Recalcitrance and Inefficiency

Why Do Member States (Not) Comply with European Law?

– Comments most welcome –

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To be presented at the Keio Jean Monnet Centre of Excellence for EU Studies, July 12, 2008.

Abstract

This paper seeks to explain cross-country variation in non-compliance with European law. While non-compliance has not significantly increased over time, some member states violate European law more frequently than others. In order to account for the variance observed, we draw on three prominent approaches in the International Relations literature on compliance – enforcement, management, and legitimacy. First, we develop a set of hypotheses for each of the three theories. We then discuss how they can be combined in theoretically consistent ways and develop interactive models. Finally, we empirically test these models drawing on a unique and comprehensive dataset, which comprises more than 6,300 instances of member state non-compliance with European law between 1978 and 1999. Our empirical findings highlight the importance of combining the enforcement and the management approach. Politically powerful member states are most likely to violate European law while the best compliers are small countries with highly efficient bureaucracies. Yet, administrative capacity also matters for powerful member states. The UK and Germany are much more compliant than France and Italy, which command similar political power, but whose administrations are ridden by bureaucratic inefficiency and corruption.

1 Introduction[1]

One of the major questions in the research on international institutions has been "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). While realists argue that states simply do not comply if the costs of a rule are too high, rational institutionalists point to the role of international regimes and organizations, which entail monitoring, sanctioning, and adjudication mechanisms increasing the costs of non-compliance. In contrast to these enforcement approaches, management theories, assume that non-compliance is involuntary and results from a lack of resources and, therefore, focus on capacity-building and rule specification. Social constructivists, finally, stress legitimacy, socialization, and norm internalization through processes of social learning and persuasion as mechanisms explaining compliance behavior. Thus, different International Relations approaches provide different explanations for why states comply. However, they have paid less attention to the question of why some states comply better than others.

This paper inquires why some states are more inclined to comply with international norms and rules than others. The European Union (EU) is an ideal case to explore this question. As 'masters of the treaties,' the member states still have a significant say on the norms and rules they have to comply with. At the same time, EU institutions entail highly legalized monitoring, adjudication, and sanctioning mechanisms. They do not only aim at changing the instrumental calculations of states by increasing the costs of non-compliance, but also allow for rule specification and capacity-building and promote processes of social learning and persuasion. Thus, all approaches should expect a rather high level of compliance with EU law. Many students of European politics would agree that the EU, compared to most international regimes, does not suffer from serious compliance problems (Zürn and Joerges 2005). At the same time, the European Commission as well as the academic literature have denounced a growing compliance deficit, which is believed to be systemic or pathological to the EU (Krislov, Ehlermann, and Weiler 1986; Weiler 1988;

[1] We thank Robert O. Keohane, Thomas Risse, Jefferey T. Checkel, Beth A. Simmons, Frank Schimmelfennig, Bernard Steunenberg, Jonas Tallberg, Katerina Linos, the participants of the Wheatherhead Center of International Affairs' *International Law and International Relations* seminar at Harvard, and the participants of the Niehaus Center for Globalization and Governance's *Faculty Colloquium in International Relations* at Princeton for detailed comments. Needless to say, we are solely responsible for any conceptual, methodological, or empirical errors that may remain.

Snyder 1993; Mendrinou 1996; Tallberg 2002). Strictly speaking, we have no data, which would allow us to draw any valid conclusion about whether the EU has a (growing) compliance problem. Even though the European Commission as the monitoring and enforcement authority opens hundreds of infringement proceedings against the member states for violating EU law every year, these cover only a fraction of all violations. Infringement proceedings are no indicator of the actual or absolute level of non-compliance in the EU (Börzel 2001). But, since infringement proceedings constitute a random sample of all non-compliance cases that occur, they allow us to compare relative levels of non-compliance across time, policies, and member states. Why is it, for example, that the EU-skeptic United Kingdom, Sweden, and Denmark belong to the compliance leaders while more EU-friendly Italy, France, or Portugal are part of the group of laggards? Or, why do centralized countries like France and Greece have equally bad compliance records as federal Belgium and regionalized Italy?

In order to explain the varying degree of state compliance with European law, this paper draws on a unique and comprehensive dataset. For the very first time, researchers have been granted direct access to the infringement database of the European Commission, which is in charge of monitoring compliance with European law. The Commission provided us with a complete set of all the cases it opened against the member states for violating European law between 1978 and 1999. Unlike the data published in the Commission's Official Reports, our database contains information regarding the nature of non-compliance, the type of law infringed on, the policy sector to which the law pertains, the violating member state, and the measures taken by EU institutions in response to non-compliance for each of the more than 6,300 infringement cases. The data confirm that there is substantial variation in the level of compliance among the member states that lacks explanation.

In a nutshell, we argue that member state compliance is a function of both power and capacity. Politically powerful member states are most likely to violate European law while the best compliers are small, politically weak countries with highly efficient bureaucracies. Yet, administrative capacity also matters for powerful member states. The UK and Germany are much more compliant than France and Italy, which yield similar political power, but whose administrations are ridden by bureaucratic inefficiency and corruption. In fact, we find an interaction between capacity and power, where capacity conditions the relation between power

and compliance. With increasing bureaucratic efficiency, the non-compliance promoting effects of power are gradually reduced.

The paper proceeds as follows. After outlining the empirical puzzle, we review three prominent compliance approaches in the International Relations literature, develop an integrated approach that combines the most promising compliance mechanisms, and provide a comprehensive test of its explanatory power. Enforcement approaches assume that states violate international norms and rules voluntarily because they are not willing to bear the costs of compliance. By increasing external constraints, international institutions can alter strategic cost-benefit calculations of states and lead to a change of their preferences over strategies eventually resulting in compliance. By contrast, management approaches argue that non-compliance is involuntary, i.e. is not the result of strategic choices. States are willing to comply, but lack the necessary resources. The third approach – legitimacy – argues similar to enforcement theories that non-compliance is intentional. But, unlike management and enforcement approaches, legitimacy draws on socialization, persuasion, and learning mechanisms. Compliance is not a matter of sufficient material resources or a question of costs and benefits of rule conforming behavior, but depends on whether a rule is internalized and accepted as a standard for appropriate behavior.

For each of the three approaches, we develop a set of hypotheses. While the literature often treats them as competing or at least alternative explanations, there are good reasons, both theoretical and empirical, to combine them to better account for the cross-member state variation of non-compliance (Checkel 2001; Tallberg 2002). We discuss three ways to integrate the power, capacity, and legitimacy approaches in a theoretically consistent and meaningful way. Deriving an additional set of interactive hypotheses, we argue that in specific constellations, power, capacity, and legitimacy interact and affect compliance beyond the sum of their individual effects.

Next, we test different models using statistical methods. The empirical findings highlight the importance of combining the enforcement and management approach. The best compliers are member states that have ample administrative capacity and lack the political power to resist the compliance pressure of enforcement authorities. Conversely, the countries with the worst compliance records are those with limited capacity, but enough power to resist the European Commission's enforcement efforts. Member states with weak capacity and limited power are not very good compliers either, but they still fare better than their powerful counterparts. Finally,

powerful member states with strong capacity comply better than powerful member states with weak capacity. In short, while power has a negative impact on compliance, it is reduced by the interaction with capacity.

In the concluding section, we place the EU in a comparative perspective and discuss the extent to which our findings can be applied to international regimes and organization, which possess a lower degree of institutionalization and legalization. Our research shows that even highly legalized international institutions do not completely mitigate power differences between states. Moreover, while capacity-building by international institutions is an effective way to improve compliance, it should combine resource transfer with measures that foster bureaucratic efficiency.

2 Non-Compliance in the European Union

2.1 Infringement Proceedings as a Measure of Non-compliance

Studies on compliance with international norms and rules face the methodological challenge of measuring their dependent variable (Simmons 1998; Raustiala and Slaughter 2002). Many have developed their own assessment criteria and collected the empirical information in laborious case studies (for instance Duina 1997; Falkner et al. 2005; Mitchell 2003; Finnemore and Sikkink 1998). Others have drawn on statistical data provided by the monitoring bodies of international regimes and organizations, like the European Commission has done for the EU since 1984 (for instance Reinhardt 2001; Steinberg 2002; Kaeding 2006; Linos 2007; Perkins and Neumayer 2007). Its Annual Reports on Monitoring the Application of Community Law[2] contain information on the legal action the Commission brought against the member states. Article 226 ECT (ex-Article 169) entitles the Commission to open infringement proceedings against member states suspected to be in violation of European law. As in any other international organization, member states have to transpose and implement European law into their domestic orders. In principle, member states can violate European law in three different ways, which eventually severely inhibits its effectiveness. They can fail to notify the European Commission of the national measures taken in order to legally implement directives or regulations in due time (notification failure). Also, states can incorrectly and incompletely transpose European law (incorrect transposition) or they can

[2] Source: http://ec.europa.eu/community_law/index_en.htm, last accessed on June 30, 2008.

incompletely implement it (incorrect implementation). Regardless of the type of violation at stake, European infringement proceedings consist of several stages. The first two, suspected infringements (complaints, petitions, etc.) and Formal Letters, are considered unofficial and treated largely as confidential. The official infringement procedure (Article 226 ECT) starts when the European Commission issues a Reasoned Opinion and ends with a ruling of the European Court of Justice. If the member states still refuse to comply, the Commission can open new proceedings (Article 228 ECT, ex-Article 171). Article 228 ECT proceedings consist of the same stages as Article 226 ECT proceedings, but the ECJ has the possibility to impose a financial penalty (Snyder 1993; Tallberg 2002).

The dependent variable of our study uses the Reasoned Opinions issues for suspected EU law violations as a measure for non-compliance for two reasons. First, Reasoned Opinions constitute the first official stage of the infringement proceedings. While the number of cases is almost three times as high in the previous two stages (Tallberg 2002), the Commission considers information on complaints and Formal Letters as confidential and only provides aggregate data on the total number of cases. Second, Reasoned Opinions concern the more serious cases of non-compliance as they refer to issues that could not be solved through informal negotiations at the previous, unofficial stages (such as notification failures).

In order to control for the growing number of legal acts that can be potentially infringed on, we use the relative number of Reasoned Opinions sent per legal act rather than the absolute number per member state in a given year as the dependent variable in our study. Between 1978 and 1999, the Commission opened almost 17,000 infringement proceedings (Formal Letters). In the same time period, the number of legal acts in force has more than doubled from less than 5,000 to almost 10,000. We develop a relative measure of non-compliance by putting the number of Reasoned Opinions sent to a member states in a given year in relation to the number of legal acts in force in that year. Moreover, we use time dummies in all our analyses to also prevent biases caused by structural breaks, such as the completion of the Internal Market, which frequently haunt panel analyses (Banerjee, Galbraith, and Dolado 1993).

The database, on which this paper draws, is based on a unique and comprehensive dataset including all the infringement proceedings in which the European Commission sent a Reasoned Opinion to member states. Since notification failures are often quickly resolved before the

Commission issues a Reasoned Opinion, the vast majority of cases consist of transposition and implementation problems.[3] The database contains more than 6,300 individual infringement cases, which are classified by infringement number, member state, policy, legal basis (CELEX number), legal act, type of infringement, and stage reached in the proceedings.[4] The Commission gave us access to its own database. We were allowed to download all the data available for the years 1978 to 1999 (excluding the Formal Letters).[5]

Using infringements as a measure for non-compliance with European law is not without problems, though. There are good reasons to question whether infringement proceedings qualify as a valid and reliable indicator 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 European Commission is not capable of detecting and legally pursuing all instances of non-compliance with European law. Infringement proceedings present only a fraction of all instances of non-compliance and the 6,300 cases in our dataset might only be the tip of the non-compliance iceberg in the EU (Falkner et al. 2005). Moreover, the infringement sample could be seriously biased since the Commission depends heavily on the member states reporting back on their implementation activities, on costly and time-consuming consultancy reports, and on information from citizens, interest groups, and companies. Yet, whereas the monitoring capacity of member states and their domestic actors varies, there is no indication that the limited detection of non-compliance systematically biases infringement data towards certain member states. We have been conducting an expert survey among the legal experts of the EU 15 member states' permanent representations to the EU in Brussels. The purpose of this survey was to analyze the extent to which the infringement data collected by the European Commission reflects the member states' perspective, and to assess whether and where national experts perceive a bias in the data.[6] All but one COREPER expert replied, giving us a response rate of 93.3 percent. The

[3] In the empirical section of this paper, we do not explicitly differentiate between failures to transpose or implement European legislation because other international organizations do not follow the EU's typology of norm violations. However, if we run separate regression for all types of non-compliance, we find virtually identical results. Those results can be provided on request.

[4] The dataset will be made publicly accessible at the authors' website.

[5] 1978 is the first year, for which the Commission comprehensively collected infringement data. 1999 is the last year, for which the Commission was willing to give us access to its database.

[6] The questionnaire sent out to the 15 representations consisted of six questions, asking the COREPER experts how they would assess the level of compliance of their own country as compared to other EU countries (1), which member state they perceive as performing best and worst (2), if they think that

most important findings are that more than 2/3 of the COREPER experts do not think that the infringement data contains any systematic bias towards certain member states. What is more, the experts' assessment of which member states violate EU law most and least is in line with the Commission's infringement data, with France, Greece, and Italy being considered the main laggards, and Denmark, Finland, and Sweden the compliance leaders. This strengthens our confidence that our database does not contain a systematic bias.

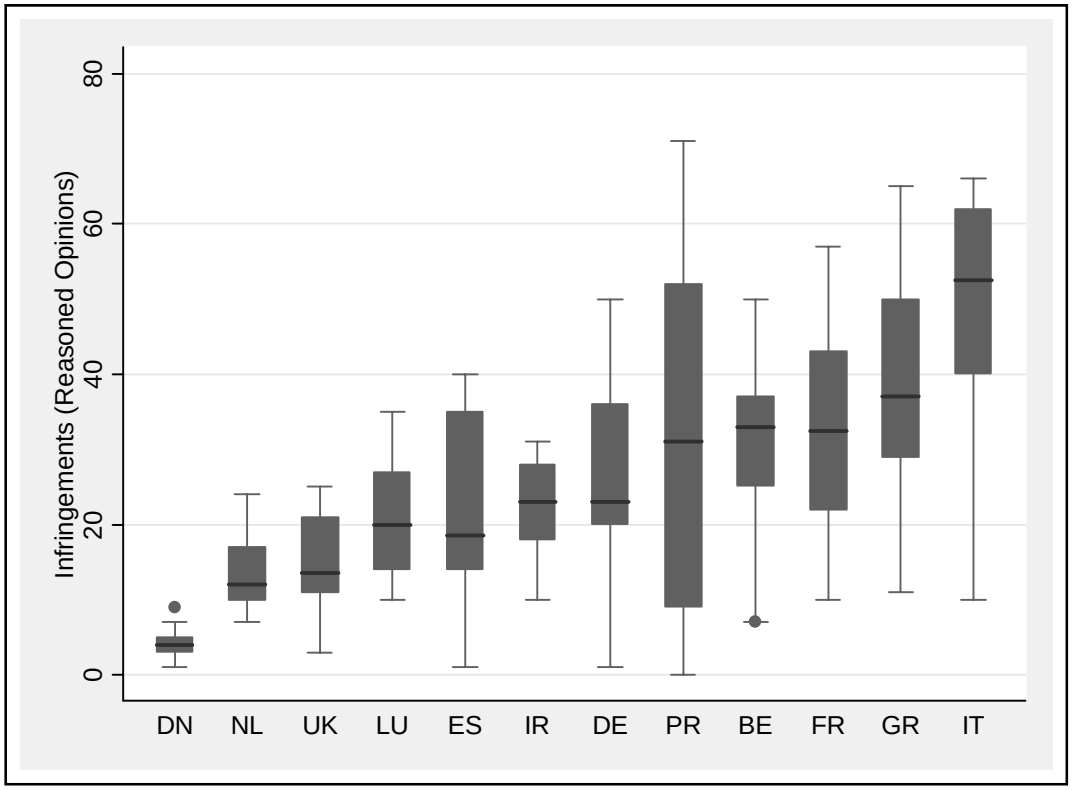
2.2 Mapping Member State Non-compliance with European Law

Our data on non-compliance with European law show significant variation between and within member states (graph 1).[7] Italy, for instance, violates EU law about ten times more frequently than Denmark as well as Sweden and Finland, which are not depicted in the graph since they only joined in 1995. Overall, the member states can be divided into leaders, laggards, and the middle-field. Denmark, the Netherlands and the United Kingdom are good compliers and seldom violate European law. By contrast, Belgium, France, and the Southern European countries (with the notable exception of Spain) considerably lag behind. The remaining member states range in between and form the middle-field. Analyzing this pattern more closely, we also find that it is virtually constant over time. Leaders stay leaders, while Belgium, France, Greece, and Italy always belong to the group of member states that lag behind. Denmark and the Netherlands consistently have non-compliance records that are much better than that of the EU 12 average, while Italy and Greece live up to their notorious reputation throughout the period 1986-99.

the distribution of infringement data is biased towards certain member states (3), and if yes to whom (4), what factors could determine an over- or an under-representation of certain member states (5), and what determines the (non-) compliance level of their own country (6).

[7] While we use non-compliance data from the period 1978-99 in the empirical part of this paper, the descriptive analysis of our dependent variable in graph 1 is limited to the largest balanced subset of our data, i.e. the EU 12 and the years 1986 to 1999, in order to control for the different accession dates of the member states. The box-and-whisker plots depict the lowest and largest number of Reasoned Opinions per year, the lower and upper quartile, and the median for each of the EU 12. The individual box plots are sorted from left to right by the average number of infringements per member state.

Graph 1: Annual Reasoned Opinions by EU 12 Member States, 1986-99[8]



The distribution of non-compliance between member states is puzzling because, at first sight, none of the prominent compliance approaches seems to provide an explanation that systematically accounts for the variance observed. Power-based theories of International Relations should ask themselves why France and Italy yield similar economic and political power in the EU as Germany and the UK, but are much less compliant. This becomes even more puzzling for management theories since France and Italy comply as badly as or even worse than Greece and Portugal, which are the two poorest countries in the EU 15. Constructivists should have a hard time to understand why EU-skeptical countries like the UK, Denmark, Sweden, or Finland comply much better with European law than states which are highly supportive of European integration, such as France, Italy, or Belgium. Institutionalists generally have difficulties in accounting for variation between countries since the level of legalization is the same for all states within an international institution. Likewise, monitoring and sanctioning mechanisms should affect the cost-benefit calculations of states in an equal way. Variance is much more expected between international institutions, if they differ in their degree of obligation, delegation,

8 BE = Belgium, DE = Germany, DN = Denmark, ES = Spain, FR = France, GR = Greece, IR = Ireland, IT = Italy, LU = Luxembourg, NL = the Netherlands, PR = Portugal, and UK = the United Kingdom.

and precision (Abbott et al. 2000; Keohane, Moravcsik, and Slaughter 2000). Of course, the costs of (non-) compliance may vary across countries. But then we need an explanation for why some states face higher costs than others, something which institutionalist theories usually do not provide. As we will see below, combining institutionalist reasoning with a power-based enforcement approach is one way to solve this problem.

3 Three Prominent Compliance Approaches

To explain why there is substantial variation between member states with regard to their level of (non-) compliance with European law, we inquire into country-based explanations. International Relations theories, such as enforcement, management, and legitimacy approaches, primarily focus on institutional design (monitoring and sanctioning, capacity-building and adjudication, and socialization). Consequently, they have largely been used to account for variation in compliance across international institutions (Keohane, Moravcsik, and Slaughter 2000; Abbott et al. 2000). However, all three approaches can be reformulated in a way to account for country-based explanatory factors, such as power (enforcement), capacity (management), and the acceptance of international rules and institutions (legitimacy).

3.1 Enforcement

Enforcement approaches assume that states choose to violate international norms and rules because they are not willing to bear the costs of compliance that result even from technical and narrow legal acts. Incentives for defection are particularly strong if international norms and rules are not compatible with national arrangements as a result of which compliance requires substantial changes at the domestic level (Cortell and Davis 1996; Checkel 2001; Risse and Ropp 1999; Underdal 1998). From this rationalist perspective, non-compliance can only be prevented by increasing the costs of non-compliance (Martin 1992; Downs, Rocke, and Barsoom 1996; Dorn and Fulton 1997). Increasing external constraints by establishing institutionalized monitoring and sanctioning mechanisms can alter the strategic cost-benefit calculations of states. The likelihood of being detected and punished increases the anticipated costs of non-compliance, be they material (economic sanctions or financial penalties) (Martin 1992; Fearon 1998) or

immaterial (loss of reputation and credibility)[9] Such costs may finally lead to a change of strategic preferences towards compliance. However, states do not necessarily face the same compliance costs nor are they equally sensitive to sanctions (Abbott et al. 2000; Garrett, Kelemen, and Schulz 1998; Horne and Cutlip 2002). Drawing on power-based theories of International Relations, we can distinguish three strands of the enforcement approach: recalcitrance, assertiveness, and deterrence.

The Power of Recalcitrance: Power Matters at the Stage of Enforcement

The enforcement approach emphasizes adjustment costs, which each state faces for complying with specific international rules. According to the recalcitrance branch of the enforcement school, a state's overall cost-sensitivity crucially affects its willingness to invest in compliance. Following the argument of Keohane and Nye on power and interdependence, (Keohane and Nye 1977) states can be regarded as being more sensitive to reputation and material costs imposed by others if they have less political or economic power and are more dependent on future goodwill and co-operation than other states. Powerful states by contrast can afford to be more resistant to external pressures, since they have more alternatives to co-operative action with a particular partner and can more easily afford reputation or material damages. Hence, power is an indicator of the cost-sensitivity of a state and influences states willingness to invest in compliance. With regard to our dependent variable, we would then expect that the less powerful EU member states are more sensitive to external constraints composed of material and immaterial sanctions and, therefore, less likely to infringe on EU legal acts (similar Martin 1992). Its high political and economic weight, by contrast, allows a state to be *recalcitrant* with respect to the complete and timely transposition and implementation of European law. Even if a powerful state losses reputation vis-à-vis the European Commission or other member states due to excessive non-compliance, its political and economic power safeguards influence in EU negotiations, since big state interests are usually accommodated (Thomson et al. 2006). A small and less powerful state, by contrast cannot rely on its big numbers of votes in the decision-making procedure and on the importance of its domestic market for other member states. Hence, a reputation as a good citizen and an efficient and reliable partner is all the more important in order to shape EU policies. A similar line of reasoning applies to material sanctions for norm violations. A less powerful member state is less able to bear the costs for the judicial procedure before the European Court

[9] Checkel calls this "social sanctioning" (Checkel 2001, 558); cf. Klotz 1995; Keck and Sikkink 1998; Gurowitz 1999; Satori 2002; Schoppa 1999.

of Justice and is also more threatened by an eventual financial sanction of the ECJ. Hence, the recalcitrance variant of the enforcement approach predicts a positive relation between the power of a state and its non-compliance record. The first enforcement hypothesis expects that *more powerful states infringe on international and European laws more often than weaker states* since they are less sensitive to the costs imposed by material and ideational sanctions.

The Power of Assertiveness: Power Matters at the Stage of Decision-making

The second variant of the enforcement approach focuses also on states, but attributes more weight to the decision-making process in which eventually costly European laws are passed. According to this line of argumentation, the power of a member state deploys an impact on the stage of decision-making. The political and economic weight of a member state is closely related to its *assertiveness*, i.e. its ability to shape legal acts according to its preferences (Giuliani 2003; Moravcsik 1997; Fearon 1998; Keohane and Nye 1977; Thomson et al. 2006). The extent to which a state has managed to fulfill its preferences during negotiations determines the mismatch between prior existing domestic policies and institutions and a European directive or regulation. This, in turn, shapes the adaptation costs, which a state has to invest in order to comply. Finally, the compliance costs influence a state's willingness to comply with a European law *ex post*. Hence, if power is defined as assertiveness in the decision-making process, a second enforcement hypothesis expects that *more powerful states infringe on international and European laws less often than weaker states* since they have been able to decrease the costs of compliance by shaping European law according to their preferences.

The Power of Deterrence: Power Matters for the Enforcement Authority

The assumption of a positive impact of state power on compliance has been taken up by a third strand of the enforcement literature which emphasizes another causal mechanism. According to this line of argumentation, the political and economic weight of a state can translate into *deterrence* of the enforcement authority, i.e. the institution, which monitors compliance and imposes sanctions against free-riders and norm-violators (Abbott et al. 2000; Garrett, Kelemen, and Schulz 1998; Horne and Cutlip 2002). The deterrence hypothesis stresses the relation between the non-compliant state and the enforcement authority. It explains the behavior of the enforcement authority to pursue cases against suspected non-compliant states. Assuming a principal-agent relation, the enforcement authority (agent) ultimately depends on the states (principals) since the latter can always renounce the power of the former (Horne and Cutlip 2002,

301; Garrett, Kelemen, and Schulz 1998; Tallberg 2000). Even within the European Union, states are the ultimate masters of the Treaties and could, therefore, introduce changes affecting the composition and competencies of the European Commission or the European Court of Justice. In addition, in particular the European Commission depends on the co-operation with member states in the economic policy-making, in which the Commission makes initiatives but cannot introduce new European law, without the approval of the member states in the Council of Ministers. In particular powerful states could withdraw their co-operation with the European Commission in using their political and economic weight in EU negotiations to substantively alter or block policies. Hence, the asymmetrical relation may induce the enforcement authorities to act strategically and be reluctant to pursue cases or impose sanctions on powerful states, since they could use their political weight in international institutions in retaliation. Regarding the case of the EU, the European Commission or the ECJ might therefore be less willing to either open infringement proceedings or issue rulings against powerful member states, since they finally depend on the extent to which member states are willing to delegate this authority to them. Thus, similar to the assertiveness hypothesis, the deterrence hypothesis predicts a lower record of non-compliance cases for powerful states. In contrast to the assertiveness hypothesis, however, powerful member states might actually violate a rule, but are simply not being sanctioned for it. In this perspective, the deterrence hypothesis only allows for predictions about the probability with which violations are prosecuted and sanctioned, not about the actual occurrence and prevalence of non-compliance (Reiss 1984). The deterrence effect, however, should still show in our dependent variable. The third enforcement hypothesis expects that *the more powerful a state is, the less often it will face infringement proceedings* since enforcement authorities are deterred.

3.2 Management

Unlike the enforcement approach, the management school of thought assumes that non-compliance is involuntary. Even if states are willing to comply with a European rule, they are prevented from doing so if the very preconditions that enable states to comply are absent. The literature has identified three sources of involuntary non-compliance: lacking or insufficient state capacities, ambiguous definitions of norms, and inadequate timetables up to which compliance has to be achieved (Chayes and Chayes 1993; Chayes, Chayes, and Mitchell 1998; Young 1992; Haas 1993; Jacobsen and Weiss Brown 1995; Haas 1998). While management approaches attribute equal influence to capacities, precision of norms, and transposition timetables, the latter

two factors relate to the character of individual rules and, hence, cannot account for inter-state variation. Therefore, we focus on state capacity within this paper.

The concept of state capacity is not used uniformly in the literature and its operationalization differs significantly. Resource-centered approaches define capacity as a state's ability to act, i.e. the sum of its legal authority and financial, military, and human resources (Przeworski 1990; Haas 1998; Simmons 1998). Neo-institutionalist approaches, by contrast, 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; Evans, Rueschemeyer, and Skocpol 1985). 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; Duina 1997; Haverland 2000). A high number of veto players reduces the capacity of a state to make the necessary changes to the *status quo* for the implementation of costly rules (Alesina and Rosenthal 1995; Tsebelis 2002; Linos 2007). In order to do justice to both lines of argumentation, we differentiate between the *government autonomy* and the *government capacity* of states. While government autonomy refers to institutional and partisan veto players (and is the higher, the lower the number of veto players is), government capacity is geared to the financial endowment of states and their human resources. Yet, even if a state has sufficient resources, its administration may still have difficulties in pooling and coordinating them, particularly if the required resources are dispersed among various public agencies (e.g. ministries) and levels of government (Mbaye 2001; Larrue and Chabason 1998; Linos 2007; Egeberg 1999). We therefore distinguish between resource endowment and the efficiency of a state bureaucracy to mobilize and channel resources into the compliance process. Italy and France are two prominent examples of how the two types of government capacity may diverge. Both countries command more resources than most of the other member states. Yet, their government capacity is constrained by comparably inefficient bureaucracies and serious problems of corruption.

When it comes to the implementation of European norms, both government autonomy and government capacity are necessary for the production of new as well as for the adaptation of preexisting national legal acts and their correct application. Based on these considerations, we derive the following hypothesis from the managerial approach: *The lower government autonomy and capacity, the more difficult it becomes for a member state to comply with European legal norms.* Hence, higher rates of infringements can be expected for states with low government autonomy and capacity

since their veto players may block or delay vital decisions and they do not have the material resources and/or efficient bureaucracies to comply.

3.3 Legitimacy

Constructivists draw on the social logic of appropriateness to explain compliance. States are socialized into the norms and rules of international institutions through processes of social learning and persuasion. They comply out of a normative belief that a rule or institution ought to be obeyed rather than because it suits their instrumental self-interests. This sense of moral obligation is a function of the legitimacy of the rules themselves or their sources (Hurd 1999; Franck 1990; Finnemore and Toope 2001; Checkel 2001). There are several ways by which legitimacy can be generated. First, the rule is embedded in an underlying institution or a legal system, which is generally characterized by a high level of legitimacy (acceptance of the rule-setting institution) (Hurd 1999; Kohler-Koch 2000). Second, a critical number of states is already complying with an international rule. As a result, other states are 'pulled' into compliance 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 (peer pressure). (Franck 1990; Finnemore and Sikkink 1998). Third, legitimacy can also result from certain procedures that include those actors in the rule-making that are potentially affected and who engage in processes of persuasion and mutual learning (procedural legitimacy) (Dworkin 1986; Hurrell 1995; Franck 1995). Both, procedural legitimacy and peer pressure focus more on compliance with individual rules (exactly those which result from 'fair' decision-making processes or those with which other states already comply). The acceptance of the rule-setting institution hypothesis emphasizes that voluntary compliance is generated by diffuse support for and general acceptance of the rule-setting institutions and the constitutive principles of law-making and standing. Since our unit of analysis are country years and we study infringements rather than individually violated legal acts in this paper, we focus on acceptance of and support for the rule-setting institution. The institutional legitimacy hypothesis can itself be disentangled into two different variants, which stress different institutional aspects: the rule of law culture in a member state and the support of member states to the EU as the rule-setting institution.

Domestic Culture of Law-abidingness and Support for the Rule of Law

Legal sociological studies refer to the relation between national legal cultures and states' inclinations to comply with national norms (Gibson and Caldeira 1996; Jacob et al. 1996). Legal

cultures comprise three elements: the characteristics of legal awareness, general attitudes towards the supremacy of law, and general attitudes towards the judicial system and its values (Gibson and Caldeira 1996). In this perspective, the degree of compliance correlates with the extent to which rule addressees accept the legitimacy of the rule of law and consider compliance with legal norms as demanded by a domestic logic of appropriateness. The acceptance of a rule and the subsequent inclination to comply with it result from the diffuse support for law-making as a legitimate means to ensuring political order in a community (Easton 1965). Consequently, even costly rules will principally be complied with. While this argument was developed for compliance with domestic laws, it should also apply to international and European rules since they also constitute law. This is all the more true for the EU, where European law is the law of the land because of its supremacy and direct effect. The corresponding first legitimacy hypothesis states that *states with lower levels of support for the principle of the rule of law infringe on European law more often than states with higher levels* since they generally feel a lower sense of obligation to comply with law.

Support for the EU as the Rule-setting Institution

The explanation of rule-consistent behavior due to diffuse support cannot only refer to the acceptance of law as a means of insurance of political order in a community. It can also refer to the institution responsible for rule-setting. Rules are not only complied with because laws ought to be obeyed, but because the rules are set by institutions, which enjoy a high degree of support (Dworkin 1986; Hurrell 1995; Gibson and Caldeira 1995). Therefore, the second legitimacy hypothesis states that *member states with high public supports for the EU as a rule-setting institution infringe European law less often than member states with an EU-skeptic population* since they feel a lower sense of obligation to comply specifically with European law.

3.4 Towards an Integration of Approaches

So far, we have treated the three compliance approaches as alternative or competing explanations of variation in non-compliance between member states. This is in line with most of the compliance literature that has been rather skeptical about combining different approaches because of their diverging assumptions regarding "how the international system works, the possibilities for governance with international law, and the policy tools that are available and should be used to handle implementation problems" (Raustiala and Victor 1998, 681). Yet, empirical compliance studies support explanations based on power, on capacity, and on legitimacy (Tallberg 2002; Linos 2007; Mbaye 2001; Haas 1998; Mendrinou 1996; Mastenbroek

2003, Steunenberg 2006; Mastenbroek 2005; Reinhardt 2001; Perkins and Neumayer 2007; Steinberg 2002, Zürn and Joerges 2005). Therefore, we inquire now whether and in which ways these three approaches can be integrated. We demonstrate that some of the approaches can indeed be fruitfully combined and some of the explanatory variables are causally connected, so that they condition their respective effects on non-compliance. Due to their interaction and as they are reinforcing or undermining their respective influences, they are more together than just the sum of their individual effects.

Power and Capacity

Enforcement approaches conceptualize compliance as a strategic choice by actors, who weigh the costs of compliance against the benefits. The management school, by contrast, emphasizes the importance of capacity to make and act upon (rational) choices in the first place. If actors have the necessary resources, they may find it easy to comply and do not see the need to exert their power of recalcitrance to defect on otherwise costly rules. Thus, management and enforcement approaches can be combined, since differences in capacity affect the cost sensitivity of states concerning non-compliance decisions. The power of recalcitrance matters less if states have the general capacity to comply, because the arising compliance costs are less severe than for states with low capacities. While the first enforcement hypothesis only focused on the recalcitrance effect and stated that countries with power should be worse compliers irrespective of their capacity, combining capacity and the power of recalcitrance should result in an interaction effect. Accordingly, powerful member states with high capacities are less cost sensitive and will less frequently choose to infringe on European law even though they have the power to resist enforcement pressures by the European Commission. Hence, we hypothesize that *the positive effect of the power of recalcitrance on the number of infringements on European law is reduced with increasing capacity*. Statistically, such a relation suggests a negative and significant interaction effect of power and capacity on non-compliance as the inclination of member states to resist enforcement pressures is 'undermined' by the capacity to comply.

Similarly, capacity and the power of deterrence are causally connected. High capacity renders the actual execution of threats more credible. Increasing capacity makes the use of power more efficient and reinforces the negative effect of deterrence on the propensity of the European Commission to take actions and prosecute infringements. We argued above that the Commission may be deterred by powerful states from opening and pushing proceedings if threats of ex-post

sanctions are credible. This is more likely the case if the respective state has the capacity to make full use of its political weight. Therefore, a second interactive power and capacity hypothesis can be derived, which states that *the negative effect of the power of deterrence on the number of infringements is reinforced with increasing capacity*.

Finally, capacity may add to and reinforce the negative effect of the power of assertiveness on non-compliance. Member states with both the capacity to comply and the power to shape EU rules according to their preferences should be even better compliers than countries that lack either both or have only high capacities to cope with the costs of compliance or the power of assertiveness. The logic behind this argument is similar to the one on the interactive effect of capacity and the power of deterrence on non-compliance. Fewer constraints on government capacity should put member states in a better position to make effective use of their political power. This time however, member states are supposed to use their additional edge constructively to influence the European decision-making process in their favor and shape new legislation according to their preferences. Therefore, we hypothesize that *the negative effect of the power of assertiveness on the number of infringements is reinforced with increasing capacity*. With respect to our empirical analysis, this implies that the negative slope of the regression line relating the power of assertiveness to infringements on EU legislation should become steeper with increases in capacity. Therefore, we expect to find a negative and significant interaction effect, which is (ostensibly) similar to the interaction effect of the power of recalcitrance and capacity discussed above.

Capacity and Legitimacy

The conditioning effect of capacity can also apply to the relation between legitimacy and (non-) compliance as actors, who are driven by a normative logic of appropriateness, need just as much capacity to do what is socially accepted as actors, whose choices are guided by an instrumental logic of cost-benefit calculations and try to strategically maximize their self-interest. Therefore, we can hypothesize that states, which have high degrees of government capacity, should be particularly well equipped to comply with laws they intrinsically value and/or their making institutions they support. Conversely, countries that feature high on support, but lack capacities should comply just as badly as their EU-skeptic counterparts despite considering law-abidingness a virtue and their citizens' general supportiveness of the EU. Overall, this implies a positive interaction effect of government capacity and legitimacy with respect to compliance, and we

should be able to observe that *the negative effect of support for the rule of law and the EU on the number of infringements is reinforced with increasing capacity*.

Power and Legitimacy

The combination of enforcement and legitimacy approaches might be more fruitful than the combination of capacity and legitimacy, but is also more problematic than that of power and capacity since the approaches are based on different theories of social action. Despite attempts to integrate rationalist and constructivist reasoning, synthetic explanations of (non-) compliance are still rare (but see Checkel 2001; Risse, Ropp, and Sikkink 1999). They tend to focus on the scope conditions for the two different logics of social action. In a similar vein, we argue that states that have power can do as they please, but what pleases them may well be defined by a normative logic that makes compliance the socially expected and accepted behavior – if their population is supportive of the rule of law and the EU, respectively. Therefore, we expect that member states are less sensitive vis-à-vis compliance costs and, ceteris paribus, more inclined to accept them with increasing support for the rule of law and the EU. High legitimacy should reduce the effect of the power of recalcitrance on the propensity of member states to infringe on European law. Therefore, we test as our first interactive power and legitimacy hypothesis whether *the positive effect of the power of recalcitrance on the number of infringements is reduced with increasing support for the rule of law and the EU*.

There may also be an interaction effect between the power of assertiveness and legitimacy. With increasing support for the rule of law, the inclination of governments to exert the power of assertiveness increases. Member states with strong support for the rule of law have high incentives to shape EU law in their favor to avoid complying with inconvenient legislation only out of a feeling of obligation and because of their generally high support for the rule of law. Conversely, the effect of the power of assertiveness increases with declining support for the EU, since EU-skeptic countries seek to avoid (demanding) EU laws. Therefore, we expect that *the negative effect of the power of assertiveness on the number of infringements is reinforced with increasing support for the rule of law and decreasing support for the EU*.

Finally, we can also hypothesize an interaction effect between the power of deterrence and legitimacy. The European Commission feels less threatened by powerful states with high support

for the rule of law and European integration than by equally powerful states with low support for the two issues. This is because the Commission might assume that states with a highly developed rule of law culture and strong support for the integration process cannot invest their power against the Commission without violating domestic logics of appropriateness. The threat of punishment is simply less credible. Therefore, the third interactive power and legitimacy hypothesis is that *the negative effect of the power of deterrence on the number of infringement proceedings a state faces is reduced with increasing support for the rule of law and increasing support for the EU.*

4 Empirical Analysis

4.1 Operationalization and Data Sources

Before we can empirically test the effects of power, capacity, and legitimacy on non-compliance, we still need to discuss the operationalization of the relevant covariates. In order to test the influence of the power of recalcitrance on non-compliance, we incorporate two power indicators into our analysis. These indicators are widely used in the literature and account for different aspects of power – economic size and EU-specific political power. Gross domestic product (*GDP*) is a proxy for economic power (Keohane 1989; Martin 1992; Moravcsik 1998; Steinberg 2002). It influences the sensitivity towards material costs of financial penalties or the withholding of EU subsidies. The data come from the World Development Indicators (World Bank 2005). Direct EU-specific political power is more relevant for reputational costs. Member states, such as Germany and France, which have significant voting power, cannot be ignored by others in EU decision-making, even if they may have lost credibility by not abiding with previously agreed upon rules. Thus, we use the proportion of times when a member state is pivotal (and can, thus, turn a losing into a winning coalition) under qualified majority voting (QMV) in the Council of Ministers (*Shapley Shubik Index*) as an indicator of EU-specific political power (Shapley and Shubik 1954; Rodden 2002). This indicator also serves for the operationalization of the assertiveness and deterrence hypotheses. The power to shape EU rules and to deter the European Commission, respectively, is strongly mitigated by the highly institutionalized context of EU decision-making and the need for coalition-building, as a result of which power resources, such as military capabilities, do not carry much weight. Population is relevant, but is captured by both power indicators, GDP and the Shapley Shubik Index. In fact, the number of votes a member state has in the Council of Ministers is based on the size of its population, even though

the conversion factor for population to relative voting power has changed over time due to the successive enlargements of the EU.

To test the hypotheses that we derived from the management school of thought, we need indicators for both government autonomy and capacity. Government autonomy is a function of the number of veto players in the political system of a member state (Tsebelis 2002; Immergut 1998). However, even if the number of the institutional and partisan veto players remains constant over time, the interests of these actors – for example regarding (non-) compliance – may change. Therefore, we use an alternative veto player index (*Constraints*), which allows for the interests of veto players in such a way that interdependences between veto players and the respective political system are taken into consideration (Henisz 2002). It is based on a simple spatial model of political interaction among government branches, measuring the number of independent branches with veto power and the distribution of political preferences across these branches. They can be interpreted as a measure of institutional constraints that either preclude arbitrary changes of existing policies or produce gridlock and so undermine the ability of the government to change policies when such change is needed.[10] Two alternative indicators of government autonomy are discussed in the literature: the executive control of the parliamentary agenda measured by the extent to which the government can successfully initiate drafts and rely on stable majorities for in the legislative branch, (Döring 1995; Tsebelis 2002) and the parliamentary oversight of government measured by the material (e.g. number of committees) and ideational resources (e.g. information processing capacity) relevant for the oversight of the legislative on the government (Harfst and Schnapp 2003). We do not include these two variables, because of multicollinearity concerns. Moreover, we controlled for both in a separate study and found that they are neither significantly nor robustly correlated with non-compliance (Authors 2003).

To test for the influence of government capacity on the distribution of non-compliance, we include two indicators that are prominent in the literature. First of all, we incorporate the *GDP per capita* (Brautigam 1996). It is a general measure for the resources on which a state can draw to

[10] Some scholars argue that political variables, such as partisan preferences of the governments in power, can explain variation in compliance with EU law (e.g. Mastenbroek 2005). This explanatory variable can be operationalized with the frequency of government changes. However, we do not find such a statistically significant relation. If partisan preferences do matter, it is more likely that they account for variation in compliance between specific policies than for variation between countries.

ensure compliance. The data come from the Word Development Indicators (World Bank 2005). Whether a state has the capacity to mobilize these resources shall be captured by the second variable, bureaucratic *Efficiency*. In the operationalization, we use an index of bureaucratic efficiency and professionalism of the public service based on work by Auer and her colleagues (Mbaye 2001; Auer, Demmke, and Polet 1996). This index consists of three components of bureaucratic efficiency: performance related pay for civil servants, lack of permanent tenure, and public advertising of open positions. Bureaucratic efficiency highly correlates with measures of corruption, e.g. the Corruption Perception Index of Transparency International (Herzfeld and Weiss 2003). For issues of multicollinearity, we include only bureaucratic efficiency in our analysis. Other potential indicators of government capacity – such as bureaucratic quality from the International Country Risk Guide and the World Bank governance indicators (Kaufmann, Kraay, and Mastruzzi 2006) – are not used due to the fact that they cover only part of the time period analyzed in this paper and lack sufficient variance for comparative studies of the EU member states.

Finally, the operationalization of the rule of law hypothesis initially seems unproblematic, since the extent of the support for the rule of law can be quantified on the basis of opinion poll data. Yet, good data are rare. We use James L. Gibson and Gregory A. Caldeira's opinion poll survey data, even though the authors only retrieved data at one point in time, 1992-93 (Gibson and Caldeira 1996). The data measure the extent of support for the *Rule of law* on the basis of agreement with the following statements: "it is not necessary to obey a law which I consider unfair", "sometimes it is 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." Alternative indicators used in the rule of law literature include the 'law and order tradition', as it is best known from the International Country Risk Guide, provided by the World Bank (Kaufmann, Kraay, and Mastruzzi 2003). However, not only does it not cover the full 1978-99 time period, but leads to virtually identical results as the Gibson and Caldeira measure of the support for the rule of law if employed in our empirical analysis. Data on public *EU support* are available from Eurobarometer surveys. The acceptance of European institutions can be quantified by the question which refers to the support of the membership of one's own country in the EU.

In the following, we report the results of our quantitative tests of the effects of power (4.2), capacity (4.3), and legitimacy (4.4) on non-compliance.[11] We discuss the findings in turn, referring to the models 1-5 of table 1, which estimate the influence of each of the three theoretical approaches simultaneously controlling for the influences of the other approaches. The models comprise the variables for each theoretical account, which were discussed in the respective sections on the operationalization of the covariates. While model 1 consists of the basic model without interactions, models 2 to 4, respectively, test the three different groups of interactive hypotheses – power and capacity, capacity and legitimacy, and power and legitimacy.[12] Model 5 tests the robustness of our most promising model 2 by looking at ECJ referrals instead of Reasoned Opinions. It checks and demonstrates whether our findings are consistent across the stages of the Commission's official infringement proceedings. In all models, we add time dummies to control for unobserved temporal heterogeneity and period effects that go beyond the growing number of legal acts, discussed in section 2.1 above.

[11] The regression results were generated using the statistics software package Stata/SE 9.2. We tested for first- and higher order autocorrelation. None was found. Problems of heteroscedasticity were counteracted by the use robust standard errors with clustering on member states. As to unobserved country heterogeneity, we decided against a fixed effect specification, which impedes the inclusion of time-invariant covariates and disregards the cross-country information in the data (cf. Plümper, Manow, and Tröger 2005).

[12] Table 1 does not contain a model that brings all interaction effects together in one single integrated model with or without three-way interactions of power, capacity, and legitimacy. Such an integrated model does not lend itself to substantive interpretation due to the severe multicollinearity introduced by the sheer number of multiplicative terms. In fact, while variation inflation factors above 10 are usually considered indicative of multicollinearity, they are in the hundreds in such a model. A correlation matrix of the covariates can be provided on request.

Table 1: Capacity, Power, Legitimacy, and Infringements

	(1)	(2)	(3)	(4)	(5)
	Reasoned Opinions	Reasoned Opinions	Reasoned Opinions	Reasoned Opinions	ECJ Referrals
Power:					
GDP	-0.0000 (0.0001)	-0.0001 (0.0000)	-0.0000 (0.0001)	-0.0001 (0.0001)	-0.0000 (0.0000)
Shapley S. Index (SSI)	0.0336** (0.0122)	0.0312*** (0.0085)	0.0317* (0.0148)	0.0370** (0.0137)	0.0127*** (0.0029)
Capacity:					
GDP per capita	0.0000 (0.0000)	-0.0000 (0.0000)	-0.0000 (0.0000)	0.0000 (0.0000)	0.0000 (0.0000)
Efficiency	-0.2227** (0.0869)	-0.1785** (0.0778)	-0.2216* (0.1022)	-0.1697** (0.0719)	-0.1004** (0.0380)
Constraints	0.0176 (0.2788)	-0.0449 (0.3099)	0.0317 (0.3499)	-0.0901 (0.3565)	0.0766 (0.0963)
Legitimacy:					
Rule of law	-0.0020 (0.0089)	-0.0063 (0.0075)	-0.0043 (0.0094)	-0.0044 (0.0074)	0.0001 (0.0042)
EU support	0.0011 (0.0023)	0.0013 (0.0022)	0.0002 (0.0021)	0.0024 (0.0018)	0.0002 (0.0010)
Interaction Effects:					
SSI * Efficiency		-0.0127*** (0.0036)			-0.0042** (0.0018)
Rule of law * Efficiency			-0.0029 (0.0092)		
EU support * Efficiency			-0.0034 (0.0029)		
SSI * Rule of law				0.0013 (0.0009)	
SSI * EU support				0.0012** (0.0004)	
Constant	0.1091 (0.0961)	0.1389 (0.0976)	0.1100 (0.0890)	0.1245 (0.0952)	0.0154 (0.0457)
Year dummies	yes	yes	yes	yes	yes
Observations	233	233	233	233	233
Adjusted R-squared	0.48	0.50	0.49	0.52	0.44

Dependent variables are Reasoned Opinions and ECJ Referrals per legal act in force. OLS regressions with two-tailed t-tests. Robust (Hubert/White) standard errors with clustering on member states in parentheses. *** = p 0.01, ** = p < 0.05, * = p < 0.1.

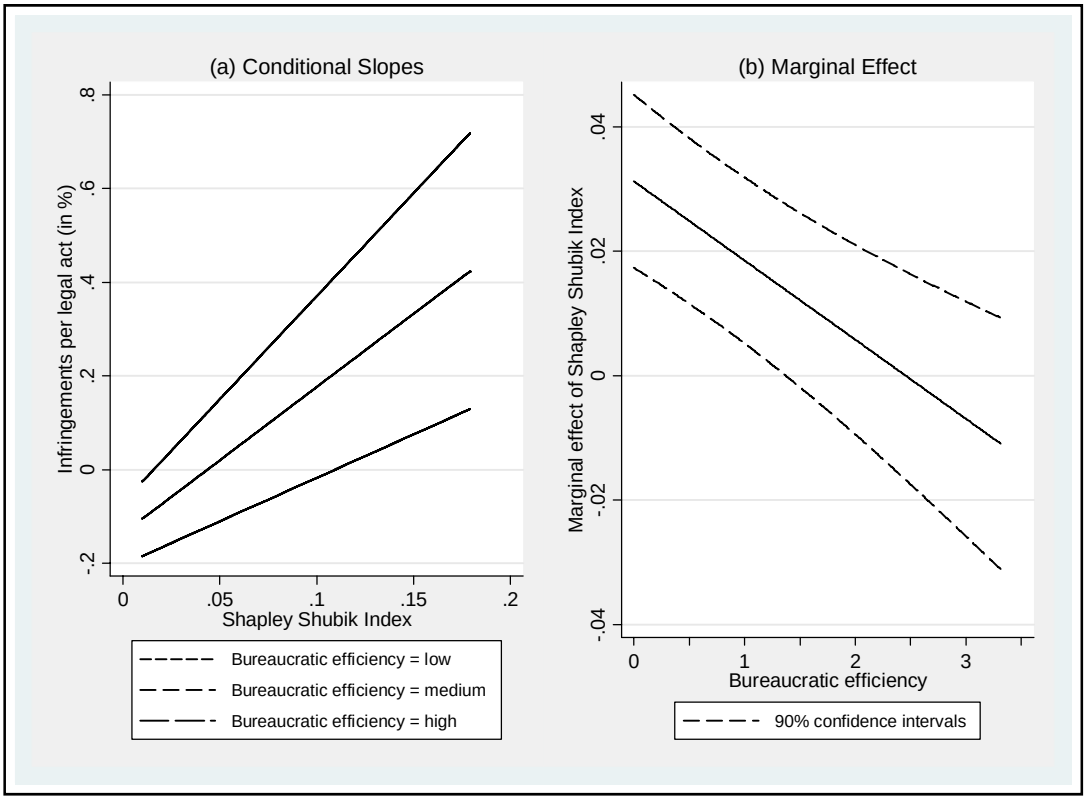
4.2 Enforcement

The results give support to the recalcitrance hypothesis. The political weight in the Council of Ministers (*Shapley Shubik Index*) has a significant effect on infringements per legal act in all models.

Member states like France, Italy, or Germany have more Council votes and violate European law more frequently than member states with low voting power, such as Denmark, Finland, Sweden, or the Netherlands. Greater economic power (*GDP*), by contrast, does not substantially affect a countries compliance record. The size of the economy does not matter when it comes to infringements on European law. Note, however, that the recalcitrance hypothesis has difficulties in accounting for the compliance performance of the United Kingdom, on the one hand, and Greece, Belgium, and Portugal, on the other. While the former complies much better compared with other 'big countries', such as France and Italy, the latter three have considerably less voting power and still belong to the worst compliers.

To better understand these 'outliers', we should inspect models 2 and 5 more closely. The negative and significant interaction effect of voting power and bureaucratic efficiency indicates what can also be read of graphs 2a and 2b. Whereas graph 2a depicts how the conditional positive slope of voting power decreases with increasing levels of bureaucratic efficiency and the non-interacted covariates held constant at their mean, graph 2b shows the marginal effect of the political weight in the Council of Ministers on non-compliance across the observed range of the modifying variable 'efficiency' with 90 percent confidence intervals. Irrespective of their differences, both graphs give support to the interactive power of recalcitrance and government capacity hypothesis. Increases in capacity make the non-compliance promoting effects of power less pronounced. This explains why the United Kingdom outperforms its powerful counterparts when it comes to compliance with European legislation. They may have similar power of recalcitrance levels, but they lack the efficiency of the British bureaucracy. Also at medium levels of political power, Belgium, Greece, and Portugal are much more recalcitrant than the Netherlands, which feature a higher government capacity.

Graph 2: Power and Capacity



The assertiveness hypothesis states that more powerful states infringe European law less often than weaker states, since they have been able to decrease the costs of compliance by shaping the law according to their preferences. It is tested in exactly the same way as the recalcitrance hypothesis above using the same indicators. The only difference is our expectation with respect to the signs of our independent power variables. This also holds true for the deterrence hypothesis, which predicts the same outcome as the assertiveness hypothesis, but draws on another causal mechanism, namely the likelihood that enforcement authorities shy away from enforcing compliance. Powerful member states would have fewer infringements than weaker ones if the European Commission and the ECJ were deterred by power. This is not what we find. As discussed above, table 1 gives strong support to the recalcitrance hypothesis and, therefore, the assertiveness hypothesis and the deterrence hypothesis have to be rejected. One should note, however, that the rejection of the deterrence hypothesis does not suggest that the Commission might not decide strategically on which infringement cases to prosecute. However, our expert survey clearly indicates that if the Commission strategically enforces European law, such behavior does not systematically disadvantage specific member states (see section 2.1.).

The interactive hypotheses of power and legitimacy score just as bad as the assertiveness and deterrence hypotheses. While the interaction effect between the Shapley Shubik Index and support for the rule of law is not significantly different from zero, the interaction effect between political power and public support for the EU is positive. This implies that with increasing support, the positive effect of the power of recalcitrance on the number of infringements on European law is not reduced, but increased. In other words, the effect of power on non-compliance is not conditional on the presence or absence of the rule of law, and EU support seems to make recalcitrant member states even more recalcitrant. Given the argument below that bureaucratic efficiency and support for the EU are in fact interchangeable covariates (both tapping into government capacity, cf. graph 3) this can be considered as indirect and additional support for our interactive power of recalcitrance and capacity hypothesis, explicitly tested and confirmed in models 2 and 5.

4.3 Management

Testing the effect of government autonomy and government capacity on non-compliance, we find a strong relation between the government capacity of a member state and its number of infringements in all models. While general capacity measured by GDP per capita has no significant effect on compliance, we can see that larger bureaucratic efficiency brings about fewer violations of European law. The coefficient for the efficiency of civil servants is negative and significantly different from zero, the GDP per capita coefficient is not. This is in line with other studies, which also find that the command of resources is less of an issue in the EU (Mbaye 2001; Hille and Knill 2006; Steunenberg 2006). Compliance appears to depend much more on the capacity to mobilize existing resources. This explains why France and Italy, which belong to the wealthiest member states of the EU, are as bad compliers as relatively poor countries like Greece and Portugal.

Government autonomy, by contrast, seems to have no effect on the number of infringements. The '*Constraints*' coefficients are not significant in any model. In fact, they even change their algebraic sign depending on the model specification. If anything, previous studies have revealed that countries with several veto players commit fewer violations of European law than countries with a small number of veto players (Mbaye 2001; Authors 2003). Both, the literature on consensual democracies and on decision-making in the EU can offer tentative explanations for this counter-intuitive finding. On the one hand, if domestic constrains prevent governments

form concluding far-reaching agreements in Brussels (Bailer and Schneider 2006) there is no good reason for veto players to blockade the implementation of European rules. On the other hand, Arendt Lijphart (Lijphart 1999) has argued that high horizontal and vertical dispersion of policy competencies fosters the inclusion of diverse societal interests into political processes and outcomes. It forces political actors to construct broad compromises and comply with them, even in cases in which their own interests are not fully included. In order to avoid deadlocks, consensual democracies develop political cultures with inclinations towards diffuse reciprocity. Yet, the group of compliance laggards, which includes unitary member states, such as Greece and France, as well as regionalized Italy and federal Belgium, indicates that either way government autonomy is a poor predictor for compliance.

In a nutshell, the government autonomy hypothesis has to be rejected, while government capacity defined as bureaucratic efficiency has a strong negative effect on the number of infringements. In fact, and as has been discussed above, bureaucratic efficiency has an additional desirable property: It improves the propensity of recalcitrant powerful member states to comply with European law.

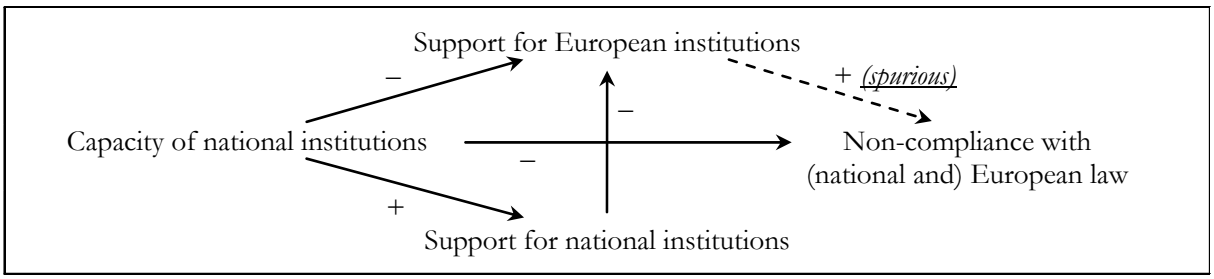
4.4 Legitimacy

The statistical analysis finds no significant correlation between the support for the rule of law and the frequency of violations of European law. Even though four of the five coefficients point in the right direction, there is no evidence that the rule of law hypothesis could be confirmed. However, we need to keep in mind the data issues discussed above. We would need better data for a more reliable statement on the influence of legal culture on the degree of compliance. As to the question of support for the EU, our findings are also disappointing. If anything, we rather find a positive correlation between public support for the EU and infringements of European law than the negative effect that we would anticipate in line with our second legitimacy hypothesis. Countries, in which the population is particularly supportive of European integration, might infringe more frequently on legal acts than EU-skeptic countries like Denmark, Sweden, and the United Kingdom, which comply particularly well with European law.

This counter-intuitive finding may be explained by a strong direct and negative relation between the covariates capacity and legitimacy themselves. Not only does this close relation bring about multicollinearity, which increases standard errors and negates significant and meaningful findings

with respect to EU support and non-compliance. It also leads to the positive, albeit spurious correlation between EU support and non-compliance that we observe. The literature has found that support for the EU and the rule of law, respectively, is directly linked to a lack of state capacity. Citizens of states with weak capacities show low support for the rule of law since domestic legislation is hardly enforced (Putnam 1993; Levi 1998; Tyler 1998). They turn to the EU as an institution that may be more effective in providing public goods (Sánchez-Cuenca 2000; Lampinen and Uusikylä 1998). As a consequence, those member states most supportive of the EU can be among the worst compliers since even if the EU produces rules for the provision of public goods, since these member states still lack the capacity to effectively implement them on the ground (cf. graph 3). This finding is corroborated by IR scholars, who argue that states have an incentive to delegate authority to international institutions to achieve policy outcomes that cannot be realized at the domestic level due to powerful veto players or lacking resources (Simmons 2002; Simmons and Martin 1998, 747-748; Keohane 1984; Putnam 1988; Keohane and Nye 1977; Ruggie 1983) and strongly supported by our own analysis. The empirical evidence does not only show a clear lack of any interaction effect between legitimacy and capacity, but also the spuriousness of the legitimacy and non-compliance correlation.

Graph 3: Capacity, Legitimacy, and Compliance



In sum, while there might be some hope for the rule of law hypothesis once better data becomes available, the support hypothesis clearly has to be rejected. The results do not support the expected negative effect of EU support on non-compliance. However, these findings are less surprising if we evaluate them in light of the correlation between capacity and legitimacy depicted in graph 3.

5 Conclusion

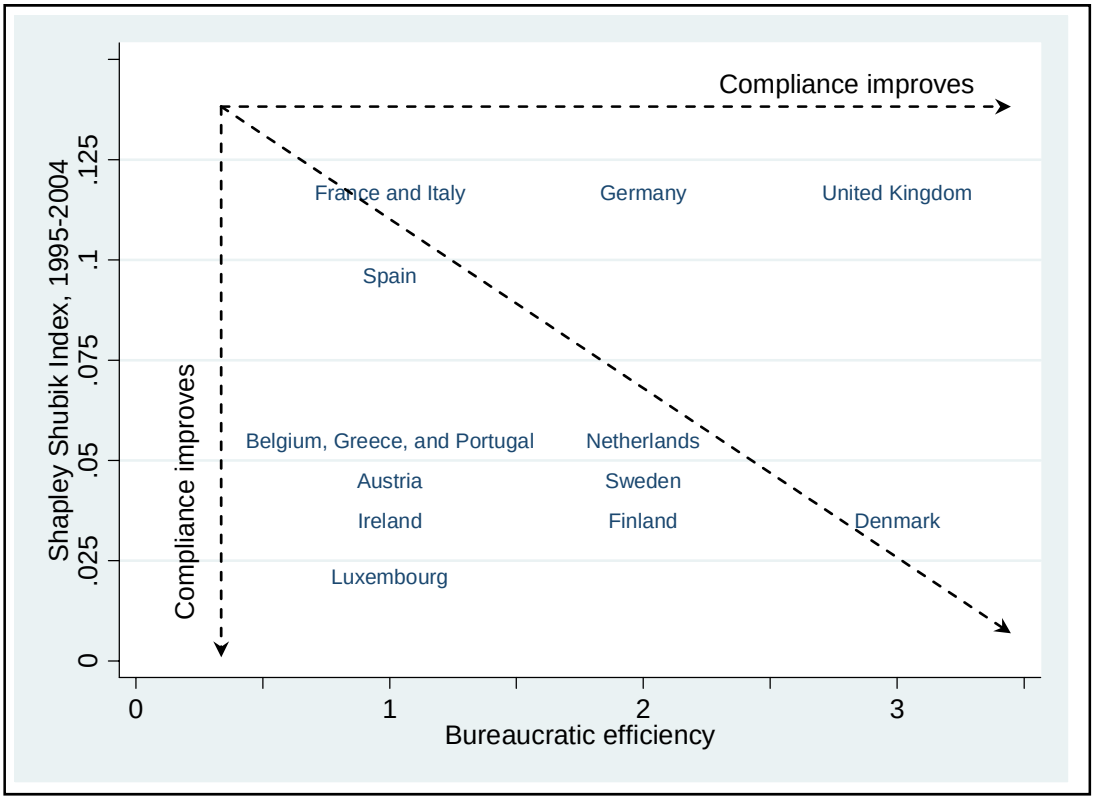
This paper explained why some member states are more likely to violate European legal acts than others. In a *first* step, we developed hypotheses based on three prominent theoretical approaches. The enforcement approach provides three hypotheses on the importance of power for the distribution of non-compliance (recalcitrance, assertiveness, and deterrence). The management school of thought argues that non-compliance is not a strategic choice, but occurs whenever states lack the necessary government capacity and government autonomy to properly and timely implement international rules. Researchers devoted to the study of legitimacy and compliance argue that neither power nor lack of capacity determines non-compliance, but that the acceptance of rules as standards for appropriate behavior is the relevant explanatory variable. While there are many ways in which legitimacy might affect (non-) compliance with rules, we focused in this paper on testing the extent to which the support for the principle of the rule of law as well as the acceptance of the rule-setting institution explain the level of non-compliance in the member states. Instead of merely treating the three approaches as alternative or even competing explanations, we discussed different possibilities in which their explanations could be combined in a theoretically consistent and meaningful way. Based on this discussion, we developed several theoretical models from which we derived different sets of interactive hypotheses.

In a *second* step, we extensively tested the empirical implications of our hypotheses. Our regression results show that capacity-, power-, and legitimacy-centered models explain a substantial part of the variance of annual infringements per European legal act in force. Combining the variables from all three approaches, we explain about 50 percent of the observed variance on the dependent variable. Even though one should not overstate the informative value of the adjusted R-squared statistic, it still highlights the substantial explanatory power of our model.

Especially the combination of the power of recalcitrance and bureaucratic efficiency, as depicted in the scatter plot on predicted and actual non-compliance performance in graph 4, yields promising results. Our quantitative analysis reveals that powerful states, such as France and Italy, which have a great share of votes in the Council, are less sensitive to enforcement costs and, therefore, have a higher share of infringements than weaker member states (graph 4, top versus bottom). Countries with high capacities, such as Denmark, Finland, or the United Kingdom, have

a better compliance record than states with lower capacities, such as Greece, Portugal, or Belgium (graph 4, right versus left). By combining the managerial variable government capacity (*bureaucratic efficiency*) with the power of recalcitrance variable (*Shapley Shubik Index*) in an interactive way, we can explain the non-compliance behavior of alleged outliers. While the United Kingdom is as powerful as France and Italy, it complies better with European law thanks to its higher bureaucratic efficiency. Conversely, Greece is one of the least powerful countries in the EU, but almost as bad a complier as the more powerful member states France and Italy. What they share is a substantial lack of government capacity compared to Denmark and the United Kingdom. States with high capacities and low political power infringe on European law less frequently than other member states. In other words, the combination of constrained government capacity and great political power brings together the inability to comply and the necessary political weight to be recalcitrant in the face of looming sanctions. The compliance record of member states should improve as we move from the top-left to the bottom-right corner of graph 4 and, indeed, we see considerable overlap with the actual non-compliance ranking of the EU member states (cf. graph 1). Italy and Denmark mark the extremes of the infringement spectrum. Also, most of the other countries can be found on graph 4 where we would expect them to be located due to our interactive power of recalcitrance and capacity hypothesis. Given their EU-specific political power and bureaucratic efficiency, Belgium, Greece, and Portugal are predicted to infringe more frequently on EU legislation than Ireland, Luxembourg, and the Netherlands, and the Scandinavian member states, exactly as they do. Of course, this is not to say that our integrated model is capable of fully accounting for the non-compliance behavior of EU member states. The most obvious outlier is Spain, which complies better than graph 4 would have us believe. However, the overall predictive accuracy of the model is remarkable.

Graph 4: Power, Capacity, and Predicted Compliance



These findings indicate some pathways for future research. *First* of all, our findings point to the importance of disentangling specific variants of each approach. Within the enforcement approach, both the assertiveness and the deterrence variant had to be rejected, while the recalcitrance approach turned out to have explanatory power for the occurrence of non-compliance. The same holds true for the management approach, in which only the capacity of a government to mobilize existing resources seems to be causally related to the number of infringements between member states. With regard to the legitimacy approach, only the support for the rule of law variant might have some potential to explain member states' non-compliance with European law. However, all variants are also closely related to each other and definitely not mutually exclusive.

Second, our findings demonstrate the added value of combining specific aspects of different theoretical approaches to explain non-compliance with law beyond the nation-state. We found interactive effects of variables from the enforcement and management approaches on compliance behavior. Legitimacy, by contrast, turned out to have poor explanatory power. But there may be other ways of theorizing and testing the relation between the support for EU institutions and compliance performance than by linking it to government capacity. In other words, the legitimacy

approach could still have explanatory power in its own right. After all, we only tested two variants of the legitimacy approach and did not include factors, such as procedural fairness or peer pressure.

Third, our integrated model has at least one 'outlying' member state whose compliance record cannot be adequately accounted for by the combination of power- and capacity-centered models. Spain performs better than predicted having an overall medium level of infringements. Explaining this counter-intuitive and unexpected finding requires an in-depth qualitative analysis, which is beyond the scope of this paper.

Fourth, while the overall fit of our integrated model is quite good, a significant amount of variation still remains to be explained. Part of the reason may be that the compliance literature in International Relations has largely neglected policy-centered explanations as developed in the early implementation literature (Pressman and Wildawsky 1973; Mazmanian and Sabatier 1981). International Relations approaches focus on country variables, such as power, capacity, and legitimacy, but neglect that these variables can vary within states. Our empirical findings suggest that there are additional important explanatory factors. Non-country-based refinements of the enforcement and management approaches highlight variables, such as policy-specific capacities (e.g. budgets of different ministries) or variation in the issue salience, which influences governmental incentives to be recalcitrant or deter the European Commission. While they might explain why governments violate one legal act rather than another, issue-specific variables cannot easily be quantified. This can only be done through qualitative research that traces the processes of compliance failure in the member states. Such studies could also take a closer and more fine-grained look at the role of 'misfit'. Our analysis considered incompatibilities between national and European legal act as the necessary (but not sufficient) condition for non-compliance to occur. Hence, misfit was considered as being binary: either the need for legal and administrative adaptations at the national level was present or absent. Qualitative case studies, by contrast, could focus on the depth of misfit and explore the domestic cost-benefit implications of compliance with specific legal acts in greater detail. This would allow us to inquire how many and what types of resources a state needs to invest in order to comply with EU law. In particular, states with low capacities might be tempted to violate those legal acts, which require extraordinary amounts of investment, while they re-distribute their scare resources to comply with less costly directives and

regulations. Thus, 'bringing policy back in' could be a fruitful way to account for variations within individual states and between policies or specific norms (Broscheid and Coen 2006).

Fifth, this study only focused on the EC 12. Our data did not allow us to assess the compliance of the 15 states that have joined the EU since 1995. We can only speculate on the implications of our integrated power-capacity model for their expected compliance performance. First of all, this study demonstrated that capacities are crucial for good compliance records. The Central and Eastern European (CEE) countries, which became members in 2004 and 2007, respectively, have considerably less capacities than the EC 12 as well as Austria, Finland, and Sweden, which joined in 1995. Even if we compare the newcomers with Southern member states, such as Greece and Portugal, a significant capacity gap is evident. In this respect, the CEE countries form a group of their own. Next to their low capacities, they do not yield much economic and political power (with the exception of Poland) in the EU either. Given capacity shortcomings and the lack of power of recalcitrance, our integrated model expects medium levels of non-compliance for the new member states. And indeed, both the European Commission's infringement data and recent research suggest that the new member states do not belong to the group of compliance laggards. They have so far been subject to fewer infringement proceedings than the old member states and have generally been faster in settling their non-compliance cases (Sedelmeier 2006). One has to bear in mind, however, that due to the short time period of membership, the new members' infringement proceedings can only capture the delayed or incorrect transposition of directives into their domestic legal systems. It is too early to assess the actual application of EU law in practice. Moreover, in the light of our model, the relatively good transposition records of new member states are even less puzzling when one takes into consideration that pre-accession conditionality gave the Commission a powerful tool to enforce compliance with the *acquis communautaire*. Moreover, the CEE countries received financial and technical assistance – e.g. via pre-accession funding and twinning programs – to help them cope with the burden of compliance. Next to a substantial transfer of resources, the EU has also put a major emphasis on the fight against corruption and the build-up of bureaucratic efficiency more generally (Sissenich 2007). Viewed from that angle, capacity-building as a means to restore compliance has already been applied in the case of Eastern enlargement. Now, it remains to be seen to which extent our integrated model can account for future violations of the new member states in the area of practical application.

Finally, what does the EU teach us about non-compliance in international politics? The EU is often regarded as a system *sui generis,* whose unique supranational properties (e.g. supremacy and direct effect of European law) (Alter 2001) preclude generalizations to other international institutions. However, if we adopt a fine grained enough perspective, any political institution ultimately appears to be one of its kind. To make fruitful comparisons, we need to climb up the ladder of abstraction (Sartori 1991). While the EU is the most legalized system in the world (Alter 2000, 490), institutionalized compliance mechanisms can also be found elsewhere (Mitchell 1996, 17-20; Smith 2000, 139-140; Peters 2003). Thus, our study has three important implications for compliance with law beyond the nation state.

First, states with both low capacities (in terms of bureaucratic efficiency) and high shares of power are likely to be compliance laggards and delimit the power of law beyond the nation state. They lack the capacity to easily comply with international law and, at the same time, are not willing to introduce major resource-redistributions and investments, but rather rely on their ability to resist enforcement pressure.

Second, the twinning of management and enforcement instruments is, indeed, an effective way to restore compliance (Tallberg 2002, 632). The combination of managerial dialogue, capacity-building, and penalties addresses the two major sources of non-compliance identified by our study. However, two caveats remain: The managerial instrument of capacity-building is not sufficient in restoring compliance if it merely entails the transfer of resources to non-compliant states. Rather, it is essential to foster bureaucratic efficiency, e.g. by promoting anti-corruption measures as part of 'good governance'. Moreover, even highly legalized institutions do not fully mitigate power differences between states. The very fact that the EU compliance system has a centralized enforcement mechanism, which imposes financial penalties upon governments, does not preclude such generalizations to other international organizations, such as the World Trade Organization (WTO) and the Andean Community, where monitoring and sanctioning powers are also delegated to third parties (Smith 2000) but which usually recur to a decentralized enforcement mechanism, which affects economic actors rather than governments. Actually, financial sanctions have much more frequently been invoked by the WTO than in the EU, where member states have so far only been required to pay lump sums for non-compliance in three cases. The latter is even less significant given that the EU's financial penalties are relatively low and do not pose a serious macro-economic threat to member states, while the WTO penalties

can be much more severe in terms of their economic impact. This would imply that the deterrence effect of the EU's enforcement mechanism vis-à-vis states should not be necessarily higher than in the WTO and that the WTO member states should actually shy away more quickly from sanctions than EU member states.

Third, there is indeed one factor that may limit generalizations from the EU case to other international organizations. Even though there is a gap in capacities and power between the member states, the EU consists of a group of relatively homogenous states, which face a globally unique level of political and economic integration. By contrast, the membership of other international organizations and regional integration projects, such as ASEAN or NAFTA, is much more heterogeneous in terms of economic strength and financial or administrative capacities (e.g. compare the US and Mexico within NAFTA). This applies even more to the regime types of the member states, their economic development, as well as their respect for human rights and the rule of law. This paper cannot explore the role of these potential background variables since they are constant within our dataset. Future research should focus on these economic and political factors and inquire whether they affect the explanatory value of the integrated power-capacity model and to which extent they account for unexplained variation.

6 Literature

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