1760 in 2007.¹ The number of judgments issued by the ECJ following environmental law infringement proceedings has also increased dramatically, from an average of less than ten judgments per year in the 1980s to more than forty per year in the first half of the 2000s (Krämer, 2006). Secondly, the ECJ’s prerogatives were reinforced. The Maastricht Treaty introduced a new infringement procedure: if the condemned Member State does not carry out the Court’s ruling, the Commission can take further action and ask the Court to impose financial penalties. In 2000, Greece was the first Member State to be the object of such sanctions for not complying with two European directives on the treatment of toxic and hazardous waste (Hervé-Fournereau, 2010).

The development of the Commission’s use of infringement proceedings and the opportunity for it to ask the Court to impose financial penalties on recalcitrant Member States should make it possible to reduce the implementation deficit. In principle, when the Commission closes infringement proceedings, it means that the Member State concerned is once again compliant. Yet, what does this compliance consist of? It is important to distinguish between two situations: infringement proceedings for failure to transpose EU law into national legislation and proceedings for failure to implement. In the first case, the validity of the corrective measures that Member States take is relatively easy to verify; one simply needs to examine the legal texts that they have adopted.² In the second case, matters are more complicated, as the Commission does not have its own administrative resources with which to control the implementation of EU law on the ground. It is all the more critical as it is in relation to implementation, rather than transposition, that resistance is greater. Actors who prefer to maintain the status quo may accommodate a rule they consider to be unfavourable to them, by ensuring that it is not (or poorly) implemented (Conant, 2002). So when the Commission closes infringement proceedings for failure to implement EU law, does this mean that it has successfully imposed its demands? How has this compliance with European law been defined?

¹ Source: https://ec.europa.eu/info/publications/annual-reports-monitoring-application-eu-law_en (page consulted 03/09/2022). The number of infringement procedures initiated by the European Commission then fell, largely due to the introduction, in 2008, of a pre-litigation procedure (known as an “EU-Pilot” procedure). This allowed countries to voluntarily correct any infringements identified by the Commission and to avoid triggering an actual infringement procedure.

² This nevertheless supposes that the Commission detects these failures to make the transpositions, which sometimes go unnoticed due to a lack of administrative resources (Falkner et al., 2005).

This article argues that in many cases compliance can be analysed as the result of a process made up of several series of interactions during which the meaning of community norms and the modes of conforming to said norms are discussed. Because this is a lengthy process, it gives actors the opportunity to play with time, particularly in order to obtain new extensions and to renegotiate the interpretation of the contentious norm and the conditions for its implementation. When the infringement proceedings have been completed, the steps taken by the Member State in question to put an end to the infringement may therefore be very different from those that the Commission initially required. During this process, we may observe a gradual dilution of the rule of law, in as much as its modes of implementation can be made considerably more flexible.

This analysis is based on a case study: the 1992–2010 litigation between France and the European Commission for failure to implement directive 75/440/CEE of 16 June 1975, concerning the quality of surface waters used for the production of drinking water. These infringement proceedings related to the excessive levels of nitrates in several drinking water catchments in Brittany, a region in the west of France. This pollution, essentially of agricultural origin, could be seen in the spectacular development of highly invasive algae in waterways and coastlines, where they constituted both a threat to aquatic life and a source of nuisance to local residents. This type of pollution is not specific to Brittany and exists in other regions of the world, such as the Baltic Sea, the Gulf of Mexico and the China Sea.

We will begin by specifying this article's theoretical background, and then present the case and our sources. We will then present the two main results of this research: firstly, how the French authorities mobilised to buy time during the infringement proceedings and the strategies they employed to this end; secondly, how this allowed them to obtain a redefinition of the modalities of compliance in order to make them more compatible with the preservation of the economic activities at the origin of the pollutions incriminated by the European Commission.

Compliance as an issue of definitional disputes

The first research on the ECJ began with a kind of surprise. Political scientists usually considered international courts to have little power, as states usually only implement courts' decisions when the latter serve their own purposes (Alter, 1996; Stone Sweet, 2000). Yet, according to certain political scientists, this was not true of the ECJ: "Member States cannot 'interpret' their way out of compliance with European Community law, governments which do not comply with European law are brought before the European Court of Justice, and its decisions are usually respected." (Alter, 1996, p. 458). This initial observation stimulated the development of a broad body of work that has sought to account for the way in which the ECJ gradually gained power from the 1960s onwards. They have shown that this was the result of both the legal and institutional strategies of the Court's judges, particularly through the production of carefully weighed decisions that led to the assertion of the primacy of community law, and the strategies of various categories of actors outside the Court who supported or had a vested interest in this objective: governments, national court

magistrates, lawyers, academics, large companies, NGOs, etc. (Stone Sweet, 2004; Vauchez, 2015; Weiler, 1991).

Taking as their starting point the idea that the increase in the number of cases dealt with by the Court is not a sufficient indicator of its influence; other works have sought to document the effects of its decisions on public policy. Some research, which has focused more on EU decision-making, has shown that the Court's rulings have significant effects on the development of European legislation and regulation (Schmidt, 2018). Other works, which have instead examined the effects of the Court's rulings at the member-state level, have emphasised the limits of its influence; like all courts, its influence depends on the actions of other actors, not all of whom have an interest in supporting it. Through various means, Member States endeavour to "contain" the scope of certain Court judgments or to anticipate them by taking minimalist measures (Blauburger, 2012; Conant, 2002; Kelemen & Schmidt, 2012).

However, despite these differences in approach, these works agree on three important points. Firstly, they all recognise the central role of the ECJ in the EU today. This centrality can be defined not by the fact that its decisions are properly implemented, but by the fact that its decisions, be they effective or merely anticipated, enter into the calculations of the actors. Secondly, this research emphasises the idea that the Court's power or limits to its power can only be analysed by placing it within a broad system of actors; some of whom, for example, seek to benefit from its decisions, while others aim to minimise their consequences. Last but not least, these works show that we cannot make do with a binary analysis that opposes compliance and non-compliance (Panke, 2007). There is a continuum of more or less marked forms of compliance, ranging from full compliance to open non-compliance. Between these two extremes, there is a vast "grey area in which member-state governments may explore how to preserve autonomous domestic regulation in EU-compatible ways" (Blauburger, 2012, p. 111).

This article aims to develop the analysis of this "grey area" by showing how the very notion of compliance is subject to definitional struggles. For Member States targeted by infringement proceedings, the challenge is not simply to comply with European regulations in order to avoid condemnation and financial sanctions. It is to obtain a reinterpretation of the disputed regulation and its conditions of implementation, in order to be able to put an end to the litigation while minimising its consequences for domestic policies. In other words, the challenge for Member States is to impose a definition of compliance that safeguards their interests while at the same time remaining acceptable to the European Commission, so as to lead the latter to terminate the infringement proceedings with the least possible damage.

In infringement proceedings, these definitional struggles have the particularity of taking place in a binding time frame. These proceedings are broken down into several stages, each with a predefined deadline. Each stage proceeds as follows: firstly, the Commission sends the Member State concerned a simple request for information, to which it must respond within 2 months. Secondly, if the Member State does not respond or if the information provided is not deemed satisfactory, the Commission sends a "formal notice" that describes the infringement in greater detail. The Member State concerned must submit its observations to the Commission within two months. In the third stage, if the Commission is still not convinced, it sends

the Member State a “reasoned opinion.” This opinion sets out in the greatest possible detail the content of the grievances against it and constitutes the legal basis upon which the Commission can then refer the matter to the ECJ. Once again, the Member State has 2 months to respond. At this stage, the Commission can refer the matter to the ECJ, which will deliberate after an adversarial procedure and may find the Member State to be in breach. If the latter still does not take the required corrective measures, the Commission may then begin new infringement proceedings. These will follow the same steps as the previous proceedings, except that this time the Commission may ask the Court to impose financial penalties on the Member State in breach.

It is rare for infringement proceedings to go as far as a referral to the Court, and rarer still that they lead to a second referral resulting in financial penalties. Member States generally prefer to take the steps that will cause the Commission to put an end to the procedure. However, a common feature of all these proceedings is that Member States are required to respond to the Commission’s demands within very short time limits. It is often very difficult for Member States to meet these deadlines, if only due to organisational constraints. In order to limit the risks of a referral to the ECJ, it is therefore essential for them to buy time. Analysis of how they play with time is fundamental to understanding not only the duration of infringement proceedings—which can last for several years—but also to understanding the reinterpretations and negotiations concerning compliance. In seeking to slow down the pace of proceedings, Member States are not simply looking to buy more time in which to comply with the Commission’s interpretation of the regulation. On the contrary, they are trying to make the most of the time gained to rediscuss the interpretation and conditions of application of the regulation. The longer the proceedings, the greater the chance of obtaining substantial concessions from the Commission. In other words, time is not simply a framework for legal and political action (Goetz & Meyer-Sahling, 2009; Beynon-Jones & Grabham, 2019). Quite the opposite, it is at the heart of actors’ strategies. Refusing to be mere “time-takers” vis-à-vis the Commission, Member States seek instead to be “time-setters” (Goetz, 2014) and to dilute over time the application of legal norms that create difficulties for them.

A case study: infringement proceedings relating to “Breton nitrates”

The infringement proceedings that pitted France against the European Commission in relation to the implementation of directive 75/440/CEE of 16 June 1975 “concerning the quality required of surface water intended for the abstraction of drinking water in the Member States,³” and transposed into French law in 1989, are particularly interesting when it comes to highlighting these political logics. The directive laid down the maximum levels authorised for various parameters (pH, heavy metals, pesticides, bacteria, etc.), including nitrates. The maximum

³ According to the title of the directive. The full text of the directive may be found here: <https://eur-lex.europa.eu/eli/dir/1975/440/oj> (page consulted 04/09/2022).

authorised content for the latter was 50 mg/L. In addition to these “mandatory” values, the directive set “guideline” levels that countries had to attempt to achieve. The guideline level for nitrates was 25 mg/L. Triggered in 1992, following a complaint by the *Eaux et rivières de Bretagne* association for the defence of the environment (ERB), the infringement proceedings—also referred to as the “Breton nitrates” proceedings—led the Commission to formulate three grievances against France. According to the first grievance, for its drinking water production, France was using catchments that exceeded the maximum authorised levels of nitrates, whereas all catchments should have come into conformity by June 1977 at the latest (art. 4.1 and 10 of the directive). In total, in 1997, thirty-seven Breton catchments were not in compliance. According to the second grievance, there had been no “continuous improvement” in Breton water quality over the 10 years following the adoption of the directive: the Commission thus concluded that France had neither adopted nor implemented the “systematic plan of action” required by the directive with a view to improving the quality of surface waters (art. 4.2). Finally, in order to be able to use the non-compliant catchments for drinking water production, for each catchment, France should have introduced a “water resource management plan” designed to bring it into conformity and have notified them to the Commission (art. 4.3), which it had not done either.

These proceedings lasted for a total of 18 years, with the Commission only bringing them to a close in 2010. Still today, France is required to provide the Commission with annual reports on the water quality of several catchments listed in the litigation. As a matter of fact, it was the object of a very significant commitment by several French government departments. Officially, only the French Secretariat for European Affairs (*Secrétariat Général des Affaires Européennes*, later referred as to the “French European Secretariat”) is authorised to convey France’s positions to the Commission via its permanent representation in Brussels. Relying on the expertise provided by the ministries, it coordinates their work and has their differences resolved by the Prime Minister or his cabinet. In total, three ministries worked on the Breton nitrates proceedings; those responsible for health, the environment and agriculture. However, these ministries defended diverging positions on this case. The work of these administrations and their disagreements thus left a very large number of written records, which make it possible to accurately document the strategies that France employed to slow down the proceedings and obtain a reinterpretation of the contentious articles of directive 75/440/EEC and the mode of compliance. These records represent hundreds of documents (notes, minutes of meetings, letters, emails, reports, etc.) and are the main basis for this article. In total, three types of archives were consulted:

- Central government archives. Some of these, such as those of the Ministry of Environment (Minister’s Cabinet and Water Directorate—*Direction de l’eau*), were deposited in the French National Archives; others remained in the premises of the ministries in the form of so-called “intermediate” archives, such as

those of the Ministry of Health (Health Directorate—*Direction générale de la santé*). The collections covered the period between 1992 and 2008⁴;

- Archives from local authorities, essentially from the health and environment unit of Brittany’s Regional Health Authority (*Agence régionale de santé*) (1993–2020).
- Archives held by the ERB association that was being kept in its premises at Guingamp (Brittany) when we accessed them (1987–2010).

We also referred to other documentary sources: national and regional press and grey literature (regulatory texts, administrative reports, expert assessments, etc.). In parallel, we carried out semi-structured interviews with officials in French central and local authorities, former members of ministerial cabinets, former European Commission officials and one ERB official ($N=17$). On average, these interviews lasted 140 min and allowed me to gather accounts of the litigation and to collect some of the aforementioned archives.⁵

Buying time

Resolution of the litigation relating to the application of directive 75/440/EEC was extremely complicated, due both to the leading farmers’ organisations’ opposition to the implementation of strong measures to reduce nitrate pollution and to the relative inertia of natural milieus. France’s first concern was therefore to buy time with the Commission, before obtaining a redefinition of the terms of compliance.

“Formidable” litigation⁶

The infringement proceedings relating to the implementation of directive 75/440/CEE in Brittany were triggered by a letter sent by the ERB association to the President of the European Commission in 1992. In this letter, the association stated that France had not complied with this directive. The water from five catchments used to produce drinking water in the Côtes d’Armor department, located in northern Brittany, had nitrate levels well above 50 mg/L, i.e. the maximum level imposed

⁴ We consulted the following collections at the French National Archives: 19,960,129 (boxes 16 and 42–43), 19,960,334 (28, 42–43), 20,030,457 (14, 20, 24, 28–32), 20,080,439 (45), 20,150,850 (10–12, 19, 21, 30–33), and 20,150,884 (12–13, 15–16, 31–40). The collection we consulted at the Ministry of Health was numbered DGS 2,014,001(3–5). For the remainder of the article, references to the French National Archives will be marked “NA”, followed by the deposit and the box numbers. References to the intermediate archives of the Ministry of Health will be marked “IA DGS”, also followed by the deposit and the box numbers.

⁵ This article is the result of a paper presented at the “Droit et temporalités” (law and temporalities) workshop organised online on 14 and 15/04/2021. We would like to thank both the organisers of this event and the RAfE reviewers and editors who helped to inspire and improve the article. And special thanks to Sebastian Billows who read an earlier version of this article and to Christopher Hinton for his translating assistance.

⁶ According to a note for the French Minister of the Environment, November 1997, NA 20,030,457(14).

by the directive. Furthermore, contrary to the directive, France had not drawn up a “water resource management plan” for these catchments with a view to reducing their nitrate levels.

This letter was in line with a series of actions taken by the ERB since the early 1980s to fight against pollution of agricultural origin in Brittany (Bourblanc, 2014; Lemieux, 2018). Just like other French and European regions, agriculture in Brittany had undergone huge changes since the 1960s. It specialised in animal farming, poultry and pigs in particular (Diry, 1985). In Brittany, the number of pigs bred had risen from 1.1 million in 1959 to 5 million in 1980, representing 43% of France’s pig stock. Poultry—and especially pig—farms produce a considerable volume of nitrogen-rich effluent; most of which is spread on agricultural land to help fertilise it. However, the volumes of effluent spread in this way far exceed those that the soil and crops are able to absorb, particularly as many farmers prefer cheap and easy-to-use mineral nitrogen fertilisers. Excess nitrogen, which is transformed into nitrates in the soil, has caused a marked deterioration in the quality of Breton waters through runoff: below 10 mg/L in the early 1970s, nitrate levels in Breton rivers exceeded 30 mg/L in 1985 and 50 mg/L in 1993—these averages mask much higher levels in some rivers (Ménesguen, 2018). This increase in nitrate levels in surface waters poses a dual problem. Firstly, in Brittany, rivers are the main source of drinking water, which must not contain more than 50 mg of nitrates per litre, as excess nitrates pose risks to the health of pregnant women and infants in particular. Secondly, excess nitrates encourage the growth of algae which develop to the detriment of other forms of aquatic life and constitute a source of an aesthetic and olfactive nuisance when they are deposited on the shore.⁷

In 1990, the ERB apprised local authorities and then the French Ministry of Health of the rapid rise in the nitrate content of Breton rivers. The public authorities were very reluctant to adopt strong measures targeting farmers, whose leading organisations minimised their responsibilities for this pollution and put the risks associated with nitrates into perspective (Bourblanc, 2011; Bourblanc & Brives, 2009; Doussan, 2002). The reduction of excess nitrogen fertilisation would require both changes in agricultural practices and significant investments (treatment plants and pits for storing effluents), which were out of reach for many farmers. In 1992, the ERB ended up “in desperation⁸” writing to the President of the European Commission. This letter was sent to the legal unit at the Directorate General for the Environment (DG ENV), then known as the “DG XI”, who suggested that the Commission instigate infringement proceedings against France. There were three reasons for this decision. Firstly, the Commission made a political priority of reducing the implementation deficit. This objective was firmly backed by DG ENV’s legal unit, which encouraged environmental protection associations to report infringements. Thanks to effective information about the possibilities that this procedure offered associations, the number of complaints received by the Commission in the

⁷ It was later found that the large deposits of “green algae” along coastlines might present a health hazard, due to the formation of pockets of hydrogen sulphide in their midst.

⁸ Interview with a former ERB official, 2018.

environmental field skyrocketed from approximately five complaints per year before 1985 to an average of five hundred per year in the early 1990s (Dezalay, 2007; Simonetti, 2008). Secondly, the infringement raised by the ERB presented interesting characteristics for the DG ENV. Directive 75/440/EEC implied a performance obligation; water used for the production of drinking water should not contain more than 50 mg/L of nitrates. The infringement was therefore easily defined as follows:

“It was unstoppable. This directive is clear, the results are bad, it’s not rocket science! There are no exceptional circumstances. [...] The case was so clear, the only thing [the French authorities] could do was to ask for delays.” (Interview with former DG ENV official, 2019.)

Thirdly and finally, the pollution reported by the ERB raised an “issue that went well beyond just a few water samples.”⁹ The ERB’s complaint raised the issue of the impact of agricultural pollution on water quality at the scale of an entire region. As directive 75/440/CEE states, France should have implemented a “systematic plan of action” to improve the quality of all the surface waters used for the production of drinking water. The ERB complaint was therefore of particular interest to DG ENV because, despite a significant increase in its staff, from 60 agents in 1987 to 500 in 1996 (Halpern, 2009), it could not investigate all the complaints. It gave priority to the infractions that were easiest to prove and that had a structural scope, i.e. those that led to wider problems than the one covered by the complaint *sensu stricto*.

Based on the additional information provided by the ERB, the Commission therefore demanded that France take steps not only to ensure that all of the catchments used for the production of drinking water be in compliance, but also to improve the quality of surface waters throughout Brittany. So, as far as the Commission was concerned, for the infringement to be resolved, France had to take wide-ranging steps to reduce pollution caused by nitrates of agricultural origin.

France initially paid little attention to the infringement proceedings opened by the Commission. It was not until 1997 that it became a priority dealt with at a political level by the cabinets of the French Ministries of the Environment and of Agriculture. There are two reasons for this evolution. Firstly, unconvinced by France’s responses to its previous demands, the Commission sent France a reasoned opinion. It was, henceforth, in a position to refer the matter to the ECJ and request that France be condemned—an act with dire political consequences. Secondly, in June 1997, Dominique Voynet, a member of the French ecology party, was appointed Minister of the Environment. For the Minister and the members of her cabinet, litigation was a lever with which to support a global and voluntarist policy to fight agricultural pollution in Brittany. There was nevertheless no desire to be condemned twice by the ECJ and to be the object of financial sanctions.¹⁰ As a former senior civil servant from the French Ministry of the Environment told us:

⁹ Interview with a former official at the DG ENV, 2019.

¹⁰ In 2006, the French Ministry of the Environment estimated the financial risk relating to this infringement to be 239 million euros.

“To be perfectly honest, when you are the director of central administration and you are dealing with a European litigation, your objective is to resolve that litigation. You must realise that at that time there were also litigations surrounding Maastricht’s 3%. In European negotiations between a country and the Commission, and the other countries, being involved in a litigation is a real millstone around your neck. Your objective is really to reduce... Of course there is obviously a basic objective. But that objective, the number one linchpin, is to resolve the dispute.” (Interview, 2019.)

This objective was shared by the French Ministry of Agriculture. However, unlike the Ministry of the Environment, the Ministry of Agriculture was primarily concerned to appease the leading farmers’ organisations which remained hostile to the implementation of any restrictive measures to reduce agricultural pollution. Despite their different concerns, the French Ministries of the Environment and of Agriculture, therefore, had a common objective: putting an end to the infringement. Yet, following the reasoned opinion of 1997, the Court’s condemnation seemed unavoidable, in as much as it appeared impossible to quickly bring all the non-compliant catchments down to a nitrate level of less than 50 mg/L, due to the inertia of the natural environment and the farmers’ organisations opposition to strong measures. The strategy proposed by the Ministry of the Environment and approved by the Ministry of Agriculture from 2000 onwards was therefore simple: buy time while seeking to change the Commission’s requirements in order to reduce the scope of the infringement.

Strategic uses of time

Following the Court’s decision on 8 March 2001 to condemn France, the Commission instigated a second infringement procedure, combined with the threat of financial penalties. The French authorities then employed two sets of strategies to stall these new proceedings. The first set can be qualified as propitiatory strategies in that their main aim was to lead the Commission to give a positive assessment of France’s efforts to comply with European law. It was a case of encouraging the Commission to postpone the following stages of the proceedings. These strategies can themselves be divided into three types. The first consisted of information control strategies (Goffman, 1959); while displaying a desire to be transparent, France was careful to present the actions it had taken in the best possible light, which meant hiding certain data. The exchanges between the French European Secretariat and the other administrations overflowed with such instructions. For example, in 2006, it asked them to “take care to transmit only elements that are favourable today and/or in the future and not all the data identified¹¹”. For the French European Secretariat, it was also important to show the Commission that the adopted measures formed a well-thought-out whole, rather than a heterogeneous catalogue. In 2004, it stressed

¹¹ Minutes of a meeting organised by the French European Secretariat on 31/01/2006, NA 20,150,884(38).

“the need to make an attractive presentation¹²” of the plan of action required by the Commission. Finally, this checking and formatting of the information sent to the Commission also took place in cooperation with agricultural organisations to make sure that the latter did not send contradictory signals to the Commission. In 2007, for example, the prefect of Brittany specifically asked Brittany’s chambers of agriculture to not adopt positions that contradicted that of the French government, to avoid the Commission having any doubts about the government’s capacity to implement its decisions.

The second type of propitiatory strategy involved providing the Commission with signs of commitment which demonstrated the efforts that France had made. To use a term frequently employed in exchanges between French civil servants, it was essential for these signs of commitment to be “credible” in the eyes of the Commission. The measures presented to the Commission would be thus all the more credible if they were legally binding, easy to implement, and endowed with dedicated resources (credits for controls, financial aid for farmers, etc.). In 2003, for example, the French European Secretariat explained that the documents sent to the Commission should not be “mere written proclamations” but should accurately indicate “the binding measures implemented” and the “financial commitments” adopted.¹³ Furthermore, they should demonstrate the government’s determination to rapidly resolve the litigation. Hence, in 2003, upon request from the French Prime Minister, France informed the Commission that all of the non-compliant water catchments would be brought back into compliance by 2010, and not by 2015, as the French administration had initially and more realistically planned. While it was not based on any new technical element, this modification to the schedule delivered to the Commission was simply designed to demonstrate the “high level of determination to fight water pollution in Brittany.¹⁴” In the same vein, the French government decided to communicate signs of commitment to the Commission at regular intervals, in order to demonstrate the continuous mobilisation of its administration:

“There was a real strategy to save time and to regularly feed the Commission with notes to show that things had been done, that things were progressing, to try to postpone the reasoned complementary opinions and, as a result, referral to the Court of Justice. We gained so much time like that...!” (Interview with a former official from the Ministry of the Environment, Water Directorate, 2019)

The final type of propitiatory strategy was the protocol strategy. These involved inviting Commission officials to Brittany to talk with local French civil servants, association officials and farmers. This type of proposal provided a breathing space due to the time required to organise such visits. For example, in 2014, the French

¹² Minutes of a meeting organised by the French European Secretariat on 30/09/2004, NA 20,150,884(37).

¹³ Minutes of a meeting organised by the French European Secretariat on 28/04/2003, NA 20,150,850(19).

¹⁴ Email from a civil servant at the French Ministry of the Environment, 06/01/2004, NA 20,150,884(37). Highlighted in the original document.

European Secretariat proposed that “the Commission be invited to visit the site, with the objective of pushing back the Court referral.¹⁵ Following a visit organised in 2005, the French European Secretariat proposed a second visit the following year, once again, “to save time and valorise the work done by the engineers.¹⁶”

However, the second set of strategies involves offensive strategies; the aim of which was to cause the Commission to lower its demands, independent of whether or not progress has been made in resolving the litigation. These strategies can also be divided into three types. The first type involved playing around with procedures or with the interpretation of legal texts and case law. There were many such procedural strategies, ranging from the possibility of a hearing at the ECJ in 2000 to “push back the outcome of the procedure,¹⁷” to challenging the pertinence of infringement proceedings in relation to pollution issues. Even if France took appropriate steps to restore water quality, the inertia of the natural environment meant that the non-compliant catchments would not be able to return to compliant values before a period estimated at 5 to 6 years, according to studies commissioned from research organisations. This was explained by officials from the French European Secretariat at a meeting to prepare for an encounter with Commission officials in September 2003:

“The [French European Secretariat] might usefully open the discussion on the procedure set out in article 228 CE and the manifest incompatibility between the payment of penalties and the performance obligation prescribed by the directives. In particular this will set out the French opinion that it is unfair to force a Member State to pay when, firstly, all obligations of means have been met and secondly, a solid scientific argument tends to show that the performance obligation cannot be met in the immediate future.” (Minutes of a meeting organised by the French European Secretariat on 10/09/2003, NA 20150884/37).

The second type of offensive strategy consisted in putting into perspective or challenging certain factual elements highlighted by the Commission. In 2005, for example, the French authorities notified the Commission that one of the catchments it had mentioned was a groundwater and not a surface water catchment and should not, therefore, have been cited as an example relating to the steps to be taken to protect aquatic sources. Such strategies were nevertheless rarely employed, probably due to the sound nature of the arguments put forward by the Commission. The last type of strategy laid in the mobilisation of major political figures to convince the European Commissioners to slow down the proceedings. It was only when the Commission decided to once again refer the matter to the ECJ, that France used this strategy as a last resort. In June 2007, Michel Barnier, former European Commissioner and very recently appointed Minister of Agriculture and Fisheries in France,

¹⁵ Minutes of a meeting organised by the French European Secretariat on 30/09/2004, NA 20,150,884(37).

¹⁶ *Ibid.*

¹⁷ Note for the director of the cabinet of the French Minister of the Environment, 07/02/2000, NA 20,030,457(32).

travelled to Brussels to set out the new steps his government had taken. His intervention was followed by another in July, by the French Prime Minister.

All of the above strategies were crowned with a certain level of success. They effectively succeeded in stalling the second infringement proceedings. After a new formal notice in December 2001 and a new reasoned opinion in April 2003, the European Commission sent the French government an “additional reasoned opinion” in July 2005. This exceptional decision allowed France to gain two additional years. Finally, in September 2007, interventions by the Minister of Agriculture and the Prime Minister, combined with the implementation in extremis of new measures, led the Commission to suspend its referral to the ECJ. This decision allowed the French government to once again buy time until the infringement proceedings were closed in June 2010.

The temporal strategies employed by France thus had the effect of considerably extending the duration of the infringement proceedings. Yet, on their own, they do not suffice to explain how the French government was able to bring them to an end. To understand this, we need to look at how it used the time it bought to win a reinterpretation of the directive and its modes of implementation.

Redefining compliance with European law

France used the time bought from the Commission to obtain a reinterpretation of the directive and of the ways to comply; this allowed it to get out of the litigation while at the same time limiting the consequences for Breton farmers. We will demonstrate that they obtained not only a beneficial interpretation of the most ambiguous articles in the directive, but also an adjustment to the modes for implementing the requirements which, a priori, seemed the least negotiable.

Symbolic compliance

As we have pointed out, the litigation involved three grievances. Of these three grievances, it was the last two—the development of a systematic plan of action to improve the quality of Breton waters (second grievance) and of management plans for the non-compliant catchments (third grievance)—which were resolved first, in June and October 2005, respectively.

The resolution of these two grievances was first made possible through discussions on the interpretation of articles 4.2 and 4.3 of the directive. Directive 75/440/CEE was somewhat vague: while it set out clear objectives in the form of mandatory values (such as maximum nitrate levels of 50 mg/L), it was vague as to how they should be achieved. Member States were obliged to take all necessary steps to ensure that surface water met the mandatory values. To this end, they had to define a “systematic plan of action including a timetable for the improvement of surface water” (art. 4.2). However, when Member States were only able to use highly polluted resources to supply certain populations with water, they could be authorised to

do so by derogation. This involved sending the Commission a water resource management plan for each of the catchments concerned (art. 4.3).

These provisions merit two remarks. Firstly, the steps that Member States were required to take to improve the quality of surface waters were set out in very general terms; the text of the directive contained no details about the expected content of the water resource management plans and the systematic plan of action. Nor was there any explanation of the “considerable improvements” (art. 4.2. of the directive) expected from the implementation of the latter. Moreover, the timeframe was unclear. Concerning the most polluted catchments that could be used under derogation, nothing was said about how long these derogations would remain in effect. As for the systematic plan of action, the directive stated that “considerable improvements” had to be achieved within 10 years, but added that this period could be modulated according to “the economic and technical constraints which exist or which may arise in the various regions of the Community.” (ibid.)

When the Commission referred the matter to the ECJ in 1999, French Ministry of the Environment officials knew there was no way they could prevent a condemnation. They nevertheless decided to use the contradictory procedure provided for by the ECJ to ask the judges to make it clear that “the failure related to the raw water used for the non-compliant catchments and not all Breton rivers as the Commission implies.¹⁸” In other words, they hoped that unlike the interpretation defended by the Commission, the Court would define the systematic plan of action as meaning obligations of means and not as performance obligations.

According to the French Ministry of the Environment, the conclusions of the ECJ’s advocate general, presented in December 2000, were “in relation to all complaints highly unfavourable to France”.¹⁹ The advocate general nevertheless accepted that the systematic plan of action should not target an obligation of result. In its decision of 8 March 2001, the ECJ followed all of the advocate general’s conclusions. So, while condemning France, the ECJ agreed with the latter on this point; the performance obligation only related to the catchments used for the production of drinking water and not all of Brittany’s surface waters. This decision was thus a step forward for France, one that it intended to exploit. In 2002, it persuaded the DG ENV to organise a meeting in Brussels. This was the first bilateral meeting to be arranged and it brought together five officials from the DG ENV and an equivalent number of French civil servants. The meeting allowed France to obtain clarifications concerning the content of the systematic plan of action, which was to be the subject of a “specific document [...] consisting of an overall presentation of the fight against nitrate pollution in Brittany (with diagnosis, steps taken, time frame, expected effectiveness²⁰).” Those present at the meeting also came to an agreement

¹⁸ *Ibid.*

¹⁹ According to a note from the French Ministry of the Environment’s legal department, 15/12/2000, NA 20,030,457(25).

²⁰ Compte rendu de la réunion du 14/05/2002 entre les agents de l’État français et ceux de la DG ENV, NA 20,150,850(19).

concerning the desired content of the water resource management plans required by the directive.

The drafting of the systematic plan of action and water resource management plans was entrusted to a newly created entity placed under the authority of the prefect of Brittany. Although the regional department of the Ministry of Health wanted the plans to have a certain degree of effectiveness, for example, by introducing legal provisions to engage State responsibility, it failed in this attempt due to opposition from the Ministry of Agriculture. As a former official from the department said:

“Everyone made management plans, but that was seen more as a necessary yet pointless administrative document. Basically they want a management plan, we’ll pay 3,000 euros to some engineering office, they’ll produce 2kg of paper, we’ll put it all in the file and the Prefect will sign an exceptional authorisation, and that’s the end of that. That’s pretty much the way it was viewed.” (Interview, 2020).

In practice, the management plans essentially consisted of taking stock of what public authorities were already doing. They did not provide for the adoption of new, more restrictive measures to reduce agricultural pollution. In a working document probably dating from 2001, a civil servant from the French Water Directorate stated that “it is absolutely vital that we get it out of our heads that the management plan is some kind of action programme”.²¹ In 2003, slides prepared by an official from the regional department of the French Ministry of Health also underlined the fact that management plans should not be conceived as “new specific action programmes” but rather as simple “audits” of steps already taken or planned.²² The same was true of the systematic plan of action requested by the Commission. During a meeting organised by the French European Secretariat in April 2003, the French Water Directorate emphasised that it “had no new measures of a type that would reinforce the actions already planned” on the scale of Brittany as a whole.²³ As already noted above, it considered that the principal necessity was to carry out a “work of rewriting, of ensuring coherence” so that the plan would be seen as a rational construction and not as “a simple compilation or juxtaposition of existing measures.” Seven months later, and still with regard to the systematic plan of action, the French European Secretariat issued the reminder that “the introductions needed [...] to be very meticulous [...] in order to highlight the Breton plan, the water resource management plans and, finally, the coherence between these instruments.”²⁴ To summarise, in the context of the litigation, the French authorities’ efforts essentially focused on

²¹ Undated note from a civil servant at the French Water Directorate, NA 20,150,850(12).

²² Undated slides by an official from the Breton department of the Ministry of Health, NA 20,150,850(12).

²³ Minutes of a meeting organised by the French European Secretariat on 18/04/2003, NA 20,150,850(19).

²⁴ Minutes of a meeting organised by the French European Secretariat on 19/11/2003, IA DGS 2,014,001(5). The “Breton plan” consisted of a set of voluntary and non-restrictive measures officially designed to improve the quality of water in Brittany.

the formal quality of the documents sent to the Commission and not on strengthening the measures designed to effectively reduce pollution throughout Brittany.

However, as far as the Commission was concerned, the water resource management plans would only be deemed acceptable if the lack of a rapid return to compliance did not create health risks for the population. Having refused to adopt strict measures to reduce agricultural pollution for all of the catchments under dispute, the French authorities would have to find other sources of drinking water for the populations concerned. They quickly decided to suspend the use of eight catchments for which there were already relatively inexpensive alternative solutions (such as connecting affected populations to other drinking water networks in the immediate vicinity). In 2007, despite the heavy cost, they closed four other catchments they felt could not be brought into compliance in the medium term. For the catchment located on the Horn River alone, the estimated cost of the work was between fifteen and 24 million euros.²⁵

In line with the Court's interpretation of the directive, the implementation of the systematic plan of action and the water resource management plans per catchment were not subject to a performance obligation. They were sent to the Commission in several stages between December 2003 and June 2005, thus allowing the gradual resolution of grievances two and three. A few procedural remarks aside, the Commission approved all of the documents sent. No follow-up of the proper implementation of these plans by the Commission was carried out. Compliance with these grievances was thus redefined as a "merely symbolic" issue (Edelman, 2016, p. 5), inasmuch as France was ultimately only required to signal its attention to the law without any consideration of the effectiveness of the measures taken. As far as the Commission was concerned, France was no longer under any obligation to effectively reduce pollution by nitrates of agricultural origin throughout Brittany. It simply had to draft plans of action that had a certain formal coherency and send them to the Commission. So for these grievances, compliance with the directive was redefined as a purely symbolic compliance, inasmuch as simply providing written procedures (plans), without monitoring their implementation, sufficed to put an end to the infringement. These plans, therefore, had no effect on the activities of the Breton farmers.

Asymptotic compliance

At first sight, the resolution of the first grievance appeared to be more complicated, as it required the thirty-seven non-compliant catchments to reduce their nitrate levels below 50 mg/L. Throughout Brittany, regulatory measures designed to put an end to excess fertilisation (some of which benefited from substantial financial aid) had already been implemented. These measures mainly consisted of regulating spreading practices, improving effluent storage systems and encouraging farmers to reduce

²⁵ Note from an official at the Breton department of the French Ministry of Health, 05/02/2007, NA 20,150,850(19).

the quantities of nitrogen present in the effluents, in particular by building treatment plants and by making changes to animal feed (Langlais et al., 2014).

However, not only did some of these measures meet with resistance, but their implementation required time, if only to carry out the required studies and works. They thus appeared insufficient to bring the catchments back into compliance within a timeframe acceptable to the Commission. Bringing these catchments back to nitrate levels below 50 mg/L required the implementation of additional measures relating specifically to the drainage basins in which they were located. These measures were adopted in stages. Up until 2007, the most important decisions consisted of making cover crops mandatory in winter (recultivation of plots after the summer harvests so as not to leave the soil bare) and the creation of continuous grass strips at least ten metres wide along water courses. These new rules, introduced in 2001 and 2005, respectively, were designed to reduce nitrate-laden runoff into rivers. While the implementation of these measures and those applying to Brittany as a whole led to several catchments once again becoming compliant and hence to a reduction in the scope of the infringement, they did not fully resolve the first grievance: nine catchments remained non-compliant in 2007. In order for the Commission to decide not to once again refer the matter to the Court, the French government finally introduced stronger measures designed to reduce nitrogen inputs to the nine catchments concerned by 30% within 5 years. In particular, the new plan allowed for additional financial aid for farmers who made a commitment to use fewer fertilisers and/or agreed to reduce the size of their herd. To compensate for the loss of income to farmers (who highlighted the risks of reduced yields) and to fund accompanying measures, a budget of 61 million euros was voted. And to ensure proper implementation, France undertook to significantly increase controls, with one in two farms to be checked every year.

The definition and modes of implementation of all these measures led to highly intense arm wrestling between the ministries of the Environment and Agriculture. The Ministry of Agriculture essentially defended two main arguments. It explained that due to the inertia of the natural environment, whatever the means employed, it was impossible to bring all of the catchments into compliance in the short or medium term. In a note to the French Ministry of the Environment in 2001, it explained the following:

“As the soils and waters contain high levels of nitrogen and where the inertia of the milieu is consequential, several years will be required to obtain significant results. [...] Given the complexity of the phenomena in question [...], it would seem unreasonable to put a figure on likely evolution or to set a time frame for restoring the quality of water in the zones concerned.” (Document annexed to a note from an official at the Water Directorate, 21/05/2001, NA 20030457(25).)

Furthermore, certain drainage basins presented specific hydrological characteristics which removed any hope of a rapid return to compliance. Secondly, it proposed steps that appeared to be more rational but whose implementation was very difficult to control, such as an additional ceiling for nitrogen inputs per hectare. The former argument, backed by scientific studies carried out in 2003 and by further

in-depth studies commissioned in 2007, was approved by the French European Secretariat and added to the notes sent to the Commission. The second argument, on the other hand, met with fierce opposition from the Ministry of the Environment, who believed it was necessary to “prefer simple, visible and verifiable actions,²⁶” such as winter cover crops or grass strips:

“From the Ministry of the Environment’s perspective, what makes winter crops a particularly interesting measure compared to other options, such as a nitrogen limit on plots?

“Easy to control, easier to see. First, there was a consensus among the experts at the time that winter cover is a good way to limit losses or to favour exports [of nitrogen]. First of all, there is a technical judgment on the issue: it is useful. Beyond this technical judgment that it is useful, it is much easier to see and control. [...] Seeing whether or not the plots are covered in winter, everyone can do that, including the local residents, including the associations. Whereas a control, a balance of the nitrogen surplus, is far more complicated. No one knows about it, apart from the farmer himself.” (Interview with a former member of the cabinet of the Minister of the Environment, 2019.)

In order to convince the French European Secretariat of its point of view, the Ministry of the Environment also asserted that these measures would only be applied to farmers located in drainage basins containing the non-compliant catchments. In other words, the measures would apply to just a few farmers and would not affect all Breton agriculture. And indeed, the return to compliance of certain catchments meant that the new measures applied to an ever smaller number of farmers: although the cover crops measure concerned more than thirty drainage basins, the enforcement of grass strips as of 2005 only applied to fifteen, and the new measures announced in 2007 to just nine. The latter had serious consequences for the farmers concerned, particularly those who were trying to develop their farms. They led to violent actions by certain farmers and their organisations, including the ransacking of the Brest premises of the ERB association at the origin of the litigation. However, in line with a rationale that we find more broadly in environmental policies, these highly restrictive measures related exclusively to the “black spots” (Lascoumes, 2012, p. 65), i.e. to the most polluted zones, and not to the rest of Brittany, despite the generally high levels of nitrate pollution.

So, as of 2001, France was able to rely on the Court’s decision (whereby the performance obligation related to the first grievance alone) and propose to the Commission stronger measures for the non-compliant catchments. The gradual decrease in the number of basins concerned and the concurrent strengthening of the measures taken made it possible to demonstrate the efforts France had made and to give the Commission credible proof of its commitment. In 2007, France thus obtained a gradual exit from the litigation through the implementation of a reporting system: every year, French authorities would simply have to send the Commission data on the evolution of the quality of the water in the non-compliant catchments. In 2010,

²⁶ Interview with a former official from the Ministry of the Environment, 2019.

the improvements observed through this system led the Commission to put an end to the infringement proceedings. Since then, the number of non-compliant catchments has decreased. Of the nine last catchments to be non-compliant in 2007, four still had nitrate levels above 50 mg/L in 2015 and one in 2019.²⁷ Progress nevertheless remains fragile: while the average nitrate content of the catchments in question was 35.6 mg/L in 2019, thus below the 50 mg/L threshold, it was well above the 25 mg/L guideline level set by the directive. Moreover, the data sent to the Commission by French authorities since 2007 relate solely to the nine catchments that were non-compliant in that year. Regarding the catchments that had returned to compliance before 2007, no data is required from the Commission. It is therefore impossible to know whether they remain compliant today.

The resolution of the first grievance was therefore essentially achieved by spreading the performance obligations over time. Although the DG ENV initially demanded that the catchments be rapidly returned to compliance, it eventually agreed with the arguments put forward by France: while nitrate levels in Brittany's rivers could be gradually reduced through the implementation of appropriate measures, this was a lengthy process that depended on the hydrological characteristics of each basin. The Commission's requirements for the resolution of the first grievance therefore evolved. It was not resolved by bringing all the catchments back into compliance, as the Commission initially requested. Unlike the other grievances, it was not resolved in a purely symbolic fashion, as the Commission required an annual report of the results that France would achieve. We propose to qualify compliance defined in this manner as *asymptotic*, inasmuch as full compliance is defined as a long-term goal likely to be achieved in a very gradual manner. In other words, asymptotic compliance means that this goal might never be achieved. In practice, the fact of getting close, if only slowly, to the standard set, suffices for being deemed compliant by the Commission. Like symbolic compliance, this asymptotic compliance allowed the French government to look after the interests of the farmers in the non-compliant basins. The fact that the measures to fight pollution were spread over time made them economically more acceptable.

Conclusion

The complaint that the ERB filed in 1992 with the European Commission was not without effect. The French administration initially ignored it but was to carry out considerable work on the complaint as of 1997. Some civil servants, from the Ministry of the Environment in particular, tried to use the dispute to defend an ambitious project to fight pollution of agricultural origin in Brittany. These "strategic uses" of Europe (Jacquot & Woll, 2004) faced strong opposition from the Ministry of Agriculture and leading farming organisations. These actors nevertheless had a common objective: that of ending the litigation. This led to a compromise strategy

²⁷ According to a note from the Brittany's Regional Health Authority, 28/07/2020 (archives of the Brittany's Regional Health Authority).

being adopted to buy time with the Commission in order to minimise the impact that the adopted measures would have on farmers. Along with the steps taken at regional and national levels (Bourblanc, 2011; Hermon et al., 2020), this policy had a significant impact on nitrate pollution in Brittany. Between 1995 and 2020, the average level of nitrates in Brittany's rivers fell by 14%.²⁸ Progress was even greater within the disputed catchment areas.²⁹ The nitrate content in Breton rivers nevertheless remained high, to such an extent that every year the coastlines are covered with green algae blooms.³⁰ Moreover, numerous drinking water catchments have been closed at a time when climate change is putting increasing pressure on Brittany's water resources. Although the French government has resolved the dispute initiated by the ERB, the problem of nitrate pollution of agricultural origin remains unresolved, both in Brittany and in other regions of France. In its opinion on a new national action programme for nitrates of agricultural origin, published in November 2021, the *Autorité environnementale* (an independent public body tasked with assessing the environmental impact of certain public projects and programmes) came to some harsh conclusions: "the effectiveness of previous programmes of action has been neither assessed nor proven. Progress is limited and cannot be attributed to these programmes. The project remains at a level of minor improvements which are unlikely to lead to a satisfactory state of the water" (*Autorité environnementale*, 2021, p. 3). The opinion of the *Autorité environnementale* (2018) on the last Breton action programme for nitrates was equally negative.

Even though it focuses on a single case, this study makes a more general contribution to research that asks "why and how member-state governments regulate 'with Luxembourg in mind'" (Blauberger, 2012, p. 112). While cases of overt non-compliance have been increasing since the late 2000s (Sciocluna, 2021; Avril, 2023), Member States are more frequently attempting to discreetly minimise the internal consequences of certain European regulations. The European Commission lacks resources, both to find failures to transpose or implement European regulations and to instigate infringement proceedings, with the result that Member States which do not transpose or correctly implement European law are rarely prosecuted by the Commission. And when they are prosecuted, they can obtain a dismissal of infringement proceedings, not by complying with the Commission's initial requirements but by pushing it to modify them. As the "Breton nitrates" infringement proceedings demonstrate, compliance can be the object of a redefinition process. Although the Commission initially expected France to take steps to significantly reduce pollution of agricultural origin in Brittany and

²⁸ According to the Observatoire de l'environnement en Bretagne (OEB), <https://bretagne-environnement.fr/nitrates-cours-eau-bretons-article> (page consulted on 16/12/2022).

²⁹ According to an assessment made by Brittany's Regional Health Authority for the European Commission in 2020, the average annual nitrate levels of the last eight water catchments involved in the dispute fell by 30% between 2001 and 2019, with one of them dropping by 48% (Brittany's Regional Health Authority archives).

³⁰ In 2020, out of the 671 stations measuring watercourse quality in Brittany, 55% reported a "mediocre status" (average nitrate content between 25 and 50 mg/L) and 13% reported a "poor status" (over 50 mg/L). Only 1% reported a "good status" (less than 10 mg/L). Source: *ibid.*

substantially improve the quality of water throughout the region, this expectation was abandoned. Henceforth, it is merely a question of improving the quality of the water in a small number of highly polluted zones over a timeframe that is sufficiently long to not destabilise the farmers. For the rest of Brittany, the measures introduced are no longer subject to performance obligations, and their implementation is not monitored by the Commission.

Thus, in the “Breton nitrates” case, we observed two processes to redefine compliance with European law. The first led to a reinterpretation of certain articles of directive 75/440/CEE and to a purely symbolic definition of compliance inasmuch as the simple introduction of written procedures, with no monitoring of their actual implementation, suffices to be in compliance. The second led to making full compliance with other articles of the directive a matter for the far-off future. We have used the term asymptotic to describe this latter form of compliance, which allows Member States to be deemed compliant by the Commission as long as there is clear evidence of the efforts made to gradually, over the long term, fall in line with European norms.

These redefinition processes are probably not specific to the infringement on Breton nitrates. Research in the sociology of law has focused on the vagueness or ambiguity of legal rules and on how their interpretation develops in stages, depending on the interactions between players and on the situations that they face (Lascoumes & Serverin, 1988; Edelman et al., 1991). This research has shown that these processes often end up restricting the scope of legal rules and preserving the interests that the rules were likely to harm (Billows et al., 2019; Dobbin, 2009; Edelman, 2016). In the case of the infringement proceedings initiated by the European Commission against Member States, these processes for the redefinition of legal norms probably come in very varied forms, depending on the nature of the dispute, the resources available to the state in question or to the Commission, and the political context. The infringement procedure on Breton nitrates highlighted the centrality of such processes through the numerous traces that it has left, both in the minds of the protagonists and in the archives of administrations and non-profit organisations. Finally, we will underline two points. First of all, as Treib (2014, p. 18–19) has already pointed out, the fact that compliance is the object of definitional conflict should lead us to treat with great caution the data produced by the European Commission on infringement proceedings. The closure of infringement proceedings does not necessarily mean that a Member State has met the Commission’s initial requirements, and discussions between the two parties may have led to a significant redefinition of the modes of compliance. Secondly, a major consequence of these redefinition processes is that they can lead to a dilution of the initial norm. There is an even greater chance of this happening when States attempt to buy time with the Commission, as is often the case with infringement proceedings. As we have shown, such dilution of the law can occur through the introduction of purely symbolic or political measures with lengthy timeframes. As some authors have already pointed out (Kotzé, 2017; Richardson, 2017), this is especially concerning in relation to environmental matters, where flexibility with the implementation of the law can have consequences that are irreparable, or at least difficult to reverse.

Funding This research was funded by PSL University (RegulRisk Project, 2017–2019).

Data availability All data and materials comply with standards in historical and sociological research.

Code availability Not applicable.

Declarations

Ethics approval Not applicable (no use of personal data).

Consent to participate The interviews were conducted and recorded with the express consent of the respondents.

Consent for publication Not applicable.

Conflict of interest The author declares no competing interests.

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