Why Do States not Obey the Law?
Lessons from the European Union

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1. Introduction[1]

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

Unlike states, international institutions cannot rely on a legitimate monopoly of force to bring about compliance. This does not imply the absence of any mechanisms for compliance, but it does mean that sanctions for violating regime principles or rules have to be enacted by the individual member states (Young, 1979). In the early International Relations literature, the major puzzle of compliance used to be "why governments, seeking to promote their own interests, ever comply with the rules of international regimes when they view these rules as in conflict with [...] their myopic self-interest" (Keohane, 1984: : 99). The puzzle of "cooperation under anarchy" (Axelrod and Keohane, 1986: 226-254) has been largely solved. What remains unclear, however, is why some international norms and rules are more effective than others. Why is overall state compliance higher with respect to whale hunting than arms trading or developing aid? Why do some states comply with the principles and rules of an international institution and others do not? How do we account for such variations in compliance with international principles, norms and rules?

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

The first part of the paper is dedicated to the dependent variable of the study. It reviews the evidence presented in the literature on the increasing compliance failure in the European Union

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[1] The study forms part of a research project funded by the Emmy-Noether-Program of the German Research Foundation (DFG BO 1831/1-1); cf. www2.hu-berlin.de/compliance.

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

2. Do Member States Obey European Law? [2]

For more than ten years, the European Commission has been denouncing a growing compliance deficit, which it believes to threaten both the effectiveness and the legitimacy of European policy-making (Commission of the European Communities, 1990; Commission of the European Communities, 2000). While some scholars argue that the level of compliance with European Law compares well to the level of compliance with domestic law in democratic liberal states (Keohane and Hoffmann, 1990: 276-300: 278; Neyer, Wolf and Zürn, 1999), many consider non-compliance to be a serious problem of the EU that is systemic and pathological (Krislov, Ehlermann and Weiler, 1986: 3-112; Weiler, 1988: 337-358; Snyder, 1993: 19-54; From and Stava, 1993: 55-67; Mendrinou, 1996: 1-22; Tallberg, 1999). The contradicting assessments of member state compliance are partly explained by the absence of common assessment criteria and reliable data.

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[2] A previous version of the following sections has been published in the Journal of European Public Policy (**Börzel, T. A. 2001** 'Non-Compliance in the European Union. Pathology or Statistical Artefact?' *Journal of European Public Policy* 8 (5): 803-824.).

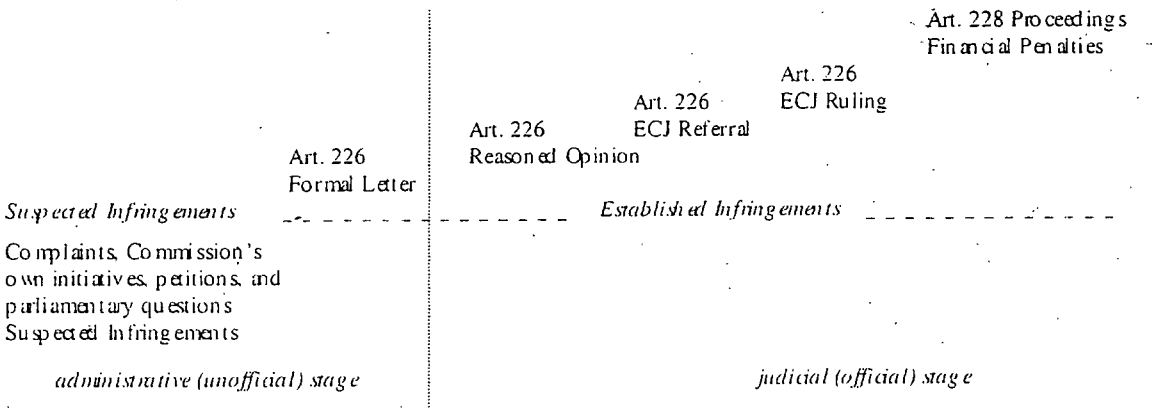
2.1 Infringement Proceedings as a Proxy for Non-Compliance

Most compliance and implementation studies develop their own assessment criteria and collect their empirical data in laborious field research (Knill, 1997: 1-45; Knill, 1998: 1-28; Duina, 1997: 155-179). As a result, a comparison of empirical findings and theoretical claims becomes difficult. Others therefore draw on statistical data published in the *Annual Reports on Monitoring the Application of Community Law* (Snyder, 1993: 19-54; Mendrinou, 1996: 1-22; Tallberg, 1999; Macrory, 1992: 347-369; Collins and Earnshaw, 1992: 213-249; Pridham and Cini, 1994: 251-277). Article 226 (ex-Article 169) of the Treaty entitles the Commission to open infringement proceedings against member states found in violation of European Law. Since 1984, the Commission has reported every year on the legal action it brought against the member states.

The proceedings specified in Article 226 consist of six subsequent *stages* (figure 1):

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

Figure 1: The different stages of the infringement proceedings



Various studies have used the numbers of infringements within the different stages as indicators for member state non-compliance with European Law. For instance, the observation that environmental policy accounts for over 20 per cent of registered infringement (Formal Letters) has been taken as evidence for a sever implementation deficit in this area (Commission of the European Communities, 1996; Jordan, 1999: 69-90). Such inferences are not without problems though. There are good reasons to question whether infringement proceedings qualify as valid and reliable indicators of compliance failure, that is, whether they constitute a random sample of all the non-compliance cases that occur. First, for reasons of limited resources, the Commission is not capable of detecting and legally pursuing all instances of non-compliance with European Law. Second, for political reasons, the Commission may not disclose all the cases, in which it took action against infringements of European Law. Third, for methodological reasons, the infringement data are neither complete nor consistent.

The Problem of Undetected Non-Compliance

Infringement proceedings only cover a fraction of the violations of European Law in the member states. The jurisprudence of the ECJ under Article 234 (ex-Article 177) already indicates that many cases of non-compliance occur without getting caught by the Article 226 procedure.[3] The Commission has only limited resources and therefore largely depends on external information, including member states reporting back on their implementation activities,[4] costly and time-consuming consultancy reports, or complaints from domestic actors. Societal monitoring is the most important source of information for the Commission. Since the degrees of social activism and respect for law vary among the member states, infringement proceedings may contain a serious bias. A country whose citizens are collectively active and law-abiding could generate more complaints than a member state whose citizens show little respect for the law and are less inclined to engage in collective action. Yet, the distribution of complaints across member states shows that societal activism per se is not the issue (table 1). Population size seems to be more important.

Another factor, which could bias the detection of non-compliance with European Law, is linked to the availability of reliable data. Some member states may lack the necessary administrative capacity to verify whether European legislation is complied with. Yet, member states with high monitoring

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

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

capacities, such as Denmark and the Netherlands, show a low number of complaints and infringement proceedings opened while those with weaker administrative and scientific infrastructures, like Greece and Spain, find themselves at the upper end of the list (table 1). Moreover, it has been argued in the literature that it is the very lack of monitoring capacity in some (southern) member states, which, among other factors, accounts for their high number of infringements (Pridham and Cini, 1994: 251-277; Hooghe, 1993: 169-178).

Table 1[5]: Member states compared by population, complaints and infringement proceedings opened, 1983-99[6]

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

Source: column 2: National Accounts, OECD, Paris, 1999; column 3, 4: Annual Reports on the Monitoring of the Application of European Law 1984-2000, data also available on-line www.iue.it/RSC/RSC_TOOLS/compliance/Welcome.html.

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

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

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

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

The Problem of Selective Disclosure of Detected Non-Compliance

The Commission has considerable discretion in deciding whether and when to open infringement proceedings (Evans, 1979: 442-456; Audretsch, 1986). The discretion of the Commission could cause a voluntary bias in the sample. This is all the more true since the Commission does not enjoy any direct political legitimacy and the implementation of EU policies falls in the responsibility of the member states (Williams, 1994: 351-400). Thus, the Commission may treat some member states more carefully than others because they make significant contributions to the EU budget or dispose of considerable voting power in the Council. Or their population tends to be 'Eurosceptic' and the Commission seeks to avoid upsetting the public opinion in these member states by officially shaming them for non-compliance with European Law (Jordan, 1999: 69-90).

The comparison between the relative ranking of the member states at the unofficial (Formal Letters) and the first official stage (Reasoned Opinions) of the proceedings could help us to reveal such a bias (table 2). Germany and France are the two member states, which contribute most to the EU budget and possess considerable bargaining power in the Council. Nevertheless, they both figure prominently among those member states that have received high numbers of Reasoned Opinions. While those two countries are rather pro-European, public and elite support for European institutions in Denmark and the UK is among the lowest, only topped by Austria and Sweden, which recently joined the European Union.[7] Denmark does indeed perform best among the member states at both stages. The British record, however, is more mixed. There appear to be no obvious factors that bias our sample towards politically less sensitive cases and member states, respectively.

[7] See 'Initial Results of Eurobarometer Survey No. 54 (autumn 2000)'. Brussels: European Union, 8 February 2001.

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

Formal Letters	Reasoned Opinion	
Italy	Italy	high level of non-compliance
Greece	Greece	
Portugal	Portugal	
France	France	
Spain	Belgium	
Belgium	Spain	
Germany	Germany	
Ireland	Ireland	
UK	Luxembourg	
Luxembourg	UK	
Netherlands	Netherlands	
Denmark	Denmark	low level of non-compliance

Source: Annual Reports on the Monitoring of the Application of European Law 1984-2000, data also available on-line: www.iue.it/RSC/RSC_TOOLS/compliance/Welcome.html.

The Problem of Incomplete and Inconsistent Data

The infringement data published by the Commission are neither complete nor consistent. First, the Commission has repeatedly changed the way in which it reports data. Suspected infringements are a case in point. From 1982 till 1991, their numbers are indicated by two different figures, complaints and own investigations by the Commission. Between 1992 and 1997, the Commission provides only one figure, which neither refers to complaints only nor to the Commission's own investigation nor does it equal the aggregate of the two. Since 1998, the Commission reports three figures – complaints, own investigations, and non-communication of the transposition of Directives, whereby it remains unclear whether the third category has been newly introduced or used to be an integral part of one of the other two categories. Additional problems arise when it comes to the reporting of infringement cases by policy sectors, since the Commission has redefined them several times over the years. Established infringements, for instance, are jointly reported by policy sector and member states only in the 10th Annual Report for the years 1988 till 1992 (Commission of the European Communities, 1993: : 165ff.).

Second, the reported data show some serious inconsistencies. For any given year, the Annual Reports of the Commission provide two types of data. Aggregate data summarize the number of infringement proceedings classified by the different stages, member states, policy sectors, and type of infringements. The 'raw' data list the individual infringement cases, which are to make up the ag-

gregate data. The comparison of the aggregate and the raw data reveals some serious 'mismatches'. The raw data merely comprise about one third of the Letters actually sent. This is explained by the policy of the Commission to individually list Letters only if they refer to cases of non-transposition.[8] But the aggregate data for Reasoned Opinions and Court Referrals do not equal the sum of the individually listed cases either. The aggregate data report 5762 Reasoned Opinions sent by the Commission between 1978 and 1999. But the 17 Annual Reports (1984-1999) list only 4241 Reasoned Opinions for these years; some 26.4 per cent of the cases are missing. The same inconsistencies can be found for ECJ Referrals, where about 37.9 per cent of the cases are not listed (1593 to 990). The explanation for the poor goodness of fit between the published aggregate data and the published raw data lies in the reporting methods. Unlike in the aggregate data, only those cases are individually listed that are still open at the end of the year reported. In sum, the incompleteness and inconsistencies in the published infringement data appear to be the result of changing reporting methods rather than administrative 'sloppiness' or political manipulation.

A Database on Non-Compliance with Community Law

The Commission data on member state infringements of European Law suffer from some problems, which should caution us against their use as straightforward indicators of non-compliance with European Law. At the same time, the Commission data are the only statistical source available. Neither international organizations nor states provide such comprehensive information on issues of non-compliance. The Commission provided the projectgroup "compliance" with a dataset drawn from its own database containing all the 6230 infringement cases, in which the Commission officially initiated proceedings between 1978 and 1999. Since the Commission considers Formal Letters as confidential, the database only contains the individually listed cases of Reasoned Opinions, Court Referrals, and Court Rulings. The 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. These data can serve as important indicators for non-compliance as long as one carefully controls for potential selection biases.

2.2 Assessing Member State Non-Compliance with European Law

If we accept infringement data as valid and reliable indicators of member state non-compliance with European Law, we still have to be careful in how to interpret them. It is a commonly held

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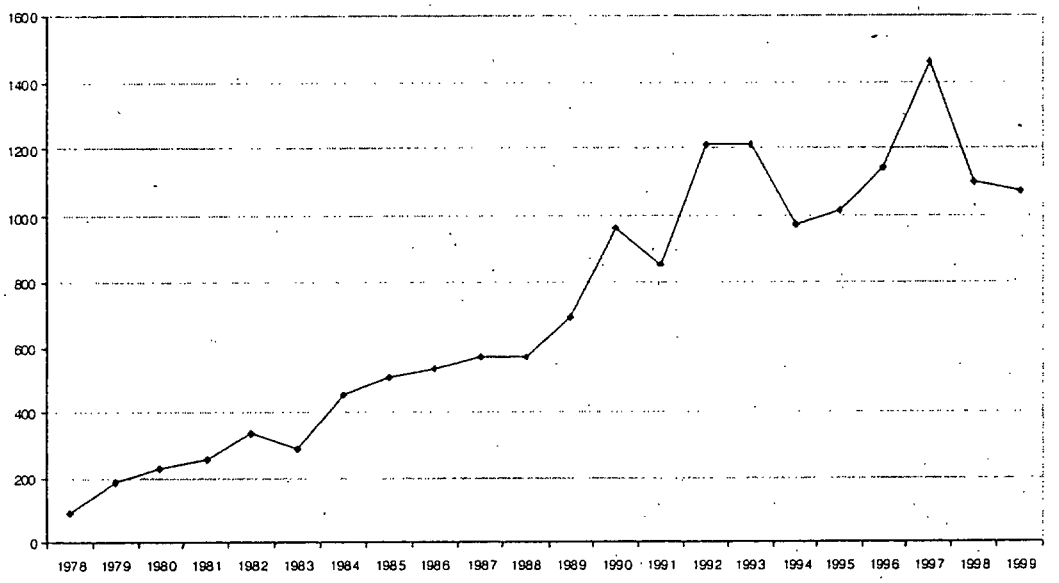
[8] The reports do list a few hundred other Letters because, for political reasons, the Commission sometimes decides to make a Letter public. Moreover, some Directorate Generals are less faithful to the Commission's policy of not disclosing cases of improper incorporation and application.

assumption – both among policy makers and academics – that the EU is facing a growing compliance problem that is systematic and pathological. The negative assessment is backed by the increasing number of infringement proceedings (Formal Letters), which the Commission has opened against the member states over the years (figure 2).

Figure 2: Total number of infringement proceedings opened for the EC 12, 1978-99



Source: Commission of the European Communities 2000.

Since 1978, the Commission has opened more than 17.000 infringement proceedings against the member states. This figure may sound impressive but must be put into perspective. Infringement numbers as such do not tell much about either the absolute scope of non-compliance or relative changes in the level of non-compliance over time. Infringement cases only cover a fraction of member state violations against European Law. We may claim that they provide a representative sample, but we have no means to estimate the total number of the population of non-compliance cases. The available data do not permit us to draw any inferences about the existence or non-existence of a compliance problem in the European Union. We can only trace relative changes in non-compliance, that is, assess whether non-compliance has increased or decreased over time. But in order to do this, we have to measure the number of infringement proceedings opened against the numbers of legal acts that can be potentially infringed as well as the number of member states that can potentially infringe them. Between 1983 and 1998, the number of legal acts in force has more

than doubled (from 4566 to 9767)[9] and five more member states have joined the Union. If we calculate the number of infringement proceedings opened as a percentage of 'violative opportunities'[10] (number of legal acts in force multiplied by member states) for each year, the level of non-compliance has not increased. This is particularly true if we control for several statistical artefacts that inflate the infringement numbers. First, the Commission adopted a more rigorous approach to member state non-compliance in the late 1970s (Mendrinou, 1996: 1-22: 3). Likewise, the Commission and the ECJ pursued a more aggressive enforcement policy in the early 1990s in order to ensure the effective implementation of the Internal Market Programme (Tallberg, 1999). Not surprisingly, the numbers of opened infringement proceedings increased dramatically twice, in 1983/84 by 57 per cent and again in 1991/92 by 40 per cent. Second, the Southern enlargement in the first half of the 1980s (Greece, 1981, Spain and Portugal, 1986) led to a significant increase in infringement proceedings opened once the 'period of grace', which the Commission grants to new member states, had elapsed. From 1989 to 1990, the number of opened proceedings grew by 40 per cent (223 cases), for which Spain, Portugal, and Greece are single-handedly responsible. The three countries account for 249 new cases while the numbers for the other member states remained more or less stable. The last significant increase of 28 per cent in 1996/97, finally, is not so much caused by the Northern enlargement in 1995 (Sweden, Austria, Finland) but by a policy change of the Commission. In 1996, the internal reform of the infringement proceedings re-stated the 'intended meaning' (*sense véritable*) of the Formal Letters as mere 'requests for observations' (*demande d'observation*) rather than warnings of the Commission.[11] Avoiding any accusations, Letters should be issued more rapidly than before. Indeed, the number of Letters sent grew significantly after the reform had been implemented. If all these factors are taken into account, the number of infringements has not significantly increased over the years but remained rather stable (figure 3).

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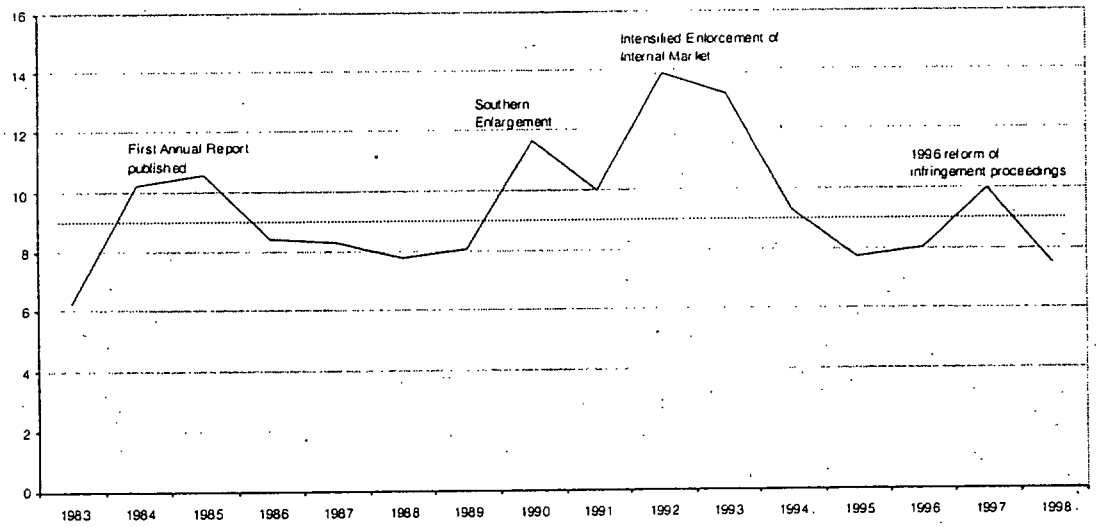
[9] We are thankful to Wolfgang Wessels and Andreas Maurer for providing us with the annual numbers of legislation in force.

[10] This term is owed to Beth Simmons.

[11] Internal document of the Commission, unpublished.

Figure 3: Total number of infringement proceedings opened in relation to violative opportunities for the EC 12, 1983-98



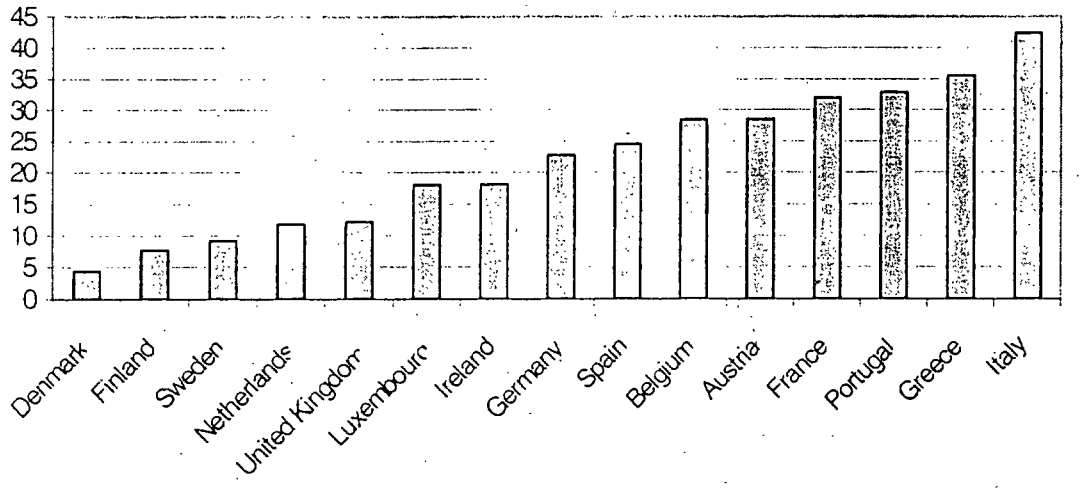
Source: own elaboration.

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

Indeed, we find that non-compliance with European Law considerably varies across both member states and policy sectors (figures 4 and 5) as well as within specific policy sectors[12].

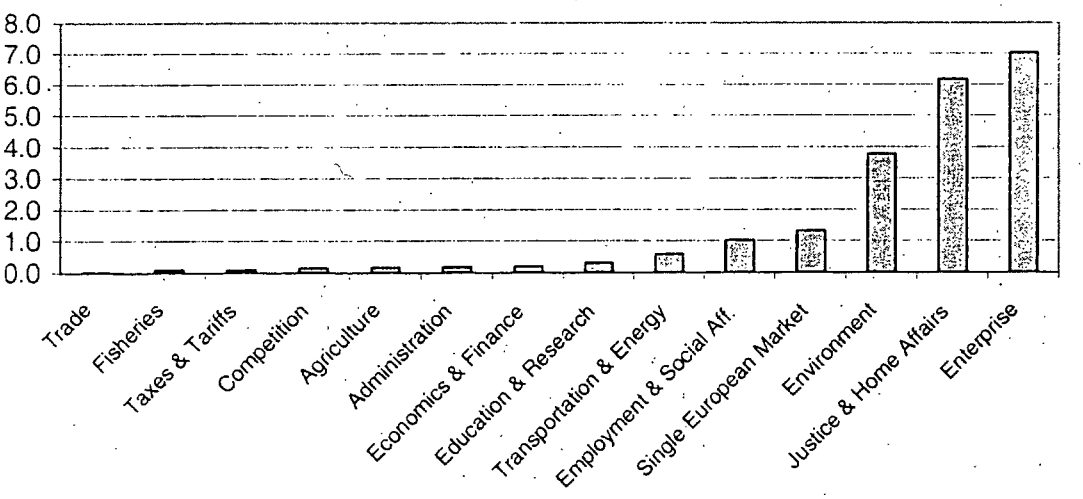
[12] See table i in the Annex.

Figure 4: Ranking of member states by average number of yearly infringements, 1978-99



Source: Commission of the European Communities.

Figure 5: Ranking of policy sectors by average percentage of yearly used violative opportunities, 1978-99[13]



Source: own elaboration.

How can we explain the variations observed?

[13] Used violative opportunities refer to the percentage of all possible infringements (violative opportunities) that actually occurred (infringements).

3. Why Do Member States not Obey European Law?

3.1 What is (Non-)Compliance?

The literature presents a Babylonian variety of understandings and definitions of compliance often using it synonymous with effective implementation. The distinction between the two concepts is often not clear. For the sake of this study, compliance is defined as *rule-consistent behaviour of those actors, to whom a rule is formally addressed and whose behaviour is targeted by the rule.*[14] While states are the addressees of European Law, and, hence, are formally responsible for compliance, they are not necessarily the main or exclusive targets. Many policies target the behaviour of non-state actors, too. If states are only the addressees but not the main targets, the ultimate responsibility for compliance lies with private actors. Beyond formal incorporation into national law, the role of public actors is confined in these cases to effectively monitoring and enforcing European policies in order to ensure compliance (Börzel, 2002: 155-178).

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

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

Compliance defined as rule-consistent behaviour of both the addressees and the targets of a rule or policy comprises the output and the outcome dimension. Impact and effectiveness are a separate matter since compliance of rule addressees and rule targets need not lead to changes in the socio-economic environment. This study concentrates on output and only considers outcome as far as the compliant behaviour of state actors is concerned. The omission of the rule-consistent behaviour of non-state actors is justified by reasons of methodology. European infringement proceedings, which

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

provide the empirical basis for evaluating various explanation of non-compliance, pursue only indirectly non-compliant behaviour of private actors by reprimanding the member states for not effectively monitoring and enforcing European Law. The European legal system is geared towards the member states. They are exclusively responsible for the effective implementation of EU policies at the domestic level (Weiler, 1988: 337-358; Krislov, et al., 1986: 3-112).

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

1) *Violations of Treaty Provisions, Regulations, and Decisions ('violation')*
Treaty Provisions, Regulations, and Decisions are directly applicable and, therefore, do not have to be incorporated into national law.[15] Non-compliance takes the form of not or incorrectly applying and enforcing European obligations as well as of taking, or not repealing, violative national measures.

2) *Non-transposition of Directives ('no measures notified')*
Directives are not directly applicable, as a result of which they have to be incorporated into national law. Member states are left the choice as to the form and methods of implementation (within the doctrine of the *effet utile*, which stipulates that the member states have to choose the most effective means).[16] Non-compliance manifests itself in a total failure to issue the required national legislation.

3) *Incorrect legal implementation of Directives ('not properly incorporated')*
The transposition of Directives may be wrongful. Non-compliance takes the form of either incomplete or incorrect incorporation of Directives into national law. Parts of the obligations of the Directive are not enacted or national regulations deviate from European obligations because they are not amended and repealed, respectively.

4) *Improper application of Directive ('not properly applied')*
Even if the legal implementation of a Directive is correct and complete, it still may not be practically applied. Non-compliance involves the active violation of taking conflicting national measures or the passive failure to invoke the obligations of the Directive. The latter also includes failures to effectively enforce European Law, i.e. to take positive action against violators, both by national administration and judicial organs, as well as to make adequate remedies available to the individual against infringements, which impinge on her rights.

5) *Non-compliance with ECJ judgements ('not yet complied with')*
Once the European Court of Justice finds a member state guilty of infringing European Law, the member state is ultimately obliged to remedy the issue. Non-compliance refers to the failure of member states to execute Court judgements, which establish a violation of European Law.

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[15] Treaty Provisions and Regulations are generally binding and directly applicable, while Decisions are administrative acts aimed at specific individuals, companies, or governments for which they are binding.

[16] ECJ Fédéchar v. High Authority, C-8/55. ECJ Van Gend en Loos C-26/62.

3.2 How to Explain Non-Compliance

This study turns to the International Relations (IR) literature as a starting point for theorizing about (non-)compliance with law beyond the nation state (cf. Mitchell, 1996: 3-28; Underdal, 1998: 5-30; Checkel, 1999b; Tallberg, 2002). IR theories are primarily concerned with explaining state behaviour. Unlike implementation research in the field of (European) public policy, IR scholars have not given up on developing generalizable claims about (non-)compliance, in spite of, or maybe because of, the complexity of the issue.

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

1) The source of non-compliant behaviour:
   voluntary (cost-avoidance) vs. *involuntary* (lacking capacity)

2) The logic of influencing non-compliant behaviour:
   rationalist (changing actors' pay-off matrices) vs. *constructivist* (changing actors' preferences)

If we combine the two dimensions, we get four different compliance mechanisms (table 3), from which we can then derive various hypotheses about (non-)compliance.

Table 3: Theoretical Approaches in the Compliance Literature

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

Compliance through Enforcement

Enforcement approaches assume that states violate international norms and rules voluntarily because they are not willing to bear the costs of compliance. This is particularly the case if intema-

tional 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. Neorealist approaches point to hegemonic states as the only way to change the pay-off matrices of states because in the absence of an international monopoly of legitimate force only they have sufficient capabilities to effectively sanction non-compliant behaviour (Downs, Rocke and Barsoom, 1996: 379-406; Fearon, 1998: 269-305). Advocates of Neoliberal Institutionalism, by contrast, emphasize that international institutions can serve as a substitute for the enforcement powers of hegemonic states. Non-compliance or free-riding becomes less attractive to states if they are likely to get caught and punished. International institutions can then provide mechanisms for monitoring compliance and for coordinating sanctions against free-riders (Boyle, 1991: 229-245; Victor, Raustiala and Skolnikoff, 1998; Weitsmann and Schneider, 1997: 283-294). More liberal approaches, which open the black box of the state, focus on the role of social mobilization and (trans)national pressure that may significantly change the cost-benefit calculations of state actors towards compliance. Domestic actors, often in transnational alliances with international non-governmental organizations, exploit international norms and organizations to generate pressure for compliance on public actors. International institutions offer an authoritative venue for private actors to challenge state behaviour. They provide new political opportunities to private actors "encouraging their connections with others like themselves and offering resources that can be used in intra-national and transnational conflict" (Tarrow, 2001; cf. Rogowski, 1989; Sikkink, 1993: 411-441; Klotz, 1995; Keck and Sikkink, 1998; Risse, Ropp and Sikkink, 1999). By exploiting these political opportunities, private actors mobilizing for compliance become empowered vis-à-vis public actors (and private actors opposing compliance). Through pressure "from below and from above" (Brysk, 1993: 259-285), private actors change the cost-benefit calculations of public actors in favour of compliance, essentially by increasing the costs of non-compliance (cf. Börzel, 2000: 221-250; Börzel, 2003).

Compliance through Management

Management approaches assume that states are in principle willing to comply with international rules, to which they once agreed. Non-compliance is mostly conceived as a problem of "involuntary defection" (Putnam, 1988: 427-460; Chayes, Chayes and Mitchell, 1998: 39-62; Chayes and Chayes Handler, 1993: 175-205; Zürn, 1997: 41-68). States do not so much lack the willingness but the capacity, i.e. the material resources (technology, expertise, administrative manpower, financial means, etc.), to comply. Or they are unclear about the required compliance behaviour since the rule is imprecise and ambiguous. Capacity building and rule specification rather than sanctioning are the primary means to prevent violations of international rules (Keohane, Haas, and Levy 1993; Jänicke

1990; Ponce-Nava 1995). Like with the enforcement approaches, international institutions are crucial for ensuring compliance. But instead of providing monitoring and sanctioning mechanisms ('sticks'), they organize financial and technical assistance for states with weak implementation capacities thereby helping to reduce the costs of compliance ('carrots'). Moreover, international institutions offer procedures to clarify and specify the obligations under a rule (contracting). Such procedures also allow for the constant review of norms and rules in light of the experience made in implementation. While compliance management aims at enhancing the capacity of states to comply with international rules, it leaves their preferences unaffected for it is assumed that states are committed to compliance once they approved a rule.

A more recent strand of the IR literature has taken up the arguments of the management school by referring to the degree of "legalization" of an international rule for explaining non-compliance (Goldstein et al. 2000). The legalization approach consists of three different elements: 1) Like the management school, it is assumed that states do not comply because the rule is vague and ambiguous and does not specify the required conduct ("degree of precision"). But legalization adds an alternative causal mechanism that links the precision of a rule to the opportunities for (trans)national actors to litigate against non-compliance at the international/European and domestic level. The better specified and the more precise the behavioral requirements of a rule are, the easier it is for actors, both plaintiffs (e.g. firms or interest groups) and prosecutors (e.g. the European Commission) to determine instances of non-compliance. This line of reasoning is taken up under the second element of legalization. 2) Non-compliance is the more likely to occur the less legally binding international norms and rules are ("degree of obligation"). The underlying assumption is that the more an international rule is embedded in the domestic legal system, the better non-state actors can litigate against violations and thereby prevent persisting non-compliant behavior by states or other non-state actors (Kahler 2000: 673-677). In this perspective, compliance is achieved through enforcement rather than through management, since litigation opportunities for (trans)national actors can significantly increase the costs of non-compliance. 3) Finally, compliance depends on the extent to which states and other actors delegate authority to third parties to interpret and apply the rules and thereby resolve disputes about precision and obligation ("degree of delegation"). This authority might be given to domestic courts or to international/supranational institutions. But in contrast to the management school, the latter serve less the function of capacity-building ('carrots') and clarifying rules (contracting). Rather, international/supranational dispute-settlement bodies promote compliance because they provide (trans)national actors with additional opportunities to exert pressure on non-compliant actors, e.g. by coordinating and imposing sanctions ('sticks').

In sum, the legalization approach draws on elements of both the management and the enforcement school. It takes up sources of non-compliant behavior of the management approach (low degree of precision), but specifies causal mechanisms referring to the enforcement literature with its focus on voluntary non-compliance of rational actors that weigh the costs and benefits of compliance. However, the explanatory power of the legalization approach for explaining (non-) compliance with international rules is rather limited. Legalization first of all explains variation in non-compliance *between* international institutions that differ with regard to the delegation of authority to third party dispute-settlement mechanisms. Legalization seems to be less appropriate to account for variation *within* an international setting where the 'degree of delegation' is a constant rather than a variable. The other two elements of legalization, the degree of precision and obligation, may vary within an international institution. But both are rule specific explanations for non-compliance. They are not able to account for cross-country variation.

Compliance through Persuasion

Like enforcement approaches, persuasion approaches assume that states do not comply voluntarily with international rules. But they start from a different logic of social action, which emphasizes socially accepted (appropriate) behaviour rather than the maximization of egoist preferences as motivating actors. Non-compliant behaviour is not so much a question of the material costs of compliance, to which actors are averse. Rather actors have not internalised the norm (yet), i.e. they do not accept the norm as a standard for appropriate behaviour. In contrast to the rationalist 'logic of consequentialism', the 'logic of appropriateness'(cf. March and Olsen, 1998: 943-969) specifies a compliance mechanism, which relies on socialization aiming to change actors' preferences. Through processes of social learning and persuasion, actors internalize new norms and rules of appropriate behaviour up to the point that it is "taken for granted" (Risse and Sikkink, 1999: 1-38: 5-6; cf. Checkel, 1999a). The internalisation of new norms and rules often results in the redefinition of actors' interests and identities. Statist constructivists focus on the role of international organizations, which drive the socialization process by 'teaching' states new norms (Finnemore, 1993: 565-597). Liberal constructivists, by contrast, emphasize the role of (trans)national non-state actors as agents of socialization. Rather than merely pressuring actors into compliance, (trans)national actors strive to persuade actors, who oppose compliance, to change their interests (Checkel, 1999a; Risse, et al., 1999). They attempt to engage opponents of compliance in a (public) discourse on why non-compliance with a particular norm constitutes inappropriate behaviour. The appeal to collectively shared norms and identities plays a crucial role in such processes of persuasion (Finnemore and Sikkink, 1998: 887-917: 202). So does legitimacy, which can foster the acceptance of a rule generating voluntary compliance (Franck, 1990). A rule-making institution that

enjoys high legitimacy can trigger a 'norm cascade' (Finnemore and Sikkink, 1998: 887-917: 901-905; cf. Dworkin, 1986; Hurrell, 1995: 49-72), where states persuade others to comply. States are 'pulled' into compliance (Franck, 1990) because they want to demonstrate that they conform to the group of states to which they want to belong and whose esteem they care about.

Compliance through Litigation

Legal internalization approaches equally assume that states do not simply refuse to comply with a rule because it imposes high costs. While they accept the rule in general, states may have diverging interpretations of its meaning and its applicability. Unlike in cases of lacking capacity, where the issue of non-compliance as such is not contested, states object that their (refraining from) action constitutes a rule violation in the first place. They argue, for instance, that the rule is not applicable to the issue under consideration or they claim that the issue qualifies as one of the exceptions permitted under the rule. From this perspective, compliance is a process of contestation and negotiation between divergent interests, interpretations, and problem perceptions, which have to be reconciled (Chayes and Chayes Handler, 1995: ; Snyder, 1993: 19-54). Ambiguous and imprecise rules are particularly prone to become subject of contesting interpretations. In order to prevent non-compliance, the legal internalization literature points to similar factors as the management school and legalization approaches. On the one hand, rules have to be as definite and unambiguously defined as possible. On the other hand, third party dispute settlement procedures are required to adjudicate between contesting interpretations of the obligations under a rule. But legal internalization goes beyond legalization, which is firmly based in a rationalist approach (see above; for a constructivist critique see Finnemore and Toope, 2001: 743-758). Adjudication and dispute-settlement give rise to a legal discourse, which promotes the internalization of international norms and rules into the domestic legal system (Koh, 1997: 2599-2659: 2656-2657). (Trans)national actors seek to have other parties accepted their interpretation of the norm and to incorporate it into its internal value system. "As governmental and nongovernmental transnational actors repeatedly interact within the transnational legal process, they generate and interpret international norms and then seek to internalize those norms domestically" (Koh, 1997: 2599-2659: 2651). Legal internalization involves the adoption of symbolic structures, standard operating procedures, and other internal mechanisms to maintain "habitual obedience" with the internalized norm (Koh, 1997: 2599-2659: 2599). Like with persuasion approaches, legal internalization results from the socialization of actors into new norms up to the point that they are taken for granted. It also involves the redefinition of identities and preferences by which compliance becomes the "self-interest" of the state (ibid). But the dominant socialization mechanisms are litigation and legal discourse rather than social learning and persuasion.

The four compliance mechanisms give rise to a whole series of hypotheses. Due to reasons of scope, the next section will evaluate only five of them in a quantitative study on non-compliance with European Law. The hypotheses are drawn from the two rationalist compliance mechanisms, enforcement and management. They were selected because they play a prominent role in the compliance literature and can be reasonably operationalized for a statistical analysis. Their causal logic is not explained in detail since it follows from the compliance mechanisms from which they are derived. For the operationalization of the independent variables, we draw on indicators that are commonly used in the literature. As the dependent variable, we consider those non-compliance cases that reached the first official stage of the European infringement proceedings between 1978 and 1999 (Reasoned Opinions). Figure 4 above shows how the infringement cases are distributed across the member states. Our units of observation for the regression analysis are cases per member state and year.

Compliance through Enforcement:

(1) The Power Hypothesis

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

There are many ways to operationalize power. We decided to use the most frequently used operationalization: gross domestic product (GDP). Alternatively we could have chosen the annual contributions of the member states to the EU budget or the voting power of member states in the Council of Ministers. But these indicators highly correlate (table 4) and do not yield very different results from those we obtained when using the GDP.

Table 4: Correlation matrix

	Votes	Contribution	GDP
Votes	1.0000		
Contribution	0.8542	1.0000	
GDP	0.7523	0.9342	1.0000

Table 5: The power hypothesis

	Used Opportunities
Votes	
Contribution	
GDP	.000***
	(.000)
Constant	.327***
	(.019)
N	243
R^2	0.022
Adj. R^2	0.018
Prob. > F	0.020
Root MSE	0.233

Dependent variable is used violative opportunities in percent. Ordinary least squares regression with panel corrected standard errors (PCSE) in brackets. *** = p < 0.01, ** = p < 0.05, * = p < 0.1.

There is virtually no correlation between GDP and used violative opportunities at all. Power is therefore unsuitable to decently predict non-compliance. The R-square confirms that the power hypothesis explains hardly any variance on our dependent variable.

Compliance through Management

(2) The State Capacity Hypothesis

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

State capacity is usually measured by GDP per capita drawn from the OECD statistical compendium (see e.g. Zürn, 1997: 41-68). Poorer countries should be less compliant than their richer counterparts, which is opposite of what the power hypothesis would lead us to expect.

(3) The Political Capacity Hypothesis

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

Capacity, however, does not need to be confined to the material/economic dimension. It can also be understood in terms of the capacity to introduce the political and legal changes necessary to ensure compliance. The number of veto players in a political system is crucial for the compliance capacity of states, particularly if international rules do not fit domestic arrangements and require costly adaptations (Tsebelis, 1995: 289-325; Alesina and Rosenthal, 1995:). The number of veto players in the individual member states is taken from the database developed by George Tsebelis (Tsebelis 2002).

Table 6: The state capacity hypothesis and the political capacity hypothesis

	Used Opportunities	Used Opportunities
GDP per capita	-.008***	
	(.001)	
Veto players		.060***
		(.012)
Constant	.528***	.201***
	(.039)	(.027)
N	245	224
r^2	0.073	0.106
Adj. r^2	0.069	0.102
Prob > F	0.000	0.000
Root MSE	0.228	0.219

Dependent variable is used violative opportunities in percent. Ordinary least squares regression with panel corrected standard errors (PCSE) in brackets. *** = p < 0.01, ** = p < 0.05, * = p < 0.1.

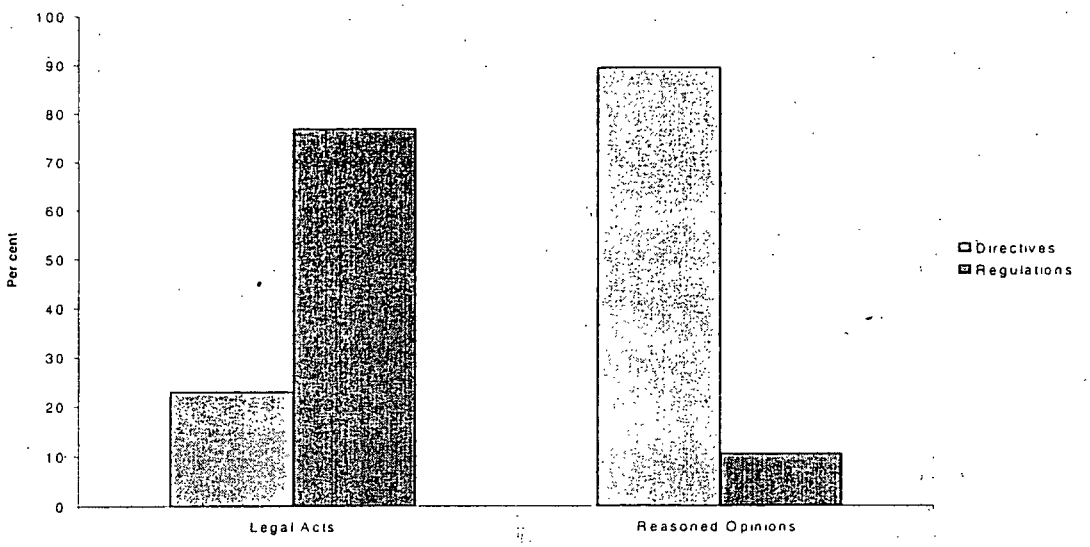
As expected, there is a negative relation between the state capacity of a member state and its non-compliance record. However, the regression of used violative opportunities on GDP per capita shows that this relation is – though significant – very weak. It might be safe to assume an effect of capacity on infringements, which is significantly different from zero at the conventional 0.01 significance level, but the proportion of variation on the dependent variable explained by GDP per capita can almost be neglected at the same time. The same holds true for the number of veto players. There is the positive and significant relation predicted by the veto player hypothesis, but veto player explain only very little variance on our dependent variable.

(4) The Contracting Hypothesis

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

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

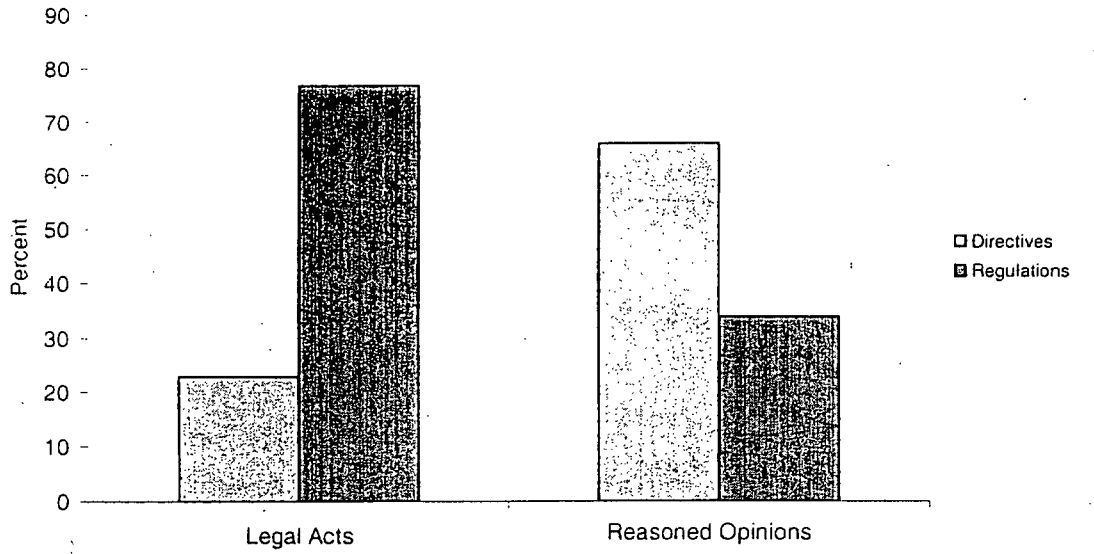
Figure 6: The contracting hypothesis



This bar diagram (figure 6) compares the relative share of Directives and Regulations in European Legal Acts with their relative share in the total number of infringements that reached the first official stage of the proceedings between 1978 and 1999. The quota of Directives and Regulations in relation to the Legal Acts is based on the legislation in force in 1999. Unfortunately, there are no data on the number of Regulations and Directives in force for the individual years. But it seems to be safe to assume that the quota has not changed dramatically over the years.

The empirical evidence lends strong support to our hypothesis. Not only are Regulations less frequently violated than Directives. Their share in Legal Acts is more than three times higher than the share of Directives, i.e. the violative opportunities are much higher for Regulations than for Directives. Even if we control for the fact that Regulations can not be non-transposed or incorrectly legally implemented while Directives can, we still find strong support to our hypothesis (figure 7). By comparing Reasoned Opinions for the effective implementation of Directives and Regulations only, we can show that the fact described above does not affect the empirical finding that Regulations are by fare less frequently violated than Directives.

Figure 7: The contracting hypothesis for effective implementation only



(5) The Legalization hypothesis

"The less precise and the less legally embedded a rule is, the less it will be complied with."

As a proxy for the degree of legalization, we can use the distinction between Regulations and Directives in European Law. First, the distinction is appropriate for testing the effect of the 'degree of precision', since both types of legal acts differ in this regard (see above). We can therefore draw on the results of the contracting hypothesis. Since the more precise Regulations are (by far) less violated than Directives, the Legalization hypothesis seems to be confirmed in this aspect. Yet, contracting and 'degree of precision' predict the same outcome but specify different causal mechanisms. Our findings do not tell us anything about whether member states involuntarily violate Directives because they are unclear about their behavioral requirements or whether the costs of non-compliance tend to be lower since the opportunities for litigation are more limited. Similar problems arise when testing for the second element of legalization, the 'degree of obligation' or of 'legal embeddedness'. The distinction between Regulations and Directives is useful since both have a different binding effect in the domestic legal system. Regulations deploy direct effect in the EU member states and are thus more legally embedded than Directives, which have to be transposed

into domestic law in order to be effective.[17] Accordingly, (trans)national actors can more easily detect non-compliance and litigate immediately against violations of Regulations. Moreover, member states have are more opportunities to violate Directives. While Directives and Regulations may equally cause problems of proper application, Directives can be additionally violated when they are not legally implemented within the specified timeframe and when they are not correctly and completely transposed into national law. The 'degree of obligation' predicts the same outcome as the 'degree of precision': Member states violate Directives more frequently than Directives. While our data support the argument (figures 6 and 7), they do not allow us to disentangle the different causal mechanisms.

In sum, all hypotheses that take member states as the units of analysis find weak to no support by our data. The power hypothesis is a case in point. The correlation between our independent variable and non-compliance is not only extremely weak but the R-square confirms that power explains hardly any variance on our dependent variable. The state capacity hypothesis, too, shows only a very weak negative correlation, which is, however, at least significant. The political capacity hypothesis does not yield substantially better results. Even though there is a positive and significant correlation between the number of veto players and non-compliance, which is comparatively stronger than both for GDP and GDP per capita, the goodness of fit is only slightly above the poor average set by the two other independent variables.

Only the contracting hypothesis and the legalization hypothesis, which are measured by the same indicators, seem to be strongly confirmed by the data. Regulations have a much larger share in European legislation (77%) than Directives but only account for around 10% (figure 6) or 34% (figure 7) of the infringements that reached the first official stage of the proceedings between 1978 and 1999. The problem is, however, that both hypotheses yield identical predictions in terms of the expected results but specify different causal mechanisms. The statistical analysis does not allow us to decide which of these causal mechanisms accounts for the frequent violation of Directives. Are Directives less obeyed because they are more vague and ambiguous and leave member states unclear about their obligations? Or is compliance with Directives more difficult to achieve because (trans)national actors cannot immediately litigate against violations for Directives need to be transposed into national law before they become effective, or at least have to be sufficiently specified (*sic*) in order to deploy direct effect despite non-transposition after the deadline for legal

[17] Directives can deploy direct effect in domestic law if they are sufficiently specified (sic). But even then, litigation is more costly than in case of Regulations since courts first have to confirm the direct effect of Directives before (trans)national actors can invoke the rights conferred to them under the Directive.

implementation expired? Is compliance achieved through capacity-building or through facilitating litigation? There is no way that we can adjudicate between the different causal claims. While this may testify to the limits of quantitative analyses, it could well be that both mechanisms are at work.

4. Conclusions

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

The statistical analysis confirms two major findings of qualitative studies on compliance with law beyond the nation state. First, monocausal explanations, as prominent as they may be in the International Relations literature, are unlikely to account for the observed variations in non-compliance. While it may be a useful exercise to break the four compliance mechanisms down into specific hypotheses, they should not be treated as competing explanations of non-compliance. A multivariate regression analysis combining different explanatory factors would probably yield better results. Second, the various causal mechanisms are not necessarily mutually exclusive; they often interact with and relate to each other. They may complement, substitute or undermine each other, or characterize different sequences of the compliance process (cf. Risse, et al., 1999; Börzel, 2002: 155-178; Börzel and Risse, 2002: 141-182). For instance, capacity-building through the transfer of resources can increase the legitimacy of international institutions. EU-financial assistance has

fostered the willingness of lowly regulated member states, such as Greece, Portugal, or Spain, to comply with rather demanding EU-environmental standards, which impose significant compliance costs and do not always address the most pressing environmental problems in these countries (Börzel, 2003). Likewise, international sanctions are most effective, if complemented by domestic pressure 'from below.' Human rights networks have effectively used international sanctions to shame their oppressive governments and challenge their legitimacy. At the same time, domestic actors and transnational coalitions serve as 'watchdogs' of compliance with international norms (Brysk, 1993: 259-285; Finnemore and Sikkink, 1998: 887-917; Risse, et al., 1999). Finally, causal mechanisms can also undermine each other's effects. If states are willing to comply but lack the necessary capacities, sanctions, such as financial penalties, may reinforce rather than elevate the problem. Rewarding voluntary defection by providing financial assistance, by contrast, could create further incentives for non-compliance.

Those examples drawn from qualitative compliance studies indicate that exploring the mutual relationship between hypotheses may be more fruitful than pitching them against each other. What is needed, however, are more complex models that systematically integrate different compliance mechanisms as well as empirical research that tests the explanatory powers of the various hypotheses to find out to what extent they compete and complement each other. As a result, our explanatory models become more complex, i.e. less elegant and parsimonious, but they may also yield better results in accounting for the variations observed.

Bibliography

Alesina, A. and Rosenthal, H. 1995 *Partisan Politics. Divided Government, and the Economy*, Cambridge: Cambridge University Press.

Audretsch, H. (ed) 1986 *Supervision in European Community Law*, New York: Elsevier.

Axelrod, R. A. and Keohane, R. O. 1986 'Achieving Cooperation under Anarchy: Strategies and Institutions', in K. A. Oye (ed) *Cooperation under Anarchy*, Princeton, NJ: Princeton University Press.

Börzel, T. A. 2000 'Improving Compliance through Domestic Mobilisation? New Instruments and the Effectiveness of Implementation in Spain', in C. Knill and A. Lenschow (eds) *Implementing EU Environmental Policy: New Approaches to an Old Problem*, Manchester: Manchester University Press.

Börzel, T. A. 2001 'Non-Compliance in the European Union. Pathology or Statistical Artefact?' *Journal of European Public Policy* 8(5): 803-824.

Börzel, T. A. 2002 'Non-State Actors and the Provision of Common Goods. Compliance with International Institutions', in A. Héritier (ed) *Common Goods: Reinventing European and International Governance*, Lanham, MD: Rowman & Littlefield.

Börzel, T. A. 2003 *Environmental Leaders and Laggards in the European Union. Why There is (Not) a Southern Problem*, London: Ashgate.

Börzel, T. A. and Risse, T. 2002 'Die Wirkung Internationaler Institutionen: Von der Normanerkennung zur Normeinhaltung', in M. Jachtenfuchs and M. Knodt (eds) *Regieren in internationalen Institutionen*, Opladen: Leske + Budrich.
Boyle, A. 1991 'Saving the World? Implementation and Enforcement of International Law through International Institutions', *Journal of Environmental Law* (3): 229-245.
Brysk, A. 1993 'From Above and From Below: Social Movements, the International System, and Human Rights in Argentina', *Comparative Political Studies* 26(3): 259-285.
Chayes, A., Chayes, A. H. and Mitchell, R. B. 1998 'Managing Compliance: A Comparative Perspective', in E. B. Weiss and H. K. Jacobsen (eds) *Engaging Countries: Strengthening Compliance with International Environmental Accords*, Cambridge, Mass.: MIT Press.
Chayes, A. and Chayes Handler, A. 1993 'On Compliance', *International Organization* 47(2): 175-205.
Chayes, A. and Chayes Handler, A. 1995 *The New Sovereignty: Compliance with International Regulatory Agreements*, Cambridge, MASS: Harvard University Press.
Checkel, J. T. 1999a 'International Institutions and Socialization', *ARENA Working Paper* (5).
Checkel, J. T. 1999b 'Why Comply? Constructivism, Social Norms and the Study of International Institutions', Oslo: Arena.
Collins, K. and Earnshaw, D. 1992 'The Implementation and Enforcement of European Community Legislation', *Environmental Politics* 1(4): 213-249.
Commission of the European Communities 1990 *Seventh Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law (1989), COM (90) 288 (final)*, Brussels: Commission of the European Communities.
Commission of the European Communities 1993 *Tenth Annual Report on the Monitoring of the Application of Community Law (1992), COM (93) 320 final*, Brussels: Commission of the European Communities.
Commission of the European Communities 2000 *Seventeenth Annual Report on Monitoring the Application of Community Law (1999), COM (2000) 92 final*, Brussels: Commission of the European Communities.
Commission of the European Communities, D. X. 1996 'Implementing Community Environmental Law. Communication to the Council of the European Union and the European Parliament', Brussels: European Commission.
Downs, G. W., Rocke, D. M. and Barsoom, P. N. 1996 'Is the Good News About Compliance Good News About Cooperation?' *International Organization* 50(3): 379-406.
Duina, F. G. 1997 'Explaining Legal Implementation in the European Union', *International Journal of the Sociology of Law* 25(2): 155-179.
Dworkin, R. 1986 *Law's Empire*, Cambridge, MA: MIT Press.
Efinger, M., Rittberger, V. and Zürn, M. 1988 *Internationale Regime in den Ost-Westbeziehungen. Ein Beitrag zur Erforschung der friedlichen Behandlung internationaler Konflikte*, Frankfurt a/M: Campus.
Evans, A. C. 1979 'The Enforcement Procedure of Article 169 EEC: Commission Discretion', *European Law Review* 4(6): 442-456.
Fearon, J. 1998 'Bargaining, Enforcement, and International Cooperation', *International Organization* 52(2): 269-305.
Finnemore, M. 1993 'International Organization as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy', *International Organization* 47(4): 565-597.
Finnemore, M. and Sikkink, K. 1998 'International Norm Dynamics and Political Change', *International Organization* 52(4): 887-917.
Finnemore, M. and Toope, S. J. 2001 'Alternatives to "Legalization": Richer Views of Law and Politics', *International Organization* 55(3): 743-758.
Franck, T. M. 1990 *The Power of Legitimacy Among Nations*, Oxford: Oxford University Press.

From, J. and Stava, P. 1993 'Implementation of Community Law: The Last Stronghold of National Control', in S. S. Andersen and K. A. Eliassen (eds) *Making Policy in Europe. The Europeification of National Policy-Making*, London et al.: Sage.
Goldstein, J. L., Kahler, M., Keohane, R. O. and Slaugther, A.-M. 2000 'Introduction: Legalization and World Politics', *International Organization, Special Issue* 54(3): 385-399.
Hooghe, M. 1993 'Too Little, Too Slow', *Planologisch Nieuws* 13(2): 169-178.
Hurrell, A. 1995 'International Society and the Study of Regimes. A Reflective Approach', in V. Rittberger (ed) *Regime Theory and International Relations*, Oxford: Clarendon Press.
Jordan, A. 1999 'The Implementation of EU Environmental Policy: A Policy Problem Without a Political Solution', *Environment and Planning C: Government and Policy* 17: 69-90.
Kahler, Miles. 2000 'The Causes and Consequences of Legalization', *International Organization, Special Issue* 54(3): 661-683.
Keck, M. and Sikkink, K. 1998 *Activists Beyond Borders: Advocacy Networks in International Politics*, Ithaca, NY: Cornell University Press.
Keohane, R. O. 1984 *After Hegemony. Cooperation and Discord in the World Political Economy*, Princeton, NJ: Princeton University Press.
Keohane, R. O. and Hoffmann, S. 1990 'Conclusions: Community Politics and Institutional Change', in W. Wallace (ed) *The Dynamics of European Integration*, London: Pinter.
Klotz, A. 1995 *Norms in International Relations. The Struggle against Apartheid*, Ithaca, NY: Cornell University Press.
Knill, C. 1997 'The Impact of National Administrative Traditions on the Implementation of EU Environmental Policy', in C. Knill (ed) *The Impact of National Administrative Traditions on the Implementation of EU Environmental Policy. Preliminary Research Report for the Commission of the European Union, DG XI.*, Florence: European University Institute, Robert Schuman Centre.
Knill, C. 1998 'Implementing European Policies: The Impact of National Administrative Traditions', *Journal of Public Policy* 18(1): 1-28.
Koh, H. H. 1997 'Why Do Nations Obey International Law?' *The Yale Law Journal* 106: 2599-2659.
Krislov, S., Ehlermann, C.-D. and Weiler, J. 1986 'The Political Organs and the Decision-Making Process in the United States and the European Community', in M. Cappelletti, M. Seccombe and J. Weiler (eds) *Integration Through Law, Methods, Tools and Institutions: Political Organs, Integration Techniques and Judicial Process*, Berlin: Gruyter.
Macrory, R. 1992 'The Enforcement of Community Environmental Laws: Some Critical Issues', *Common Market Law Review* 29: 347-369.
March, J. G. and Olsen, J. P. 1998 'The Institutional Dynamics of International Political Orders', *International Organization* 52(4): 943-969.
Mendrinou, M. 1996 'Non-Compliance and the European Commission's Role in Integration', *Journal of European Public Policy* 3(1): 1-22.
Mitchell, R. B. 1996 'Compliance Theory: An Overview', in J. Cameron, J. Werksman and P. Roderick (eds) *Improving Compliance with International Environmental Law*, London: Earthscan.
Neyer, J., Wolf, D. and Zürn, M. 1999 'Recht jenseits des Staates', Bremen: Zentrum für europäische Rechtspolitik.
Pridham, G. and Cini, M. 1994 'Enforcing Environmental Standards in the European Union: Is There a Southern Problem?' in M. Faure, J. Vervaele and A. Waele (eds) *Environmental Standards in the EU in an Interdisciplinary Framework*, Antwerp: Maklu.
Putnam, R. 1988 'Diplomacy and Domestic Politics. The Logic of Two-Level Games', *International Organization* 42(2): 427-460.
Risse, T., Ropp, S. C. and Sikkink, K. (eds) 1999 *The Power of Human Rights. International Norms and Domestic Change*, Cambridge: Cambridge University Press.
Risse, T. and Sikkink, K. 1999 'The Socialization of International Human Rights Norms Into Domestic Practices: Introduction', in T. Risse, S. C. Ropp and K. Sikkink (eds) *The Power of*

Human Rights. International Norms and Domestic Change, Cambridge: Cambridge University Press.

Rogowski, R. 1989 *Commerce and Coalitions: How Trade Affects Domestic Political Alignments*, Princeton, NJ: Princeton University Press.

Sikkink, K. 1993 'Human Rights, Principled Issue Networks, and Sovereignty in Latin America', *International Organization* 47(3): 411-441.

Snyder, F. 1993 'The Effectiveness of European Community Law. Institutions, Processes, Tools and Techniques', *Modern Law Review* (56): 19-54.

Tallberg, J. 1999 *Making States Comply. The European Commission, the European Court of Justice and the Enforcement of the Internal Market*, Lund: Studentlitteratur.

Tallberg, J. 2002 'Paths to Compliance. Enforcement, Management, and the European Union', *International Organization* 56.

Tarrow, S. 2001 'Beyond Globalization: Why Creating Transnational Social Movements is so Hard and When is it Most Likely to Happen?' *Annual Review of Political Science* 5.

Tsebelis, G. 1995 'Decision Making in Political Systems. Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartism', *British Journal of Political Science* 25(3): 289-325.

Tsebelis, G. 2002 'Veto Players Data', http://www.polisci.ucla.edu/tsebelis/vpdata.html.

Underdal, A. 1998 'Explaining Compliance and Defection: Three Models', *European Journal of International Relations* 4(1): 5-30.

Victor, D. G., Raustiala, K. and Skolnikoff, E. B. (eds) 1998 *The Implementation and Effectiveness of International Environmental Commitments*, Cambridge, MA: MIT Press.

Weiler, J. 1988 'The White Paper and the Application of Community Law', in R. Bieber, R. Dehousse, J. Pinder and J. H. H. Weiler (eds) *1992: One European Market?*, Baden-Baden: Nomos.

Weitsmann, P. A. and Schneider, G. 1997 'Risky States: Implications for Theory and Policy Making', in G. Schneider and P. A. Weitsmann (eds) *Enforcing Cooperation. Risky States and Intergovernmental Management of Conflict*, London: Macmillan.

Williams, R. 1994 'The European Commission and the Enforcement of Environmental Law: An Invidious Position', *Yearbook of European Law* 14: 351-400.

Young, O. R. 1979 *Compliance and Public Authority: A Theory with International Applications*, Baltimore, MD.

Zürn, M. 1997 '"Positives Regieren" jenseits des Nationalstaates', *Zeitschrift für Internationale Beziehungen* 4(1): 41-68.

Annex

Table i: Used violative opportunities by policy sectors

	Mean	Standard Deviation	Std. Dev. / Mean
Administration	0.18	0.24	1.33
Agriculture	0.17	0.09	0.53
Competition	0.16	0.17	1.05
Economics & Finance	0.20	0.32	1.65
Education & Research	0.32	0.61	1.89
Employment & Social Affairs	1.03	0.62	0.61
Enterprise	7.03	3.37	0.48
Environment	3.77	1.99	0.53
Fisheries	0.10	0.15	1.49
Justice & Home Affairs	6.18	11.77	1.90
Single European Market	1.34	0.51	0.38
Taxes & Tariffs	0.11	0.06	0.54
Transportation & Energy	0.58	0.56	0.96
Trade	0.01	0.02	2.13

Source: Own elaboration.

In column 4 you can see that at least for some policy sectors the coefficient of variation (i.e., standard deviation / mean) is substantially bigger than one. It is interesting to notice that there is substantial cross-yearly variation within policy sectors and not just variation between policy sectors.