05/06/2004

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Why Do States not Obey the Law?
Non-Compliance in the European Union

Tanja A. Börzel/Tobias Hofmann/Carina Sprungk

Paper prepared for presentation at Leiden, June 11-12, 2004.

The paper summarizes the first results of the project "Non-Compliance with European Law" (BO 1831) funded by the German Research Council (DFG). For helpful comments and criticisms, we are particularly indebted to Diana Panke and Thomas Risse. We also thank Eric Sangar and Meike Dudziak for their research assistance. This is work still in progress. So, please do not quote without authors' permission.

Authors' address:
University of Heidelberg
Institute of Political Science
Marstallstr. 6
D-69117 Heidelberg

Tel.: +49 (0)6221 54 28 68
Fax: +49 (0)6221 54 28 96

E-Mail: boerzel@uni-hd.de
thofmann@uni-hd.de
carina.sprungk@urz.uni-heidelberg.de
Web: www.boerzel.uni-hd.de

1. Introduction

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 even go so far as to argue that international institutions only exist if they are effective in bringing about rule consistent behavior 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 sorts of 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 development aid? Why do some states comply with the principles and rules of international institutions and others do not? How do we account for such variations in compliance with international principles, norms and rules?

This paper seeks 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. As 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 on 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 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. We argue that there is 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 behavior on the one hand, and the logic of influence on non-compliant behavior 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 ten hypotheses, which are subsequently tested against data on member state violations of European law. The empirical findings clearly show the limits of mono-causal explanations of non-compliance.

2. Do Member States Obey European Law?

Since the early 1990s, the European Commission has been denouncing a growing compliance deficit which, it believes, threatens 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 systemic and pathological problem of the EU (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.

2.1 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 ECT (former Article 169 ECT) of the Treaty entitles the Commission to open infringement proceedings against member states found to violate European

law. Since 1984, the Commission has reported every year on the legal action it brought against the member states.[1]

Various studies have used the number of infringements within the different stages as indicators for member state non-compliance with European law. 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. It heavily depends on the member states reporting back on their implementation activities, on costly and time consuming consultancy reports, and on information from citizens, (public) interest groups, and companies. Second, the Commission has considerable discretion in deciding whether and when to open proceedings (Evans 1979). Yet, from a methodological point of view, undetected non-compliance and political discretion of the Commission are only problematic if they systematically bias the data towards particular member states or policies. We have no means to estimate the quantity of undetected non-compliance. Nor are we able to trace strategic decisions of the Commission. But we have been conducting an expert survey, which asks policy makers, administrators, companies, interest groups, and scientific experts to assess the level of non-compliance in their country with core norms and rules in different policy areas. Since the results correspond to the relative distribution of infringement proceedings so far, we are confident that our data do not contain any systematic biases (cf. Börzel 2003a: 11-16).

But even if we accept infringement data as valid and reliable proxies of member state non-compliance with European law, we have to be careful in how to interpret them. We cannot simply take the rising number of infringement proceedings as an indicator for a growing compliance deficit. Between 1978 and 1998, the Commission opened more than 16.000 infringement proceedings. At the same time, the number of legal acts in force has more than doubled (from about 4500 to more than 9.500)[2] and the number of member states increased from nine to 15 (time trends). If we also control for certain political events, such as the completion of the Internal Market or the reform of the infringement proceedings (structural brakes), the level of non-compliance has remained rather stable since the early 1980s (see below).

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1 On the structure and functioning of the infringement proceedings see Börzel 2001.

2 We thank Wolfgang Wessels and Andreas Maurer for providing us with the annual numbers of legislation in force.

In order to control for both the growing number of legal acts that can be potentially infringed on and the increasing number of member states that can potentially infringe we have used the relative infringements per legal act rather than the absolute number of infringements per country or policy area. Unlike other studies, we thus escape problems of time trends or structural breaks. We also avoid problems like prima facie significant correlations (spurious correlations) between the variables of the model which frequently arise in the context of non-stationarity[3], and an analysis of long term levels – instead of first differences – of non-compliance becomes possible (Banerjee et al. 1993; Enders 1995).

The database[4] which our study draws on comprises 5569 cases of non-compliance, which reached the first official stage of the infringement proceedings (reasoned opinion) between 1978 and 1998 and which can be clearly assigned to a policy area.[5] From this database, we generated three different data sets. The first two data sets serve for the analysis of systemic (country related) and sectoral (policy related) sources of non-compliance. The 5569 cases were aggregated by year and country (systemic infringements), and year and policy area (sectoral infringements), respectively. The numbers of *systemic infringements* and *sectoral infringements* were then divided by the total number of potential infringements (violative opportunities) per year and country or policy sector.[6] To operationalize these *violative opportunities*, we used the number of legal acts in force in a given year (systemic legal acts), and the number of legal acts in force in a given year and policy area (sectoral legal acts) times the number of member states, respectively. This operationalization is based on the assumption that each legal act in force can be violated once per year by each member state. The systemic legal acts have been drawn from the annually published *Directory of Community Legislation in Force*.

The determination of the sectoral legal acts was comparatively difficult since the *Directory of Community Legislation in Force* does not provide data on the legislation in force by policy sectors.

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[3] Non-stationarity is present in time series, if the moments of a distribution are not constant over time and current values of a variable can be predicted by past values of the same variable as in the case of annual infringements of European law. The dependent variable is trended (Börzel 2001). If some of the independent variables are also trended, spurious correlations can emerge.

[4] The data were kindly provided by the European Commission. Once the project is concluded, the database will be publicly accessible at the website of the Robert Schumann Centre of the European University Institute (http://www.iue.it/RSCAS/Research/Tools/, accessed June 4, 2004).

[5] The reasoned opinion is preceded by an informal stage at which the Commission sends a warning letter. The letters are considered confidential as a result of which there are no reliable data available.

[6] We owe this term to Beth Simmons.

We took resort to data on legal output (legal acts adopted by the European Community).[7] First, we calculated the percentage of cumulated percentage of *Legal Output* which actually was still in force between 1978 and 1998. We detected that this percentage declines by one basis point per year. Second, assuming no significant fluctuations between policy sectors with respect to the relationship of cumulated *Legal Output* and *Legislation in Force*, a reliable estimation of annual infringements per policy sector was possible.

The third dataset contains 7.432 infringements of individual legal acts. Often, the Commission collapses various infringements into one proceeding. In order to analyze the violation of individual legal acts, we dissected the infringement proceedings into the legal acts that were violated.

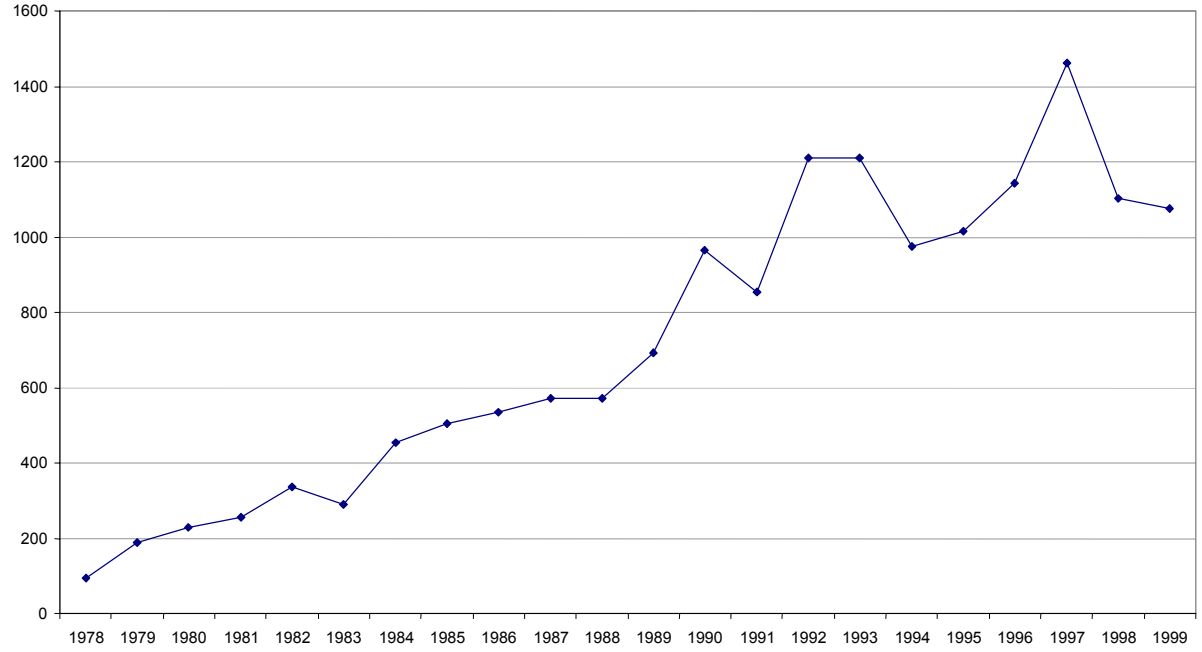
2.2 Assessing Non-Compliance with European Law

(1) Variation across Time: Why the EU Does not Face a Growing Compliance Deficit

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, which the Commission has opened against the member states over the years (figure 1).

[7] We are thankful to Wolfgang Wessels and Andreas Maurer for providing us with the annual numbers of legislation in force.

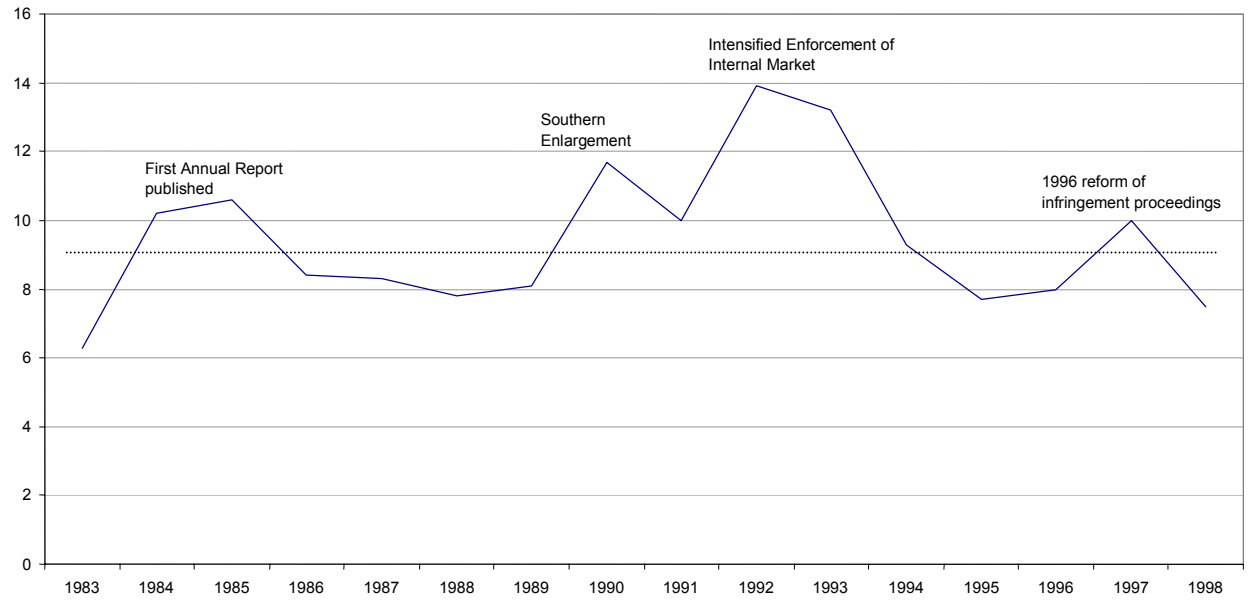
Figure 1: Total Number of Infringements for the EC 12



Since 1978, the Commission has opened more than 18.000 infringement proceedings against the member states. But at the same time, the number of legal acts in force has more than doubled and six more member states have joined the Union. If we calculate the number of infringement proceedings opened as a percentage of "violative opportunities" for each year, the level of non-compliance has not increased. This is particularly true if we control for several statistical artifacts that inflate the infringement numbers. First, the Commission adopted a more rigorous 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 program (Tallberg 1999). Not surprisingly, the numbers of opened infringement proceedings increased twice dramatically, 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 restated the "intended meaning" (*sense*

véritable) of the Formal Letters as mere "requests for observations" (*demande d'observation*) rather than warnings of the Commission.[8] 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 (figure 2).

Figure 2: Infringements Relative to Legislation in Force for the EC 12



To sum up, if we control for time trends and structural ruptures, the level of non-compliance in the European Union has not increased over time. This is not to say that the EU does not have a compliance problem. But we have no data to estimate the absolute level of non-compliance. We can only analyze relative levels of non-compliance, i.e. variation across time, member states, and policy sectors.

(2) Variation across Countries: Leaders, Laggards, and the Middle-Field

There is significant variation across member states. They can be divided into three groups: leaders, laggards, and the middle-field. The three Scandinavian member states, Great Britain, and the Netherlands rarely violate European law. The Southern Countries (including France) – with the

[8] Internal document of the Commission, unpublished.

exception of Spain – and Belgium seriously lag behind. The rest of the member states range in between forming the middle-field.

Figure 3: Average Numbers of Infringements (x100) by Member States, 1978-99

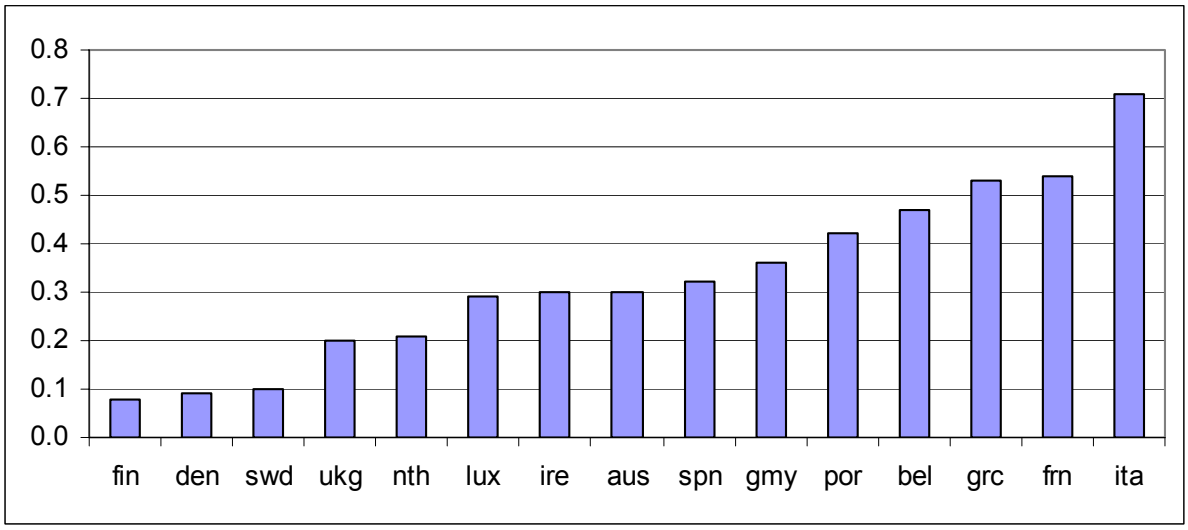


Figure 3 does not only present the individual rankings of the member states. It also shows, for example, that Italy violates seven out of 1000 legal acts each year whereas the Scandinavian countries infringe on only one. In addition, table 1 demonstrates that the member states' infringement rates do not vary significantly across time, i.e. their relative rankings hardly change.

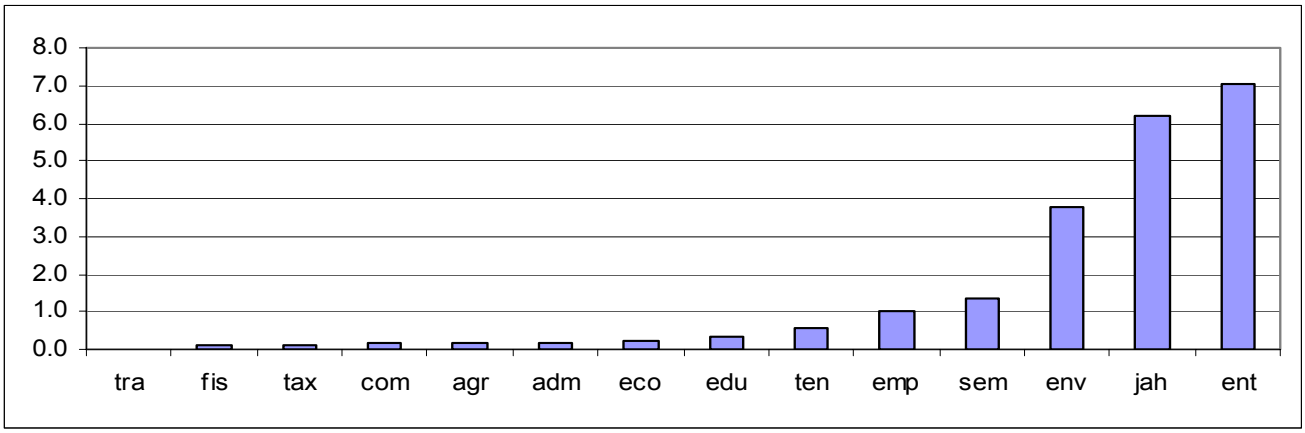
Table 1: Descriptive Statistics for "Violations per Legal Act" (x100)

Member State	**Mean**	**Std. Deviation**	**Std. Dev. / Mean**	**Minimum**	**Maximum**
Finland (fin)	0.08	0.04	0.45	0.03	0.11
Denmark (den)	0.09	0.07	0.78	0.00	0.28
Sweden (swd)	0.10	0.06	0.63	0.05	0.17
Great Britain (ukg)	0.20	0.07	0.36	0.04	0.35
Netherlands (nth)	0.21	0.08	0.40	0.07	0.34
Luxembourg (lux)	0.29	0.12	0.41	0.08	0.58
Ireland (ire)	0.30	0.09	0.30	0.15	0.52
Austria (aus)	0.30	0.18	0.60	0.09	0.52
Spain (spn)	0.32	0.17	0.54	0.02	0.58
Germany (gmy)	0.36	0.12	0.34	0.15	0.62
Portugal (por)	0.42	0.31	0.73	0.00	1.03
Belgium (bel)	0.47	0.17	0.37	0.08	0.89
Greece (grc)	0.53	0.26	0.49	0.00	0.94
France (frn)	0.54	0.20	0.37	0.26	1.06
Italy (ita)	0.71	0.21	0.30	0.34	1.05

(3) Variation across Policy Sectors: Policy Matters

The distribution across policy sectors also shows significant variation. In half of the policy sectors we hardly find any infringements if we control for the violative opportunities. In "enterprise" (corporate law), by contrast, member states violate about seven percent of the legal acts in force. In "justice and home affairs" and "environment", the number of infringements is also relatively high.

Figure 4: Average Numbers of Infringements (x100) by Policy Sectors, 1978-99



Besides the variation across different policy sectors, non-compliance varies significantly across time within some of the policy sectors. Unlike the ranking of the member states, in which leaders and laggards remain constant throughout the years, some policy sectors change position (at least temporarily).

Table 2: Descriptive Statistics for the "Violations per Legal Act" (x100)

Policy Sector	**Mean**	**Std. Deviation**	**Std. Dev./ Mean**	**Minimum**	**Maximum**
Trade (tra)	0.01	0.02	2.13	0.00	0.07
Fisheries (fis)	0.10	0.15	1.49	0.00	0.54
Tax (tax)	0.11	0.06	0.54	0.03	0.23
Competition (com)	0.16	0.17	1.05	0.00	0.61
Agriculture (agr)	0.17	0.09	0.53	0.05	0.40
Administration (adm)	0.18	0.24	1.33	0.00	0.95
Economic and Finance (eco)	0.20	0.32	1.65	0.00	1.12
Education and Research (edu)	0.32	0.61	1.89	0.00	2.44
Energy and Transport (Ten)	0.58	0.56	0.96	0.05	2.14
Social Affairs (emp)	1.03	0.62	0.61	0.30	2.61
Single Market (sem)	1.34	0.51	0.38	0.68	2.52
Environment (env)	3.77	1.99	0.53	0.00	8.40
Justice and Home Affairs (jah)	6.18	11.77	1.90	0.00	36.32
Enterprise (ent)	7.03	3.37	0.48	2.37	15.48

The variation across time within individual policy sectors, however, does not change their overall ranking. While in some years, member states have infringed on legal acts in the sector of environmental policy more frequently than in the sector of enterprise policy, and vice versa, non-compliance in both sectors is still higher than in sectors such as energy and transport or trade.[9]

In sum, our data show that variation in non-compliance with European law is greater between member states than within member states across time. This is also true for the variation across policy sectors, with some exceptions in which non-compliance also varies significantly across time. In order to explain the variations, we need to look at both systemic, country specific variables and sectoral, policy sector specific variables. We started testing the two types of variables separately. The results are presented in the fourth section of the paper. But we are in the process of creating an integrated data set that will allow us to account for the combined variation across countries, policy sectors, and time.

3. Why Do Member States not Obey European Law?

3.1 Exploring the Literature on Non-Compliance

This study turns to the International Relations literature as a starting point for theorizing about (non-) compliance with law beyond the nation state (cf. Mitchell 1996; Underdal 1998; Checkel 1999; Tallberg 2002). IR theories are primarily concerned with explaining state behavior. 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 behavior and the logic of influencing (non-compliant) behavior, to which they subscribe (cf. Börzel 2002a, 2003b):

[9] Justice and home affairs is the only exception since it has oscillated between the two extreme positions. But the European Union received policy-making competencies in this policy actor only in 1992.

1) The Source of Non-Compliant Behavior: *Voluntary* vs. *Involuntary*

Do states *voluntarily* violate international or European norms and rules because they want to avoid the costs of compliance (voluntary defection) or is non-compliance *involuntary* because states lack the necessary capacity to comply?

2) The Logic of Influencing Non-Compliant Behavior: *Rationalist* vs. *Constructivist*

Do states need to be induced into compliance by (the threat of) economic and legal sanctions or can they be persuaded by causal or normative arguments that compliance is the most appropriate thing to do? Can capacity building (resource transfer) prevent involuntary non-compliance? Can legal dispute settlement procedures help clarify the meaning of international norms and rules? The possibilities of influencing non-compliant behavior depend on the logic of social action that is employed. Rationalist approaches emphasize the need to change actors' pay-off matrices to bring them into compliance while social constructivist theories focus on changing actors' preferences and identities through processes of learning and persuasion.

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

Figure 5: Theoretical Approaches in the Compliance Literature

	Voluntary Non-Compliance	**Involuntary Non-Compliance**
Incentives and Constraints	Monitoring and Sanctions (*enforcement*)	Capacity Building and Contracting (*management*)
Socialization	Persuasion and Learning	Legal Internalization

We started with testing the most prominent hypotheses that have dominated the literature to account for the state of the art. Almost all of them focus on systemic, country specific explanations. Sectoral, policy specific factors have been largely neglected in the compliance literature (cf. Börzel, Hofmann, and Sprungk 2003).

3.2 Testing Hypotheses on Non-Compliance

In order to account for the variation observed, we combine quantitative and qualitative methods in testing various hypotheses. The quantitative analysis shall help us reduce the number of explanatory

factors so that they can be systematically controlled for in comparative case studies, which will allow us to trace the causal mechanisms.

Method of Analysis

We analyze our model of violations of European law using regression techniques for *pooled* data developed by Beck and Katz (Beck and Katz 1995, Beck, 1996, 2001). This technique consists of a *pooled* OLS-regression with panel corrected standard errors (PCSEs). Using this technique is possible because we use "infringements per legal act" as our dependent variable. The advantages of this dependent variable over the absolute number of infringements per member state or policy sector and year were already discussed before. Especially the fact that we can account for additional variation within member states or policy sectors and over time militates in favor of a *pooled* model and against a simple cross sectional model. However, pooled models entail a number of pitfalls (Hsiao 1986; Kittel 1999; Maddala 2001) which become manifest in violations of some assumptions of the classical linear regression model (Greene 2000). The Beck and Katz technique counteracts problems of panel heteroscedasticity (Beck and Katz 1995, Beck, 1996) by the use of panel corrected standard errors which avert the underestimation of standard errors and thereby the overestimation of the significance of regression coefficients. Autocorrelation is another frequent problem of *pooled* analyses. However, this does not affect us, as indicated when discussing our dependent variable. Therefore, there is no need to use corrections of serial correlation e.g. by Prais-Winston or Cochrane-Orcutt (Gujarati 2000). In addition, we can do without a *lagged dependent variable* as theory does not suggest the probability of current infringements being dependent on the number of past infringements.

As to *fixed effects* we decided against the use of country, policy sector or even year dummies in accordance with Plümper et al. (Plümper 2004).[10] Especially the simultaneous use of dummies and other categorical variables amongst the independent variables would lead to problems of multicollinearity. The variable "efficiency" belongs to this group of variables. In addition and aggravating, *fixed effects* cannot explain why countries or policy sectors vary with respect to their constants. They statistically "explain" that part of variance which is most interesting from a comparative point of view without being able to give substantial explanations of the country or policy specific differences. Last but not least *fixed effects* consume degrees of freedom on a big scale.

[10] *Fixed effect* models allow for the comparison of average infringements between member states or policy sectors and years by the use of dummy variables. Dummy variables are categorical variables with only two values (0 and 1).

(1) The Basic Assumption: Misfit

Irrespective of which theory they adhere to, most compliance approaches share one major assumption, which provides the starting point for this study: Only ”inconvenient” norms rules give rise to compliance problems because they generate significant pressure for adaptation, which states are either not willing or able to satisfy. By contrast, international norms and rules that fit i.e. are compatible with domestic regulatory standards, political and administrative institutions, problem solving approaches, and collectively shared identities are unlikely to result in non-compliance.[11] There is, however, no consensus on the degree of misfit or pressure of adaptation that is likely to cause problems of non-compliance (Knill and Lehmkuhl 1999; Börzel forthcoming), and whether certain factors can mitigate the effect of misfit. Börzel and Risse, for example, argued that misfit is the necessary but not sufficient condition for non-compliance (Börzel and Risse 2002, 2003).

The degree of misfit is difficult to operationalize. One could argue that the more states are able to shape European norms and rules, the better is the fit and the less likely is non-compliance (Börzel 2002b, 2003c). The modus of decision-making could serve as a proxy for the degree of misfit (Schmitter 1996; Pollak 2000; Scharpf 2002). If European policies are decided on by qualified majority and with the participation of supranational actors, such as the European Parliament and the Commission, individual states no longer have the possibility to veto inconvenient norms and rules. Yet, classifying the more than 10.000 legal acts in force according to the decision-making procedure on which they are based is close to impossible. But there are also theoretical reasons to question the validity of decision-making modes as a proxy for the degree of misfit. From a rationalist point of view, qualified majority voting does not necessarily result in a lower compatibility between European norms and rules and the domestic structures of outvoted member states. First, states are only willing to forgo unanimity decisions in sectors in which they see the European Union serve their basic interests (Bräuninger et al. 2001). Moreover, even where majority voting applies, member states usually seek consensus (Héritier 1999). Agreeing to “inconvenient” policies can also be in the interest of member states if their consent is linked to some side-payments or package deals. Finally, information asymmetries or incomplete information about the costs of compliance may also explain why states accept norms and rules that constitute a serious misfit. Social constructivist approaches, by contrast, emphasize that states do not always act on the basis of cost-benefit calculations but follow a logic of appropriateness seeking to do what is socially

[11] Cf. Keohane 1984; Breitmeier 1995; Cortell and Davis. 1996; Checkel 1997; Duina 1997; Ulbert 1997; Keck and 1998; Underdal 1998; Risse and Ropp 1999; Young 1999; Börzel 2000.

accepted in a given situation. Thus, pro-European member states may refrain from vetoing "misfitting" policies because they do not want to be seen as foot-draggers (cf. Börzel 2002b).

The causal relevance of the misfit assumption can only be examined through careful process tracing in qualitative case studies.

(2) Sanctioning (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 compliance requires substantial changes at the domestic level. From this rationalist perspective, non-compliance can only be prevented by increasing the costs of non-compliance. Power based 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 behavior (Gilpin 1981; Martin 1992). Institutionalist approaches, 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 (Keohane 1984; Boyle 1991; Victor, Raustiala, and Skolnikoff 1998; Weitsmann and Schneider 1997).

The institutions of the European Union provide for a sophisticated monitoring and sanctioning system. Since the institutionalist framework, however, has been a constant in our study, we focus on the power based explanations of non-compliance.[12]

The Power Hypothesis

H 1: The larger the political and economic weight of a state, the more infringements it is expected to commit.

Power-centered approaches in International Relations – like neo-realism – assume that states violate rules deliberately, if they assume the costs of compliance to be too high. Compliance with

[12] The Maastricht Treaty modified the infringement proceedings of Art. 226 ECT introducing the possibility for the European Court of Justice to impose financial sanctions (Art. 228 ECT). Yet, the new procedure was only enacted in 1997 and concerns the later stages of the infringement proceedings.

"inconvenient" rules can only be enforced by hegemonic states or by a central power with the ability to impose sanctions. The European Commission is missing sufficient resources to influence the expected utility of potential violators by negative sanctioning and it cannot enforce compliance with Community law by (the threat of) force. Therefore, especially politically and economically powerful member states can more frequently be expected to refrain from effectively implementing "inconvenient" rules.

First, the general concept of power can be subdivided into several individual categories of power, which again can be operationalized in various ways. Apart from the general economic size, measured via the gross domestic product, there is military and European Union specific political power. Indicators for the latter are among other things the proportion of votes in the Council and the proportion of financial contributions to the European Union's budget. Unsurprisingly, the different indicators correlate highly with each other (see table 3) since the proportion of votes depends on population size and the portion of the European Union's budget depends on the GDP. Furthermore, economically large and populous states usually have larger armies and spent more on their national defense in absolute terms. The indicators we have used for our analyses so far are: gross domestic product ("GDP"), total population ("population"), size of the armed forces ("soldiers"), proportion of votes in the Council ("votes"), and contributions to the European Union's budget ("contributions").

Table 3: Correlation Matrix of Power Indicators

	GDP	**Population**	**Soldiers**	**Votes**	**Contributions**
GDP	1				
Population	.9350	1			
Soldiers	.8671	.9308	1		
Votes	.8019	.9312	.9199	1	
Contributions	.9618	.9293	.8806	.8602	1

Our analyses show that economically large and densely populated countries violate EU law more frequently (table 4). Thus, the coefficients have the "correct" sign and are – depending on the model specification – significant. However, the explanatory power of the indicators is small. The same holds true for the proportion of the European Union's budget, i.e. countries making a comparatively large contribution to the European Union's budget, violate EU law more frequently.

Table 4: Power and Infringements

GDP	.00001 ***				
	(.00000)				
Population		.00003 ***			
		(.00000)			
Soldiers			.00001 ***		
			(.00000)		
Contributions				.00005 ***	
				(.00000)	
Votes					.00019 ***
					(.00002)
Constant	.00292 ***	.00286 ***	.00292 ***	.00311 ***	.00255 *
	(.00021)	(.00021)	(.00022)	(.00022)	(.00144)
Observations	231	245	184	245	245
r^2	.0808	.0789	.1120	.0416	.1256

Dependent variable is infringements per legal act. OLS regression with two-tailed t-test, PCSEs in parentheses. *** = p < 0,01, ** = p < 0,05, * = p < 0.1.

The two other variables come off well, too. However, the question remains whether the statistically significant results make sense theoretically. Even though countries with strong military forces violate EU law more frequently, this hardly implies a causal mechanism. The use of military force or the threat thereof seems barely plausible in the European Union. Countries with comparatively many votes in the Council also violate EU law more frequently. This result is also in agreement with the power hypothesis at first sight. However, the question remains: How come that these countries do not make use of their influence already in the context of the formulation and adoption of EU law? This would allow them to enact only "convenient" and "fitting" laws in the first place, which they are willing to implement later. Thus, a problem of endogeneity exists, as more powerful states should be in the position to put their interests through in international negotiations and should therefore have fewer incentives to violate rules than less powerful states (cf. Downs et al. 1996). This circumstance might be responsible for the fact that the influence of power on compliance – although statistically not rejected – turns out to be rather modest regarding size and importance. According to the power hypothesis powerful states violate "inconvenient" regulations more frequently than weak states, but only to a small extent, as they can already make use of their power position during the formulation of new regulations. This interrelationship can only be inspected in a qualitative analysis.

(3) Capacity Building and Contracting (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 Handler-Chayes 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. Finally, states have often difficulties in meeting the deadline for compliance. Capacity building, rule specification and more implementation time – rather than monitoring and 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 the course of implementation.

Management approaches identify three explanatory factors for non-compliance: first, incomplete information, i.e. lacking procedures to clarify rule requirements; second, capacity problems, i.e. lacking resources or lacking mechanisms for resource transfers; and third, lacking time. Contracting procedures for rule clarification are again an institutional constant helping to settle two-thirds of the cases that reach the first, unofficial stage of the infringement proceedings (Börzel 2003b). But it cannot account for the variation between member states and policy sectors at the later, official stages. In order to account for the time dimension of non-compliance, we need to analyze the evolution of infringement proceedings across different stages, as is planned for the second part of our project. We therefore concentrate on the capacity of the member states.

The General Capacity Hypothesis
The smaller the capacities of a state, the more infringements are expected.

Capacity is regarded both in the research on implementation and on compliance as an important explanatory factor for systemic variance of implementation and compliance with legal acts (Mayntz 1983; Chayes and Chayes Handler 1995; Jaenicke and Weidner 1997; Haas 1998). However, it proved problematic that both the term *state capacity* and its operationalization are not used uniformly in the literature. While state or resource centered approaches define capacity as a state's capacity to act, i.e. the sum of its legal authority and financial, military and human resources (Przeworski 1990; Martin Vazquez and Boex 1997; Zürn 1997; Haas 1998; Simmons 1998), neo-institutionalist approaches argue that the domestic institutional structure influences the degree of a

state's capacity to act and its autonomy to make decisions (Katzenstein 1978; Evans 1995). Thereby domestic veto players come to the fore, which block the implementation of international rules because of the costs they have to (co-) bear (Putnam 1988; Moravcsik 1997: 538/539; Duina 1997; Haverland 1999).

In order to do justice to both lines of the argument, we differentiate between the political and administrative capacity of states. While political capacity refers to institutional and partisan veto players, administrative capacity is geared to the financial endowment of states and their human resources.

Figure 6: State Capacity

Political Capacity	**Administrative capacity**		
	financial resources	*human resources*	
		quantitative	qualitative
- number of institutional and partisan veto players	- GDP per capita - share of tax revenue in GDP	- share of public spending on civil servants in GDP - share of civil servants on working population	- higher education of civil servants in years - bureaucratic efficiency

(A) Political Capacity: The Veto Player Hypothesis

H 2: The larger the number of veto players, the more probable are infringements.

The number of actors having the possibility to block political decisions (i.e. veto players) has a crucial influence on the autonomy of a state to make the necessary changes to the *status quo* for the implementation of "inconvenient" rules (Scharpf 1988; Alesina and Rosenthal 1995; Tsebelis 1995). Thus, the number of veto players should increase the probability of infringements in the process of legal implementation of international or European legal acts.

As you can infer from table 6, our analysis shows quite to the opposite that there is a negative correlation between the number of veto players and the degree of compliance with European law, which is, however, not significant on the conventional 5% level. Thus, if veto players are of importance at all, they rather seem to reduce the number of infringements and not to increase them. Countries with several veto players commit less violations of European law than countries with few veto players. This also applies to the timely and correct transposition of directives into national law, where veto players should play a particularly obstructive role (Haverland 1999, 2000). We showed

in our work that even in this case veto players have a rather favorable influence on compliance (Börzel et al. 2003b: 269-271).

This contra-intuitive finding can be attributed to the fact that the operationalization of the veto player concept is problematic for different reasons. The analysis allows only for "institutional" and "partisan" veto players, which possess the possibility to block decisions on the implementation and enforcement of rules. However, societal actors without formal veto powers can also obstruct or block compliance by exerting domestic pressure. Regrettably, we are unable to evaluate the relevance of these so-called "actual" veto players (Héritier et al. 2001) in the context of a quantitative analysis, as the influence of such veto players can vary depending upon system of government, structures of interest mediation and/or political culture. In addition, their relevance can vary substantially across policy sectors and time.

Something similar applies to the preferences of veto players. Even if the number of the institutional and partisan veto players remains constant over time; the interests of these actors – e.g. regarding compliance with international law – may change. However, these interests can be allowed for when operationalizing the veto player variable in such a manner that interdependences between veto players and the respective political system are taken into consideration (Tsebelis 2002). By this importance regarding the reform capacity of states is ascribed to the preferences of actors. Then, a change of the *status quo* is the more probable, the less a pro-reform veto player depends on other veto players and the more probable a change of government is. The collection of preferences and their change over time, policy sector and countries is problematic within a quantitative model. However, the veto player index (Beck et al. 2001) we use allows for it.[13]

The contra-intuitive results cannot only be ascribed to the problematic operationalization but also to problems of endogeneity of the veto player hypothesis. On the one hand, the concept is insufficient as it alleges that the interests of actual or institutional and/or partisan veto players are always directed towards non-compliance. The implementation of "inconvenient" rules causes costs for some actors. It can, however, also strengthen those actors, who want to change the *status quo* but have failed with their efforts to reform so far because of domestic resistances (Milner 1988; Rogowski 1989; Börzel and Risse 2002). From this point of view, certain veto players can affect compliance favorably and thus explain the detected negative correlation.

[13] Such an "adjusted" veto player index cannot account for preferences of all veto players over the 21 years under investigation, in the 14 policy sectors examined and the nine to 15 member states of the European Union. But by considering partisan orientation and institutionally founded interests the index is at least superior to a bare listing of potential veto players with an ideological distance which is assumed a priori.

capacity to decide whether and to what extent it generates and deploys the means for the implementation and enforcement of law beyond the nation state. The data for the variable "GDP per capita" in thousand constant US dollars comes from the *World Development Indicators* of the World Bank (World Bank 2001). In order to be able to make an additional and more direct statement about how many means are at the state disposal to introduce the necessary measures for the enforcement of international law, we follow the literature and use the proportion of tax revenue of the gross domestic product ("tax revenue") (Martin Vazquez and Boex 1997; Byun 2001; Mbaye 2001). The data for this indicator are also provided by the World Bank (2001).

The operationalization of human resources is more complicated. The state needs sufficient personnel, which is adequately qualified to implement legal acts, for the effective application and enforcement of the law. Not only is it necessary to have legal knowledge of the precise behavioral requirements which result from regulations, but also to have technical expertise on the implementation of the law and the monitoring of compliance. First, we assume that the more a state spends on civil servants in proportion to the gross domestic product ("expenditure") and the larger the proportion of civil servants of the working population ("servants"), the more resources it has at its disposal for the implementation and enforcement of the law. The data for both quantitative indicators of human resources were collected by Cusack (Cusack et al. 1989; Cusack 1998). Second, in order to account for the qualification of personnel, we use the average length of higher education of the population over the age of 20 in years of a country ("education"). We assume that we can make a statement on the qualification of civil servants on the basis of the general level of education, which we determined via the average length of the higher education of the population. The higher the level of education, the more probable it is that civil servants are well trained and possess the necessary expertise in order to comprehend the behavioral requirements of an international rule and to effectively implement them. The data for the length of education come from Barro and Lee (Barro and Lee 1993, 1994, 2001). The second qualitative variable for the analysis of the importance of human resources for violations of European law follows Mbaye, who used data from Auer et al. (Auer et al. 1996) to create an index of bureaucratic efficiency and professionalism of the public service ("efficiency") (Mbaye 2001). The index consists of three components of bureaucratic efficiency: performance related pay for civil servants, lack of permanent tenure, and public advertising of open positions.

The choice of indicators for the empirical analysis of the capacity hypothesis is not undisputed. There is an abundance of possible operationalizations. Therefore, we use several capacity indicators for our analyses, which capture different aspects of the theoretical construct, as can easily be seen in

table 5. Although the selected indicators do not correlate excessively with one another, each indicator produces a significant result regarding compliance with European law (see table 6).

Table 5: Correlation Matrix of Capacity Indicators

	GDP pc	Tax rev.	Expenditure	Servants	Efficiency	Education	Veto p.
GDP per capita	1						
Tax revenue	.5567	1					
Expenditure	.2274	-.1453	1				
Servants	.5817	.1266	.6150	1			
Efficiency	.4301	.0289	.3633	.6560	1		
Education	.5126	.1243	.5040	.5129	.6099	1	
Veto players	.3989	.2905	.1763	.3880	.0577	.1793	1

First, table 6 proves that there is indeed a correlation between the administrative capacity of a state and the number of infringements. If you ignore the positive signs of the coefficients for the gross domestic product per capita and the first quantitative human resource variable ("expenditure"), you can see that larger administrative capacity of a state brings about fewer violations of European law. The coefficients are significantly different from zero and the fit of the model is good. However, two contra-intuitive results ("GDP per capita" and "expenditure") remain regarding the influence of administrative capacity on the violation of European law for which no more than *ad hoc* explanations can be given.

It could be argued that gross domestic product per capita – although frequently used in the literature – is not an indicator for a state's implementation and enforcement capacity but for its power to defy "inconvenient" rules. This corresponds to the central assumptions of the power hypothesis, which we already tested using GDP as an indicator. However, the problem of endogeneity remains.

Our analysis shows bureaucratic efficiency to be the administrative capacity variable with the greatest explanatory power. This is in line with Mbaye's (2001) findings. The testing of an "economical" two-variable model shows that the correlation is not only robust but that the model actually offers a considerable explanatory power.

Table 6: State Capacity and Infringements

Variables	general	economical	economical plus
Constant	.00255 *	.00605 ***	.01076 ***
	(.00144)	(.00035)	(.00105)
Administrative capacity:			
GDP per capita	.00043 ***		
	(.00006)		
Tax revenue	-.00006 *		
	(.00003)		
Expenditure	.00028 ***		
	(.00009)		
Servants	-.00014 **		
	(.00006)		
Efficiency	-.00152 ***	-.00160 ***	-.00112 ***
	(.00026)	(.00012)	(.00011)
Education	-.00995 ***		
	(.00202)		
Political capacity:			
Veto players	-.00016 *		
	(.00009)		
Confidence in institutions:			
National			-.00010 ***
			(.00002)
Observations	166	245	206
Adj. r^2	.4911	.2691	.3880
Rehearse > F	.0000	.0000	.0000
Root MSE	.0019	.0020	.0019

Dependent variable is infringements per legal act. OLS regression with two-tailed t-test, PCSEs in parentheses. *** = p < 0,01, ** = p < 0,05, * = p < 0.1.

(C) Capacity Building: The Hypothesis of the Transfer of Resources

H 4: The fewer resources a state with only modest action capacity receives, the higher the number of infringements.

The lack of administrative capacities is an important cause for infringements. Therefore, measures to build up capacity should lead to a drop in infringements in countries with only few resources. The European Union possesses a set of mechanisms for the transfer of resources: the structural funds. In order to test the explanatory power of the hypothesis, we used Commission data on the annual allocation of European funds. The data refer to the portion of all funds, which each member country receives annually from the European Union.

You can learn from table 7 that those countries, which receive comparatively high levels of funding, violate EU law more frequently. This finding is significant and robust. However, the question about the direction of cause and effect remains, if you can take a causal connection for granted at all. It is safe to assume that member states do not violate European law due to the comparatively large

allocation of funds, but rather that funds are allocated to those countries, which feature below average economic development and an absence of resources. Thus, the missing administrative capacities and the desolate economic situation are responsible for the frequent violations by some member countries and not the funds from Brussels. However, it can be expected that a sufficient and continuous transfer of resources contributes to the development of those administrative capacities in the long and medium run, whose presence is a precondition for an effective implementation of European law. It seems questionable, however, whether the funds for the transfer of resources which are allocated by the European Union are sufficient for capacity building.

Table 7: Allocation of Funds and Infringements

EU funds	.00019 ***
	(.00002)
Constant	.00200 ***
	(.00018)
Observations	142
Adj. r^2	.2238

Dependent variable is infringements per legal act. OLS regression with two-tailed t-test, PCSEs in parentheses. *** = p < 0,01, ** = p < 0,05, * = p < 0.1.

(4) Learning and Persuasion

Like enforcement approaches, learning and persuasion approaches 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) behavior rather than the maximization of egoist preferences as motivating actors. Non-compliant behavior is not so much a question of the material costs of compliance to which actors are averse. Rather actors have not internalized the norm (yet), i.e. they do not accept the norm as a standard for appropriate behavior. If states challenge the validity of a norm or rule, sanctions and capacity building are futile. Rather, states have to be persuaded into accepting compliance as the appropriate thing to do and to redefine their interests and identities accordingly (learning; cf. Risse and Sikkink 1999; Checkel 2001). Naming and shaming by non-governmental organizations or international organizations provides one way of persuading states that non-compliance is inappropriate (Finnemore 1993; Keck and Sikkink 1998; Risse, Jetschke, and Schmitz 2002; Liese 2004). 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. Legitimacy can also result from certain procedures that include those actors in the rule-making that are potentially affected (procedural legitimacy; cf. Franck 1995)

(Non-) Compliance Pull: The Hypothesis of the Inverse Cascade Effect

An important factor, on the basis of which compliance through socially appropriate behavior can be explained, is the existence of a critical number of states, which accept and comply with the rule. Due to *peer pressure* compliance becomes "contagious" and triggers a "cascade of norms" (Finnemore and Sikkink 1998) or a "compliance pull" at a certain point (Franck 1990). By interaction with complying states violating states become socialized into behavior that is conform to the rule because compliance is considered to be socially appropriate. Conversely you could argue that non-compliance is the effect of the behavior of states, which are ready to comply in principle, but violate rules, if a critical number of states do not obey these rules either. This could mean, for example, that in the case of European directives states, which have already begun cost intensive transposing, halt transposition, if they notice (e.g. by the opening of infringement proceedings) that other states began the transposition too late or not at all. A strategic change of behavior from compliance to non-compliance results by this form of socializing, which is socially accepted. Thus, the hypothesis must read:

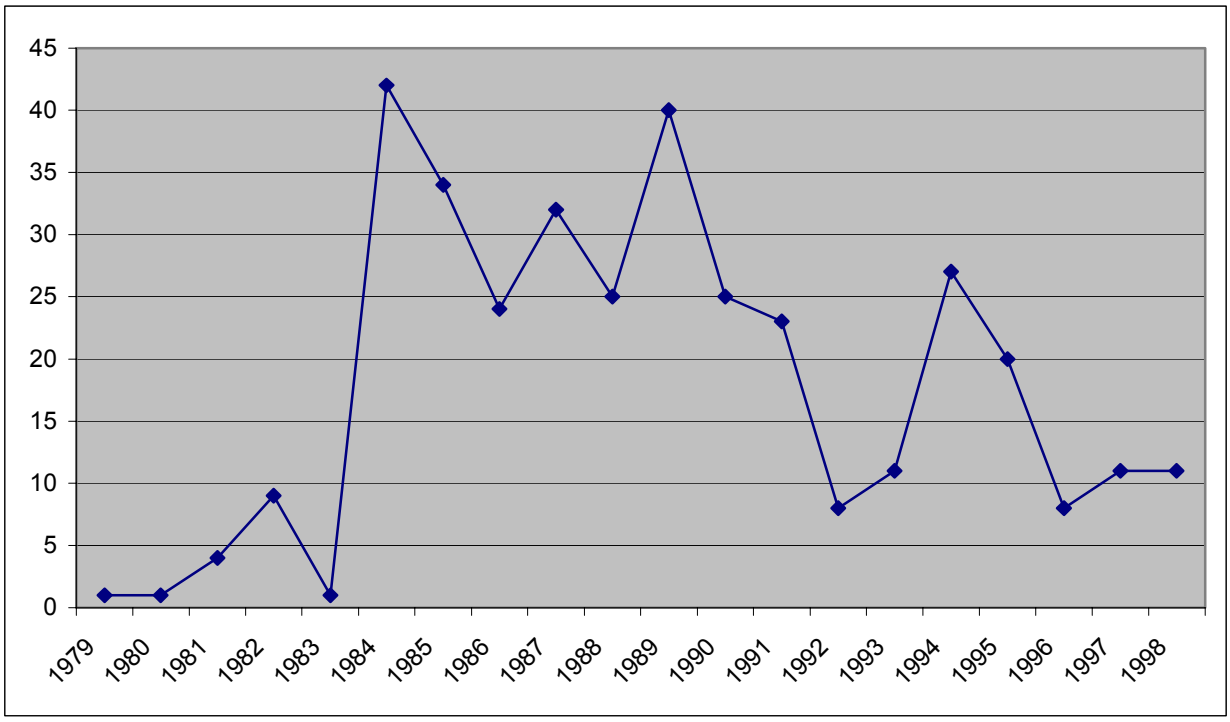
H5: The smaller the number of the states that comply with an international rule, the more probable it is that even states, which were initially inclined to comply with the rule, infringe on it.

For the quantitative analysis of the hypothesis this means that we shall first examine to what extent the violations of European law are concentrated on a few legal acts. Second, we will determine if those legal acts are infringed on by many member states – among them both latecomers and model students. Third, the inverse cascade effect would have to be evident on the basis of the date of the infringements, i.e. legal acts would have to be infringed on by few member states at first and by an increasing number of member states in the course of the time.

Thanks to our third dataset, which contains the violations of individual legal acts, we can show that infringements actually concentrate on few European laws. The 7.432 infringements are distributed over 1.338 legal acts altogether. Approximately 20% (1.514 of 7.432 cases) of all infringements are concentrated on only ten legal acts (approximately 1% of the legal acts), which were violated more than 80 times altogether.

Article 28 ECT provides an outstanding case in this respect. The Article, which prohibits quantitative import restraints, has been infringed on a total of 404 times. Further analyses show that these infringements include all 15 member states. The latecomers France, Italy and Greece violate the article by far the most frequently. But even compliance leaders, such as Denmark, Sweden and Great Britain, have repeatedly infringed on the Article. The analysis of the time dimension seems indeed to indicate an "inverse cascade effect" (see figure 7). While the member states did not violate Article 28 ECT in the years between 1975 and 1980 at all, the frequency of violations gradually increased between 1980 and 1983 and then rose from an average of ten violations per year to almost 45 annual violations in the year 1984. This could be attributed to the fact that the Commission published its first annual report on compliance with Community law at that time (see figure 2). Thus, it could be argued that the public disclosure of infringements promoted the inverse cascade effect, since those member states, which complied with the prohibition of quantitative import restraints despite high costs, became aware of other states' violations of this legal act.

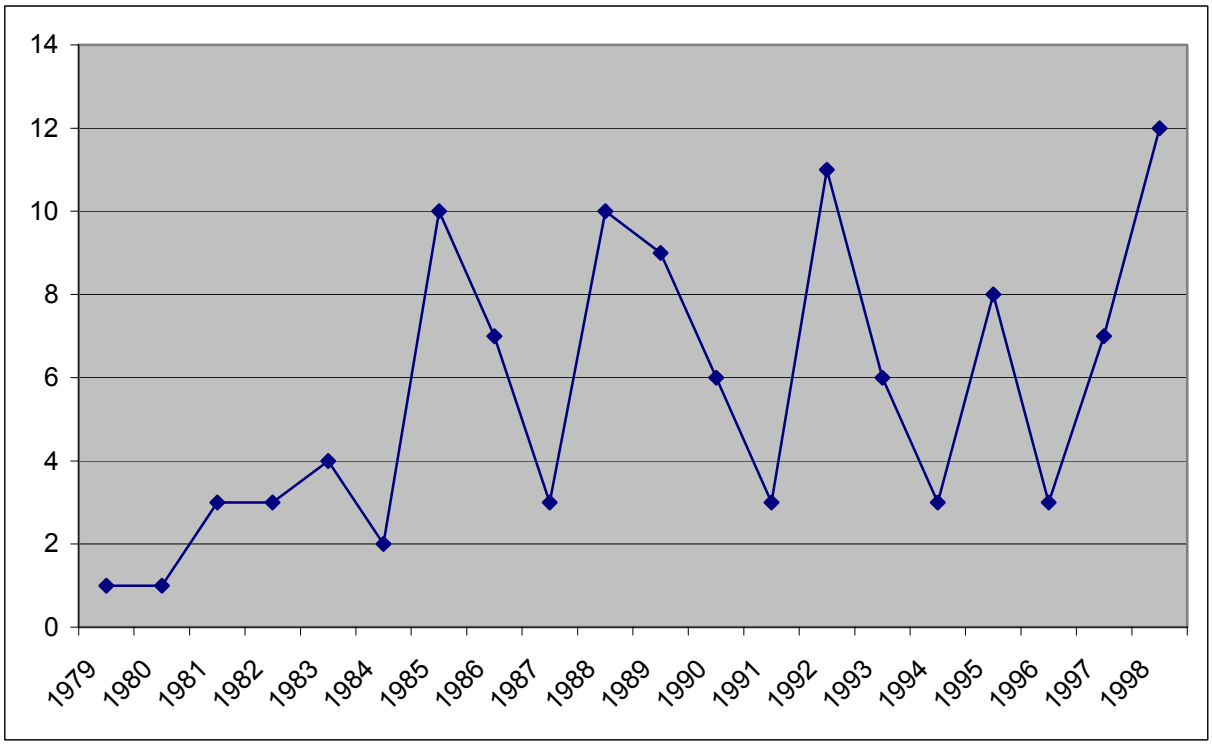
Figure 7: Frequency of Violations of Article 28 ECT per Year



Another case is Regulation 77/308 on the harmonization of the value added tax. Before it ceased to be in force, the member states had infringed on it altogether 112 times. Similar to Article 28 ECT, infringements are widely dispersed over 12 member states, whereby the respective frequency of violations does not vary according to the overall compliance record of the member states. The

laggard France infringes on the regulation most frequently (altogether 33 cases). However, in the middle field are leaders, such as the United Kingdom and the Netherlands, while laggards like Portugal and Greece infringe on the Regulation less frequently. Unlike in case of Article 28, the relatively even distribution of infringements over time hardly confirms the presence of an inverse cascade effect (see figure 8). The number of infringements of the Regulation on the harmonization of the value added tax jumped up to a similar extent as the infringements of Article 28 in the years 1984/85 – after the publication of the first annual report by the Commission – while they had been on a low level before. Yet, this pattern repeats itself in regular intervals from this point onwards without being attributable to outside events.

Figure 8: Frequency of Violations of Regulation 77/308 per Year



Thus, our quantitative analysis confirms one aspect of the hypothesis of the inverse cascade effect to the extent that non-compliance with European law is concentrated on few legal acts, which almost all member states infringe on. However, the temporal delay of the infringements – violations are initially committed by few member states and then increasingly by more and more member states – prognosticated by the hypothesis can hardly be found. The hypothesized "negative" effect of socialization (change from conforming to violating behavior) can be observed on the basis of the increase in infringements in the period of the publication of the first annual report. If one assumes a negative "learning process" of compliant member states, which is induced by the publication of violations, a similar increase in infringements should be found for *all* legal acts which are

frequently violated in this period. However, an analysis of a random sample of frequently violated regulations and directives did not reveal a significant rise of infringements in the period 1983 to 1985.

Finally, quantitative analyses are not conclusive to what extent infringements of those member states, which were originally willing to comply, can actually be explained by a "non-compliance pull". Violations of frequently infringed on legal acts could, for instance, be attributed to rule specific factors. Qualitative case studies are required to ultimately clarify the extent to which infringements are to be explained by an inverse cascade effect. Only be means of careful process-tracing, we can test to what extent a change of behavior towards non-compliance is caused by the interaction with violating states or similar processes.

The hypothesis of the (inverse) cascade effect explains compliance and/or non-compliance as socially appropriate behavior brought about by actors' reaction to the behavior of their social environment, without the actual internalization of the rule. Thus, (non-)compliance results to a lesser extent from the (non-)acceptance of the rule than from the (non-)adjustment to the behavior of other states. In contrast to the (inverse) cascade effect, internalization of the rule and the consequent change of preferences are a necessary condition for compliance for the hypotheses of persuasion.

Procedural Legitimacy: The Deliberation Hypothesis

Legitimacy supports the internalization of international rules and leads to compliance with these rules because either the process of rule-setting or the content of the rule meet certain criteria rendering compliance appropriate. One of these normative criteria (developed by legal scholars), which crucially increases acceptance of the rule and subsequently compliance, is the equal inclusion of all relevant stake-holders – addressees as well as target groups – into the procedure of rule-setting (Dworkin 1986; Franck 1990, 1995; Lind 1995; Tyler 1997). If all actors, who are potentially concerned by the rule, have the chance to participate in the process of rule-setting and articulate their interests, the specific rule is more likely to be complied with, because the cost-benefit distribution is perceived to be "fair". Thereby, the internalization of the rules results from the acceptance of the procedure by which the rule is brought about. Therefore, the hypothesis of deliberation states:

H6: The less the stake-holders (addressees as well as target groups) are involved in the process of formulation, decision-making and implementation of a rule, the more probable are infringements.

However, the degree to which relevant actors are involved in the rule-making process can hardly be quantified. As already mentioned in the context of the hypothesis of rule incompatibility (misfit assumption), the possibility to differentiate between different modes of decision-making exists in principle, whereby, in the case of the deliberation hypothesis, not only the possibility of the exertion of influence of the national governments, but also of other governmental and non-governmental actors would have to be taken into account. This could be analyzed in the case of the European Union e.g. with respect to the participation of the European Parliament (EP) and the involvement of the Committee of the Regions (COR) or European Economic and Social Committee (EESC) in the decision-making procedures. However, the problem for the quantitative analysis still holds. Data on the decision-making procedures for all legal acts cannot be collected. In addition, these procedures vary within policy sectors and over time. Furthermore, incorporating the EP, the COR and the EESC does not necessarily mean that all actors who are concerned by the rule are actually involved or represented in the decision-making process. The type of actors that are relevant for ensuring compliance vary between member states. We would have to theoretically specify which form of inclusion and/or which extent of participation of which actors would have to be present in order to increase the legitimacy of a rule and thus compliance.

Moreover, the fundamental problem for testing the deliberation hypothesis is that analytically it can hardly be distinguished from the assumption of rule incompatibilities with national regulations and structures. While "misfit" explains compliance because actors accept a rule due to limited adjustment costs, the deliberation hypothesis is less concerned with the content of the rule. Rules are complied with despite high adjustment costs because the concerned actors accept the rule-setting procedure. In the end, however, it can hardly be quantitatively delineated whether the addressees and target groups of the rule comply with it for reasons of procedural fairness or because of they were able to reduce the compliance costs in the decision-making process. Ultimately, the importance of the "fair" procedure for the acceptance of and compliance with the adopted rule can only be analyzed by a qualitative study of cases, in which actors obey rules despite lacking consideration of their interests and despite high adjustment costs.

Acceptance of the Rule Setting Institution I: The "Rule of Law" Hypothesis

While the deliberation hypothesis expects compliance exactly with those rules, which result from "fair" decision-making processes, other hypotheses of persuasion emphasize voluntary compliance generated by diffuse support for and acceptance of the rule-setting institutions and the constitutive principles of the law-making and standing.[15]

Legal sociological studies refer, for example, to the relation between national legal culture and the inclination for compliance (Gibson and Caldeira 1996; Jacob et al. 1996; Carnations 1997). Legal culture comprises three elements: (1) the characteristics of legal awareness, (2) general attitudes towards the supremacy of law, and (3) general attitudes towards the judicial system and its values (Gibson and Caldeira 1996: 57f.). From this point of view, the degree of compliance can be attributed to the extent to which addressees of a rule accept the principle of the rule of law. The acceptance of a rule and the subsequent inclination to comply with it result from the diffuse support for law-making as a means of ensuring political order in a community. Consequently, "inconvenient" rules are principally complied with. Accordingly the hypothesis must read:

H7: The lower the support for the principle of the rule of law, the more probable are infringements.

The operationalization of the hypothesis is relatively unproblematic, as the extent of the support for the rule of law can be quantified on the basis of opinion poll data. However, James L. Gibson's and Gregory A. Caldeira's opinion poll survey only provide data for the years 1992 and 1993, and for the twelve member states of the EC (cf. Gibson and Caldeira 1996). Consequently, the data for the independent variable do not vary annually. The extent of support for the rule of law was measured on the basis of agreement with the following statements: "it is not necessary to obey a law which I consider unfair", "sometimes is it better to ignore a law and to directly solve problems instead of awaiting legal solution" as well as "if I do not agree with a rule, it is okay to violate it as long as I pay attention to not being discovered".

[15] In this sense only the overall level of compliance in the member states is the relevant object of analysis and not its variation over time or between policy sectors.

Table 8: Support for the Rule of Law and Infringements

Support	-.00007 ***
	(.00001)
Constant	.00823 ***
	(.00093)
Observations	233
Adj. r^2	.0747

Dependent variable is infringements per legal act. OLS regression with two-tailed t-test, PCSEs in parentheses. *** = p < 0,01, ** = p < 0,05, * = p < 0.1.

The statistical analysis finds a negative and significant correlation between the support for the rule of law and the frequency of violations of European law. Thus, infringements of EU law are rarer in countries, in which the principle of the rule of law is supported. Even though the rule of law hypothesis is confirmed, the relevance of this finding has to be questioned due to the poor fit of the model and because the used data are incomplete and were only collected at two points in time. We need better data for a more reliable statement about the influence of legal culture on the degree of compliance.

Acceptance of the Rule Setting Institution II: The Institutional Resonance Hypothesis

The explanation of rule conforming behavior due to diffuse support can not only refer to the acceptance of the law as a means of ensuring political order in a community and, thus, to the legal act, but it can also refer to the institution responsible for the rule-setting. Rules are not only complied with because the legal act itself is accepted, but because the rules are set by institutions, which enjoy a high degree of support (Dworkin 1986; Hurrell 1995). If rule-setting is a socially accepted function of an institution, rules are accepted in the same way as other output of the institution. In line with the misfit assumption, it has been argued, for example, that compliance with international rules can be explained by the fact that international rule-setting institutions work the same way as democratically legitimized national institutions (Kohler-Koch 2000). If institutional structures and modes of operation as well as the internal logic and decision-making processes correspond to accepted and legitimized norms and principles at the national level, international rules are accepted and complied with in the same way as national laws are. Thus, the resonance hypothesis states:

H8: The stronger the institutions of the European Union correspond to ideas of democratic institutions at the national level, the lower is the probability of infringements.

In contrast to the misfit assumption, this hypothesis is less concerned with the degree of compatibility between a specific European rule and national structures and reform capacities, but

focuses on the degree of compatibility between the (democratic) institutions of the member states and those of the European Union ("policy misfit" versus "institutional misfit", see Börzel and Risse 2003).

The hypothesis of institutional resonance can hardly be tested quantitatively. First of all, we would have to develop a typology of those (democratic) institutions, which generate legitimacy and support on the national level. In a second step, we would have to analyze the compatibility with European institutions. For this, we would need several indicators, e.g. the respective governmental systems (minority government, coalition government or single party government), the forms of interest mediating structures (etatistically, corporatistically or pluralistically organized), the distribution of power between executive and legislation and/or between the central government and the regions or the degrees of delegation of public functions to independent authorities. But even then the problem still holds that certain institutional structures vary both within the European Union and within the member states across both policy sectors and time. Furthermore the conditions of compatibility would have to be specified more exactly, e.g. in order to be able to make a statement on whether the distribution of power between the "executive" and "legislative" in the EU corresponds to the respective constitutional or actual (policy sector specific) distribution on the national level. Such a specification can only be done in the context of a qualitative case study.

Acceptance of the Rule Setting Institution III: The Support Hypothesis

The hypothesis of institutional resonance is sequentially upstream from the "starting hypothesis" on the acceptance of the rule setting institution by formulating those preconditions, which must be fulfilled, so that the output of an international institution is accepted and complied with. However, it does not make a direct statement about the correlation between the extent of support for the international institution and the level of compliance. Therefore, the hypothesis of the acceptance of the rule setting institution reads:

H9: The lower the acceptance of the institution, into which a rule is embedded and the more superficial this embedding is, the more infringements are to be expected.

The operationalization of the support hypothesis is hardly problematic, since appropriate data are available from the Euro-barometer surveys. Thus, the acceptance of European institutions can be quantified by two corresponding questions at least. The first of the two selected questions refers to the support of the membership of one's own country in the European Union, the second question asks for one's confidence in the European institutions. Nonetheless there is the problem that no

annual data are available for the quantitative analysis of the importance of confidence and support for compliance with European law. Even more problematic is the fact that estimated coefficients for confidence and support partially depend on the selected control variables. Therefore, the results of alternative regressions are not robust.

Table 9: Confidence, Support and Infringements

Confidence in the institutions of the European Union	-.00002 ** (.00001)
Support for the European Union	.00003 *** (.00000)
Confidence into national institutions	-.00015 *** (.00002)
Constant	.010407 *** (.00123)
Observations	206
Adj. r^2	.3181

Dependent variable is infringements per legal act. OLS regression with two-tailed t-test, PCSEs in parentheses. *** = p < 0,01, ** = p < 0,05, * = p < 0.1.

Our analysis proves that more confidence in the institutions of the European Union correlates rather negatively with infringements. However, further tests showed that this correlation is not robust; the signs and the significance of the coefficients vary depending on the specification of the tested regression model. As to the question of the support for European institutions we found a contra-intuitive result. There is a smaller but significant positive correlation between support for European institutions and infringements of European law. Contrary to the legitimacy hypothesis, those countries, in which the population is particularly supportive of membership in the European Union, infringe on legal acts more frequently while euro-skeptic countries like Denmark, Sweden and the United Kingdom comply particularly well with European law.

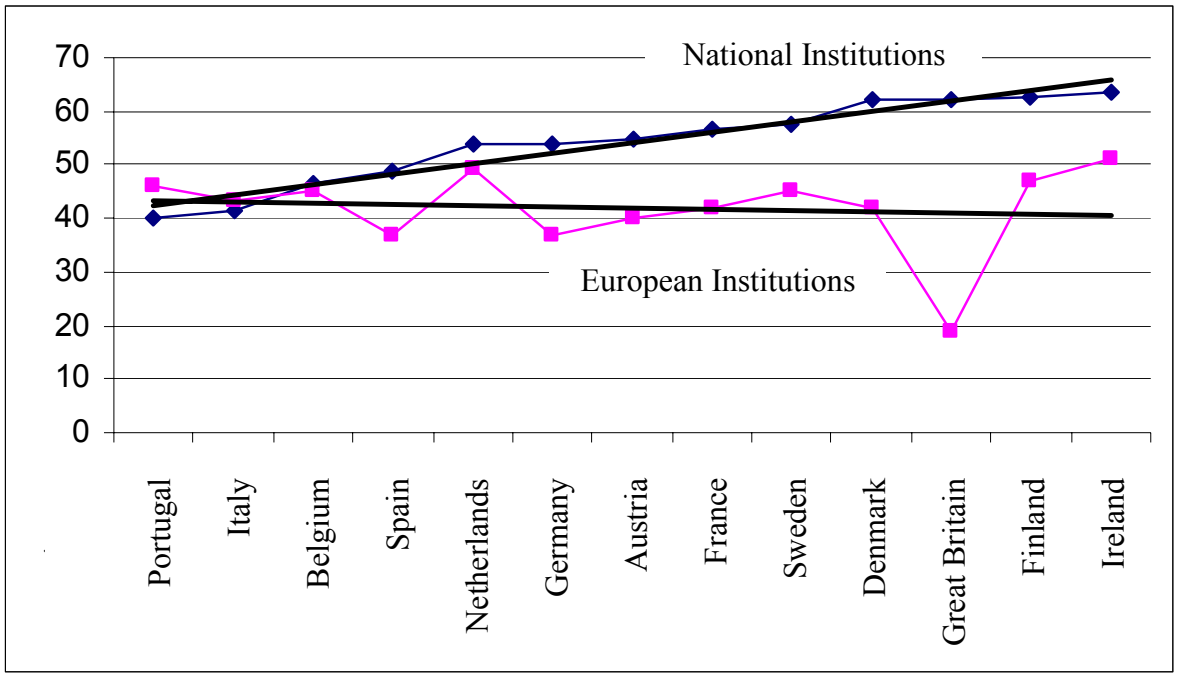
This finding is probably not the result of problems of operationalization but rather of the specific conditions and the specific context in which international and European rules are developed and adopted. The legitimacy hypothesis we use does not account for these characteristics. Thus, it could be argued with recourse to realist approaches that states comply with international rules because they only agree upon those rules in international negotiations which they would comply with anyway (see power hypothesis). From this perspective, “euro-skeptic” countries comply particularly well with European law because they pay attention to the protection of their (national) interests in the forefront of a decision, consider their capacities and have the ability to effectively bring in their interests into the decision-making process (Börzel 2003a; 2003c). From this point of view the lower acceptance of the European integration process would lead to the fact that greater demands are

placed on the rule-making activities of the European Union. If "euro-skeptic" countries have agreed on the passing of a European law, then the implementation and enforcement of this European law is relatively unproblematic in these member states.

On this note, the legitimacy of an international rule and the associated inclination to comply are generated less by the acceptance of the international or supranational institution, within whose framework the rule is generated, but rather by the confidence in the negotiating power of the respective national actors, which are involved in the decision-making process. This is confirmed by a statistical analysis using data from the *World Value Survey*, which asks for the confidence in national institutions.

The quantitative analysis proves convincingly that countries, whose institutions enjoy a high degree of confidence amongst their own population, infringe on European law infrequently. This is supported by two further findings. On the one hand the explanatory power of the "economical" two-variable "bureaucratic efficiency" model can be considerably increased by the inclusion of the variable "confidence in national institutions" (see table 6, "economical model plus"). On the other hand the difference between confidence in European and national institutions increases with increasing confidence in national institutions (figure 10). However, due to the (still) problematic data – there is no annual data for both confidence variables – these results are only accepted under reservation.

Figure 9: Confidence in National and European Institutions

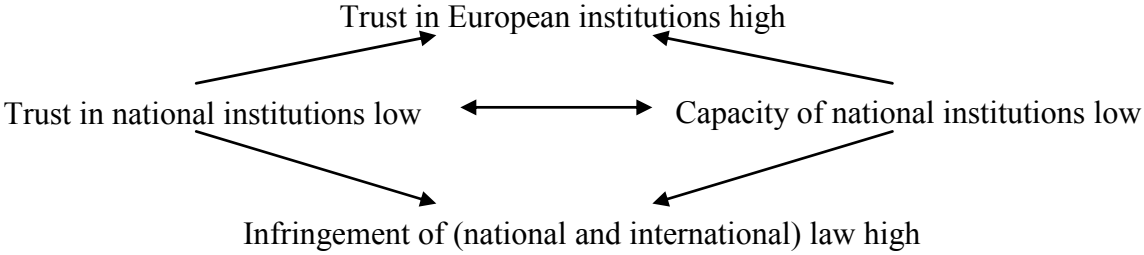


The previous results suggest that legitimacy plays a role in explaining compliance – however, in other ways than expected. The hypothesis on the acceptance of the rule-setting institution above does not account for the specific conditions of the international and European legislative process, in which the national governments act as "gate keepers" and are the central actors with respect to the generation and passing as well as implementation and enforcement of law (Börzel 2002b, 2003b, 2003c).

Assuming that the legitimacy of a rule (and the inclination to comply that follows from it) results less from the acceptance of the international or European institutions but rather from the confidence in the responsible national institutions, the frequent infringements by integration-friendly member states – such as Italy, Greece or Portugal – could finally be explained. The confidence in national institutions is low in these member states compared with other countries (Klingemann 1999; Della Porta 2000). Research on political participation refers to a causal connection between the confidence that political institutions receive from the population and their performance regarding the solution of political problems (Norris 1999; Putnam and Pharr 2000). Transferred to the research on compliance this means that infringements can be ascribed to a lack of confidence of the population in the capacity of national institutions to protect their interests in the forefront of a decision and to subsequently implement and enforce rules – whether national or international – effectively. From this point of view, there is an indirect causal connection between the integration-friendliness of certain member states and the violations of European law: on the one hand, the low capacity and associated low confidence in national institutions lead to infringements for whose generation and enforcement the national institutions are responsible. On the other hand, this results in support for and confidence in the institutions on the next higher level in the expectation that those institutions compensate for the capacity deficits at the national level.

This connection between *capacity* and *trust* can be depicted as follows:

Figure 10: Capacity, Trust and Infringements



The theoretical justification for the connection between the two factors, which possess by far the strongest explanatory power in our analyses so far, will be one of the focal points of the second phase of our project.

(5) Legal Internalization

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 to the fact 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 (Snyder 1993; Chayes and Chayes Handler 1995; Marauhn 1996; Koh 1997). Ambiguous and imprecise rules are particularly prone to become subject of contesting interpretations. In order to prevent non-compliance, the legal internalization 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 promoting the internalization of international norms and rules into the domestic legal system (Koh 1997: 2656-2657). (Trans-) national actors seek to have other parties accept 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 where they are taken for granted. It also involves the redefinition of identities and preferences by which compliance becomes the "self-

interest" of the state. But the dominant socialization mechanisms are litigation and legal discourse rather than social learning and persuasion.

The Legalization Hypothesis

H10: The less a rule is internalized in the national judicial system, the more probable are infringements.

However, the process of legal internalization implies that an international rule can be enforced by legal action before domestic courts. This is where the literature on legalization comes into play which formulates specific conditions for the enforcement of (international) rules by legal action (Goldstein et al. 2000). The assumption is that a low degree of legalization – both on the systemic level and on the level of individual regulations – can be held liable for infringements because of a lack of possibilities to solve infringements via legal discourse. The degree of the legalization of a rule is characterized by three elements (Abbott and Snidal 2000).

Precision

Following management approaches, the lack of *precision* of a rule is considered to be a cause of infringements. However, the literature on legalization specifies another causal mechanism which connects the degree of the precision of a rule with the possibility to take legal actions against infringements on the international and national level. The more specific the rule is and the more specifically it prescribes a certain behavior, the easier it is for both plaintiffs (e.g. companies and interest groups) and prosecutors (like the European Commission) to detect infringements and to take legal action. For the analysis of the legal internalization hypothesis it follows that rules have to be as precise as possible in order to be enforceable and to promote the internalization of the rule through legal discourse. However, this can only partially serve as an explanatory factor for infringements of European law. On the one hand, the precision of rules is a necessary but not sufficient condition for the initiation of a legal discourse leading to internalization. On the other hand, a quantitative analysis is problematic because the degree of precision can only be differentiated with respect to legal acts (articles, directives, regulations, decisions). As European legal acts are equally precise for all member states, inter-state variation cannot be explained. A statement can only be made about which kinds of European rules are more precise and therefore more suitable for legal discourse.

The two most important types of European law, directives and regulations, differ significantly in their degree of precision. While regulations, which are directly applicable, are well specified and

leave little leeway as to enforcement, directives set common goals to be achieved by the member states and, thus, tend to be less precise than regulations.[16] An analysis of infringement proceedings shows that directives are much more frequently infringed on even though there are approximately three times more directives than regulations (Börzel et al. 2003a). However, it remains unclear whether this is caused by the low degree of precision, which makes detection of infringements more difficult, particularly as directives are as frequently infringed on as the directly applicable regulations once they are transposed into national law. Therefore, in a further step one would have to quantitatively examine to what extent infringements, referred to the European Court of Justice, mainly concern directives. In addition, a qualitative study could examine at first, what kind of European law is most frequently legally disputed before domestic courts, and secondly, such a study could help us understand the causal mechanisms of the enforcement of specific rules by legal action.

Obligation

The second element of legalization refers to the degree of *obligation* of an international rule. From this point of view, infringements are the more probable, the less obligatory the respective international rule is. The assumption is again that a strong degree of legal bindingness and direct applicability of a rule enable non-governmental actors to charge other non-governmental or governmental actors for non-compliance and by this to work against continued violations (Kahler 2000: 673-677). For the testing of the legal internalization hypothesis follows that legal discourses take place in particular if rules are directly applicable. This results in the same problem with respect to the quantitative analysis as in the case of precision. Infringements can only be explained by the distinction between types of rules while inter-state variation is ignored. Moreover, it is not possible to resolve the question whether regulations are rarely infringed on due to the possibility of direct application and enforcement by legal action (Börzel et al. 2003a).

Delegation

Finally, legalization refers to systemic factors e.g. to the extent to which states and other actors delegate the authority to interpret rules and thus to resolve conflicts about the meaning and scope of rules to third parties. This function can be assigned to domestic courts or international and/or supranational institutions. A high degree of *delegation* positively affects compliance because (trans-

[16] For example, European directives can only enforced by legal action if they are sufficiently precise. Therefore, you have to differentiate between the so called “framework directives” and normal directives. Similar to Germany’s federal framework legislation, the member states have more leeway when transposing “framework directives”. Normal directives are more precise and it is easier to enforce them by legal action. However, such a differentiation of types of directives cannot be made for the quantitative analysis.

) national actors gain additional possibilities to initiate legal internalization processes boosting legal discourses. This means for the hypothesis of legal internalization that a broad competence of courts to adjudicate between competing interpretations of the meaning and scope of international norms boosts legal internalization and thus compliance because courts offer possibilities for mediating discourses. For the quantitative analysis, the degree of delegation could be operationalized by access to courts (Moravcsik 1995; Slaughter 1995). This choice of indicator establishes again a connection to the literature on legalization which postulates the possibility of access to mediating discourses before courts beside the rule specific elements precision, commitment and delegation as a condition for the possibility to enforce a rule by legal action. However, there is no study on the European Union and its member states so far, which provides a uniform catalogue of criteria concerning the possibilities to access courts and on the basis of which quantification would be possible.

The actual number of legal disputes offers an indirect way of examining the possibility to access courts. There is also a direct relationship to the hypothesis of legal internalization as a statement can be made on the actual prevalence of legal discourses. However, the possibilities to access the European Court of Justice are a constant, which cannot explain variation between member states. Thus, the numbers of plaintiffs before the European Court of Justice between 1980 and 1989 only confirms that the possibilities of complaint are used to different extents depending on the nationality of potential plaintiffs (Harding 1992). The data on the use of Article 234 ECT on preliminary rulings (former Article 177 ECT) also prove these substantial differences between the member states (Stone Sweet 1998; Conant 2002). National courts in Germany, France Italy, Belgium and the Netherlands most frequently refer proceedings to the European Court of Justice for preliminary ruling between 1983-1997 (Conant 2002: 82). As this group contains compliance leaders as well as compliance laggards, this does not imply a direct link between the “lust for legal action” or the “inclination to ally with the ECJ”, on the one hand, and infringements, on the other.

Since European rules can also be interpreted by domestic courts, the number of national court rulings concerning European law permits a more direct statement with respect to legal internalization processes in the member states (Conant 2002). Like in the case of the use of Article 234, Germany, the Netherlands, France, Italy and Belgium, i.e. the same heterogeneous group of countries, played a prominent role in the years 1983-1997, even though the ranking of the member states changed. Therefore and as beforehand, the interrelationship postulated by the legal internalization hypothesis cannot be confirmed.

A similar result is obtained by consulting general numbers on national legal disputes. For this purpose we reverted to data by Wollschläger (Wollschläger 1998) on the number of legal disputes per 1000 inhabitants of a country. Unfortunately, there are no data for Belgium, Finland, Italy and Luxembourg. On the one hand, it becomes apparent that compliance leaders, such as Sweden, Great Britain and Denmark, have high numbers of legal disputes. This would support the legal internalization hypothesis, since a multiplicity of legal discourses could promote the internalization of rules and with it compliance. On the other hand, a moderate complier like Germany has the most legal disputes and the Netherlands, which belong to the compliance leaders, belongs to those countries with only few legal disputes.

Altogether the operationalization of the degree of legal internalization by the number of legal disputes seems problematic. The coincidence of a rare use of the possibilities to access courts and a good compliance record could be the result of an effective judicial system. From this point of view, mediating discourses which boost the internalization of rules take place in an informal way or on a lower formal level instead. We need better data to test the legal internalization hypothesis in a meaningful way. Moreover, the statistical analysis will have to complemented by qualitative studies tracing the scope of and level at which the internalization of rules takes place.

4. Conclusions

The paper set out to understand and explain why member states do not obey European law. The first part discussed the dependent variable. While there is no evidence for a growing compliance problem (variation across time), we find significant variation both across member states and policy sectors. In order to account for these variations, 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 behavior and the logic of influencing it. By combining the two dimensions, we received four compliance mechanisms, from which we could derive different hypotheses on non-compliance with law beyond the nation state. We selected ten hypotheses and tested them for non-compliance in the European Union using a database on infringements of European law. Table 10 summarizes the results.

Table 10: Quantitative Analysis

Hypothesis	Expected correlation	Result
Misfit as necessary condition	-/-	not quantifiable
Enforcement Approaches		
Power Hypothesis (economic, political, military resources)	positive	positive, but little explanatory power
Management Approaches		
Capacity Hypothesis		
- political capacity (number of veto players)	positive	negative, not significant
- **administrative capacity (financial und human resources)**	**negative**	**negative, relatively good explanatory power**
- Resource transfer (EU subsidies)	negative	positive, but spurious correlation?
Persuasion and Learning Approaches		
Inverse cascading effect (compliance pull, peer pressure)	negative	not confirmed but difficult to quantify
Procedural legitimacy (deliberation)	negative	not quantifiable
Acceptance of rule setting institution I (rule of law)	negative	negative, but little explanatory power and incomplete data
Acceptance of rule setting institution II (institutional resonance)	negative	not quantifiable
Acceptance of rule setting institution III (support for and trust in the EU)	**negative**	**positive (support) negative (trust), but data problematic and spurious correlation?**
Acceptance of implementing institution (trust in national institutions)	**negative**	**negative and relatively good explanatory power**
Legal Internalization Approaches		
Legalization Hypothesis (precision, obligation, delegation)	negative	not quantifiable

The most important findings are in bold.

Our findings show that some of the explanatory approaches cannot be tested by using quantitative methods. The operationalization of the independent variables is not possible either due to lacking data or because there are no valid indicators. This is particularly true for social constructivist approaches, which emphasize processes of persuasion and learning and the legal internalization of international norms and rules. These need to be tested in comparative case studies, which will also allow to trace the causal mechanisms for those hypotheses that proved to be causally relevant in the statistical analysis.

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 might 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 compliance process (cf. Risse, Ropp, and Sikkink 1999; Börzel 2002a; Börzel and Risse 2002). Exploring the mutual relationships 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 with and complement each other.

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