

**First Draft: Comments most welcome**

# **Why Do States not Obey the Law?**

Tanja A. Börzel  
Humboldt Universität zu Berlin

*Paper prepared for presentation at ARENA, University of Oslo, June 6, 2002.*

*Author's Address:*

Dr. Tanja A. Börzel  
Project Director and Lecturer  
Philosophische Fakultät III  
Institut für Sozialwissenschaften  
Humboldt Universität zu Berlin  
Unter den Linden 6  
D-10585 Berlin  
Tel: 030/4797 345  
Fax: 030/3454 0184  
Email: [tanja.boerzel@rz.hu-berlin.de](mailto:tanja.boerzel@rz.hu-berlin.de)

## 1. Introduction<sup>1</sup>

A major function of international institutions in facilitating ‘governance beyond the nation state’ (which used to be called international cooperation) is to ensure compliance with their principles and rules, i.e. to prevent free-riding. Some strands in the International Relations literature go even so far as to argue that international institutions only exist if they are effective in bringing about rule-consistent behaviour among its members (Efinger, Rittberger, and Zürn 1988).

Unlike states, international institutions cannot rely on a legitimate monopoly of force to bring about compliance. This does not imply the absence of any mechanisms for compliance, but it does mean that sanctions for violating regime principles or rules have to be enacted by the individual member states (Young 1979). In the early International Relations literature, the major puzzle of compliance used to be “why governments, seeking to promote their own interests, ever comply with the rules of international regimes when they view these rules as in conflict with [...] their myopic self-interest” (Keohane 1984: 99). The puzzle of “cooperation under anarchy” (Axelrod and Keohane 1986) has been largely solved. What remains unclear, however, is why some international norms and rules are more effective than others. Why is overall state compliance higher with respect to whale hunting than arms trading or developing aid? Why do some states comply with the principles and rules of an international institutions and others do not? How do we account for such variations in compliance with international principles, norms and rules?

This paper strives to find out why states do not obey law beyond the nation-state, i.e. why they violate legally binding norms and rules that cannot rely on a monopoly of legitimate power for their enforcement. The EU is an ideal case to explore the sources of non-compliance with law beyond the nation-state. For it is the institution with the most developed body of supranational law, it presents a critical case for non-compliance in the sense of least likely case. Moreover, it offers a rich field for empirical research since cases of non-compliance are comprehensively documented according to the nature of non-compliance, the type of law infringed and the policy sector to which the law pertains, the violating member states and the measures taken by EU institutions in response to non-compliance.

The first part of the paper is dedicated to the dependent variable of the study. It [reviews the evidence presented in the literature on the increasing compliance failure in European policy-making](#)

---

<sup>1</sup> The study forms part of a research project funded by the Emmy-Noether-Programme of the German Research Foundation (DFG BO 1831/1-1).

claimed by scholars and European policy-makers alike. [It starts with raising some critical questions about the reliability of existing data.](#) Drawing on some new [sources, it then explores whether the compliance gap has been widening](#) in the European Union. It is argued that we have no data to evaluate the overall level of compliance in EU policy-making. The data available only allow us to make statements about relative levels of non-compliance. In order to account for variations across time, member states, and policies, the second part of the paper reviews prominent approaches to (non-)compliance in the International Relations literature. The various theories are distinguished according to the assumptions they make about the source of non-compliant behaviour, on the one hand, and the logic of influence on non-compliant behaviour, on the other. The combination of the two dimensions results in four compliance mechanisms from which we can derive different hypotheses on non-compliance with law beyond the nation state. The last part of the paper develops six hypotheses, which are subsequently tested against data on member state violations of European Law. The empirical findings clearly show the limits of monocausal explanations of non-compliance. The paper concludes with some considerations on the need for more complex models of non-compliance with law beyond the nation state.

## 2. Do Member States Obey European Law? <sup>2</sup>

For more than ten years, [the European Commission has been denouncing a growing compliance deficit, which it believes to threaten both the effectiveness and the legitimacy of European policy-making](#) (Commission of the European Communities 1990; Commission of the European Communities 2000). [While some scholars argue that the level of compliance with European Law compares well to the level of compliance with domestic law in democratic liberal states](#) (Keohane and Hoffmann 1990: 278; Neyer, Wolf, and Zürn 1999), [many](#) consider non-compliance to be a serious problem of the EU that is systemic and pathological (Krislov, Ehlermann, and Weiler 1986; Weiler 1988; Snyder 1993; From and Stava 1993; Mendrinou 1996; Tallberg 1999). [The contradicting assessments of member state compliance](#) are [partly](#) explained by [the](#) absence [of common assessment criteria and reliable data.](#)

---

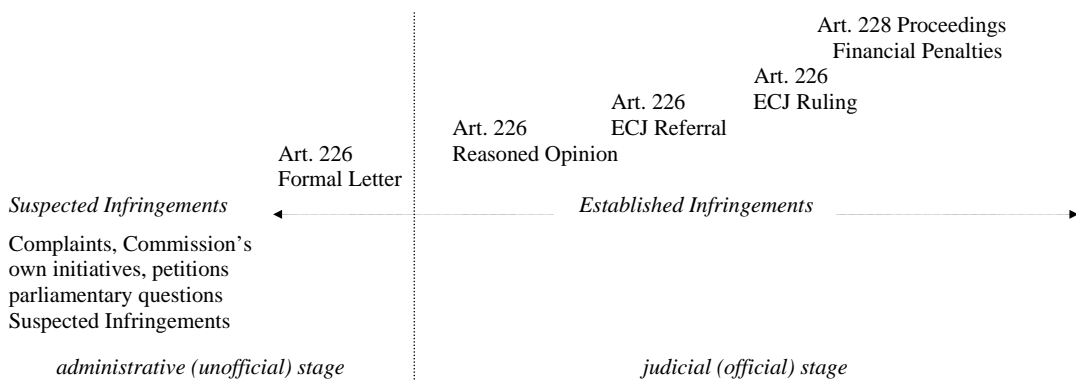
<sup>2</sup> A previous version of the following sections has been published in the Journal of European Public Policy (Börzel, Tanja A. 2001. Non-Compliance in the European Union. Pathology or Statistical Artefact? *Journal of European Public Policy* 8 (5): 803-824.).

## 2.2 Infringement Proceedings as a Proxy for Non-Compliance

Most [compliance and implementation studies develop their own assessment criteria and collect their empirical data in laborious field research](#) (Knill 1997; Knill 1998; Duina 1997). As a result, a comparison of empirical findings and theoretical claims becomes difficult. [Others](#) therefore [draw on statistical data published in the Annual Reports on Monitoring the Application of Community Law](#) (Snyder 1993; Mendrinou 1996; Tallberg 1999; Macrory 1992; Collins and Earnshaw 1992; Pridham and Cini 1994). Article 226 (ex-Article 169) of the Treaty entitles the Commission to open infringement proceedings against member states found in violation of European Law. Since 1984, the Commission has reported every year on the legal action it brought against the member states.

The proceedings specified in Article 226 consist of six subsequent *stages* (figure 1.2).

- 1) Suspected Infringement
  - *complaints* lodged by citizens, corporations, and non-governmental organization,
  - *own initiatives* of the Commission,
  - *petitions* and *questions* by the European Parliament,
  - *non-communication* of the transposition of Directives by the member states.
- 2) Formal Letter of Notice (Article 226)
- 3) Reasoned Opinion (Article 226)
- 4) Referral to the European Court of Justice (Article 226)
- 5) ECJ Judgement (Article 226)
- 6) Post-Litigation Infringement Proceedings (Article 228)



**Figure 1 The different stages of the infringement proceedings**

Various studies have used the numbers of infringements within the different stages as indicators for member state non-compliance with European Law. For instance, the observation that environmental policy accounts for over 20 per cent of registered infringement (Formal Letters) has been taken as evidence for a severe implementation deficit in this area (Commission of the European Communities 1996; Jordan 1999). Such inferences are not without problems though. There are good reasons to question whether infringement proceedings qualify as valid and reliable indicators of compliance failure, that is, whether they constitute a random sample of all the non-compliance cases that occur. First, for reasons of limited resources, the Commission is not capable of detecting and legally pursuing all instances of non-compliance with European Law. Second, for political reasons, the Commission may not disclose all the cases, in which it took action against infringements of European Law. Third, for methodological reasons, the infringement data are neither complete nor consistent.

### *The Problem of Undetected Non-Compliance*

Infringement proceedings only cover a fraction of the violations of European Law in the member states. The jurisprudence of the ECJ under Article 234 (ex-Article 177) already indicates that many cases of non-compliance occur without getting caught by the Article 226 procedure.<sup>3</sup> Infringement proceedings encompass cases of non-compliance, which have been detected by the Commission itself or have been brought to its attention by citizens, companies, and interest groups. The detection rate is rather high for the failure to transpose Directives into national law. The Commission automatically opens proceedings after the transposition deadline of a Directive expired and a member state did not notify the Commission about its incorporation into national law. Non-transposition accounts for more than two-thirds of all infringement cases opened. The chances of detection significantly decrease when it comes to complete and correct transposition, practical application and enforcement of European policies. Amid its limited resources, the Commission largely depends on external sources, including member states reporting back on their implementation activities,<sup>4</sup> costly and time-consuming consultancy reports, or information from domestic actors. Commission officials can do on-site visits in the member states, but such spot-checks tend to be time-consuming, politically fraught, and can easily be blocked by member states. They are usually little more than 'fact-finding missions' to clarify certain points rather than investigate instances of suspected non-compliance. Societal monitoring is the most important source of information. Since the degree of

---

<sup>3</sup> According to the preliminary ruling procedure of Article 226, domestic courts may, and courts of last instance must, bring cases to the ECJ concerning questions of the legal interpretation of European Law. Those cases often arise if European regulations challenge national legal provisions.

<sup>4</sup> Only Denmark, Finland, and Sweden regularly report to the Commissions the measures taken to transpose EU Directives into national law (Jordan, Andrew. 1999. *The Implementation of EU Environmental Policy: A Policy Problem Without a Political Solution. Environment and Planning C: Government and Policy* 17: 69-90.).

social activism and respect for law vary among the member states, infringement proceedings may contain a serious bias. A country whose citizens are collectively active and law-abiding could generate more complaints than a member state whose citizens show little respect for the law and are less inclined to engage in collective action. Yet, the distribution of complaints across member states shows that societal activism per se is not the issue (table 1.1). Population size seems to be more important. The five biggest member states – Germany, France, the UK, Italy, and Spain – are home of more than 75 per cent of the European population and account for about 69 per cent of the complaints lodged between 1983 and 1999. At the same time, the numbers of complaints originating in Germany and the UK are lower than we would expect given their population size. Spain, by contrast, has an unusually high share of complaints compared to the other bigger member states. The same is true for Greece within the group of less populated states, since it accounts for a much bigger share of complaints than the Netherlands or Denmark. Both Spain and Greece show a lower degree of societal activism than their northern counterparts of similar population size. It has been argued that southern societies hold certain distrust against their state institutions as a result of which they resort to the European Union for assistance (Pridham and Cini 1994), which could explain the relatively high number of complaints originating in Spain and Greece. However, neither Italy nor Portugal fit this explanation, since their societies may be less active but their numbers of complaints are relatively low compared to their population size.

Another factor, which could bias the detection of non-compliance with European Law, is linked to the availability of reliable data. Some member states may lack the necessary administrative capacity to verify whether European legislation is complied with. Monitoring water and air quality, for instance, requires an adequate technical and scientific infrastructure. In the absence of comprehensive and reliable monitoring data, neither the member states nor their citizens nor the Commission are able to assess compliance with European air and water pollution control Directives. Yet, member states with high monitoring capacities, such as Denmark and the Netherlands, show a low number of complaints and infringement proceedings opened while those with weaker administrative and scientific infrastructures, like Greece and Spain, find themselves at the upper end of the list (table 1.1). Moreover, it has been argued in the literature that it is the very lack of monitoring capacity in some (southern) member states, which, among other factors, accounts for their high number of infringements (Pridham and Cini 1994; Hooghe 1993).

**Table 1<sup>5</sup> Member states compared by population, complaints and infringement proceedings opened, 1983-99<sup>6</sup>**

	Percentage of EU population	Average percentage of complaints*	Average percentage of proceedings opened
Germany	21.9%	11.9%	7.8%
France	15.7%	16.8%	10.3%
UK	15.7%	9.9%	6.6%
Italy	15.3%	12.9%	11.6%
Spain	10.6%	17.6%	10.1%
Netherlands	4.2%	3.5%	5.9%
Greece	2.8%	10.5%	11.3%
Belgium	2.7%	5.1%	8.4%
Portugal	2.6%	4.5%	10.8%
Denmark	1.4%	2.6%	4.5%
Ireland	1.0%	3.8%	6.5%
Luxembourg	0.1%	0.9%	6.2%
EU		8.3%	8.3%

Source: column 1: National Accounts, OECD, Paris, 1999; column 2, 3: Annual Reports on the Monitoring of the Application of European Law 1984-99, data also available on-line: [www.iue.it/RSC/RSC\\_TOOLS/compliance/Welcome.html](http://www.iue.it/RSC/RSC_TOOLS/compliance/Welcome.html).

\* The figures for the complaints are only an approximation since the Annual Reports do not provide consistent data on complaints (see below).

In sum, we have no indication that the limited detection of non-compliance would systematically bias the infringement data.

#### *The Problem of Selective Disclosure of Detected Non-Compliance*

The Commission has considerable discretion in deciding whether and when to open official proceedings (Evans 1979; Audretsch 1986). In principle, the Commission prefers informal bargaining to formal sanctions in order to induce member state compliance (Snyder 1993). It considers an official opening of Article 226 proceedings only 'when all other means have failed' (Commission of the European Communities 1991: 205). The great majority of cases are settled in bilateral exchanges with national authorities during the administrative stage – only about one third of the letters

<sup>5</sup> In order to compare the member states, which differ in their years of membership, I standardized their scores. First, I divided the number of complaints, letters etc. of the different member states by their years of membership. Second, I added up these average scores and made the sum equal 100 per cent. Finally, I calculated the percentage of the average scores.

<sup>6</sup> Finland, Austria, and Sweden are excluded because they joined the EU only in 1995. They are still in the adaptation phase and the incorporation of the comprehensive *acquis communautaire* into national law is not fully concluded. Most of their infringement cases refer to the delayed transposition of Directives. Therefore, their infringement records are likely to be exaggerated, particularly in the earlier stages of the proceedings.

result into Reasoned Opinions and, hence, become official. The sending of a Formal Letter is already preceded by written exchanges and meetings between the Commission and the member state on an informal level. The political discretion of the Commission in deciding whether and when to open official proceedings could cause a voluntary bias in the sample. This might be all the more true since the Article 130r(4) of the Treaty attributes the primary responsibility for implementing EU policies to the member states. The principle of decentralized enforcement of European Law puts the Commission, which does not enjoy any direct political legitimacy, in a weak and 'invidious position' (Williams 1994). Thus, the Commission may treat some member states more carefully than others because they make significant contributions to the EU budget or dispose of considerable voting power in the Council. Or their population tends to be 'Eurosceptic' and the Commission seeks to avoid upsetting the public opinion in these member states by officially shaming them for non-compliance with European Law (Jordan 1999).

The comparison between the relative ranking of the member states at the unofficial (Formal Letters) and the first official stage (Reasoned Opinions) of the proceedings could help us to reveal such a bias. (table 1.2). Germany and France are the two member states, which contribute most to the EU budget and possess considerable bargaining power in the Council. Nevertheless, they both figure prominently among those member states that have received high numbers of Reasoned Opinions. While those two countries are rather pro-European, public and elite support for European institutions in Denmark and the UK is among the lowest, only topped by Austria and Sweden, which recently joined the European Union.<sup>7</sup> Denmark does indeed perform best among the member states at both stages. The British record, however, is more mixed. There appear to be no obvious factors that bias our sample towards politically less sensitive cases and member states, respectively.

---

<sup>7</sup> See 'Initial Results of Eurobarometer Survey No. 54 (autumn 2000)', Brussels: European Union, 8 February 2001.



**Table 2 Ranking of member states at the stages of Formal Letters and Reasoned Opinions, 1978-99**

Formal Letters	Reasoned Opinion	
Italy	Italy	
Greece	Greece	
Portugal	Portugal	
France	France	
Spain	Belgium	
Belgium	Spain	
Germany	Germany	
Ireland	Ireland	
UK	Luxembourg	
Luxembourg	UK	
Netherlands	Netherlands	
Denmark	Denmark	

Source: Annual Reports on the Monitoring of the Application of European Law 1984-99, data also available on-line: [www.iue.it/RSC/RSC\\_TOOLS/compliance/Welcome.html](http://www.iue.it/RSC/RSC_TOOLS/compliance/Welcome.html).

### *The Problem of Incomplete and Inconsistent Data*

The infringement data published by the Commission are neither complete nor consistent. First, the Commission has repeatedly changed the way in which it reports data. Suspected infringements are a case in point. From 1982 till 1991, their numbers are indicated by two different figures, complaints and own investigations by the Commission. Between 1992 and 1997, the Commission provides only one figure, which does neither refer to complaints only nor to the Commission's own investigation nor does it equal the aggregate of the two. Since 1998, the Commission reports three figures – complaints, own investigations, and non-communication of the transposition of Directives, whereby it remains unclear whether the third category has been newly introduced or used to be an integral part of one of the other two categories. A comparison of suspected infringements across time is further impaired because since 1995, the Commission has subsumed parliamentary questions and petitions under complaints and own investigations, respectively. Additional problems arise when it comes to the reporting of infringement cases by policy sectors, since the Commission has redefined them several times over the years. In 1992, for instance, the Directorate General III changed its name from 'Internal Market and Industrial Affairs' to 'Industry' as a result of which the number of complaints in this sector dropped dramatically from 382 in 1992 to 34 in 1993. Finally, some data are not provided at all or only for a limited number of years. Transposition rates for Directives have been included in the Annual Reports as late as 1990. Since 1998, figures for suspected infringements are merely given by member state, unlike in previous years, where they were also

provided by policy sector. Established infringements, finally, are jointly reported by policy sector and member states only in the 10<sup>th</sup> Annual Report for the years 1988 till 1992 (Commission of the European Communities 1993: 165ff.). In 1992, the Commission also stopped reporting Court Judgements.

Second, the reported data show some serious inconsistencies. For any given year, the Annual Reports of the Commission provide two types of data. Aggregate data summarize the number of infringement proceedings classified by the different stages, member states, policy sectors, and type of infringements. The 'raw' data list the individual infringement cases, which are to make up the aggregate data. The comparison of the aggregate and the raw data reveals some serious 'mismatches'. The raw data merely comprise about one third of the Letters actually sent. This is explained by the policy of the Commission to individually list Letters only if they refer to cases of non-transposition.<sup>8</sup> But the aggregate data for Reasoned Opinions and Court Referrals do not equal the sum of the individually listed cases either. The aggregate data report 5762 Reasoned Opinions sent by the Commission between 1978 and 1999. But the 17 Annual Reports (1984-1999) list only 4241 Reasoned Opinions for these years; some 26.4 per cent of the cases are missing. The same inconsistencies can be found for ECJ Referrals, where about 37.9 per cent of the cases are not listed (1593 to 990). Confronted with the inconsistencies in their published data, the Commission provided the author with a dataset drawn from its own database containing all cases of Reasoned Opinions, Court Referrals, and Court Judgements. Their aggregate numbers closely correspond to the aggregate data published in the Annual Reports (see table 2.3). The explanation for the poor goodness of fit between the published aggregate data and the published raw data lies in the reporting methods. Unlike in the aggregate data, only those cases are individually listed that are still open at the end of the year reported. For instance, if the Commission had sent a Reasoned Opinion in January and the case is closed in July because the member state rectified the violation, the case features in the aggregate but not in the raw data. In 1999, 122 out of 438 cases, in which the Commission had sent a Reasoned Opinion, were closed or merged with similar cases. Most of them (104) refer to the delayed transposition of Directives.<sup>9</sup> In sum, the incompleteness and inconsistencies in the published infringement data appear to be the result of changing reporting methods rather than administrative 'sloppiness' or political manipulation.

---

<sup>8</sup> The reports do list a few hundred other Letters because, for political reasons, the Commission sometimes decides to make a Letter public. Moreover, some Directorate Generals are less faithful to the Commission's policy of not disclosing cases of improper incorporation and application.

<sup>9</sup> Interview in the enforcement unit of the Secretariat General of the Commission, Brussels, 26.4.2001.

**Table 3 Comparing infringement data from the Annual Reports and the Commission, 1978-99**

	Reports – Individual Listings	Reports – Aggregate Date	Dataset provided by Commission
Reasoned Opinion	4243	5762	5760
Court Referrals	993	1593	1618
Court Judgements	488	430*	672

*Source:* Annual Reports on the Monitoring of the Application of European Law 1984-99, [EUI Database on Member State Compliance with Community Law \(www.iue.it/RSC/RSC\\_TOOLS/compliance/Welcome.html\)](http://www.iue.it/RSC/RSC_TOOLS/compliance/Welcome.html).

\* The Annual Reports provide data only for 1978-92.

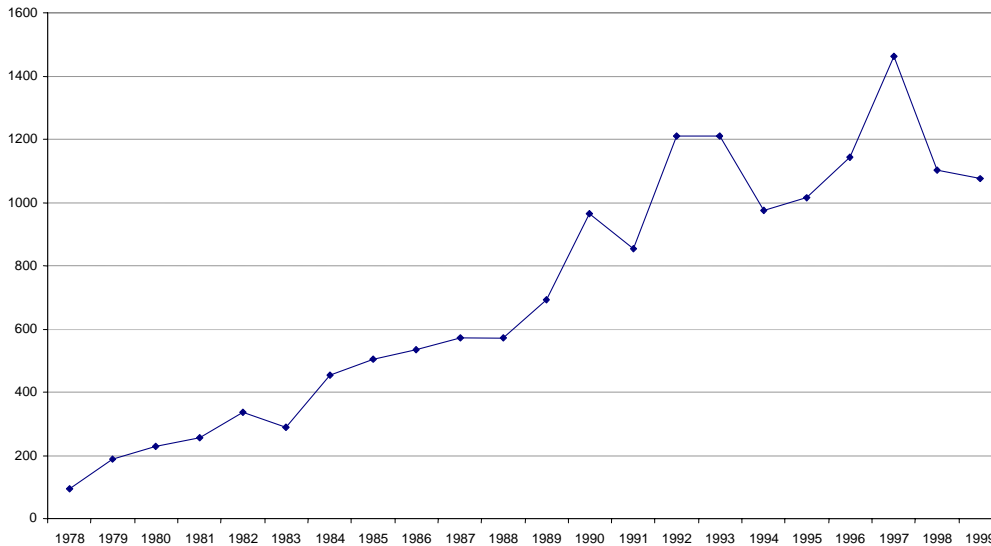
#### *A Database on Non-Compliance with Community Law*

The Commission data on member state infringements of European Law suffer from some problems, which should caution us against their use as straightforward indicators of non-compliance with European Law. At the same time, the Commission data are the only statistical source available. Neither international organizations nor states provide such comprehensive information on issues of non-compliance. The Infringement database compiled by the author comprises some 6230 infringement cases, which the Commission initiated between 1978 and 1999. Since the Commission does not fully report Formal Letters, the database only contains the individually listed cases of Reasoned Opinions and subsequent stages. The cases are classified by infringement number, member state, policy sector, legal basis (celex number), legal act, type of infringement, and measures taken by the Commission. Unlike the aggregate data in the Annual Reports, each case features only once and not several times as a Letter, Reasoned Opinion, ECJ Referral etc. These data can serve as important indicators for non-compliance as long as we carefully control for potential selection biases.

## 2.2 Assessing Member State Non-Compliance with European Law

But even if we accept infringement data as valid and reliable indicators of member state non-compliance with European Law, we have to be careful in how to interpret them. It is a commonly held assumption – both among policy makers and academics – that the EU is facing a growing compliance problem that is systematic and pathological. The negative assessment is backed by the increasing number of infringement proceedings (Formal Letters), which the Commission has opened against the member states over the years (chart 1.1).

Chart 1 Total number of infringement proceedings opened for the EC 12, 1978-99



Source: Commission of the European Communities 2000.

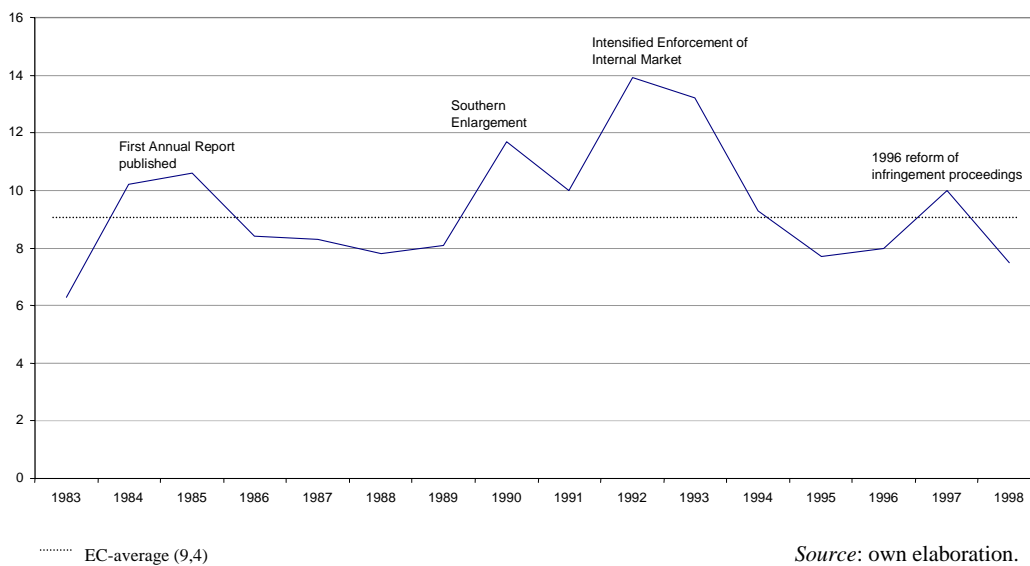
Since 1978, the Commission has opened more than 17,000 [infringement proceedings](#) against the member states. This figure may [sound impressive](#) but must be put into perspective. Infringement numbers as such do not tell much about either the absolute scope of non-compliance or relative changes in the level of non-compliance over time. Infringement cases only cover a fraction of member state violations against European Law. We may claim that they provide a representative sample, but we have no means to estimate the total number of the population of non-compliance cases. The available data does not permit us to draw any inferences about the existence or non-existence of a compliance problem in the European Union. We can only trace relative changes in non-compliance, that is, assess whether non-compliance has increased or decreased over time. But in order to do this, we have to measure the number of infringement proceedings opened against the numbers of legal acts that can be potentially infringed as well as the number of member states that can potentially infringe them. Between 1983 and 1998, the number of legal acts in force has more than doubled (from 4566 to 9767)<sup>10</sup> and five more member states have joined the Union. If we calculate the number of infringement proceedings opened as a percentage of ‘violative opportunities’<sup>11</sup> (number of legal acts in force multiplied by member states) for each year, the level of non-compliance has not increased. This is particularly true if we control for several statistical artefacts that inflate the infringement numbers. First, the Commission adopted a more rigorous

<sup>10</sup> I am thankful to Wolfgang Wessels and Andreas Maurer for providing me with the annual numbers of legislation in force.

<sup>11</sup> I owe this term to Beth Simmons.

approach to member state non-compliance in the late 1970s (Mendrinou 1996: 3). Likewise, the Commission and the ECJ pursued a more aggressive enforcement policy in the early 1990s in order to ensure the effective implementation of the Internal Market Programme (Tallberg 1999). Not surprisingly, the numbers of opened infringement proceedings increased dramatically twice, in 1983/84 by 57 per cent and again in 1991/92 by 40 per cent. Second, the Southern enlargement in the first half of the 1980s (Greece, 1981, Spain and Portugal, 1986) led to a significant increase in infringement proceedings opened once the ‘period of grace’, which the Commission grants to new member states, had elapsed. From 1989 to 1990, the number of opened proceedings grew by 40 per cent (223 cases), for which Spain, Portugal, and Greece are single-handedly responsible. The three countries account for 249 new cases while the numbers for the other member states remained more or less stable. The last significant increase of 28 per cent in 1996/97, finally, is not so much caused by the Northern enlargement (Sweden, Austria, Finland 1995) but by a policy change of the Commission. In 1996, the internal reform of the infringement proceedings re-stated the ‘intended meaning’ (*sense véritable*) of the Formal Letters as mere ‘requests for observations’ (*demande d’observation*) rather than warnings of the Commission.<sup>12</sup> Avoiding any accusations, Letters should be issued more rapidly than before. Indeed, the number of Letters sent grew significantly after the reform had been implemented. If all these factors are taken into account, the number of infringements has not significantly increased over the years but remained rather stable (chart 1.2).

Chart 2 Total number of infringement proceedings opened in relation to violative opportunities for the EC 12, 1983-98



<sup>12</sup> Internal document of the Commission, unpublished.

To sum up, the infringement data do not allow us to make any statements about the absolute level of non-compliance in the European Union. We can use the data, however, for comparing relative levels of non-compliance across time, policy sectors, and member states.

### 3. Why Do Member States not Obey European Law?

#### 3.1 What is (Non-)Compliance?

The literature presents a Babylonian variety of understandings and definitions of compliance often using as synonymous with effective implementation. The distinction between the two concepts is often not clear. For the sake of this study, compliance is defined as *rule-consistent behaviour of those actors, to whom a rule is formally addressed and whose behaviour is targeted by the rule*.<sup>13</sup> While states are the addressees of European Law, and, hence, are formally responsible for compliance, they are not necessarily the main or exclusive targets. Many policies target the behaviour of non-state actors, too. If states are only the addressees but not the main targets, the ultimate responsibility for compliance lies with private actors. Beyond formal incorporation into national law, the role of public actors is confined in these cases to effectively monitoring and enforcing European policies in order to ensure compliance (Börzel 2002).

The distinction between addressees and targets of a rule or policy helps to clarify the relationship between *compliance* on one hand, and *implementation*, on the other hand. *Implementation* refers to the putting into practice of policies or rules. Drawing on David Easton's system theory approach, implementation studies often distinguish between three different stages of the implementation process:

- *output*: the legal and administrative measures to put a policy into practice (formal and practical implementation)
- *outcome*: the effect of the policy measures on the behaviour of the target actors
- *impact*: the effect of the policy on the socio-economic environment (*effectiveness, problem-solving capacity*)

---

<sup>13</sup> Actors targeted by a policy are not identical with actors affected by a policy. Unlike affected actors, a policy directly requires target actors to change their behaviour. For instance, consumers are affected by foodstuff regulations, but it is the food industry, which has to change its production behaviour.

Compliance defined as rule-consistent behaviour of both the addressees and the targets of a rule or policy comprises the output and the outcome dimension. Impact and effectiveness are a separate matter since compliance of rule addressees and rule targets need not lead to changes in the socio-economic environment. This study concentrates on output and only considers outcome as far as the compliant behaviour of state actors is concerned. The omission of the rule-consistent behaviour of non-state actors is justified by reasons of methodology. European infringement proceedings, which provide the empirical basis for evaluating various explanation of non-compliance, pursue only indirectly non-compliant behaviour of private actors by reprimanding the member states for not effectively monitoring and enforcing European Law. The European legal system is geared towards the member states. They are exclusively responsible for the effective implementation of EU policies at the domestic level (Weiler 1988; Krislov, Ehlermann, and Weiler 1986).

On the output dimension, we can distinguish five different forms of non-compliance with European Law:

- 1) *Violations of Treaty Provisions, Regulations, and Decisions ('violation')*  
Treaty Provisions, Regulations, and Decisions are directly applicable and, therefore, do not have to be incorporated into national law.<sup>14</sup> Non-compliance takes the form of not or incorrectly applying and enforcing European obligations as well as of taking, or not repealing, violative national measures.
- 2) *Non-transposition of Directives ('no measures notified')*  
Directives are not directly applicable, as a result of which they have to be incorporated into national law. Member states are left the choice as to the form and methods of implementation (within the doctrine of the *effet utile*, which stipulates that the member states have to choose the most effective means).<sup>15</sup> Non-compliance manifests itself in a total failure to issue the required national legislation.
- 3) *Incorrect legal implementation of Directives ('not properly incorporated')*  
The transposition of Directives may be wrongful. Non-compliance takes the form of either incomplete or incorrect incorporation of Directives into national law. Parts of the obligations of the Directive are not enacted or national regulations deviate from European obligations because they are not amended and repealed, respectively.
- 4) *Improper application of Directive ('not properly applied')*  
Even if the legal implementation of a Directive is correct and complete, it still may not be practically applied. Non-compliance involves the active violation of taking conflicting national measures or the passive failure to invoke the obligations of the Directive. The latter also includes failures to effectively enforce European Law, that is to take positive action against violators, both by national administration and judicial organs, as well as to make adequate remedies available to the individual against infringements, which impinge on her rights.
- 5) *Non-compliance with ECJ judgements ('not yet complied with')*  
Once the European Court of Justice finds a member state guilty of infringing European Law, the member state is ultimately obliged to remedy the issue. Non-compliance refers to the failure of member states to execute Court judgements, which establish a violation of European Law.

---

<sup>14</sup> Treaty Provisions and Regulations are generally binding and directly applicable, while Decisions are administrative acts aimed at specific individuals, companies, or governments for which they are binding.

<sup>15</sup> ECJ *Fédéchar v. High Authority*, C-8/55; ECJ *Van Gend en Loos*, C-26/62.

### 3.2 How to Explain Non-Compliance

This study turns to the International Relations (IR) literature as a starting point for theorizing about (non-)compliance with law beyond the nation state (cf. Mitchell 1996; Underdal 1998; Checkel 1999b; Tallberg 2002). IR theories are primarily concerned with explaining state behaviour. Unlike implementation research in the field of (European) public policy, IR scholars have not given up on developing generalizable claims about (non-)compliance, in spite, or maybe because of, the complexity of the issue.

There are many ways in which International Relations theories can be organized and classified. For the research on compliance, it is most useful to distinguish IR theories according to the source of non-compliant behaviour and the logic of influencing (non-compliant) behaviour, to which they subscribe:

- 1) The source of non-compliant behaviour:  
*voluntary* (cost-avoidance) vs. *involuntary* (lacking capacity)
- 2) Logic of influencing non-compliant behaviour:  
*rationalist* (changing actors' pay-off matrices) vs. *constructivist* (changing actors' preferences)

If we combine the two dimensions, we get four different compliance mechanisms, from which we can then derive various hypotheses about (non-)compliance.

	Voluntary Non-Compliance	Involuntary Non-Compliance
Sanctioning (negativ/positiv)	'Sticks' monitoring and sanctions ( <i>compliance through enforcement</i> )	'Carrots' capacity building and contracting ( <i>compliance through management</i> )
Socialization	Persuasion and learning ( <i>compliance through persuasion</i> )	Legal Internalization ( <i>compliance through litigation</i> )

**Figure 2 Theoretical Approaches in the Compliance Literature**

#### *Compliance through Enforcement*

Enforcement approaches assume that states violate international norms and rules voluntarily because they are not willing to bear the costs of compliance. This is particularly the case if international norms and rules are not compatible with national arrangements as a result of which compli-



ance requires substantial changes at the domestic level. From this rationalist perspective, non-compliance can only be prevented by increasing the costs of non-compliance. Neorealist approaches point to hegemonic states as the only way to change the pay-off matrices of states because in the absence of an international monopoly of legitimate force only they have sufficient capabilities to effectively sanction non-compliant behaviour (Downs, Rocke, and Barsboom 1996; Fearon 1998). Advocates of Neoliberal Institutionalism, by contrast, emphasize that international institutions can serve as a substitute for the enforcement powers of hegemonic states. Non-compliance or free-riding becomes less attractive to states if they are likely to get caught and punished. International institutions can then provide mechanisms for monitoring compliance and for coordinating sanctions against free-riders (Boyle 1991; Victor, Raustiala, and Skolnikoff 1998; Weitsmann and Schneider 1997). More liberal approaches, which open the black box of the state, focus on the role of social mobilization and (trans)national pressure that may significantly change the cost-benefit calculations of state actors towards compliance. Domestic actors, often in transnational alliances with international non-governmental organizations, exploit international norms and organizations to generate pressure for compliance on public actors. International institutions offer an authoritative venue for private actors to challenge state behaviour. They provide new political opportunities to private actors “encouraging their connections with others like themselves and offering resources that can be used in intra-national and transnational conflict” (Tarrow 2001; cf. Rogowski 1989; Sikkink 1993; Klotz 1995; Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1999). By exploiting these political opportunities, private actors mobilizing for compliance become empowered vis-à-vis public actors (and private actors opposing compliance). Through pressure “from below and from above” (Brysk 1993), private actors change the cost-benefit calculations of public actors in favour of compliance, essentially by increasing the costs of non-compliance (cf. Börzel 2000; Börzel forthcoming).

### *Compliance through Persuasion*

Persuasion approaches also assume that states do not comply voluntarily with international rules. But they start from a different logic of social action, which emphasizes socially accepted (appropriate) behaviour rather than the maximization of egoist preferences as motivating actors. Non-compliant behaviour is not so much a question of the material costs of compliance, to which actors are averse. Rather actors have not internalised the norm (yet), i.e. they do not accept the norm as a standard for appropriate behaviour. In contrast to the rationalist ‘logic of consequentialism’, the ‘logic of appropriateness’(cf. March and Olsen 1998) specifies a compliance mechanism, which relies on socialization aiming to change actors’ preferences. Through processes of social learning and persuasion, actors internalize new norms and rules of appropriate behaviour up to the point that it is “taken for granted” (Risse and Sikkink 1999: 5-6; cf. Checkel 1999a). The internalisation of new

norms and rules often results in the redefinition of actors' interests and identities. Statist constructivists focus on the role of international organizations, which drive the socialization process by 'teaching' states new norms (Finnemore 1993). Liberal constructivists, by contrast, emphasize the role of (trans)national non-state actors as agents of socialization. Rather than merely pressuring actors into compliance, (trans)national actors strive to persuade actors, who oppose compliance, to change their interests (Checkel 1999a; Risse, Ropp, and Sikkink 1999). They attempt to engage opponents of compliance in a (public) discourse on why non-compliance with a particular norm constitutes inappropriate behaviour. The appeal to collectively shared norms and identities plays a crucial role in such processes of persuasion (Finnemore and Sikkink 1998: 202). So does legitimacy, which can foster the acceptance of a rule generating voluntary compliance (Franck 1990). A rule-making institution that enjoys high legitimacy can trigger a 'norm cascade' (Finnemore and Sikkink 1998: 901-905; cf. Dworkin 1986; Hurrell 1995), where states persuade others to comply. States are 'pulled' into compliance (Franck 1990) because they want to demonstrate that they conform to the group of states to which they want to belong and whose esteem they care about.

### *Compliance through Management*

Management approaches assume that states are in principle willing to comply with international rules, to which they once agreed. Non-compliance is mostly conceived as a problem of "involuntary defection" (Putnam 1988; Chayes, Chayes, and Mitchell 1998; Chayes and Chayes Handler 1993; Zürn 1997). States do not so much lack the willingness but the capacity, i.e. the material resources (technology, expertise, administrative manpower, financial means, etc.), to comply. Or they are unclear about the required conduct since the rule is vague and ambiguous. Capacity building and rule specification rather than sanctioning are the primary means to prevent violations of international rules (Keohane, Haas, and Levy 1993; Jänicke 1990; Ponce-Nava 1995). Like with the enforcement approaches, international institutions are crucial for ensuring compliance. But instead of providing monitoring and sanctioning mechanisms ('sticks'), they organize financial and technical assistance for states with weak implementation capacities thereby helping to reduce the costs of compliance ('carrots'). Moreover, international institutions offer procedures to clarify and specify the obligations under a rule (contracting). Such procedures also allow for the constant review of norms and rules in light of the experience made in implementation. While compliance management aims at enhancing the capacity of states to comply with international rules, it leaves their preferences unaffected for it is assumed that states are committed to compliance once they approved a rule.

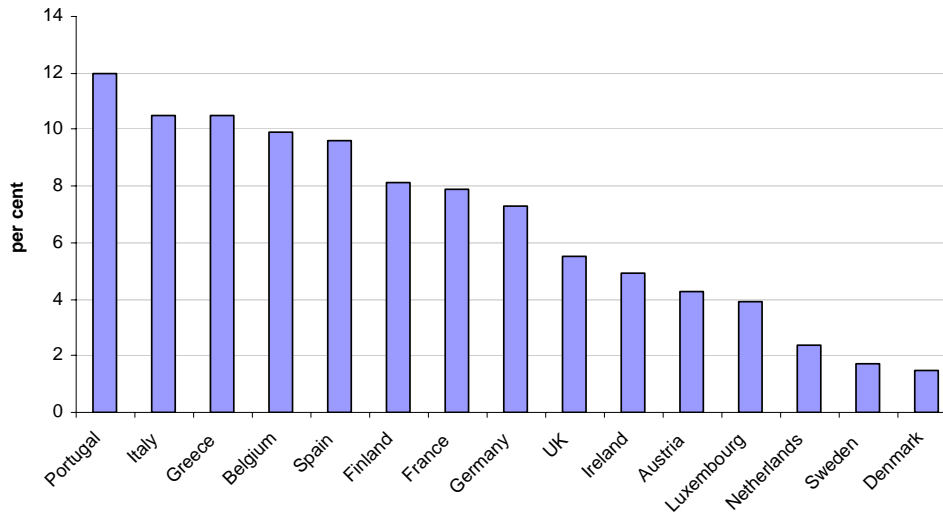
### *Compliance through Litigation*

Legal internalization approaches equally assume that states do not simply refuse to comply with a rule because it imposes high costs. While they accept the rule in general, states may have diverging interpretations of its meaning and its applicability. Unlike in cases of lacking capacity, where the issue of non-compliance as such is not contested, states object that their (refraining from) action constitutes a rule violation in the first place. They argue, for instance, that the rule is not applicable to the issue under consideration or they claim that the issue qualifies as one of the exceptions permitted under the rule. From this perspective, compliance is a process of contestation and negotiation between divergent interests, interpretations, and problem perceptions, which have to be reconciled (Chayes and Chayes Handler 1995; Snyder 1993). Ambiguous and imprecise rules are particularly prone to become subject of contesting interpretations. In order to prevent non-compliance, the legal internalisation literature points to similar factors as the management approaches. On the one hand, rules have to be as definite and unambiguously defined as possible. On the other hand, third party dispute settlement procedures are required to adjudicate between contesting interpretations of the obligations under a rule. But legal internalization goes beyond what some authors have coined ‘legalization’, which is firmly based in a rationalist approach (Goldstein et al. 2000; for a constructivist critique see Finnemore and Toope 2001). Adjudication and dispute-settlement give rise to a legal discourse, which promotes the internalization of international norms and rules into the domestic legal system (Koh 1997: 2656-2657). (Trans)national actors seek to have other parties accepted their interpretation of the norm and to incorporate it into its internal value system. “As governmental and nongovernmental transnational actors repeatedly interact within the transnational legal process, they generate and interpret international norms and then seek to internalize those norms domestically” (Koh 1997: 2651). Legal internalization involves the adoption of symbolic structures, standard operating procedures, and other internal mechanisms to maintain “habitual obedience” with the internalized norm (Koh 1997: 2599). Like with persuasion approaches, legal internalization results from the socialization of actors into new norms up to the point that they are taken for granted. It also involves the redefinition of identities and preferences by which compliance becomes the “self-interest” of the state (ibid). But the dominant socialization mechanisms are litigation and legal discourse rather than social learning and persuasion.

The four compliance mechanisms give rise to a whole series of hypotheses. Due to reasons of scope, the next section will evaluate only six of them in a quantitative study on non-compliance with European Law. The hypotheses were selected because they play a prominent role in the compliance literature and can be reasonably operationalized for a statistical analysis. The causal logic of the hypotheses is not explained in detail since it follows from the compliance mechanism from

which they were derived. For the operationalization of the independent variables, we use indicators that are commonly used in the literature. As the dependent variable, we consider those non-compliance cases that reached the first official stage of the European infringement proceedings between 1978 and 1999. Chart 3 shows how the 6230 infringement cases are distributed across the member states. Our unit of observation for the regression analysis are cases per member state and year.

**Chart 3 Reasoned Opinions per Member States, 1978-99**



In order to compare the member states, which differ in their years of membership, I standardized their scores. First, I divided the number of Reasoned Opinions of the different member states by their years of membership. Second, I added up these average scores and made the sum equal 100 per cent. Finally, I calculated the percentage of the average scores.

#### *Compliance through Enforcement: The Power Hypothesis*

“The less powerful a state is, the more compliant it should be.”

There are many ways to operationalize power. We decided to use the annual contributions of the member states to the EU budget. The data were kindly provided to us by the EUROSTATS. Alternatively we could have chosen the GDP per capita of the member states or their voting power in the Council of Ministers. But these indicators significantly correlate and do not yield very different results from those we obtained when using the EU budget contributions.

#### *Compliance through Capacity Building and Contracting:*

##### *a) The Capacity Hypothesis*

“The less action capacity a state has, the less likely it will comply.”

Capacity is usually measured by GDP per capita drawn from the OECD statistical compendium (see e.g. Zürn 1997). Poorer countries should be less compliant than their richer counterparts, which is opposite of what the power hypotheses would lead us to expect.

Capacity, however, need to be confined to the material/economic dimension. It can also be understood in terms of the capacity to introduce the political and legal changes necessary to ensure compliance. The number of institutional veto players (regions, parties, interest groups, courts etc.) in a political system is crucial for the compliance capacity of states, particularly if international rules do not fit domestic arrangements and require costly adaptations (Tsebelis 1995; Alesina and Rosenthal 1995).

“The higher the number of veto players within a state, the less likely it will comply.”

The number of veto players in the individual member states is taken from the database developed by George Tsebelis.

#### *b) The Contracting Hypothesis*

“The less specified a rule is, the less likely it will not be complied with.”

The two most important types of legal rules in European Law are Directives and Regulations. The two significantly differ with regard to the degree of their specification. Regulations, which deploy direct effect in the member states, are clearly specified and leave little discretion in implementation. Directives, by contrast, have to be transposed into the domestic legal systems of the member states by national law. As a result, member states have more flexibility in adapting European rules to domestic requirements and are more likely to run into problems of non-compliance.

#### *Compliance through Persuasion: The Legitimacy Hypothesis*

“The lower the legitimacy of the rule-making institution in a state, the lower its level of compliance is.”

The legitimacy of the European Union as the rule-making institution is measured in terms of the public support in a member state for European Integration provided by the Eurobarometer.

#### *Compliance through Litigation:*

##### *a) The Legal Quality Hypotheses*

“The lower the legal quality of a rule, the less it will be complied with.”

The legal quality of a rule refers to its effectiveness in the domestic legal system. Regulations deploy direct effect and should be better complied with than Directives, which have to be transposed into domestic law. This legal quality hypothesis yields identical predictions as the contracting hypothesis in terms of the expected results but specifies a different causal mechanism.

*b) The Legal Culture Hypothesis*

“The less a legal culture favours litigation and the more access to justice is constrained, the more likely is non-compliance.”

Our data do not allow us to test this hypothesis since we would run into serious endogeneity problems. The European infringement proceedings are a major litigation mechanism, next to the preliminary ruling proceedings of Art. 234.

The statistical analysis is presented in the Annex of the paper. The four hypotheses that take member states as the unit of analysis find weak to no support by our data. The power hypothesis is clearly rejected. The correlation is not only extremely weak but not even significant. The capacity hypothesis, too, shows only a very weak negative correlation, which is, however, at least significant. The veto player hypothesis yields somewhat better results. The correlation is comparatively stronger than in the previous two cases and so is the goodness of fit. But a member state with no veto players would still have 14 infringements and an additional veto player leads to an increase of only three infringements. The correlation and the goodness of fit are strongest for the legitimacy hypothesis. Unfortunately, we have to reject the hypothesis since the correlation points into the opposite direction. The less a member state supports European integration, the more it obeys European Law!

Only the contracting hypothesis and the legal quality hypothesis, which are measured by the same indicators, are confirmed by the data. Regulations have a much larger share in European legislation (77%) than Directives but only account for around 10% of the infringements that reached the first official stage of the proceedings between 1978 and 1999. The problem is, however, that the statistical analysis does not allow us to decide which of the two causal mechanisms – contracting or litigation – accounts for the outcome. Are Directives less obeyed because they are more vague and ambiguous and leave member states unclear about their obligations? Or is legal internalization more difficult to achieve because (trans)national actors cannot immediately litigate against violations for Directives need to be transposed into national law before they become effective, or at least have to be sufficiently specified (*sic*) in order to deploy direct effect despite non-transposition after the

deadline for legal implementation expired? There is no way that we can adjudicate between the two causal claims. While this may testify to the limits of quantitative analyses, it could well be that both mechanisms are at work. Rather than treating the various hypotheses as competing, we should start to explore their interactive effects. As a result, our explanatory models become more complex, i.e. less elegant and parsimonious, but they may also yield better results in accounting for the variations observed.

#### **4. Conclusions**

The paper set out to understand and explain why member states do not obey European Law. The first part discussed the methodological problems in observing the dependent variable. The statistical data available only allow us to measure relative levels of non-compliance. We cannot say anything about whether compliance is high or low in the European Union. Nor do we have evidence for a growing compliance problem – quite on the contrary, the relative level of non-compliance has remained rather stable across time if we control for several factors that seriously bias the number of violations against European Law. In order to account for variations across member states and policies, the literature offers a variety of explanations. The second part of the paper organized the various compliance theories along two different dimensions regarding the source of non-compliance behaviour and the logic of influencing it. By combining the two dimensions, we get four compliance mechanisms, from which we can derive different hypotheses on non-compliance with law beyond the nation state. I selected six hypotheses and tested them for non-compliance in the European Union using a database on infringements of European Law. Two of the six hypotheses have to be clearly rejected (power and legitimacy), while two receive little support (capacity and veto players). The other two are largely confirmed by the data but the causal mechanisms yielding the outcome are difficult to disentangle.

The statistical analysis confirms two major findings of qualitative studies on compliance. First, monocausal explanations, as prominent as they may be in the International Relations literature, are unlikely to account for the observed variations in non-compliance. While it may be a useful exercise to break the four compliance mechanisms down into specific hypotheses, they should not be treated as competing explanations of non-compliance. A multiple regression analysis combining different explanatory factors would probably yield better results. Second, the various causal mechanisms are not necessarily mutually exclusive; they often interact with and relate to each other. They may complement, substitute or undermine each other, or characterize different sequences of the compli-

ance process (cf. Risse, Ropp, and Sikkink 1999; Börzel 2002; Börzel and Risse 2002). For instance, capacity-building through the transfer of resources can increase the legitimacy of international institutions. EU-financial assistance has fostered the willingness of lowly regulated member states, such as Greece, Portugal, or Spain, to comply with rather demanding EU-environmental standards, which impose significant compliance costs and do not always address the most pressing environmental problems in these countries (Börzel forthcoming). Likewise, international sanctions are most effective, if complemented by domestic pressure ‘from below.’ Human rights networks have effectively used international sanctions to shame their oppressive governments and challenge their legitimacy. At the same time, domestic actors and transnational coalitions serve as ‘watch-dogs’ of compliance with international norms (Brysk 1993; Finnemore and Sikkink 1998; Risse, Ropp, and Sikkink 1999). Finally, causal mechanisms can also undermine each other’s effects. If states are willing to comply but lack the necessary capacities, sanctions, such as financial penalties, may reinforce rather than elevate the problem. Rewarding voluntary defection by providing financial assistance, by contrast, could create further incentives for non-compliance.

Those examples drawn from qualitative compliance studies indicate that exploring the mutual relationship between hypotheses may be more fruitful than pitching them against each other. What is needed, however, are more complex models that systematically integrate different compliance mechanisms as well as empirical research that tests the explanatory powers of the various hypotheses to find out to what extent they compete and complement each other.

## Bibliography

- Alesina, Alberto, and Howard Rosenthal. 1995. *Partisan Politics. Divided Government, and the Economy*. Cambridge: Cambridge University Press.
- Audretsch, H, ed. 1986. *Supervision in European Community Law*. New York: Elsevier.
- Axelrod, Robert A., and Robert O. Keohane. 1986. Achieving Cooperation under Anarchy: Strategies and Institutions. In *Cooperation under Anarchy*, edited by K. A. Oye. Princeton, NJ: Princeton University Press, 226-254.
- | Börzel, Tanja A. 2000. Improving Compliance through Domestic Mobilisation? New Instruments and the Effectiveness of Implementation in Spain. In *Implementing EU Environmental Policy: New Approaches to an Old Problem*, edited by C. Knill and A. Lenschow. Manchester: Manchester University Press, 221-250.
- Börzel, Tanja A. 2001. Non-Compliance in the European Union. Pathology or Statistical Artefact? *Journal of European Public Policy* 8 (5): 803-824.
- | Börzel, Tanja A. 2002. Non-State Actors and the Provision of Common Goods. Compliance with International Institutions. In *Common Goods: Reinventing European and International Governance*, edited by A. Héritier. Lanham, MD: Rowman & Littlefield, 155-178.
- Börzel, Tanja A. forthcoming. *On Environmental Leaders and Laggards in the European Union. Why There is (Not) a Southern Problem*. London: Ashgate.

Formatiert: Englisch  
(Großbritannien)

Formatiert: Englisch  
(Großbritannien)



- Börzel, Tanja A., and Thomas Risse. 2002. Die Wirkung Internationaler Institutionen: Von der Normanerkennung zur Normeinhaltung. In *Regieren in internationalen Institutionen*, edited by M. Jachtenfuchs and M. Knodt. Opladen: Leske + Budrich, 141-182.
- Boyle, Alan. 1991. Saving the World? Implementation and Enforcement of International Law through International Institutions. *Journal of Environmental Law* (3): 229-245.
- Brysk, Alison. 1993. From Above and From Below: Social Movements, the International System, and Human Rights in Argentina. *Comparative Political Studies* 26 (3): 259-285.
- Chayes, Abram, Antonia Handler Chayes, and Ronald B. Mitchell. 1998. Managing Compliance: A Comparative Perspective. In *Engaging Countries: Strengthening Compliance with International Environmental Accords*, edited by E. B. Weiss and H. K. Jacobsen. Cambridge, Mass.: MIT Press, 39-62.
- Chayes, Abram, and Antonia Chayes Handler. 1993. On Compliance. *International Organization* 47 (2): 175-205.
- Chayes, Abram, and Antonia Chayes Handler. 1995. *The New Sovereignty. Compliance with International Regulatory Agreements*. Cambridge, MASS: Harvard University Press.
- Checkel, Jeffrey T. 1999a. International Institutions and Socialization. *ARENA Working Paper* (5).
- Checkel, Jeffrey T. 1999b. *Why Comply? Constructivism, Social Norms and the Study of International Institutions*. Manuscript, Oslo: Arena.
- Collins, Ken, and David Earnshaw. 1992. The Implementation and Enforcement of European Community Legislation. *Environmental Politics* 1 (4): 213-249.
- Commission of the European Communities. 1990. *Seventh Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law, COM (90) 288 (final)*. Brussels: Commission of the European Communities.
- Commission of the European Communities. 1991. Monitoring of the Application by Member States of Environment Directives. Annex C to the Eighth Annual Report to the European Parliament on the Application of Community Law. *Official Journal of the European Communities* C 338 (31.12.1991).
- Commission of the European Communities. 1993. *Tenth Annual Report on the Monitoring of the Application of Community Law (1992), COM (93) 320 final*. Vol. COM (93) 320 final. Brussels: Commission of the European Communities.
- Commission of the European Communities. 2000. *Seventeenth Annual Report on Monitoring the Application of Community Law (1999), COM (2000) 92 final*. Brussels: Commission of the European Communities.
- Commission of the European Communities, DG XI. 1996. *Implementing Community Environmental Law. Communication to the Council of the European Union and the European Parliament. Communication, COM (96) 500*. Brussels: European Commission.
- Downs, George W., David M. Rocke, and Peter N. Barsoom. 1996. Is the Good News About Compliance Good News About Cooperation? *International Organization* 50 (3): 379-406.
- Duina, Francesco G. 1997. Explaining Legal Implementation in the European Union. *International Journal of the Sociology of Law* 25 (2): 155-179.
- Dworkin, Ronald. 1986. *Law's Empire*. Cambridge, MA: MIT Press.
- Efinger, Manfred, Volker Rittberger, and Michael Zürn. 1988. *Internationale Regime in den Ost-Westbeziehungen. Ein Beitrag zur Erforschung der friedlichen Behandlung internationaler Konflikte*. Frankfurt a/M: Campus.
- Evans, A. C. 1979. The Enforcement Procedure of Article 169 EEC: Commission Discretion. *European Law Review* 4 (6): 442-456.
- Fearon, James. 1998. Bargaining, Enforcement, and International Cooperation. *International Organization* 52 (2): 269-305.
- Finnemore, Martha. 1993. International Organization as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy. *International Organization* 47 (4): 565-597.

Formatiert: Englisch  
(Großbritannien)

Formatiert: Englisch  
(Großbritannien)

Formatiert: Englisch  
(Großbritannien)

Formatiert: Deutsch  
(Deutschland)

Formatiert: Deutsch  
(Deutschland)

- Finnemore, Martha, and Kathryn Sikkink. 1998. International Norm Dynamics and Political Change. *International Organization* 52 (4): 887-917.
- Finnemore, Martha, and Stephen J. Toope. 2001. Alternatives to "Legalization": Richer Views of Law and Politics. *International Organization* 55 (3): 743-758.
- Franck, Thomas M. 1990. *The Power of Legitimacy Among Nations*. Oxford: Oxford University Press.
- From, Johan, and Per Stava. 1993. Implementation of Community Law: The Last Stronghold of National Control. In *Making Policy in Europe. The Europeification of National Policy-Making*, edited by S. S. Andersen and K. A. Eliassen. London et al.: Sage, 55-67.
- Goldstein, Judith L., Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter. 2000. Legalization and World Politics. *International Organization, Special Issue* 54 (3).
- Hooghe, Marc. 1993. Too Little, Too Slow. *Planologisch Nieuws* 13 (2): 169-178.
- Hurrell, Andrew. 1995. International Society and the Study of Regimes. A Reflective Approach. In *Regime Theory and International Relations*, edited by V. Rittberger. Oxford: Clarendon Press, 49-72.
- Jänicke, Martin. 1990. Erfolgsbedingungen von Umweltpolitik im internationalen Vergleich. *Zeitschrift für Umweltpolitik* 3: 213-232.
- Jordan, Andrew. 1999. The Implementation of EU Environmental Policy: A Policy Problem Without a Political Solution. *Environment and Planning C: Government and Policy* 17: 69-90.
- Keck, Margaret, and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca NY: Cornell University Press.
- Keohane, Robert O. 1984. *After Hegemony. Cooperation and Discord in the World Political Economy*. Princeton, NJ: Princeton University Press.
- Keohane, Robert O., Peter M. Haas, and Marc A. Levy. 1993. The Effectiveness of International Environmental Institutions. In *Institutions for the Earth. Sources of Effective International Environmental Protection*, edited by P. M. Haas, R. O. Keohane and M. A. Levy. Cambridge, MA: MIT Press, 3-26.
- Keohane, Robert O., and Stanley Hoffmann. 1990. Conclusions: Community Politics and Institutional Change. In *The Dynamics of European Integration*, edited by W. Wallace. London: Pinter, 276-300.
- Klotz, Audie. 1995. *Norms in International Relations. The Struggle against Apartheid*. Ithaca, NY: Cornell University Press.
- Knill, Christoph. 1997. The Impact of National Administrative Traditions on the Implementation of EU Environmental Policy. In *The Impact of National Administrative Traditions on the Implementation of EU Environmental Policy. Preliminary Research Report for the Commission of the European Union, DG XI.*, edited by C. Knill. Florence: European University Institute, Robert Schuman Centre, 1-45.
- Knill, Christoph. 1998. Implementing European Policies: The Impact of National Administrative Traditions. *Journal of Public Policy* 18 (1): 1-28.
- Koh, Harold Hongju. 1997. Why Do Nations Obey International Law? *The Yale Law Journal* 106: 2599-2659.
- Krislov, S, Claus-Dieter Ehlermann, and Joseph Weiler. 1986. The Political Organs and the Decision-Making Process in the United States and the European Community. In *Integration Through Law, Methods, Tools and Institutions: Political Organs, Integration Techniques and Judicial Process*, edited by M. Cappelletti, M. Seccombe and J. Weiler. Berlin: Gruyter, 3-112.
- Macrory, Richard. 1992. The Enforcement of Community Environmental Laws: Some Critical Issues. *Common Market Law Review* 29: 347-369.
- March, James G., and Johan P. Olsen. 1998. The Institutional Dynamics of International Political Orders. *International Organization* 52 (4): 943-969.
- Mendrinou, Maria. 1996. Non-Compliance and the European Commission's Role in Integration. *Journal of European Public Policy* 3 (1): 1-22.

Formatiert: Englisch  
(Großbritannien)

Formatiert: Englisch  
(Großbritannien)

Formatiert: Deutsch  
(Deutschland)

Formatiert: Englisch  
(Großbritannien)

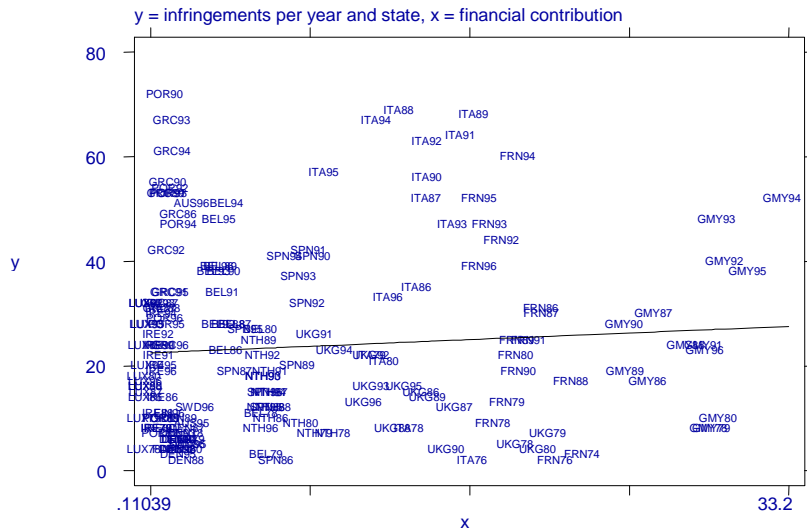
Formatiert: Englisch  
(Großbritannien)

- Mitchell, Ronald B. 1996. Compliance Theory: An Overview. In *Improving Compliance with International Environmental Law*, edited by J. Cameron, J. Werksman and P. Roderick. London: Earthscan, 3-28.
- Neyer, Jürgen, Dieter Wolf, and Michael Zürn. 1999. *Recht jenseits des Staates*. ZERP-Diskussionspapier, 1/99. Bremen: Zentrum für europäische Rechtspolitik.
- Ponce-Nava, Diana. 1995. Capacity Building in Environmental Law and Sustainable Development. In *Sustainable Development and International Law*, edited by W. Lang. London: ????, 131-136.
- Pridham, Geoffrey, and Michelle Cini. 1994. Enforcing Environmental Standards in the European Union: Is There a Southern Problem? In *Environmental Standards in the EU in an Interdisciplinary Framework*, edited by M. Faure, J. Vervaele and A. Waele. Antwerp: Maklu, 251-277.
- Putnam, Robert. 1988. Diplomacy and Domestic Politics. The Logic of Two-Level Games. *International Organization* 42 (2): 427-460.
- Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink, eds. 1999. *The Power of Human Rights. International Norms and Domestic Change*. Cambridge: Cambridge University Press.
- Risse, Thomas, and Kathryn Sikkink. 1999. The Socialization of International Human Rights Norms Into Domestic Practices: Introduction. In *The Power of Human Rights. International Norms and Domestic Change*, edited by T. Risse, S. C. Ropp and K. Sikkink. Cambridge: Cambridge University Press, 1-38.
- Rogowski, Ronald. 1989. *Commerce and Coalitions: How Trade Affects Domestic Political Alignments*. Princeton, NJ: Princeton University Press.
- Sikkink, Kathryn. 1993. Human Rights, Principled Issue Networks, and Sovereignty in Latin America. *International Organization* 47 (3): 411-441.
- Snyder, Francis. 1993. The Effectiveness of European Community Law. Institutions, Processes, Tools and Techniques. *Modern Law Review* (56): 19-54.
- Tallberg, Jonas. 1999. *Making States Comply. The European Commission, the European Court of Justice and the Enforcement of the Internal Market*. Lund: Studentlitteratur.
- Tallberg, Jonas. 2002. *International Organization*.
- Tarrow, Sidney. 2001. Beyond Globalization: Why Creating Transnational Social Movements is so Hard and When is it Most Likely to Happen? *Annual Review of Political Science* 5.
- Tsebelis, George. 1995. Decision Making in Political Systems. Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartism. *British Journal of Political Science* 25 (3): 289-325.
- Underdal, Arild. 1998. Explaining Compliance and Defection: Three Models. *European Journal of International Relations* 4 (1): 5-30.
- Victor, David G., Kal Raustiala, and Eugene B. Skolnikoff, eds. 1998. *The Implementation and Effectiveness of International Environmental Commitments*. Cambridge, MA: MIT Press.
- Weiler, Joseph. 1988. The White Paper and the Application of Community Law. In *1992: One European Market?*, edited by R. Bieber, R. Dehousse, J. Pinder and J. H. H. Weiler. Baden-Baden: Nomos, 337-358.
- Weitsmann, Patricia A., and Gerald Schneider. 1997. Risky States: Implications for Theory and Policy Making. In *Enforcing Cooperation. Risky States and Intergovernmental Management of Conflict*, edited by G. Schneider and P. A. Weitsmann. London: Macmillan, 283-294.
- Williams, R. 1994. The European Commission and the Enforcement of Environmental Law: An Invidious Position. *Yearbook of European Law* 14: 351-400.
- Young, Oran R. 1979. *Compliance and Public Authority: A Theory with International Applications*. Baltimore, MD.
- Zürn, Michael. 1997. "Positives Regieren" jenseits des Nationalstaates. *Zeitschrift für Internationale Beziehungen* 4 (1): 41-68.

## Annex

The following graphs 1-4 are scatter-plots of the dependent variable “infringements” (Reasoned Opinions drawn from our database) on the vertical axis versus an independent variable on the horizontal axis. A regression line is added to each scatter-plot. The coefficient and the slope of the regression line are estimated with an OLS regression.<sup>16</sup>

**Graph 1: Financial Contribution to the EU budget**



This scatter-plot shows 167 combinations of implementation infringements and financial contribution of the member states to the EU budget in percent of all contributions to the budget of all member states for the years 1978 to 1980 and 1986 to 1996.

The bivariate regression of implementation infringements on financial support demonstrates that there is virtually no significant correlation between the two variables. The  $R^2$  (0.006) we calculated confirms that financial contributions explain hardly anything of the variance on our dependent variable. Looking at graph 1 this is not surprising.

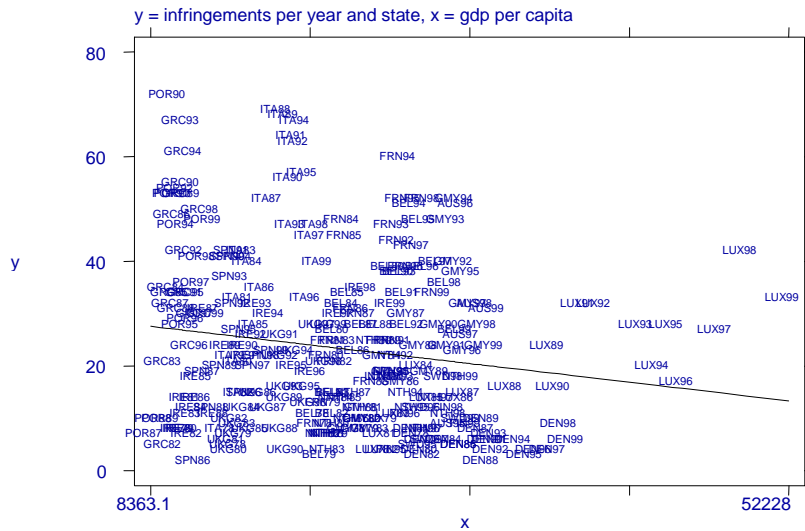
Source	SS	df	MS	Number of obs =	167
Model	304.610046	1	304.610046	F( 1, 165) =	0.99
Residual	50781.869	165	307.768903	Prob > F =	0.3213
Total	51086.479	166	307.749874	R-squared =	0.0060
				Adj R-squared =	0.0001
				Root MSE =	17.543

cases	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]
fincon	.1528559	.1536464	0.99	0.321	-.1505106 .4562224
_cons	22.46559	1.91011	11.76	0.000	18.69418 26.23699

<sup>16</sup> Research assistance by Tobias Hofmann, who conducted the statistical analysis, is gratefully acknowledged.

**Graph 2: GDP per Capita**



This scatter-plot shows 257 combinations of implementation infringements and GDP per capita in constant 1995 US\$ for all member states of the European Union and for the years 1978 (or year of accession) to 1999. The data on GDP per capita was obtained from the OECD’s statistical compendium.

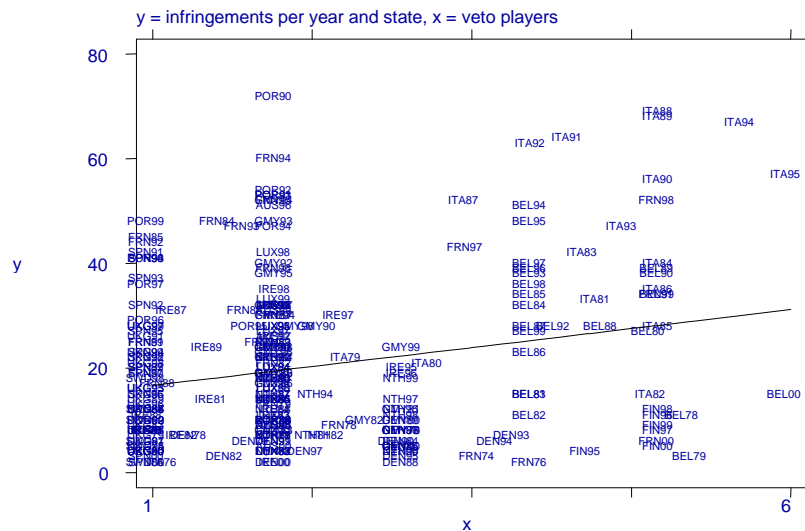
The bivariate regression of infringements on GDP per capita shows that there is a very weak negative but significant correlation between the two variables (even if we control for heteroscedasticity and the correlation of errors). That is, it is safe to assume an effect of GDP per capita on infringements, which is significantly different from zero at the conventional 0.01 significance level. However, this effect is rather small and the  $R^2$  (0.0277) we calculated emphasises the first impression you receive from graph 2: GDP per capita explains only little of the variance on our dependent variable.

Source	SS	df	MS	Number of obs =	257
Model	1848.75446	1	1848.75446	F( 1, 255) =	7.27
Residual	64812.5062	255	254.166691	Prob > F =	0.0075
Total	66661.2607	256	260.39555	R-squared =	0.0277
				Adj R-squared =	0.0239
				Root MSE =	15.943

cases	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]
gdppc	-.0003246	.0001204	-2.70	0.007	-.0005616 -.0000876
_cons	30.28513	2.83652	10.68	0.000	24.69914 35.87112

Graph 3: Veto Players



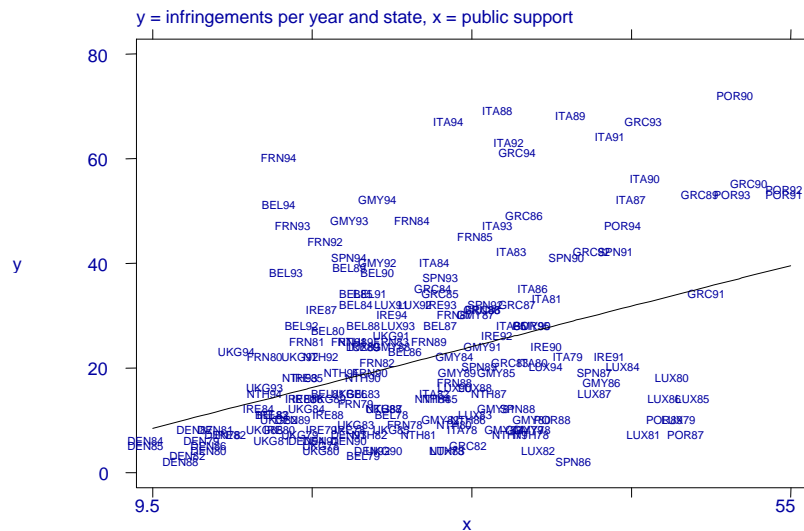
This scatter-plot shows 251 combinations of implementation infringements and the number of national (institutional and partisan) veto players of 14 member states for the years 1978 to 2000 (for Italy data are only available till 1995). The data on veto players was obtained from George Tsebelis (<http://www.polisci.ucla.edu/tsebelis/vpdata.html>).

The bivariate regression of implementation infringements on veto players shows that there is a positive and significant correlation between the two variables, which is stronger than both for GDP per capita and financial contributions. Even though the  $R^2$  is small (0.0555), the goodness of fit is still better than for the two other variables.

Source	SS	df	MS	Number of obs =	251
Model	3462.08546	1	3462.08546	F( 1, 249) =	14.64
Residual	58887.4285	249	236.495697	Prob > F =	0.0002
Total	62349.5139	250	249.398056	R-squared =	0.0555
				Adj R-squared =	0.0517
				Root MSE =	15.378

cases	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]
veto	2.895248	.7567083	3.83	0.000	1.404883 4.385613
_cons	13.75307	2.038949	6.75	0.000	9.737283 17.76885

Formatiert: Englisch  
(Großbritannien)

**Graph 4: Public Support of European integration**

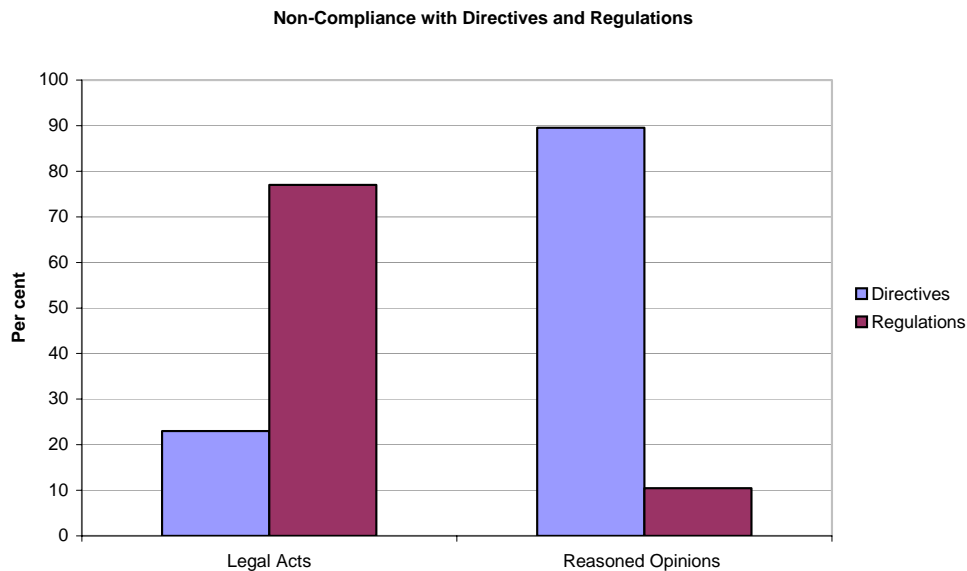
This scatter-plot shows 183 combinations of infringements and public support of European integration in percent of the population of 12 member states for the years 1978 to 1994. The data on public support of European integration was obtained from the Eurobarometer surveys.

The bivariate regression of infringements on public support shows that there is a positive and significant correlation between the two variables, which is significantly stronger compared to the three other independent variables, financial contributions, GDP per capita, and veto players. In addition, public support can at least explain some variance on our dependent variable ( $R^2 = 0.1527$ ). Yet, the results support exactly the opposite of what the legitimacy hypothesis predicts. More public support of European integration coincides with more infringements – the more Eurosceptic a member state is, the less likely it will violate European Law!

Source	SS	df	MS	Number of obs =	183
Model	7888.49133	1	7888.49133	F( 1, 181) =	32.61
Residual	43778.5032	181	241.870183	Prob > F =	0.0000
				R-squared =	0.1527
				Adj R-squared =	0.1480
Total	51666.9945	182	283.884585	Root MSE =	15.552

cases	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]
pubsupp	.6837392	.119725	5.71	0.000	.4475031 .9199753
_cons	1.973084	3.746836	0.53	0.599	-5.420013 9.36618

Formatiert: Englisch  
(Großbritannien)

**Graph 5: Specification/Legal Quality of European Legal Acts**

This bar diagram compares the relative share of Directives and Regulations in European Legal Acts with their relative share in the total number of infringements that reached the first official stage of the proceedings between 1978 and 1999. The quota of Directives and Regulations in relation to the Legal Acts is estimated on the basis of the legislation in force in 1999. Unfortunately, there are no data on the number of Regulations and Directives in force in a given year. But it is safe to assume that the quota has not changed significantly over the years.

The frequency distributions lend strong support to our two hypotheses. Not only are Regulations less frequently violated than Directives. Their share in Legal Acts is more than three times higher than the share of Directives, i.e. the violative opportunities are much higher for Regulations than for Directives.