
*The European
Economic
Governance: Soft law
v Hard law.
The case of Italy.*

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Abstract

The global financial crisis has largely contributed to the implementation of structural reforms in the European South, particularly regarding labour and pensions, fields under the formal jurisdiction of the national governments. The intrusion in domestic affairs on the one hand and the rapidity of implementation of EU-requested reforms between 2011 and 2012 on the other, requires explanation. Several studies have focused on providing practical explanations; for instance, the conditions set by financial aid programmes, reputational concerns, crisis-induced hypothesis, socialization etc. On the contrary, this research will provide an insight on the tools employed by the EU to achieve such reforms. The aim of this comparative cross-case study is to investigate the effectiveness of soft law vis à vis hard law in the EU. As states grow increasingly interdependent, several sensitive domestic policy areas, such as labour policy, become of relevance for all member states and require the implementation of fast-track reforms. During the 2011-12 timeframe, the EU has resorted to soft law tools in order to achieve quick results. After the crisis, European economic governance has shifted towards hard law measures enhancing surveillance and control over Member States' budgetary and economic policies. In sum, this research will investigate and compare the implementation process of two main labour reforms: Fornero Reform (2012) and Jobs Act (2015) and the role the EU has played in the formulation and implementation process of both respectively, through soft law in the first case and hard law in the second.

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1. Introduction

On the verge of one of the most severe economic crises to ever hit the world and the first one to truly threaten for the European Union (from this point onwards EU), many countries had to deal with issues linked to their external as well as their internal debt. While some EU member states were struggling to obtain financial support from European institutions and were willing to enter formal bailout agreements others, such as Italy, appeared resistant to the involvement of the EU or of the International Monetary Fund (IMF).

The global financial crisis struck Europe unexpectedly and largely contributed to radical changes within member states' (MS) economic and welfare policies while also significantly affecting the framework of the European economic governance. The Treaty on European Union, dating back to 1992, originally assigned monetary policy to the EU level and left fiscal and structural policies in the hands of member states. (Begg, 2012, 108) However, after the establishment of the Economic Monetary Union the interdependence amongst European countries continued to grow. Aside from the Stability and Growth Pact and Europe 2020 (established in 2010), which provided guidelines for domestic economic policies, European countries were largely left in charge of their affairs as the EU was capable of releasing mere recommendations and non-binding outputs on the matter. (Bekker & Palinkas, 2012, 362) Consequently, compliance was rather weak and has led to free-riding problems which were made evident in the circumstance of the Eurozone crisis. (Begg, 2012, 108) Countries largely diverged when it came to deciding how to handle the crisis and which measures were going to be more effective. The gap between the Southern and the Northern states further widened.

In light of these developments economic governance within the EU has undergone extensive changes through the creation of new crisis-solving tools such as The European Stability Mechanism, the Six Pack, the Two Pack, the European Semester and the Fiscal Pact. (Begg, 2012, 117) These measures enhanced surveillance and were intended to increase compliance and represent an institutional turnover within the EU. Several scholars sustain the inversion of the trend within the EU from soft law governance towards increased compliance and tools more centred on hard law. The aim is unequivocally that to avoid the domino effect an extensive economic crisis can unleash upon member states and the Union itself. For instance, employment policies are strongly affected by the Macroeconomic Imbalances Procedure as part of the Six-Pack Legislation. (Bekker & Palinkas, 2012, 363) The latter aims to introduce preventive and corrective measures when

macroeconomic imbalances within MS are identified on the basis of a system of indicators. (Bekker & Palinkas, 2012, 362)

Nonetheless, as these mechanisms were only established once the situation truly deteriorated and were mainly aimed at containing potential future economic turmoil. Between 2011 and 2012 the EU managed to pressure members towards the introduction of much needed structural reforms via different means. In order to achieve fast-track results the EU resorted to unconventional measures such as soft law, emblematically represented by implicit conditionality in this study.

Welfare state reform has always been a sensitive subject, especially in times of economic and financial turmoil. Labour, pensions, social policy are by definition the first economic sectors to suffer budget cuts and downsizing. When the financial crisis hit Europe all member states were unavoidably involved, however several Southern-Mediterranean countries were in need of more radical and drastic reforms in order to efficiently cope with their internal and external debt. The latter entailed severe structural transformations affecting labour, pensions as well as social policies.

The implementation of such policies can often generate increasing levels of resistance. From this point of view, structural reforms are really hard to implement firstly, because it forces political agents to abandon previously established short-term solutions. The crisis provides a perfect window of opportunity for such innovation. For instance, between 2011-2013 similar structural reform packages have been implemented in Ireland, Greece, Italy, Spain and Portugal affected by external and internal debt. What is so peculiar about the crisis is also the fact that it created a political gap within the leadership in Italy and brought a technocratic government to power, strongly endorsed by the EU itself. In other countries, on the other hand, the election of leftist governments has produced attrition between Brussels and member states. (Featherstone, 2016, 48)

As many studies have focused on the economic challenges that ensue in times of crises as well as the drivers and obstacles vis à vis the implementation of structural reforms, this research intends to shed light over the involvement of the EU in the reform packages adopted in the case of Italy first in 2011- 2012 through soft law measures and in 2014-2015 through the newly established surveillance framework briefly outlined above and identifiable as hard law.

More specifically, the focus of the study will fall onto the norms used by the EU to issue its policy recommendations to member states. Furthermore, the comparative case study involving the Italian reforms in two different biennia could provide fertile soil for deepening the understanding and evaluation of the effectiveness of non-binding norms, i.e. soft law, in comparison to the binding ones, i.e. hard law.

The ultimate aim is to assess whether the type of norm selected impacts its degree of effectiveness, operationalized in this study as compliance, and why. The research will attempt to provide an explanation for the mechanisms that trigger the effectiveness of the norm. It also intends to investigate whether the mechanisms that trigger compliance in each case have an impact on the potential different rates of compliance between soft and hard law.

This research will be structured in the following manner: firstly, it will provide a definition and classification criteria for both soft and hard law setting up a theoretical framework for analysis. Norms will be classified according to several criteria: legalization, the softness or hardness of the norm, their purpose. Additionally, the norms will be classified on the basis of the mechanism they employ, distinguishing between reactive and proactive reinforcement.

Secondly, in order to provide more background on the subject of the study, it will present and excursus on structural reforms and the obstacles to their implementation.

The research design section will define the methods and sources of the study as well as set out the questions that this research intends to answer. In order to investigate potential answers to these questions this study will then comparatively analyse the implementation of two labour reforms in Italy. The focus will be on two main timeframes: the 2011-2012 Fornero Reform and 2014-2015 Jobs Act reform. The analysis will concentrate on EU's involvement in the aforementioned policy outcomes via respectively soft and hard law and attempt to discover which was more effective in generating the adoption of EU recommendations at national level and why.

2. International norms: the theoretical framework for analysis

The EU uses a variety of norms to influence member states, to foster inter-state coordination and to increase the convergence of national policies across the EU. There are different policy areas for which the EU enjoys exclusive competence. The latter means that the EU can legislate in the areas specifically assigned to it by the treaties such as transport policy, fishery policy, competition rules etc. (Art 3, TFEU) In other policy areas the EU does not necessary enjoy such power therefore, in order to understand the shift in economic governance of the EU prior and post crisis, it is first necessary to distinguish and classify the type of norms used by the EU. Most scholars provide a distinction between legal and non-legal rules however, for the purpose of this study a more detailed classification is required.

The theoretical framework for analysis will build upon the classification and criteria provided by several scholars. In order to focus specifically on conditionality aimed at the implementation of structural reforms it will be necessary to identify the different classes of international norms.

Firstly, it will draw a distinction between legal and non-legal norms on the basis of the criteria for legalization outlined by Abbott, Keohane, Moravcsik and Slaughter. (2000)

Secondly, it will be necessary to identify which legal norms are to be classified as hard law and which should be considered soft law with. Within the latter, a further distinction between the different type of conditionality will be made: external and internal conditionality, the former applying to aspirant states and the latter to member states. This distinction is necessary since the conditions necessary to become members of the EU have much higher compliance rates due to the magnitude of the reward represented by EU membership. It is much more difficult to understand and analyse the effectiveness of conditionality when applied to states that are already members of the EU since they have less incentives to comply with EU's requests.

Next, section 2.3 will distinguish international norms according to their purpose. The classification will distinguish between legislative, structural, policy-making, and regulatory norms.

Finally, section 2.4 will focus on the mechanism behind the effectiveness of the norms which are mostly based on a system of sanctions and rewards. Two main mechanism are identified: reactive and proactive reinforcement.

2.1 Legal and non-legal norms

To this day, most scholars rely on the indicators outlined by Abbott, Keohane, Moravcik and Slaughter in issue 54 of the International Organization Journal in 2000. The authors provide detailed criteria for different levels of legalization of an international norm. They identified three different dimensions of legalization:

1. **Obligation:** a norm contains an obligation when states to which it is targeted, are legally bound by its provisions and under scrutiny of the rules and procedure of international law;
2. **Precision:** a norm is precise when it defines unequivocally, and without any ambiguity, the behaviour that states are required, authorized or prescribed to carry out;
3. **Delegation:** a norm contains a delegation element when the state, identified in the norm, has also been provided the necessary authority to interpret, apply or implement the norm in question.

(Abbott et al., 2000, 401-402)

Each of these criteria varies according to different degrees representing a sort of continuum. At its extremity, we would find a norm where each of these characteristics is maximized representing hard law at its highest degree and on the other side one where all of these are minimized identifying non-legal norms. (Abbott et al., 2000, 402)

This classification allows us to classify norms in terms of their content and form, not the outcomes they produce and clearly distinguish between legal and non-legal norms.

For instance, a norm that is characterized by a low degree of obligation, precision and delegation is to be defined as non-legal. (Abbott et al., 2000, 407) In order to be considered legal, the norm needs to score high on at least one of the dimensions. (Abbott et al., 2000, 406-407)

This first classification is necessary to pinpoint the differences between hard law, soft law and non-legal norms. Since the focus of the first case is conditionality, an un-defined and under-studied type of norm, it will be necessary to first ensure that the norm under exam is indeed a legal norm and not a form of political pressure exercised upon the member states to foster compliance.

2.2 Soft law versus Hard law

2.2.1 What is soft law?

Soft law began developing in the 1970s however, it is still a very contested concept as most lawyers argue that law is either hard i.e. binding, or not law at all. (Cini, 2001, 194) Its nature lies somewhere in between legislation and general policy recommendations international institutions can provide, remaining a very elusive and contested concept for all legal experts and scholars. (Cini, 2001, 194)

In order to understand the development of soft law one must fully grasp the legal framework of governance within the EU. Two of the main principles regulating governance within the EU are the principles of subsidiarity and proportionality. (Korkea-Aho, 2013, 161) The latter are intrinsically necessary to protect states prerogatives when it comes to implementing measures that could potentially compromise or affect national sovereignty. (Korkea-Aho, 2013, 161) The Edinburgh European Council was the first occasion during which states agreed to follow those principles and to use non-binding tools to govern alongside the formal binding ones within the EU. Later on, the Lisbon European Council in 2000, revised and revisited in 2005, has brought soft law back on the agenda. (Tholoniati, 2010, 93)

The Lisbon encounter allowed to bring soft law back into use within EU aiming to increase flexibility and respect the diversities of each member states. On this occasion, the Open Method of

Coordination (OMC) was established in order to deepen integration without compromising regional diversities. (Tholoniati, 2010, 93)

Soft law measures were considered to be more suitable for EU policy making vis à vis member states. The latter is due to the fact that soft law consists of rules that are not necessarily legally binding but do have legal effect if they hinder the adoption of the prescribed measures at domestic level. (Trubek et al., 2005 as cited in Korkea-Aho, 2013, 160) It means that EU institutions cannot enforce these rules and regulations allowing member states to preserve their autonomy. Despite how widespread this type of norm is, article 38 of the International Court of Justice Statute does not provide a definition nor identify soft law as possible source of international law. As regards a definition within European law, article 288 of the Treaty on the Functioning of the European Union also does not include soft law among the types of secondary legislation. In the absence of a clear definition we will rely of the typology of soft law norms established by fellow scholars. There are three main conceptualizations of soft law according to Terpan (2015):

1. **Non-binding legal norms with legal relevance.** Some scholars identify soft law with non-treaty agreements which constitute non-binding norms with legal relevance. A norm has legal relevance if it meets one of the following conditions:
 - a. A court can use the norm to interpret an existing rule;
 - b. It is framed and construed to resemble hard law;
 - c. It can have the same impact of a hard law norm i.e. it generates compliance;

Legal relevance is crucial to classify a norm as law despite the lack of enforcement (i.e. their not-binding nature). (Terpan, 2015, 70-71)

2. **Binding norms with a soft dimension.** Soft law can also be interpreted as those legal commitments that have a soft nature, specifically related to their content. These are those commitments derived from a legal source and therefore, creating an obligation, but their content lacks precision. For instance, it could be general treaty provisions, objectives or optional commitments. (Terpan, 2015, 71)
3. A third view identifies soft law as comprising both **legally binding and non-binding norms** with legal relevance.

Binding norms		Non-binding norms	
Binding norms	Binding-norms with a soft dimension	Non-binding norms with legal relevance	Non-binding norms
Hard law	Soft law		Non-legal norms

Figure 1: Classification adapted from Terpan, 2015

Non-binding norms without any legal relevance are usually considered non-legal norms. They are generally not classified as law due to the fact that they cannot be enforced nor are they precise enough to be perceived as hard law norm. As mentioned before in order to be considered legal a norm must at least have a high level of obligation or precision. Non-binding norms without legal relevance by definition lack on all three elements of legalization: obligation, precision and delegation.

However, even if a soft law norm is not binding, it can still impose constraints upon member states since it can produce diverse legal effects. Firstly, soft law can be transformed in hard law which by definition is binding upon the involved parties. Moreover, legal effect is created through the expectancy established by soft law itself. The former leaves room for the implementation of the provisions of the norm whilst the latter creates the legal expectations which can be later transformed into hard law. Legal effect of a soft law norm is created by providing recommendations and expectancies which demand specific implementation measures. (Terpan, 2015, 75) Consequently, hard law norms can be more easily negotiated and implemented. More often than not, soft law is a necessary step in order to pass hard law measures. It makes the implementation of reforms much easier as actors find it easier to accept hard law measures when common ground has been found and results are expected.

However, soft law does not necessarily need to become hard law in order to produce compliance. Ultimately, the fundamental difference lies between soft law and a non-legal norm lies in the fact that the latter does not set precise objectives and does not have an obligation nor an enforcement mechanism. For instance, it could be a declaration by heads of state on a certain issue. (Terpan, 2015, 75)

Nonetheless, soft law does not necessarily entail the presence of a strong enforcement mechanism. In order to further define the criteria for distinction between soft and hard law it is useful to make reference to the classification of the assessment criteria development by Terpan (2015):

Type of norm	Nature of the obligation	Nature of the enforcement mechanism
Hard Law	Hard obligation	Hard Enforcement
Soft Law	Hard Obligation	Soft Enforcement
		No Enforcement
	Soft Obligation	Hard Enforcement
		Soft Enforcement
No Obligation	Soft Enforcement	
Non-legal norms	No Obligation	No Enforcement

Figure 2: Classification adapted from Terpan, 2015

Soft law can provide a new institutional, administrative and knowledge-sharing infrastructure that allows to negotiate conflicting interests MS may have. (Tholoniati, 2010, 112) Furthermore, there are several mechanisms that allow soft law to make a difference: through shaming MS will be forced to at least attempt to comply with the provided guidelines in order to steer away from criticism both from fellow member states and the European institutions. Secondly, by imitating other states' techniques to achieve the common goals, national policy makers are encouraged to adhere to the same policy model. (Trubek et al, 2005, 348) Networking also contributes to the increase of communication and exchange of ideas among MS, for instance through the formulation of National Action Plans within the OMC, but also between entities outside of the governmental networks which increases knowledge sharing and facilitates mutual learning and exchange of best practices. (Trubek et al, 2005, 358)

It brings different stakeholders together and gives them the freedom to adapt to the requirements at their own pace and in their own way while erasing distances between MS and eliminating boundaries among policy areas encouraging experimentation, innovation and information-sharing. Finally, it also allows to witness the example of the best performance and obliges actors to questions their approaches in a free and unconstrained manner which would be impossible with the use of hard law.

Despite its many advantages soft law in general has one main flaw, aside from non-compliance, it can often result in "soft compliance" since the implementation of said recommendations and

nationally formulated plans rests entirely on the goodwill of MS. (Cini, 2001,194) The latter might result in inconsistent policy outcomes. It often tends to bypass the regular democratic processes established and the national level (for instance, parliamentary approval) and tends to be inaccessible to the input from the public, putting bureaucrats into a predominant role within the policy-making process. (Cini, 2001, 194)

Several scholars have argued that soft law is a good instrument because it protects national autonomy and leaves wiggle room for the implementation of EU recommendations in a more flexible manner adapting them to national policy regimes. (Korkea-Aho, 2013, 157) It also involves smaller delegation of sovereignty and leaves room for speedy, simple and effective results. (Trubek et al, 2005, 356) For this reason more states, even the most resistant ones, might be in favour. Moreover, it also increases transparency and facilitates agenda-setting.

Some on the other hand, believe that efficient EU integration required uniformity and straightforward guidance, measures to ensure compliance and battle the lack of it and therefore, sustain that soft law has many weaknesses.

As such, non-binding legal measures may lack precision in their content and can be not fully reliable for the purpose of establishing plans for action and implementation. Finally, while it can certainly establish expectations it may also fail to provide change. (Korkea-aho, 2013, 168)

In many policy areas, the EU has unavoidably made use of both soft and hard law measures in a hybrid way. For instance, the fiscal policy coordination has a non-binding component which leaves room for flexibility but also present the deterrent of sanctions in case the fixed and binding excessive deficit rules are disrespected. (Trubek et al, 2005, 362)

2.2.1.a EU Soft Law in Practice: Conditionality

External Conditionality

In his 2015 article, Sacchi provides a general definition of the concept of conditionality:

“Conditionality can tentatively be defined as the granting of some good by a party (or a coordinated group of parties) to a second party that deems such a good valuable, linked to the latter party’s compliance with some behaviour valued by the former party.”

Conditionality is a tool of governance mostly used during accession talks with aspirant member states. The EU has always been quite effective in pressuring candidate states towards the implementation of several reform packages, required for the *acquis communautaire*, by the means of

conditionality. (Grabbe, 2014, 41) Despite the latter, it is often criticized as an attack on national sovereignty which unavoidably decreases compliance. (Smith, 1998, 256)

A lot of international organizations make use of conditionality given their lack of enforcement powers. Conditionality is an excellent tool to achieve compliance when the organization lacks the appropriate delegation power to enforce it upon one of its member states. In sum, the international organization sets out conditions to be satisfied by a target state which can either accept or reject them. On the basis of its response the international organization will either provide a reward, deny it or sanction the member state through the tools at its disposal. (Schimmelfennig, 2002, 3)

Schimmelfennig and Sedelmeier (2004) developed a model that attempts to explain which are the variables that make conditionality effective in the process of ensuring adherence to EU laws and principles. The latter is based upon the simple assumption that reforms will be implemented if the domestic costs of such process are smaller compared to the benefits EU memberships can provide. This relies on the level of determinacy of the conditions, size and speed of rewards, the credibility of threats and promises and the size of adoption costs. (Schimmelfennig & Sedelmeier, 2004, 663)

It means that if the implementation of the reform will not make the state incur into significant political and financial costs but will ensure the reward of EU membership in next future, the aspirant state will be more willing to comply. The latter model however, as it relates to states interested in accession, does not really apply to cases where conditionality is used to pressure member states to remain in the Eurozone or comply with its recommendations. (Featherstone, 2016, 50)

Several studies have attempted to investigate how EU conditionality works and how it generates compliance but more specifically, why do the reforms the EU aims to see implemented via conditionality tend to remain in place even after accession. Some might rightfully think that post-membership the EU's leverage over aspirant states is less strong however, this does not seem to be the case. The process was first witnessed in the early 2000s during a democratization spike spread across several newly independent European countries. These states, part of the enlargement that took place in 2004, did not overturn any of the EU rules implemented prior to accession. Some of the explanations of this phenomenon that scholars have presented have to do with socialization, legislative capacity and/or sanctions that were enforced against non-compliance. (Sedelmeier, 2008, 807) More specifically, newly established member states could be more damaged by potential criticism coming from the Union and tend to act according to the social and behavioural constraints.

They also mostly have all the necessary processes already in place for keeping the requested reforms in place.

While accession conditionality has a strong enforcement mechanism including sanctions, in cases where conditionality has been applied internally within the EU, it has radically different features.

Internal conditionality

Conditionality has developed itself as a practice able to pressure member states towards compliance with policy recommendations issued by the EU in the presence of favourable circumstances. It usually takes form of memorandums of understanding, recommendations, informal letters and other political instruments. (Sacchi, 2015, 79)

As regards the content, EU is ordinarily explicit and precise about its requirements in terms of policy outcomes. However, the same does not apply to sanctions. Consequently, it is necessary to distinguish between implicit and explicit conditionality.

Implicit conditionality lacks an enforcement mechanism and any potential sanctions are mutually understood but not formally stated. It might be defined as a mutual understanding which however, does not go through the official formal channels (for instance, through formal soft law coordination via the OMC) and holds the status of a policy recommendation. Implicit conditionality will be the main focus of this study as it was used by the EU towards Italy in 2011.

Scholars have diverging opinions over the status of conditionality and whether it can be considered law in any form, soft or hard. According to the Terpan’s categorization outlined above, conditionality would fall in the category of soft law with either a hard obligation and no enforcement or soft obligation and soft enforcement mechanism. For practical purposes, the categorization follows the logic illustrated below:

Soft Law	Hard Obligation	Soft Enforcement
		No Enforcement
	Soft Obligation	Hard Enforcement
		Soft Enforcement
	No Obligation	No Enforcement

Figure 3: Adaptation of Figure 2

The precise classification in one of the two categories will need to be made on a case by case basis. For the purpose of this study, the focus will be on implicit conditionality which presents a hard obligation but no formal enforcement mechanism. Policy requirements are formulated in a clear and precise way and directed towards a specific addressee however, any sanctions in case of non-compliance are not explicitly listed. Arguably, implicit conditionality acts as a precursor to hard law i.e. to the implementation of the requested policy recommendations within the domestic legal framework.

Conditionality is generally not compiled with due to the absence of a strong and formal enforcement mechanism. Originally, the governance of the Eurozone was mainly informal, that is governance carried out outside the EU treaty framework. (Christiansen, 2013, 1198) However, the magnitude of the EU sovereign debt crisis seems to provide evidence for the ineffectiveness of such governance tools. Several scholars argue that the lack of respect and enforcement of the Stability and Growth Pact was one of the main catalysts for major economic issues as well as spill-overs in neighbouring countries. Despite the criticism, once the conditions worsened around 2011-2012 informal agreements taking form of implicit conditionality managed to produce results rather quickly. Furthermore, it would also be quite hard to ask all members to comply to strict fiscal and macro-economic criteria in light of the deep and persisting gap between Southern and Northern EU states. In spite of the fact that informal means of governance have been depicted as “unrule of law” in the past, nowadays in terms of efficiency they can sometimes be more viable and faster than old-fashioned instruments, especially, but not exclusively, in times of crisis since they can also provide a less constraining arena for negotiation. (Christiansen, 2013, 1202) The degree of democracy and transparency informality can provide is questionable however, it is not a matter to be treated in this study.

2.2.2 What is hard law?

On the basis of the aforementioned criteria set up by Terpan (2015) and other scholars we can easily identify hard law with norms that are precise in their content, binding, create an obligation upon the parties and have a strong enforcement mechanism. Hard law measures are characterized by uniformity, justiciability and often even sanctions in case of non-compliance. (Trubek et al., 2005, 344)

Hard law has clear legal sources as defined the Oxford Dictionary of Law (2015) it comprises:

“those legal obligations, found either in treaties or customary international law that are binding in and of themselves”

In practice, hard law comprises treaties, regulations and directives and decisions. (FCA, 2016, 19) The treaties constitute primary legislation and they have to be ratified by MS. The decision-making powers and the necessary procedures for the creation and implementation of EU law are laid out in the treaties.

In order to be applicable and binding, *regulations* do not have to be incorporated in the national law of MS. *Directives* are binding as regards the policy objectives they set however, the MS has the prerogative to decide how to incorporate the norm into its national legal regime. (FCA, 2016, 19) The Commission generally monitors implementation. In case of non-compliance within the prescribed deadlines the Commission is entitled to resort to the infringement procedure laid out in article 258 of the TFEU and initiate proceedings against the state in question in front of the European Court of Justice. Finally, decisions are also directly applicable and binding on the member state. They may contain rights, obligation, or request a certain action to be implemented or revoked. (FCA, 2016, 19)

EU hard law governance has been commonly described as the Community Method. The Community method was originally developed in order to overcome some of the deadlock created by intergovernmental institutions, Council of Europe in the specific. Various scholars have come up with several definitions of the Community Method, without ever jointly agreeing to one. It has been one of the most relevant creations that have fostered more supranational nature of the EU. (Devuyst, 1999, 110) It generally refers to the legislative process outlined in article 294 of TFEU. Also called co-decision, it is initiated by the Commission which has the power to submit a legislative proposal to be approved by the Council and the European Parliament. (Chang, 2013, 263) The outcome of the ordinary legislative procedure is also formally subject to the jurisdiction of the European Court of Justice (Chang, 2013, 256)

The Community Method has managed to preserve state sovereignty while still introducing a supranational framework for decision-making which partially escapes MS control. It aims for a solid balance between MS rights and obligations, functional division of power between institutions, avoidance of the unanimity trap, and the establishment of binding Community law. The latter has been decided and furthered especially after the Amsterdam treaty in order to avoid the creation of an à la carte Europe. Countries need to converge, especially as regards certain policy areas.

But as much as its soft opponent, hard law in its different forms, has also been widely criticized. For instance, in the context of the EU the binding nature of hard law measures can be non-respectful of the difference in issues each member state encounters. (Trubek et al., 2005, 356) The involvement

of such a high number of relevant stakeholders also creates fertile soil for uncertainty and moreover, in many cases norms within the EU need constant adaptation and updating which can become difficult especially due to the complexity and diversity of internalization procedures across MS. (Trubek et al, 2005, 357)

Furthermore, the Classic community method, considered more effective because it is binding and it involves stricter enforcement principles, has proven to be less effective in sensitive policy areas like social policy and employment. In light of the diversity of the national welfare states across the EU and the complexity and vast differences between the problems each MS has to face, a top-down approach envisaged in hard law norms was often not as effective as soft law. (Trubek et al, 2005, 344)

In the aftermath of the crisis a number of new tools have permeated the existing EU institutional framework. New hard law surveillance and compliance processes such as The Fiscal Compact, the Six Pack and the Two Pack together with the “softer” European Semester were established. The new governance architecture will be introduced and analysed in section 7.

2.3 Norms and their purpose: legislative, structural, regulatory, policy-making

Norms can serve various purposes:

Legislative Function	The EU aims to coerce a member state to adopt a certain law;
Regulatory Function	Or adopt new regulations on a certain conduct;
Policy-making Function	The EU seeks the implementation of a new policy;
Structural Function	Require the implementation of structural reforms and capacity-building.

Figure 4: Adaptation of classification scheme in Vita, 2017, 123

Conditionality pursuing a structural function is a crucial element of this study. During the Euro crisis seven member states formally entered into full bailout agreements, outside the EU treaty framework, which outlined the requirements to be fulfilled in order to receive financial support. These agreements are also called sovereign debt conditionality. (Vita, 2017, 117) While in these cases, the formal agreements contained explicit reference to sanctions in case of non-compliance, the process behind the implementation of structural reforms in Italy was radically different. In the case of Italy, the EU established several conditions and policy recommendations to be fulfilled,

before a set deadline, while leaving the repercussions of non-compliance implicit. Therefore, no formal enforcement mechanism can be observed.

Although conditionality has had very high rates of compliance in accession talks it is not necessarily a sign of its effectiveness since additional other political, economic and situational factors could play a role as well. (Vita, 2017, 143)

The classification of norms by purpose is crucial in order to establish that the aim of the norm is indeed the implementation of structural reforms at domestic level.

2.4 Mechanisms of state compliance with international norms

Now that the norms have been classified according to their content, including their position on the soft and hard continuum and their purpose, it is necessary to pinpoint the mechanisms that render international norms effective. This section will focus on rewards and sanctions as triggers compliance with the norms' requirements.

For the purpose of this study effectiveness will be understood as compliance which is reached when states adhere to the conditions of the norm and implement the provisions it establishes at national level through appropriate means. Implementation of international norms involves their incorporation in the national legal framework either through legislative means, executive decree or judicial decision. The latter gives legal effect to the international norm as it becomes part of the domestic legal framework. Detailed conceptualization and operationalization of effectiveness will be provided in section 4.

However, first, it is necessary to understand what pushes states to comply with international norms at all, especially those lacking a formal enforcement mechanism. Several scholars have attributed the rate of compliance of international norms to power asymmetries. (Quaglia, 2017, 3) The latter implies that powerful states have the chance to push for inclusion of their national interests into the international norm. This means, that they will be more willing to comply with a norm that mirrors their goals as they will incur in less adjustment costs.

Others give more value to the degree of legalization of the norm itself. As outlined in section 2.1 the latter comprises three main elements: precision, obligation and delegation. Abbott et al. point out that if all three elements are maximized and legalization is therefore, at its highest degree, the compliance rate will be higher. (Abbott et al, 200, 406) Firstly, because the state is obliged to comply, secondly because the requirements of the norm are set out in the most precise manner and the authority to implement is clearly delegated.

The enforcement and monitoring mechanisms established in some norms could also play a relevant role. (Quaglia, 2017, 3) However, this would not explain why states comply with soft law as it often lacks such a mechanism.

Shelton (2003) has egregiously highlighted this gap. There is lack of research regarding the mechanisms that push states to comply with soft law and whether their compliance is dependent on the type of norm selected. The approach chosen by the author in his book “Commitment and Compliance: The role of non-binding norms in the international legal system” focused on different policy fields: environment, finance, trade, human rights and arms control. Finance is a particularly interesting subject as there are several areas that are highly regulated via binding norms with strict sanctions while others are not. The book highlights that states do not react well when their sovereignty is challenged even indirectly by international organizations. Hence, soft law has become increasingly popular in order to allow states to have enough flexibility in terms of implementation and compliance with such norms. However, these are not criteria that will be used to understand compliance with international norms in this research.

Several scholars have focused on the nature of soft law and questions concerning its status, mainly whether it should be considered law at all. However, very few studies focus on compliance, potentially due to the very thin line between non-binding norms and political pressure. In addition, most research on the subject focuses on inter-state agreements therefore, it lacks the necessary criteria in order to provide a substantive assessment of the role and effectiveness of soft law in a peculiar multi-level governance system such as the EU. This research intends to fill that gap.

This last classification of international norms will distinguish between different reinforcement mechanisms implemented by international organisation to generate compliance. The latter will allow to understand how soft law in case one and hard law in case two produced compliance.

2.4.1 Reinforcement mechanisms

Most international norms seek to prescribe objectives or specific recommendations to the state which he is either obliged or not to take into account. There an enforcement mechanism appears absent, it is difficult to understand why states willingly comply.

The key feature is the prospect of a reward. Reinforcement generally speaking, means that compliance will be rewarded and in some cases, depending on the type and content of the norm, lack whereof will be sanctioned. (Schimmelfenning, 2002, 2)

In making this call, the receiving actor may be motivated by several elements such as political interests, potential benefits, risks etc. Borrowing from international relations literature it is possible to identify two main rationales for state compliance with international norms: logic of appropriateness and logic of consequence. (Karlsson-Vinkhuyzen et al., 2009, 403) The latter will help understand the different rates of effectiveness of soft law without a formal enforcement mechanism vis a vis hard law.

2.4.1.a Logic of consequence

The logic of consequence was coined by realists and is based on the belief that states act exclusively on the basis of their utilitarian interest. They will first evaluate their personal gains and losses, expecting all other actors in the arena to do the same. In sum, they are driven by a logic of calculating consequences on the basis of their prior preferences. (March & Olsen, 1998, 949) In practice, the logic of consequence shapes behaviour on the basis of incentives and disincentives, a carrot and stick approach of sorts. Motivation to comply with international norms can be triggered by understanding the benefits of compliance and risks of lack thereof.

Therefore, compliance according to this interpretation will largely depend on the potential sanctions that could be applied against the state or benefits that it could gain. Some scholars suggest that a state will comply where a dominant actor pressures it to compliance through the threat of sanctions or rewards for compliance. (Charney, 2003, 117) For this purpose, the presence and nature of verification and monitoring systems is also important since, if they are publicly available, it will most likely motivate the state to comply. In the cases of this study, European and International Financial Institutions held significant advantages over states as they had direct access to resources necessary for governments to power through the crisis. Additionally, if there is a possibility to submit non-compliance to the review of a judicial organ, for example the European Court of Justice, the state will be more likely to comply with the requirements set out by the norm.

The linkage of the norm to established international institutions is therefore of utmost importance in order to understand compliance. Such institutions have the power to expose non-compliant behaviour of states via shaming as well as raising significant reputational concerns for the government of the state in question. (Charney, 2003, 117-118) The latter is due to the fact that non-compliance might undermine governmental power. Logic of consequence can easily account for compliance with accession conditionality as outlined in section 2.2.1. Candidate states have a clear view of the incentives and disincentives as compliance is a non-negotiable pre-requisite for

accession. However, it does not fully explain why member states that arguably have more bargaining power vis a vis the EU, willingly comply with soft law.

The intrusiveness of this norm is high therefore it could produce significant political costs for the state: undermine its governmental power, increase of opposition rates, decrease public support to mention some. All these elements that shape motivation of state compliance with international norms will serve as guidelines in the identification and assessment of the mechanisms that led to the adoption of the Fornero Reform and the Jobs Act.

2.4.1.b Logic of appropriateness

The logic of appropriateness, on the other hand, emerges from liberalism and constructivism and argues that states do not act merely on the basis of their utilitarian interest but also on the basis of rules, norms and moral or ethical standards. (March & Olsen, 1998, 951)

According to this view, legitimacy of the process that created the international norm as well as its moral and ethical aspects will play an important role in determining state compliance. The precision of the norm also plays an important role in determining compliance. States are more likely to comply with highly transparent norms. (Charney, 2003, 117)

Additionally, the degree of support for the norm among the affected members of the community, in this case member states, will have a significant impact. If there is a high chance that other addressees of such norm will adopt free rider behaviour, the state is less likely to comply to avoid bearing all the costs alone.

The level of political, economic or other support for the norm among both domestic and international actors also contributes to ensuring compliance. At national level in particular, the existence of interest groups or epistemic communities capable of exercising pressure on the state with the purpose of hindering compliance also plays a role.

Logic of appropriateness was especially used to assess and investigate state compliance with environmental and human rights policies where states usually do not incur into significant gains. However, focusing on the regulation of the financial sector, logic of appropriateness alone cannot explain why member states such as Italy, willingly complied with soft law norms which openly intruded the realm of their domestic politics and challenged their sovereignty. While conditionality relies on the fact that states make their decisions based on a utilitarian cost-benefit analysis taking into consideration what is required and the potential rewards, logic of appropriateness is more

linked to socialization since states do not adapt their behaviour on the basis of incentives but are instead peer pressured, shamed or persuaded to adapt their policies. (Kelley, 2004, p. 428)

2.4.1.c Reactive reinforcement

Now that the elements that influence the states' decisions have been outlined, for the purpose of this research it is necessary to identify the type of reinforcement mechanism that international norms may contain.

If a norm has reactive reinforcement, it means that the international organization imposing the conditions withholds the reward in case of non-compliance but does not sanction the state, which eventually complies. (Schimmelfenning, 2002, 2)

The research is based upon the argument that the presence of sanctions is the determining element for non-compliance with international norms as it not only increases the costs of compliance but also decreases the capacity of the state to comply. While a sanction can represent a strong motivational element, it may not always be sufficient to generate compliance. Sanctions can further obstruct the state's capacity to comply. For instance, the presence of a formal sanctioning mechanism could enhance a politically unstable domestic climate. (Charney, 2003, 118) It could also decrease the power of an already unstable government which will then find itself unable to negotiate with the relevant veto-players. The latter would generate political deadlock and ultimately produce non-compliance.

Consequently, reactive reinforcement is a more fit strategy for generating compliance of member states with EU conditionality. The promise of a reward makes the norm more appealing to a state and seem less of a challenge to its sovereignty. If the government is highly unstable or is supported by a weak parliamentary majority, the reward could be a crucial element to get all conflicting parties on board.

2.4.1.d Proactive reinforcement

Proactive reinforcement occurs, when the international organization pursues other actions aside from merely withholding the reward. (Schimmelfenning, 2002, 3) It is possible to distinguish two possible outcomes to this mechanism:

- Imposes a sanction upon the state guilty of non-compliance. The aim is to increase the costs of non-compliance and push the state towards compliance. This is the case of coercive reinforcement. (Schimmelfenning, 2002, 3)

- The international organization also provides additional support to the state with the aim to decrease the costs of compliance and enable the state to fulfil the requirements. This is the case of supportive reinforcement. (Schimmelfenning, 2002, 3)

The costs of compliance are not necessarily financial. More often than not, especially when it comes to conditionality issued by international organisations, compliance can result in significant political costs for the national leadership of the state in question. Additionally, the more intrusive the norm, the more difficult it will be to comply. If the international norm concerns a policy field that is generally regulated by the state (for instance, structural reforms) the government might incur into criticism generated by domestic veto players such as civil society groups or opposing parties. In that case, the costs would outweigh the reward. That is why when aiming to implement structural reforms at domestic level the EU should refrain from strict sanctions which will only make compliance less likely.

The focus of this study will be mainly centred on norms with structural function therefore, it is necessary to analyse the nature and development of structural reforms as well as the actors involved in their implementation and approval.

3. Structural reforms: What are they? Why are they hard to implement?

Now that the classification criteria for international norms have been outlined, it is necessary to focus on the outcome of the norm: the reform itself. The focus of this study comprises hard and soft law with a structural purpose that is, norms that aim to the implementation of structural reforms at domestic level.

Structural reforms have always been considered one of the most efficient and rapid tools for the resolution of economic issues as they can be a catalyst for growth compared to other merely temporary solutions. (Macaes, 2013, 154) For instance, in the aftermath of World War I numerous European countries were forced to face severe debt crises which unavoidably led to tax reform packages. (Drazen & Grilli, 1993, 606) However, the latter was implemented only once conditions worsened to a point of no return. In France reforms were finally introduced in 1923 when hyperinflation rates hit 29,000 %. (Drazen & Grilli, 1993, 606)

A complete and fulfilling economic reform also depends on the friction between political actors representing diverging social groups. (Alesina & Drazen as cited in Chang, 2001, 124)

The most salient feature of structural reforms is their aim to pursue permanent adjustments instead implementing temporary solutions for domestic economic issues. They were originally designed and promoted by the International Monetary Fund and the World Bank during the 1980s. (Macaes, 2013, 155) Both institutions comprehended the ineffectiveness of an approach merely focused on lending money to countries in need. More action was definitely required. If structural adjustments were not pursued the countries would have never been able to pay off their debts. Consequently, the IMF and the World Bank established the requirement of permanent reforms which would allow debtor countries to meliorate their economic situation in a definitive and irreversible way. (Macaes, 2013, 155) The most innovative feature of structural reforms is their capacity to use the market as a fully integrated policy system which can provide permanent problem-solving effects. However, on the path to implementation several obstacles can arise. For instance, several political reasons are interfering with such radical changes. National parties are often troubled by distributional concerns regarding which social groups would benefit from the reforms and/or would have to indirectly pay for them. Furthermore, the public opinion can hold significant leverage over political actors preventing them from committing to radical reform packages. Often, the postponement allows them to adjust costs and benefits and build up their reputation before taking a step further. Finally, re-election concerns also put a strain on the agenda as policy-makers will seek to please the largest social group.

Moreover, structural reform implementation can also be challenged by the institutional setting of the country in question. For instance, a fragmented party system might obstruct the introduction of radical policy transformation compared to majority party governments. (Roubini & Sachs, 1989, 908)

For these and many other reasons structural reforms are hard to enforce and despite their beneficial economic effects they tend to be marginalized on the agenda. (Chang, 2001, 125)

Most scholars tend to consider economic or political crisis as main drivers behind the implementation of structural reforms. The “crisis induced reform” hypothesis (Drazen and Grilli, 1993 as cited in Agnello et al, 2015, 2) considers extreme economic circumstances necessary for implementation, as this policy type requires major adjustments and compromises amongst the parties involved at the domestic level. The crisis situation allows to overcome the aforementioned obstacles to implementation.

Within the economic crisis framework, the public would be more eager to accept cuts and drastic measures. It opens a window of opportunity to overcome internal conflicts and produce significant policy changes in a rapid way.

On the other hand, in the European case the “crisis – induced reform hypothesis” only partially contributes to the explanation of the rapid implementation of reform packages between 2011-2012 in Italy, Spain, Greece, Portugal or Ireland.

It can be argued that within the EU institutional framework structural reforms are also supposed to allow an increase in regional convergence and re-establish flexibility which was undermined once the EMU eliminated the possibility for currency devaluation as potential tool for crisis resolution. (Macaes, 2013, 154). Therefore, some assume that reforms are actually part of the member states’ political strategy in coping with the financial obstacles of interest.

However, as domestic constraints can sometimes overshadow the potential long-term benefits of such reforms, the EU holds an advantage over member and candidate states. EU membership is key prosperity, growth, security as well as political and economic opportunities. In numerous cases, we have witnessed countries with severe democratic deficits and structural welfare imbalances get in line and promote reform packages in order to obtain membership. In sum, EU has significant transformative power vis à vis structural reforms when it comes to candidate states.

3.1 Structural Reforms and the EMU

Accession negotiations aside, structural reforms are also linked to the Economic Monetary Union (EMU) itself, established through the Treaty of Maastricht in 1992 as well as the conditionality institutions such as the European Central Bank and the European Monetary Fund. The EMU entailed the delegation of the monetary policy from the domestic level towards the European one and introduced a new common currency. As expected, the latter restricted the liberty member states had in dealing with financial turmoil since it did not allow them to use the devaluation of their national currency as a coping mechanism. (Eggertsson et al., 2014, 3) It also resulted in the delegation of a significant part of their domestic sovereignty which consequently allowed the EMU institutions to have a bigger impact on domestic politics within the field of financial regulation.

The EMU has a positive effect on the implementation of structural reforms. Given the interdependence that comes with the establishment of a common currency across different states, governments are now forced to implement reforms and cannot deal with financial shock unilaterally. (Eggertsson et al., 2014, 3) The latter can also bring uniformity within EU regulation. It can be argued that the ECB can deal with such turmoil situations however, as the EMU grows larger, a central governing body also brings more uncertainty. (Jaeck & Kim, 2013, 75) Therefore, for numerous reasons member states will prefer to pursue the reform packages domestically instead of delegating further sovereignty. (Jaeck & Kim, 2013, 75) The process is quite simple. If countries

cannot rely on a central mechanism for dealing with shocks they will have bigger incentives for making an effort at national level.

As previously mentioned the EMU framework can only partially account for these reforms. For instance, Italy has traditionally always represented one of the main pro-European states however lately Euroscepticism seems to be growing. Consequently, mere reputational concerns and fear of criticism on the European part cannot fully explain why Italy has allowed a state-like agenda item (i.e. structural reforms) to make it to the EU-level agenda without formal delegation of sovereignty. At this point it is necessary to shift the focus towards the type of norm chosen by the EU to ensure compliance and recommend the implementation of effective policy packages. If reputational concerns and fear of criticism alone cannot be deemed as sufficient explanatory indicators, it is worthy considering whether the position of the norm on the soft-hard law continuum has an impact on state compliance and the structural reform implementation process.

The implementation of structural reforms at the domestic level may seem unlinked from the EU level of governance as it has always been a matter of domestic sovereignty and a prerogative of national governments. However, the focus on this specific policy outcome can allow to observe EU involvement as well as the institutional turnovers the crisis might have enhanced.

4. Research Design and Methods

The purpose of this research is comparative as it intends to assess for the effects of two different types of international norms: soft law and hard law. In order to narrow the assessment, the study will focus on European norms. The objectives of the comparative research are as follows:

- To determine to which extent the type of norm chosen, hard law or soft law, has an impact on the degree of effectiveness of the norm, defined for the purpose of the study as compliance;
- To understand the connection between the differences in compliance with these norms and the mechanisms that determine compliance, in this study represented by reactive and proactive reinforcement;

This study will be structured on the basis of a cross-case comparative small-N research design. More specifically, it will be a most similar systems design where all elements do not vary except the independent variable which changes across cases. (Toshkov, 2016, 263) The purpose of this particular design is to assess the impact of the variation of the independent variable on the outcome. (Toshkov, 2016, 264)

It will involve only two cases:

Case one will be represented by the labour reform implemented by Monti government in 2011/12 (i.e. Fornero reform) following EU policy recommendations in the form of soft law norms, specifically implicit conditionality.

Case two will be represented by the labour reform proposed and approved by the Renzi government in 2015 (i.e. Jobs Act) on the basis of EU recommendations within the new hard law economic governance framework. (European Semester, Fiscal Compact, Two Pack and Six Pack)

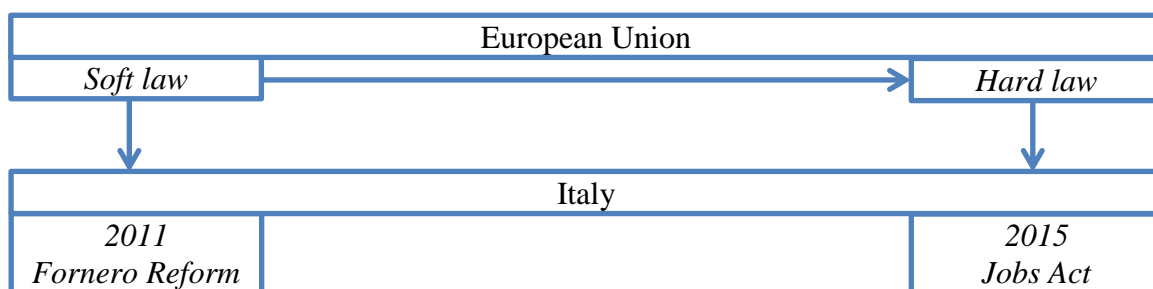


Figure 4: Simplified representation of the research design

Italy is the unit of analysis for both cases therefore, that allows us to avoid any differences as regards relevant factors for this study. The relevant variables that could act as confounders are maintained constant across cases since the analysis is focused on the same country. The sovereign debt level, the deficit imbalances, the type of party system and governmental regime are maintained constant across both cases.

Italy represents the most suitable case for analysis since unlike other European countries reliant on EU financial aid (Ireland, Spain, Greece among others), it did not enter into a formal bailout agreement with an international monetary institution, such as the European Central Bank or the International Monetary Fund, during the unfolding of the global financial crisis. (Sacchi, 2015, 77-78) A bailout agreement is by definition part of hard law since it sets clear, precise obligations upon the parties and includes hard enforcement and sanctions in case of non-compliance. Choosing Italy as unit of analysis allows to assess whether the type of norm chosen by the EU has any impact in terms of effectiveness on generating the implementation of the structural reform.

In order to limit the scope of the study, the focus will be on one particular type of national reform, that is structural labour reform. The first case is emblematic of the effectiveness of EU soft law norms while in the other case a second labour reform was implemented a couple years after the

introduction of the new hard law governance framework. Hence, both the unit of analysis and case selection are the most appropriate in order to carry out this study.

The independent variable is the type of law the European Union bodies used to issues their country-specific policy recommendations and influence the implementation of labour reform at the domestic level. That is soft law in Case 1 and hard law in Case 2. In this study, the independent variable is the one changing over time given the shift from soft law to hard law framework within the EU economic governance therefore, the study intends to uncover how and why the dependent variable is affected by this change in terms of effectiveness.

The independent variable is casually relevant as changing it, without disturbing the rest of the system, would affect the outcome i.e. the structural reform. (Toshkov, 2016, 262)

The dependent variable, on the other hand, is the effectiveness of soft and hard law in attaining the desired policy outcome that is a domestic reform following recommendations issued at EU level. For the purpose of this study the focus is on policy effectiveness which implies that “that the policies designed, adopted and implemented at the EU level are effective in the sense that they are (at least) producing the expected results”. (Graziano & Halpem, 2016, 10) In the aftermath of the crisis policy effectiveness became particularly relevant in EU’s oversight of the budgetary policies. In order to conduct the assessment, effectiveness will be operationalized as **compliance**.

The aim of the study is to answer the following research questions:

How does the type of norm used by the EU (hard law versus soft law) impact the implementation of structural labour reforms at domestic level in terms of effectiveness?

The argument is that soft law norms with structural purpose are more effective in producing the desired outcomes, it is expected that reactive reinforcement is the explanatory mechanism behind this. If the EU pursues a proactive reinforcement strategy, in particular referring to coercive reinforcement and the imposition of sanctions, when it comes to the implementation of structural reforms, the rate of compliance will be lower as power asymmetry in EU’s favour is enhanced, consequently:

1. The domestic costs for compliance will increase including conflicts with key veto-players;
2. Political costs will be high since the high level of intrusiveness of the reforms at hand will not be well received by the public, antagonize the state to the EU. (Smith, 1998, 266) The latter is important for the political class of member state in question especially in terms of re-election concerns.

Therefore, the hypothesis for the study is as follows:

Hypothesis 1: EU policy recommendations in the form of soft law are more likely to produce Member States' compliance.

Sub-hypothesis 1: Reactive reinforcement is more effective than coercive reinforcement in producing compliance with EU policy recommendations.

Considering the outlined hypotheses and the purpose of the study, each of the cases will firstly, examine the process and mechanisms that led to the adoption of the labour reform. Secondly, it will classify the norm chosen by the EU on the basis of the classification criteria outlined in section 2. Thirdly, it will provide a comparative analysis of the content of the EU norm vis à vis the content of the adopted labour reform in each case. Finally, an analysis of the mechanism behind the norm will be carried out to identify which mechanism is more effective.

The latter will allow to assess the level of compliance with the requirements of the norm under scrutiny that is, to what degree the goals it set out were included in the Member State's domestic structural reform. In order to understand the process that led to a potentially different rate of compliance between hard and soft law the study will also examine the mechanism that determined compliance in both cases. The latter will be necessary in order to explain the potential differences in terms of effectiveness between hard and soft law.

In sum, the study intends to assess whether the introduction of hard law measures in the EU economic governance framework is more effective in producing the desired policy outcome in accordance with EU recommendations vis à vis soft law.

The methods used to measure the variables and guide the comparative analysis will be discussed in the following section.

4.1 Methods

4.1.1 Process-tracing

Firstly, in order to uncover chain of events that led to the outcome it is necessary to use process-tracing as one of the methods. Process-tracing can be employed for different purposes: to build or test a theory, explain an outcome or establish the presence of a causal mechanism. (Beach et al., 2013, 3) In this study, the method will be use to provide an explanation that accounts for a particular outcome. Process-tracing with this purpose intends to find a minimally sufficient explanation for a certain outcome. (Beach et al., 2013, 3) In this study the outcome of interest is represented by the labour reforms implemented in Italy in 2011 and 2015.

Since the research does not aim to build or test a theory, the causal mechanism that will be analysed is case-centric. This means that the causal mechanism is non-systematic and case-specific and cannot be detached from the outcome it aims to explain. (Beach et al., 2013, 13) The latter can produce problems of generalization of the cases as well as difficulty in attempting replication. (Beach et al., 2013, 13) However, the purpose of the study is not that of establishing the causal mechanism behind labour reform implementation but evaluating the rate effectiveness of hard law vis à vis soft law.

Additionally, in order to assess compliance, it is necessary to evaluate how quickly member states conformed with the policy recommendations set out in soft and hard law norms. Process-tracing will be the main method in order to evaluate whether the reforms were implemented according to the deadlines set by the EU and ultimately map the process that led to implementation.

However, process-tracing alone is not sufficient to assess compliance and it will also be necessary to take a closer look at the content of the soft and hard law norms as well as the content of the reforms.

4.1.2 Qualitative Document Analysis

It will also be necessary to assess to what degree have member states complied with the policy recommendations set out respectively in soft law form for the Fornero reform and in hard law form for Jobs Act. Did the Italian government take all recommendations into account?

The main method for this particular purpose will be qualitative document analysis, in particular, a comparison of recommendations issued by the relevant European Union bodies to Italy immediately prior to the implementation of the reform and the content of the policy outcome itself, that is Fornero Reform for Case 1 and Jobs Act in Case 2.

A higher rate of compliance is indicative of a higher level of effectiveness as it means that the member state was willing to comply with the policy recommendations to a higher degree if for instance, they took the form of soft law. The same example is valid for hard law.

The chosen methods will allow to evaluate whether the new hard law framework, characterized by close monitoring, hard enforcement and sanctions in case of non-compliance, is indeed more effective in producing the policy outcome recommended by the EU than soft law norms and vice versa.

The main data sources will be represented by recommendations, letters and statements issued by EU institutions with particular focus on the requirements put forward by the EU as regards Italian labour policy. The latter will be then compared to text of the reforms itself to qualitatively assess

whether the goals set by the EU either in soft or hard law format have been met and to what degree. Where primary documents might not be deemed sufficient to make conclusions, secondary documents will also be used.

In sum, the first case will analyse the effectiveness of European soft law (more specifically implicit conditionality) in fostering the implementation of structural reforms at the domestic level while the second case will focus on the role of hard law within the same process, with particular focus on the hard law governance structure developed in the aftermath of the 2008 economic crisis.

5. Case one: the implementation of the Fornero reform in 2012 via implicit conditionality

5.1 EU Economic Governance Institutional framework pre-2011

Since the establishment of the EMU in 1992 the EU has intervened indirectly in social and fiscal policies across the EU. The adoption of the Stability and Growth Pact (SGP) in 1997 and its benchmarks, indicators, national reports and corrective mechanisms in case of failure to meet the requirements has enhanced EU surveillance in these particular policy areas with the aim to preserve compliance with the original purpose of the EMU. (De la Porte et al., 2015, 9)

In the mid-1990s leftist governments have promoted the idea of a European welfare which has pushed the EU to push towards more flexibility in the attempt to ensure the growth of the labour market. The latter has pushed the EU to develop and sort of European Social Model however, merely through voluntary and/or soft law forms of coordination such as the Open Method of Coordination. (De la Porte et al., 2015, 10)

Moreover, some would say that the nature of the EMU is at the root of the devastating effect the crisis has had over MS. The EMU is naturally asymmetrical due to the fact that monetary policy is delegated to the EU level whilst fiscal policy remains in the hands of the states. Some MS did undertake the necessary steps to comply with the Maastricht criteria before the financial disaster of 2008 but the SGP, before its amendment in 2011, did not manage to keep all members within the necessary limits. Consequently, the crisis has made all these imbalances evident.

Italy has had the record for one of the biggest sovereign debt crises in the world. Only second to Japan, it has been bigger than Italy's GDP for almost 10 years. (Sacchi, 2015, 81) This issue has become relevant to the EU once the crisis started to strongly affect some of the member states.

Greece was initially the first country that went close to default and was facing severe economic problems. In July 2011 the EU was starting to be deemed incapable of handling the sovereign debt crises of its members. (Jones, 2012, 83) Several stress tests were implemented in order to test the European banks and the results were highly disturbing.

5.2 Berlusconi government: August 2011 – December 2011

In July 2011 it was made public that Germany was progressively trying to become less exposed to the Italian debt. The Deutsche Bank decided to decrease its net exposure to Italian debt by 88% going from 8 million to just 1. (Milne & Wilson, 2011 in Sacchi, 2015, 82). The news, published on the Financial times, had incremented the fear and anxiety permeating the EU markets.

In order to release some of the tension, on the 4th of August 2011, in the framework of the Securities Market Programme (SMP) established in May 2010, the ECB started to purchase sovereign debt paper. (Sacchi, 2015, 82) On the same day in a press conference the President of the ECB Jean-Claude Trichet stressed the importance of structural reforms and in particular the “removal of labour market rigidities”. (Sacchi, 2015, 82) When on the 5th August 2011, the spread between Italian and German bonds reached unprecedented levels, the ECB decided to take action and Trichet, jointly with Bank of Italy Governor Mario Draghi, addressed the Italian prime minister Silvio Berlusconi in a private and highly confidential letter listing policy measures to be taken and objectives to be reached by the Italian government in a timely manner. (Sacchi, 2015, 83)

The letter was not a formal policy plan or recommendation although it prescribed specific actions to be undertaken by the Italian government. There was no mention of an enforcement mechanism or sanctions that would follow in case of disobedience however, the following line of events provides significant evidence that those repercussions were mutually implied and understood.

The letter specified that Italy was expected to implement the requested measures by September 2011 through governmental decree approved by the Parliament. (Il sole 24ore, 29 September 2011)

The most relevant fear of the European institutions and fellow member states was the high risk of contagion within the markets giving also the difficult situation in Greece, Portugal, Spain and Ireland which was probably at the core of EU’s pressure. Later the same day, after receiving the letter that would not stay secret for long, Berlusconi publicly stated that he would aim to achieve a balance in the budget a year sooner than previously established i.e. 2013. (Sacchi, 2015, 82) Some would argue that considering this renewed commitment as proof of motivation to comply would be speculative however, it is quite unrealistic to consider it merely a coincidence too.

The ECB governing council scheduled a meeting on the 7th of August, only two days after Berlusconi's announcement. The encounter resulted in their commitment to the persistent implementation of the Securities Market Programme (SMP). The ECB proceeded to purchase 22 billion euros worth of sovereign debt paper through the SMP providing Italy with substantial financial support. (Sacchi, 2015, 82)

As previously mentioned, the letter only provided recommendations. Therefore, the SMP indirectly and implicitly acted as both a stick and a carrot for Italy's compliance with the requests. If it refused to cooperate, the ECB would stop purchasing sovereign debt paper and push Italy towards a formal, strict bailout agreement. Compliance, on the other hand, would ensure financial support for the Italian state. The chain of events that followed the secretive communication mostly speaks for itself. The letter remained secret for quite a while despite several journalists and activists asking for its publication.

As many times before in the past, the Italian governmental instability put a strain upon the efficiency of implementing fast-track reforms. The proposed package required a lot of re-drafting and the markets continued to paint Italy as not credit-worthy. (Jones, 2012, 84) The decree n.138/11 outlining Italy's budget expenditure aiming to pursue budget balance by 2013 was finally adopted by the Parliament on the 14th of September 2011. The reform mainly aimed to re-organize public expenditure in order to be able to respect the deadline however, without specific norms aimed at labour reform. The introduction of the new seniority pensions was not included as the Northern League, one of the parties at the time, was strongly against it. The party was mainly driven by reputational and re-election concerns as their target consists of a demographic working and living in the North and also happens to be the major beneficiary of the aforementioned pensions.

However, this effort was insufficient and Italy was further downgraded by Standard & Poor rating agency in September. (Jones, 2012, 84) Italy rapidly became a major issue for the European markets.

In order to obtain further assistance from the EU as the situations was abruptly worsening, Italy was required to implement structural reform packages. Its sovereign debt was ranked as the 4th largest in the world and Berlusconi's government was unable to pursue bold action in order to deal with the crisis due to internal disagreements hence, creating a political deadlock. (Sacchi, 2015, 81)

This time publicly and persistently, the European Council requested Italy to pursue stronger and more cost-efficient in the short-term measures. However, as months went by, the urgency of the financial situation and the instability of the Italian political scene increased as a consequence, Italy

started to lose its credibility. The public display of this reaction was witnessed by the entire world when between 22-23 October 2011 at the European Council meeting Nicolas Sarkozy, French president at the time, and Angela Merkel, the German Chancellor, were asked if they are confident in Berlusconi's leadership. Both of them smirked. (Jones, 2012, 85) The lack of confidence in the Italian leadership was further confirmed by another downgrading of the country's credit rating, this time by Moody's. (Jones, 2012, 96)

In open conflict over the necessary action plan with the Lega Nord affiliate Minister of the Economy, Giulio Tremonti, Berlusconi had found himself in a crossfire both domestically and internationally.

Before the informal meeting of the EU Council scheduled for the 26th of October 2011, the Italian prime minister went to great lengths to persuade the political leadership to promote the pension reforms requested by the EU. He was unsuccessful and resorted instead to a letter of intentions addressed to the European leadership which vaguely outlined the reforms that the Italian government intended to implement by November 15. (Jones, 2012, 100) When it came to seniority pensions the Italian prime minister once again relied on promising yet long-term goals to please his coalition members. He stressed the success and capability of promoting such reforms Italy has had in the past and set the goal for 2026. These remote promises were not enough for the EU which demanded immediate and decisive action and significant structural reforms. It had also enforced stronger monitoring over Italy after the implementation of the second Greek bailout package on the 26th October 2011. (Jones, 2012, 100)

The EU found itself once again not taken into account. Other financial institutions grew increasingly worried over the Italian financial situation. During the G-20 Summit in Cannes, between the 3rd and 4th November 2011, the International Monetary Fund proposed to Italy the entrance into a formal bailout agreement worth 85 billion euros in credit. However, Italy was not willing to commit to a formal conditionality program with its strict requirements and sanctions therefore, it agreed to increased surveillance on behalf of the IMF without entering a formal conditionality-led financial aid programme. (Jones, 2012, 102)

Another secret letter was sent, from Olli Rehn, European Commissioner for Economic and Monetary Affairs, on the 4th of November 2011, listing 39 very specific questions over different policy areas that needed a response within a week's time. (Sacchi, 2015, 84) The EU was eager to know what, when and how was Italy intending to implement its promises. Italy's last hope was constituted by ECB's purchase of Italian sovereign debt papers. However, in November ECB's

Governing Council publicly stated that if national governments kept avoiding the implementation of the requested measures the ECB would have no other choice but to reconsider its decisions. In particular, when asked if the ECB would stop acquiring Italian bonds, Yves Mersch, member of the ECB Governing Council stated:

“If the ECB Governing Council reaches the conclusion that the conditions that led it to take a decision are no longer there, it is free to change such decision at any time.”

(Mastrobuoni, La Stampa, as translated by Sacchi, 2015 note n7)

The spread between Italian and German bonds continued to grow by 150 points. On 12th of November 2011 the budget law for 2012 was finally approved by the Parliament and Berlusconi was forced to resign in favour of a technocratic government due to a loss of majority. (Sacchi, 2015, 84) The latter was endorsed by the President of the Republic Giorgio Napolitano, who has a monitoring and balancing role within the Italian institutional framework, as well as three main parties: Partito Democratico, Unione del Centro and the party of Berlusconi himself, Popolo della Libertà.

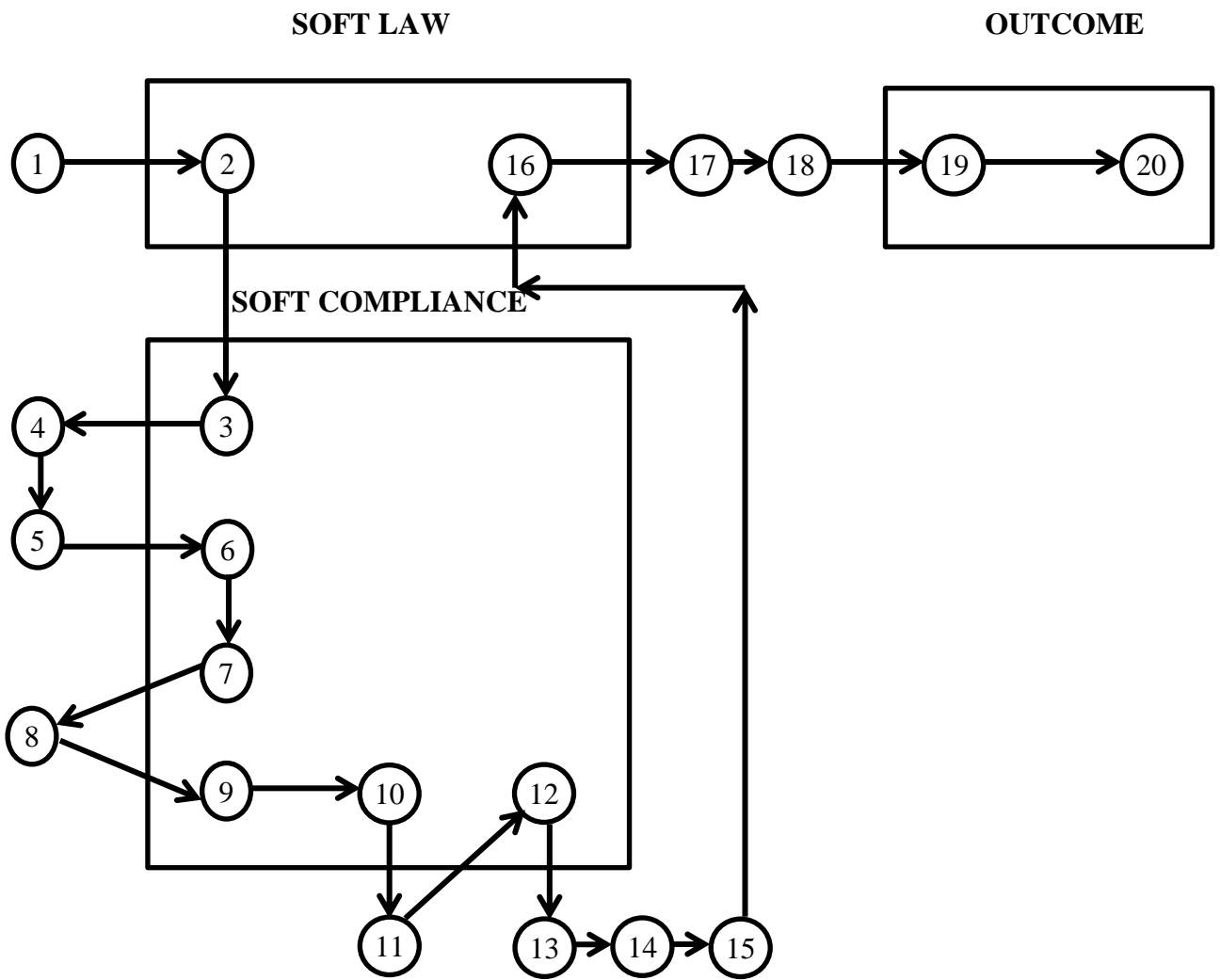
The figure below intends to summarize the processes behind the implementation of the reform, in order to identify which documents are considered soft law in this study, which acts carried out by the Italian government can be identified as forms of soft compliance preceding the outcome represented by the implementation of the reform.

The actions outside of the designated boxes are to be identified as political pressure. Some acts carried out by the ECB in order to force the Italian government could be interpreted as sanctions however, as mentioned in the theoretical part of the study soft law in this case is identified as a norm containing either a soft or hard obligation without an enforcement mechanism. Therefore, these presumed “sanctions” will be labelled as political pressure for the purpose of the study.

Figure 6: Explanatory process-tracing table of the implementation of the Fornero Reform in 2011/12

- | | |
|-------------------------|--|
| 1. <u>4 August 2011</u> | ECB starts purchasing Irish and Portuguese bonds |
| 2. <u>5 August 2011</u> | First letter from Bank of Italy and ECB to S. Berlusconi |
| 3. <u>5 August 2011</u> | Italy announces that it would achieve a balanced budget by 2013, instead of 2014 |

4. 7 August 2011 ECB Governing Council meeting confirming the implementation of the Securities Market Programme
5. 8-12 August 2011 ECB purchases 22 billion euro worth of secondary market sovereign paper
6. 13 August 2011 Governmental legislative decree n.138
7. 14 September 2011 Decree n.138 approved as law n.148
8. 19-20 September 2011 Standard & Poor downgraded Italy's long-term and short-term debt rating
9. 12 October 2011 Italian Parliament fails to approve 2010 financial accounts
10. 14 October 2011 Berlusconi wins the confidence vote
11. 22-23 October 2011 At a public press conference before the emergency European Council Summit, Sarkozy and Merkel openly disclose their lack of confidence towards the Italian government
12. 26 October 2011 Special European Council Summit, Berlusconi presents a letter of intentions
13. 28 October 2011 The spread between German and Italian bonds increases
14. 3 November 2011 European Financial Stability Facility confirms that it will delay its bond issue consequently, resources in order to assist the MS in need would not be available.
15. 3 November 2011 Cannes G20 Summit, Berlusconi refuses a bailout agreement with the International Monetary Fund
16. 4 November 2011 Secret letter from Olli Rehn, European Commissioner for Economic and Monetary Affairs, to the Italian government
17. 8 November 2011 Italian Parliament approves 2010 financial accounts but Berlusconi faces a vote of no confidence
18. 12 November 2011 2012 Budget law (Legge Finanziaria n183) is approved. Berlusconi resigns from his post as Prime Minister.
19. 17 November 2011 Vote of confidence for Monti government.
20. 6 December 2011 Legislative decree n 201/11 ("Decreto Salva-Italia") adopted by the Parliament on the 22nd of December



5.3 Monti Government: the implementation of Fornero Reform

The Italian situation started to become more and more relevant to other MS as it was necessary to restore confidence in the markets. Spain managed to promote a reform package on the 29 of August while the instability of the Italian government was reaching its peak.

Monti pushed for an anti-crisis reform called decree “Salva Italia”, which focused on fiscal reform and growth and was approved on 22nd of December 2011. (Negrelli & Signoretti, 2014, 2) The latter included the reform of the pension system, outlined in article 24 of the decree, while the other measures were later adopted in the Fornero Reform, named after the Minister of Labour, Social Policies and Gender Equality. It comprised: the rise of retirement age, the abolition of the length-of-service system and new calculations as regards contribution-based pensions. (Negrelli & Signoretti, 3)

The letter dated 5th August 2011, that the Italian government received from the EU requested the following policy measures to be implemented in the field of labour regulation:

1. “There is also a need to further reform the collective wage bargaining system allowing firm-level agreements to tailor wages and working conditions to firms’ specific needs and increasing their relevance with respect to other layers of negotiations.”
2. “A thorough review of the rules regulating the hiring and dismissal of employees should be adopted in conjunction with the establishment of an unemployment insurance system and a set of active labour market policies”
3. “Intervene further in the pension system, making more stringent the eligibility criteria for seniority pensions and rapidly aligning the retirement age of women in the private sector to that established for public employees”

(Il sole 24ore, 29 September 2011)

The reform adopted by the Monti government relied on the policy plan prepared by the EU as a roadmap for its action. It introduced the following measures in the first reform focused on pensions and adopted on the 22nd of December: (Sacchi, 2015, 85)

- a. System for automatic retirement age aiming to set it to 67 years by 2019 for both men and women. The latter applied also to women in the private sector. Seniority pensions were abolished and substituted by early-drawn pensions, based on a more stringent system.

Monti understood the urgency of the situation consequently, the pension reform was not even negotiated with the social parties. The latter created backlash as consultation on such drastic measurements was expected.

A more thorough labour reform, took some negotiations and was finally adopted on the 27th of June. It included the other recommendations listed in the 5th of August letter as follows:

- b. De-regulation of individual dismissals of open-ended workers including dismissal for economic reasons. In practice this meant that reinstatement of employees dismissed for economic reasons, even when approved by a judge, would no longer be possible. (Sacchi, 2015, 83)
- c. Reform of the unemployment insurance system: in case of unemployment workers will be entitled to an allowance corresponding to 75% of their monthly salary.

A number of social actors such as the leader of the Italian employers' federation Confindustria (i.e. trade union), were strongly opposed to the reform of article 18 of the Constitution concerning dismissal as well as reforms of the pension eligibility requirements introducing a fixed age limit to be reached and required people to pay for longer. (Negrelli & Signoretti, 2014, 3)

The Report by the Commission's Economic and Financial Affairs Directorate issued following the meeting of Eurozone Finance Ministers was praising Monti's achievements:

“The responsibility for a quick adoption of an effective reform now rests with the parliament. While it is very positive that the draft reform proposal by the government builds on a constructive dialogue with the social partners, it is crucial that the objective and degree of ambition of the reform remain commensurate to the challenges of the Italian labour market, in line with the Council recommendation.”

(Spiegel, 2012 as cited in Sacchi, 2015, 87)

The de-regulation of dismissals however, created a political deadlock and required domestic negotiations. Ultimately, the actors compromised on allowing dismissal for economic motives unless confirmed by a judge that the legitimate grounds for such a dismissal are non-existent.

The reform was finally adopted. The bill on the liberalization of professions and other services however, had not been approved due to strong opposition of the majority of the lobbies. Overall, Italy under Monti's leadership, compiled with most of the requirements set out by the ECB in the letter aside from one. It is worth mentioning however, that under the circumstances outlined above implicit conditionality evidently relied on an asymmetry of power. The EU holds both the carrot

and the stick and in the difficult situation with the markets continuously putting Italy in a tough spot, conditionality was bound to have an effect in a short amount of time. It only took more or less five months to accomplish a difficult, contested set of reforms.

5.4 The mechanisms of compliance with EU soft law in case one

5.4.1 Legalization and purpose

The soft law norms implemented by the EU were not limited to a recommendation within the existing institutional framework but instead, took the unusual form of implicit conditionality. Overall, it is possible to identify two main documents as soft law: letter dated 5 August 2011 from the ECB to the Italian government and the letter from Olli Rehn, European Commissioner for Economic and Monetary Affairs to the Italian government dated 4 November 2011.

It is certainly debatable whether norm status can be attributed to the two letters addressed to Italy. The low level of obligation does not necessarily imply that they do not have legal effect. As outlined by Terpan (2005) a soft law norm can lack obligation but have legal relevance. In this case the letters gain legal relevance due to their hard law-like content. (Terpan, 2005, 71) They set out specific conditions to be fulfilled by an established deadline.

Hence, arguably the letters have a high degree of precision and delegation and qualify as legal norms. In addition, they have proven to have the same impact of a hard law norm as demonstrated by the implementation of the Fornero reform which complied with the majority of the recommendations issued by the EU.

Secondly, in the absence of a treaty as the basis for the such conditions, these norms definitely belong to the soft law realm.

The letter of 5th of August expressly requests the following measures wage reform, the homogenization of pension regimes between private and public regimes as well as the increase of the retirement age and finally new regimes for dismissals and hiring. The latter implicate a reform that aims to make a permanent adjustment of Italy's budgetary expenditure and resource allocation which qualify it as a norm with structural purpose. Additionally, these measures needed to be implemented by the end of September 2011. (Il sole 24ore, 29 September 2011)

The letter of 4th November 2011 from Olli Rehn required a response from the Italian Government in barely a week, no later than 11th November 2011. (D'Argenio, 2011) Berlusconi resigned on the 12th of November after the Parliament approved additional budgetary corrections. This left the

structural reform in the hands of the newly appointed technocratic government. The letter has a questionnaire as annex outlining all the reform and queries that were submitted to Italy's attention.

5.4.1 Reactive reinforcement

Sacchi's analysis (2015) is revealing because it relies on a completely new type of conditionality, which is highly informal and under-researched. Conditionality is generally based upon a power asymmetry where one actor imposes conditions on another in exchange for a reward or a sanction. In the case implicit conditionality this asymmetry is particularly evident because the EU does not feel the need to lay out the consequence of compliance or lack thereof.

Hence, the benefits of compliance are mutually understood. Given Italy's resistance towards the idea of entering a formal bailout program, it is important to remember it was the only state among those under the more severe economic strain (Greece, Spain, Portugal, Ireland) to not enter into a formal conditionality program with the ECB or the IMF. Despite the fact that the reward is not expressly laid down in the letters however, the ripple effects of the suspension of the Securities Market Programme are quite evident. (Sacchi, 2015, 83) Italy was highly dependent on the European Central Bank which was purchasing European government bond with the purpose of improving the status of failing bond markets of several countries, Italy included. The commercial banks of those states then had the chance to sell these bonds to the ECB in exchange for financial aid. (Ansgar, 2010, 357)

There are also additional reasons why the rewards could not be formally included in the letters. The ECB limited the SMP to secondary markets therefore, not in violation of its mandate however, it went against the spirit of the Bank. (Ansgar, 2010, 357) Especially, given that direct bailouts of government deficits operated by a central bank are not allowed. (Ansgar, 2010, 357)

In sum, although the reward was not explicitly outlined, the existence of the SMP itself was incentive enough to push a distressed Italy towards action. It is important to note that the situation was drastic, and Italy was highly dependent on the financial aid provided by the ECB. Hence, the crisis-induced hypothesis could also represent a potential explanation for Italy's compliance with EU soft law. In that sense, withholding the reward was sanction enough for Italy. However, the absence of a formal enforcement mechanism thus, sanctions, is also a relevant element.

While Berlusconi failed to implement a full-blown structural reform due to his conflict with his own government coalition and his re-election concerns.

Despite Berlusconi lacking both capacity and motivation to comply, the reforms were implemented exactly by the deadlines requested by the EU. This lack of political will and capacity due to his

conflict with fellow members of his cabinet such as Tremonti, cost him his role as Prime Minister. (Jones, 2012, 84)

Monti took over the executive role with a long list of measures to be implemented. It is important to highlight that Monti was a representative of a technocratic government and set to keep his role for a limited amount of time only and without possibility of re-election. (Jones, 2012, 105) This generated less re-election concerns hence, Monti's priority was not the opinion of the public or that other relevant veto-players such as the trade unions but the realization of the establishment economic and political goals. Monti had much more room for discretion compared to Berlusconi from a political point of view which allowed him to bypass the negotiation process with domestic actors such as the labour unions.

Overall, the EU managed to spur the implementation of fast-track reforms without the need for a hard law framework and sanctions. Arguably, withholding the reward became enough of a sanction in itself. Finally, the negotiation and implementation of the reforms took much less time with the first recommendations issued in August 2011 and the reforms being implemented December 2011 and June 2012. Overall, less than a year was required which is record timing for a politically unstable country such as Italy. Additionally, the reform included some amendments to the constitution, specifically to article 18 concerning labour contracts therefore, the speed of implementation is a token of the effectiveness of reactive reinforcement and soft law. The same results may not have been achieved with the threat of a sanction weighting over Italy's head. However, this will be explored in the second case.

6. Post-crisis EU Economic Governance

After the disastrous consequences of the crisis, the framework of European economic governance needed to be reformed. More precision in terms of objectives and stricter surveillance and enforcement have become necessary. The EU has called for increasing austerity measures within member states. EU economic governance has undergone a shift towards hard law.

The European Semester (ES) represents the central foundation within which all the new instruments are embedded and the base for further institutional layering. (De la Porte et al., 2015, 13) It consists of a cycle of economic and fiscal policy coordination, created in 2010, and aiming to increase coordination and effectiveness of economic and social policies within the EU. The ES is usually initiated by the Commission through the completion of an Annual Growth Survey (AGS) which assesses the progress achieved in the previous year and sets new goals for the future. It is a very

powerful instrument in terms of agenda-setting, providing both the Commission and MS with the progress as well as policy goals still to be achieved. (De la Porte et al., 2015, 13)

Interestingly enough, instead of reforming the existing framework the EU has resorted to institutional layering, introducing new tools on top of the present ones. Despite the latter, the newly introduced Six Pack, the Fiscal Compact (FC) and the Two Pack have radically altered the institutional framework. The new governance framework foresees direct intervention of the EU in the economic policies of member states. The new norms comprise enhanced monitoring, prevention and correction.

6.1 Six Pack

The Six Pack is a set of EU legislative measures reforming the Stability and Growth Pact that has entered into force in December 2011.

The Six Pack aims to further fiscal coordination and consolidation within the EU. To enhance monitoring, it establishes country-specific medium-term objectives (MTOs) and specifies budget criteria to be adhered to. Compared to the previous surveillance mechanisms, the Six Pack is much stricter. The purpose is to avoid that MS accumulate high deficits and make them accountable for their budget in reference to the set MTOs. (De la Porte et al., 2015, 15) The enforcement of the latter has also increased: the Commission is entitled to issue a warning in case of serious budget deviations. The latter presents limits to the actions national governments can undertake, specifically structural reforms which are highly dependent on budget availability which is now under strict surveillance of the Commission.

The Macroeconomic Imbalances Procedure, previously mentioned, is also part of the Six Pack and is being increasingly used by the Commission. The indicators it sets are far more detailed than the ones present in the SGP and aim to assess the MS economic situations quantitatively. (De la Porte et al., 2015, 16) Potential red flags can lead to Alert Mechanism Reports (AMR) that review with scrutiny MS economic situations and provide recommendations and corrections to be implemented. (14 MS have undergone the procedure in the second round of AMR). (De la Porte et al., 2015, 16)

Last but not least, the Excessive Deficit Procedure (EDP) can be approved if MS have surpassed their deficit and debt criteria whereas pre-crisis only the deficit criteria were deemed relevant.

In sum, the Six Pack brings enhanced surveillance, stricter budget rules, higher rate of enforcement of such rules and punitive sanctions in case of non-compliance. (De la Porte et al., 2015, 16) The latter largely influences the state capacity to define its political agenda and specifically welfare reform to which most of the national budget is dedicated.

6.2 Fiscal Compact

Amongst some of these new surveillance and accountability tools is the Treaty on Stability, Coordination and Governance also known as the Fiscal Compact signed in 2012 and into force since 2013. The Fiscal Compact establishes strict budgetary criteria for MS to comply to as well as automatic sanctions in case the parameters are not met. (Antonioli & Pini, 2014, 5) Therefore, it furthers the existing strict limits set by the Six-Pack. The aim is to provide fiscal discipline and stringent structural deficit rules. (De la Porte et al., 2015, 17)

In order to meet the requirements set in the Fiscal Compact most MS have to implement recessive policies such as cuts in welfare spending, expenditure cuts etc. Compliance to the Fiscal Compact creates a sort of recession cycle. First a decline in GDP growth fosters an increase in a MS' budget deficit which forces the government to implement measures to stop the latter. MS will have to create even stricter fiscal policies in order to comply which further decrease the GDP growth. This cycle originates into recessive and stagnative economy of which Italy is the emblem.

Moreover, surveillance within the Fiscal Compact is extremely high due to the fact that MS have to report on their national debt issuance to the Commission and the Council. (De la Porte et al., 2015, 18) Consequently, national governments must discuss any major domestic reforms with Commission and Council prior to implementation, further restraining their agenda-setting capacity. (De la Porte et al., 2015, 18)

Compliance with the Fiscal Compact is a pre-requisite in order to obtain financial assistance through the SGP. More specifically, articles 3 to 8 of the Fiscal Compact establish that the annual structural balance has to meet the country-specific medium-term objective and must not exceed a 0.5 % GDP deficit. There is no derogation to the rule aside from exceptional circumstances independent from the State's political agenda.

6.3 Two Pack

Created in May 2013, the Two Pack also builds upon the surveillance and compliance mechanisms established by the previous two tools. The addition is represented by the introduction of a common budgetary timeline. The latter means that governments must submit their annual budget proposal (Draft Budgetary Plans, DBP) to the Commission and the Eurogroup before it undergoes approval at the national level. (De la Porte et al., 2015, 19) Therefore, EU has pre-eminence over national parliaments which only vote the acts after EU approval.

If the Commission deems the DBPs deviant from commonly established criteria it will issue specific recommendations however, in serious cases of non-compliance a revision of the plan will be requested. (De la Porte et al., 2015, 19)

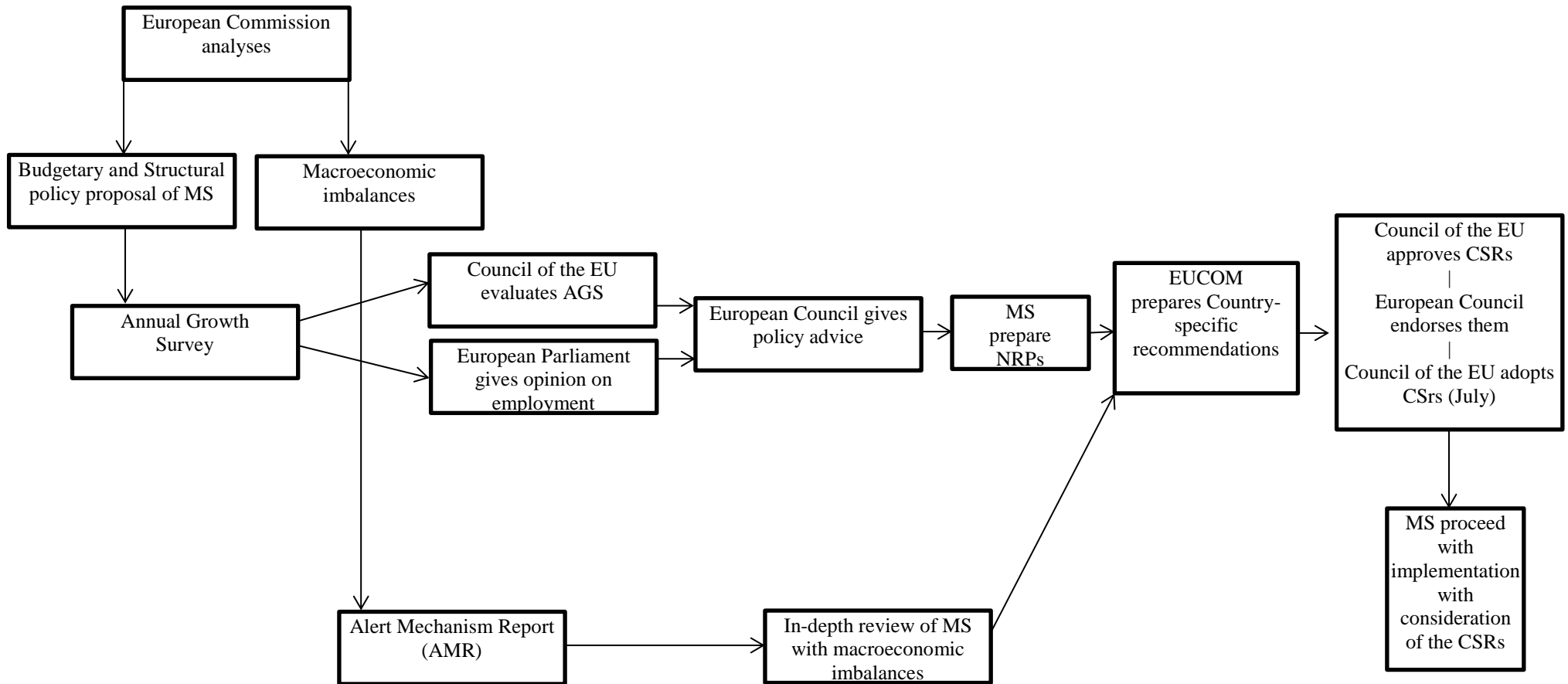
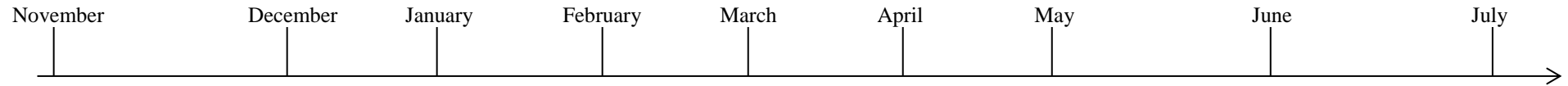
Although all three new tools are strictly linked to fiscal and budgetary policy they also highly affect public expenditure, national agenda-setting and their policy plans in all domains but more so as regards structural reforms, which required high portions of the budget to be implemented.

6.4 European Semester

Alongside the newly established surveillance measure the EU has also focused on new social objectives and enhanced policy coordination to be pursued given that austerity measures have put a serious strain upon most MS. The European Semester can be defined as a policy coordination tool with increased surveillance however, it is not legally binding upon MS. Consequently, when on the basis of NRPs the EU issues country-specific recommendations, MS are not obliged to comply and include them in their national reform.

However, the European Semester can lead to sanctions through other mechanisms such as the SGP, Fiscal Compact and MTOs especially when it comes to compliance with the “balanced budget rule”. (De la Porte, 2015, 24) The mechanism aims to play a preventive role instead of a corrective one and is emblematic of the switch from ex-post coordination at EU level to ex-ante coordination.

Figure 7: Explanatory summary of the European Semester. (De la Porte, 2015, European Commission, the EU Economic Governance Explained)



7. Case two: the implementation of the Jobs Act labor reform in 2015 via hard law

7.1 Towards Jobs Act

After the 2013 political elections Prime Minister Enrico Letta proceeded in the same direction as the previous Monti government. He declared that he wanted less austerity measures and to invest in more constructive attempts to foster growth however, his actions were not complying with his rhetoric. The latter was also due to the fragility of his government which lasted only 11 months and was mainly characterized by political paralysis which consequentially led to inaction. (Antonioli & Pini, 2014, 6)

Renzi's government, which took Letta's place in February 2014, has made it its mission to promote reforms that would foster growth and productivity. However, his focus on flexibility ultimately failed to reverse the decline in Italy's productivity.

The Jobs Act, which comprised a number of reforms and decrees, is based upon 3 main pillars. Firstly, the introduction of an 80 euro bonus in the pay check as well as tax wedge reduction. (Antonioli & Pini, 2014, 7) The second pillar aims to protect the Made in Italy partisanship and provide support to Italy's manufacturing firms. (Antonioli & Pini, 2014, 8) Lastly, the reform aims to simplify labour law and introduces a new contract type which is based on progressive protection. (Antonioli & Pini, 2014, 8) The aforementioned deregulation has spurred a controversy within the EU. The law puts the worker in a weaker bargaining position compared to the employer moreover the new and revised motivations for temporary hiring clash with the EU standards which interpret subordinate contracts as permanent and not temporary. (Antonioli & Pini, 2014, 8-9) The latter however, enters the realm of labour law and is not the purpose of this research.

As outlined in Figure 7, the process set by the European Semester comprises several steps including the submission of the National Reform Plans by the member states and the issuance of country-specific recommendations to the state in question by the Council. Italy was subject to the Macroeconomic Imbalances Procedure in 2014 as its public debt was growing and competitiveness failed to increase. Olli Rehn, the European Commissioner for Economic and Monetary Affairs and the Euro, has declared in his 5th of March 2014 press conference that Italy's results for 2014 are insufficient. (EU news, 5th March 2014) He advocated for more flexibility in the job market, structural reforms that aim at increasing production rates. Italy at the time was undergoing in-depth review of its status and policies due to the negative assessment contained in the Alert Mechanism

Report of 13 November 2013. In order to show willingness to comply and depart from the inaction that characterized the previous government Renzi pushed for the adoption of the Legislative decree n.34 or Decreto Poletti containing urgent measures to improve employment rates, approved on 20th March 2014. (Fana et al, 2016, 84) However, the latter was just a preliminary step and completely insufficient in order to tackle the problems highlighted by the EU. The National Reform Plan for 2014 was approved in April 2014 and provided a substantial list of reforms and adaptations that still needed to be implemented by the Italian government. It clearly showed that the Decreto Poletti was deemed insufficient by the EU. Given that the government had been in power for barely one month, the decree can be interpreted as an attempt to show willingness and therefore, the compliance rate at this point should be evaluated as low or soft for that matter. It proved that the Renzi government had an agenda that intended to follow EU requirements but more time would be required for proper compliance.

The content of Jobs Act was under debate for several months, Renzi's government encountered opposition of the most prominent Italian labour unions, such as CGIL, as well as of other political parties. The latter was due to the fact that the reform entailed a deeper modification of Article 18 of the Italian Constitution compared to that already implemented within Fornero reform. In order to liberalize the job market and allow for more flexibility it was deemed necessary to facilitate the contract scheme and dismissal rules. Both the opposing parties and labour unions argued that this reform would bring even more instability to the job market and instead of fostering employment it would increase precariousness of the employees. (Negrelli & Signoretti, 3)

After a long debate between the domestic actors, the roadmap for the Jobs Act reform was finally adopted on the 3rd December 2014, and it granted the executive organ the delegation necessary in order to adopt the provisions of the reform separately via legislative decree. The implementation of the reform however, took much longer. The roadmap outlined a total of 8 decrees to be gradually adopted in the course of 2015.

The table below outlines the steps that led to the adoption of Jobs Act and intends to be a summary of the pathway that led to implementation.

The documents included in the hard law box are to be interpreted as the measures representing the newly established hard law framework. They are those recommendation, reports, acts issued according to the rules of the European Semester, the Six-Pack, the Two-Pack and the Fiscal Compact.

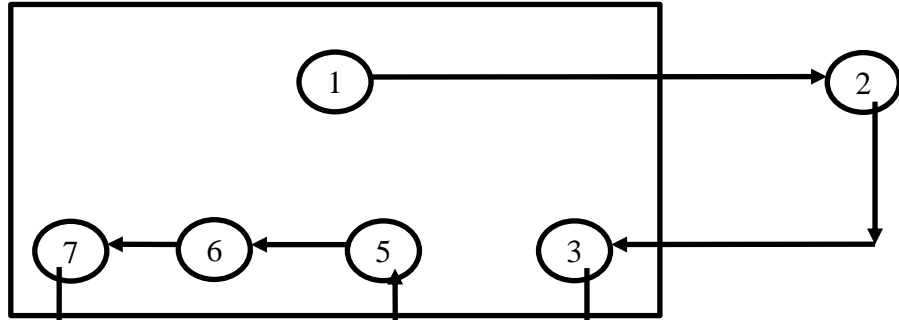
Soft compliance should be interpreted as those actions that intend to be a token of Italy's willingness and motivation to follow EU policy recommendations. However, these acts are not to be

considered sufficient and do not represent compliance. Therefore, it is necessary to distinguish it from the reform and its decrees. Finally, the acts filling the outcome box represent the legal decrees through which Italy has implemented the Jobs Act reform.

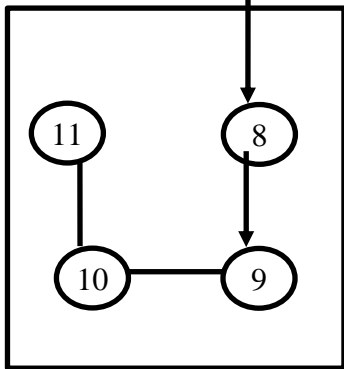
Figure 8: Explanatory process-tracing table of the implementation of Jobs Act 2014/2015

- | | |
|------------------------------|--|
| 1. <u>13 November 2013</u> | Alert Mechanism Report 2014 |
| 2. <u>22 February 2014</u> | Prime Minister Renzi forms the new government |
| 3. <u>5 March 2014</u> | In depth review of Italy as MS with excessive macroeconomic imbalances |
| 4. <u>20 March 2014</u> | Legislative decree n.34 or Decreto Poletti, concerning emergency measures to improve employment and simplify the obligations upon companies |
| 5. <u>22 April 2014</u> | National Reform Plan and Stability Plan for 2014 submitted to EU |
| 6. <u>2 June 2014</u> | European Council Recommendation on Italy's 2014 national reform programme and delivering a Council opinion on Italy's 2014 stability programme |
| 7. <u>28 November 2014</u> | Alert Mechanism Report 2015 |
| 8. <u>3 December 2014</u> | Jobs Act is adopted by the Senate (Legge n.183) |
| 9. <u>4 March 2015</u> | Legislative Decree n.22 and n.23 |
| 10. <u>15 June 2015</u> | Legislative Decree n.80 and n.81 |
| 11. <u>14 September 2015</u> | Legislative decree n.148, n.149, n.150, n.151 |

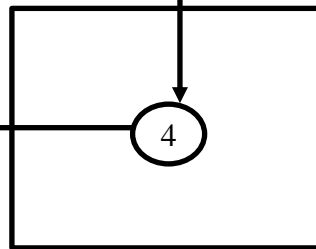
HARD LAW



OUTCOME



SOFT COMPLIANCE



7.2 EU hard law vis à vis Jobs Act

Already in April 2013 the Commission concluded that Italy was subject to excessive macroeconomic imbalances therefore, closer monitoring and strong policy reform was deemed necessary. (Alert Mechanism Report, 2014, Section 3: Country-specific commentaries on the reading of the scoreboard) In particular, it highlighted the increase of unemployment rates to 12 ¼ % in August 2013 with even higher youth unemployment rates.

Following the Alert Mechanism Report and the NRP submitted at the time still by Letta government, the Council issued Country-specific recommendations requesting among others the following measures to be implemented as regards labour:

- Ensure the effective implementation of the labour-market and wage-setting reforms to allow better alignment of wages to productivity.
- Take further action to foster labour-market participation, especially of women and young people, for example through a Youth Guarantee.
- Strengthen vocational education and training, ensure more efficient public employment services and improve career and counselling services for tertiary students.

(Council Recommendation on Italy's 2014 National Reform Programme COM/2014/0413)

The Letta government was incapable of implementing significant reforms therefore, compliance with the above prescriptions fell onto the newly appointed Renzi government.

The 2015 Alert Mechanism Report issued the same conclusions, Italy was still experiencing excessive rates of macroeconomic imbalance. Italy was urgently required to achieve the following goals:

- Strengthen competitiveness
- Foster productivity growth
- Tackle unemployment rates with particular focus on youth unemployment

(Alert Mechanism Report, 2015, Section 3: Imbalances and Risks: country-specific commentaries)

Prescriptions for further action were issued in the 2014 CSRs, confirming that Decreto Poletti alone was not at all sufficient to cope with the public debt and low productivity rates.

Within the 2014 CSRs, issued in the framework of the ES, the Commission had explicitly addressed the need to tackle high rates of unemployment. Specifically suggesting an increase in flexibility, the

Commission underlined the segmentation of the Italian labour market which tends to leave out women and youth, hence the high youth unemployment rate i.e. 40%. Its final recommendation was to assess the general labour regulation by the end of 2014 and evaluate the need for further action, which as it transpires from the text of CSR is deemed necessary. It also stresses the need to address female unemployment, social exclusion, reduce fiscal disincentives for second earners and offer traineeships and apprenticeship opportunities in order to tackle youth unemployment and brain drain. (Council Recommendation on Italy's 2014 National Reform Programme COM/2014/0413)

The Italian 2015 National Reform and Stability Programme proposed a slight deviation from the set budgetary criteria in order to devote those resources to the implementation of significant structural reforms which could bring long-term benefits and set the course back in 2016. After attentive assessment, the Commission agreed to the temporary deviation as long as the it was corrected on time as promised. As regards Jobs Act, although it looked promising the Commission has some reservations. Whilst the plan for action was considered solid and compliant with the necessary measures, its operationalization will be decisive as regards the delivery of expected results. As previously mentioned, the decree adopted in December 2014 merely outlined the measures to be adopted and did not yet provide any visible results. The Commission also recommended to adopt the relevant decrees on the matter of wage supplementation schemes, review contractual arrangements by introducing further flexibility for firms and implement a revision of the current school reform in order to tackle high youth unemployment rates. (Council Recommendation on Italy's 2015 National Reform Programme COM/2015/262)

The recommendations were taken into account by the Italian Government and the decrees constituting the Jobs Act included the following measures:

a. Introducing flexibility:

- It further de-regulated dismissal allowing to fire workers arbitrarily without any economic motives;
- It eliminated the employees' right to a permanent contract once the maximum number of temporary contracts has been reached. Consequently, it is financially more convenient for firms to hire temporary workers.
- Decreto Poletti, introduced in May 2014, had already removed the economic requirements necessary in order for firms to make use of temporary contracts.

b. Tackling low labour productivity and decreased competitiveness:

- Hiring incentives for firms: if a firm hires an employee with a permanent contract it will be entitled to an exemption from social security contributions for three years.

c. Wage supplementation schemes:

- The introduction of vouchers which are hourly tickets that can be used as compensation for jobs with a net hourly salary of 7,50 euros.

(Fana et al., 2016, 30-31)

7.3 The mechanisms of compliance with EU hard law in case two

7.3.1 Legalization and purpose

First and foremost, both Council recommendations COM/2014/0413 and COM/2015/262 are part of the new European Semester and therefore, they are legal norms by definition. However, it is important to note that these recommendations do not necessarily classify as hard law if analysed separately since MS are not formally obliged to take them into account.

The latter does not imply that these norms belong to the soft law realm either. If analysed as part of the whole new regulatory framework and especially if coupled with the Macroeconomic Imbalances Procedure which forces member states to adhere to strict deficit criteria, the recommendations gain significant legal relevance and a binding dimension. In practice, they restrict the state's agenda-setting power because of the strict medium-term budgetary objectives. (De la Porte, 2015, 16) The level of obligation they generate is significantly higher from this perspective in addition, they are based on a treaty, the Fiscal Compact, by definition a source of hard law.

Hence, technically, because states are obliged to comply with the requirements of the macroeconomic imbalances procedure they are also mandated to implement the policy recommendation issued by the Council within the European Semester in order to contain their deficit levels.

Both Council Recommendations COM/2014/0413 and COM/2015/262 impose goals to be achieved through reform of the labour and social policies including changes in the contract types, pension and wage schemes. Therefore, they are norms with structural purpose. It is not entirely possible to make the same statement about the norms issued on the basis of the Fiscal Compact. The latter imposes strict budgetary requirements but does not dive into precise structural reform recommendations.

However, while the precise conditions are outlined in non-binding norms issued by the Council, the requirements set out through the macroeconomic imbalances procedure and through the automatic correction mechanism still have a structural purpose.

That is because monetary integration generated interdependency between MS fiscal, social and employment policies. (Trubek, 2005, 345) The latter constraints MS discretion when it comes to the implementation of their domestic structural reforms. Employment policy has significant impact on domestic budget and a state's competitiveness. If MS budgets and markets are independent from each other, employment policy remains a matter of domestic concern. However, once interdependency grows due to the introduction of a common currency and a single market, the employment policy of one state is also of interest to others because a poor employment policy will also affect the competitiveness and budget of all MS involved in the common market. Social expenditure is the biggest part of a state's budget, often even more than half of it, therefore, by imposing strict budgetary rules domestic structural reforms become part of the EU agenda. (De la porte, 2015, 9)

The crisis highlighted this interdependence and the new hard law framework was conceived to coordinate MS structural reforms and welfare policies to make the EU market more resilient to future crises.

Since Italy was undergoing the Macroeconomic Imbalances Procedures, its budget was under strict scrutiny of the EU. Despite the fact that CSRs issued by the Council are not formally binding, in this situation the allocation of governmental expenditure was subject to the approval of the Commission and Parliament. Therefore, arguably, those recommendations were indirectly binding through the enforcement mechanisms present in the other instruments.

In sum, when analysing the post-crisis hard law framework in its entirety it is possible to see a high degree of all the elements of legalization, including obligation. For instance, the Alert Mechanism Reports tend to set generic goals to be achieved while Council recommendations dive deeper and propose concrete policy measures that MS should consider implementing to achieve these goals.

Arguably, the country specific recommendations are highly precise and provide structural purpose and to the hard law norms whilst the binding requirements of the Fiscal Compact, Two-Pack and Six-Pack provide a high level of obligation, a sanction-based enforcement mechanism and monitoring.

7.3.2 Proactive Reinforcement

In general, the Fiscal Compact also establishes a proactive reinforcement mechanism, if MS MTOs have significant deviations that have not been corrected within 3 years' time, the automatic

correction mechanism kicks in. (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, 2012, Art 3.1.e) The latter imposes measures that need to be implemented in order to correct the deviations.

On the basis of the theoretical framework outlined in Section 2, in this case the EU's financial aid is the reward while the sanctions imposed on the basis of the Fiscal Compact in case of systematic non-compliance allow to identify this mechanism as coercive reinforcement. While at a first glance, the latter may appear as an extremely effective way to generate compliance, it is not necessarily the case. Italy presents numerous factors that should be taken into consideration before resorting to a strict sanction based strategy. Firstly, it has a history of highly unstable governments consisting of weak coalitions that often cannot even last one legislature. The political failure of the Letta government, the resignation of which forced Italy to delay its compliance with the recommendations for labour reform, already set out in the CSRs in 2013, is an example.

The political class is very fractured and the public is known to have become increasingly Eurosceptic. Secondly, in this case Renzi was highly dependent on EU aid due to the persisting ripple effects of the sovereign debt crisis as well as the stagnant status of the Italian economy.

At the same, time re-election concerns played an important role in setting his policy agenda. For instance, to promote a new contract regime that would lead to more flexibility but would also significantly decrease job security for thousands of citizens Renzi chose to stress the 80 euro bonus as the main pillar of the Jobs Act reform. This proposal represented indeed nothing but a bonus and had nothing to do with the actual structural reform under discussion. (Antonioli & Pini, 2014, 7)

It appears evident that the Renzi government was strongly motivated to comply with the recommendations set out by the EU and has put the labour reform on the agenda from the beginning of its mandate. However, Renzi was conditioned by the opposition of domestic veto players represented by trade unions. The latter forced him to enter into lengthy negotiations with all parties involved seeking a compromise that would not cost him his role.

In order to avoid the long adoption mechanisms required for the approval of a reform by the Parliament, the Renzi government opted for the legislative decrees instead. The latter are adopted by the executive organ on the basis of a delegation provided by the legislative organ. However, the preparation and implementation of the decrees still required more than 9 months while labour specific recommendations were issued by the EU within the Alert Mechanism Reports already in 2013.

All things considered, the threat of sanctions under the Fiscal Compact and the close monitoring through the Alert Mechanism Reports in reality lowered the effectiveness of the hard law framework because it affected the state's capacity to pursue reform. This is because of the type of the reform, i.e. structural reform, which is not part of EU exclusive competence. The latter coupled with the formal sanction and monitoring directly affects the state's capacity to overcome internal opposition and undermines governmental power. The transparency of the sanction system could also worsen the government's capability to promote and implement the reform especially in the wake of serious Euroscepticism spreading across MS. The governments are unlikely to be motivated to appear directed by the EU in the formulation of their national policy agenda.

Finally, it should be noted that the binding rules of the Fiscal Compact do not set out specific policy objectives which allows states to deliver less than expected. In practice, the latter is proven by the fact that the EU stressed the need for more structural reforms to be implemented by Italy in its Alert Mechanism Report 2016 confirming the ineffectiveness of the new hard law framework.

The country specific recommendations provide general goals to be achieved by the member state via means of its own preference. Although the new hard law framework established a clear timeline for monitoring and implementation of all structural reforms, it takes a significantly longer amount of time. Considering that the European Semester runs from November to July for a total of 8 to 9 months, the negotiation and review process due to all the foreseen formal steps is less speedy. Nonetheless, in a non-crisis environment, some would argue that it is completely acceptable for the implementation of reforms concerning significant policy areas.

From a practical point of view, the new hard law framework, specifically the European Semester with its set deadlines, requires more time to issue recommendations and implement the necessary reforms. The latter lessens motivation and allows states to postpone the necessary reforms as proven by the almost two years long negotiation process surrounding the implementation of Jobs Act. The EU had already advocated for labour reform in the Alert Mechanism Report issued in 2013 however, the incapacity of Letta's government blocked any way forward until 2015. While hard law may generally hinder higher levels of compliance due to close monitoring and surveillance and the clarity of sanctions in case of non-compliance, it can also decrease the state's capacity to comply as it did in Italy in 2015.

8. Conclusion

8.1 Limitations

As this research project focused on two isolated cases in a very short period of time there is quite obviously a risk for lack of generalization of the study and the lack of applicability of the findings to other units of analysis. The study has external validity as regards the evaluation of the effectiveness of hard law and can be applied to other cases. External validity of the type of soft law under analysis, specifically represented by implicit conditionality, is compromised by the confounder represented by the financial crisis. There is potential for concluding that soft law is more effective than hard law in achieving policy results only due to the pressing conditions during the implementation of the reform itself i.e. the political and economic pressure produced by the complicated market conditions. In order to ascertain that the explanatory variable is responsible for producing the outcome it is necessary to be able to isolate other variables that might have produced the same result. (Toshkov, 2016, 263) However, this is not possible in this case. As a critical juncture within the EU the crisis fostered a fertile climate for policy reform especially due to the urgency of the situation and the critical state of the markets at the time. It is not possible to isolate the effects of the confounder in this study which represents the main flaw for the conclusions. Additionally, to establish validity it is necessary to keep all other relevant variables that make the cases similar constant. (Toshkov, 2016, 263) In this study the latter is not possible since in case one Italy was led by a temporary technocratic government that had very few reputational concerns hence, much lower compliance costs. For Renzi, highly dependent on EU aid and the vote of the citizens, it was necessary to negotiate and be inclusive of all domestic veto-players which slowed down the implementation process.

Another pitfall for generalization is the focus of the study on one particular type of soft law, that is implicit conditionality. However, the study could be extended to include more types of soft law and gain more validity.

Given the qualitative approach to the methodology, there is lower risk of measurement error and the potential role of crisis will be accounted for in the explanation of the mechanisms that led to the adoption of the reform. For the purpose of increasing external validity, a replication with extension may be carried out modifying the independent variable to represent a less specific type of soft law, i.e. not implicit conditionality.

Finally, both types of norms are capable of producing the outcome which makes the impact of the explanatory variable on the outcome questionable. (Toshkov, 2016, 264) However, the main goal of

the research was an evaluation of the effectiveness of each norm since it is known that they both can impact structural reform implementation at domestic level.

In sum, this most similar systems design is very weak. (Toshkov, 2016, 264) In addition to the above, the outcome could also be the result of multiple variables interacting with each other. (Toshkov, 2016, 264) Given the complexity of a multi-level governance system like the EU, that is definitely applicable. In particular, it is not only the type of the norm and the mechanism behind it but also political bargaining, socialization, influence of third parties and domestic veto-players, the opinion of the public, budgetary rules not only at domestic but also EU level, that play a role in the implementation of such significant reforms.

8.2 Final remarks

This study once again proves that the strict distinction between hard and soft law is simply unrealistic. Even within the new treaty-based hard law framework established after the crisis there is consistent interplay between the soft law norms issued within the European Semester and the strict monitoring and enforcement procedures foreseen in the Fiscal Compact and its automatic correction mechanism. In an increasing number of policy areas new modes of governance arise combining the two. (Graziano & Halpern, 2014, 7)

Ultimately, this research intended to highlight the effectiveness of reactive reinforcement and soft law in generating compliance. By specifically focusing on implicit conditionality, it also aimed to highlight the development of new international norm typologies which deserve further exploration. Considering the growing levels of Euroscepticism and the diffusion of populist, right-wing, anti-EU governments across member states draws attention to the potential of soft law. (Graziano & Halpern, 2014, 13) The latter allows the EU to pursue the common policy goals and coordinate domestic policies related to employment without the need to formally assert its authority over the MS by imposing issuing binding recommendations with strong sanction mechanisms. (Graziano & Halpern, 2014, 13) Consequently, the steering capacity of the EU of MS policies is strengthened.

The relevance of this comparative study is threefold. Firstly, it allows to outline the development of the European economic governance in the EU from soft law towards a hard law framework through institutional layering and provides the unique opportunity to compare the effectiveness of both in producing structural reforms. Secondly, it shows how the EU can affect domestic agenda-setting even in fields that are out of its competency and help states overcome political deadlocks on the path to implementation. Thirdly, it shows how the selected enforcement mechanism affects state compliance with international norms.

Additionally, the study portrays the gaps in coordination of MS fiscal and welfare policies. In the presence of a Monetary Union, such coordination is crucial in order to avoid spill-over effects. Any new structural reform is now highly dependent on the EU's willingness to allow MS to use parts of their budget for that particular purpose depending on their debt and deficit rates. From this perspective, labour policy has been indirectly transferred to the discretion of the EU, limiting the governments' say on the matter. It is major step towards an even more supranational Europe.

Soft law on the other hand is obviously highly flexible. Shaming, peer pressure and exposure put a strain on states. These factors can increase motivation and force the state to comply due to reputational concerns but it can also weaken the capacity of the state to pursue reform. For instance, in the case of Berlusconi the public undermining of his government by fellow European leaders did not facilitate the promotion of reforms on the domestic front. However, he was also involved in numerous scandals and was in open conflict with members of his own party. Even if the letters analysed in previous sections were not leaked and his political agenda was not openly criticized by other leaders, he would still not have been likely to have the necessary capacity to implement the Fornero reform. The technocratic government that followed had the necessary capacity, expertise and motivation to pursue effective results. In addition, international factors further increased motivation. For instance, the severe debt and issues experienced by fellow Mediterranean states were useful to overcome blockages raised by domestic veto players such as the labour unions.

Overall, hypothesis 1 appears to be confirmed by the facts of both cases. The implementation of the structural reform following implicit conditionality required less negotiation, less adjustment costs, and less time. The high precision of the content of the soft law norm was useful in order to provide a higher rate of compliance while hard law merely outlined goals that could be implemented with policies left to the discretion of the government. In addition, the presence of the strict enforcement mechanism in case two (i.e. coercive reinforcement) has further limited the capacity of the government to pursue reform proving that sanctions are not always as effective as they seem.

Despite the absence of an enforcement mechanism, the mutual understanding of the consequences of non-compliance following a carrot/stick logic was a crucial factor in determining Italy's behaviour vis à vis EU demands. The Italian markets were largely dependent on all the support they could get from ECB and other financial institutions at that time. While it is necessary to conclude that soft law produced a much higher rate of effectiveness, some would argue that Italy has fully complied with the goals set out by the EU via hard law in the second case as well. However, the recommendations merely set general goals making the assessment quite difficult. The Alert

Mechanism Report for 2016 is useful since it confirms that the EU is yet again not satisfied with Italy's progress and urges the implementation of further structural reforms.

Additionally, an important limitation of this assessment is the crisis environment. The threat of not being included in the SMPs might have the same weight as the sanctions imposed through the Fiscal Compact.

Soft law continues to evolve and adapt with new strategies such as naming and shaming, persuasion, rewards and sanctions. As soft law becomes harder it also increases its effectiveness making a new hybrid model of governance (Graziano & Halpern, 2014, 5)

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