

# The other face of Eurolegalism: The multifaceted convergence of national enforcement styles

## Citation for published version (APA):

Bastings, L., Mastenbroek, E., & Versluis, E. (2017). The other face of Eurolegalism: The multifaceted convergence of national enforcement styles. *Regulation & Governance*, 11(3), 299-314. <https://doi.org/10.1111/rego.12126>

## Document status and date:

Published: 01/09/2017

## DOI:

[10.1111/rego.12126](https://doi.org/10.1111/rego.12126)

## Document Version:

Publisher's PDF, also known as Version of record

## Document license:

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# The other face of Eurolegalism: The multifaceted convergence of national enforcement styles

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## Abstract

This article analyzes the implications of European integration for national regulatory enforcement. More specifically, it tests the Eurolegalism thesis, which holds that the tendency of using more detailed, prescriptive European Union (EU) regulation combined with more public and private enforcement leads to a convergence in national enforcement styles. It does so by developing and applying a fine-grained conceptualization of enforcement style. This conceptualization forms the basis of a focused comparison of enforcement of the highly detailed and strict EU Packaging Waste Directive in the Netherlands and Germany – two countries known for their opposed enforcement styles. Our analysis shows that although convergence toward a more insistent enforcement style seems to have taken place, the two countries have arrived at this position in markedly different ways. By identifying differences in style underneath the surface of convergence, the article qualifies the Eurolegalism argument, thus, advancing the literature on EU enforcement styles and deepening our understanding of the subtle and divergent ways in which common international regulatory inputs may affect domestic enforcement.

**Keywords:** Enforcement, Eurolegalism, European Union, packaging waste, regulatory styles.

## 1. Introduction

The world of the “domestic inspector” is globalizing. Inspectors, responsible for ensuring compliance with legislation, are increasingly confronted with international input into their work. The question that presents itself is to what extent international regulatory harmonization affects national enforcement styles and concomitant practices. In this article, we explore this question in the context of the European Union (EU). The EU, in its capacity of “regulatory state,” has produced an impressive body of law, which needs to be implemented and enforced by national authorities (Majone 1996). As such, the EU provides us with an interesting natural experiment, allowing us to study the implications of regulatory internationalization for domestic inspectors.

In analyzing the implications of international regulation for national enforcement styles, we relate to a pronounced puzzle deriving from work in the broader field of regulatory styles. The common consensus in this literature is that national regulatory styles vary substantially across countries (e.g. Richardson, 1982; Kagan, 1989; Versluis, 2003). This variance is argued to be structural, because regulatory styles are deeply rooted in domestic legal institutions and legal cultures (Van Waarden, 1995; Kagan, 1997). From this vantage point, the expectation is that national regulatory styles will persist in the face of international regulation.

However, several scholars have challenged this expectation of persistent differences in national regulatory styles. Kelemen (2006, 2008, 2011, 2012; also see Vogel 2003) has argued that the regulatory styles of EU member states converge to a more legalistic style – a phenomenon he labels “Eurolegalism” (Kelemen 2011). According to Kelemen, the EU relies increasingly on “formal, transparent legal norms backed by more aggressive public enforcement and expanded opportunities for private enforcement litigation” (2012, p. 56). This development is argued to profoundly affect

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Accepted for publication 04 June 2016.

national regulatory styles, in that it has allegedly “undermined informal national styles of regulation based on closed, insider networks and has pressured regulators to rely on more formal, transparent and judicially enforceable approaches to regulation” (Kelemen 2008, p. 33).

The debate between these two schools – persistence versus convergence of regulatory styles – has also been waged in empirical terms. Kelemen (2008) has conducted empirical research on the allegedly increased role in enforcement for private parties and national courts. By contrast, the second aspect of the Eurolegalism thesis, the convergence toward strict or even “aggressive” public enforcement has hardly been tested empirically so far (Kelemen 2008, p. 34; Kelemen 2012, p. 56).<sup>1</sup> We seek to fill this gap, by carrying out a focused comparison of the influence of European integration on national enforcement practices. We do so using the case of enforcement of the EU Packaging Waste Directive (94/62/EC) in Germany and the Netherlands – two European countries known for their different enforcement styles, with the German style characterized as the most legalistic on the European continent, and the Dutch style defined as more situational and accommodative (Versluis 2003, pp. 13–16).

By answering this question, we seek to make the following contribution to the literature. First, by testing the Eurolegalism argument for enforcement style, we seek to contribute to the convergence debate. Second, in doing so we add to the broader literature on Eurolegalism, which so far has been limited to changes in litigation patterns (Kelemen 2008, 2011). Third, we meet the call in the literature to provide case studies reflecting complex empirical pictures of regulatory convergence (Rehder 2009, p. 218). This is important because the aggregate indicators so far used to analyze Eurolegalism may reflect trends or patterns not related to Eurolegalism (Kelemen 2008, p. 39). Finally, by carefully operationalizing the concept of enforcement style, and exploring its utility for analyzing changes in national enforcement styles, we seek to pave the way for future case studies on the internationalization of regulatory enforcement.

The focused comparison shows that the adoption of a strict, detailed, and ambitious EU directive on packaging waste did have an impact on the Dutch enforcement style, in that it became as equally legalistic as the German style. Yet this change cannot be automatically labeled as convergence. Under the surface of this seeming similarity in styles, however, we identified two different constellations of more specific elements of enforcement styles. The Dutch insistent style is primarily a matter of enhanced formalism, as opposed to the greater importance of hierarchy in the German case. Hence, behind the surface of convergence, key differences in enforcement style persist.

## 2. Convergence of enforcement styles?

According to Kagan, policy and judicial processes in the United States (US) are characterized by a particular “way of law,” combining a high importance attached to legal formal rules with strong participatory tendencies (2003, p. 9). Together, these tendencies produce a style of adversarial legalism: “policymaking, policy implementation, and dispute resolution by means of lawyer-dominated litigation” (Kagan 2003, p. 3). Arguably, this American regulatory style contrasts sharply with European traditions, which tend to be more informal and cooperative, and less reliant on lawyers and courts (Kelemen 2006, p. 103).

Yet a fascinating academic debate has ensued on the alleged convergence in regulatory styles between the US and the EU. On the one hand, several observers have argued that entrenched institutional features preclude the spread of adversarial legalism to European countries (Kagan, 1997; Van Waarden, 1995). According to Van Waarden, the substantial differences between regulatory enforcement styles are structural because these styles are deeply rooted in domestic legal institutions (1995, p. 361). In turn, these national legal institutions reinforce these cultural values by their existence in society (Van Waarden 1995, p. 361; Kagan 1997, pp. 180–183). Scholars on comparative law (e.g. Blankenburg 1998), bolster this thesis by arguing that differences between the Dutch and the German regulatory enforcement style mainly stem from differences between their legal institutions, such as judicial review and legal devices. As a result of the interaction between legal institutions and legal cultural values, enforcement styles are claimed to be resistant to change (Unger & Van Waarden 1995, p. 28). Finally, according to Rehder (2009) the introduction of new legal concepts or practices may function as “legal irritants” (Teubner 1998, p. 12), triggering new divergence instead of convergence.

Despite these arguments for persisting differences in national regulatory styles, Kelemen (2006, 2008, 2011, 2012) argues that, partly as a consequence of European integration, national regulatory styles converge around a style called “Eurolegalism.” According to Kelemen, the driver behind this convergence is the extensive use in the EU of highly detailed, enforceable legal norms and rights, combined with transparent procedural requirements (Kelemen 2006,

pp. 40–41, pp. 102–114). Vogel also observes this trend, arguing that precautionary or risk-averse EU policies have led to the adoption of more detailed and stringent EU legislation (2003, pp. 556–557).

According to Kelemen, these changes in regulatory design have two important consequences for enforcement of common European regulation by the EU's member states. First, judicial enforcement is promoted, as evidenced by increased access to justice instruments for regulated entities, and higher legal activity (Kelemen, 2011). Kelemen (2006, 2008, 2011) has gathered extensive data on these aspects of Eurolegalism, relating to the size of the legal services industry in the EU, and the expanding volume of litigation at the EU level.

Second, the adoption of more detailed and stringent EU legislation is argued to weaken cooperative, informal, and ambiguous legislation at the national level (Kelemen 2006, pp. 102–104). Important European integration objectives require more formal, transparent, and legalistic regulatory approaches at the member state level in order to create a level playing field. This expectation is in line with the work by Vogel, who also observed a trend toward more legal formality in regulatory enforcement in the EU (2003, pp. 556–557).

This alleged development toward more stringent public enforcement in EU member states is further sustained by two additional developments. First, member states receive stricter interpretations of directives from the Commission and the Court of Justice of the European Union (CJEU; Kelemen 2006, pp. 108–115). Particularly in the field of environmental policy, the Commission and the CJEU have greatly restricted the discretion of member states (Kelemen 2006, p. 115). The CJEU is reported to strike down national legislation because of its informality and the lack of transparency or legal certainty. Second, the rise of litigation to enforce EU legislation necessitates stricter public enforcement. In the area of security policy, for instance, shareholders in various member states (e.g. France, United Kingdom, and Germany) have called upon their individual EU rights and used litigation to enforce their rights, which may be seen as a reason for national authorities themselves to step up enforcement (Kelemen 2006, p. 118).

In sum, the Eurolegalism thesis holds that the adoption of more detailed and stringent EU legislation has led to a more legalistic enforcement style across the EU, encompassing both stricter private and public enforcement. In the following, this latter expectation will be put to a test, using the case of packaging waste in the Netherlands and Germany. Before exploring the question whether indeed the Dutch and German enforcement styles have become more legalistic since the adoption of more detailed and stringent EU legislation, we first explain this case selection.

### 3. Case selection: Enforcement of the Packaging Waste Directive in the Netherlands and Germany

The convergence school argues that more detailed and stringent EU legislation is the crucial factor that explains convergence in regulatory style (Kelemen 2006, pp. 102–106; Vogel 2003, pp. 557–558). For this reason, we have chosen a most likely case, that is, a very detailed and stringent piece of EU legislation: the Packaging Waste Directive (94/62/EC).<sup>2</sup> This directive was marked as one of the necessary measures for the establishment of the Single Market (Carroll 2000, p. 283). Although less aspiring than the Commission proposal on which it was based, the directive combines a rather strict regulatory approach with ambitious targets for the recovery and recycling of the materials in packaging waste (Vogel 2003, p. 564).

An important aspect of the directive is the introduction of the principle of Extended Producer Responsibility (EPR; Article 7), implying a transfer of the responsibility for end-of-life management from waste managers to producers (Tojo 2003, p. 5). This principle stipulates, first, that member states are required to establish systems for the return and the collection of used packaging or packaging waste.<sup>3</sup> Second, this article determines that member states have to establish systems for the recovery of packaging waste.

Article 7 requires that return, collection, and recovery systems should be open for the participation of economic operators, encompassing a wide range of possible actors: suppliers of packaging materials, packaging producers and converters, fillers and users, importers, traders and distributors, authorities, and statutory organizations. As a result of this broad definition, member states had flexibility in determining which economic operators have to participate and will be held responsible for the return, collection, and recovery systems for packaging waste (Cahill *et al.* 2011, p. 456). The responsible economic operator has to meet related stringent recovery and recycling targets: recovery of at least 60 percent of packaging waste weight and recycling of between 55 percent and 80 percent of packaging waste weight. The recycling targets are further specified for materials contained in packaging waste, such as glass, paper and cardboard, metal, wood, and plastic.

The method we employ for analyzing this case is a focused comparison of enforcement styles for packaging waste between member states over time (George & Bennett 2004, p. 3). The structured comparison will be achieved by asking a set of standardized, general questions on the starting and current positions of member states in terms of enforcement styles for packaging waste. Furthermore, this method allows us to focus on a limited number of aspects of enforcement styles.

We use a Most Similar Systems Design for selection of the countries, so as to control for confounding variables at the member state level that may affect the enforcement style. We opted for the Netherlands and Germany, as countries that, despite their similarities in a number of aspects, have opposite starting positions in terms of regulatory enforcement styles (Van Waarden 2009, p. 202–206). Overall, Dutch officials adopt a pragmatic enforcement style (Siemons, 1992; Van Waarden & Hillebrand 2009, p. 266), whereas the German enforcement style is rather legalistic (Siedentopf & Ziller 1988). At the same time, the Netherlands and Germany both have an advanced economy, a democratic system, and a considerably high level of technological development (Haverland 1999). Moreover, both member states have a forerunner position in the field of environmental policy (Haverland 1999). These aspects are relevant to enforcement styles, because they provide indications of how a country would deal with public policy problems, such as packaging waste (Haverland 1999). Furthermore, the legal traditions of the Netherlands and Germany show much communality as far as it concerns the law in the books. Both the Dutch and the German substantive law reflect common “Germanic traditions” (Blankenburg, 1998). These commonalities in written law also hold for packaging waste legislation, which the Netherlands and Germany transposed almost identically (see section 6).

The enforcement of European packaging waste legislation in Germany and the Netherlands is analyzed at two moments: the early 1990s and in 2012. The starting date is situated in the early 1990s because both countries were confronted with more detailed and stringent legislation in 1994 as a consequence of the adoption of the Packaging Waste Directive. The starting positions, thus, refer to the regulatory enforcement styles for national packaging waste EPR legislation before 1994 (enforcement styles in  $t_0$ ). The current positions (2012) refer to the present regulatory enforcement style for Europeanized packaging EPR legislation (enforcement styles in  $t_1$ ).

#### 4. Conceptualizing and operationalizing “enforcement style”

In order to fine-tune this debate on convergence of enforcement styles and to put it to the test in the Netherlands and Germany, we need a clear understanding of the concept of “enforcement style.” In addition, we need to elaborate how we operationalize and measure the concept. To this end we use the existing literature on enforcement styles, which boomed in the 1980s (e.g. Bardach & Kagan 1982; Hutter 1989; Kagan, 1989), and is still of relevance today (e.g. May & Winter 2011). We define enforcement as “the degree to which the relevant authorities seek to ensure compliance and bring those responsible for non-compliance into line” (Matthews 1993, p. 2). The core focus is, thus, on the behavior of the relevant authorities, that is, the government officials or inspectors. Following Kagan (2003) and May and Winter (2000, 2011) we can argue that enforcement styles are composed of two core dimensions. An enforcement style refers to (i) the *way in which government officials deal with legislation*; and (ii) the *way in which governmental officials interact with regulated entities* in order to provide for compliance with the legislation.

The first dimension of enforcement style concerns the extent to which a government official calls upon formality and prioritizes conformity to the legal rules. May and Winter (2000, 2011) label this dimension “formalism,” while Kagan (2003) refers to this as “legal formality.” The bottom line is the same: some officials apply the rules literally, while others may be more flexible, taking the arguments of the regulated entities into account. High legal formality or strong formalism refers to a high conformity to the letter of the law in policy implementation and dispute resolution by public and private actors (Van Waarden, 2009). This dimension touches upon the amount of discretion government officials have when enforcing the rules.

The second dimension of enforcement style refers to the interaction of the officials with regulated entities, and their reaction when the latter violate the law. Some officials may immediately impose a sanction on regulated entities, while other officials may negotiate about the required change with the regulated entities. Kagan (2003) labels this the “hierarchical” dimension, while May and Winter (2000, 2011) define this as the “coercion” dimension. A hierarchical or coercive organization of decisionmaking authority means that policy implementation and dispute resolution are controlled by a government official who applies authoritative norms or standards. The more hierarchical the

enforcement style, the more limited the role for affected citizens, regulated entities, or contending interests in terms of legal representation and influence in the implementation process.

Combining these two dimensions, we can identify four “ideal” types of enforcement styles (e.g. Hutter 1989; Fig. 1). First, the *passive style* concerns a permissive and flexible enforcement style. The intensity of inspections and assessments are low and sanctions are not imposed at all. Moreover, government officials are extremely dependent on the regulated entities. May and Winter (2000) label these inspectors “token enforcers.” Second, when adopting a *persuasive style*, officials try to persuade the rule violators by explaining the law and identifying possibilities to improve the situation together. The style is rather permissive because officials provide the regulated with second and third chances and rarely impose sanctions. In sum, the government officials show a considerable amount of tolerance, using informal enforcement techniques to ensure norm-compliant behavior. Officials who adopt a persuasive style operate as “negotiators” or “consultants” and use a sympathetic, facilitative approach. Third, the *insistent style* incorporates pragmatic aspects but is in general labeled as a legalistic style. The officials first try to use informal techniques to ensure norm-compliant behavior. However, when the regulated do not respond adequately to their demands, the officials have limited tolerance and impose sanctions immediately. Fourth, the most legalistic or strict enforcement approach concerns the *authoritative style*. The inspections and assessments are intensive; the officials check if the regulated comply with all (detailed) requirements. Furthermore, sanctions are frequently imposed and the regulated entities feel that their circumstances or arguments are not taken into account. May and Winter (2000) label these inspectors “rule-bound enforcers.”

Following Ayres and Braithwaite (1992), several scholars (e.g. Nielsen & Parker 2009; Baldwin & Black 2008) argue for the flexible combination of a more deterrent and a more cooperative approach under the label “responsive regulation.” This approach takes the motivation for non-compliant behavior into account and provides “a ‘socially intelligent’ way for the regulator to react to the behavior of the regulatee” (Nielsen & Parker 2009, p. 379). In this article, we stick to the four ideal types, and leave the option inspectors have to “mix and match” styles in a more responsive approach aside, as the aim is to analyze whether we see a convergence of enforcement styles toward the more legalistic variant, as proposed by Kelemen.

In order to analyze this hypothesis by Kelemen, we offer a conceptualization of enforcement style by providing clear indicators that can be empirically assessed. The selection of indicators is based on the enforcement literature and on the “enforcement provision” related to the specific case at hand (e.g. Ayres & Braithwaite 1992; Versluis 2003). In this specific case, the packaging waste enforcement provision refers to the requirement that producers have to send a monitoring report to the competent authority. In operationalizing the concept, we distinguish between two aspects of the level of formalism (check for completeness and reliability, and substantive check), and two aspects of the level of hierarchy (sanctioning approach, and relationship with the producer; Table 1). These four aspects are further specified into specific elements as follows:

- 1 **Check for completeness and reliability.** This aspect concerns the level of discretion inspectors have and can be differentiated into the following three elements related to how government officials check the regulated: the *use of*

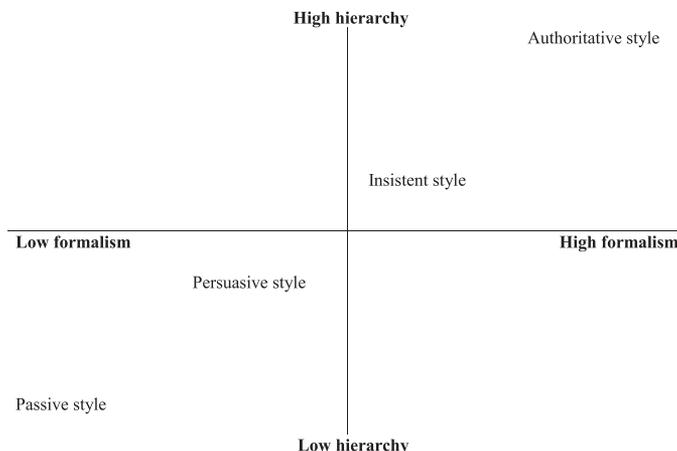


Figure 1 Ideal types of enforcement styles.

**Table 1** Conceptualization of enforcement style

Aspects	Elements
1. Check for completeness and reliability	Use of assessment tool Comparison with other data sources Request for additional information
2. Substantive check	Use of inspection tool Many hours spent on substantive check High frequency of inspecting actors in packaging chain
3. Sanctioning approach	Ability to impose formal sanction Use of manual Low frequency of warning before sanctioning
4. Relationship with producer	Little or no room for advice, discussion, and negotiation Either negligibly or not dependent on producer
Total number of indicators	11

*an assessment format; a comparison of monitoring reports with alternative data sources and a request for additional information.* The more an inspector is “forced” to work according to predefined formats – that is, using a prescriptive assessment format, being required to compare information with alternative sources, and being required to request additional information – the more legalistic the enforcement style.

- 2 Substantive check.** This aspect covers the intensity of the inspections. It can be broken down into three specific elements: the use of an *inspection tool*; the *number of hours* spent on substantive check; and the *frequency* with which actors in the packaging chain are inspected. Working according to an inspection tool indicating what companies are visited when according to what format, a high amount of hours spent per inspection, and a high frequency of inspections, all indicate a highly intensive substantive check, in turn indicating a legalistic enforcement style.
- 3 Sanctioning approach.** This aspect comprises the following three elements: the *ability to impose a formal sanction*; the use of a *sanctioning manual*; and the *frequency of warnings* before imposing a sanction. The more inspectors are actually able to impose a formal sanction, are directed in their work via clear instructions on when to impose a sanction (sanctioning manual), and the less frequent they intend to provide warnings, the more we speak of a legalistic enforcement style.
- 4 Relationship with producer.** The final aspect relates to the previous one, in that it provides an indication of the likeliness with which sanctions will be imposed. Here, two specific elements are at stake: *room for advice, discussion, and negotiation* during inspections, and the degree to which government officials are *dependent on producers* in enforcing legislation. The more an inspector provides advice and discusses the law with the regulated entities, and the more an inspector feels dependent on the regulated for receiving all information necessary to be able to do his or her job, the less legalistic the enforcement style.

**Table 2** List of respondents

#	Organization	Type of Organization	Date
1	Inspectie voor Leefomgeving en Transport	Enforcement	29/08/2012
2	Agentschap NL	Enforcement	31/08/2012
3	Agentschap NL	Enforcement	31/08/2012
4	Agentschap NL	Enforcement	06/09/2012
5	Umweltbundesamt	Enforcement	07/09/2012
6	Umweltbundesamt	Enforcement	07/09/2012
7	Nedvang	Producer organization	20/09/2012
8	Stadt Bremen	Enforcement	25/09/2012
9	Bayerisches Staatsministerium für Umwelt und Gesundheit	Enforcement	25/09/2012
10	Stadt Köln	Enforcement	08/10/2012
11	Deutsches Duales System	Producer organization	22/10/2012

These 11 elements of enforcement style were measured via content analysis and interviews with 11 key stakeholders in the enforcement of the packaging waste directive in the Netherlands and Germany, as listed in Table 2. There were no relevant documents that could be used to establish the Dutch and German enforcement styles in the early 1990s. Little is documented on enforcement, and some of the organizations responsible for enforcement in the early 1990s no longer exist. Therefore, we combined the following available information. We first resorted to existing academic literature on packaging waste governance before the early 1990s, and crosschecked this with extensive analysis of German and Dutch involvement in the EU packaging waste directive by Haverland (1999). Second, we analyzed the legal requirements as stated in the national legislation adopted prior to the EU legislation. For the 2012 situation, various reports by the enforcement agencies were available. In addition, semi-structured interviews were conducted with officials involved in the enforcement process for packaging waste legislation. In order to prevent a bias in findings, producers were also interviewed. The various Dutch and German producer and enforcement organizations involved were asked to provide names of those officials responsible for the topic at hand and willing to meet, and these respondents at times referred to other involved partners (snowballing). For both time periods, we interviewed representatives of both the key enforcement and producer organizations.

We score the 11 conceptual elements identified above using nominal scores, a + denoting presence (legalistic), a – denoting absence, implying a non-legalistic style. The interviewer scored the presence or absence of each element based on the interviews, and triangulated these insights with insights from the academic literature, as well as available reports and documents by the enforcement agencies. The interviews were semi-structured in nature, consisting of a topic list comprising open-ended questions about the 11 aspects of enforcement style. The two co-authors analyzed a selection of the interviews and compared this to the analysis made in order to ensure inter-rater reliability. The step from raw analysis per member state to full comparison – as reported in this article – was also double-checked by a second researcher. Each score is weighted equally as there are no persuasive reasons for differential weighting. The elements for which we were not able to retrieve the relevant data are not taken into consideration when counting the total score. The interpretation of the scores is outlined in Table 3, and is based on the underlying principle that the more elements present in a country, the stricter its enforcement style.

## 5. Enforcing packaging waste: German and Dutch starting positions

How can we label the German and Dutch enforcement styles for national packaging waste policy prior to the adoption of the European Packaging Waste Directive in 1994? National packaging policies were first established in Germany in 1991. The Netherlands – also in 1991 – quickly followed suit (as did Austria, Belgium and France; Cahill *et al.*, 2011).

**Table 3** Scoring of enforcement style

Total score +	Pragmatic/ legalistic style	Total score +	Types of regulatory enforcement styles
1–5	Pragmatic	1–2	<i>Passive</i> : An extremely permissive enforcement style that officials adopt when overpowered by the regulated. They cannot undertake enforcement action (e.g. substantive check) or impose sanctions on the regulated. This style can also be adopted by officials who do not care about compliance.
		3–5	<i>Persuasive</i> : A rather permissive enforcement style that officials adopt when aiming to ensure norm-compliant behavior using informal enforcement techniques, such as persuasion, advice, and negotiation. They have a considerable amount of tolerance.
6–11	Legalistic	6–8	<i>Insistent</i> : A rather legalistic style. The officials first try to use informal enforcement techniques to ensure norm-compliant behavior. When the regulated do not respond adequately to these informal enforcement techniques, the officials will have limited tolerance and will change over to sanctions. Checks are intensive and take place regularly.
		9–11	<i>Authoritative</i> : A very strict enforcement style that officials with no tolerance adopt and impose sanctions immediately. Checks are detailed, strict, and intensive and take place often.

Germany adopted the *Verpackungsverordnung* (Packaging Ordinance) and the Netherlands adopted the *Convenant Verpakkingen I* (Packaging Covenant I). These national packaging policies included comparable provisions on the end-of-life management of packaging waste and the enforcement of the packaging system. While the content of the pre-Directive packaging waste policies of both member states is comparable, the type of legislation used is not. While Germany used binding secondary legislation (*Verordnung*), the Netherlands used a *Covenant* – an agreement that is only binding under private law for those who sign the agreement. In both countries, producers were required to draw up implementation plans, but the organization thereof was carried out differently in both countries. In the Netherlands, individual packaging producers were required to do so. In Germany, the collective organization “*Duales System Deutschland*” (DSD)<sup>4</sup> was responsible for reporting on the implementation of the collection and recovery systems for packaging waste.<sup>5</sup>

In the Netherlands, enforcement was arranged via a “Packaging Committee,” which was formed by two members appointed by the packaging industry, two members appointed by the Ministry of the Environment, and one member appointed by both parties together (Haverland 1999, p. 72). This committee was responsible for drawing up a report on whether the implementation of the provisions in the Covenant was properly arranged. The check for completeness and reliability of the producers’ implementation plans was outsourced to the National Institute for Public Health and the Environment – an institute under the Ministry of Health, Welfare and Sport that conducts research, advises on policy, and helps implement policy (in Dutch: RIVM).

In Germany, enforcement was delegated to the states (*Länder*), which were free to decide which organizations would be involved in the process. Producers had to establish a collective organization for the end-of-life management of packaging waste, which had to send monitoring reports to the *Länder* authorities.<sup>6</sup> For example, in Bavaria, both the *Bayerisches Staatsministerium für Umwelt und Gesundheit* and the Bavarian environmental agency were responsible for the enforcement of packaging waste legislation.<sup>7</sup> How do these two enforcement styles score for the indicators we identified?

### 5.1. Check for completeness and reliability

When comparing the check for completeness and reliability in Germany and the Netherlands, both similarities and differences can be identified. First, while the Dutch inspectors did not use an assessment tool, the German officials did. Although the Dutch Packaging Covenant (Article 12) stipulated in broad terms what had to be included in the implementation plan, it did not provide a format for analyzing the implementation plans strictly and systematically.<sup>8</sup> By contrast, German officials analyzed the monitoring report according to the annex of the Packaging Ordinance, which included a list of requirements the report of the DSD had to meet. This annex guided the officials in assessing whether the monitoring report of the DSD was complete.

Concerning comparison with other data sources, the Dutch Packaging Committee checked the reliability of the implementation plans by comparing these with the alternative measures on the implementation of the Packaging Covenant (indicator “comparison with alternative data sources”).<sup>9</sup> However, because there is no information as to whether the monitoring report of the German DSD was compared with alternative data sources, this indicator was not taken into account when measuring enforcement styles.

In both member states, requests for additional information were made. In the Netherlands, individual producers were sometimes asked by RIVM officials to provide additional information in order to conduct a sufficient check of the implementation plans.<sup>10</sup> In Germany, the DSD has been asked for additional information.

### 5.2. Substantive check

A substantive check was not carried out in either of the two countries. No inspection tool was used, no time was spent on the substantive check, and actors in the packaging chain were not inspected.<sup>11</sup> In the Netherlands, the Packaging Committee was not allowed to examine the books of packaging producers and other companies in the packaging chain. This absence of substantive checking seems rooted in the lack of a clear legal basis in the Covenant.<sup>12</sup> As a result, the Packaging Committee was not able to substantively check the implementation plans. We were not able to find an explanation why the German officials did not out carry substantive checks, despite the strong legal basis.

### 5.3. Sanctioning approach

The two member states clearly diverge in their sanctioning approach. In the Netherlands, inspectors were not able to impose a formal sanction. As a consequence, there was no sanctioning manual and warnings were not used. The Packaging Committee provided for an informal procedure when the goals of the Covenant were not achieved. If the Packaging Committee reached the conclusion that the goals were not achieved, the Committee had to inform the parties involved. If the packaging chain agreed with the Committee, the implementation plans had to be revised. If the parties of the Covenant disagreed about the outcomes of the Committee, the Committee had to discuss the issue with the minister in order to identify an appropriate solution for the situation, as evidenced by article 17 of the Packaging Covenant. This informal negotiation process shows that the committee and the packaging chain had a rather equal position; neither party could refer to written legal procedures, legal rights, or duties. As a result, great value was attached to the arguments they put forward in the process. This informal procedure corresponded well with the voluntary character of the Covenant.

As opposed to the Dutch situation, German officials were able to impose severe formal sanctions on the DSD. The Packaging Ordinance provided for a manual that indicated what a Land could do when the DSD did not meet the objectives set out in the Packaging Ordinance. By means of sanction, when the DSD did not meet the objectives set out in the Packaging Ordinance, the *Land* authorities could revoke the declaration that the DSD instead of individual producers provide for end-of-life management of packaging waste – which constitutes a very severe sanction (Haverland, 1999, p. 73). Because of the lack of literature on how packaging waste legislation was enforced in the beginning of the 1990s, there is no information on the frequency of warning before sanctioning, and, therefore, this indicator is not considered further.

### 5.4. Relationship with producer

The voluntary character of the Dutch Covenant ensured that there was much room for discussion, advice, and negotiation with producers. The RIVM and the Packaging Committee could only use informal techniques in order to ensure that the packaging producers proved compliant with the Covenant. This informal relationship is illustrated by the presence of an arbitration committee: if the parties of the covenant disagreed about the Packaging Committee's findings in its annual report, the arbitration committee was asked for further research (Haverland 1999, p. 73). The RIVM and Packaging Committee were, however, dependent on the information provided by the producers, because they were not allowed to check the accounting by producers themselves.<sup>13</sup>

Although the German Packaging Ordinance did not have a voluntary character, it left some room for discussion. Given the lack of experience with packaging waste legislation, the DSD had many questions about the content of the legislation.<sup>14</sup>

The member states scored differently, finally, in the dependence of inspectors on producers. In the Netherlands, the RIVM and the Packaging Committee indicated that they felt dependent on the information provided by the producers, because they did not have any enforcement powers. They were not allowed to check the producers themselves.<sup>15</sup> By contrast, the German officials did not feel dependent on the information from DSD to check the compliance record. They were allowed to perform research themselves and to check the books of the DSD.<sup>16</sup>

### 5.5. Starting positions compared: Dutch passiveness versus German insistence

When evaluating the scores, the first thing that springs to mind is that the Dutch enforcement style (with a total score of 1) was much more passive compared with the German enforcement style (with a total score of 5; see Table 4). In line with the voluntary character of the Packaging Covenant, Dutch officials adopted an informal, passive enforcement style. The Packaging Committee, as the competent authority for the enforcement of the Covenant, lacked enforcement power to perform a substantive check or to impose formal sanctions on producers. Without a “stick,” officials could only attempt to ensure compliance using informal techniques, such as advice, persuasion, and negotiation.

The German enforcement style had a more closed character. German officials had severe sanctions at their disposal and were not dependent on packaging producers for information in order to check compliance with legalization. Additionally, the Packaging Ordinance, with its strong legal basis, provided for an assessment tool and a manual for sanctioning, which made the enforcement procedure more detailed and strict than the Dutch procedure. At the same time, German officials did not conduct a substantive check of the rules, and the enforcement practice allowed for considerable room for discussion with the regulated. All in all, we observe a Dutch passive enforcement style versus an insistent German enforcement style.

## 6. Enforcing packaging waste: German and Dutch current positions

To a large extent, enforcement styles are influenced by the nature of the legislation in place. We have seen that the starting positions of the Dutch and German enforcement styles were influenced by the difference in character of the legislation in place, that is the German Ordinance versus the Dutch Covenant. Against these divergent backgrounds, the two countries transposed the newly adopted EU Packaging Waste Directive after its adoption in 1994.

The Netherlands largely attempted to transpose the EU packaging waste directive via their existing Covenant. The European Commission criticized this approach, arguing that the rigidity and legal certainty of a Covenant as a legal instrument could be called into question (Voermans *et al.*, 2000). The Netherlands changed its transposition accordingly, adopting a legally binding decree in 2005.

As the new European directive to a large extent resembled the existing German ordinance of 1991, the German transposition process consisted of amending the existing ordinance. In the end, transposition of the EU directive was almost identical in the two countries.

As we know from other case studies, correct transposition of an EU directive does not necessarily say much about enforcement. Analysis of the EU Safety Data Sheets Directive illustrates that a very similar transposition situation in four member states was followed by very uneven enforcement by inspectors and compliance by industry in these same countries (Versluis, 2007). This implies that similar transposition in Germany and the Netherlands does not automatically lead to a similar enforcement practice. It is, therefore, crucial to continue this section with an analysis of the actual enforcement of this newly existing legislation since the mid-1990s. Do we, in response to the more detailed and stringent national legislation in both countries, also witness a change in enforcement styles?

Before analyzing the identified indicators, it is relevant to outline that with the adoption of new legislation, changes were introduced in the organization of enforcement. In the Netherlands, the Packaging Committee and the RIVM were succeeded by the “Agentschap NL” and the *Inspectie voor Leefomgeving en Transport* (ILT, the Dutch enforcement agency for the environment). In addition, the responsibility of individual packaging producers to provide implementation plans was transferred to the collective organization “Nedvang,” which is responsible, on behalf of all individual producers, for reporting on the implementation of the collection and recovery systems for packaging waste.

By contrast, in Germany, the contact between the individual *Länder* and the regulated entities is no longer restricted to the collective organization DSD. Since 2009, nine collective organizations have been active in Germany. These collective organizations, on behalf of the individual producers assigned to them, are required to report verifiable evidence on the collected and recovered packaging quantities to the individual *Länder*.<sup>17</sup>

### 6.1. Check for completeness and reliability

Similarities and differences can be found between the Netherlands and Germany concerning the aspect check for completeness and reliability. In both countries, inspectors use an assessment tool. In the Netherlands there is a common questionnaire that Nedvang has to complete, later assessed by officials of Agentschap NL.<sup>18</sup> In Germany there is the annex of the Packaging Ordinance, which requires a checklist as to whether the monitoring reports of the collective organizations address all issues.<sup>19</sup>

The member states differ concerning the aspect comparison with alternative data sources. A Dutch official of Agentschap NL carries out a reliability check by comparing the provided data on the number of collected, recovered, and recycled packaging waste with alternative sources from research institutions and tax authorities.<sup>20</sup> By contrast, the German officials do not compare the reports of the nine collective organizations with alternative sources in order to check whether the calculated mass balances are correct. It is too complicated for government officials to calculate the millions of weighing balances themselves.<sup>21</sup>

Finally, in both countries, officials regularly request additional information during the analysis of monitoring reports.<sup>22</sup>

### 6.2. Substantive check

First, neither of the member states uses an inspection tool.<sup>23</sup> Dutch officials indicate that no tools or manuals are used given the complex character of the substantive check. In order to analyze whether recovery targets are met, technical knowledge and research skills are needed. Therefore, a small team consisting of four officials of the Dutch enforcement agency for the environment is responsible for the annual substantive check in order to easily exchange knowledge and ensure flexibility.<sup>24</sup>

The second aspect of the substantive check concerns the hours spent on the substantive check. This is only rated positively in the Netherlands. Since 2009, the Nedvang monitoring report has been examined with respect to the content. In most cases, only a part of the monitoring report is under study. The focus of the study is determined by the degree of political attention, the related risks, the chance of improvement, or the signals the officials receive from the industry or the public. Dutch officials spend around 1500 hours on the investigation of the Nedvang monitoring report every year. These 1500 hours form a large part of the 5000 hours that are available for the enforcement of packaging waste legislation. Since 2009, the substantive check has held an important position in the enforcement strategy for waste management in the Netherlands.<sup>25</sup>

In Germany, government officials do not carry out the substantive check. Independent experts check the content of the monitoring reports by analyzing the input and output of packaging waste of these facilities. Sometimes officials accompany the independent experts in analyzing the content of the monitoring reports. This means that German officials spend few hours on the substantive check.<sup>26</sup>

The presence of the aspect high frequency of inspecting actors is also restricted to the Netherlands. As a part of the investigation of the Nedvang monitoring report, officials of the enforcement agency for the environment visit around 20 waste companies in the packaging chain to verify the reported figures each year (Inspectie voor Leefomgeving en Transport [ILT] 2010). The officials examine the books of the waste companies to gain insight into whether the recovery and recycling targets are met. Given that ILT officials have visited waste companies on a yearly basis since 2009, it is a recurring enforcement activity. Recurring activities are rare in enforcing waste legislation and, therefore, the annual visits for packaging waste legislation can be labeled as inspections with a high frequency. In Germany, however, there are only occasional inspections of waste companies by officials. The officials do not have a plan for inspecting waste companies. Sometimes officials join independent experts when they are auditing a waste company.<sup>27</sup>

### 6.3. Sanctioning approach

Strictly speaking, Dutch officials are able to impose a formal sanction on individual producers because the Packaging, Paper and Cardboard Management Decree addresses the individual producer as the responsible actor for achieving recovery and recycling targets. However, in practice, enforcement activities are directed at the collective organization, Nedvang. If recycling targets are not met at the collective level, enforcement should be aimed at individual producers (ILT, 2010, p. 15). However, the feasibility of doing so is limited because it is extremely difficult to establish whether an individual producer has met its targets (ILT 2010, p. 15). As a result, despite the fact that officials are formally capable of sanctioning individual producers, this rarely happens in practice because of a lack of information. The ability to impose a formal sanction is also present in Germany. If a report is of poor quality or if no monitoring report has been sent, officials can impose a fine on the collective organization.<sup>28</sup>

With regard to the second indicator, there is no sanctioning manual in the Netherlands.<sup>29</sup> German officials do have a manual for imposing a license revocation, which clearly limits the discretion of officials.

Finally, both countries also score differently in their practice of warning before sanctioning. German officials warn collective organizations only once by letter if the quality of the report is poor, or if no monitoring report has been sent. After this one warning, an administrative penalty will be imposed.<sup>30</sup> By contrast, the Dutch officials provide Nedvang with second and third chances to comply with the requirements when some parts of the report are missing or if the quality of the report is poor.<sup>31</sup> Such warnings hardly ever result in actual sanctioning. As described above, officials often find this difficult given the complexity of the topic, and, thus, the difficulty with which one can determine the seriousness of non-compliance.

### 6.4. Relationship with producer

Generally speaking, the relationship in the Netherlands is more positively evaluated than in Germany. One reason for this is that there is only one collective organization in the Netherlands, while there are nine in Germany. The presence of one collective organization makes it easier to meet regularly and build a relationship. However, in both member states, informal enforcement techniques are used, with discussion on the content of legislation playing an important role. This means that the indicator little or no room for advice, discussion, and negotiation is absent in both member states.

In the Netherlands, the officials of Agentschap NL have annual consultations with Nedvang after the check for completeness and reliability of the monitoring report, but do not advise the Nedvang.<sup>32</sup> In Germany, the officials also

regularly meet the representatives of the collective organizations, together with their independent experts. During meetings with the collective organizations they discuss the content of the legislation, but the officials take a formal attitude and there is little room for negotiation and advice.<sup>33</sup>

In both countries, the respondents indicated that the officials are not very dependent on the producer. The Dutch officials of Agentschap NL are not allowed to examine the Nedvang's books or those of any other actor in the packaging chain. However, they do not consider themselves dependent on Nedvang in order to check the compliance record, because ILT officials – who are allowed to check the accounting of Nedvang and other actors in the packaging chain – may be involved in the process. Both Nedvang and ILT agree that is easier to exchange information in an “open” and “professional” relationship.<sup>34</sup> Nedvang stresses that an open relationship in which regular contact and discussions are perceived to be great assets is especially important because of the political and media attention on packaging waste.<sup>35</sup>

German officials have the power to check the accounting of collective organizations and other waste companies. However, the officials do not use this enforcement power as this task is to a great extent carried out by independent experts in order to draw up the monitoring reports.<sup>36</sup>

### 6.5. Dutch and German current positions: “Insistence” is the rule

As evidenced by the focused comparison, both the Dutch and the German enforcement styles are insistent, with a score of 6 (see Table 4). The Netherlands scores particularly legalistic on formality, for example, the aspects “check for completeness and reliability” and “substantive check.” Both checks are intensive and detailed. However, at the same time, pragmatic aspects are found in the sanctioning approach of Dutch officials under the rubric of hierarchy. Dutch officials cannot impose a formal sanction on individual producers nor on Nedvang. Sanctions are a key aspect of the legalistic style as this style is an immediate, coercive, and strict style aimed at deterrence. Although Dutch officials cannot impose formal sanctions, they can impose informal ones. The report that ILT officials write on the substantive check is a powerful informal sanction. Given that this report is made publicly available, it can cause damage to Nedvang.<sup>37</sup> The fact that Nedvang itself states an aim to avoid open criticism from the ILT, illustrates the working of the report as a “stick.”<sup>38</sup> In addition, a pragmatic element is present in the relationship with Nedvang. Dutch officials provide room for discussion and negotiation, implying that they have a certain amount of tolerance in enforcing packaging waste legislation and are less rigid in imposing tasks on Nedvang within a certain time period. However, if Nedvang does not respond to their requirements, Dutch officials will not refrain from writing a critical report.

In Germany, most legalistic scores are found in the “check for completeness and reliability” and the “sanctioning approach.” German officials carry out an intensive, detailed check using an assessment tool and making information requests. The sanctioning approach is also legalistic. German officials can impose formal sanctions on collective organizations. Moreover, by warning collective organizations only once and using a manual, German officials show limited tolerance and a rather strict style. However, German officials do not immediately resort to sanctioning. The relationship with collective organizations has some pragmatic elements. Although discussions are perceived to be important, there is little room for negotiation and advice. German officials take a formal attitude and are more rigid in imposing tasks on collective organizations and setting deadlines than the Dutch. This might be linked to an inability to build up a more personal relationship with collective organizations because there are nine in Germany. Moreover, the substantive check by government officials is absent in Germany. Government officials do not carry out inspections themselves. Additionally, they have a great deal of discretion in determining whether they accompany the independent experts during the inspections. The observation that government officials never initiate inspections refers to a passive or pragmatic element in the overall insistent style.

## 7. Comparative analysis

When analyzing the current positions ( $t_1$ ), we found that both countries fall in the category “insistent” (Table 4). Notably, the Dutch enforcement style changed considerably, from a passive to a more insistent style. This implies that the Dutch enforcement style has converged toward a more legalistic enforcement style, similar to that in Germany. The EU Packaging Waste Directive changed the Dutch voluntary agreement into a legally binding decree and provided for a stronger legal framework. This increased the rigidity and the legal certainty of the Dutch packaging waste legislation and, as a consequence, the enforcement style. Dutch packaging waste legislation is no longer a compromise between

**Table 4** Comparing Dutch and German enforcement styles

Aspects	Elements	Dutch style $t_0$	German style $t_0$	Dutch style $t_1$	German style $t_1$
1. Check for completeness and reliability	Use of assessment tool	-	+	+	+
	Comparison with other data sources	n/a	n/a	+	-
	Request for additional information	+	+	+	+
2. Substantive check	Use of inspection tool	-	-	-	-
	Many hours spent on substantive check	-	-	+	-
	High frequency of inspecting actors in packaging chain	-	-	+	-
3. Sanctioning approach	Ability to impose formal sanction	-	+	-	+
	Use of manual	-	+	-	+
	Low frequency of warning before sanctioning	n/a	n/a	-	+
4. Relationship with producer	Little or no room for advice, discussion and negotiation	-	-	-	-
	Either negligibly or not dependent on producer	-	+	+	+
<b>Total number of indicators taken into account</b>		9	9	11	11
<b>Total score + Enforcement style</b>		1	5	6	6
		Passive	Insistent <sup>†</sup>	Insistent	Insistent

<sup>†</sup>Based on Table 1, we score an enforcement style as insistent from 6 onwards. Here we opt for scoring the German enforcement style as insistent with a score of 5, because only 9 indicators (and not 11) were taken into consideration.

the packaging industry and the government. As a result, officials are no longer “overpowered” by the packaging industry, nor they are dependent on information from the packaging producer to check the compliance record. Because of their more independent position, they are able to adopt a more legalistic style. A clearly defined legal framework demonstrates the narrow scope of what is permitted, allowing officials to determine more easily whether the packaging producers comply with the legislation, and, thus, allowing a more legalistic approach.<sup>39</sup>

By contrast, the German enforcement style did not undergo major changes, and remained insistent. The first German Packaging Ordinance already had a strong legal basis, which resulted in solid enforcement powers, such as the ability to impose (severe) formal sanctions. However, detailed and stringent EU legislation has impacted on the level of legalism to some extent. In reaction to the Packaging Waste Directive that provided for a well-defined legal framework, the Germans have set up a system in which independent experts are appointed to monitor the end-of-life management of packaging waste and to insert the data into an Internet-based database that is available to officials. By introducing this system, Germany provides for procedural requirements that enhance the transparency of the monitoring process. As a result of these procedural requirements, the officials gain more insight into the compliance record, which enables them to enforce the legislation more strictly. These procedural requirements had an impact on the enforcement style, but only marginally.

When comparing both enforcement styles over time, patterns of persistence are also observed. Most patterns of persistence are obviously found in the German style, but despite the rather major change from a passive to an insistent style, we see patterns of persistence in the Dutch case as well – for instance the lack of judicially enforceable objectives. Despite the adoption of detailed and stringent packaging waste EU legislation, Dutch officials still lack the capacity to impose formal sanctions on the packaging industry when they do not comply with recovery and recycling targets. Moreover, the avoidance of conflict escalation is still visible in the relationship the officials have built up with Nedvang. Despite the strong legal basis of the Dutch Decree and the enforcement powers of officials, there is still a pragmatic relationship that leaves room for discussion and negotiation. Although Dutch legislation has become more detailed and stringent, both parties agree that the legislation leaves room for various interpretations. By seeking to maintain an open and professional relationship officials try to avoid conflict.<sup>40</sup> Despite transforming to a more insistent style, Dutch officials are not firm believers in formalism. When they carry out the substantive check, officials do not restrict themselves to the letter of the law by only investigating the achievement of the recovery and recycling targets. The officials seek to

understand the collection, recovery, and recycling processes in order to propose improvements to the end-of-life management of packaging waste in general.

## 8. Conclusion

This article has analyzed German and Dutch enforcement styles in the field of packaging waste policy before and after the adoption of strict and detailed EU legislation in this sector. We aimed to provide a test of Kelemen's hypothesis on the effects of Eurolegalism on enforcement of common EU rules. Can we expand Kelemen's claim beyond its current judicial dimension: do domestic enforcement styles converge into a more legalistic enforcement style?

As a first and straightforward answer to this question, our focused comparison indeed sustains Kelemen's hypothesis. Our case study shows that the adoption of more stringent and detailed EU packaging waste legislation has caused the Dutch enforcement style to become more legalistic: moving from a persuasive to an insistent style. This finding is in line with the observation by Rehder (2009, p. 231) that in the field of industrial relations, a specific German path and style of adversarial legalism is developing. But particularly, the case of the Netherlands illustrates that stricter EU legislation precludes the use of more informal approaches, such as the Covenant, which in turn influenced the domestic enforcement style.

By carefully operationalizing the concept enforcement style we were able to illustrate, however, that conclusions on the convergence of domestic enforcement styles need to be drawn up with care. Whereas the Dutch enforcement style has become more legalistic, we have to be very cautious in labeling this as *convergence*. Opening the black box of domestic enforcement practices – and operationalizing the concept into 11 measurable indicators – illustrates that different countries can be labeled as having an insistent style based on different elements. The German style is mostly insistent because of its sanctioning approach, while the Dutch insistent style is particularly a matter of completeness and its substantive check of compliance.

Translating the Eurolegalism argument to enforcement styles would lead us to expect sanctioning approaches to become stricter. The Dutch style illustrates that its "strictness" lies more in the assessment and inspection approach, and less in its attitude toward sanctioning. The Dutch belief in the avoidance of conflict escalation and alternatives for formal court procedures is still visible in the relationship between the Dutch officials and Nedvang. Despite the adoption of an insistent style, Dutch officials still provide room for discussion, attempting to avoid conflict by seeking to maintain an open and professional relationship with the regulated – in contrast to Germany. Additionally, the emphasis the Dutch put on conformity to the spirit rather than the letter of the law is reflected in the way Dutch officials investigate whether Nedvang complies with legislation. Substantive checks are not only carried out to apply the rules by determining whether packaging producers meet recovery and recycling targets, but also to improve the end-of-life management of packaging waste as such.

In sum, our case study illustrates that the conclusion that domestic enforcement styles converge to a more legalistic style, as a result of the introduction of more stringent EU legislation, needs to be unpacked and handled with care. The analysis shows that indeed, common European legal inputs could serve as "legal irritants" rather than "legal transplants," effectuating partial changes rather than clear convergence (Teubner, 1998). The path to more legalistic enforcement styles in the Netherlands and Germany is not the same. Beneath the surface of the shared "insistent style," we see case-specific patterns. This leads one to wonder whether such varied responses in the face of EU legislation may also apply to other aspects of Eurolegalism, such as private litigation. This puts forward the call for further unpacking and empirical testing of the effects of Eurolegalism at a member state level, going beyond an analysis of aggregate indicators. This unpacking of domestic enforcement styles will help to further increase our understanding of the meaning of international regulatory input on the work of domestic inspectors.

## Notes

1 Note, however, that Kelemen (2011) did address the rising importance of public enforcement for cases of EU securities regulation and competition policy.

2 According to the Treaty on the Functioning of the European Union, "a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods." In practice directives differ greatly with respect to the discretion they offer to national authorities. While so-called framework directives provide great flexibility, other directives are highly prescriptive and detailed, to the point that they resemble regulations (Héritier *et al.* 2013, p. 61).

3 Return stands for the taking back of products from end users. Collection refers to the gathering of waste and the preliminary sorting and storage of waste for the purposes of transport to a waste treatment facility.

4 *Duales System Deutschland* is an industry-funded system that only collects packaging material from manufacturers who pay a license fee to DSD.

- 5 Interview #11, 22 October 2012, Köln.
- 6 Interview #4, 06 September 2012, Den Haag
- 7 Interview #9, 25 September 2012, München
- 8 Interviews #2 and #3, 31 August 2012, Den Haag
- 9 Interviews #2 and #3, 31 August 2012, Den Haag
- 10 Interviews #2 and #3, 31 August 2012, Den Haag
- 11 Interviews #2, #3 (31 August 2012, Den Haag), #9 (25 September 2012, München), and #11 (22 October 2012, Köln).
- 12 Interview #1, 29 August 2012, Den Haag
- 13 Interviews #2 and #3, 31 August 2012, Den Haag
- 14 Interview #8, 25 September 2012, Bremen
- 15 Interviews #2 and #3, 31 August 2012, Den Haag
- 16 Interview #95, 25 September 2012, München
- 17 Interview #9, 25 September 2012, München
- 18 Interview #4, 06 September 2012, Den Haag
- 19 Interview #9, 25 September 2012, München
- 20 Interviews #2 and #3, 31 August 2012, Den Haag
- 21 Interview #9, 25 September 2012, München
- 22 Interview #7, 20 September 2012, Rotterdam
- 23 Interviews #1 (29 August 2012, Den Haag) and #9 (25 September 2012, München)
- 24 Interview #1, 29 August 2012, Den Haag
- 25 Interview #1, 29 August 2012, Den Haag
- 26 Interview #9, 25 September 2012, München
- 27 Interview #9, 25 September 2012, München
- 28 Interview #9, 25 September 2012, München
- 29 Interview #1, 29 August 2012, Den Haag
- 30 Interview #9, 25 September 2012, München
- 31 Interviews #2 and #3, 31 August 2012, Den Haag
- 32 Interviews #1 (29 August 2012, Den Haag), #2, #3 (31 August 2012, Den Haag) and #7 (20 September 2012, Rotterdam)
- 33 Interview #9, 25 September 2012, München
- 34 Interviews #1 (29 August 2012, Den Haag) and #7 (20 September 2012, Rotterdam)
- 35 Interview #7, 20 September 2012, Rotterdam
- 36 Interview #9, 25 September 2012, München
- 37 Interview #1, 29 August 2012, Den Haag
- 38 Interview #7, 20 September 2012, Rotterdam
- 39 Interview #1, 29 August 2012, Den Haag
- 40 Interview #7, 20 September 2012, Rotterdam

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