Recalcitrance, inefficiency and support for European integration: Why member states do (not) comply with EU law

– Very first draft, comments most welcome –
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Tanja A. Börzel, Meike Dudziak, Tobias Hofmann, Diana Panke, and Carina Sprungk

Authors’ Address:
Center for European Studies
Otto-Suhr-Institute for Political Science
Free University of Berlin
Ihnestr. 22
D-14195 Berlin

Tel.: +49 30 838-54830
Fax: +49 30 838-55049

http://www.fu-berlin.de/europa
Abstract

In this paper we test the explanatory power of three approaches – enforcement, management, and legitimacy – for the frequency of non-compliance with EU law among the EU member states. We develop three groups of hypotheses and test them quantitatively using a database on non-compliance with EU law. Our analysis shows that violations occur most often in member states that are politically powerful, have little administrative resources, and have a high level of public support for European integration and trust in European institutions. The paper concludes with a suggestion on how these variables can be fruitfully combined in order to explain the occurrence and frequency of member state’s violation of European law.
1. Introduction

A major function of international institutions in facilitating “governance beyond the nation state” 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 et al. 1988).

Unlike states, international institutions cannot rely on a legitimate monopoly of force to facilitate compliance. There are compliance-inducing mechanisms, (such as sanctions for violating regime principles or rules), but they 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). This puzzle of cooperation under anarchy has been largely solved (Axelrod and Keohane 1986). It remains unclear, however, why some international norms and rules are more effective than others and why the propensity for rule violation differs between states.

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 ideal 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 test case for non-compliance. Moreover, it offers a rich field for empirical research, since non-compliance cases are comprehensively documented in the Commission’s annual reports according to the nature of non-compliance, the type of law infringed on, the policy sector to which the law pertains, the violating member states, and the measures taken by EU institutions in response to non-compliance.

In order to explain the frequency of non-compliance with EU law among the member states, this paper inquires the explanatory power of the enforcement, management, and legitimacy approach. Enforcement approaches assume that states violate international norms and rules voluntarily because they are not willing to bear the costs of compliance (Martin 1992, Martin
and Simmons 1998; Downs et al. 1996, Downs 1998). Increasing external constraints can alter strategic cost-benefit calculations of rule addressees and lead to a change of their preferences over strategies eventually resulting in compliance. By contrast, management approaches argue that non-compliance is involuntary (Putnam 1988; Chayes et al. 1998; Chayes and Handler Chayes 1993; Zürn 1997). States are willing to comply but do not have the necessary resources (technology, expertise, administrative manpower, financial means, etc.). Rule specification and/or more time for implementing rules are also to be considered as reasons for an involuntary non-compliant behavior. The third approach – legitimacy – argues similar to enforcement theories that non-compliance occurs voluntarily. But, unlike management and enforcement approaches, legitimacy draws on persuasion and learning mechanisms. Compliance is not a matter of sufficient material resources or a question of costs and benefits of rule confirming behavior but depends more on whether a rule is accepted as a standard for appropriate behavior.

For analyzing the explanatory power of the three approaches, the paper proceeds in the following steps. First, we outline our empirical puzzle (section 2). Drawing on a database on infringement proceedings opened by the European Commission against the member states, we find that there is significant variation over time with regard to the occurrence of member states’ violations of EU law. In order to account for the observed variation, we turn to our three compliance approaches (enforcement, management, and legitimacy) and develop competing hypotheses for explaining non-compliance with EU law (section 3). We then test these hypotheses using advanced econometric methods (section 4). The empirical findings show that a combined model of the enforcement and the management approach turns out to have the highest explanatory power. The paper concludes with a summary of the main findings and some considerations on future research.

2. Do Member States Obey? Non-Compliance with EU Law

Several studies have shown that non-compliance with European law occurs frequently (Börzel 2001, Tallberg 2002). However, most compliance and implementation studies develop their own assessment criteria and collect their empirical data in laborious field research (Knill, 1997: 1-45; Knill, 1998: 1-28; Duina, 1997: 155-179). As a result, a comparison of empirical

The annual reports contain information on the legal action the Commission brought against the member states. Article 226 ECT (ex. Art. 169) entitles the Commission to open infringement proceedings against member states suspected in violation of European law. This infringement proceeding consists of the following stages. The first two, suspected infringements (complaints, petitions, etc.) and Formal Letters, are considered informal and treated largely as confidential. The official infringement procedure (Art. 226) 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 (Art. 228 ECT, ex-Art.171), which may result in financial penalties. Article 228 proceedings consist of the same stages as Art. 226 proceedings but the ECJ has the possibility to impose a financial penalty (cf. Börzel 2001).

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. Infringement proceedings present only a fraction of all instances of non-compliance, and we have no means to estimate their real number. 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. But 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 (cf. Börzel 2003a: 11-12).

14). In the framework of our research project, we have been conducting an expert survey, which asks policy makers, civil servants, 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 with the relative distribution of infringement proceedings so far, we are confident that our data do not contain any systematic biases.

Yet, the Commission data are the only statistical sources available. Neither states nor other International Organizations provide such comprehensive information on issues of non-compliance. The database on which this paper draws is therefore based on a dataset including all the infringement proceedings officially opened by the European Commission against member states between 1978 and 1999 as covered by the *Annual Reports on Monitoring the Application of Community Law*. It contains the individually listed cases of Reasoned Opinions, Court Referrals, and Court Rulings. The 6230 cases are classified by infringement number, member state, policy sector, legal basis (celex number), legal act, type of infringement, and stage reached in the proceedings.

The dependent variable of our analyses captures member states’ non-compliance with European law and is operationalized as infringements on European law per legal act in force at the time of violation in %. This variable measures the number of yearly infringements on European law by EU member states, and controls for the number of European legal acts that can be potentially infringed on. We cannot simply take the rising number of infringement proceedings as an indicator for non-compliance. Between 1978 and 1999, the Commission opened more than 16000 infringement proceedings. At the same time, the number of legal acts in force has more than doubled (from less than 5000 to almost 10000). In order to control for the growing number of legal acts that can be potentially infringed on, we use the relative infringements per legal act rather than the absolute number of infringements per member state. Unlike other studies, we thus avoid problems of time trends (ever-growing number of legal acts) and structural breaks caused by political events, such as the completion of the Internal Market, as well as autocorrelation and prima facie significant correlations (spurious correlations), which frequently haunt panel and time series analyzes (cf. Banerjee et al. 1993; Enders 2004).

When mapping member states’ non-compliance with EU law, we find significant variation (graph 1). Member states can be divided into three groups: leaders, laggards, and the middle-
field. The three Scandinavian member states, the United Kingdom, and the Netherlands rarely violate European law. The Southern countries (including France) – with the exception of Spain – and Belgium seriously lag behind. The rest of the member states range in between forming the middle-field. Analyzing this pattern more closely, we also find that it is virtually constant over time. Leaders stay leaders and Italy always belongs to the group of member states with the worst compliance record. Graph 1 does not only present the ranking of the member states. It also shows, for example, that Italy receives on average almost one reasoned opinion from the Commission per 100 legal acts in force each year whereas the Scandinavian countries infringe on only one out of 1000 legal acts.

Graph 1: Annual Reasoned Opinions per Legal Act (in %) by Member States, 1978-99

The distribution of non-compliance between member states is puzzling in two ways. First, the EU is a highly legalized institution (Abbott et al. 2000; Keohane et al. 2000). This is due to the obligation of states to report national legal measures for implementing EU law to the Commission and the Commission’s power to open obligatory infringement procedures against reluctant states, which may end with binding Court rulings and financial penalties. High legalization should deter states from violating European law, since the likelihood of being detected and punished increases considerably. Yet, we find that member states’ violations of
EU law occur frequently. Why do states not comply with European norms, even though the degree of legalization and the likelihood of being detected are very high?

Second, although the institutional design of the EU’s infringement procedure is constant, non-compliance rates differ enormously between states. Why, for instance do euro-skeptical countries like Denmark, Sweden, or Finland comply better with European law than states which are highly supportive of European integration, such as France, Italy, or Belgium. Or, why do small countries violate European law less frequently than more powerful states, even though the latter have a greater capacity to shape legal norms and rules according to their preferences?

How can we account for the observed variation of non-compliance between member states? In order to solve the empirical puzzle of differences in member states’ propensity to violate European rules, we discuss three of the most prominent compliance approaches, which focus on state-centred explanatory factors. We then derive hypotheses and test them systematically using quantitative methods.

3. Why Member States Do not Obey: Three Compliance Approaches

For explaining why there is significant variation between member states with regard to their level of (non-)compliance with European law, we have to focus on state-centered theories like the enforcement, management and legitimacy approaches which respectively emphasize the role of the power (enforcement) and capacity (management) of states or focus on the changes to actors’ preferences and identities through processes of learning and persuasion (legitimacy).

However, before we can turn to the discussion of the different approaches to (non-) compliance, we have to notice that most approaches share one major assumption: Only “inconvenient” European norms give rise to compliance problems because only they generate significant pressure for adaptation, which states are either not willing or able to satisfy. By contrast, European norms that fit domestic regulatory standards, political and administrative institutions, problem solving approaches, and collectively shared identities are unlikely to
result in non-compliance in the first place.² Börzel and Risse argued that misfit is the necessary but not sufficient condition for non-compliance (Börzel and Risse 2002, 2003). However, there is no consensus on the degree of misfit or pressure of adaptation that is necessary or likely to cause problems of non-compliance (Knill and Lehmkuhl 1999).

*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 (Martin 1992, Martin and Simmons 1998; Downs et al. 1996, Downs 1998). In this perspective, increasing external constraints can alter strategic cost-benefit calculations of rule addressees and finally lead to a change of their preferences over strategies. States can be regarded as being the more sensitive to these costs the less political or economic power they have.

The *management approach* relies on the assumption that non-compliance is involuntary. Even if states would like to comply with a European rule, they are prevented from doing so if the very preconditions that enable states’ actions (qualifying as compliance) are absent. There are 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 Handler Chayes 1993, 1995). While the managerial school attributes equal influence to capacities, precision of norms and transposition timetables, our quantitative tests (Börzel et al. 2005, Börzel et al. 2004) revealed that only capacity contributes to the explanation of the distribution of non-compliance among member states. Therefore, we focus on capacity within this paper.

There are several ways on how *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 (peer pressure) (Finnemore 1998). In this perspective, states are “pulled” into compliance (Franck

² Cf. Keohane 1984; Breitmeier 1995; Cortell and Davis. 1996; Checkel 1997; Duina 1997; Ulbert 1997; Keck
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 (peer pressure). Third, legitimacy can also result from certain procedures that include those actors in the rule-making that are potentially affected (procedural legitimacy) (Dworkin 1986; Hurrell 1995; Franck 1995; cf. Franck 1995). While both the procedural legitimacy and the peer pressure hypothesis make assumptions about 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 the law-making and standing. For reasons of scope, we focus in this paper on the first approach.

3.1. Enforcement

Enforcement approaches theorize that non-compliance can only be prevented by increasing the costs of non-compliance (Martin 1992, Martin and Simmons 1998; Downs et al. 1996, Downs 1998). Recent literature has yet provided evidence for the importance of disentangling different variants of the enforcement approach (Abbott et al. 2000; Garrett et al. 1998; Giuliani 2003; Horne and Cutlip 2002), allowing for a more differentiated assessment of the effect of a state’s power on its compliance record with law beyond the nation-state.

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

The most prominent reading of the enforcement approach takes a state-centered perspective and assumes that increasing external constraints can alter strategic cost-benefit calculations of rule addressees and finally lead to a change of their preferences over strategies {Martin, 1992 #1633} {Downs, 1996 #1424}. States can be regarded as being sensitive to these costs if they have less political or economic power than other states, the latter being more resistant to external pressures. With regard to our dependent variable, we would then expect that the more sensitive EU member states are to external constraints imposed upon them, the less likely do they infringe EU legal acts at all and accordingly the smaller is their number of infringements compared to less cost-sensitive, i.e. more powerful member states. Hence, the political and economic weight of a state allows it to be recalcitrant regarding the effective implementation of law beyond the nation-state. It thus focuses on the extent to which power translates into

indifference or resistance vis-à-vis external constraints imposed on states during the stage of implementation, be they reputational or material. The mechanism of recalcitrance thereby predicts a positive relationship between the power of a state and its non-compliance record. The first enforcement hypothesis (H1a) expects that more powerful states infringe law beyond the nation-state more often than weaker states.

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

Another variant of the enforcement approach focuses on states but attributes less weight on the stage of implementation and stronger weight on the decision-making process. According to this line of argumentation, high power results in a better record of compliance with law beyond the nation-state, if we adopt a broader view of the legislative procedure. In this perspective, the power of a member state does not only deploy an impact in the implementation stage (resulting in recalcitrance), but also in the stage of decision-making (Abbott et al. 2000; Garrett et al. 1998; Giuliani 2003; Horne and Cutilp 2002). Here, the political and economic weight of a member state is closely related to its assertiveness, i.e. its ability to shape the legal act according to its preferences (Giuliani 2003; Kassim et al. 2000, 2001). The extent to which a state has managed to impose its preferences during negotiating procedures determines the costs of implementation and thereby the state’s willingness to comply with the decision ex post. Hence, if power is defined as assertiveness in the decision-making procedure, a second enforcement hypothesis (H1b) expects that more powerful states infringe law beyond the nation-state less often than weaker states.

**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 other strands of the enforcement literature which emphasize yet another causal mechanism. According to this line of argumentation, the political and economic weight of a state can translate into a 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 et al. 1998; Horne and Cutilp 2002). Like the hypothesis about the recalcitrance of powerful states, the deterrence hypothesis stresses the relationship between the non-compliant state and the enforcement authority. But rather than conceptualizing the power of the non-compliant state as determining its reaction to actions of the enforcement authority, it explains the behavior of the enforcement authority in the first place. The fact that the enforcement authority is to a certain extent dependent on the deviant (Horne and Cutilp 2002: 301) might
result in a certain reluctance to actually impose sanctions. Regarding the case of the European Union, the European Commission or the European Court of Justice (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 making predictions about the probability with which violations are officially detected and sanctioned, not about the actual occurrence and prevalence of non-compliance.

Regarding our dependent variables, we would have to slightly modify our focus in order to test the deterrence hypothesis. The third enforcement hypothesis (H1c) expects that the more powerful a state is, the less probably are its cases of non-compliance officially detected and sanctioned, since enforcement authorities are deterred.

Table 1: Overview of the Enforcement Hypotheses

| Power of recalcitrance (H1a): Powerful states infringe European law more often than weak states, since they are less sensitive to costs imposed by sanctions. | Power of assertiveness (H1b): Powerful states infringe EU law less often than weak states, since they have been able to decrease the costs of compliance by shaping the law according to their preferences. | Power of deterrence (H1c): Powerful states are less likely to be officially detected and sanctioned for infringements against EU law, since the Commission as enforcement authority is deterred by them. |

Operationalization of the Independent Variables

In order to test for the influence of the power of recalcitrance on non-compliance, we incorporate two power indicators into our analyses. 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. The data come from the World Bank (2004). Direct EU specific political power can be either operationalized via the proportion of votes under QMV (qualified majority voting) in the Council of Ministers (“votes”) or calculated as the proportion of times when a member state is pivotal (and can,
thus, turn a losing into a winning coalition) under QMV (“SSI”) (Shapley and Shubik 1954; Rodden 2002).

3.2. Management

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 Handler Chayes 1995; Jaenicke and Weidner 1997; Haas 1998). Yet, the term ‘state capacity’ is not used uniformly in the literature and its operationalization differs as well. State or 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; Zürn 1997; 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). Thereby domestic veto player come to the fore, which block the implementation of international rules because of the costs they have to (co-) bear (Putnam 1988; Moravcsik 1997; Duina 1997; Haverland 1999). 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. With respect to the legal transposition of European norms into national legal acts, government autonomy (political capacity) and government capacity (administrative capacity) are necessary for the production as well as 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 the lower government capacity, the more difficult it becomes for a member state to completely comply with European legal norms. Hence higher rates of non-compliance can be expected for states with low government autonomy and capacity.
Table 2: Overview of the Management Hypotheses

<table>
<thead>
<tr>
<th>Government autonomy (H2a):</th>
<th>Government capacity (H2b):</th>
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<tbody>
<tr>
<td>States with a low level of government autonomy infringe European law more often than more autonomous states, since veto players might block or delay decisions.</td>
<td>States with a low level of government capacity infringe EU law more often than states with a high level of capacity, since they do not have the material resources to comply.</td>
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</table>

Operationalization of the Independent Variables

To test for the influence of government capacity on the distribution of non-compliance (cf. H2b), we include four indicators that are prominent in the literature. First of all we incorporate the variable “expenditure”. This rests on the assumption that the more a state spends on civil servants relative to the gross domestic product, the more human resources it has at its disposal for implementation and enforcement. The data for this quantitative indicator of human resources was collected by Cusack et al. (1989) and Cusack (1998). The second variable follows Mbaye (2001), who used data from Auer et al. (1996) to create an index of bureaucratic efficiency and professionalism of the public service (“efficiency”). 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. As a third indicator of government capacity we use corruption as measured by the inverse of the Corruption Perception Index (“CPI”) of Transparency International. The fourth and final capacity indicator is GDP per capita (“GDPpc”). The data come form the Word Bank (2004). Other variables – such as the World Bank governance indicators by Kaufmann et al. (2002) – are not used due to the fact that they cover only part of the time period analyzed in this paper or their limited applicability to comparative studies within the OECD world.

Government autonomy is important, too. A high number of actors with the potential of blocking political decisions has a crucial influence on the government autonomy. It reduces the likelihood of making the necessary changes to the status quo for the implementation of costly rules (Scharpf 1988; Alesina and Rosenthal 1995; Tsebelis 2002). As expected by hypothesis H2a, the number of veto players should increase the probability of infringements in the process of legal implementation of European legal acts. 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 two alternative veto player indices (“checks” and “polcon”) which allow for the interests of veto
players in such a way that interdependences between veto players and the respective political system are taken into consideration. These indices were developed by Beck et al. (2001) and Henisz (2002) and are 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 precludes arbitrary changes of the extant policies or produces gridlock and so undermine the ability of the government to change policies when such change is needed. Two alternative indicators of government autonomy are the executive control of the parliamentary agenda (“excontrol”) as measured by Döring (1995) and Tsebelis (2002) and the parliamentary oversight of government (“parliament”) (Harfst and Schnapp 2003). The variable “excontrol” measures the extent to which the government can successfully initiate drafts and rely on stable majorities for in the legislative branch. The control of the legislative by the executive is the stronger, the less veto players there are. The variable “parliament” measures the material (e.g. number of Committees) and ideational resources relevant for the oversight of the legislative on the government.

3.3. Legitimacy

If states challenge the validity of a norm or rule because they act according to logic of appropriateness, sanctions are futile and capacity building is unnecessary. Legitimacy of the rule-setting institution creates a compliance pull by fostering a certain logic of appropriateness, which leads to the acceptance of rules (Franck 1990). The acceptance of the rule-setting institution hypothesis can itself be disentangled into two different variants which stress different institutional aspects.

Rule of Law

Legal sociological studies refer to the relation between national legal cultures and their inclinations for compliance (Gibson and Caldeira 1996; Jacob et al. 1996). Legal cultures comprise 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). 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 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. Consequently, even ‘inconvenient’ rules will principally be complied with. The corresponding hypothesis states that the lower the support for the principle of the rule of law, the more probable are infringements.

Support and Trust
The explanation of rule-conforming behavior due to diffuse support can not only refer to the acceptance of the law as a means to the 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 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). Therefore, the second hypothesis states that the higher the acceptance of the rule-setting institution, the less infringements are expected.

Table 3: Overview of the acceptance of rule-setting institution hypotheses

<table>
<thead>
<tr>
<th>Rule of law (H3a):</th>
<th>Support and trust (H3b):</th>
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<tr>
<td>The lower the support for the principle of the rule of law, the more probable are infringements.</td>
<td>The higher the acceptance of the rule-setting institution, the less infringements are expected.</td>
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</table>

Operationalization of the Independent Variables
In principle, the operationalization of the rule of law hypothesis is unproblematic. The extent of the support for the rule of law can be quantified on the basis of opinion poll data (“rule of law”). Yet, available data are poor. Unfortunately, the Kaufmann et al. (2002) rule of law data do not cover the time period analyzed. Therefore, we use James L. Gibson’s and Gregory A. Caldeira’s opinion poll survey data. However, they only provide data for the twelve member states of the EC (cf. 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”.

Data on trust in institutions are available from Eurobarometer surveys. The acceptance of European institutions can be quantified by two corresponding questions. The first of the two
selected questions refers to the support of the membership of one’s own country in the European Union (“support”), the second question asks for one’s confidence in the European institutions (“EU trust”).

4. Empirical Results

In this section we report the results of our quantitative tests of the effects of power, capacity, and legitimacy on non-compliance. We discuss the findings in turn, referring to the separate enforcement, management, and legitimacy models 1-9 of table 4 as well as the results from the two integrated models 11 and 12, which estimate the influence of each of the theoretical approaches simultaneously controlling for the influences of the other approaches. Models 11 and 12, respectively, comprise the most promising variables of each theoretical account. The only difference is the interaction term between political power and capacity included in model 12.

The integrated model 10 (table 4) consists of all the variables from the separate enforcement, management, and legitimacy models 2, 6, and 9. Due to problems of multicollinearity – caused by relations between variables and aggravated by a comparatively small sample size – individual p values are misleadingly high.

3 The regression results were generated using the econometrics package Intercooled Stata 9.1. We tested for first- and higher order autocorrelation. None was found. Problems of panel heteroscedasticity were counteracted by the use of panel corrected standard errors (PCSEs) (Beck and Katz 1995). As to unobserved heterogeneity, we decided against the use of fixed effects in accordance with Plümper et al. (Plümper et al. 2005). Especially the simultaneous use of dummies (categorical variables with only two values) 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 statistically “explain” that part of variance which is most interesting from a comparative point of view without giving a substantial explanation why countries differ with respect to their constants. Last but not least fixed effects consume degrees of freedom on a big scale and inflate (traditional) measures of model fit.

4 Within these models, we test the hypotheses derived from the three theoretical approaches using the independent variables introduced above. As approaches comprise several hypotheses (e.g. the management account takes government autonomy and capacity into account as determinants of non-compliance) and operationalizations overlap (e.g. EU specific political power is measured by the proportion of votes under QMV as well as the Shapley Shubik Index), we estimate first separately and then jointly multiple, differently specified models per approach.
Table 4: Capacity, Power, Legitimacy, and Infringements

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<th>Model</th>
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<td></td>
<td>Enforcement</td>
<td>Management</td>
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<td>Votes</td>
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<td>SSI^5</td>
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<td>(0.006)</td>
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<tr>
<td>GDP</td>
<td>-0.000***</td>
<td>-0.000***</td>
<td></td>
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<td></td>
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<tr>
<td>GDPpc</td>
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<td></td>
<td>(0.000)</td>
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<td>Expenditure</td>
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<td></td>
<td></td>
<td>(0.009)</td>
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<tr>
<td>Efficiency</td>
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<td>-0.195***</td>
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<tr>
<td></td>
<td>(0.045)</td>
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<td>(0.040)</td>
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<td>CPI^6</td>
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<td>0.051**</td>
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<td>(0.218)</td>
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<td>(0.034)</td>
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<td>(0.049)</td>
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<tr>
<td>Parliament</td>
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<tr>
<td>Rule of law</td>
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<tr>
<td>Support</td>
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<tr>
<td>EU trust</td>
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<tr>
<td>National trust</td>
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<td></td>
</tr>
<tr>
<td>SSI *</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Efficiency</td>
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<tr>
<td>Constant</td>
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<td>0.620***</td>
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<td>0.464***</td>
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<td></td>
<td>(0.045)</td>
<td>(0.041)</td>
<td>(0.144)</td>
<td>(0.108)</td>
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<td>(0.261)</td>
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<td>260</td>
<td>119</td>
<td>260</td>
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<td>167</td>
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<td>0.14</td>
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<td>0.55</td>
<td>0.73</td>
<td>0.72</td>
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<td>0.00</td>
<td>0.12</td>
<td>0.05</td>
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</tr>
</tbody>
</table>

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.

^5 Shapley Shubik Index
^6 Inverse Corruption Perception Index
Table 4: Capacity, Power, Legitimacy, and Infringements (continued)

<table>
<thead>
<tr>
<th>Model:</th>
<th>(7)</th>
<th>(8)</th>
<th>(9)</th>
<th>(10)</th>
<th>(11)</th>
<th>(12)</th>
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<tr>
<td></td>
<td>Legitimacy</td>
<td>Integrated</td>
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<tr>
<td>Votes</td>
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<tr>
<td>SSI</td>
<td>0.041*** (0.009)</td>
<td>0.034*** (0.005)</td>
<td>0.049*** (0.008)</td>
<td></td>
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<tr>
<td>GDP</td>
<td>-0.000 (0.000)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GDPpc</td>
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<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Efficiency</td>
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<td>-0.130*** (0.020)</td>
<td>-0.050* (0.029)</td>
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<tr>
<td>CPI</td>
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<td>Excontrol</td>
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<td>Parliament</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Rule of law</td>
<td>-0.011*** (0.002)</td>
<td>-0.009** (0.004)</td>
<td>0.003 (0.010)</td>
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<td></td>
<td></td>
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<tr>
<td>Support</td>
<td>0.005*** (0.001)</td>
<td>0.005*** (0.002)</td>
<td>-0.000 (0.002)</td>
<td></td>
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<tr>
<td>EU trust</td>
<td>-0.003* (0.002)</td>
<td>-0.006** (0.003)</td>
<td>0.007** (0.004)</td>
<td>0.006** (0.003)</td>
<td>0.001 (0.003)</td>
<td></td>
</tr>
<tr>
<td>National trust</td>
<td>-0.021*** (0.003)</td>
<td>-0.017*** (0.003)</td>
<td>-0.012** (0.005)</td>
<td>-0.011*** (0.003)</td>
<td>-0.011*** (0.003)</td>
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</tr>
<tr>
<td>SSI * Efficiency</td>
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<td></td>
<td></td>
<td></td>
<td>-0.011*** (0.003)</td>
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<td>Constant</td>
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<td>1.452*** (0.170)</td>
<td>1.910*** (0.322)</td>
<td>0.415 (0.700)</td>
<td>0.537** (0.267)</td>
<td>0.554** (0.265)</td>
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<tr>
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<td>206</td>
<td>194</td>
<td>137</td>
<td>206</td>
<td>206</td>
</tr>
<tr>
<td>Adj. R²</td>
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<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
</tbody>
</table>

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.
4.1. Enforcement

The results give support to the recalcitrance hypothesis (H1a). The political weight in the Council of Ministers (“votes” or “SSI”) has a significant effect on infringements per legal act. Member states with more Council votes violate European law more frequently than others (cf. table 4, models 1-2 and 11-12). In contrast to this effect of political power, greater economic power does not substantially affect a country’s compliance record (cf. table 4, models 1-2). The size of the economy does not matter when it comes to infringements on European law.

The assertiveness hypothesis (H1b) states that more powerful states infringe law beyond the nation-state 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 (H1a) above using the same indicators. The only difference is our expectation with respect to the signs of our independent power variables. As the results have already given support to the recalcitrance hypothesis, the assertiveness hypothesis (H1b) has to be rejected.

The deterrence hypothesis (H1c) predicts the same outcome as the assertiveness hypothesis (H1b), but draws on another causal mechanism, namely the likelihood that enforcement authorities shy away from officially detecting and enforcing compliance. Accordingly, the deterrence hypothesis would expect that powerful EU member states have less infringement proceedings opened for violations of EU law than weaker ones since the European Commission and the ECJ are deterred to a stronger extent.\(^7\) We operationalize the deterrence hypothesis in the same way as the recalcitrance hypothesis and use the same indicators.\(^8\) As the results have already given support to the recalcitrance hypothesis, the deterrence hypothesis has to be rejected.

4.2. 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

\(^7\) Independently from the size of state’s power, the Commission might treat some Member State more carefully than others because they might not want to encourage anti-European attitudes in Eurosceptic countries by officially shaming their government for violation European law (Jordan 1999).

\(^8\) To properly test the deterrence hypothesis, we would need the population of infringement cases and compare it to those infringements denounced by the Commission. However, we only have Commission data. Therefore, we cannot statistically test whether the Commission is systematically biased towards particular member states.
infringements (cf. table 4, models 3, 6, and 11-12). We can see that larger administrative
capacity brings about fewer violations of European law. The coefficient for the efficiency of
civil servants is negative and significantly different from zero; that of corruption is positive
and significant. This is in line with Mbaye’s (2001) findings. Both her analysis and our
analysis show bureaucratic efficiency to be the variable with the greatest explanatory power.
A state’s expenditure on its civil service, however, has no effect on non-compliance (cf. table
4, model 3). This is probably due to the fact that large administrative budgets and excessive
expenditure is the exact opposite of bureaucratic efficiency. Expenditure may not be an
indicator for a state’s implementation and enforcement capacity, but an indicator for the
inefficient use of (abundant) financial resources, waste, or even corruption, for which we
control with the separate indicator “CPI” that shows the expected sign.

Veto players as part of the government autonomy seem to have no effect or even to reduce the
number of infringements (cf. table 4, models 4-6). If anything, countries with several veto
players commit less violations of European law than countries with few veto players. The
literature offers two alternative explanations of why a high number of veto players could
decrease non-compliance with EU-law. First, countries with high numbers of veto players
belong to the type of consensual democracies (Lijphart 1999). High horizontal and vertical
power dispersion fosters the inclusion of diverse societal interests into political possesses and
outcomes (Lijphart 1999). It forces political actors to construct broad compromises and
comply with them, even in cases in which own interests are not fully included. In order to
avoid deadlocks, consensual democracies develop political cultures with inclinations towards
diffuse reciprocity. This fosters compliance with rules, even if they do not represent own
interests proportionally. Second, especially within consensual democracies it could be the
case that European legislation empowers actors who want to change the status quo but have
failed with their efforts to reform so far because of domestic resistance (Milner 1988,
Rogowski 1989, Börzel and Risse 2002). Yet another explanation for the apparent favorable
influence of veto players could relate to the fact that veto players are already involved in the
process of decision-making. If domestic veto players did not block the development and
resolution of a rule in the first place, there is no good reason for a blockade of its
implementation. However, this implies that all actors with potential veto power are actually
included into the negotiation process. This is not probable in the case of European rules.
Therefore, only the phase of domestic implementation offers all veto players the possibility to
block.
Just like the general veto player indices, parliamentary oversight of government measured as the legislative control over the executive (“excontrol”) correlates negatively with the number of infringements, but is not significant (cf. table 4, models 4-5). The indicator “parliament” seems to be the only institutional management variable that has at least some significant effect on the number of infringements. Strong control over the activities of the executive hinders the effective implementation of European law and therefore leads to more non-compliance. However, when integrating government autonomy and government capacity indicators into one model, “parliament” turns insignificant just to resurge in the fully integrated models 11 and 12. This indicates lack of robustness of the finding and somewhat questions the non-compliance promoting effects of parliamentary control.

In a nutshell, the government autonomy hypothesis (H2a) has to be rejected, while government capacity (H2b) seems to have a positive effect on the number of infringements of EU law.

4.3. Legitimacy

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 (H3a) (cf. table 4, models 7 and 9). 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, we should be careful because the Gibson and Caldeira (1996) data are incomplete. We would need better data for a more reliable statement about the influence of legal culture on the degree of compliance.

As to the question of the support for European institutions and the level of public support for the EU membership of one’s own country, we find mixed and contra-intuitive result (cf. table 4, 8-9 and 11-12). Taking into account the close relationship between the two variables, we find a significant positive correlation between public support for/trust in the EU and its institutions and infringements of European law. Contrary to hypothesis 3b, those countries, in which the population is particularly supportive of European integration, infringe more frequently on legal acts than EU-skeptic countries like Denmark, Sweden, and the United Kingdom, which comply particularly well with European law. However, this finding is only contra-intuitive on first sight. On the one hand, EU-skeptic countries may comply particularly
well with European law because they pay attention to the protection of their (national) interests in the forefront of a decision. Therefore, once an EU-skeptic country has agreed on the passing of a European law, the implementation of this European law is relatively unproblematic in this member state (Börzel 2003, Börzel et al. 2004). On the other hand, the legitimacy of an international rule and the associated inclination to comply may be 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 the results of our statistical analysis of trust in national institutions\(^9\) (cf. table 4, models 8 and 9; 11 and 12) and non-compliance. We find a strong negative correlation with non-compliance. Moreover, Sánchez-Cuenca (2000) convincingly shows that support for European integration is directly linked to lack of government capacity, lending support to the managerial argument (H2b). The finding that the difference between confidence in European and national institutions increases with increasing confidence in national institutions points in the same direction. The correlation between the two variables is negative and significant (-0.154**).

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).

In sum, the rule of law hypothesis (H3a) seems to be \textit{confirmed}, though data are incomplete. The support and trust hypothesis (H3b), on the other hand, has to be \textit{rejected}, since the results for support for EU membership and trust in EU institutions contradict our expected outcome, overall. However, drawing on another causal mechanism, we could reformulate the hypothesis: \textit{The higher the trust in EU institutions and support for EU membership, the more infringements can be expected} as support and trust are an expression for dissatisfaction with and mistrust in national institutions that lack capacities (not only) for the timely, complete, and correct transposition, application, and enforcement of European law.

\(^9\) To measure trust or confidence in national institutions (“national trust”), we use World Value Survey data.
4.4. Recalcitrance, Bureaucratic Efficiency, and Trust

Taking the three approaches together, we find that not only the bureaucratic efficiency as an indicator for government capacity reveals explanatory power for the infringements of European law. A country’s share of votes in the Council of Ministers (“votes” or “SSI”), as well as the level of support for European integration and trust in the EU institutions, have a significant effect on infringements per legal act. Member states with more votes and higher support rates and trust violate European law more frequently than others. In the following we will analyze the causal relationship between the three variables power, capacity and trust.

While – given H1a – the fact that a greater share of council votes makes countries less compliant with EU law is not surprising, the sign of the coefficient for public support contradicts the legitimacy hypothesis (H3b). 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 – can be explained: Confidence in national institutions is low in these member states compared with other countries (Klingemann 1999; Della Porta 2000). However, further tests have to demonstrate that this correlation is robust, as signs and significance of the estimated legitimacy coefficients vary in our analysis depending on model specification (cf. table 4, 8-9 and 11-12).

Research on political participation refers to a causal connection between the confidence that political institutions receive from the population and their problem-solving capacity (Norris 1999; Putnam and Pharr 2000). Applied 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, 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, low capacity 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 is depicted in graph 2.

**Graph 2: Capacity, Trust, and Infringements**

The managerial hypothesis (H2b) expects that all states with high capacity (Denmark, Finland, Germany, the Netherlands, Sweden, and the United Kingdom) should have a lower number of infringement proceedings opened as compared to states with low capacities. This corresponds to our empirical findings. Member states with high government capacity have better compliance records. The recalcitrance hypothesis (H1a) expects that powerful states have a higher share of non-compliance cases opened than weaker states, because they are less sensitive to costs imposed by sanctions. This hypothesis is supported by our data as well. Taken together, governmental capacity (H2b) and recalcitrance (H1a) are promising in explaining the distribution of non-compliance among member states.

Model 12 in table 4 tests whether we can combine the two hypotheses in order to develop an even more fine-grained explanation of non-compliance. To do this, we test for the existence of an interaction effect (“SSI * Efficiency”) between power and capacity, i.e. we check whether there is a differing effect of one independent variable on non-compliance, depending on the particular level of the other independent variable. In fact, we find that the interaction term of government capacity and EU-specific political power is negative and significant. Not only do less political weight and more bureaucratic efficiency reduce the number of infringements, but the joint presence of power and capacity has an additional compliance
promoting effect. Of course, this effect does not cancel out the negative influence of power on compliance. However, it significantly reduces it.

Considering our empirical findings and the expectations from hypotheses H1a and H2b, a two-by-two matrix can be developed (table 5). In general, the higher the capacity and the lower the power of a state is, the lower the level of infringements. Yet, our empirical tests suggest that capacity differences might matter more for the number of infringement cases opened than power differences. Hence, the two dimensions are not weighted equally. The level of infringements is higher for states with low than with high capacities. Given similar capacities, states with higher power more often violate EU law than states with low power. In addition, the detrimental effects of power are reduced by increasing capacity.

Cases in the second quadrant of table 5 (Denmark, Finland, the Netherlands, and Sweden) have high capacities but do not have political power. Hence, we would expect a lower level of infringements of these states as compared to all other member states. Our regression results show that the level of infringements should be medium to low in the first quadrant. Even though power is detrimental to compliance, the interaction of present power and capacity has a positive effect on compliance. Hence, we would expect Germany and the United Kingdom to have a good compliance record as well. Cases in the third quadrant are characterized by a combination of low governmental capacity and high power (in terms of votes). For these states (France, Italy, and Spain) we expect and find a high level of infringements as lack of capacity and strong political power bring together inability and lack of willingness to comply. The fourth quadrant, finally, contains states with low power and low governmental capacity. In line with our expectation, these states have the second highest share of opened infringements, since they do not have the capacity to comply but are sensitive to the costs of sanctions imposed by European institutions in consequence of non-compliance.
**Table 5: Capacity and Power Combined**

<table>
<thead>
<tr>
<th></th>
<th>High Power</th>
<th>Low Power</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>High Capacity</strong></td>
<td>Germany and the United Kingdom → medium to low level of infringements</td>
<td>Denmark, Finland, the Netherlands, and Sweden → low level of infringements</td>
</tr>
<tr>
<td><strong>Low Capacity</strong></td>
<td>France, Italy, and Spain → high level of infringements</td>
<td>Austria, Belgium, Greece, Ireland, Luxembourg, and Portugal → medium level of infringements</td>
</tr>
</tbody>
</table>

**5. Conclusion**

In this paper, we analyzed why some member states violate European legal acts more frequently than others. In a *first* step, we developed hypotheses based on three competing theoretical approaches. The management school of thought argues that non-compliance is involuntary and occurs when EU member states lack the necessary government capacity and government autonomy to properly and timely implement European rules. The enforcement approach provides three hypotheses on the importance of power for the distribution of non-compliance (recalcitrance, assertiveness, and deterrence). Researchers devoted to the study of legitimacy and non-compliance argue that neither power nor lack of capacity determines non-compliance, but that acceptance of rules as standards for appropriate behavior is the relevant independent 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.

In a *second* step, we extensively tested the empirical implications of all hypotheses, derived from these three theoretical approaches, with panel-econometrical methods. Our regression results show that capacity-centered, power-centered, and legitimacy-based models explain some of the variance of annual infringements per European legal act in force (cf. table 7). Combining those variables from all three approaches which have turned out to have the highest explanatory power in one integrated model, we explain more than 50% of the observed variance on the dependent variable. Even though one should not overstate the
informative value of the R-squared statistic, it still highlights the substantial explanatory power of our model.

Especially a combination of the recalcitrance (H1a) and the governmental capacity hypotheses (H2b) look very promising in explaining the empirical puzzle presented in section 2. Our quantitative analyses reveal that powerful states like France and Italy, who have a great share of votes in the council, are less sensitive to costs imposed by sanctions and therefore have a higher share of infringement proceedings opened than weaker member states. Countries with high capacities like Denmark, Finland, or the United Kingdom have a better compliance record than states with lower capacities. The managerial variable government capacity and the power of recalcitrance variable (“SSI”) turn out to be the most important variables in explaining non-compliance. States with high capacities and low political power infringe on EU law less frequently than other member states. In other words, the combination of low government capacity and great political power brings together inability to comply and the necessary political weight to be recalcitrant in the face of looming sanctions. Hence, we expect and find states like Italy or France, who have a great share of votes in the Council but are characterized by low government capacity, to have a comparatively high number of infringement proceedings opened.

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 seems to be causally related to the number of infringements between member states. With regard to the legitimacy approach, only the support and trust variant reveals robust results for explaining member states’ non-compliance with EU law. However, all variants are also closely related to each other and not necessarily mutually exclusive. This is particularly the case for the power-centered approaches, in which both the recalcitrance and the deterrence hypothesis refer to the relationship between the deviant and the enforcement authority. Thus, we could argue that the confirmation of the recalcitrance hypothesis does not only reveal insights about why member states do not comply, but that it could also be interpreted as the inclination of the enforcement authority to open infringement proceedings against powerful member states. However, this argument only holds true if we use...
infringement proceedings as a proxy for non-compliance. Further research has to focus on testing this argument by using different proxies. Secondly, our findings suggest going a step further and combine specific parts of competing theoretical approaches to explaining non-compliance with law beyond the nation-state. But while a combination of variables from the enforcement and the management approach turned out to have biggest explanatory power, we still have to find alternative ways for explaining the results of the legitimacy approach. Are there other ways of explaining the relationship between the low support for EU institutions in certain member states and their good compliance record than linking it to the government capacity? In other words, does the legitimacy approach have explanatory power in its own right? Thirdly, next to studying the why member states violate EU law in the first place, we should also focus on the prevalence of infringements. How come that some member states shy away from conflict with the European Commission while others do not even bother to comply with rulings of the ECJ? Why do some member states settle their infringement proceedings faster and at an earlier stage than others? Finally, while the overall fit of our integrated model, is quite good, a large amount of the variation remains unexplained. Moreover, our integrated model has two ‘outlier’ member states whose compliance record cannot be adequately explained by the combination of power- and capacity-centered models: Germany and Spain. While the latter performs better than predicted by the integrated model and has an overall medium level of infringements, the former has a worse compliance record than expected. Part of the reason why a lot of variation in non-compliance remains unexplained may be that the compliance literature in International Relations has largely neglected policy-related explanations as developed in the early implementation literature (Mayntz 1983). “Bringing policy back in” could also help to account for variations within individual states and between policy fields or specific norms (cf. Börzel 2001; Börzel/Panke 2005).
**Table 7: Summary of Our Empirical Findings**

<table>
<thead>
<tr>
<th>Hypotheses</th>
<th>Indicators</th>
<th>Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power of recalcitrance (H1a):</td>
<td>- Economic power (“GDP”)</td>
<td>Confirmed</td>
</tr>
<tr>
<td>Powerful states infringe European law more often than weak states, since they are less sensitive to costs imposed by sanctions.</td>
<td>- EU specific political power (“votes”, “SSI”)</td>
<td></td>
</tr>
<tr>
<td>Power of assertiveness (H1b):</td>
<td>- Economic power (“GDP”)</td>
<td>Rejected</td>
</tr>
<tr>
<td>Powerful states infringe EU law less often than weak states, since they have been able to decrease the costs of compliance by shaping the law according to their preferences.</td>
<td>- EU specific political power (“votes”, “SSI”)</td>
<td></td>
</tr>
<tr>
<td>Power of deterrence (H1c):</td>
<td>- Economic power (“GDP”)</td>
<td>Rejected</td>
</tr>
<tr>
<td>Powerful states are less likely to be officially detected and sanctioned for infringements against EU law, since the Commission as enforcement authority is deterred by them.</td>
<td>- EU specific political power (“votes”, “SSI”)</td>
<td></td>
</tr>
<tr>
<td>Government autonomy (H2a):</td>
<td>- Veto players (“checks”, “polcon”)</td>
<td>Rejected</td>
</tr>
<tr>
<td>States with a low level of government autonomy infringe European law more often than more autonomous states, since veto players might block or delay decisions.</td>
<td>- Executive control of the parliamentary agenda (“excontrol”)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Parliamentary oversight of government (“parliament”)</td>
<td></td>
</tr>
<tr>
<td>Government capacity (H2b):</td>
<td>- Financial resources (“GDPpc”)</td>
<td>Confirmed</td>
</tr>
<tr>
<td>States with a low level of government capacity infringe EU law more often than states with a high level of capacity, since they do not have the material resources to comply.</td>
<td>- Human resources (“expenditure”, “efficiency”)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Corruption (“CPI”)</td>
<td></td>
</tr>
<tr>
<td>Rule of law (H3a):</td>
<td>- Extent of support for the rule of law (“rule of law”)</td>
<td>Confirmed, but results are not robust</td>
</tr>
<tr>
<td>The lower the support for the principle of the rule of law, the more probable are infringements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support and trust (H3b):</td>
<td>- Support for EU membership (“support”)</td>
<td>Contra-intuitive result (positive correlation between support for European institutions and infringements of European law)</td>
</tr>
<tr>
<td>The higher the acceptance for the rule-setting institution, the less infringements are expected.</td>
<td>- Confidence in European institutions (“EU Trust”)</td>
<td></td>
</tr>
</tbody>
</table>
6. Literature


