

WORKING PAPER

KFG
The
Transformative
Power of Europe

Policy Matters But How?

Explaining Non-Compliance Dynamics in the EU

Tanja A. Börzel, Tobias Hofmann and Diana Panke

No. 24 | FEBRUARY 2011



KFG Working Paper Series

Edited by the *Kolleg-Forscherguppe* “The Transformative Power of Europe”

The KFG Working Paper Series serves to disseminate the research results of the *Kolleg-Forscherguppe* by making them available to a broader public. It means to enhance academic exchange as well as to strengthen and broaden existing basic research on internal and external diffusion processes in Europe and the European Union.

All KFG Working Papers are available on the KFG website at www.transformeurope.eu or can be ordered in print via email to transform-europe@fu-berlin.de.

Copyright for this issue: Tanja A. Börzel, Tobias Hofmann, Diana Panke
Editorial assistance and production: Farina Ahäuser, Corinna Blutguth

Börzel, Tanja A./Hofmann, Tobias/Panke, Diana 2011: Policy Matters But How? Explaining Non-Compliance Dynamics in the EU, KFG Working Paper Series, No. 24, February 2011, *Kolleg-Forscherguppe* (KFG) “The Transformative Power of Europe” Freie Universität Berlin.

ISSN 1868-6834 (Print)

ISSN 1868-7601 (Internet)

This publication has been funded by the German Research Foundation (DFG).

Freie Universität Berlin
Kolleg-Forscherguppe
„The Transformative Power of Europe:
The European Union and the Diffusion of Ideas“
Ihnestr. 26
14195 Berlin
Germany
Phone: +49 (0)30- 838 57033
Fax: +49 (0)30- 838 57096
transform-europe@fu-berlin.de
www.transformeurope.eu

Deutsche
Forschungsgemeinschaft
DFG

POLICY MATTERS BUT HOW?

EXPLAINING NON-COMPLIANCE DYNAMICS IN THE EU

Tanja A. Börzel, Tobias Hofmann and Diana Panke

Abstract

The European Union's infringement procedure is highly legalized. Nevertheless, as in other international institutions, non-compliance occurs on a regular basis and its transformation into compliance varies across EU infringement stages and over time. State of the art compliance literature focuses mainly on country-specific explanations, such as power, capacity, and legitimacy. In particular power-capacity models explain a good part of whether non-compliance occurs and how quickly it can be resolved. Yet, these approaches leave substantial parts of the empirical variation that we observe unexplained. This paper argues that policy and, in particular, rule-specific variables – although often neglected – are important for explaining non-compliance. Based on a quantitative analysis, we show that policy matters not only for the frequency with which EU law is violated, but also the persistence of non-compliance over time and over the different stages of the infringement procedure.

The Authors



Tanja A. Börzel is Professor of Political Science and holds the chair for European Integration at the Otto Suhr Institute of Political Science, Freie Universität Berlin. Her research concentrates on questions of Governance, institutional change as a result of Europeanization as well as on the diffusion of ideas and policies within and outside of the European Union. Since October 2008, she coordinates the Research College “The Transformative Power of Europe” together with Thomas Risse.

Contact: europe@zedat.fu-berlin.de

Tobias Hofmann is visiting instructor of government at the College of William & Mary and about to finish his PhD in Political Science at Freie Universität Berlin. His research interests include the political economy of international institutions and regional integration. Before joining the college of William & Mary faculty, he was a fellow at the Niehaus Center of Globalization and Governance and an associate at the Weatherhead Center for International Affairs.



Contact: thofmann@wm.edu



Diana Panke is Lecturer of Political Science at the University College Dublin. Her research interests focus on governance beyond the nation-state, including international negotiations, the creation and degeneration of international norms, Europeanization, comparative European Union politics, EU decision-making processes, modern theories of international relations as well as compliance and legalization.

Contact: diana.panke@ucd.ie

Contents

1. Introduction	6
2. Non-Compliance and Policy-Variation	7
3. Policy-Explanations	12
4. Rule-specific Explanations	18
5. Conclusions	27
Literature	29
Appendix: Operationalization of Power and Capacity	33

1. Introduction

Non-compliance haunts all international institutions, as even highly legalized compliance monitoring, management, and enforcement settings cannot completely prevent rule violations.¹ The infringement procedure of the European Union (EU) combines centralized compliance monitoring (the European Commission) with an elaborated procedure to resolve violations of EU Law. The European Commission opens infringement procedures for detected cases of suspected non-compliance and starts a managerial dialogue with the respective state. Should settlements fail, the Commission initiates the adjudication stage by referring the case to the European Court of Justice (ECJ), which issues binding rulings. For the rather rare cases of highly persistent non-compliance, the Commission and the ECJ carry the case onwards to the enforcement stage, in which the ECJ can issue financial penalties (cf. Börzel 2001). Despite these institutional provisions, non-compliance occurs on a regular basis and includes all member states.² In addition, the transformation of norm violations into compliance varies across the stages of the EU compliance procedure and with respect to the time it takes to resolve infringement cases. Since the institutional design is constant, it cannot explain the empirical variance of member states non-compliance. The state of the art in non-compliance research focuses mainly on country-specific explanations (e.g. Knill 1998; Haverland 2000; for an overview cf. Mitchell 1996; Checkel 2001). In particular, power-capacity models explain a good part of whether non-compliance occurs and how fast or through which compliance instruments it can be resolved (Börzel et al. 2010). Yet, all these approaches leave substantial parts of the observed variation unexplained. We argue that this is due to the compliance literature's neglect of policy-related explanations. Therefore, this paper focuses on policy-specific variables³, which we show to be of high importance for the frequency of non-compliance and its persistence over time and the stages of the infringement procedure. In addition, it shows that rule-specific variables, such as high European misfit, a high complexity of rules, as well as the idleness of European law transposition, significantly increase the frequency of norm violations.

The paper proceeds in the following steps. Firstly, we empirically assess the variation of non-compliance across policy fields (2). Subsequently, we develop policy-specific hypotheses and quantitatively test them (3). Variation in the frequency of compliance and its settlement dynamics between policy sectors cannot be completely captured by our policy explanations due to the heterogeneity of rules within policy fields. For example, while non-compliance cases from positive, market-correcting policy sectors seem to take longer to be settled – both in terms of stages of the infringement procedure and days – almost every policy field encompasses market-creating and market-correcting rules. Similarly, almost every regulative policy also encompasses redistributive effects. It can be difficult to aggregate them into distinct policy areas. To overcome these difficulties, we adopt an even more fine-grained approach. Next to policy-based hypotheses, we introduce rule-specific hypotheses and also test them with quantitative methods (4).

1 Cf. Abbott et al. 2000; Abbott/Snidal 2000; Duina 1997; Garrett et al. 1998; Goldstein et al. 2000; Helfer/Slaughter 1997; Hudec 1993; Joerges 2000; Kahler 2000; Keohane et al. 2000; Simmons 2000; Smith 2000; Stone Sweet/Brunell 1997; Zangl 2001; Zürn/Joerges 2005 among others.

2 Cf. Duina 1997; Falkner et al. 2004; Falkner et al. 2005; Hartlapp 2007; Haverland 2000; Mbaye 2001; Mastenbroek 2003; Steunenberg 2006; Treib 2003 among others.

3 For similar arguments in favor of an approach that does not ignore variation across policies cf. Lampinen/Uusikylä 1998; König et al. 2005; Steunenberg 2007; Steunenberg/Rhinard 2005; Steunenberg/Kaeding 2008; Treutlein 2007; Haverland 2000; Haverland et al. 2008.

This reveals that when new Directives are based on existing European legislation, the misfit for member states is kept to a minimum and the probability of infringements becomes smaller. Likewise, increasing complexity of Directives goes hand in hand with a higher share of non-compliance. Finally, rule-specific idleness makes infringements more common. The paper concludes that policy-, rule-, and country-specific explanations of non-compliance are not competing, but can be combined. In terms of country-specific variables, high EU-specific political power and low bureaucratic capacities foster non-compliance (cf. Börzel et al. 2010). European misfit and complexity interact with capacities. High misfit between the new Directive and the European *aquis communautaire* as well as highly complex Directives require more political, administrative, financial, and cognitive resources than Directives that resemble or adapt already existing ones and Directives that are not as complex. Thus, states that struggle with capacity shortcomings face particularly difficult problems concerning the transposition and implementation of complex and original EU laws.

2. Non-Compliance and Policy-Variation

While the European Union has successively expanded its legislative competencies, the implementation and enforcement of European law firmly rests within the responsibility of the member states. The European Commission has the right to bring legal action against member states it suspects to infringe on European law (based on Article 226 ECT). The infringement proceedings consist of several stages. The first two, suspected infringements (complaints, petitions, etc.) and Formal Letters, are informal and treated as confidential. The formal infringement proceedings start when the European Commission issues a Reasoned Opinion. Should non-compliance prevail after managerial dialogue, the European Commission refers cases to the European Court of Justice (ECJ). This initiates the adjudication phase, which ends with a binding judgement. If the member states still refuse to comply, the Commission can open new proceedings (Art. 228 ECT), which may result in a second ECJ judgment linked to financial penalties (cf. Börzel 2001).

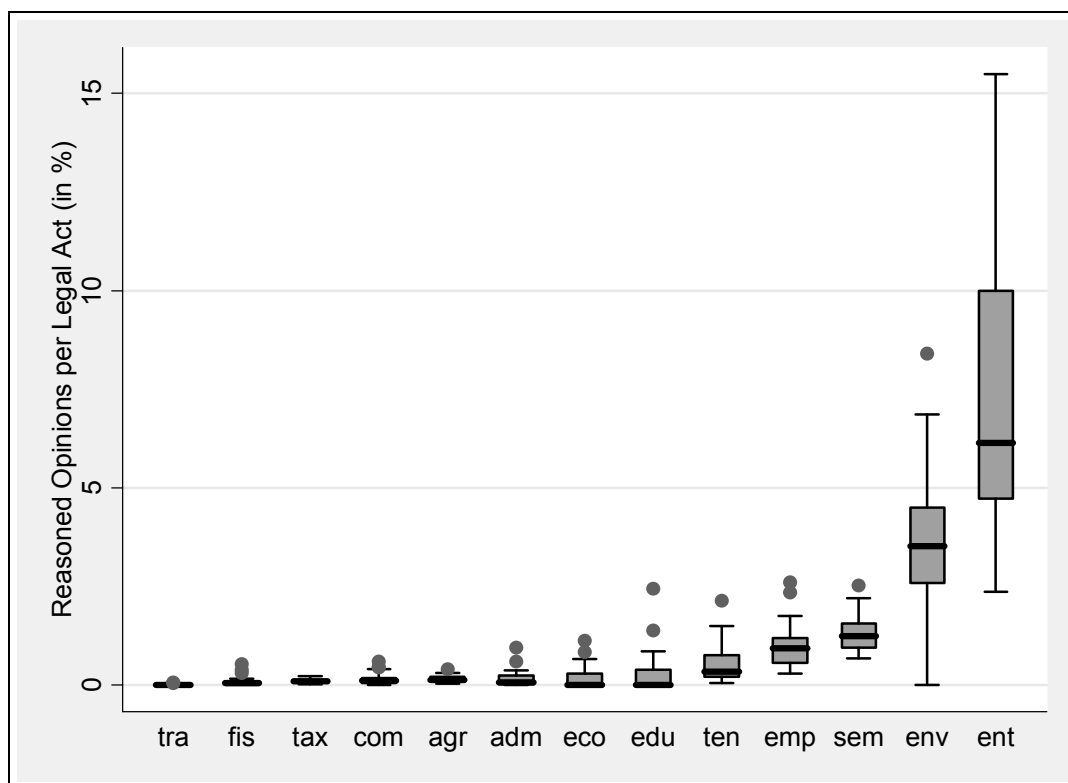
When we map the frequency of non-compliance across policy fields between 1978 and 1999⁴, we can see that all member states together infringe on European legislation in some policy areas more often than in others. Opened non-compliance cases (DV1)⁵ are not randomly distributed across policies.⁶ When we graph the annual number of Reasoned Opinions per legal act in a specific policy sector, we can see that in half of the policy sectors there are hardly any infringements (cf. Graph 1). However, in the enterprise (i.e. corporate law) sector, member states violate an average seven percent of the legal acts in force every year. Infringement numbers are also relatively high for environmental policies.⁷

4 For more information on the dataset, cf. Börzel et al. 2007.

5 For more information on the dataset, cf. Börzel et al. 2007. In this part of the paper, in which we focus on policy-specific explanations of non-compliance, we distinguish between two types of dependent variables – DV1 and DV2a/b. The first dependent variable (DV1) measures the frequency at which non-compliance occurs. It is based on Reasoned Opinions, i.e. the first official stage for which the Commission publishes non-compliance data. The second dependent variable (DV2) measures the persistence of non-compliance. It further distinguishes between the duration of non-compliance over time (DV2a) and the number of stages of the infringement procedure it takes to settle specific infringement cases (DV2b).

6 The variance across policies is even larger than that between countries (cf. Börzel et al. 2007).

7 The same holds true for the justice and home affairs policy sector. However, this sector was only introduced

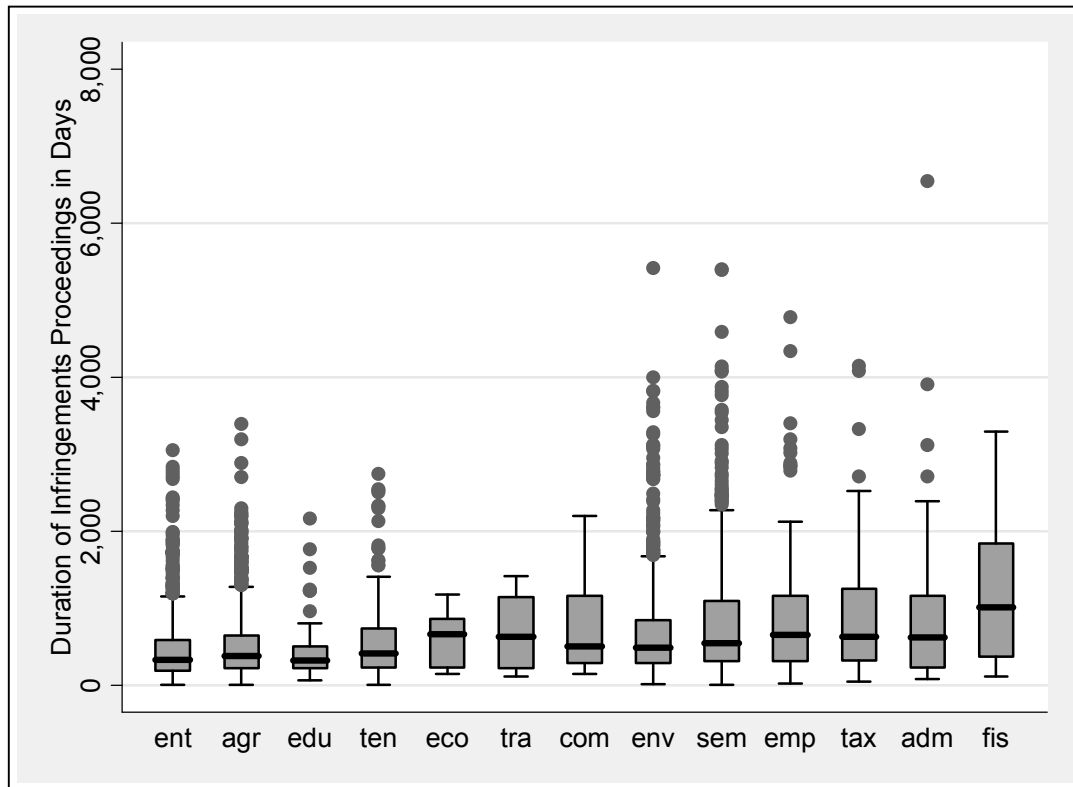
Graph 1: DV1 – Annual Reasoned Opinions per Legal Act (in %) by Policy, 1978-99⁸

If we look at the persistence of non-compliance (DV2) instead of the occurrence, we see a very different picture. While European legal acts in the enterprise sector are the ones most prone to be infringed on, the enterprise non-compliance cases are also the ones that are most rapidly settled on average. While non-compliance is usually transformed into compliance in less than two years in the areas of enterprise and education legislation, infringement proceedings in the fisheries policy sector tend to drag on for three years before they are successfully resolved.

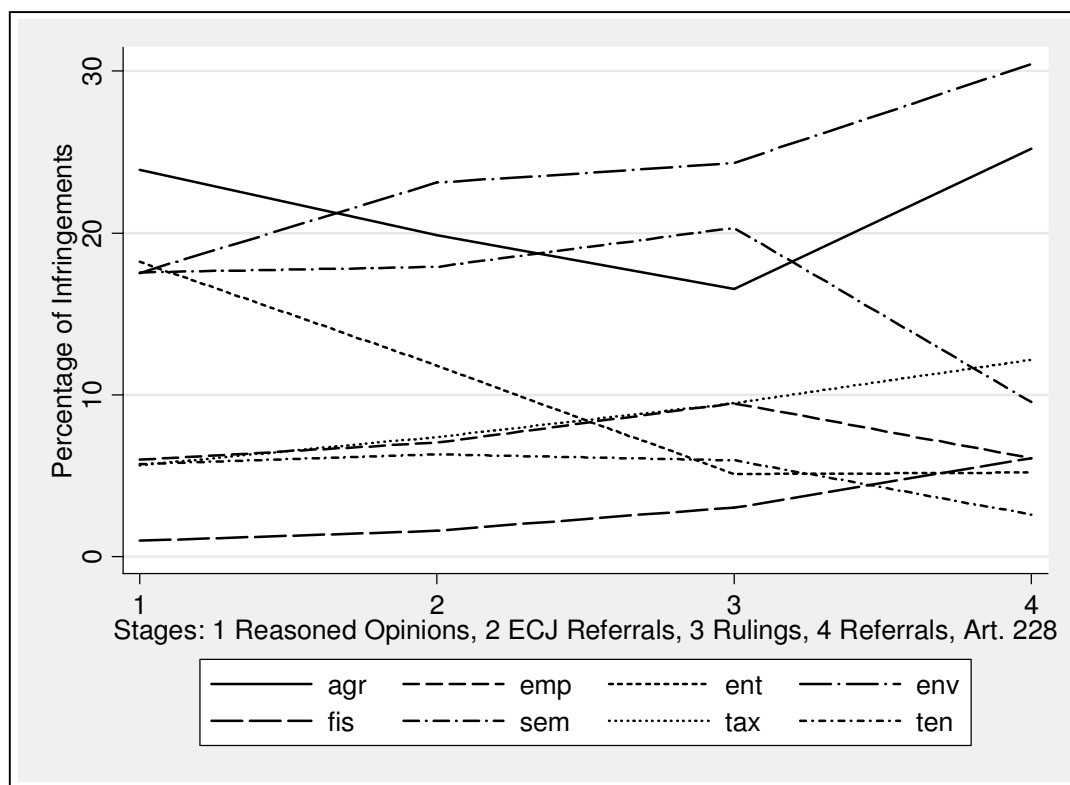
after the other policy sectors by the Maastricht Treaty in late 1993. Moreover, justice and home affairs has only subsequently been “communitarized” and made subject to Article 226 infringement proceedings. Therefore, we decided to exclude this policy sector from our analyses.

- 8 adm = Administration, agr = Agriculture, com = Competition, eco = Economic and financial affairs, edu = Education and research, emp = Social affairs, ent = Enterprise, env = Environment, fis = Fisheries, sem = Single market, tax = Tax, ten = Transportation and Energy, and tra = Trade.

Graph 2: DV2a – Average Duration of Non-compliance (in Days) by Policy, 1978-99



As there is a large positive correlation between the duration of non-compliance (DV2a) and the stages individual infringement cases reach (DV2b), it is not surprising that enterprise is the one policy sector that shows substantial variation across the stages of the infringement procedure. It starts out as the policy sector with the second largest number of infringements (not controlling for the number of legal acts in the policy sectors), but ends up in the middle field at the later stages (cf. Graph 3). Most of the other policy sectors stay compliance leaders or laggards across the stages. They might change their ranking within their respective group, but they do not substantially change their position. Agriculture, environment, and single market account for most infringements at all stages. By contrast, trade, economic and financial affairs, education and research, and competition feature very few infringements across the board. Overall, it seems that policy sector-specific non-compliance remains stable across the stages of the infringement procedure (Graph 3).

Graph 3: DV2b –Non-Compliance across Stages for Selected Policy Sectors, 1978-99⁹

In order to inquire whether there is significant cross-policy variation beyond the graphical evidence, we analyze the effects of binary policy variables on the three variants of our dependent variable, i.e. DV1 and DV2a/b. First, we look at the occurrence of non-compliance in different policy sectors with an OLS regression (Model 1, Table 1). In a second step, we try to answer the question whether the number of stages that individual infringements reach and how long it takes for infringement cases to be settled depends on the policy sectors that the infringed legal acts belong to. In order to provide a statistical answer, we use an ordered probit model (Model 2, Table 1) and a Cox proportional hazard model (Model 3, Table 1).

From the models in Table 1 it becomes obvious that there is significant policy variation with respect to the occurrence of non-compliance. Three policy sectors – fisheries, tax, and trade – have significantly less and five have more Reasoned Opinions per legal act and year on average (in %) than the arbitrary reference category agricultural policy (cf. Model 1, Table 1). With respect to the numbers of stages of the infringement procedure, enterprise cases have the lowest probability of making it from one stage to another, fisheries cases the highest (cf. Model 2, Table 1). Duration-wise, only enterprise cases last significantly shorter than agricultural cases, which form the reference category. Also, disputes over compliance with European

9 All sectors that make up less than 2 percent of the infringement cases across all stages of the EU's official infringement procedure were excluded from this graph in the interest of clarity. In fact, not a single case from the economic and financial affairs, education and research, and trade sectors has made it to the fourth stage (ECJ Referral, Article 228) in the years 1978-99.

fisheries legislation have the best chances for a long survival, i.e. to be dragged on for a significantly longer time than all the others (cf. Model 3, Table 1).

Table 1: Policy Sectors and Infringements

Models:	(1)	(2)	(3)
	DV1	DV2a	DV2b
Administration	0.0112 0.0555	0.3487** 0.1492	-0.5730*** 0.1537
Competition	-0.0031 0.0425	0.2150 0.1821	-0.3835*** 0.1405
Economic & Financial Affairs	0.0278 0.0729	0.5151** 0.2312	-0.2014 0.1997
Education & Rresearch	0.8580*** 0.1369	0.3444*** 0.0772	-0.5411*** 0.0662
Enterprise	6.8655*** 0.7353	-0.2459*** 0.0553	0.1051** 0.0471
Environment	3.6017*** 0.4348	0.4077*** 0.0528	-0.3579*** 0.0479
Fisheries	-0.0689* 0.0375	0.8810*** 0.1806	-0.8927*** 0.1183
Single Market	1.1717*** 0.1127	0.1771*** 0.0542	-0.4808*** 0.0452
Tax	-0.0582** 0.0234	0.4575*** 0.0787	-0.5485*** 0.0618
Transportation & Energy	0.4165*** 0.1239	0.2055*** 0.0757	-0.0890 0.0683
Trade	-0.1581*** 0.0199	0.2819 0.2455	-0.2524 0.1815
Constant	0.1676*** 0.0195		
Cut Point 1		0.6532*** 0.0366	
Cut Point 2		1.1998*** 0.0384	
Cut Point 3		2.2336*** 0.0545	
Time Dummies	yes	yes	yes
Observations	273	5,462	4,591
Adjusted R-squared	0.74		
Time at Risk			2,974,371

Regressions with two-tailed t-tests and robust (Hubert/White) standard errors. *** = $p < 0.01$, ** = $p < 0.05$, * = $p < 0.1$.

3. Policy-Explanations

In order to explain why certain policy fields are more often infringed upon and why cases from some fields, such as enterprise, are settled at the earlier stages of the compliance procedure and more rapidly than from others, this third section develops policy-field hypotheses on the occurrence of non-compliance (DV1) and its persistence (DV2), respectively. This is made somewhat difficult by the International Relations (IR) legacy of the existing compliance and implementation literature, which is strongly state-centered and hardly considers policy variables. However, there are exceptions. At least three prominent approaches highlight differences between regulative and non-regulative policies (Majone 1993), distributive and redistributive policies (Windhoff-Héritier 1980), and market-creating/negative and market-correcting/positive policies (Zürn 1997).

Majone argues that the costs of policy formulation and decision-making in regulatory policy sectors are relatively low at the European level, but often significant – in material and political terms – when it comes to the implementation of European legislation at the domestic level. Regulative policies are more prone to non-compliance than the non-regulative ones because the former usually come at higher costs, which the implementing authorities might be neither willing nor able to bear (Majone 1993). Windhoff-Héritier (1980) focuses more on how policies differ in the extent to which they redistribute resources. States find it easier to comply with non-redistributive policies than with redistributive ones because their implementation faces less opposition at the domestic level. Unlike distributive policies, redistributive policies typically specify winners and losers (Wilson 1980). Some groups benefit from redistributive policies, while others have to pay for them. The latter groups – especially if they are well defined, small, and (therefore) not suffering from collective action problems (Olson 1965) – will fiercely try to prevent the implementation and resist the enforcement of redistributive European legislation, thereby increasing non-compliance. Third, legal acts from certain policy sectors might have a wider regulative scope than policies from other sectors, i.e. address more and broader issues. The logic behind this argument refers to the costs of implementation once again. Policy sectors, in which the EU has comprehensive legislative competencies (wide scope), are expected to come with higher costs and more infringements than policy sectors in which the EU can only legislate on selective or minor issues. The wider the scope, the more member states might be unwilling or unable to bear the costs that come with the implementation and enforcement of comprehensive and far reaching policies.¹⁰

Table 2: Policy-specific Hypotheses – Part 1

Regulative	Redistributive	Scope
If the better part of a policy sector is regulative, it will experience more non-compliance than non-regulative policy sectors.	If the better part of a policy sector is redistributive, it will experience more non-compliance than non-redistributive policy sectors.	If the better part of a policy sector has a wide regulative scope, it will experience more non-compliance than policy sectors with a more narrow scope.

¹⁰ Somewhat similar to the scope is the concept of specializations (or the lack thereof), which is described by Steunenberg/Kaeding 2008 as “the extent to which directives regulate rather technical issues, which are intended to be implemented uniformly by national administrations” (11).

Finally, Zürn argues that policy sectors vary in their affinity for non-compliance along a positive, market-correcting versus negative, market-making dimension, with positive/market-correcting policies being the ones that are more likely to be infringed on (Zürn 1997; Börzel et al. 2003). The idea is that negative or market-making policies do not require member states to take action or develop and police the application of new legislation, but “only” to abstain from interfering with the free flow of market forces. By contrast, positive policies do not just aim at the elimination of distortions of competition in Europe, but explicitly require states to interfere and to take action (Scharpf 1999; Wallace 2005). The transposition and implementation of positive policies does not only come at a higher cost, but they also create more opportunities for member states to non-comply. However, Zürn’s argument does not stop there. In fact, he hypothesizes interaction effects between the type of policy and member states’ capacity on the one hand and policies and the phase of the transposition and implementation process on the other hand (Zürn 1997). More specifically, he suggests that European legal acts from a positive policy sector are particularly vulnerable to non-compliance (i) if member states lack government capacity, i.e. the financial endowment as well as the efficient bureaucracy that can mobilize and channel those resources into the compliance process, and (ii) when it comes to their practical application and enforcement rather than their legal transposition into national law. Elaborating on Zürn, we can also argue that not only a lack of government capacity, but also a lack of government autonomy should make compliance especially with positive policies more difficult for member states (cf. Börzel et al. 2003). In that context, government autonomy refers to institutional and partisan veto players (and is the higher, the lower the number of veto players is), which can block the implementation of international rules because of the costs they have to (co-) bear (Alesina/Rosenthal 1995; Haverland 2000; Tsebelis 2002; Linos 2007). Taken together, we end up with four additional policy-centered hypotheses, three of which are about interaction effects. These hypotheses are summarized in Table 3.

Table 3: Policy-specific Hypotheses – Part 2

Positive	Interactions
If the better part of a policy sector has a positive character, it will experience more non-compliance than negative policy sectors.	<p>With decreasing levels of government capacity, the non-compliance promoting effects of positive integration become more pronounced.</p> <p>With decreasing levels of government autonomy, the non-compliance promoting effects of positive integration become more pronounced.</p> <p>The non-compliance promoting effects of positive integration are more striking when it comes to the practical application and the enforcement of EU law than for its legal transposition.</p>

All four theoretical accounts require a categorization of the policy fields. This is extremely difficult, since it is highly likely that every policy field, or in fact, every single European legal act entails both regulative and redistributive elements and some elements of market correction and of market creation, respectively. This is why previous studies have focused on analyzing policies which are straight forward in their categorization (Scharpf 1996, 1997; Zürn 1997, 2002). Yet, even on the level of individual policies, the

categorization along our four variables remains difficult. Surrendering to the methodological challenge might be tempting but would render the theoretical distinctions made by Scharpf empirically irrelevant. We claim that analyzing the general goals the EU aims to achieve within a certain policy area, its underlying problem-solving approach and the policy instruments mainly invoked to achieve these goals allows to determine the predominant character of a policy area. Our categorization is certainly not beyond criticism but provides a first cut into an important research area.

Table 4: Policy Sectors and their Characteristics

Concept:	Regulative	Redistributive	Scope	Positive
Administration				
Agriculture			X	
Competition	X		X	
Economic & Financial Affairs	X			
Education & Research	X			X
Social Affairs	X	X	X	X
Enterprise	X	X	X	
Environment	X	X	X	X
Fisheries		X		
Single Market	X		X	
Tax	X			
Transport & Energy	X	X	X	
Trade	X		X	

We find that only three policy areas actually have a predominantly market-correcting character, while all other policy areas either pursue mostly market-making goals, or both. The social policy of the EU has clearly market-correcting goals (Art. 136 ECT) since it aims at improving living and working conditions to protect workers' health and safety. In a similar vein, *environmental policy* is designed to correct market failures by setting production and product standards to fight environmental pollution (Art. 174-176 ECT). Finally, while *research policy* aims at improving the competitiveness of European industries, it does so by invoking primarily market-correcting instruments, including financial and technical assistance (Art. 163 ECT).

As for the regulatory scope of policy areas, we argue that it is widest in the areas of *agriculture*, *environment*, *social affairs*, and *single market*. These sectors regulate many diverse issues ranging e.g. from biotechnology to air quality in the environment sector and from gender-related issues to working hours and safety regulations in social affairs. Fisheries and tax, by contrast, cover only very few issues.

Finally, in line with Majone's description of the EU as a "regulatory state" (Majone 1997), many policy areas have been assigned a predominantly regulatory character. Exceptions are *administration*, *agriculture* and

fisheries policies. While the former does not seem to fall in any of the developed categories, *agricultural policies* have both redistributive and distributive policy goals and instruments and do not primarily aim at setting standards and prescribing behaviour. The same holds true for *fisheries*, which invokes, however, more redistributive instruments for protecting market participants than agricultural policy does. In a similar vein, *social affairs*, *enterprise*, *environmental policy* and *transport and energy policies* invoke measures with redistributive implications, but do so along with regulatory ones.

Empirical Findings

Having discussed the policy-specific theoretical approaches to non-compliance and operationalization of our policy variables, it is time to turn to empirically test the derived hypotheses. It is important to notice that we need different datasets to test these hypotheses. To test the separate policy-specific hypotheses, we just need a dataset that has the policy year as its unit of analysis. This allows us to compare whether on average more Reasoned Opinions address infringements in regulative or non-regulative, redistributive or non-redistributive, etc. policy sectors. As the first two of Zürn's interactive hypotheses make reference to policy- and member state-specific variables, we need a dataset that captures both of these aspects. The unit of analysis for Models 2 and 3 of Table 5 is the negative versus positive country year, i.e. for each country year there are two observations – one focusing on the non-compliance with negative policies and one on non-compliance with positive policies. Finally, to test the third of Zürn's interactive hypotheses, we have to distinguish between non-compliance that occurs during the legal transposition phase and those cases that happen during practical application. The unit of analysis is not only the policy year as in Model 1 of Table 5, but the legal transposition versus practical application and enforcement policy year.

Table 5 shows that the regulative scope of a policy sector might influence the frequency of non-compliance (cf. Model 5, Table 5), while neither Majone's nor Windhoff-Héritier's policy distinctions seem to matter when it comes to the question of compliance (cf. Models 1 and 5, Table 5). When we control for the member state-specific variables, there is some evidence for Zürn's argument that positive policies might indeed follow a different logic of implementation than negative ones. There is a strong positive correlation between a policy sector's market-correcting nature and a larger number of infringements on European law (cf. Models 2 and 3, Table 5). Also, the first of the two interactive capacity hypotheses is strongly supported (cf. Model 3, Table 5). While the number of veto players does not affect the relation between the characteristics of a policy sector and the number of infringements, effective bureaucracies do. The negative and significant interaction effect between the positive dummy and the government capacity indicator suggests that more capacity reduces the non-compliance promoting effects of positive policy sectors. This is perfectly in line with the respective interactive hypothesis.

Table 5: Policy-specific Explanations of the Occurrence of Non-compliance¹¹

Models:	1	2	3	4	5
<i>Policy:</i>					
Regulative	1.4988 1.1350				0.0195 0.6936
Redistributive	2.1744 1.4292				0.7559 0.7116
Scope	0.8490 0.4823				0.9354** 0.4244
Positive	-0.4298 1.4391	1.5845*** 0.2078	1.2873*** 0.1619	0.5909 0.9366	0.2608 1.0586
<i>Phase:</i>					
Application				-0.2455 0.6163	0.0072 0.6274
<i>Power:</i>					
GDP		0.0001 0.0001	0.0001 0.0001		
Shapley S. Index		0.0341 0.0203	0.0341 0.0204		
<i>Capacity:</i>					
GDPpc		-0.0037 0.0093	-0.0037 0.0093		
Efficiency		-0.4888*** 0.0543	-0.1696* 0.0791		
Constraints		0.7973 0.6483	0.4884 0.4500		
<i>Interaction Effects:</i>					
SSI * Efficiency		0.0127 0.0094	0.0127 0.0095		
Pos. * Efficiency			-0.6385*** 0.1813		
Pos. * Constraints			0.6177 1.2140		
Pos. * Application				-0.6650 0.9823	-0.9176 0.9624
Constant	-1.0556 1.0696	-0.5695 0.6143	-0.4209 0.6143	0.5204 0.6068	-0.5652 0.4818
Time Dummies	yes	yes	yes	yes	yes
Observations	252 Policy Years	464 Negative vs. Positive County Years	464 Negative vs. Positive County Years	564 Transposition vs. application policy years	522 Transposition vs. application policy years
Adj. R-squared	0.33	0.44	0.47	0.00	0.12

Regressions with two-tailed t-tests and robust (Hubert/White) standard errors with clustering on member states (Models 2 and 3) and policy sectors (Models 1, 4, and 5). *** = p 0.01, ** = p < 0.05, * = p < 0.1.

11 The operationalization of the power and capacity variables is explained in Appendix.

Table 6: Policy-specific Explanations for the Persistence of Non-compliance

Models:	(1)	(2)	(3)	(4)
	Number of Stages (DV2a)		Duration (DV2b)	
<i>Policy:</i>				
Positive	0.2969*** 0.0770	0.2368*** 0.0756	-0.2709*** 0.0552	-0.2486*** 0.0739
<i>Power:</i>				
GDP	0.0001* 0.0000	0.0001* 0.0000	-0.0000 0.0001	-0.0000 0.0001
Shapley S. Index	0.0033 0.0110	0.0038 0.0107	-0.0177** 0.0082	-0.0179** 0.0085
<i>Capacity:</i>				
GDPpc	0.0000 0.0000	0.0000 0.0000	-0.0000 0.0000	-0.0000 0.0000
Efficiency	-0.2317*** 0.0248	-0.2119*** 0.0404	0.0585*** 0.0196	0.0505 0.0359
Constraints	0.4530** 0.1973	0.4831* 0.2685	-0.3524 0.2184	-0.3306 0.2479
<i>Interaction Effects:</i>				
SSI * Efficiency	-0.0017 0.0060	-0.0016 0.0058	-0.0017 0.0052	-0.0018 0.0051
Positive * Efficiency		-0.0808 0.0769		0.0307 0.0836
Pos. * Constraints		-0.1583 0.7477		-0.1028 0.3447
Cut point 1	0.6701*** 0.2211	0.6576*** 0.2226		
Cut point 2	1.2113*** 0.2242	1.1989*** 0.2253		
Cut point 3	2.2244*** 0.2410	2.2120*** 0.2406		
Time Dummies	yes	yes	yes	yes
Observations	5,181	5,181	4,377	4,377
R-squared	0.0216	0.0217		
Time at Risk			2,905,849	2,905,849

Regressions with two-tailed t-tests and robust (Hubert/White) standard errors with clustering on member states (Models 2 and 3) and policy sectors (Models 1, 4, and 5). *** = p 0.01, ** = p < 0.05, * = p < 0.1.

We also test the policy-sectors hypotheses for the persistence of non-compliance (DV2). Here, we focus especially on the relative promising hypotheses on negative versus positive policies and the interactions between policy-centered and country-centered variables.¹² For this, we use the same datasets we used for Models 2 and 3 of Table 1, but append them with a dummy variable that distinguishes between positive and negative policy sectors and the interactions between this variable and government autonomy and government capacity.

12 We also looked at the effect of the other policy variables (cf. Table 5) on the persistence and duration of non-compliance, but did not find any significant effects. Therefore, we concentrated our testing efforts on the positive versus negative hypothesis in Table 6.

Table 6 reveals that non-compliance from positive policy sectors take longer to be settled – both in terms of stages of the EU infringement procedure and days. For this effect, however, it seems to make no difference whether member states have effective bureaucracies and/or many domestic veto players. None of the two hypothesized interaction effects between government capacity, government autonomy, and policy sector type turn out to be significant.

Overall, the evidence for policy effects on non-compliance is mixed. However, this might be more due to the operationalization of the policy covariates than to the actual effects of policies. The problem is that all of the policy hypotheses start from the level of the individual legal act and aggregate up to the policy sector level. Obviously, this comes with problems as policy sectors are usually not homogenous, but feature variation along the different policy dimensions within themselves. While some environmental legal acts have regulative characteristics, others do not. Some social affairs regulations have a wide scope, others have a narrow one. Some legal acts in the policy sector enterprise follow a positive implementation logic, others a negative one. In order to tackle this problem, the next section focuses on the individual legal acts that make up the policy sectors.

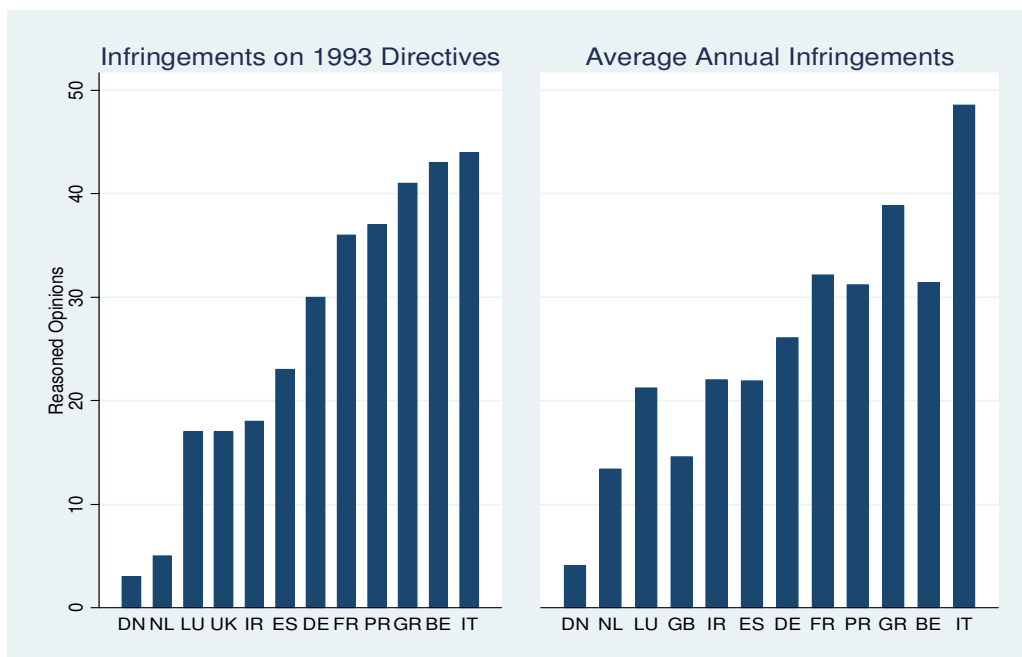
4. Rule-Specific Explanations

While compliance varies across policies, it is empirically extremely difficult to classify policy fields along analytical lines, such as negative versus positive or distributive versus non-distributive. For most policy sectors it is hard to tell whether their overall orientation is market-creating or correcting or regulative rather than redistributive. Since heterogeneity within policy sectors is the major problem for the development and testing of policy hypotheses, we turn our attention to single legal acts instead. We are interested in how the characteristics of specific legal acts affect their chances to be infringed on or complied with (DV1).

At this point, we do not look at our second dependent variable, i.e. the time (DV2a) and the number of stages of the infringement procedure (DV2b) it takes for individual instances of non-compliance to be settled. While the necessary data for such an analysis is available to us, the analysis itself poses methodological challenges, which we do not tackle at this time. In essence, the problem is that – as we have shown in previous work on non-compliance and its prevalence (Börzel et al. under review) – the very factors that influence our dependent variable of interest (DV2) are also critical to the event in question, i.e. non-compliance. More precisely, the principal problem is sample selection bias. Substantively, we want to know whether country-, policy-, and rule-specific factors “help” to prolong the duration of infringement proceedings and make infringement cases reach later stages of the EU’s infringement procedure. However, the question whether we even observe the dependent variable of interest depends on the probability of selection, which itself depends on similar covariates. Both outcomes of the selection equation – compliance and non-compliance – are conditionally linked to our outcome of interest (duration or stages) through the variables that determine the duration or number of stages. Hence, to explain duration, the selection of non-compliance into the sample has to be explicitly addressed. However, the development of appropriate estimation techniques for probit and count data models at the first and survival and ordered probit models at the second stage is still in flux (Boehmke et al. 2006; Kachi 2007; Boehmke/Meissner 2008).

Focusing exclusively on the first dependent variable, our rule-specific, empirical analysis still requires a new dataset that differs from the one we analyzed in section 3. We need compiled data on whether individual legal acts have been complied with by all, some, or none of the EU member states as well as data on corresponding characteristics (independent variables) for each of the legal acts in the database. As collecting information for all independent variables for the more than 10,000 European legal acts in force over the period 1978-99 is beyond the scope of this paper, we focus on the year 1993 and information on all 118 EU Directives that came into force in that year. This 1993 subset is a representative sample of the larger 1978-99 non-compliance dataset. It has very similar properties (cf. Graph 4, left versus right): Italy, Belgium, Greece, Portugal, and France are the usual suspects forming the group of compliance laggards, while Denmark, the Netherlands, Luxemburg, and the UK infringed only relatively few of the 1993 EU Directives.¹³ Therefore, it should be possible to draw inference about legal act-specific causes of non-compliance from the sample for the universe of infringement cases in the European Union.

Graph 4: Infringements on 1993 Directives versus Average Annual Infringements¹⁴

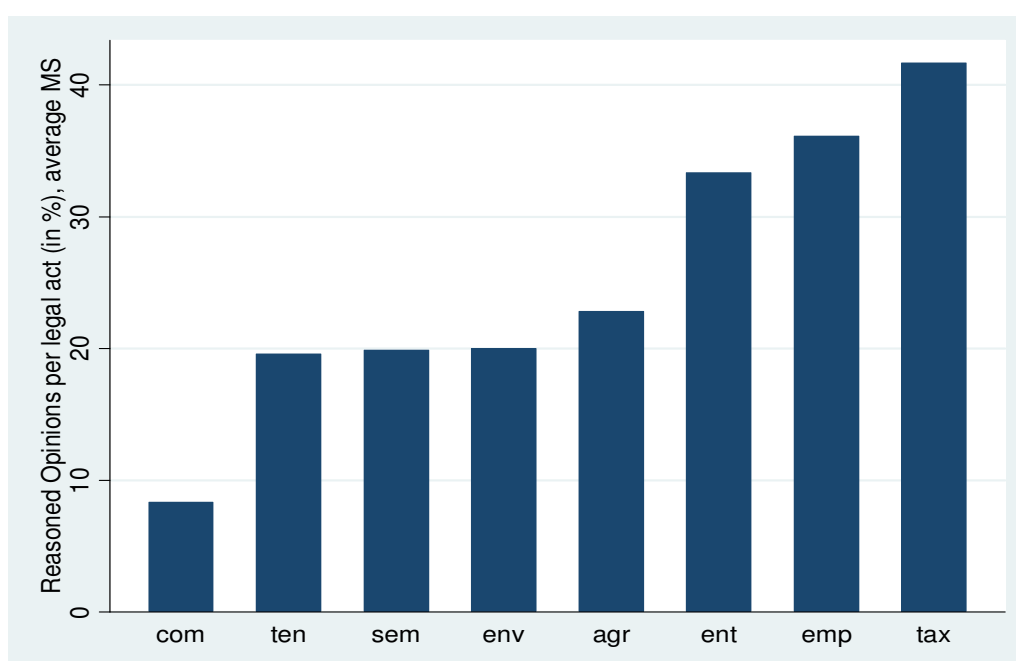


13 The data also shows that if compliance leaders infringe on a Directive, they do so only once. Some of the laggards, by contrast, infringe on the same Directives several times. For instance, the Commission has initiated infringement proceedings for infringements on Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts against France five times since 1993. Therefore, Belgium, France, and Greece can call exactly as many infringements their own as Italy (44 to be precise), which leads the pack in terms of number of legal acts infringed on. However, it should also be noted that $\frac{3}{4}$ of the 118 EU Directives passed in 1993 have never been infringed on by any member state and only one Directive – Council Directive 93/13/EEC on unfair terms in consumer contracts – has been infringed on by more than ten EU members.

14 The graph on the left shows the number of the 118 EU Directives that came into force in 1993 that each of the EU 12 member states infringed on between 1993 and 1999. The graph on the right depicts the average annual number of infringements of all European legal acts per EU 12 member state in the years 1986-1999.

Looking at our data from a policy sector- instead of a member state-perspective (Graph 5), we can see that there is substantial variation in the probability with which 1993 EU Directives from the eight covered policy sectors are infringed on. Doing so, we control for the number of Directives that came into force in these policy sectors in 1993 because this constitutes the number of Directives that member states can potentially infringe on. While there are 46 Directives that deal with agricultural issues and 36 that are concerned with the European market, only two new Directives address competition. The average member state infringes on more than one out of every three enterprise, social affairs, and tax Directives. Contrariwise, most member states comply with competition Directives most of the time.

Graph 5: Reasoned Opinion per 1993 EU Directive (in %) by Average Member State



How can we explain that only some of these 118 Directives are infringed on? What makes the ones that are violated different from those that are complied with? Also, why do some member states infringe on some of these Directives while others do not? To answer these questions, we take a closer look at three interrelated concepts – misfit, complexity, and time – and derive several testable hypotheses, mainly from implementation and Europeanization approaches, the management school, enforcement theory, and a relatively new literature that also tries to analyze the effects of rule specific variables in the context of transposition (delays).¹⁵

First, taking the individual legal act as the unit of analysis, we can actually analyze the effects of the fit of European rules on their chances to be infringed on. As is one of the most basic assumptions in non-compliance research, “inconvenient” rules can facilitate violations, since only they require states to invest resources, which they might be unwilling (Downs et al. 1996; Martin 1992) or unable to do (Chayes/

¹⁵ Cf. Steunenberg 2007; Haverland et al. 2008; and Steunenberg/Kaeding 2008.

Chayes 1993). Rules that resemble already existing standards, political, or societal institutions, problem solving approaches, or collective identities do not require (major) investments of financial, administrative, political, or cognitive resources (Börzel 2005; Héritier et al. 2001). Hence it is less likely that states oppose them and non-compliance should be relatively low. As new European rules can resemble existing European legislation, national legislation, or both, we can specify two distinct misfit hypotheses.

Table 7: Misfit Hypotheses

European Misfit	Domestic Misfit
The higher the misfit between existing and new European norms, the more probable are infringements.	The higher the misfit between new European and existing domestic norms, the more probable are infringements.

To test the first misfit hypothesis, we analyze – in line with Mastenbroek 2003, Kaeding 2006, and Haverland/Romeijn 2007 – whether the number of existing European legal acts, on which the new Directive is based upon, has a negative impact on the probability that the new Directive is infringed on. Neither the hypothesis nor the independent variable distinguishes between the member states as the European misfit is the same for all countries. This is not the case for domestic misfit. New European legislation can be more in line with existing national legislation in one member state than in another. We operationalize the domestic misfit with the number of transposition instruments that specific member states (need to) use to transpose and implement European Directives. The assumption behind this operationalization is that the lower the number of reported transposition measures, the lower the misfit between the European Directive and existing domestic norms. Therefore, we expect that with more transposition measures, it becomes more likely that a member state infringes on EU law.¹⁶

Second, management and enforcement approaches expect that the complexity of new European Directives should affect their chances of being infringed on. The management school on non-compliance assumes that infringements are involuntary (Chayes/Chayes 1991, 1995). Even if states like to comply with a European rule, they are prevented from doing so if the very preconditions that enable states to comply are absent. One source of non-compliance is complex norms. Unclear obligations can facilitate involuntary non-compliance by member states simply because states base their behavior on wrong interpretations of what the norm is about and where it should be applied. High complexity of norms is also related to capacity requirements. Complex Directives also require more political, administrative, financial, and cognitive capacities than precise ones, thereby facilitating the occurrence of non-compliance. Thus, the management approach expects that more complex legislation stands a better chance of being violated.

The enforcement approach assumes that states as strategic rational actors violate norms if non-compliance costs exceed benefits (Downs 1998; Downs et al. 1996). Compared to ambivalent norms, highly precise Directives hardly leave margins for states to choose cost-saving interpretations for their transposition and

¹⁶ For a related operationalization of domestic misfit in the context of a study on transposition of directives in the Netherlands (cf. Mastenbroek 2003). Kaeding (2006) is also interested in domestic misfit. However, rather than looking at the “technical” fit, he uses the number of recitals as an indicator for member states’ explicit dissatisfaction with an European Directive or the potential domestic controversies that the transpositions of the Directive might lead to.

implementation. Thus, cost-benefit calculations more likely point towards non-compliance for the former. Also, as highly precise norms restrict the margins for potential compromises between the member state and the European institutions (Hucke 1980; Feick 1980; Windhoff-Héritier 1980), high precision increases the chances that a norm is violated.

Table 8: Complexity and Precision Hypotheses

Managerial Approach to Complexity	Enforcement Approach to Precision
The higher the complexity of new European norms, the more probable it is that it is infringed on.	The higher the precision of new European norms, the more probable it is that it is infringed on.

How do we operationalize the complexity and the precision of European Directives? Unfortunately, there are not two perfectly matching indicators. We use three different indicators for the measurement of complexity: The number of legal acts a new Directive cites, the number of existing acts it changes, and its length in terms of words.¹⁷ All three of these variables are hypothesized to be positively related to complexity and therefore the probability of non-compliance according to the management approach. Precision is a tricky concept as well. We operationalize it with two indicators: the number of existing acts a new Directive changes and the Directive's length in terms of words. Based on the enforcement approach, we expect that high precision fosters non-compliance.

In the managerial perspective, inadequate timetables, up to which compliance has to be achieved, are an important source of involuntary non-compliance (Chayes/Chayes 1991, 1995). EU member states need time to actually transpose, implement, and enforce Directives. If member states do not receive sufficient time, non-compliance seems unavoidable (cf. Mastenbroek 2003; Steunenberg/Rhinard 2005; Kaeding 2006; Haverland et al. 2008). Domestic bureaucracies might simply not (yet) be qualified to implement and enforce new and challenging legislation. There is a second aspect to time. Not only does it matter for the probability of non-compliance how much time member states receive to transpose new EU Directives, but also how much time they take. The longer member states wait to transpose and implement European legislation (beyond the transposition deadline), the higher the chance that they are caught by the Commission and that the Commission presses charges against them, i.e. initiates infringement proceedings.¹⁸

¹⁷ Some studies also use the number of articles and the length of annexes as indicators for the complexity of European legal acts. Interestingly, while the length of Directive in words and the number of its articles are usually associated with higher complexity, extensive annexes are usually thought to detail the technical aspects of new legislation, making it easier to transpose and more straightforward to apply (cf. Steunenberg/Kaeding 2008).

¹⁸ Most of the previously cited literature on the transposition of European Directives treats this second aspect of time not as a covariate, but as the dependent variable itself. While we are interested in documented instances of non-compliance in this paper, (Mastenbroek 2003, Haverland et al. 2008, Steunenberg/Kaeding 2008, and others analyze the time it takes to transpose Directives (beyond the official transposition deadline) – and whether the Commission considers a member state to be violating European law or not.

Table 9: Time Hypotheses

Transposition Timetables	Rule-specific Idling
The more time member states are granted to transpose European norms, the less probable are infringements.	The longer member states take to transpose new European norms, the more probable it is that the Commission initiates infringement proceedings/that infringements are detected.

To empirically test the effects of time received and time taken, we analyze the effects of the number of days between the passing of new European Directives and their transposition deadline on non-compliance, on the one hand, and the number of days between the deadline and the date of the last reported transposition instrument, on the other hand.

Empirical Findings

Now, let us turn to our analysis, where we use probit models, to test whether our rule-specific covariates have a significant effect on the probability that an EU Directive passed in 1993 is infringed on by a member state, as well as count data models. The unit of analysis is the member state-Directive. The binary dependent variable for our probit analysis measures whether an infringement occurred for a unit between 1993 and 1999. The dependent variable for the count data analysis measures how often a specific member state infringes on a specific Directive.

Table 10: Misfit, Complexity, Time, and Infringements

Models:	(1)	(2)	(3)	(4)
	Probit	Count	Probit	Count
<i>Misfit:</i>				
Previous EU Acts	-0.1785*** 0.0633	-0.1381 0.0872	-0.1133** 0.0498	-0.0902 0.0748
National Instruments	-0.0281 0.0216	-0.0292 0.0235	0.0123 0.0132	0.0132 0.0130
<i>Complexity/ Precision:</i>				
Acts Cited	0.0037 0.0160	0.0175 0.0191	0.0408*** 0.0129	0.0575*** 0.0155
Acts Changed	0.0336 0.0260	0.0278 0.0312	0.0374** 0.0181	0.0489** 0.0204
Words	0.0000 0.0000	0.0000 0.0000	0.0000 0.0000	0.0000 0.0000
<i>Time:</i>				
Deadline	0.0004* 0.0002	0.0003 0.0003	0.0003* 0.0002	0.0004 0.0002
Idleness	0.0009*** 0.0001	0.0008*** 0.0001		
Constant	-1.1322*** 0.1206	-1.8720*** 0.1613	-0.9282*** 0.1031	-1.7657*** 0.1514
Policy Dummies				
Observations	1079	1079	1320	1320
Pseudo R-squared	0.1824	0.1072	0.0216	0.0189

Regressions with two-tailed t-tests and robust (Hubert/White) standard errors. *** = p < 0.01, ** = p < 0.05, * = p < 0.1.

Table 10 shows that there is some empirical support for at least three of our rule-specific hypotheses. There is clear evidence that, when new Directives are based on existing European legislation, the misfit for member states is kept to a minimum and the probability of one (Probit Models 1, 3, 5, 7, 9, and 11 of Table 10) or several (count data Models 6 and 10 of Table 10) infringements becomes smaller. However, the second misfit hypothesis on the effects of a domestic legal misfit is not supported by our data. This might be more due to our data than anything else as the operationalization of domestic misfit via the number of national transposition instruments is very indirect. In fact, if we specify the domestic misfit hypothesis in an even more detailed fashion by including interaction effects with our two main capacity indicators for government autonomy and capacity (Models 9-12 of Table 10) (cf. Börzel et al. 2010), our findings imply that with an increasing number of domestic veto players the probability that misfit leads to non-compliance is actually reduced.

Table 10: Misfit, Complexity, Time, and Infringements (continued)

Models:	(5)	(6)	(7)	(8)
	Probit	Count	Probit	Count
<i>Misfit:</i>				
Previous EU Acts	-0.1797*** (0.0641)	-0.1454* (0.0803)	-0.2266** (0.0923)	-0.1690 (0.1099)
National Instruments	-0.0086 (0.0181)	-0.0087 (0.0171)	-0.0021 (0.0177)	-0.0005 (0.0158)
<i>Complexity/ Precision:</i>				
Acts Cited	0.0075 (0.0160)	0.0267 (0.0168)	0.0103 (0.0192)	0.0263 (0.0189)
Acts Changed	0.0353 (0.0271)	0.0270 (0.0292)	0.0344 (0.0289)	0.0184 (0.0312)
Words	0.0000 (0.0000)	0.0000 (0.0000)	0.0000* (0.0000)	0.0000* (0.0000)
<i>Time:</i>				
Deadline	0.0004* (0.0002)	0.0004 (0.0002)	0.0004* (0.0003)	0.0003 (0.0003)
Idleness	0.0009*** (0.0001)	0.0007*** (0.0001)	0.0009*** (0.0001)	0.0007*** (0.0001)
<i>Power:</i>				
GDP	0.0001 (0.0002)	0.0002 (0.0002)	0.0001 (0.0002)	0.0001 (0.0002)
SSI	0.0655* (0.0369)	0.0975* (0.0512)	0.0699* (0.0383)	0.1026** (0.0508)
<i>Capacity:</i>				
GDPpc	-0.0000 (0.0000)	-0.0000 (0.0000)	-0.0000 (0.0000)	-0.0000 (0.0000)
Efficiency	-0.4601*** (0.1151)	-0.7648*** (0.1860)	-0.4976*** (0.1235)	-0.7782*** (0.1827)
Constraints	0.8333 (0.5483)	0.8824 (0.6143)	0.8947 (0.5508)	0.9352 (0.6091)
<i>Interaction Effects:</i>				

SSI * Efficiency	0.0387 (0.0246)	0.0819** (0.0390)	0.0416 (0.0263)	0.0828** (0.0384)
Constant	-1.4996*** (0.1581)	-2.5399*** (0.2273)	-0.9823* (0.5868)	-2.0174*** (0.4810)
Policy Dummies	no	no	yes	yes
Observations	1079	1079	1067	1079
Pseudo R-squared	0.2230	0.1436	0.2405	0.1585

At least in half of the estimated models in Table 10 (3, 4, 7, 8, 11, and 12), we find support for the managerial complexity argument, i.e. more complex new EU Directives are more likely to be infringed on. The enforcement precision hypothesis finds no support, since the length of Directives is not significant at all (with Models 7 and 8 as the only exceptions in Table 10) and because the correlation between the numbers of cited legal acts and non-compliance points into the wrong direction in basically all models. Finally, idleness in the transposition of Directives significantly increases the probability that the Commission initiates one or more infringement proceedings against the respective state. This is by far the most consistent finding of our rule-specific analyses. Also consistent, but far more surprising, is the finding that time matters other than expected when it comes to the time that member states receive after the passing of new legislation to actually transpose, implement, and enforce it domestically. Counter to one of the basic assumptions of the management approach and our first time hypothesis, lax transposition deadlines actually increase the probability that compliance problems occur.

In Models 5-12 of Table 10, we control for member state and policy variables. It is interesting to notice that, on the one hand, the idleness and European level misfit hypotheses are not affected by the inclusion of these control variables. That is, the effects of the number of acts new Directives are based on and the time member states take to transpose these Directives are robust. On the other hand, it is also reassuring to see that two main country-centered covariates – political power and bureaucratic efficiency, which explain the occurrence of non-compliance across member states in the whole dataset (Börzel et al. 2010) – are correctly and significantly correlated with the probability of infringements. This shows again that the data on infringements on 1993 EU Directives is a suitable subset of the universe of infringements on EU law between 1978 and 1999.

Table 10: Misfit, Complexity, Time, and Infringements (continued)

Models:	(9)	(10)	(11)	(12)
	Probit	Count	Probit	Count
<i>Misfit:</i>				
Previous EU Acts	-0.1820*** (0.0648)	-0.1461* (0.0774)	-0.1178** (0.0513)	-0.0949 (0.0703)
National Instruments	-0.0166 (0.0250)	-0.0011 (0.0226)	0.0249 (0.0264)	0.0130 (0.0202)
<i>Interaction Effects:</i>				
Nat. Instruments * Efficiency	0.0397 (0.0312)	0.0485 (0.0328)	0.0188 (0.0291)	0.0082 (0.0292)
Nat. Instruments * Constraints	-0.7432** (0.3118)	-0.5385* (0.2789)	-0.3792** (0.1751)	-0.3693* (0.1909)
<i>Complexity/ Precision:</i>				
Acts Cited	0.0101 (0.0162)	0.0277 (0.0170)	0.0441*** (0.0132)	0.0596*** (0.0147)
Acts Changed	0.0412 (0.0287)	0.0266 (0.0306)	0.0415** (0.0194)	0.0487** (0.0208)
Words	0.0000 (0.0000)	0.0000 (0.0000)	0.0000 (0.0000)	0.0000 (0.0000)
<i>Time:</i>				
Deadline	0.0005* (0.0002)	0.0004 (0.0002)	0.0003* (0.0002)	0.0003 (0.0002)
Idleness	0.0009*** (0.0001)	0.0008*** (0.0001)		
<i>Power:</i>				
GDP	0.0001 (0.0002)	0.0002 (0.0002)	0.0002 (0.0002)	0.0003 (0.0002)
SSI	0.0541 (0.0380)	0.0877* (0.0509)	0.0605* (0.0325)	0.1104** (0.0537)
<i>Capacity:</i>				
GDPpc	-0.0000* (0.0000)	-0.0000* (0.0000)	-0.0000* (0.0000)	-0.0000* (0.0000)
Efficiency	-0.4684*** (0.1221)	-0.7916*** (0.1850)	-0.5801*** (0.1047)	-1.0017*** (0.2050)
Constraints	1.0212* (0.5365)	1.1583** (0.5841)	0.9290** (0.4671)	1.1121* (0.5830)
<i>Interaction Effects:</i>				
SSI * Efficiency	0.0334 (0.0252)	0.0802** (0.0381)	0.0494** (0.0225)	0.1083** (0.0442)
Constant	-1.5731*** (0.1652)	-2.6130*** (0.2242)	-1.3380*** (0.1393)	-2.5249*** (0.2318)
Observations	1079	1079	1320	1320
Pseudo R-squared	0.2332	0.1489	0.09452	0.07544

Overall, what makes table 10 interesting beyond the findings for individual hypotheses is that it shows that non-compliance is a multi-dimensional phenomenon that can fruitfully and simultaneously be addressed from a policy, country, and legal act perspective. Even when we test hypotheses about the effects of member state power and capacity, Directive characteristics, and policy dummies together in one model, we find support for hypotheses from each of these perspectives. This gives paramount support to an integrative approach, which integrates country-, policy-, and rule-specific variables.

5. Conclusions

Due to its IR legacy, compliance theories mainly focus on country-based explanations for the occurrence and persistence of non-compliance. In our previous work, we could show that an integrated capacity and power model explains a large share of the observed variation in compliance dynamics (Börzel et al. 2010). Yet, some variation has remained unexplained so far. This paper advances the claim that it is worthwhile to move beyond state-centered approaches and to policy- and rule-specific variables. To this end, we mapped the frequency of non-compliance and its persistence across policy fields. This reveals that some policies are more often violated than others (especially those from the enterprise sector, justice and home affairs, and environment policy fields) and that some violations require more time and more stages of the infringement procedures until they are settled (especially those from the fisheries, administration, and taxation policy fields). But, how exactly can policy make a difference with respect to the frequency of violations and the transformation of states' non-compliance into compliance? In section 3, we develop hypotheses based on diverse theoretical approaches, such as research on domestic implementation, compliance, and international cooperation. The quantitative tests of these hypotheses reveal that neither broad categories of different policy types (i.e. regulative, distributive, and redistributive), nor the distinction between market-creating and market-correcting policies can conclusively account for the empirical variation in non-compliance that we observe. The main reason for that has to be the almost irreconcilable difficulties that come with trying to code policy fields along the identified policy dimensions. For instance, most policy fields entail positive and negative integration elements as well as regulative aspects. In addition, regulative legal acts can have redistributive side-effects. We decided to climb down on the ladder of abstraction (Sartori 1970) and focus on rule-specific variables rather than the characteristics of whole policy fields. To this end and based on and modifying existing Europeanization, implementation, management, and enforcement approaches, we develop hypotheses on national and European misfit, the complexity and precision of new norms, transposition timetables, and idling in section 4 of this paper. To test these hypotheses, we introduced a dataset, which contains all Directives that entered into force in 1993. This dataset does not only allow us to measure compliance and non-compliance for individual EU Directives, but to code Directives' individual, rule-specific characteristics as well. When testing our rule-specific hypotheses, it turns out that the managerial complexity of Directives goes hand in hand with a higher share of non-compliance. Also, when new Directives are based on existing European legislation, the misfit for member states is kept to a minimum and the probability of infringements is small. Last, but not least, idleness in the transposition of Directives increases the chance that the Commission opens infringement procedures against the indolent member state.

This paper demonstrates that explanations focusing on country-, policy-, and rule specific-characteristics can be fruitfully combined. Testing our hypotheses on the effects of member state power and capacity, rule-specific variables, and policy dummies in a single model, we found support for each of these perspectives: Countries with high power (to be recalcitrant) are more likely to violate EU law than less powerful ones across the board. Countries with effective bureaucracies are better compliers than those that lack capacities no matter what legal act they have to transpose, implement, and enforce (cf. Börzel et al. 2010). At the same time, our analysis shows that all member states violate complex rules and legislation in market-correcting policy fields more often than precise ones and those from policy sectors characterized by negative integration. Also, all member states infringe on new EU legal acts more often if the European misfit is high. Thus, this paper gives paramount support to an integrative approach, which combines independent variables that cover the differences between countries, policy sectors, and specific rules.

Building upon this integrated approach, there remain at least two challenges for future empirical research. First, we pointed to the difficulties of properly testing the hypotheses developed in section 3 of this paper. The legal acts that form part of European policy sectors are very heterogeneous and complicate the categorization of different sectors as either regulative, distributive, redistribute, market-making, or market-correcting. A logical next step would be to take these meaningful concepts down to the level of the legal act and to code individual European articles, regulations, directives, and decisions along these policy dimensions. While this is certainly feasible, it is a daunting task, given the more than 10,000 European legal acts in force. The second challenge for future research is not about time and effort, but methodological. How can we test rule-specific hypotheses for our second dependent variable, i.e. the persistence of non-compliance over time and over the different stages of the infringement procedure? As we pointed out, this requires two-stage selection models that can combine probit and count data models on the one hand with survival and ordered probit models on the other in order to account for the non-random sample selection that affects the explanation of why some infringements of certain European legal acts are harder to settle than others and why it takes longer and more stages of the EU infringement procedure to overcome non-compliance in some cases than in others.

Literature

- Abbott, Kenneth W./Keohane, Robert O./Moravcsik, Andrew/Slaughter, Anne Marie/Snidal, Duncan* 2000: The Concept of Legalization, in: *International Organization* 54/3, 401-419.
- Abbott, Kenneth W./Snidal, Duncan* 2000: Hard and Soft Law in International Governance, in: *International Organization* 54/3, 421-456.
- Alesina, Alberto/Rosenthal, Howard* 1995: *Partisan Politics, Divided Government, and the Economy*, Cambridge.
- Auer, Astrid/Demmke, Christoph/Polet, Robert* 1996: *Civil Services in the Europe of the Fifteen: Current Situation and Prospects*, Maastricht.
- Boehmke, Frederick J./Meissner, Christopher M.* 2008: Modeling Sample Selection for Durations with Time-Varying Covariates, With an Application to the Duration of Exchange Rate Regimes, in: *The Society for Political Methodology, 25th Annual Summer Conference, 9-12 July 2008, Ann Arbor, MI.*
- Boehmke, Frederick J./Morey, Daniel S./Shannon, Megan* 2006: Selection Bias and Continuous-Time Duration Models: Consequences and a Proposed Solution, in: *American Journal of Political Science* 50, 192-207.
- Börzel, Tanja A.* 2001: Non-Compliance in the European Union. Pathology or Statistical Artefact?, in: *Journal of European Public Policy* 8/5, 803-824.
- Börzel, Tanja A.* 2005: Europeanization: How the European Union Interacts with its Member States, in: *Bulmer, Simon/Lequesne, Christian (eds): The Member States of the European Union*, Oxford. 45-69.
- Börzel, Tanja A./Dudziak, Meike/Hofmann, Tobias/Panke, Diana/Sprungk, Carina* 2007: Recalcitrance, Inefficiency and Support for European Integration. Why Member States Do (Not) Comply with European Law, in: *CES Working Paper 151, Harvard University, Cambridge, Massachusetts.*
- Börzel, Tanja A./Hofmann, Tobias/Panke, Diana* (under review): Options, Referrals, and Judgements. Analyzing Longitudinal Patterns of Non-Compliance.
- Börzel, Tanja A./Hofmann, Tobias/Panke, Diana/Sprungk, Carina* 2010: Obstinate and Inefficient. Why Member States Do Not Comply With European Law, in: *Comparative Political Studies* 43/11, 1363-1390.
- Börzel, Tanja A./Hofmann, Tobias/Sprungk, Carina* 2003: Einhaltung von Recht jenseits des Nationalstaats. Zur Implementationslogik marktkorrigierender Regelungen in der EU, in: *Zeitschrift für Internationale Beziehungen* 10/2, 247-286.
- Brautigam, Deborah* 1996: *State Capacity and Effective Governance*, Washington, DC.
- Chayes, Abram/Chayes, Antonia Handler* 1991: Compliance Without Enforcement: State Behavior under Regulatory Treaties, in: *Negotiation Journal* 7/2, 311-331.
- Chayes, Abram/Chayes, Antonia Handler* 1993: On Compliance, in: *International Organization* 47/2, 175-205.
- Chayes, Abram/Chayes, Antonia Handler* 1995: *The New Sovereignty. Compliance with International Regulatory Agreements*, Cambridge.
- Checkel, Jeffrey T.* 2001: Why Comply? Social Learning and European Identity Change, in: *International Organization* 55/3, 553-588.
- Döring, Herbert* 1995: *Parliaments and Majority Rule in Western Europe*, New York.
- Downs, George W.* 1998: Enforcement and the Evolution of Cooperation, in: *Michigan Journal of International Law* 19/2, 319-344.
- Downs, George W./Rocke, David M./Barsoom, Peter N.* 1996: Is the Good News About Compliance Good News About Cooperation?, in: *International Organization* 50/3, 379-406.
- Duina, Francesco G.* 1997: Explaining Legal Implementation in the European Union, in: *International Journal of the Sociology of Law* 25/2, 155-179.

- Falkner, Gerda/Hartlapp, Miriam/Leiber, Simone/Treib, Oliver* 2004: Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor?, in: *West European Politics* 27/3, 452-473.
- Falkner, Gerda/Treib, Oliver/Hartlapp, Miriam/Leiber, Simone* 2005: *Complying with Europe. EU Harmonization and Soft Law in the Member States*, Cambridge.
- Feick, Jürgen* 1980: Internationale Vergleichbarkeit staatlicher Interventionsprogramme, in: Mayntz, Renate (ed.): *Implementation politischer Programme II. Ansätze zur Theoriebildung*, Opladen.
- Garrett, Geoffrey/Kelemen, R. Daniel/Schulz, Heiner* 1998: The European Court of Justice, National Governments, and Legal Integration in the European Union, in: *International Organization* 52/1, 149-176.
- Goldstein, Judith L./Kahler, Miles/Keohane, Robert O./Slaughter, Anne-Marie* 2000: Legalization and World Politics, in: *International Organization, Special Issue* 54/3, 385-399.
- Harfst, Philipp/Schnapp, Kai-Uwe* 2003: Instrumente parlamentarischer Kontrolle der Exekutive in westlichen Demokratien, in: *WZB Discussion Paper FS IV*, 03-201.
- Hartlapp, Miriam* 2007: On Enforcement, Management and Persuasion: Different Logics of Implementation Policy in the EU and the ILO, in: *Journal of Common Market Studies* 45/3, 653-674.
- Haverland, Markus* 2000: National Adaptation to European Integration: The Importance of Institutional Veto Points, in: *Journal of Public Policy* 20/1, 83-103.
- Haverland, Markus/Romeijn, Marleen* 2007: Do Member States Make European Policies Work? Analysing the EU Transposition Deficit, in: *Public Administration* 85/3, 757-778.
- Haverland, Markus/Steunenberg, Bernard/van Waarden, Frans* 2008: Sectors at Different Speeds. Analyzing Transposition Deficits in the European Union, in: *European Consortium for Political Research (ECPR), 36th Joint Sessions of Workshops, 11-16 April 2008, Rennes, France*.
- Helper, Laurence R./Slaughter, Anne-Marie* 1997: Toward a Theory of Effective Supranational Adjudication, in: *Yale Law Journal* 107/2, 273-391.
- Henisz, Witold J.* 2002: The Institutional Environment for Infrastructure Investment, in: *Industrial and Corporate Change* 11/2, 355-389.
- Héritier, Adrienne/Kerwer, Dieter/Knill, Christoph/Lehmkuhl, Dirk/Teutsch, Michael/Douillet, Anne-Cécile* 2001: *Differential Europe. The European Union Impact on National Policymaking*, Lanham.
- Herzfeld, Thomas/Weiss, Christoph* 2003: Corruption and Legal (In)effectiveness: An Empirical Investigation, in: *Political Economy* 19/3, 621-632.
- Hucke, Jochen* 1980: *Politische Handlungsspielräume. Möglichkeiten und Probleme der empirischen Bestimmung*, Bad Honnef.
- Hudec, Robert E.* 1993: *Enforcing International Trade Law. The Evolution of the Modern GATT Legal System*, Salem.
- Immergut, Ellen M.* 1998: The Theoretical Core of the New Institutionalism, in: *Politics and Society* 26/1, 5-34.
- Joerges, Christian* 2000: *Compliance Research in Legal Perspective*, Manuscript.
- Kachi, Aya* 2007: The Empirical Implications of Bargaining Games: Estimating Strategic Duration Models, in: *Society for Political Methodology, 24th Annual Summer Conference, 18-21 July 2007, Penn State University, PA*.
- Kaeding, Michael* 2006: Determinants of Transposition Delay in the European Union, in: *Journal of Public Policy* 26/3, 229-253.
- Kahler, Miles* 2000: Conclusion: The Causes and Consequences of Legalization, in: *International Organization* 54/3, 661-683.
- Kaufmann, Daniel/Kraay, Aart/Mastruzzi, Massimo* 2006: *Governance Matters V: Governance Indicators for 1996-2005*, World Bank Policy Research Paper.

- Keohane, Robert O.* 1989: *International Institutions and State Power: Essays in International Relations Theory*, Boulder.
- Keohane, Robert O./Moravcsik, Andrew/Slaughter, Anne-Marie* 2000: Legalized Dispute Resolution: Interstate and Transnational, in: *International Organization* 54/3, 457-488.
- Knill, Christoph* 1998: Implementing European Policies: The Impact of National Administrative Traditions, in: *Journal of Public Policy* 18/1, 1-28.
- König, Thomas/Luetgert, Brooke/Mäder, Lars* 2005: Troubles with Timeliness: Transposition Delay, in: European Consortium for Political Research (ECPR), 33rd Joint Sessions of Workshops, Grenada, Spain.
- Lampinen, Risto/Uusikylä, Petri* 1998: Implementation Deficit: Why Member States Do Not Comply with EU Directives?, in: *Scandinavian Political Studies* 21/3, 231-251.
- Linos, Katerina* 2007: How Can International Organizations Shape National Welfare States? Evidence From Compliance with European Union Directives, in: *Comparative Political Studies* 40/5, 547-5470.
- Majone, Giandomenico* 1993: The European Community between Social Policy and Social Regulation, in: *Journal of Common Market Studies* 11/1, 79-106.
- Majone, Giandomenico* 1997: From the Positive to the Regulatory State: Causes and Consequences of Changes in the Model of Governance, in: *Journal of Public Policy* 17/ 2, 139-167.
- Martin, Lisa L.* 1992: *Coercive Cooperation: Explaining Multilateral Economic Sanctions*, Princeton.
- Mastenbroek, Ellen* 2003: Surviving the Deadline: The Transposition of EU Directives in the Netherlands, in: *European Union Politics* 4/4, 371-396.
- Mastenbroek, Ellen* 2005: EU Compliance: Still a 'Black Hole'?, in: *Journal of European Public Policy* 12/6, 1103-1120.
- Mbaye, Heather A. D.* 2001: Why National States Comply with Supranational Law. Explaining Implementation Infringements in the European Union 1972-1993, in: *European Union Politics* 2/3, 259-281.
- Mitchell, Ronald B.* 1996: Compliance Theory: An Overview, in: Cameron, James/Werksman, Jacob/Roderick, Peter (eds): *Improving Compliance with International Environmental Law*, London.
- Moravcsik, Andrew* 1998: *The Choice for Europe: Social Purpose and State Power From Rome to Maastricht*, Ithaca.
- Olson, Mancur* 1965: *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge.
- Rodden, Jonathan* 2002: Strength in Numbers? Representation and Redistribution in the European Union, *European Union Politics* 3/2, 151-175.
- Sartori, Giovanni* 1970: Concept Misformation in Comparative Politics, in: *The American Political Science Review* 64/4, 1033-1053.
- Scharpf, Fritz W.* 1996: Negative and Positive Integration in the Political Economy of European Welfare States, in: Marks, Gary/Scharpf Fritz W./Schmitter, Philippe C./Streeck, Wolfgang (eds): *Governance in the European Union*, London, New Delhi.
- Scharpf, Fritz W.* 1997: Introduction: The Problem-Solving Capacity of Multi-Level Governance, in: *Journal of European Public Policy* 4/4, 520-538.
- Scharpf, Fritz W.* 1999: *Governing Europe. Effective and Legitimate?*, Oxford.
- Shapley, Lloyd S./Shubik, Martin* 1954: A Method for Evaluating the Distribution of Power in a Committee System, in: *American Political Science Review* 48/3: 787-792.
- Simmons, Beth A.* 2000: Compliance in International Relations, in: American Political Science Association, Annual Meeting, 31 August – 3 September, Washington, DC, USA.
- Smith, James McCall* 2000: The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts, in: *International Organization* 54/1, 137-180.

- Steinberg, Richard H.* 2002: In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO, in: *International Organization* 56/2, 339-374.
- Steunenberg, Bernard* 2006: Turning Swift Policy-making into Deadlock and Delay. National Policy Coordination and the Transposition of EU Directives, in: *European Union Politics* 7/3, 293-319.
- Steunenberg, Bernard* 2007: A Policy Solution the EU Directives' Transposition Puzzle. Interactions of Interests in Different Domestic Arenas, in: *West European Politics* 30, 23-49.
- Steunenberg, Bernard/Kaeding, Michael* 2008: „As Time Goes By“: Explaining the Transposition of Maritime Directives, in: *European Consortium for Political Research (ECPR), 36th Joint Sessions of Workshops, 11-16 April 2008, Rennes, France.*
- Steunenberg, Bernard/Rhinard, Mark* 2005: Hare or Turtle? Member States Catching up with the Transposition of EC Directives, in: *Netherlands' Institute of Government, Conference, Nijmegen, Netherlands.*
- Stone Sweet, Alec/Brunell, Thomas L.* 1997: The European Court and National Courts: A Statistical Analysis of Preliminary References, 1961-1995, in: *Jean Monnet Working Paper Series 97/14, Jean Monnet Center for International and Regional Economic Law & Justice, New York University.*
- Treib, Oliver* 2003: EU Governance, Misfit, and the Partisan Logic of Domestic Adaption: An Actor-Centered Perspective on the Transposition of EU Directives, Köln.
- Treutlein, Daniela* 2007: What Actually Happens to EU Directives in the Member States? A Cross-Country Cross-Sector View on National Transposition Instruments: CESifo Working Paper 2098.
- Tsebelis, George* 2002: *Veto Players: How Political Institutions Work*, Princeton.
- Wallace, William* 2005: Post-Sovereign Governance: The EU as a Partial Polity, in: *Wallace, William/Wallace, Helen (eds): Policy Making in the European Union*, New York.
- Wilson, James Q. (ed.)* 1980: *The Politics of Regulation*, New York.
- Windhoff-Héritier, Adrienne* 1980: *Politikimplementation: Ziel und Wirklichkeit politischer Entscheidungen*, Königstein/Taunus.
- World Bank* 2005: *World Development Indicators on CD-Rom*, Washington, DC.
- Zangl, Bernhard* 2001: Bringing Courts Back In: Normdurchsetzung im GATT, in der WTO und der EG, in: *Schweizer Zeitschrift für Politikwissenschaft* 7/2, 49-80.
- Zürn, Michael* 1997: „Positives Regieren“ jenseits des Nationalstaates, in: *Zeitschrift für Internationale Beziehungen* 4/1, 41-68.
- Zürn, Michael* 2002: Societal Denationalization and Positive Governance, in: *Ougaard, Morten/Higgott, Richard (eds): Towards a Global Polity*, London.
- Zürn, Michael/Joerges, Christian (eds)* 2005: *Law and Governance in Postnational Europe. Compliance Beyond the Nation-State*, Cambridge.

Appendix: Operationalization of Power and Capacity

In order to test the influence of power, we incorporate two power indicators into our analysis. These indicators are widely used in the literature and account for different aspects of power – economic size and EU-specific political power. Gross domestic product (GDP) is our proxy for economic power (Keohane 1989; Martin 1992; Moravcsik 1998; Steinberg 2002). The data come from the World Development Indicators (World Bank 2005). For direct EU-specific political power, we use the proportion of times when a member state is pivotal (and can, thus, turn a losing into a winning coalition) under qualified majority voting (QMV) in the Council of Ministers (*Shapley Shubik Index*) as an indicator (Shapley/Shubik 1954; Rodden 2002).

As discussed in the context of our hypotheses, capacity can be subdivided into two specific concepts – government autonomy and government capacity. Government autonomy is a function of the number of veto players in the political system of a member state (Tsebelis 2002; Immergut 1998). However, even if the number of the institutional and partisan veto players remains constant over time, the interests of these actors – for example regarding (non-) compliance – may change. We use an alternative veto player index (*Constraints*), which allows for the interests of veto players in such a way that interdependences between veto players and the respective political system are taken into consideration (Henisz 2002). It is based on a simple spatial model of political interaction among government branches, measuring the number of independent branches with veto power and the distribution of political preferences across these branches. They can be interpreted as a measure of institutional constraints that either preclude arbitrary changes of existing policies or produce gridlock and so undermine the ability of the government to change policies when such change is needed.¹⁹ Two alternative indicators of government autonomy are discussed in the literature: The executive control of the parliamentary agenda measured by the extent to which the government can successfully initiate drafts and rely on stable majorities for in the legislative branch (Döring 1995; Tsebelis 2002), and the parliamentary oversight of government measured by the material (e.g. number of committees) and ideational resources (e.g. information processing capacity) relevant for the oversight of the legislative on the government (Harfst/Schnapp 2003). We do not include these two variables, because of multicollinearity concerns.

To test for the influence of government capacity, we include two indicators that are prominent in the literature. First of all, we incorporate GDP *per capita* (Brautigam 1996). It is a general measure for the resources on which a state can draw to ensure compliance. The data come from the World Development Indicators (World Bank 2005). Whether a state has the capacity to mobilize these resources shall be captured by the variable bureaucratic *Efficiency*. In the operationalization, we use an index of bureaucratic efficiency and professionalism of the public service based on work by Auer and her colleagues (Mbaye 2001; Auer et al. 1996). This index consists of three components of bureaucratic efficiency: Performance related pay for civil servants, lack of permanent tenure, and public advertising of open positions. Bureaucratic efficiency highly correlates with measures of corruption, e.g. the Corruption Perception Index of Transparency International (Herzfeld/Weiss 2003). For issues of multicollinearity, we include only bureaucratic efficiency in our analysis. Other potential indicators of government capacity – such as

19 Some scholars argue that political variables, such as partisan preferences of the governments in power, can explain variation in compliance with EU law (e.g. Mastenbroek 2005). This explanatory variable can be operationalized with the frequency of government changes. However, if partisan preferences do matter, it is more likely that they account for variation in compliance between specific policies than for variation between countries.

bureaucratic quality from the International Country Risk Guide and the World Bank governance indicators (Kaufmann et al. 2006) – are not used due to the fact that they cover only part of the time period analyzed in this paper and lack sufficient variance for comparative studies of the EU member states.

The Kolleg-Forschergruppe - Encouraging Academic Exchange and Intensive Research

The Kolleg-Forschergruppe (KFG) is a new funding programme launched by the German Research Foundation in 2008. It is a centrepiece of the KFG to provide a scientifically stimulating environment in which innovative research topics can be dealt with by discourse and debate within a small group of senior and junior researchers.

The Kolleg-Forschergruppe „The Transformative Power of Europe“ brings together research on European affairs in the Berlin-Brandenburg region and institutionalizes the cooperation with other universities and research institutions. It examines the role of the EU as promoter and recipient of ideas, analyzing the mechanisms and effects of internal and external diffusion processes in three research areas:

- Identity and the Public Sphere
- Compliance, Conditionality and Beyond
- Comparative Regionalism and Europe's External Relations

KFG The
Transformative
Power of Europe

