Now or Later: Tradeoffs in Implementation of Directives Among European Union Member States

by

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Abstract

Of nearly 1500 European Union directives enacted between 1978 and 1997, over 65% had at least one infringement case opened against a member state for noncompliance. Existing research has considered the problem of infringement by either focusing upon timing alone or upon total numbers of infringements. These approaches incorrectly assume that all infringements are alike and thus can be addressed as parts of the same phenomenon. While some common factors contribute to higher levels of infringements overall, e.g. incapacities within the bureaucracy and complexity of the directives to be enacted, three factors separate late from substantive infringements: preferences, power, and opportunity. Infringements have a common source: disagreement by national political actors (policy-area minister and coalition members) regarding a directive but whether this disagreement transforms into substance or delay depends. Substantive infringements arise when three conditions are simultaneously present: the national political actors not only *disagree* with a directive, AND they have the *power* to affect national legislation, AND they have the *opportunity* to do so, in the national parliament. Late infringements arise when only some of these conditions are present: when national political actors disagree but lack tools to substantively influence legislation, e.g. when

coalition members have weak parliamentary powers but disagree with directive content, or when strong national parliaments are involved in the passage of legislation during the transposition process.

This dissertation analyzes the incidence of state noncompliance among EU member states using a novel approach on a new dataset. With these tools, I not only explain factors relevant to late and substantive infringements but also why previous research has been unable to provide this explanation until now.

Chapter I: Introduction

The European Union, formerly known as the European Coal and Steel Community (later as simply the European Community), plays an increasingly large role in the lives of European citizens. Membership in the European Union requires compliance with mandates set forth in state directives, and those directives span an increasingly broad spectrum of policy domains. While countries initially came together to help coordinate the trade of commodities such as coal and steel, the objectives of the union have evolved over time. As the purview of the EU expanded, so did the domain and reach of directives.

To understand the rapid expansion, consider how directives have changed: there were few directives in effect in the 1970s, but by 2012 there were 1,989 directives in force (COM 2013). Directives require state compliance, and member states need to enact or adapt national legislation to satisfy legislative mandates set by directives. The enactment of national legislation in the process of complying with a directive is called *transposition* and requires that states implement the directive correctly and in a timely manner. Directives enable the coordination of national legislation on topics to provide an even playing field for citizens in EU member states.

Noncompliance with these directives by member states continues to be a problem for

the EU and, in particular, social policy directives are often prone to poor implementation within member states with states failing to meet implementation deadlines (typically 18 months to 2 years after legislation's passage) or by enacting national measures that are inconsistent with the directives. Failure to meet legislative mandates set forth in directives results in official citation by the European Commission and triggers *infringement proceedings*, which can involve fines.

Agents from the member states draft EU legislation yet the states frequently struggle to comply with the directives *their representatives* helped negotiate. Why do states agree to commitments they cannot, or will not, honor? This problem is not new to political science: scholars such as Simmons (2000), among many others, study state compliance with treaties and other international agreements finding that states often fail to comply to agreements they've entered into. However, member state noncompliance in the EU is particularly puzzling because of *how* states fail to comply with legislation. Some states drag their feet, delaying national implementation, while others enact legislation that is incorrect or never enforced.

Political scientists do not understand the mechanisms behind these different forms of noncompliance. There are two types of noncompliance, late and substantive, and different causal factors contribute to their incidence. The conflation of late and substantive infringements confuses things. Because timing and substance violations occur for different reasons, one cannot expect that using a single, undifferentiated approach would shed light on the conditions for noncompliance. In the pages that follow, I explain that policy-area ministerial preferences over legislation cause late implementation and that the constellation of national actors (including national veto players and the presence of a strong national parliament) affects substantive noncompliance.

The Case of the *Pregnant Workers Directive*

The pregnant workers directive of 1992 aimed to improve workplace environments for pregnant and nursing women in European Union member states. It included 14 minimal standards with the intent "to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding" (Article 1, also cited by Falkner et al 2007, pg. 73). The directive gave states an average implementation period of two years to comply with the directive.

The pregnant workers directive lays out a number of requirements and also includes some flexibility: states must provide a minimum of 14 weeks of maternity leave but can provide more and are permitted latitude in the pay workers receive. States are also permitted some discretion to define what 'recently given birth', 'pregnant worker' and 'breastfeeding worker' mean. For example, Greece counts women who have given birth in the last two months as having 'recently given birth' while in Ireland, it is women who have had a child within the last 14 weeks. (COM 1999 100 Final). Similarly, in Greece, breastfeeding women are covered up to one year while in Ireland it is 6 months and 9 months in Spain (COM). Additionally, states are free to have some means of addressing how 'pregnant' workers notify their workplace of their pregnancy and the period in which workers qualify for this designation (the number of months after birth that a worker is entitled to benefits). What states cannot do is impose additional restrictions upon workers, such as provide restrictions for pregnant employees that do not apply to other employees. States may not, for example, require pregnant employees to notify their employers of their pregnancy with a medical certificate or

otherwise affect the rights of a pregnant employee in comparison to other employees.

Despite these clear guidelines and the fact that many states already had a number of the directive's provisions already in place, several member states still failed to comply. Seven states had infringement proceedings initiated against them as early as 1995 for failing to notify the Commission of measures enacted to comply with the directive—meaning the states were dragging their feet on implementation: Belgium, France, Germany, Greece, Italy, Luxembourg, and Portugal. In some cases, as with France, states disagreed with some of the provisions set forth in the directive and thus refused to transpose the directive. For example, French officials felt France had superior legislation to that set forth in the directive (Galligan, in Abels and Mushaben 2015, pg 112) while Sweden objected to the compulsory requirement for two weeks of maternity leave (Falkner et al 2004). The Swedish government argued that its fourteen weeks of optional leave satisfied the directive's mandate and thus no further action while necessary while the Commission held that the directive mandated *compulsory* leave. After receiving communication from the Commission about their noncompliance, the delayed states, aside from Luxembourg, quickly complied and reported national measures as required by the directive. Luxembourg delayed implementation until 1998 because of disagreements with the requirements of the legislation.[1]

Luxembourg and the Pregnant Workers Directive

As a member of the EU, Luxembourg is under obligation to enforce and support existing EU legislation. However, Luxembourg's disagreement with the directive interfered

[1] http://www.eurofound.europa.eu/observatories/eurwork/articles/commission-reviews-implementation-of-

with a full and correct transposition of the directive, a decision that affected the employment of many pregnant workers, among them Ms. Virginie Pontin.“Ms Virginie Pontin [a pregnant employee] worked for the Luxembourg company T-Comalux from November 2005. On 25 January 2007 she was notified of her dismissal with immediate effect ‘on grounds of serious misconduct’ consisting of ‘unauthorised absence for more than three days’.”[2] This dismissal, related to Ms. Pontin’s pregnancy, violated the pregnant worker’s directive and was thus in violation of the directive’s mandate. Luxembourg, in compliance with the pregnant workers directive, made clear that pregnant employees could not be dismissed for her condition. However, Luxembourg’s restrictive application of the directive permitted Ms. Pontin to file a suit against her employer only within 15 days of her dismissal.

While the actions of T-Comalux violated the directive, Luxembourg's transposition of the directive also failed to comply with the directive’s mandate that employees have recourse to address unfair dismissals and that this recourse be in line with other domestic issue timeframes. Because Luxembourg limited the period in which employees could file a suit against their dismissal, the European Court of Justice, ECJ, opened an infringement case against Luxembourg for its improper application of the directive.[3,4,5]

The case of Ms. Pontin in the example above highlights how important, many of these provisions can be in citizens’ daily lives. Without the protection of these directives she would

[2] http://europa.eu/rapid/press-release_CJE-09-98_en.htm
[3] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62008CC0063
[4] The court ultimately found (C-63/08) that the referring court needed to specifically evaluate the duration of 15 days to determine whether the period “provided however that those rules are no less favourable than those governing similar domestic actions (principle of equivalence) and are not framed in such a way as to render practically impossible the exercise of rights conferred by Community law (principle of effectiveness)”
[5] Luxembourg also had a number of problems in implementation, including requiring pregnant women to not only notify their employers but to do so by registered mail, to send their employers a medical certificate and to affiliate with a social security scheme

have no repercussion for the discriminatory treatment she received. However, as the example also highlights, it is unfortunate that the enactment of directives is often not sufficient to guarantee citizens the rights promised or standards set forth by such directives. In the case of the pregnant workers directive, full compliance was not achieved without intercession by the ECJ and the Commission's initiation of infringement proceedings against member states.

From the scholarly perspective, *explaining* the behavior of Luxembourg and other member states regarding the implementation of directives, including the pregnant worker's directive, has proven quite difficult. Despite many studies on noncompliance, as the next chapter discusses, the findings have been inconsistent regarding the key factors contributing to state noncompliance. A primary contribution of this dissertation is to share that these studies have failed to distinguish between the two key types of noncompliance, late and substantive noncompliance. The case of Luxembourg highlights these two aspects of noncompliance: in this example, ministerial disagreement explains the delayed implementation while the strong and involved parliament, coupled with a moderate number of veto players, contributed to substantive noncompliance. An explanation focused upon only the timing of national compliance, whether Luxembourg was late or not, would have missed the subsequent substantive noncompliance of the state.

Not only would missing this distinction weaken the overall understanding of noncompliance it would also significantly undermine abilities to understand whether and why directives succeed; substantive infringement is difficult to detect, occurs for reasons distinct from late infringements, and is caused by factors (the involvement of national parliaments) that are increasing over time. Thus, we can expect that substantive infringements will become more prevalent yet more difficult to detect without further study of substantive infringements

as a phenomenon distinct from late infringements.

Overview

This chapter provides the necessary background to understand the general institutional structure of the European Union relevant to my investigation. In this chapter, I discuss relevant types of legislation, and the drafting process, in addition to the commission infringement procedure. Readers familiar with EU institutions and the obligations for states to comply with legislation, and the subsequent infringement procedure, will find this chapter a helpful reminder while readers unfamiliar with the EU will find the information they need to understand the context of the implementation process and the relevant vocabulary for the process.

Noncompliance

Compliance refers to whether states meet their obligation of enacting national legislation to transpose, and implement a directive in a timely and correct fashion with respect to the mandate of the directive. Member state compliance is important for the functioning of the EU. There has been continued research on the “transposition deficit”, calculated as the number of in-force directives yet to be transposed by member countries relative to the existing body of in-force legislation, and its reduction over time. Member state failure to properly enact or apply legislation is costly for business and citizen constituents in the individual member states who are not able to receive the same benefits and rights they are permitted by law. For example, in the cases of marketplace regulation, when new obligations for the market are passed, compliance with directives that mandate higher levels of environmental responsibility,

for example, can put compliant companies at a disadvantage in comparison to companies that flaunt these additional regulations and therefore do not incur the costs of additional precautions, etc. To ensure compliance, the Commission is empowered to check on states during the transposition process.

Thus, directives are important and can significantly affect the lives of citizens, and the compliance with these directives is not guaranteed. Furthermore, how states fail to comply with these directives can occur in different ways: states can delay implementation or enact incorrect legislation and they often delay, write incorrect measures, or even both, quite often. Of European Union directives enacted between 1978 and 1997, nearly 67% had at least one infringement case opened against a member state for noncompliance.

Existing research has considered the problem of infringement by either focusing upon timing alone or upon total numbers of infringements. These approaches incorrectly assume that all infringements are alike and thus can be addressed as parts of the same phenomenon, yet this assumption does not appear to hold.

When tabulating the number of infringement cases by member state in the period of 1978-1999, the correlation between the total number of late and total number of substantive infringements for states is merely 0.73.

While this is a moderately strong correlation, suggesting that tendencies toward late and substantive infringement do relate, the remaining variation (more than 25%) indicates that the two types of infringements do not move in tandem. This observation has been supported in the few pieces that have considered types of infringements separately (Thomson 2007, König and Mäder 2013, Mastenbroek 2007). These authors have indicated that some states may choose to trade between late and substantive infringements at different rates and for

different reasons—that is, they are not substitutable. Furthermore, states that perform poorly on one measure, do not necessarily perform poorly on the second, something missed by the literature's broad approach to infringements. For example, despite Portugal's reputation for poor compliance, Portugal had fewer substantive infringement cases (201) than either Germany or the UK (at 286 and 216, respectively) between 2002 and 2009.

While some common factors contribute to higher levels of infringements overall, e.g. incapacities within the bureaucracy and complexity of the directives to be enacted, three factors distinguish late from substantive infringements: preferences, power, and opportunity. Infringements have a common source: disagreement by national political actors (including the policy-area minister, coalition members in the government) regarding a directive but whether this disagreement transforms into substantive or late noncompliance depends. . Substantive infringements arise when three conditions are simultaneously present: the national political actors not only *disagree* with a directive, AND they have the *power* to affect national legislation, AND they have the *opportunity* to do so, in the national parliament. Late infringements arise when only some of these conditions are present: when national political actors disagree but lack tools to substantively influence legislation, e.g. when coalition members have weak parliamentary powers but disagree with directive content, or when strong national parliaments are involved in the passage of legislation during the transposition process.

The European Union, in response to state complaints about the increasingly irrelevant role national parliaments held in legislating, has moved to make national parliaments more relevant. The increasingly powerful role of parliaments in drafting and transposing directives is likely to contribute to higher levels of substantive infringements while appearing to reduce late

infringements. Because infringements stem from conflict, analyzing them jointly can seem logical but approaches that conflate these two types of infringements will miss the potential tradeoff between timing and substance. Combining late and substantive infringements will lead researchers to not only misunderstand the mechanisms behind these distinct types of infringements, but they will conclude that the involvement of parliament will potentially move member states toward greater levels of compliance when it indicates the opposite: more opportunities for unrecognized substantive noncompliance. My approach demonstrates that the distinction of substantive infringements captures a phenomenon that is likely to increase over time as parliaments become increasingly involved in transposition, contributing to ever-higher numbers of infringements and further weakening the impact of enacted directives. Furthermore, my analysis provides an explanation for why and when late and substantive infringements are likely to occur, something the literature has so far overlooked.

Legislation Design and Obligations in the European Union

The European Union (EU) offers an interesting balance between autonomy and interdependence for its 28 member countries: members retain their own sovereignty while agreeing to implement and comply with EU legislation. Today there are 28 member states, but the EU began with just six states (Germany, France, Italy, the Netherlands, Belgium and Luxembourg) signing a treaty to commonly manage coal and steel. From this initial starting point, the 28-member union covers over 4 million km^2 and has 503 million inhabitants ("Living in the EU" n.d.). There are three branches of the EU and many independent agencies, all of which have helped produce and now oversee the the more than 40,000 legal acts, 15,000 Court verdicts, 62,000 international standards, and over 34,000 secondary legislative acts

(“Number of Laws” 2015).

A Brief History

The original six member countries, Belgium, Germany, France, Italy, Luxembourg, and the Netherlands, came together to jointly manage coal and steel markets in the 1950s. The European Union began as the Common Assembly of the European Coal and Steel Community (ECSC) and later became the European Economic Community after the Treaty of Rome in 1957. The 1990s saw more changes in the EU as it transitioned to a more organized and powerful federation with the Treaty on the European Union being signed in 1992, the Schengen Agreement of 1995 enacted, the signing of three additional treaties: the 1997 Treaty of Amsterdam, 2002 Treaty of Nice and 2007 Treaty of Portugal.

The 1992 Treaty on European Union formally changed the name of the group of member states from the European Community to the European Union and created a framework for a stronger unification of Europe. While the 1995 Schengen Agreement made travel between the seven countries of the agreement (Belgium, France, Germany, Luxembourg, the Netherlands, Portugal, and Spain) much easier as no passport was required for entering and exiting within these states. In 1997, the Treaty of Amsterdam expanded the 1992 treaty, discusses institutional reform and also expands the EU's reach into policy on citizen affairs.

EU expansion

There have been six waves of expansion of the Union, taking membership from the original six to the new 28 (with several more waiting in the wings).[6] These different waves occurred in 1973 (Denmark, Ireland and the United Kingdom), 1981 (Greece), 1986 (Spain and Portugal), 1995 (Austria, Finland and Sweden), 2004 (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia), 2007 (Bulgaria and Romania) and 2013 (Croatia) (EU Enlargement, n.d.).

Bodies of the European Union

There are many layers within the EU organizational structure that begins the European Council and its rotating six-month presidency, which cannot set legislation but determines the general policy direction of the EU's three legislative bodies (the European Parliament, Council of the European Union, and the European Commission).

European Parliament

Members of the EU have directly elected the European Parliament members since 1979 and representatives sit by political groups rather than national delegations. The Parliament passes laws, in conjunction with the Council, monitors other EU institutions, and sets the EU's budget, with the Council.

Council of the European Union

[6] Note that this dissertation was defended in June of 2016, prior to the UK vote to leave the European Union. As of this last edit, in July of 2016, exactly whoe (and if) this exit is to transpire remains to be determined by the EU and UK.

The Council of the EU represents member-state governments in the EU, keeping the interests of the EU as a whole in mind. The Council members are national ministers from each member country and the presidency rotates between member countries as well, much like the presidency of the European Council. The Council of the EU, with the European Parliament and Commission, passes laws, signs agreements between the EU and other countries, approves the EU budget (with the Parliament), and coordinates cooperation between courts and police forces of member countries.

European Commission

Finally, the European Commission, like the Council of the EU, also represents the interests of the EU as a whole. The Council of the EU is responsible for enacting legislation proposed by the Commission. The European Council nominates the president of the Commission and the President assigns each country's commissioner specific policy areas upon which to focus. In addition to the 28 commissioners, there is a permanent staff that keeps the Commission running.

European Legislation

The Community Acquis contains the existing in-force legislation of the European Union, spanning thirty-five chapters. Over time, the number of chapters, each relating to different policy areas (such as 'Competition' and 'Energy'), has expanded both in the amount of legislation required and the detail given. All legal requirements are contained within the acquis and each chapter must be negotiated and evaluated with each prospective country before

membership is finalized. The Acquis also specifies that all member countries must make provisions to enact and implement future directives and mandates as they are created. Thus, all member countries are obligated to transpose the body of EU legislation that exists prior to their membership, and to maintain compliance during the tenure of their membership.

There are two forms of legislation: primary and secondary. Primary legislation, the Treaties,[7] lays out the distribution of institutional powers and functions in the EU. Secondary legislation details the specifics for the functioning of the EU and member states. Succinctly, primary law lays out *how* things will be done (who has power to limit whom and when) while secondary law lays out *what* will be done (e.g., what taxes are to be shared and how they are to be calculated). Secondary law, discussed in Article 288 of the Treaty on The Functioning of the EU (TFEU), is divided into four categories: regulations, directives, decisions, and opinions & recommendations. Two of these categories are effectively binding for all states[8] (*regulations* and *directives*), one is binding for the addressees (*decisions*),[9] and one is non-binding (*opinions*, targeted to particular states) and *recommendations*, directed at all states)[10].

Drafting of Legislation

Legislation (specifically, regulations and directives) can be drafted by the Council alone, the Commission, or the Commission and the European Parliament. Initially, the Treaty of Rome (1957) afforded the EP an 'advisory role' in policy design which amounted to very

[7] The Treaty on the Functioning of the European Union (TFEU) and the Treaty of the European Union (TEU).
[8] Regulations and directives are almost always directed to all member states or, at the minimum, categories of states rather than individuals.
[9] Although after the Treaty of Lisbon, decisions are no longer required to be specifically addressed (they may be general). Decisions are increasingly used in the policy-area of Common Foreign and Security Policy.
[10] Recommendations and opinions are "little more than suggestions or tentative proposals" (Watts 2008) and are not binding for member states or other addresses.

little. The roles of the different EU institutions (and the institutions themselves) are set out in the successive treaties on the European Union and the role of the EP has evolved (and expanded) over time.

The Brussels treaty, signed in 1965, created a single Commission and single Council to serve the member countries.[11] The Single European Act, signed in 1986, altered qualified majority voting in the Council and increased the influence of the EP through the cooperation procedure[12]. The previously small role of the EP expanded in 1991 with the Treaty of the European Union (Hertiér et al 2013) and the establishment of Co-Decision. In the treaty of Maastricht (signed in 1992), the EP was granted the right to initiate legislation.[13] The treaty of Amsterdam (signed in 1997) increased the number of policy domains covered by the EU, extended the codecision procedure and qualified majority voting. The treaty of Nice (signed in 2001) made fewer changes, primary among them the simplification of the 'enhanced codecision procedure'. The 2007 treaty of Lisbon made wide-reaching reforms, including a new allocation of competencies between the EU and member states and modifying the way decisions are made in the then-27 member EU. New policy domains were added to the legislative competencies and legislative powers of the institutions were enhanced.

Through this evolution, the legislative process has been broadened and the power of the European Parliament (EP) expanded through the development of three procedures, cooperation, codecision, and the ordinary legislative procedure.

Cooperation Procedure

[11] http://europa.eu/eu-law/decision-making/treaties/index_en.htm
[12] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:xy0023
[13] http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130619/LDM_BRI(2013)130619_REV2_EN.pdf

The cooperation procedure was introduced in the Single European Act (SEA), along with the assent procedure. The cooperation procedure was the first procedure to be set out in a separate treaty article, where other articles referred to it, and applied to approximately one-third of legislation (Hix and Høyland 2011). The procedure increased the powers of the European Parliament by permitting a second reading and reducing the Council's ability to overturn EP amendments made in the second reading. The assent procedure required the approval of the EP before the Council could act, including association agreements with non-EC states and the accession of new member states. The assent procedure was later extended by the Maastricht Treaty.

Codecision Procedure (and **Enhanced Codecision Procedure** or 'Co-decision II') The Maastricht Treaty of 1993 introduced the codecision (also referred to as 'co-decision') procedure in a separate article, much like the cooperation procedure in the SEA. With the introduction of the codecision procedure, the EP and Council became legislative equals. This procedure again strengthened the power of the EP and introduced provisions should disagreements arise between the EP and Council over legislation. In such a case, a conciliation committee of equal members from each body would be convened. The EP and Council would then approve the committee's proposal. This procedure applied to the provisions previously covered under the cooperation procedure and also incorporated new areas that were introduced by the Maastricht Treaty: public health, consumer protection, education, and culture (Hix and Høyland 2011).

The extension of the codecision procedure by the Amsterdam Treaty in 1999 permitted the adoption of legislation at the first reading if both the EP and Council could agree. The conciliation committee, formerly the penultimate phase of legislation (after which the Council

and EP would need to pass the committee's arrangement), became the final stage of the legislative process. Failure to reach an agreement equated to no legislation.

Ordinary Legislative Procedure

The 2009 Lisbon Treaty significantly extended the codecision procedure, now the ordinary legislative procedure, to almost all areas of EU law. While the Commission has the right of initiative,[14] most EU laws are the products of joint decisions by the EP and the Council.[15] The ordinary legislative procedure is set out in article 249 of the Lisbon Treaty and gives equal weight to the EP and the Council of the European Union in many domains, in contrast to previous procedures.

Initially Qualified Majority Voting (QMV) was a weighted vote system where states received an allocation of votes (roughly) proportional to their populations (e.g. France had 29 votes compared to 10 votes for Austria and 3 for Malta) from a total of 352. QMV required a majority of states and at least 260 votes in favor. In November 2014, this changed. The new QMV is a departure from previous formulations, replacing the previous weighted voting system with a dual majority system. Passage now requires at least 55% of Member States representing at least 65% of the EU's population. In circumstances where the Council doesn't act on a proposal from the Commission, a qualified majority is defined as at least 72% of Member Sates representing at least 65% of the EU's population. Minorities can also block legislation if at least 4 member states with at least 35% of EU population are opposed.

Together with the ordinary legislative procedure, special legislative procedures govern

[14] http://ec.europa.eu/atwork/index_en.htm
[15] http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00004/Legislative-powers

the production of legislation. While the ordinary legislative procedure is the most commonly used legislative procedure today (source: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:ai0016), special legislative procedures (which replace the former consultative, cooperation, and assent procedures) typically designate the Council of the EU as the sole legislator (relegating the EP to a consultative role).

Shifts in Legislation

These changes in how legislation is drafted and approved have increased the number of national political actors who have influence on policy (increased not only by the expansion of the EU but also by the involvement of the EP and its increased power). Furthermore, the domain of EU legislation has expanded from the original coverage of the European Coal and Steel Community. The ECSC was initially formed to create a common market for coal, iron ore, scrap iron and steel. From this initial agreement, policy domains of agriculture (1962), foreign policy, internal markets, and social policy (1992) were included and expanded (source: http://www.civitas.org.uk/eufacts/OS/OS15.php).

Types of Legislation

Secondary legislation in the European Union consists of Regulations, Directives, Decisions Opinions and Recommendations. Of these, both regulations and directives are binding, although only the directives carry an additional burden of transposition, as I discuss later. For this dissertation, I will focus on regulations and directives, although I recognize the importance of decisions, recommendations and opinions. Directives are generally recognized

as permitting more discretion to state actors (Franchino 2007, Golub 1999, Windhoff-Héritier and Moury 2013) while regulations are often perceived as narrow and less significant in scope (Golub 1999). However, this is not always the case as some significant legislation may be enacted as a regulation (Windhoff-Héritier and Moury 2013).

Regulations and directives are a bit curious in that there are clear distinctions for states but more ambiguity in whether legislation should or must be in the form of directive or regulation. For states, regulations are immediately binding while directives require states to enact legislation (usually of any type—laws, acts, etc.) that fulfills the directive's mandate. Directives are intended to respect the potential heterogeneity of state legal systems as they set forth goals and requirements while permitting some discretion. In practice, this discretion has varied, decreasing some over time (Windhoff-Héritier and Moury 2013). From the perspective of legislative bodies within the EU, the distinction between regulations and directives is decidedly less clear as different actors (Commission, Council, European Parliament, in co-decision,) have mandates from different bases (Treaties, existing secondary legislation) that can be fulfilled at times per the actors' discretion but other times not (and this has changed over time).

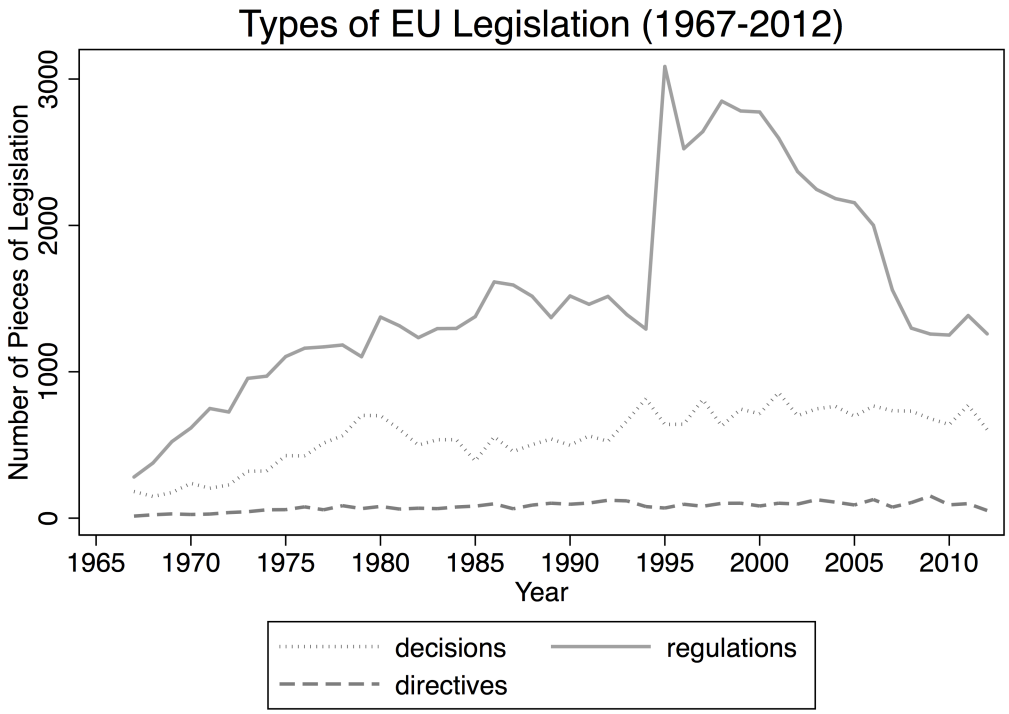
Regulation vs. Directive

The choice of writing legislation as a regulation or directive is sometimes stipulated in the Treaty on the EU (Treaty on the Functioning of the European Union). For example, Article 46 allows either directives or regulations to be used in 'bringing about freedom of movement for workers (Art 45)' while Article 59 (trade) discusses only directives and Article 121

(economic policy) references regulations. However, other policy domains receive no such direction and the choice is left to the actors.

Windhoff-Héritier and coauthors explore this topic at length (Windhoff-Héritier and Moury 2013), finding that many different considerations likely go into the choice of regulations over directives, or vice versa, depending upon the complexity of the policy issue, the policy domain itself, whether treaties offer any guidance or stipulations, the need for integration in complex national legislative systems (is there existing national legislation that needs to be remedied?), among other concerns. (Windhoff-Héritier and Moury 2013) Thus, while Golub (1999) argues that regulations are often issued in cases of bulk packages on routine issues (such as updating agricultural prices or quotas), this is not necessary true for all regulations. Windhoff-Héritier argues, and Golub concedes, that important issues also sometimes make their way into legislative force as regulations as well, particularly when states themselves may prefer the immediately binding regulation over a low-discretion directive that also requires national legislative action. Regulations can provide political cover for states as regulations require no state action. However, on average, regulations contain less complex material with lower saliency.

Figure 1-1: Types of EU Legislation (1967-2012)



Both regulations and directives have come to play an increasingly large role in the European Union: although there were fewer than 50 directives in effect in the 1970s, by 2012 there were 1,989 directives in force (COM 2013). Through this change, the boundary between regulations and directives has muddied over time (Windhoff-Héritier and Moury 2013) but the bulk of regulations are still more 'mundane' compared to most directives.

I evaluate directives because the focus of this study is upon how states behave when confronted with a deadline and a mandate: do they comply or ignore? Directives require states to report compliance and to adhere to the legislation states enacted. Regulations require compliance without the reporting and vary widely in content and demands placed upon states. A focus upon directives enables a study of how legislative design varies cross nationally in ways that are not possible in using only regulations.

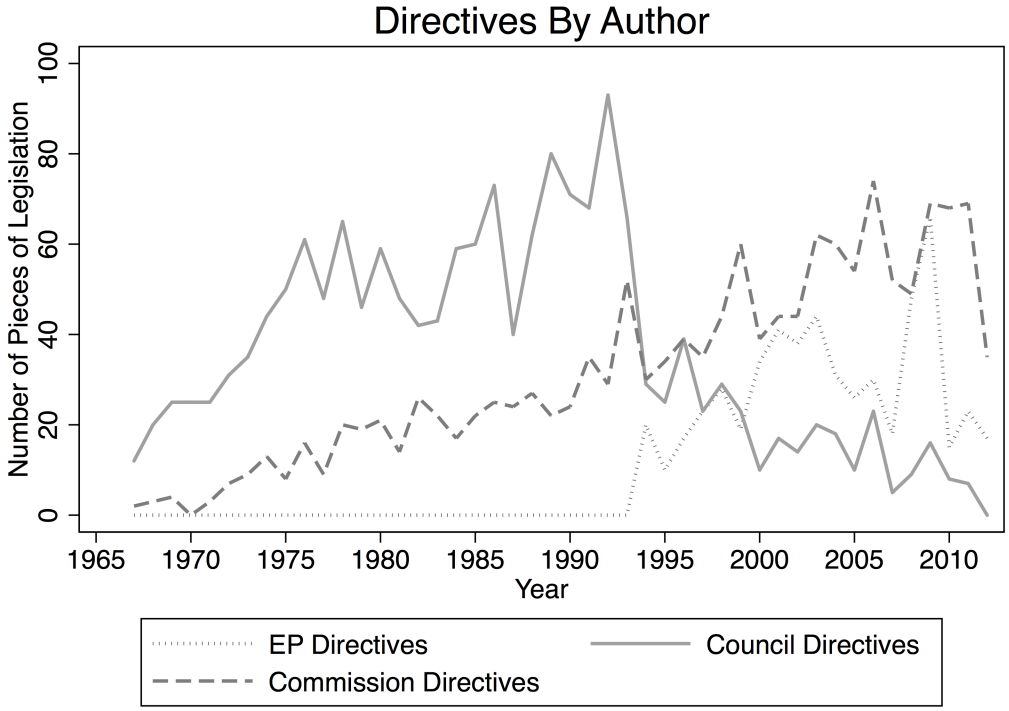
Note that while I focus upon directives, I do not delve into specifics of the negotiation process that contributes to the design of the final directive. This means that questions of how states came to negotiate the drafts that subsequently formed the final directive are not directly addressed, aside from the level of (policy-area) ministerial approval. While ministerial approval is often similar to the level of state support for the directive, the two are not necessarily equivalent (particularly in environments with multiple national political actors). I do not address issues of 'fit' between the directive and national legislation, aside from in the literature review; although this is an issue worth considering in future work. In particular, there is a question of the degree to which existing legislation conforms to that within a country—for example, in the case of the packaging waste directive and whether the final legislation was close enough to that of, say Germany, that Germany might be expected to be compliant without significant adaptation of national legislation. Because states negotiate draft EU legislation, as I later discuss, all states typically have to adapt or adjust national laws. Seemingly small differences between national and EU legislation can contribute to important gaps between national laws and that mandated by the directive. It is for these reasons that the motivations behind a directive, aside from the national level preferences of policy-area ministers, are not explicitly addressed.

Authorship Trends in Directives Over Time

Over time, the European Parliament has become more active in legislation—we notice a marked increase after Maastricht in 1993 in directives authored by the European Parliament. Over the same period, there is a decline in Council directives. Given that the EP

does not have sole legislative power, these directives are joint with the Council. These directives are more complex, on average, as they involve multiple actors negotiating over increasingly diverse policy areas.

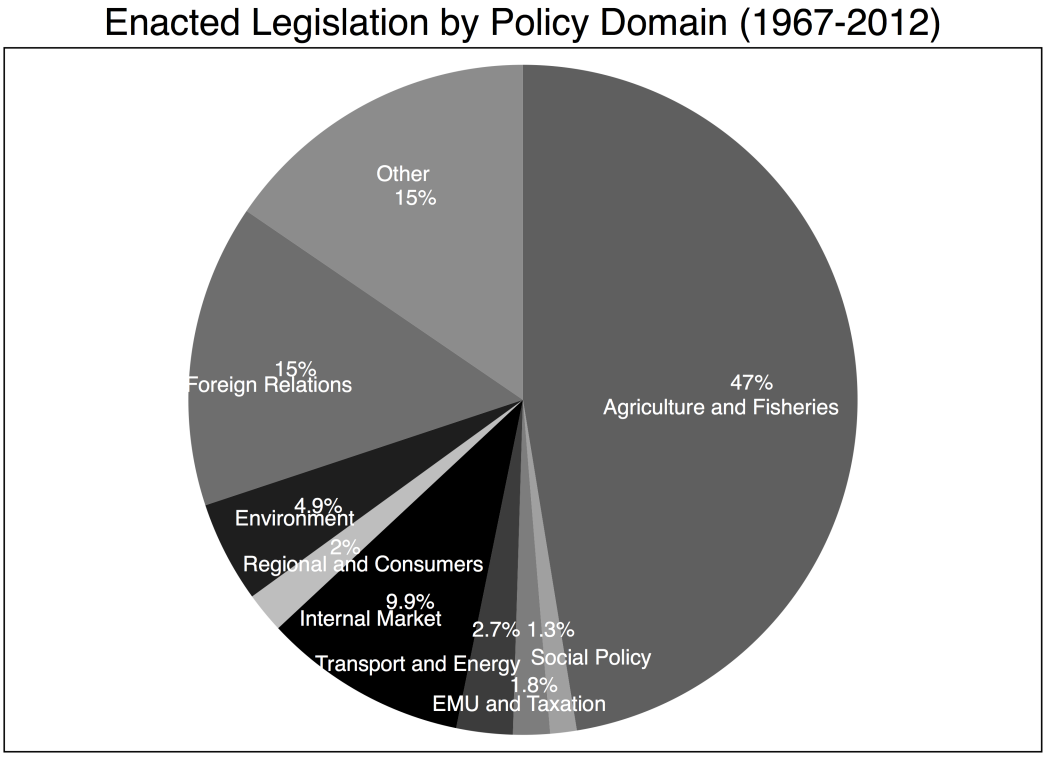
Figure 1-2: Directives by Author (EU Institution) (1967-2012)



Policy Areas

From its origins as a community of six member states, the depth and scope of European Union legislation have increased quite substantially. To illustrate the different domains of legislation covered, I first discuss all legislation and then focus solely upon directives, the topic of the dissertation.

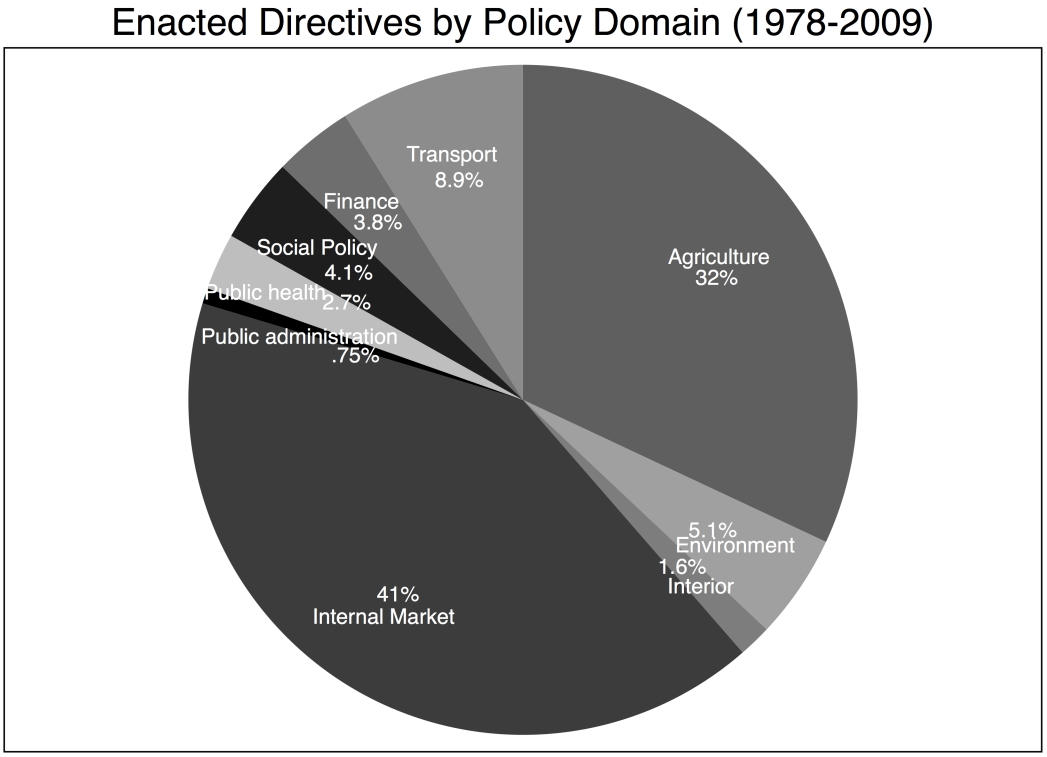
Figure 1-3: Enacted Legislation by Policy Domain (1967-2012)



The above graph illustrates the share of different policy domains in enacted EU legislation. We observe that the largest share is that of Agriculture and Fisheries (47%) with Foreign Relations coming in second (15%). These results are not the same when we focus solely upon directives. For directives, Agriculture remains a primary policy domain but Transport (8.9% of directives vs. 2.7% overall), Social Policy (4.1% of directives vs. 1.3% overall) and the Internal Market (41% of directives vs. 9.9% overall) all have a much larger share of directives than overall policy.[16]

[16] Note the difference in years covered—there are some idiosyncrasies between the two datasets in the periods covered. The first dataset comes from Dimiter Toshkov (http://www.dimiter.eu/Eurlex.html) and his visualization "55 Years of European Legislation." The data for directives comes from König and Luig (2014) and is described in the data chapter.

Figure 1-4: Enacted Directives by Policy Domain (1978-2012)



A second observation is that the bulk of existing research covers Transport (8.9%) or, particularly, Social Policy (4.1%) directives. From the above graph, we can see that these two policy areas cover a small proportion of directives. Comparatively few studies consider agricultural directives while some do focus on Internal Market directives. This topic will be revisited in the following chapter.

Compliance

Compliance refers to whether states meet their obligation of enacting national legislation to *transpose* a directive in a timely and correct fashion. The act of transposition refers to the

drafting and enacting compliant national legislation by member states. Member state compliance is important for the functioning of the EU. There has been continued research on the "transposition deficit", calculated as the number of in-force directives yet to be transposed by member countries relative to the existing body of in-force legislation, and its reduction over time. To ensure compliance, the Commission is empowered to check on states during the transposition process. Failing to notify the Commission of compliant legislation consumes Commission resources during compliance checks. Similarly, failing to properly enact or apply legislation is costly for member state constituents who are not able to receive the same benefits and rights they are permitted by law, and it is costly for countries that do comply as they may be at a disadvantage relative to countries that are not in compliance. For example, the estimate of cost to the environment and for health costs of unapplied legislation are approximately €50 billion a year. [17,18] Later I discuss the elements of successful transposition, but first, I outline the procedure through which infringements are detected and by which they are resolved.

Detecting Non-Compliance: Monitoring and Complaints

The Commission ensures compliance with EU legislation and works to ensure that member states are compliant with existing legislation.[19] The Commission verifies compliance and has the power to initiate infringement proceedings. Commission awareness of infringements occurs through Commission checks (focusing upon areas which are prone to

[17] http://ec.europa.eu/environment/legal/law/com_improving.htm
[18] For example, these costs include costs relevant to environmental damage that occurs when countries are in violation of an environmental protection.
[19] For further information, see: http://ec.europa.eu/eu_law/infringements/infringements_en.htm

infringement and upon countries which are prone to infringement) and through complaints. Interestingly, the Commission is moving away from a complaint-based system toward a more active approach to seeking cases of infringement, similar to what has been defined as 'police patrols' (discussed later)(Commission website, Windhoff-Héritier and Moury 2013). Currently, complaints have and continue to represent the majority of substantive infringements. Regardless of the origination of the detected non-compliance, once a case of non-compliance is detected, the same procedure is followed: letter of formal notice, reasoned opinion, referral to the Court of Justice (COJ) and then a decision from the Court.[20]

Infringement Procedure

Once a possible infringement has been detected through a complaint or the Commission's efforts, the process of information gathering begins. This stage is devoted to determining whether a state has infringed on the legislation. The number of open cases under investigation has historically been around 2000 cases per year between all the stages of infringement proceedings. Before the infringement process formally begins, the Commission sends a letter of formal notice. It is the first public stage of what some call the infringement process, but technically it is categorized as 'pre-infringement'. Following this preliminary investigation, there are two stages within the formal infringement process, a reasoned opinion and referral to the Court of Justice.

Letter of Formal Notice

[20] If state non-compliance persists, the Commission can again refer the state to the COJ.

In a letter of formal notice, the Commission requests information from a member state on the relevant legislation within a certain time frame, typically two months. Information on the incidence of formal notices are published in aggregate annually by the Commission but typically are not individually publicized unless they are noteworthy, for example if many complaints have been brought against a piece of legislation or a member state as the letter constitutes part of the 'pre-infringement' phase. Typically, the Commission requests additional information to clear up confusion about aspects of compliance. This also gives the state an opportunity to work toward compliance before formal infringement processes begin. The infringement process officially begins when the Commission sends a reasoned opinion. This will occur when a state fails to respond to the letter of formal notice, or if it responds in a way that is unsatisfactory, either by providing insufficient information or if the information provided makes it clear that an infringement has occurred. State failure to resolve these issues leads to the Commission to move forward with the process.

Reasoned Opinion

A reasoned opinion is much more detailed than the letter of formal notice and opens the door to the litigation procedure. It is the first step of the official formal infringement process and, like letters of formal notice, is intended to provide an opportunity for states to resolve the case as quickly as possible. Reasoned opinions occur when it is clear an infringement has occurred, or when a state fails to provide adequate information. They are the final step before referral to the court. Court referrals can involve costly sanctions and states have an incentive to remedy infringements before the court referral stage is reached. As in the letter of formal

notice, states have two months within which they must comply. Between 2005 and 2009, approximately 38% of cases moved from letters of formal notice to the Commission issuing a reasoned opinion.

Court Referral

Once a state has failed to adequately address the Commission's concerns laid out in the reasoned opinion, the state is referred to the Court of Justice. The Commission's goal is to resolve noncompliance before referring to the court, but this goal is not always met. Approximately 12% of infringement cases moved from the letter of formal notice to court referrals with approximately 33% of reasoned opinions moving to court referrals between 2005 and 2009. Once referred to the Court of Justice, the Court can side with either the member state (and the case is closed) or the Commission (and the state must comply with the directive). The Court's judgment is binding and may include sanctions.

These sanctions are can be either flat amounts (referred to as "lump sum"), daily/monthly recurring sums ("penalty") or a combination of each. Recurring sums continue to accrue until a state complies.[21] Although the Commission can suggest sanction amounts, only the Court can set them. Failure to comply can lead to subsequent re-referrals to the Court.

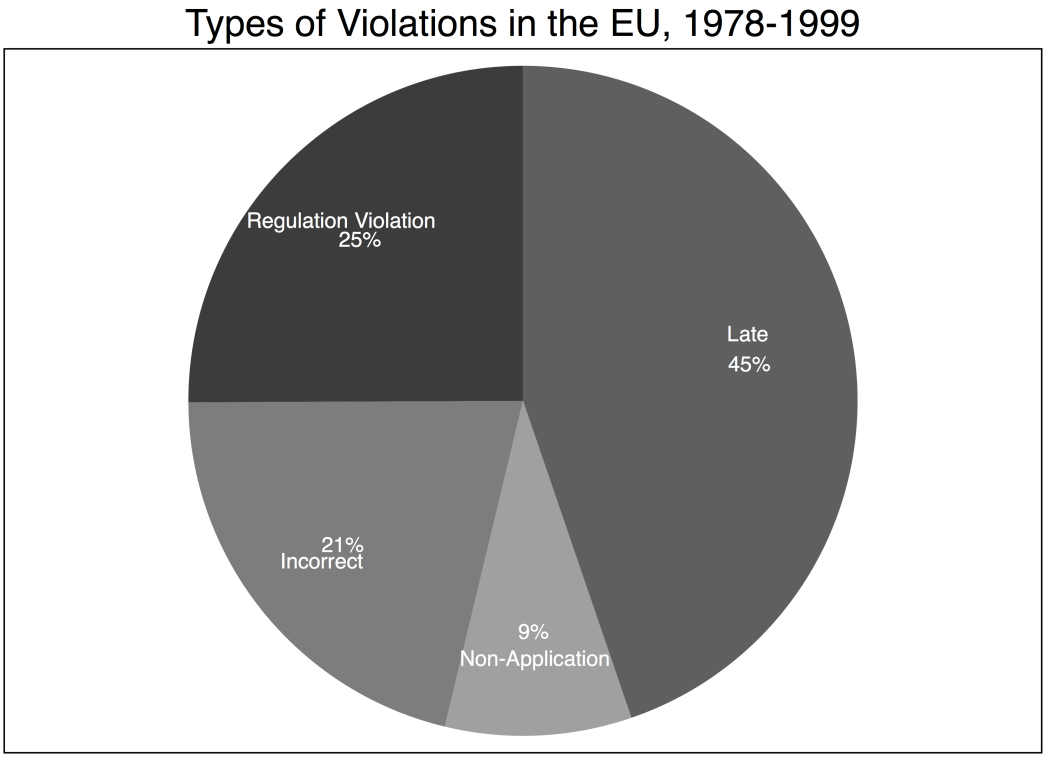
Infringements

When evaluating the implementation of directives, the Commission distinguishes between the different types of failure (official Commission categorization in parenthesis).

[21] More on calculation of infringement sanctions here: http://ec.europa.eu/eu_law/infringements/infringements_en.htm

Instances in which the directive is applied incorrectly or contradicted by member state legislation ("Application"), when the directive is incorrectly written in some way ("Non-Conformity"), or not enacted within the given deadline ("Non-Communication"). Since regulations do not require transposing into national legislation, there is only one infringement category for regulation infringements, ("Violation"). This category captures instances of states not repealing existing contradictory legislation or enacting further legislation that goes against regulation provisions. This yields four technical categories, but I combine them into two categories to reflect the type of failure: late and substantive infringements. In the graphs that follow, I use data from the disaggregated dataset (state-directive cases) for all infringement cases except those with multiple infringement types cited. There are 9,537 total cases with 6 cases missing information on infringement type and 46 cases with unclear infringement types (e.g. The type of violation is cited as '2;3'). Rather than include these unclear instances as multiple infringement types, they are excluded from the graphs below. Note that they represent about 0.00063% and 0.005% of violations, respectively.

Figure 1-5: Types of Violations in the EU (1978-1999)



Late infringements are cases in which states have failed to enact legislation by the deadline. Substantive infringements are those where states have failed to correctly write or apply legislation. Although all infringement types follow the same procedures, how they have failed to comply may lead to different outcomes. For example, late infringements are typically easier for the Commission to detect than substantive infringements while substantive infringements are more commonly reported as complaints. Furthermore, substantive infringements may ultimately play a larger role in the degree to which legislation succeeds, as these instances can be difficult for the Commission to monitor because states have reported that they are compliant, unlike in instances of late transposition. Note that states can have multiple infringement cases for the same law: they can have multiple referrals to the Court of Justice in the event they do not comply with the initial COJ ruling and they can infringe on

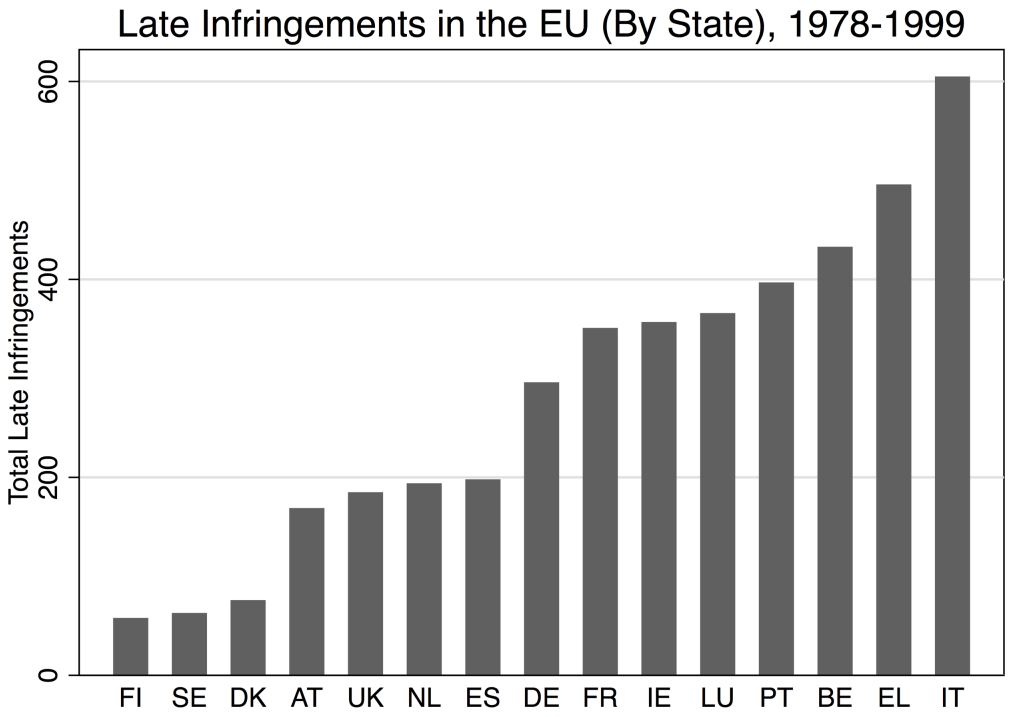
legislation in multiple ways.

Non-Communication of Directive Measures ("Late")

The most common infringement type is *non-communication*. During the process of transposition, officially incorporating directives into national law, states must notify the Commission of the legislation enacted to come into compliance with a directive. Failure to notify by the deadline of the directive (most commonly two years) leads to infringement cases being opened against the member state. States may enact legislation but fail to notify the Commission (as Denmark did in 2014 on the Energy Efficiency Directive)[22] but this happens rarely. A more typical outcome is a state failing to enact legislation and thus not having measures to report to the Commission. This happened in the case of the pregnant workers directive when Belgium, France, Germany, Greece, Italy, Luxembourg and Portugal initially failed to notify the Commission of relevant transposing legislation because they delayed enacting legislation. All states but Luxembourg were able to adopt the relevant legislation after the letter of formal notice, before moving to later stages of the infringement process. Luxembourg received a reasoned opinion and was eventually referred to the COJ. Luxembourg subsequently enacted a law in 1998 to satisfy the directive, four years after the 1994 deadline.

[22] http://uk.reuters.com/article/2014/08/13/eu-energy-germany-idUKL6N0QJ2FS20140813

Figure 1-6: Late infringements in the EU (By State) (1978-1999)



Non-Conformity Cases of Directive Measures ("Substantive (writing)")

These cases are instances where a directive has been partially transposed, but not all aspects of the provisions within the directive have been fulfilled by notified legislation. Thus, it may be that a state has notified the Commission of measures but that a) the measures enacted are not technically correct or b) the entire mandate of the directive is not fulfilled.

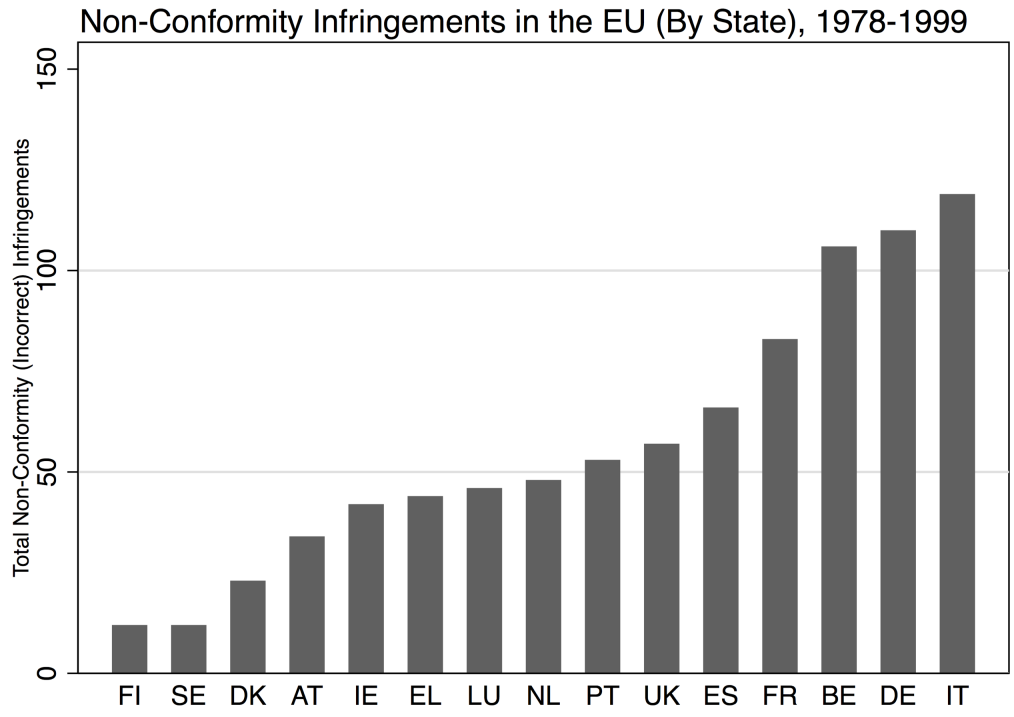
Although directives do provide considerable flexibility relative to regulations, states do not have total freedom: they must adhere to the provisions stipulating what is and is not an acceptable requirement in execution of the law. States sometimes fail to correctly write legislation, either by failing to address provisions of a directive or by going 'beyond' the requirements of a directive in placing additional restrictions that limit the intended recipients in some way not intended by the original directive. For example, during transposition of the

pregnant workers directive (92/85/EEC), Luxembourg illegally imposed additional restrictions on pregnant workers. Luxembourg required pregnant women to not only notify their employers but to do so by registered mail, to send their employers a medical certificate and to affiliate with a social security scheme. For this *incorrect writing* of legislation, Luxembourg ultimately had infringement proceedings opened against it by the Commission, yielding a substantive infringement. Luxembourg's actions placed additional restrictions beyond those identified in Article 2, section (a), a "pregnant worker shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice" (92/85/EEC).

Requiring workers to take the additional steps was not a legally correct interpretation of the directive. Italy had infringement proceedings for similar causes: it imposed a ban on night work in the manufacturing industry, a prohibition not included or permitted in the directive. States may also fail to fully address all the provisions of a directive: France failed to include the possibility for pregnant women to be released from work if necessary in order to protect their health.[23] All three instances were failing to implement the objectives of the directive, either as falling short of the goals (France) or by imposing additional restrictions prohibited or excluded by the directive (Italy and Luxembourg). These infringements all affected the substantive impact of the directive: all workers were not receiving their entitled benefits as laid out in the directive text.

[23] Note that failing to address one provision of a directive is not late IF the state notifies the EU of other measures. Meaning, the state must report transposing measures to the EU. If one portion of the directive is not covered by the legislation, this is a substantive violation for reason of *incorrect writing* because the state implied it was otherwise in compliance.

Figure 1-7: Non-Conformity Infringements in the EU (By State) (1978-1999)

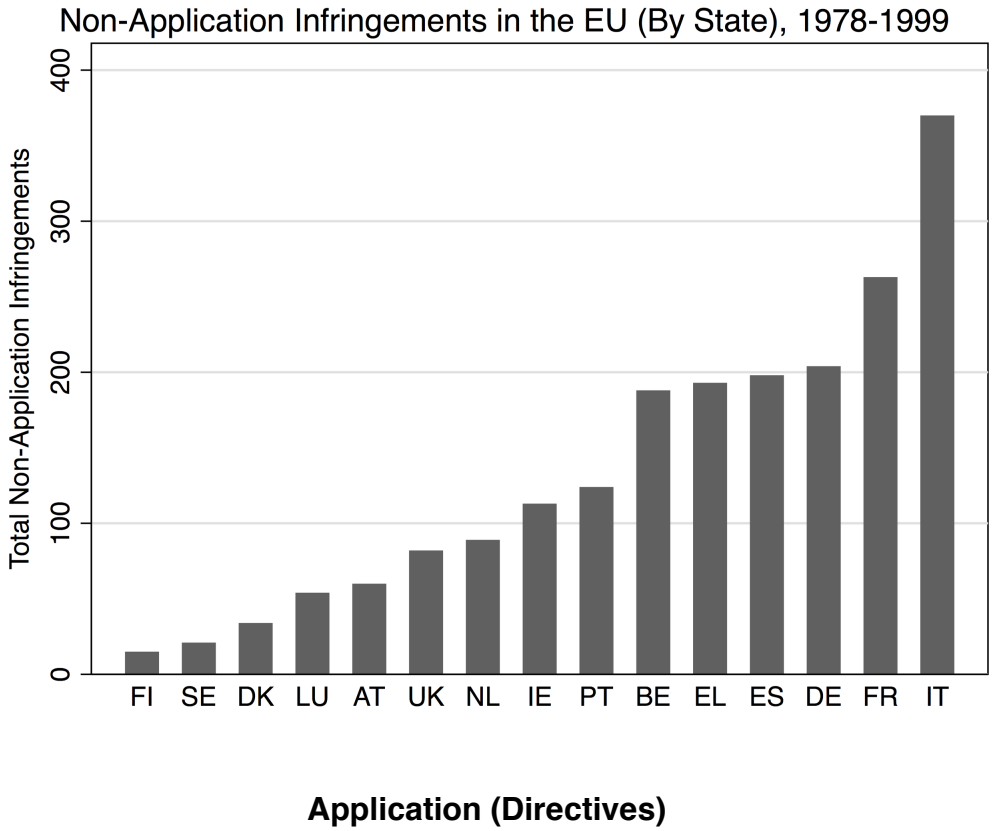


Non-Application (Directives and Regulations) ("Substantive (Application)")

There are two types of application-related infringements—one for directives and one for regulations—and both involve the same criteria. In both instances, *application* violations occur when states fail to fulfill the legislation they wrote. This may include not applying written legislation, failing to repeal existing national legislation that contradicts EU legislation and/or subsequently enacting legislation later that contradicts EU legislation. The most common type of application violation is a state later enacting legislation that directly contradicts an existing directive or regulation, despite the state having enacted compliant legislation. This means that a state has legislation that contradicts itself (the new and previous laws) and legislation that contradicts a directive (the new law and the text of the directive or regulation). Below I provide

examples of instances where substantive infringements occurred for member countries in the instances of directives and regulations. The Commission categorizes these infringements separately, distinguishing between directives and regulations, but as mentioned above, the criteria for each type of infringement is the same and the end result is a substantive infringement.

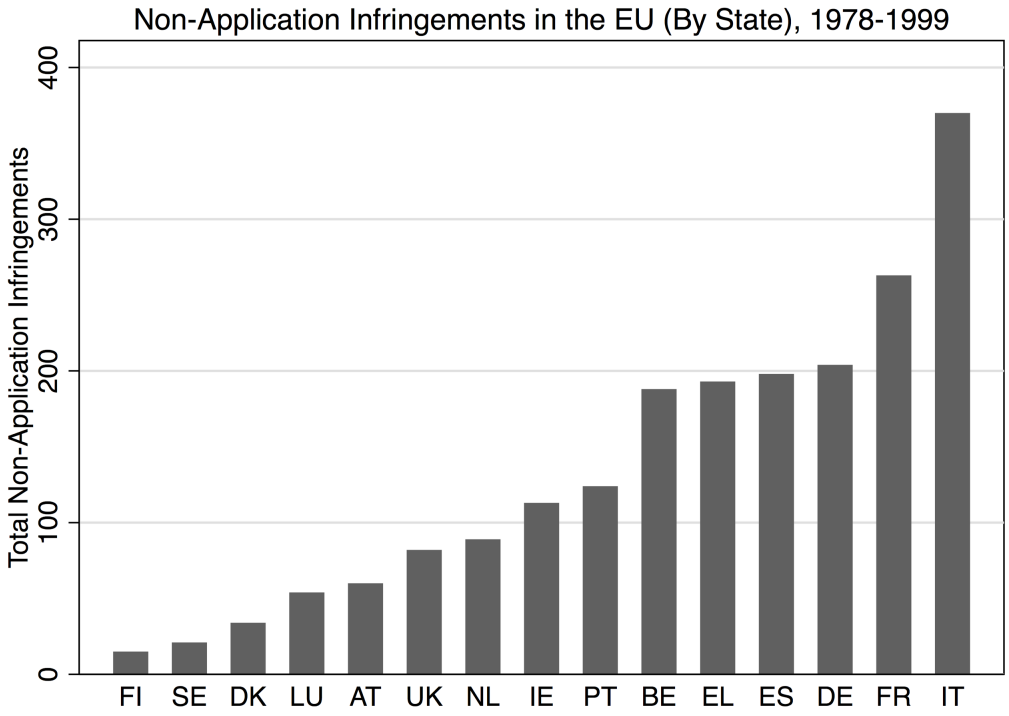
Figure 1-8: Non-Application Infringements in the EU (By State) (1978-1999)



Application of Wastewater Directive (91/271/EC): this directive was intended to provide guidance for the protection of water quality in the EU. Two states, France and Greece, were applying the directive unevenly, resulting in variable water quality for citizens. The

Commission found that both Greece and France failed to comply with European norms. In France, initially some 551 small agglomerations (population between 10,000 and 15,000) inhabitants were noncompliant with the (correctly transposed) directive. This number was later reduced to 54 agglomerations as France worked to consistently apply the requirements for water treatment.[24] In Greece, 23 agglomerations were also noncompliant.[25] In both instances, despite legislation mandating the proper procedures, secondary treatment of wastewater was not consistently occurring. Thus, despite legislation in force, the legislation was not consistently applied to small communities.

Figure 1-9: Non-Application Infringements in the EU (Directives) (By State) (1978-1999)

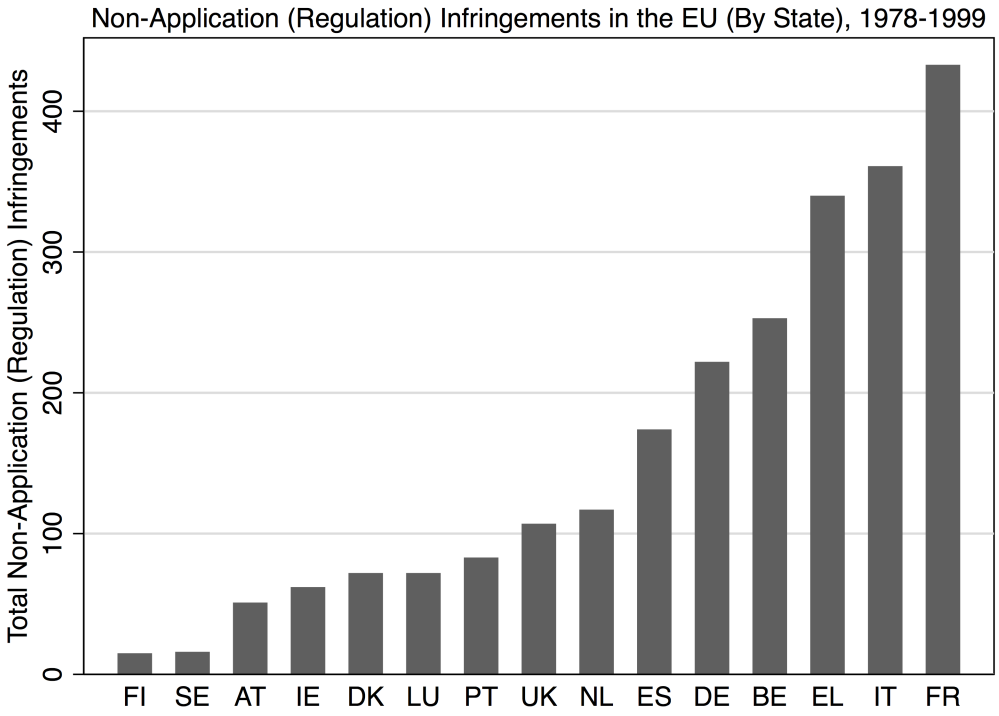


[24] http://europa.eu/rapid/press-release_MEMO-14-36_en.htm
[25] http://europa.eu/rapid/press-release_IP-13-1102_en.htm

Violations (Regulations)

France[26] recently enacted legislation permitting a new type of wine made from byproducts of distilling (marcs and lees). Member states argue, and the Commission has agreed, that this practice violates Regulation (EC) No 110/2008 that pertains to spirit drinks. France, after receiving a letter of formal notice stopped the practice relevant to marcs but was still permitting distillation-using lees. The Commission sent a reasoned opinion in 2012.[27]

Figure 1-10: Non-Application (Regulation) Infringements in the EU (By State) (1978-1999)



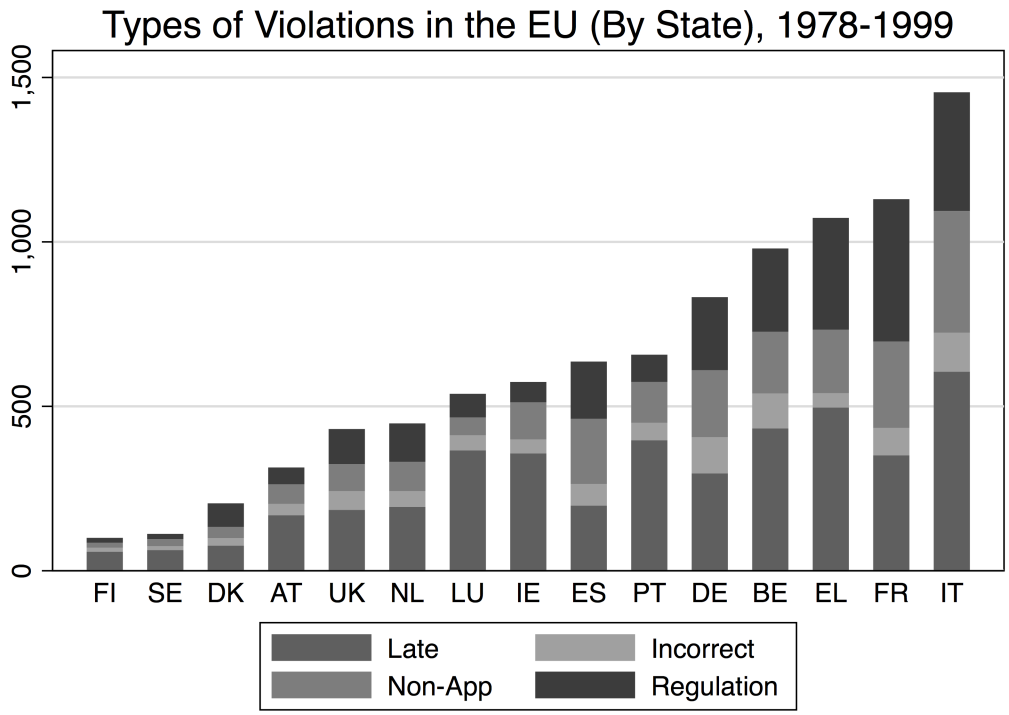
[26] France had the highest number of infringements of this type during 1978-1999 to it is perhaps not coincidental that both examples involve France.

[27] http://europa.eu/rapid/press-release_IP-12-179_en.htm?locale=en

Infringement Approaches in the Literature

Approaches to noncompliance have focused upon the degree of noncompliance, represented by the relative incidences of infringements to enacted legislation. Over the period 1978-1999 there is definite variation among member states. For example, Denmark, which joined in 1973, has one of the lowest numbers of infringement cases against it while Greece, which joined in 1981, has one of the highest numbers of infringement cases.

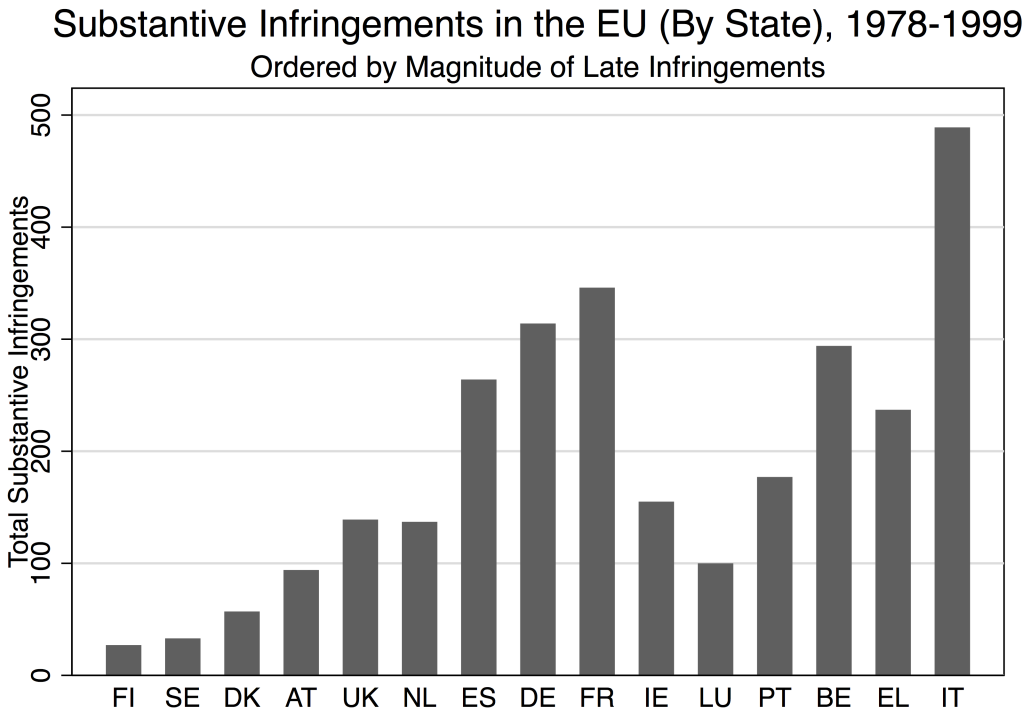
Figure 1-11: Types of Violations in the EU (By State) (1978-1999)



However, there is also variation in the types of noncompliance by member state, for example, the graphic below presents the number of substantive infringement (Incorrect and Non-Application infringements) by member states. However, the graph is ordered by the

relative number of late infringements. That is, if we anticipate that all types of infringements occur for similar reasons, then the relative heights of the bars should then get increasingly larger as one moves from left to right. Instead, we see that some factors remain consistent: Denmark has few infringements overall while Italy has many. But we also observe that Greece has only a moderate number of substantive infringements overall in comparison to other states, fewer than Spain, Belgium Germany, and France.

Figure 1-12: Substantive Infringements in the EU (By State) (1978-1999)



Outline

In the following chapters, I examine the flexibility and specificity of legislation and the institutional capacity of the national political actors, including policy-area ministers and coalition members, implementing or policing the rules using the lens of European Union

member countries and their compliance with EU legislation. The dissertation proceeds in six chapters, beginning with this overall introduction to the dissertation, moving through particular EU-relevant vocabulary and explanations, and then to the theory. After a discussion of the theory, I provide evidence for my theory first generally, and then introducing other elements that affect decision-making, including how and when the Commission enforces noncompliance. Concluding remarks follow.

CH2: Literature Review and Theory

This chapter summarizes the relevant literature in the field, explaining how previous analyses have approached the problem and problems they've overlooked. In this chapter, I highlight why additional research is necessary

Transposition has two distinct parts: the decision to initiate the process and implementation (drafting and enacting) of legislation. Within each piece, preferences of national political actors are influential but only within the limits of the existing institutional framework. In the first portion of transposition, the relevant policy-area minister operates essentially as a lone veto player: she determines if and when transposition will begin. However, once the transposition process is initiated, the policy-area minister loses much of her power to other national political actors. It is in the second stage that domestic actors and their institutionally endowed rights to shape legislation become salient. Substantive infringements arise when three conditions are simultaneously present: the national political actors not only *disagree* with a directive, AND they have the *power* to affect national legislation, AND they have the *opportunity* to do so, in the national parliament. Late infringements arise when only some of these conditions are present: when national political

actors disagree but lack tools to substantively influence legislation, e.g. when coalition members have weak parliamentary powers but disagree with directive content, or when strong national parliaments are involved during the transposition process.

Because infringements stem from conflict, analyzing them jointly can seem logical. However, the increasing role of parliaments in drafting and transposing directives is likely to contribute to higher levels of substantive infringements while appearing to reduce late infringements. Approaches that conflate these two types of infringements will miss this potential tradeoff. Thus, combining late and substantive infringements will lead researchers to not only misunderstand the mechanisms behind these distinct types of infringements, but they will conclude that the involvement of parliament will move member states toward greater levels of compliance when it potentially indicates the opposite: more opportunities for substantive noncompliance, a type of noncompliance that is particularly difficult to detect and enforce because it requires the Commission to investigate the substance and application of every national measure reported by each member state for each directive.

My approach demonstrates that distinguishing between late and substantive infringements captures a phenomenon that is likely to increase over time as parliaments become increasingly involved in transposition. Furthermore, my analysis provides an explanation for why and when late and substantive infringements are likely to occur.

Coalition disagreement is able to find its way into the enacted policy by the very nature of the process of drafting such measures. Giving disagreeing actors the ability to act on the disagreement is at the heart of the parliamentary process as having more members in the governing coalition contributes not only to the likelihood of more dissent but also translates into the potential for these actors to use the parliamentary arena to act on their disagreement.

Governments typically hold majorities in parliament and when coalition partners dislike a policy, they may involve the parliament as a means to settle the disagreement. In Chapter 4, I find that having more coalition members is positively associated with the involvement of the parliament in transposition.

CH 3: Data on Late and Substantive Infringements

I make the distinction between late and substantive infringements: cases where states are cited for late implementation and cases where states are citied for substantively falling short of the directive's mandate. My distinction between late and substantive infringements clarifies our understanding that states may be strategic in when and how they comply. In this chapter, I explore why we see some states defying expectations and implementing legislation in a timely fashion.

Existing research has approached questions of compliance using different sub-samples of directives, countries and policy domains. Some scholars, notably König and coauthors, have worked to provide a systematic evaluation of when states do or do not notify measures. However, this is only the first step in implementation. In the second step of implementation, enacting legislation, there are different institutional actors involved and whose preferences matter. Investigating this second stage enables an understanding of why some legislation fails to comply and why these failures are distinct from failures in the first stage.

In this chapter, I use data from three sources: the Commission on infringements (1978-1999 (working to extend time period), König and Luig on policy-area minister and partisan

preferences (based on Party Manifesto data) (1978-2011), and the Database of Political Institutions (via Quality of Governance dataset) (1978-2004). I also incorporate measures of parliaments based on data from Martin and Vanberg (2011).

CH 4: Analysis

In this chapter, I conduct the analysis of the data and models from chapter four. I also provide information on the particular effects of the different measures used for my key variables of interest—strong parliaments, veto players, and parliamentary involvement. This information includes interpretation of the models and information on the marginal effect of the variables.

In addition, I provide information on alternate specification of the key variables and robustness checks on the models and analysis.

CH 5: Conclusions

This chapter provides a discussion and summary of the preceding chapters. I distinguish between two types of infringements and demonstrate that there are different factors contributing to the incidence of late or substantive infringements. Secondly, I provide an explanation for the pattern of observed infringements and evidence that substantive infringements are likely to be under-detected. This under-detection increases over time leading to a systematic under detection and under identification of substantive infringements.

Institutions and rules provide a means to coordinate behavior. Failures of or changes to

these agreements can tell us about how that coordination may succeed or fail. In the case of the European Union, member states failing to follow through on legislative mandates can mean that individuals don't receive pensions as promised, that corporations don't provide a safe workplace for employees, or that there is an uneven playing field for companies in one country compared to another with respect to onerous regulations. Furthermore, these failures to comply are to agreements that the states themselves help draft. Noncompliance is a problem in the EU but is not unique to European Union member states. Compliance issues plague agreements more generally at both the international level in treaties and international organizations and within states themselves often in the form of bureaucrats implementing policy.

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Chapter II: Factors in Transposition Complications

The previous chapter introduced European Union-specific terminology and illustrated the problem of noncompliance among member states. In this chapter, I explore previous explanations for and shortcomings of existing approaches in the literature. I then provide a theory to address these shortcomings, which I test in chapter four.

Noncompliance is thought to arise from one or a combination of three sources: the actors involved, institutions within member states, and features of the directives themselves. These components have been addressed throughout the literature, but often by taking only one or two of these elements into consideration, not all three. In addition to the different factors contributing to noncompliance, measurement of actual noncompliance is not standard in the literature. Quantifying transposition outcomes typically involves focusing upon one of three compliance indicators: 1) measuring some aspect of timeliness of state transposition (are states on time, is there a big delay, are measures notified), 2) tallying the number of infringement citations for a country (this might include the stage of infringement proceedings reached or the proportion of infringements to legislation per country per year), or, rarely, 3) a hybrid approach that considers both timeliness and infringements (for example, looking at

cases of delayed implementation *or* infringement).

Thus, there are many elements that contribute to noncompliance multiplied by various ways to evaluate noncompliance. As a result of these different approaches, expectations are difficult to compare across studies. Furthermore, contradictory expectations arise within each of these quantifications and, particularly, across them.

As we have already observed that late and substantive infringements are only imperfectly related, it should perhaps be unsurprising that there are no clear expectations regarding how actors, institutions, and directives might affect outcomes. The literature operates as though all negative consequences are the same. This conflation comes at a high price, particularly as circumstances conducive to substantive infringements are on the rise. To understand existing expectations about the roles of these three factors, preferences, veto players and institutions, I explore how each of these factors is thought to contribute to poor transposition outcomes within the three traditional approaches (timing, infringement, and hybrid). I then present a table summarizing these findings, illustrating the contradictory expectations arising from previous research. To address these contradictions, a holistic approach is needed, one that I develop in the chapters that follow.

Timing: Delay and Timeliness

Timeliness of implementing measures is measured either by the degree of delay in implementing a measure (time past the deadline) or the total time taken during transposition. The length of deadline permitted for implementation is sometimes a function of the difficulty of the task at hand, reflecting the need for more intensive policy design (Haverland et al 2011).

Studies that focus on time to policy creation from the passage of the legislation (what is often termed *timeliness* in the literature) will unintentionally incorporate this difficulty into their measure of compliance as more complex policies will have longer deadlines and will be expected to take longer to implement, all else equal, than 'simpler' policies with shorter deadlines. Secondly, in cases where states are permitted longer deadlines for implementation, the likelihood that a state is able to meet the deadline (and thereby have little *delay*, or notified measures after the deadline has passed) is higher. Studies that focus upon timeliness will then inadvertently capture elements of policy difficulty while studies that focus upon delay may be better able to address questions related to improper implementation. In both cases, a focus solely upon policy timing, be it *timeliness* or *delay*, still implicitly assume that the policy enacted is otherwise desirable and correct. That is, policies that are enacted in a shorter time are thought by the literature to be preferable than those enacted in a longer time. This approach does not consider the actual enacted policies themselves.

Participation of multiple actors in the transposition process, complex directives, contentious policy domains and state administrative resources are all thought to increase the time needed to incorporate directives into national legislation. Institutional capacity, particularly with respect to administrative resources has been demonstrated qualitatively to influence transposition (Falkner et al 2005). Finally, there are thought to be different sector-specific factors that likely increase delays, particularly in domains such as social policy and heath and safety (Haverland et al, 2011).

Preferences

The preferences of national actors and member states are also thought to affect the timing of transposition. These studies often consider the 'state' as an actor based on the preferences of the government (e.g. Thomson et al (2007)) or they look to particular actors, such as the policy-area minister. Still others focus upon the constellation of national actors (Steunenberg 2007) to gain an understanding of where upper and lower level (national and domestic, for example) actors stand relative to the policy. These differences in measurement of preferences certainly also contribute to inconsistencies in findings.

Two studies find no relationship or negative, but statistically insignificant, relationships between preferences and delay (Thomson (2007) and Linos (2007)) while two others find a positive and significant relationship between disagreement and delay (König and Luig 2014, König and Luetgert (2009)). For timeliness, disagreement is *typically* associated with a decreased likelihood of transposition (Luetgert and Dannwolf (2009), Thomson et al (2007)) find a positive relationship.[28] Thus, evidence suggests that disagreement by actors with the policy, specifically a dislike of the policy by the 'agent', however measured, is associated with delayed implementation and/or implementation that stalls during transposition. However, while some research fails to find support for this, some have found the opposite to be true.

Veto Players

The theoretical influence of veto players has appeared to be the cleanest and clearest:

[28] However, this effect is not as strong when incorporating only directives that have been transposed and notified to the Commission. That is, that when excluding situations in which there is no notification of national measures (which are often those with low incentives to deviate) the significance is not as strong.

more actors in the process and/or larger distances between the preferences of national actors would be associated with poor outcomes (Tsebelis 1995; 1999; 2002). However, support has been weak (for example, Mbaye (2001) does not find strong support, although Kaeding (2006) does). State and minister preferences have been demonstrated to have a range of different associations with poor outcomes. In contrast, the strongest conclusions we can reach about veto players is that their effect that is at least not positive (Toshkov 2010). However, the expected negative effect of veto players on compliance is, in some circumstances, clearly demonstrated to be negative (Linos (2007), Luetgert and Dannwolf (2009)).

Luetgert and Dannwolf use the distance of the national core on a directive's policy area as a means to incorporate disagreement by national veto actors and their influence on transposition, where the larger the level of disagreement, the more significantly delayed legislation is expected to be. As they expect, they find that the level of conflict among political actors about a directive is significantly associated with reduced timeliness in transposition of that directive. König and Luetgert (2009) also observe a negative relationship between timeliness and conflict in an analysis that considers *all* national measures (rather than the first notified).

However, unlike previous research that found that more conflict contributed to less timeliness (slower transposition), Romeijn (2008) finds an opposite effect: more veto players *reduce* the duration of transposition. Given the clear demonstrated relationship between veto players and poor policy outcomes in the broader literature, why would findings for transposition be so unclear? This question remains unanswered by existing research.

Institutions

The role of institutions, particularly the involvement of a national parliament in the passage of legislation,[29] is anticipated to play a significant role in delayed implementation for reasons along the line of veto player arguments (more actors contributed to greater delays) and because national legislation can be more cumbersome and time-consuming to enact. The involvement of a national parliament has been found to be positive (Linos (2007)), insignificant (Berglund et al (2006)) or negative and significant (König and Luetgert (2009)[30], Haverland et al (2011)[31]). Meanwhile, Borghetto and Franchino find a complex relationship between the involvement of a national parliament and the time taken to transpose measures: over time, legislative measures move from initial insignificance to *speeding* implementation (Borghetto and Franchino 2010). National parliaments, and parliamentary scrutiny, then may have a straightforward effect, they may not, or they may have a nuanced effect with transposition. I address this later, but it is likely that these differing results could be explained by the nature of transposition: parliamentary measures (and parliamentary involvement) are only relevant for notified measures. Thus, the involvement of parliament may appear to speed implementation relative to other measures simply because parliaments are not involved in measures for which states do not begin transposition.

New research by Finke et al (2015) evaluates the involvement of the national parliament at two stages in Germany: in the negotiations of a policy and then the

[29] When referring to a parliament, unless otherwise noted, I am referring to a national parliament and not the European Parliament.

[30] Curiously, the analysis (table 6) reports a negative and significant relationship between share of primary legislation and delay but the authors' explanation states that the relationship is positive and significant. I use the relationship established in table 6 by the authors.

[31] They find that ministerial measures are positive and significant with respect to delay.

implementation of the same policy. They find that the involvement of parliament prior to a directive's passage, during the drafting stages, slows down discussion but ultimately is associated with faster implementation after a directive is passed. Thus, the role of a parliament can be to both slow implementation (in the case of information asymmetries) and to effectively speed implementation (in the absence of such asymmetries). These results certainly provide important insight and motivation for future research.

In summary, explanations for delay produce mixed expectations for preferences, weak results for the role of veto players, and complicated findings for the role of parliamentary scrutiny. While there is evidence in policy analysis to suggest that preferences, actors, and institutions matter, consistent findings do not yet support this.

Substance: Infringements and Violations

Substantive approaches have focused upon the *substance* of legislation enacted to transpose directives without explicit regard to the time taken during implementation. Scholars have studied either the occurrence of infringements (e.g. Börzel et al 2007) or an evaluation of the substance of enacted legislation (e.g. Falkner et al 2005). Infringements-based approaches are distinct from both qualitative approaches to compliance (such as the smaller case studies of Falkner et al 2005) and from timing-based approaches as they are typically-country focused and as such are unable to incorporate directive-specific features, particularly the preferences of national actors or the types of institutions used in the transposition process. Approaches that look at noncompliance on a state-directive level tend to do so in smaller samples, often focusing upon qualitative case studies of few directives in few member

states. Again, the three principal arguments are on the role of preferences, actors, and institutions. Both approaches fail to address the questions raised in the timing literature. This is because they either look only at states, not directives, or because they focus on a very small—and often unrepresentative—subset of a larger phenomenon while leaving many unanswered questions regarding substantive noncompliance.

Preferences

The preferences of national actors and member states are also thought to affect the substance of transposition. These studies often consider the 'state' as an actor based on the preferences of the government (e.g. Thomson et al (2007)) or they look to particular actors, such as the policy-area minister. These differences in measurement of preferences certainly also contribute to inconsistencies in findings.

König et al (2012) argue that although directives do not cover the majority of EU legislation, they cover the most contested issues. More contested issues, when compared to regulations and decisions, means the greater likelihood of divergent preferences.

As legal noncompliance is one type of substantive infringement, state preferences (coded by Thomson using EU documents and meetings with state representatives) were found to be influential in whether a state complied substantively or not. Falkner et al (2007) also find that compliance does occur after a member state failed to have its preferences incorporated into legislation. However, they attribute the bulk of failures to poor administrative capacity and interpretation, rather than disagreement with substance. Furthermore, Steunenberg (2007) emphasizes both the necessity of implementation of EU legislation and

the role preferences may play in diverging from a directive's mandate. Disagreement is more likely to produce substantive violations given the pressures to comply rather than simply delay or inaction (Steunenberg 2007).

In short, actor disagreement, typically that of the government, is associated with substantive shortcomings, but these findings lie primarily within qualitative studies and have not been examined from a large-scale quantitative perspective.

Veto Players

The preferences of national political actors can further complicate and, often, stymie attempts to transpose legislation. However, the expectations and findings within the literature are inconsistent: veto players are thought to lead to delay, which could produce late infringements as actors block legislation (Borghetto et al, 2006, who also consider whether measures are notified (late infringements)), or veto players could force policy compromise (Steunenberg 2007). It's possible that they do both, as Haverland argues in the evaluation of the Packaging directive's transposition across the UK, Germany and the Netherlands (Haverland 2000). The number of veto players has not been found to play a consistent role in the number or extent of infringements overall (Börzel et al 2007, Mbaye 2001) and some have found that more veto players lead to *fewer* infringements (Börzel, Hofmann, and Sprungk 2003, cited in Börzel et al 2007 and Borghetto et al 2006)[32].

In contrast, Giuliani (2003) provides a novel perspective, considering timeliness and infringements together (creating a standardize measure of 'adaptation' incorporating the

[32] This article is available only in German but has been cited by multiple authors in the literature. I've also consulted with Timm Betz regarding the key findings.

number of infringements, at each stage, and relative delay in implementation).[33] Giuliani finds that veto players are positively and significantly associated with delays and with the number of infringements at the member state level, a result that stands in contrast to findings within the timing literature as explored above. Jensen's (2007) work also provides support for Giuliani's findings: more veto players are not only associated with infringements but the stage of infringement reached, as illustrated by Giuliani (2003). Thus, veto players are likely to contribute to more infringements that are difficult to resolve. This, in turn, supports what Tsebelis (1995; 2002) finds: more veto players make policy change more difficult.

However, these results are at odds with existing research on substantive infringements (Börzel et al 2007, Mbaye 2001), and it is also odd that this strong result exists for infringements in the work of Giuliani (2003) but is not found in the timing literature.

In short, there are strong theoretical reasons for why veto players are positively associated with infringements, but these empirical results are not consistent in the literature. It seems, based on quantitative and qualitative work, that veto players are part of national-level factors generally associated with transposition difficulties but small samples and different categorizations of veto players makes it difficult to reach a consensus. This observation is echoed by König and Luetgert (2009).

Institutions

Substantive infringements have recently become associated with institutional capacities of political actors, namely the involvement of the national parliament in transposition.

[33] I include Giuliani here, rather than in hybrid approaches, because of his primary focus on infringements rather than an explicit distinction between infringements and delay. His index does include elements of infringements and delay together.

Dörrenbächer et al (2015) undertake a small case study to evaluate how and when parliaments are able to shift policy in the case of a controversial directive. They find that national parliaments are more likely to be involved in the presence of coalition conflict and that "parliamentary scrutiny is attractive to parliaments wanting to change the course of implementation of salient EU policies" (pg. 1023, Dörrenbächer et al (2015)).

Mastenbroek et al (2014) find that both coalition and opposition members scrutinize proposed bills, although they do not consider the substance of amendments or bills relative to the directive from a perspective of compliance. While coalition parties do so at a lower rate than opposition parties, the interventions of all parties are intended to not only gather information but also shape the course of transposition. This latter type of scrutiny is likely to occur when issues are particularly salient (Mastenbroek et al 2014). The involvement of parliaments is becoming an increasingly important part of the implementation of policies and the literature has started to recognize this, although few studies have yet undertaken systematic study of the relationship between parliaments and substance within the context of infringements and noncompliance.

Comparative evaluation

There has been little work done directly comparing timing and substance. Those that have contrasted the two have argued that there is a likely a tradeoff between the timing and correctness of implementation (Thomson et al 2007, Mastenbroek 2007, König and Mäder 2013). For example, disagreement with a policy is thought to contribute to both infringements and delay. In these studies, scholars have found evidence for a negative relationship between

timing delays and infringements (Thomson 2007). The hybrid approaches contrasting timing and infringements focus primarily upon the role of preferences in relationship to outcomes and do not explore the roles of institutions or veto players.

Preferences

The negative relationship between delays and infringements is supported by König and Mäder (2013), who look at three types of implementation: conformable, partially conformable and non-conformable. They suggest that there is a tradeoff between timely implementation and the quality of transposition, arguing that in the instance of non-conformable directives "…member states seem to follow a 'quick and dirty' strategy and notify non-conformable measures earlier…" (König and Mäder (2013), p 65).

These are valuable insights but they have not yet been evaluated beyond the limited dataset used by the authors: both Thomson (2007) and König and Mäder (2013a) focus upon highly controversial directives and it is unclear whether or the extent to which the patterns they observe apply more broadly. There is reason to believe these cases do *not* generalize, particularly because König and Mäder (2013a) observe few cases of noncompliance (about 11%),[34,35] compared to the 26% rate observed in directives enacted from 1978-1999.

In sum, expectations generated by previous research have provided contradictory explanations regarding the relationship between key institutional and actor factors in transposition. For example, existing research finds that disagreement with a directive may

[34] The authors calculate infringement separate from EU infringement cases and report 314 total cases, of which 279 are conformable, 15 are partially conformable and 20 are non-conformable. (König and Mäder 2013)
[35] Thomson et al (2007) use EU infringement data for these cases and find an infringement rate of 5.3% for the dataset.

lead to delay (König & Luig 2014) or it may speed implementation but result in an infringement (Thomson et al 2007, König & Mäder 2013). Additionally, the relationship between late and substantive infringements has not been evaluated jointly except in limited instances. Furthermore, research that *does* consider timing and infringements does not consider the role of institutions or other domestic actors, such as veto players, two likely influential factors in delay and infringements and looks only at a limited and non-random sample of enacted directives. Thus, previous approaches leave many questions unanswered about why, when, and how noncompliance emerges.

Many Questions, Unanswered

Although these three factors are understood to be significant sources of influence by both the literature on EU compliance and in policy change and adaptation more broadly, existing studies have failed to reach consistent conclusions regarding the direction and magnitude of their influence.

The table below illustrates the literature's different findings regarding the three key factors relevant to noncompliance—preferences, veto players, and institutions. The table contains the three independent variables, how the dependent variable (often delay or infringement) has been operationalized, the studies using that arrangement, and their findings (including both sign and significance). A more extensive table, listing the years and policy domains of each study, is included in the appendix.

What becomes clear in the table is that there have been many approaches to understanding compliance that have produced contradictory results, even when attempting to

explain the same outcome. The table in the appendix provides some insight into the variations of the studies' approaches, particularly the different samples used in their analysis: for example, some include all EU-15 while some include a subset, or only one country; some include all policy domains, a small selection, or just one; some include many years while others include few. These variations likely contribute to the contradictory findings.

Table 2.1: Independent and Dependent Variables in the Literature

Independent Variable	**Dependent Variable**	**Authors**	**Findings and Significance**	
Preferences (Disagreement)	Delay	Thomson (2007)	.	Not significant
	Delay	Linos (2007)	Mixed	Not Significant
	Delay	König & Luig (2014), König & Luetgert (2008)	+	Significant
	Infringement	Falkner et al (2007)	.	Not significant
	Infringement	Thomson et al (2007)	+	Significant
	Transposition	Luetgert and Dannwolf (2009)	-	Significant
	Timeliness	Linos (2007), Thomson et al (2007)	-	Not Significant, Significant, Significant
	Timeliness *and* correctness	König & Mäder (2013)	-	Significant
	Violation	Steunenberg (2007)		
Veto Players	Delay	Linos (2007), Romeijn (2008), Kaeding (2006)	-	Significant
	Infringement	Hofmann, Sprungk (2003)		
	Infringement	Börzel et al (2007), Börzel et al (2010), Mbaye (2001)	Mixed	Not significant
	Non-Transposition	Toshkov (2007)	.	Not significant
	Stage of infringement procedure	Jensen (2007)	-	Not significant
	Timeliness	Steunenberg &	-	* (depends on

Independent Variable	Dependent Variable	Authors	Findings and Significance	
		Rhinard (2010)		model—both sig and not), Significant
	Delay	Luetgert & Dannwolf (2009)	-	Significant
	Transposition Performance	Giuliani (2003)	-	Significant
Institutions: Use of parliament / type of measure	Delay	Berglund et al (2006)	+	Not significant
	Delay	Haverland and Romeijn (2007)	.	Not Significant
	Delay	Haverland et al (2010)	-	Significant
	Delay	Linos (2007)	+	Significant
	Time to transpose	Borghetto and Franchino (2010)	-	Significant
	Time to Transpose	Mastenbroek (2003)	+	Significant
	Delay	Kaeding (2006)	-	Significant
	Timeliness	König & Luetgert (2009), Linos (2007)	+	Significant*, Not Significant
	Amendment/scrutiny	Dörrenbächer et al (2014), Mastenbroek et al (2014)		Case Studies

Three explanations: Samples, Measurement and Infringement Type

One possible explanation for the different expectations and findings generated by the literature could be that different samples contribute to different observations (also noted by Luetgert and Dannwolf (2009) and Berglund (2009)). By focusing upon different policy areas, countries and/or time periods, our understanding of noncompliance is still incomplete.

Secondly, the inconsistency in approaches' *measures* of noncompliance may also explain conflicting expectations across the three approaches explored: authors vary within

literatures on how they quantify these different approaches. For example, timeliness can be how many days a measure took to transpose in total (from the adoption of the directive to the adoption of the relevant national measure) or the total number of days late a state was in transposition (days between the deadline and adoption of relevant measure), or a binary or categorical account of 'lateness' (late/not, timely/a little late/very late) and these accounts can begin from the first notified national measure or the last, or some average thereof.

On top of the differences in measures and samples, the conflation of late and substantive infringements (in their various forms, as discussed in the previous paragraph) further confuses things. Because timing and substance violations occur for different reasons, one cannot expect that using a general approach would shed light on the conditions for noncompliance.

An Approach to Understanding Noncompliance

To address these three problems, I focus upon enacted directives between 1978 and 1997, the period for which compliance data are most readily available. This period is also prior to the expansion of the EU. I exclude the new member states, admitted after 1995, because their approach to implementation of national legislation is distinct from their implementation of EU legislation.[36] Note that this period also includes the UK as a member of the EU. I use a standardized measure of noncompliance (infringement proceedings initiated by the European Commission).

[36] The most recent new member states have had to adopt a large body of EU legislation at once and have developed distinct systems for doing so that are separate from how national legislation is handled. I focus upon the EU15 because how these states implement EU legislation is more similar to how national legislation is implemented. Thus, this study is relevant to the implementation of EU policy and also national policy change.

I use infringement proceedings, rather than days of delay because infringement proceedings provide information for both late and substantive violations standard across states. All states are held to the same standard by the same agency. Although there may be variation in Commission enforcement across time, states are subject to this variance simultaneously. A measure of substantive variation that focuses upon comparisons of the text of legislation to the text of the directive would be helpful for one aspect of substantive violation (legal correctness), but is not feasible for the body of legislation in force for all fifteen states. Secondly, even if such a study were to be undertaken, it would still be difficult to independently verify whether the legislation is being enforced, the second aspect of substantive compliance, for all fifteen states and approximately 1500 pieces of legislation. Commission data, though imperfect, should be consistent for the states as any citizen or member state is able to raise concerns about any member state's failure to comply with legislation. This mechanism, commonly termed a 'fire alarm' system, will permit many infractions to be observed.

Because states typically use national legislative systems to implement legislation, national actors and institutions are particularly important in the implementation process. There are three components that determine whether infringements will occur and be late or substantive: the preferences of the policy-area minister, the level of intragovernmental conflict in the directive domain, and the strength and involvement of the national parliament in the passage of the relevant national legislation. Some of these factors have unconditional effects, such as the preferences of the policy-area minster while some of these factors have conditional effects, such as the involvement of a strong national parliament. There are two types of disagreement to consider: disagreement between actors over a policy and

disagreement *with* the policy. Disagreement between actors is when some actors support while others oppose the policy. Disagreement *with* a policy is when actors are united in their opposition. Both types of disagreement can contribute to substantive infringements, that is, when the substance of legislation falls short of the mandate from the directive. Substantive shortcomings are the outcome of different types of disagreement.

Below I provide a concise summary of the roles of these three components in shaping the implementation process and thereby affecting the probability of delay and/or substantive infringement:

The *policy-area minister,* the minister whose assigned portfolio is the relevant domain for the directive, is responsible for initiating draft measures at the national level to begin state transposition, therefore effectively acts as a state's gatekeeper for the transposition process. The minister can initiate the policy implementation process or refrain from doing so. If the minister disapproves of the initiatives requirements, s/he declines to act. In making this decision, the policy-area minister raises the risk of infringement proceedings for delayed implementation. The additional potential advantage for the minister, if s/he expects the national parliament and ruling coalition to support the directive, is that she can use her gatekeeping power to mute those who prefer the directive to the status quo. Without the minister's decision to initiate draft legislation, coalition and opposition members cannot affect the status quo for the directive without extreme measures like banding together to propose draft legislation (even still, non-government bills have a very poor success rate).

The level of intragovernmental conflict between governing coalition members and the policy-area minister in a state dramatically impacts the state's ability to implement an initiative

(or avoid its implementation). In a multiparty government,[37] the governing *coalition members* play an important role once measures are initiated, as they impact the final policy. When government parties agree with the policy-area minister, and there is a united government, the minister's placement of the policy or decision not to act mirrors the policy-area minister's preferences. When intragovernmental conflict exists, different players fight to implement the policy of their preferences. This, coupled with the strategic incentives for the policy-area minister and other government members, leads to different types of infringements. The type of infringement depends upon which of the national policy actors support and which oppose the directive and on whether these actors have the institutional capacity to act.

Policy-area ministers have the institutional capacity to determine whether to initiate transposing measures but coalition members with other policy area portfolios on which to focus do not. Only when the directive legislation is in the domain of a minister does he or she draft measures. In the case of multiple areas being covered by a directive, one minister will typically act as 'lead' for implementation. As a result, intragovernmental disagreement has a conditional effect: coalition members with preferences divergent from the relevant policy-area minister can only use their institutional capacity to transform their disagreement into policy if the *national parliament* is strong and involved. Thus, intragovernmental conflict with parliamentary involvement can produce substantive infringements or late infringements, or both, depending upon whether the policy-area minister has decided to initiate policy or refuse to move forward.

The table below gives the different outcomes produced by the combinations of these

[37] In cases where there is one party in power, preferences are assumed to be in line with those of the policy-area minister. Thus, there is supposed to be no intragovernmental conflict in unitary governments.

three key factors: policy-area ministers, coalition members, and the national parliament's strength and involvement. In the sections that follow, I provide deeper analysis of these three crucial actors, their roles and interactions, explaining precisely why these combinations produce these particular expected outcomes.

Table 2.2 Role of Actors and Relationship to Noncompliance

Actor Preference	**Parliament**	**Parliament Involved?**
Minister Approves		
Minister Disapproves		
No Conflict	Weak	No
	Weak	Yes
	Strong	No
	Strong	Yes
In-Cabinet Conflict	Weak	No
	Weak	Yes
	Strong	No
	Strong	Yes

(Policy-area) Ministerial Roles

Given the need to comply with transposition deadlines, member states have increasingly moved to expedite the legislative process to avoid late infringements. This has shifted more power to the policy-area minister, who is often empowered to push legislation

through, given the importance of timely transposition. The ministry has the authority to write some measures (ministerial orders) while other measures may additionally require an up-down vote from the cabinet or legislature.[38] Some measures may require full consideration of the national parliament, depending upon the type of measure drafted.

The policy-area minister does have some say regarding the type of policy drafted, but there are two additional constraints on national measures: 1) member states may have existing measures that need to be adapted to be brought into line—for example, existing legislation on privacy that must be adjusted (as higher-level legislation cannot typically be amended or repealed by lower-level instruments) and 2) national laws or conventions may dictate the type of legislative measure used (for example, if the federal government does not have domain over an area in the constitution, it cannot be transposed at the federal level through a delegated measure). Some member states vary—for example, Portugal used to require that all legislation go through the national parliament (OECD) and Denmark still uses parliamentary review for most legislation (Steunenberg and Voermans (2006)). For the most part, however, policy-area ministers have a large amount of power and discretion in implementation within member states. Thus, initiating legislation is very often in the domain of the relevant policy-area minister and it is this minister whose preferences shape the resulting policy (König and Luig 2014). Ministerial approval increases the odds of transposition, reducing the potential for late infringement. Although we may observe substantive infringements, policy-area ministerial disagreement with a directive will produce delay,

[38] While ministries can pass ministerial orders, and these orders can occur fairly frequently (e.g. 40% of transposing measures used in Spain), they are typically very limited in scope. For example, they are typically used for the transposition of directives that introduce or amend technical norms and standards, such as new standards and technical requirements of equipment on board of vessels (pg. 129, Steunenberg and Voermans 2006).

irrespective of the preferences of fellow coalition members.[39]

Cabinets and Coalition Members

Once measures are drafted, they typically go to other members of the government for approval. Even though there are delegation procedures in place to permit lower-level actors to draft and implement legislation, such as policy-area ministers and their offices, such permissions come with certain restrictions. Often, these draft measures must be presented to the cabinet and/or parliament for an up-down vote (for example, ministerial measures in the UK must be accepted by the parliament (Steunenberg and Voermans 2006)).

Approximately 63% of coalition cabinets between 1945 and 1999 were based on identifiable coalition agreements (Müller & Strøm, 2000). Even when coalition agreements exist, EU legislation is not generally included in the coalition agreement (Auer et al 1996) and typically only the policy-area minister is involved in negotiating the draft directive at the EU level (member states vary in the extent to which parliaments are consulted in the drafting (Steunenberg and Voermans 2006)). This means that while cabinet members are often involved in national implementation of EU legislation, these same members are often excluded from the bargaining at the EU level (although some member states do work to consult national interests during the drafting phase, such as Denmark). Thus, there is likely to be a tension between the policy-area minister who negotiated the bill and other coalition members whose preferences were not incorporated in the policy design. How this tension,

[39] There are circumstances in which ministers may choose to enact or report disliked policies quickly. This point is addressed in the following section.

particularly disagreement between coalition members and the policy-area minister, plays out depends upon the institutional capacity of coalition members to shift policy and ministerial reaction to that capacity.

National Parliamentary Power and Constraints

In addition to the preferences of actors, the *power* of domestic political actors to incorporate their preferences into policy affects whether the type of infringement observed will be late or substantive when the national parliament is involved. Actors in the political process have institutional powers to act on their incentives to affect the content of bills. These powers relate to the ability of actors to shape draft bills though amendment, the procedure of debate, and how bills move through the drafting process. The rules for these bills can *favor* the governing coalition by limiting debate, restricting information access with ad hoc, rather than permanent, committees, and allowing the government to have final amendment rights. Rules can *limit* the governing coalition by permitting broad amendment by political actors and by constraining the governing coalition's ability to 'fast track' bills ('fast track' measures also often limit debate). Increased parliamentary power, in the presence of political conflict, can allow actors to shift legislative bills closer to their own ideal points. Decreased political power, even in the face of conflict, can restrain actors and constrain the policy domain to that of the directive, reducing the potential for substantive infringement.

Stronger national government control over legislation corresponds to stronger tools to keep coalition partners in line (Franchino and Høyland 2009). Weaker national government control (and thus, stronger national parliamentary institutions) reduces the potential to police or rein in fellow coalition members, thereby increasing the potential for these actors to act on

their preferences. Weaker government and stronger parliaments coincide from the perspective of institutional powers. While it is possible that no one has any particular power, often there are a certain set of institutional capacities including the ability to amend legislation, the formation of committees, the ability to shape discussion, and the ability to have final say over amendments, for example. These abilities belong to the institutional players. The more of these powers that belong to the government, the stronger the government's control of the agenda. In contrast, the weaker the government, meaning the fewer of these powers the government has, the stronger the parliament. Stronger parliaments are associated with more substantive and more late infringements in the presence of coalition conflict because they provide the potential for policy changes and these changes take time.[40]

Expected Outcomes

I now turn to the outcomes expected by the combinations of the three factors for infringements (policy-area ministers, coalition preferences and national parliaments). Note that I have argued that the minister acts as an *additive* effect to the transposition outcome; he or she adds the potential for late infringements to the outcome to the second component of the transposition process, the enactment of measures by national political actors. These national actors contribute to compliance, late infringement or substantive infringement based on the amount of in-coalition disagreement, the strength of the national parliament and the involvement of the national parliament in passing legislation. In sum, there are ten scenarios to evaluate: whether the minister approves or not, and then the combination of whether the

[40] It is possible that coalition members can threaten to involve parliament if certain concessions are not made to a policy. However, it is also possible that these threats will be ineffective, resulting in delays but no substantive infringement. It is for this reason that strong parliaments are associated with increased infringements but the involvement of parliament is relevant to whether the infringement will be late or substantive.

parliament is involved or not, if the parliament is strong or not, and if there is in-cabinet conflict or not. I expand upon these elements below, highlighting those most salient to the theory. The key element to understand is how these crucial components combine to provide a fertile ground for late or substantive noncompliance.

Ministerial Approval and Disapproval

When a minister approves of the measure, he or she will work to initiate draft measures. When the minister does not approve of the measure, she or he will *not* initiate draft measures. This is because inaction is easier than action: if a minister does not like a measure, there is a risk that enacting any measure, even a non-compliant one, will move the minister further from his or her ideal point. Thus, in cases in which a minister disagrees, his or her first preferred move is to maintain the status quo.

Dissatisfied coalition members may press for substantive changes but, without the involvement of the parliament, such disapproval is likely to amount in delay as well. For these reasons, late infringements are anticipated in this scenario.[41] These conditions produced a situation in which a late infringement was observed during the German implementation of the Data Retention Directive (2006/24/EC): the policy-area minister was opposed to the directive and not even the strong support by fellow coalition members could induce the policy-area minister to initiate transposition.

[41] It is possible that coalition members can threaten to involve parliament if certain concessions are not made to a policy. However, it is also possible that these threats will be ineffective, resulting in delays but no substantive infringement. It is for this reason that strong parliaments are associated with increased infringements but the involvement of parliament is relevant to whether the infringement will be late or substantive.

Strong National Parliament and In-Cabinet Conflict

In this scenario, the presence of a strong national parliament and multiple veto players means that actors have a potential for disagreements to exist and a strong institutional structure to leverage their policy disagreements. Coalition conflict provides an incentive for actors to try to change proposed national measures. To successfully affect the substance of legislation, a state's cabinet members need the ability to gather information about the proposed measure (typically through committee membership in stable committee structures) and the institutional capacity to amend legislation. Without the involvement of the national parliament, cabinet members can delay the measures at best, although they may have no effect on the measures because they have no institutional power to do so. Thus, in this scenario, late infringement is most likely.

Strong and Involved National Parliament

The involvement of a strong national parliament provides the opportunity for parliamentary scrutiny of actors. Even in the absence of actor disagreement, the involvement of a strong institution can contribute to higher-than-average numbers of late infringements because legislative measures must go through multiple stages of parliamentary review, including evaluation and consideration by multiple committees. Thus, in this scenario, late infringement is expected to occur.

In-Cabinet Conflict and Involved (Weak) National Parliament

With the involvement of the national parliament and the presence of in-cabinet conflict, political actors have the possibility to affect the substance and path of legislation. However, because the parliament is weak, parliamentary actors do not have the ability to amend bills, or the government has the right to curtail debate, for example, As a result, despite these actors having the preference to adjust or amend considered legislation, they do not have the institutional capacity to do so. In these scenarios, late infringements are expected, rather than substantive, because the best coalition members can do is a delay of the bill.

In-Cabinet Conflict and Strong, Involved National Parliament

In-cabinet conflict provides an incentive for actors to try to change proposed national measures. The involvement of a strong parliament provides the opportunity for coalition (and opposition) members to act on this disagreement and substantively affect policy. Thus, in this scenario, substantive infringement is most likely.

Germany's work to implement the packaging directive provides an example of this scenario: because Germany has a strong upper chamber, parties not included in the government are able to exercise influence over draft legislation, as in the case of the opposition's power in the Bundesrat. These actors are veto players not in the governing coalition and are typically not included in drafting legislation or in coalition agreements.

In the context of the 1991 Packaging directive (91/441/EEC), authored by the Council, the German government worked to draft legislation that would reduce the quota for drinks sold

in refillable containers. Local business favored the high quota because it indirectly favored national producers over foreign companies. The German government, a coalition of Christian Democrats (CDU/CSU) and the Free Democratic Party (FDP), faced a strong opposition, the Social Democratic Party of Germany (SDP). Because both chambers must consent to legislation and the directive was sufficiently complex, there were many points of disagreement among actors but also points of compromise. The opposition was able to use its power in the Bundesrat, where it held a majority, to veto the government's proposal, forcing compromise on the final quota set. Germany ultimately faced infringement proceedings for the substance of the enacted legislation (Haverland 2000). In this case, the strong national parliament's involvement enabled national actors to shift the substance of the enacted measure away from that of the directive and closer toward the actors' preferences.

Remaining Scenarios

Remaining scenarios are those in which there is no conflict but national parliamentary involvement of (1) a weak national parliament or (2) a strong national parliament, when there is conflict but no (weak) parliamentary involvement, or when there is no conflict and no parliamentary involvement but the parliament is strong. These scenarios may be associated with infringements, but if they are, it will be because a) these measures may be time consuming to enact (parliamentary/legislative measures can be time-consuming to enact) and/or b) because there are external factors that are either capacity-specific (such as having an effective bureaucracy) or directive-specific (a complex or lengthy directive).

Expectations

The above arguments generate the three following expectations:

1. Approval by the policy-area minister will be negatively associated with late infringements.
2. Late infringements are also likely to arise when there exists conflict amongst actors and no institutional opportunities to voice that disagreement, specifically:
    a. Strong National Parliament x National Parliament involved
    b. In-coalition Conflict x (any) National Parliament involved
    c. In-coalition Conflict x Strong National Parliament
3. Substantive infringements are likely to arise when there exist disagreements among coalition members *and* strong national parliamentary institutions that are *also* involved in legislating.

First Look: Comparisons

Before turning to the statistical analysis, I first conduct tests on the conditions laid out in the arguments above. We can see the ten cases from before with two possible outcomes: late or substantive infringement. I separate the minister's approval or disapproval as a distinct additive portion. From there, there are the eight distinct cases that combine the level of in-cabinet conflict, strength of the national parliament and the involvement of the national parliament. The major predictions of the theory presented above are labeled and bolded in the respective column. I then highlight the cell with the appropriate color (green) to indicate if the theory has been proven correct. Red indicates incorrect).

As the table below shows, the theory correctly predicts five of the six scenarios outlined

by the theory. The case that the theory fails to predict correctly - that of in-cabinet conflict and a strong, but uninvolved parliament - could occur because the delays are smaller here compared to other cases. It could also be that the theory is incorrect or that there are other factors affecting the circumstances.

Although not highlighted in the table, I also tested the 'remaining cases' together to determine whether they have higher or lower levels of late infringements than those predicted to be late. I find that the theory is also correct here: these cases do have significantly fewer late infringements. Similarly, when comparing the instance in which substantive infringements are expected to the body of cases in which substantive infringements are not expected, the results are as anticipated: substantive infringements are much more likely to occur in the scenario expected than in the other cases jointly.

Table 2.3: Evaluating the Hypotheses[42]

Actor Preference	**Parliament**	**Parliament Involved?**	**Late**	**Sub**
Minister Approves			***No***	
Minister Disapproves			***Yes***	
No Conflict	Weak	No	No	No
	Weak	Yes	No	
	Strong	No	No	
	Strong	Yes	**Yes**	
In-Cabinet Conflict	Weak	No	No	
	Weak	Yes	**Yes**	
	Strong	No	**Yes**	

[42] Note that that table has late and substantive infringements in reversed order to the statistical analysis in chapter four. This is because for the purposes of explanation, late infringements seem more familiar and are more often discussed in the literature. However, the explanation of substantive infringements is a significant contribution of the dissertation and so it is presented first in the analysis.

	Strong	Yes	**No**	**Yes**

On the whole, the theory performs very well in these initial tests, providing strong support for my arguments. I also evaluate these arguments in chapter four with a statistical model.

Additional Factors

In addition to the arguments presented above, certain elements of a directive's design are anticipated to affect a state's compliance. These factors are very important but have a higher level of consensus about them in the literature than the actor and institutional components in the previous section. For this reason, their discussion is concise.

Directives

In addition to the actors and institutions involved in the process, certain features of directives themselves have been identified as contributing to difficulties in the transposition process. They include the complexity of the directive, the policy area of the directive, and the amount of discretion permitted to state actors in implementing that directive. I detail these below.

Legislation *complexity*, typically referring to issues that touch on many topics or require a high amount of technical knowledge or skill to execute, have been demonstrated to negatively affect timely compliance. Complexity has alternately been measured as the length of recitals on a directive (Kaeding 2007), the number of issues covered (König and Luig 2014,

Franchino 2004). When topics are more complex, they may be more difficult for states to implement but they may also offer more discretion to states in the implementation process in recognition of their complexity (Franchino 2004). Previous work has determined that more complex directives can be associated with delayed implementation as granting discretion can permit states more freedom in implementing but lead to delays as states interpret the directive (Thomson et al 2007).

Directive *length* can increase implementation burdens for member states. Long and/or detailed directives can require more of states as they move to enact compliant legislation because these pieces of legislation may provide many restrictions that may be difficult for states to satisfy (Kaeding 2006). These concerns a bit more ambiguous as length is not always a clear indicator of the detail or requirements contained within legislation.

For example, a statement may outline items that are not possible or those that are possible in the same number of words. Despite taking the same number of pages, the second may prove more restrictive. Thus, while this measure is included as an additional proxy in the literature and analysis, what it measures is not entirely clear. As Steunenberg and Rhinard (2010) point out, there also may be additional annexes (appendices) in more technically complicated measures that consume additional pages that do not contribute directly and, if anything reduce, the level of overall difficulty in transposing the legislation. The effect of increased detail is thought to increase delay because states may not have other avenues for the disagreement with a directive and potentially influence the number of infringements as these directives may be more prone to conflict within coalitions (König and Luig 2014).

Discretion itself is also measured in individual directives. The discretion permitted to member states has two sides: when more discretion is granted, it may be more likely for

states to enact compliant legislation as they are better able to adapt the directive requirements to conform to national legislation. At the same time, more discretion can often mean more ambiguity for states, increasing the difficulty of enacting complaint legislation, as Toshkov and Steunenberg find (2009). There are different measures for discretion, including the ratio of provisions granting autonomy to states relative to the number of provisions overall (Franchino 2004), or whether the Council or Commission initiated the directive (Council directives typically permit more discretion to states). Discretion has been associated with increased delays (Mastenbroek 2003). However, the relationship between discretion and infringements is unclear: discretion may enable better compliance because states have more latitude to adjust the directive to national systems or the directive may prove to ambiguous for states to properly implement.

Policy Area

Finally, the policy domain of different directives is thought to be influential in how states transpose measures. The significance of policy domains pertains both to the topic area itself and addresses potential differences in how legislation regulates. For the former, different domains may have different levels of public salience or interest: social policies, such as those on worker rights, and environmental directives are frequently more salient than many agriculture policies.[43] Furthermore, the types of directives in different policy domains may have different scopes, with some being far-reaching whiles others more 'mundane'. The

43 However, not all agriculture policies are uninteresting. For example, in 2009 protests farmers and protesters upset over failing milk prices (linked to EU agriculture policies and milk quotas) "poured milk onto the streets, hurled eggs and other missiles, and started fires that filled the air with black smoke." http://www.nytimes.com/2009/10/06/business/global/06milk.html?_r=0

salience of these directives can also be tied to whether the directive, or modal directive of that policy type, is redistributive or regulative. Redistributive policies are akin to zero sum games in that there are winners and losers. These types of policies an create higher-profile disagreements among member states as some individuals are likely to be advantaged at the expense of others, for example when regulating how to label and manufacture different chocolates. This debate may seem inconsequential, but can shift trade from one country's producers to another. The requirements for labeling of different chocolates, with differing levels of cocoa solids, can permit some states to label 'chocolate' what a rival state (such as Belgium) would label as an 'inferior' product. Thus, states would be able to compete for consumers using a 'higher prestige' nomenclature under some permission for chocolate production, often at the expense of existing producers.

In contrast, regulative polices are often about coordinating measures to ensure even treatment. In these scenarios, something like driving on the same side of the road across all member states (unregulated by EU directives) or the appropriate size and placement of tractor mirrors (regulated by EU directives and regulations, ex: directive 32009L0059). Here, there aren't winners and losers in the same sense as in redistributive policies, although there may be some advantages for some states, companies, or individuals.

Different policy domains feature different mixtures of these policy types. This mixture, in combination with relative salience for an issue can contribute to challenges in implementation, both because national actors may be more divisive on an issue and because the issue at hand will be more relevant. Finally, it may also be that different directive domains are more technical or require different levels of expertise to implement. Thus certain domains, such as telecommunications, will require longer deadlines and may incur more delay. This

argument is difficult to evaluate empirically without individual coding of each directive and member states' enacting legislation, but seems to be supported by Haverland et al (2011) who find stark differences across policy sectors in compliance rates. In particular, while many policies are enacted late, those suffering from particular lateness are those that may require more change in social and economic systems, such as directives on Health and Safety.

In short, there are domain-specific factors that can speed or slow transposition and that make infringements more likely. Accounting for different domains in the overall analysis is a first step toward addressing these factors although I do not develop specific hypotheses in this dissertation.

This chapter provided an overview of existing approaches to member state compliance and developed a theory of member state noncompliance. I demonstrated the importance of distinguishing between late and substantive infringements, particularly focusing upon the mechanisms contributing to the incidence of late infringements or substantive infringements. This theoretical discussion produced a series of expectations regarding the circumstances under which either late and/or substantive infringement might arise. Before evaluating these hypotheses in chapter five, I first provide an overview of the available data on noncompliance in the next chapter. I then explain for the best means of evaluating these hypotheses, exploring different means of modeling state noncompliance.

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Appendix: Summary of literatures

Table 2.4: Preferences (Disagreement)

Dependent Variable	Authors	Countries (Years)	Policy Sectors	Findings and Significance	
Delay	**König & Luig (2014)**	1978-2009	All	+	Significant
Delay	**Linos (2007)**	EU-12 (1985-2000)	Social Policy	mixed	Not Significant
Delay	**Thomson (2007)**	EU-15 (1991-2004)	Social Policy	.	Not significant
Infringement	**Thomson et al (2007)**	EU-15 (1999-2006)	6 Dirs	+	Significant
Time to Transpose	**Luetgert and Dannwolf (2009)**	BE, DK, FR, DE, EL, IT, LU, NL, SP (1986-2003)	All	-	Significant
Timeliness	**Linos (2007)**	EU-12 (1985-2000)	Social Policy	mixed	Mixed
Delay	**König & Luetgert (2009)**	EU-15 (1986-2002)	All	+	Significant
Timeliness	**Thomson et al (2007)**	EU-15 (1999-2006)	6 Dirs	-	Significant
Timeliness	**König & Mäder (2013)**	EU-15 (2001-2007)	All (*contentious)	+	Significant
Violation	**Falkner et al (2007)**	EU-15 (6 dirs)	Social Policy	.	Not significant
Violation	**Steunenberg (2007)**	NL (2 dirs)	Health, Agriculture		(case studies)
Correctness	**König & Mäder (2013)**	EU-15 (2001-2007)	All (*contentious)	-	Significant

Table 2.5: Veto Players

Dependent Variable	Authors	Countries (Years)	Policy Sectors	Findings and Significance

Delay	**Linos (2007)**	EU-12 (1985-2000)	Social Policy	-	Significant
Infringement	**Börzel et al (2007)**	EU-15 (1978-1999)	All	.	Not significant
Infringement	**Börzel et al (2010)**	EU-15 (1978-1999)	All	mixed	Not significant
Infringement	**Börzel , Hofmann, Sprungk (2003)**	EU-15 (1978-1999)	All	-	Significant
Infringement (rate)	**Mbaye (2001)**	EU-15 (no Greece, 1972-1993)	All	.	Not Significant
Non-Transpositions	**Toshkov (2007)**	NMS (1998-2005)	Social Policy	.	Not significant
Stage of infringement procedure	**Jensen (2007)**	EU-15 (1978-2000)	Social Policy	-	Not significant
Delay (0/1)	**Kaeding (2006)**	DE, EL, NL, ES, UK (1957-2004)	Transport	-	Significant
Transposition Performance	**Giuliani (2003)**	EU-15 (1986-2000)	All	-	Significant
Transposition Time	**Steunenberg & Rhinard (2010)**	DE, EL, NL, ES, UK (1978-2002)	Food, Social Policy, Transport	-	Significant

Table 2.6: Institutions: Use of parliament / type of measure

Dependent Variable	**Authors**	**Countries (Years)**	**Policy Sectors**	**Findings and Significance**	
Delay	**Berglund et al (2006)**	DE, EL, NL, ES, UK (1986-1999)	Utilities, Food Safety	+	Not significant
Delay	**Haverland and Romeijn (2007)**	DE, EL, NL, ES, UK (1975-1999)	Social Policy	.	Not Significant
Delay	**Haverland et al (2011)**	DE, EL, NL, SP, UK (1978-2002)	Agriculture, Energy, Food, Health and Safety, Road Transport, Shipping,	-	Significant

			Social Policy, Telecom		
Delay	**Linos (2007)**	EU-12 (1985-2000)	Social Policy	+	Significant
Time to transpose	**Borghetto and Franchino (2010)**	EU-15 (1978-2004) (random selection)	All	-	Significant
Time to Transpose	**Mastenbroek (2003)**	NL (1995-1998)	All	+	Significant
Delay (0/1)	**Kaeding (2006)**	DE, EL, NL, ES, UK (1957, 2004)	Transport	+	Significant
Timeliness	**König & Luetgert (2009)**	EU-15 (1986-2002)	All	-	Significant
Timeliness	**Linos (2007)**	EU-12 (1985-2000)	Social Policy	+	Not significant
Amendment	**Dörrenbacher et al (2014)**	AT, DE, FR, NL (1 dir)	Justice		(case study)
Scrutiny	**Mastenbroek et al (2014)**	NL (2 dirs)	Social		(case study)

Chapter III: Data and Model Framework

So far, I have explored significant themes in understanding noncompliance. I then developed a theory to explain the origin of noncompliance among member states. In this chapter, I explain the dataset in greater detail and include information about model design and selection. I also provide information on the variables to be used, their source and operationalization, and descriptive statistics. This chapter describes and provides a framework to test the hypotheses developed in the previous chapter. I first discuss the data, how these data are combined to test my hypotheses and then move to explaining the model I use to test the data.

Data

I use data from two sources: Commission Data (via Börzel et al (2010)) and directive-level data (König and Luig (2014)). These two datasets enable detailed study of noncompliance. The Börzel data cover all infringement cases reaching at least the stage of Reasoned Opinion (the first public stage) for all secondary legislative acts from 1978 to 1999, although I limit the years of directives from 1978-1997 to reflect the delay between directive deadlines and detection of infringements. These data encompass over 9000 infringement

cases pertaining to directives and regulations.

I use data from König and Luig (2014) to explore directive-level details and the degree of approval by the policy-area minister. However, using the infringement and König and Luig data together does reduce the overall sample of infringement cases as the infringement data only go through 1999. Part of the reduction comes from König and Luig's focus solely on directives and exclusion of regulations. In the preliminary analysis that follows, I focus upon directives, in part because the majority of the literature has focused upon directives, typically from the perspective of explaining delays during the transposition process. These data cover 1490 directives, of which 998 directives have at least one infringement case opened on them. The number of member state observations per directive vary, as state-directive observations are only included when they occur during a state's membership in the EU (e.g., Greece is not included on directives written prior to 1981).

Infringement data come from the European Commission via Börzel et al (2010). The data are at the state-infringement case level and often include citations for multiple directives for substantive infringements. I explain how infringements are calculated in the following section. The data have been reformatted such that each directive cited for late ('non-notification') or substantive ('incorrect' or 'non-application') infringement is included in the dataset. Infringements on regulations, a substantial portion of the data, are not included in the dataset. For reasons listed above, only directives from 1978-1997 are included in the dataset. There are 3,656 infringement cases, of which 812 are substantive infringements.

Dataset Creation

The two datasets are combined such that three variables—infringement, late

infringement, and substantive infringement—note whether an infringement, late infringement and/or substantive infringement are observed. There are three consequences of this combination: multiple infringement citations for the same cause are reduced to one instance, multiple infringement citations for different causes are affected and citations for multiple directives in the same infringement case are included for each directive mentioned.

Multiple Cases

When a state is cited multiple times for the same directive, for example, if substantive infringement proceedings are brought against the state fewer than two different infringement case numbers, this is recorded as a substantive infringement. I also tally the number of infringement cases brought against a state for a particular directive, but the analysis in the following chapter focuses only upon whether a late or substantive infringement exists, not the severity of infringement. I also count instances of whether an infringement occurs or not. Even in instances where a state is cited multiple times, this registers as having an infringement occurred.

I focus only upon the incidence of infringement, rather than the repeated occurrence of infringements, because understanding the incidence of infringements is important prior to understanding why some infringements occur repeatedly.

Multiple Infringement Types

States are sometimes cited for both late and, later, substantive infringements. In my analysis, both the late and substantive infringement is recorded for the directive. As before,

once an infringement case is opened against a state on a directive, the 'infringe_not' variable (recording whether infringements occur) is set to 1.

It is important for my analysis to record whether an infringement occurs, or not, and the type of infringement(s) that occur. As with multiple cases of infringements, I do not focus upon severity or repeat occurrences in this research and, as such, the maximum value for each of the infringement, late, and substantive variables is 1.

Infringements Spanning Multiple Directives

Some infringement cases, typically for substantive infringement, cite multiple directives. For example, infringement case 1998/2329 cites three directives for substantive infringement: 31991L0156; 31991L0689; 31994L0062. For each of these directives, a substantive infringement is recorded for the cited member state, Italy.

Often when a state is in substantive violation of a directive, their misbehavior affects multiple directives in similar domains (this often occurs with environmental directive) or a new directive has superseded the original directive during the course of infringement proceedings. I include all directives mentioned in the infringement proceedings because all directives have been substantively infringed by the state. Citing multiple infringements in one case, rather than opening separate cases for each directive reduces the administrative burden on the Commission when investigating possible infringement.

In the case of the three directives cited above in case 1998/2329, for example, they all have to do with waste.[44] Thus, Italy's violation affects the three directives and each directive

44 COUNCIL DIRECTIVE of 18 March 1991 amending Directive 75/442/EEC on waste (91/156/EEC), Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, European Parliament and Council Directive

should have a substantive violation recorded for it. To address the potential that splitting multiple citations into separate cases creates additional data points, I conduct additional robustness tests in the following chapter.

Variables

There are a number of different variables included in the analysis, pertaining to preferences, actors, institutions, and directives. I first provide descriptions of the operationalization of each of the variables and then follow with a table of descriptive statistics of the variables. The name of the variable from the analysis appears first, followed by a longer description in parentheses).

Infringe_not (Infringement present): Whether an infringement occurred (1) or not (0). Source: own calculations using data from Börzel et al (2010)

Sub_not (Substantive infringement): Whether a substantive infringement occurred (1) or not (0). Source: own calculations using data from Börzel et al (2010)

Late_not (Late infringement): Whether a late infringement occurred (1) or not (0)

Prior Whether a state reported legislation in transposition that was enacted prior to the deadline for the directive (1) or not (0) Source: own calculations using data from Börzel et al (2010)

Approval (Policy-area Ministerial Approval): the distance between the ideal point of the relevant transposing minister in the policy domain and the Council of Ministers on that domain. The national party government position is used to estimate the length of the EU core

94/62/EC of 20 December 1994 on packaging and packaging waste

as the maximum ideological distance between negotiating member-state governments (König and Luetgert 2009) with the assumption that the final directive will lie in the Council core (König and Luig 2014). Ministerial approval is measured as the shortest distance between the policy-area minister's *party's*[45] ideal point and the boundaries of the EU core. Positive values reflect preferences within the EU core and negative values reflect preferences further from the core. This variable comes from estimation using party manifesto data. Source: König and Luig 2014

Strong (Parliamentary strength): Categorical variable from 0 to 4 (strongest). This is a variable to reflect the strength of national parliamentary institutions in comparison to the government. The involvement of the national parliament is thought to protect against ministerial drift (Martin and Vanberg 2005, Franchino and Høyland 2009) as the legislature may be able to affect the substance of enacted legislation (Dörrenbächer, Mastenbroek and Toshkov 2015, Haverland 2000), pulling or pushing the final content from the text of the directive. However, this depends upon whether the national parliament is able to affect the substance of debate (Martin and Vanberg 2011). This variable combines four elements of national parliamentary power: the ability to rewrite bills, if the government cannot truncate debate, whether the government cannot mark bills as 'urgent' to expedite the process, and whether extensive committees exist (numbering more than the average number of committees within states). These measures were selected for their ability to empower the national parliament to scrutinize bills and gather their own information. Their selection is informed by factor analysis undertaken by Martin and Vanberg in their analysis of the core

45 This is an important distinction that I don't develop here. The minister is assumed to have strong party allegiance, implementing a policy corresponding to his or her party's preferences (acting as a faithful agent of his/her party).

elements of a strong national parliament. Source: Martin and Vanberg (2011)[46]

Alternate measure:[47] **Agenda_rev (Agenda Control)**: Agenda control reflects the relative power between the government and parliament. I've reversed the scale, so higher values reflect more *parliamentary* control of the agenda relative to the government. Source: König and Luig 2014

VP_tsebelis (Veto Players): The number of veto players is calculated using data on governments from Tsebelis (bulk of data obtained from website). The values reflect the number of actors whose assent is necessary to enact policy change. The number of actors can fluctuate across time, depending upon government changes. The values do vary by state over the period, but the variation is rather narrow. See appendix for plot by state of values. Source: Tsebelis (website, book (2002)[48]). Website data downloaded fall 2015.

Alternate measure: **Conflict (Coalition Conflict)**: Level of coalition conflict: distance between policy-area minister and furthest coalition member (or coalition support-member in the case of minority government) on a simplified left-right dimension. From König and Luig: Following Franchino and Høyland (2009: 612), we use party positions from expert surveys (Ray 1999; Benoit and Laver 2006; Steenbergen and Marks 2007) and calculate the mean value across the national implementation measures for each directive. To cope with missing data for Luxembourg, we use the data of the Comparative Manifestos Project (CMP; Budge et al. 2001; Klingemann et al. 2006), aggregated on the left-right dimension using a method proposed by Gabel and Huber (2000). For the coding of parliaments and cabinets, we collect

46 These values are currently static for member countries. Future analysis will include the number of committees in each year as they fluctuate.

47 For robustness, I've used two measures to capture the two key variables. The analyses are replicated using combinations of the two operationalizations of the two key variables. The analysis can be found in the following chapter with the additional models being included in the appendix of that chapter.

48 Missing data for Greece supplemented from Tsebelis (2002) as are years for Italy for 1996 & 1997.

information provided by Müller and Strøm (2000), Woldendorp et al. (2000), and the political data yearbooks published in the *European Journal of Political Research*. Source: König and Luig 2014

Parliament: Whether the national Parliament was involved (1) or not (0) in implementation Source: König and Luig 2014

Policy factors: Work suggests (Haverland et al 2000, Börzel 2010, Börzel 2007, among many others) that policy domains are important and influential with respect to policy outcomes. For example, some domain areas may entail more technical details, more mundane policies, or more controversial topics. Although I don't delve into these arguments here, I include dummy variables for the policies to demonstrate that even when accounting for factors known to influence implementation, the effects are consistent.

Agricult (Agriculture): Policy Area. Source: König and Luig 2014

Environ (Environment): Policy Area. Source: König and Luig 2014

Interior: Policy Area. Source: König and Luig 2014

Industry: Policy Area. Source: König and Luig 2014

P_admin (Public Administration) Policy Area. Source: König and Luig 2014

P_health (Public Health): Policy Area. Source: König and Luig 2014

Finance: Policy Area. Source: König and Luig 2014

Transport: Policy Area. Source: König and Luig 2014

Council: Whether the directive was authored by the Council (0, 1), with Council directives typically affording more discretion. The question of whether Council directives are inherently more flexible has been discussed at length in the literature, although some scholars have chosen to use other measures in place of the dummy for Council authorship (Franchino

2004, Franchino & Høyland 2009). Upon my calculation, the correlation between an alternate measure of discretion—the number of provisions granting power to member states relative to the number of provisions within the directive—and whether a directive is a Council directive is approximately 0.8. This is high enough to justify using the Commission measure for now as this indicator is much more widely available and does not require subjective coding of provisions. (Source: König and Luig 2014)

Pages: Number of pages (standardized) when published in the Official Journal Source: König and Luig 2014

Deadline: Length of the transposition deadline (years) Source: König and Luig 2014

Complexity: Number of topics covered by a directive (based on the number of different directory codes covered). Ranges from 1 to 4. Source: König and Luig 2014

Efficiency: Categorical variable representing the efficiency (professionalism) of the bureaucracy. This variable is based on one constructed by Mbaye (2001) and consists of the following three factors: structural efficiency (performance-related pay), lack of permanent tenure, and public announcement of vacancies. Performance-related pay provides an incentive for dedication to one's job and quality of work product. Lack of permanent tenure provides more incentive to work than the presence of permanent tenure. Finally, public announcement of vacancies enables recruitment of higher caliber employees than within-the-ranks hires might. Higher values reflect higher levels of efficiency. This variable is constant across time. Source: Auer et al (1996)

Table 3.1: Variables

Variable	Description	Obs	Mean	Std. Dev.	Min	Max
Infringe_not	Whether an infringement occurred (1) or not (0)	17371	0.210	0.408	0	1
Sub_not	Whether a substantive infringement occurred (1) or not (0)	17371	0.047	0.211	0	1
Late_not	Whether a late infringement occurred (1) or not (0)	17371	0.176	0.381	0	1
Prior	Whether a state reported legislation in transposition that was enacted prior to the deadline for the directive (1) or not (0)	17371	0.139	0.346	0	1
Approval	The shortest distance between the minister's party and that of the Council of Ministers. Positive values reflect higher approval.	17371	0.029	0.122	-0.4	0.32
Strong	National parliamentary strength: categorical variable from 0 to 4 (strongest)	17371	2.270	1.536	0	4
Agenda_rev	Strength of agenda (reversed): reflects the national parliament’s strength relative to the government in controlling the legislative agenda	17371	0.523	0.291	0	1
VP_tsebelis	Veto players: number of actors whose assent is required to enact policy change	17371	2.260	1.255	1	6
Conflict	Level of coalition conflict: distance between furthest coalition member and policy-area minister	17371	0.171	0.129	0	0.65
Parliament	Binary variable reflecting whether national Parliament was involved (1) or not (0) in implementation of the directive	17371	0.102	0.303	0	1

Agricult	Policy Area	17371	0.328	0.470	0	1
Environ	Policy Area	17371	0.056	0.229	0	1
Interior	Policy Area	17371	0.004	0.059	0	1
Industry	Policy Area	17371	0.433	0.495	0	1
P_admin	Policy Area	17371	0.008	0.089	0	1
P_health	Policy Area	17371	0.020	0.140	0	1
Finance	Policy Area	17371	0.040	0.196	0	1
Transport	Policy Area	17371	0.067	0.250	0	1
Council	Whether the directive is a Council directive (1) or not (0) (Commission)	17371	0.649	0.477	0	1
Pages	Number of pages (standardized) when published in the Official Journal	17371	0.051	0.103	0	1
Deadline	Length of the transposition deadline (years)	17371	0.981	0.867	0	8.3
Complexity	Number of topics covered by a directive.	17371	1.237	0.499	1	4
Efficiency	Categorical variable representing the efficiency (professionalism) of the bureaucracy. Higher values reflect higher levels of efficiency	17371	1.529	0.765	1	3

Model Selection and Explanation

Existing approaches to noncompliance typically consider infringements as occurring for a similar reason or as interchangeable. There has been little work done directly comparing timing and substance. Those that have contrasted the two have argued that there is a likely a tradeoff between timing and correctness of implementation (Thomson et al 2007, Mastenbroek 2007). Thus, to understand the emergence of noncompliance, we must select a model that can investigate this potential difference between late and substantive infringements. In the sections that follow, I describe different model frameworks that merit

consideration and the motivations for selecting the model chosen. I conclude the seemingly unrelated probit is appropriate given the underlying framework of the data, arguments for noncompliance, and assumptions of the models.

Count Models/Regression

Previous approaches to infringements have frequently looked either at the number or share of infringements incurred by a state per time period (often over each year). While these approaches are able to estimate the magnitude of noncompliance, they are not able to distinguish a) between different types of infringement nor b) between policy-area differences across directives as the data are aggregated to the state-year level. It is possible to tally the number or share of late and substantive infringements and analyze these separately, but such analysis would still require aggregation at the state level. Such aggregation would fail to capture the role of the national parliament in implementation and the preferences of state actors (policy-area minister and coalition members) on infringements.

For these reasons, models of these types are not appropriate for the task at hand, as they do not allow the fine-grained distinction we need to further explore the problems of late and substantive infringement.

Ordinal Logit

An ordinal logit model allows the representation of noncompliance along a scale from full compliance (where no noncompliance is observed) to complete lack of compliance (non-notification of measures), with the order of categories being particularly important. There are

two potential problems with this framework, one pertaining to the order noncompliance and one regarding assumptions of the model.

Regarding the ordering of noncompliance: it is difficult to determine whether substantive noncompliance should be viewed as *more* or *less* of an infringement than late infringements. Substantive infringements occur when legislation has been enacted but the legislation is either incorrect or incorrectly applied (for example, it is on the books, but not enforced). Late infringements can include measures that are never notified (occurs in practice, but typically states are pursued until they notify some measures unless the directive is not significant and/or replaced/amended by a different directive) and those that are simply late. When measures are late, no action has been taken and the default legislation is whatever currently exists within the member state. Substantive infringements can also leave gaps such that existing state legislation is the default (and so late and substantive infringements are equivalent). Substantive infringements can be worse than late infringements because they introduce a new complication (for example, if a state imposes a new ban, as some states did when they did not retroactively apply parental leave policies in transposing legislation). This can be further complicated by the appearance of state compliance: when states fail to notify measures and incur a late infringement, this is easily monitored by the Commission. Substantive infringements are more difficult to detect and thus may be worse than late infringements in that the costs of a substantive infringement are higher because they persist for longer on average than late infringements and are less likely to be detected.

However, satisfying the question of whether or not an order of infringement severity exists is insufficient. A subsequent question regarding whether the model is appropriate exists. An important assumption of the ordinal logistic model is that there are proportional

odds over the types of infringement. This means that each independent variable has the same effect at each level of the independent variable: that is that the effects of any individual are the same for each type of noncompliance. If we anticipate variables to have different effects at each level of the independent variable—for example, if we anticipate that some variables will be significant at one level and not at another or, if some variables are positive for some but negative for other levels—then this model is not appropriate. As evidence indicates that late and substantive infringements are indeed distinct and will likely have different variables influencing their incidence, this model is not appropriate.

Multinomial Logit

Multinomial logit allows for modeling a scenario in which actors may decide to comply, delay or infringe. This choice is made simultaneously and requires actors to determine their compliance path at the time of implementation (actors cannot sequence actions by first being late, and then choosing noncompliance, for example). Unlike in ordinal logit, there is no presumed ordering relationship between the categories.

The assumptions for this model are that the categories are mutually exclusive and independence of irrelevant alternatives (IIA). The current framework (compliant, late, substantive) does not satisfy this requirement as states may suffer both late and substantive infringements. A slight modification from the ordinal logistic setup—the addition of one more measure of noncompliance (when states incur both late and substantive violations)—allows the satisfaction of the first requirement. IIA requires that the odds of any particular category, for example, the odds of substantive noncompliance, are independent of the odds for late

noncompliance.

However, IIA is a bit more difficult to fulfill, as the underlying argument regarding noncompliance is that actors are choosing between noncompliance modes. Furthermore, the correlation between late and substantive infringements points to some underlying relationship between the two types of infringements. Thus, the removal of one category of noncompliance, or the addition of one more category, would likely shift the odds between the different types of categories in a non-proportional way, violating the IIA requirement. This means that multinomial logit is likely a poor fit for this scenario.

Bivariate Probit

Using seemingly unrelated probit allows for modeling a scenario in which actors may decide to delay or infringe and may make these two seemingly unrelated decisions simultaneously. These decisions may not be completely unrelated and using seemingly unrelated probit allows for both the inclusion of multiple dependent variables (the two types of noncompliance) and allows for correlation in the error terms across the two equations.

This approach has the advantage over both the ordinal and multinomial logit in that the overlap of choices (late and substantive) is not a cause for concern. Furthermore, the failure of IIA is also not a concern for this framework. Thus, seemingly unrelated probit allows for a comparison between the two types of infringements while explicitly acknowledging the possible overlap in factors contributing to the incidence of late and/or substantive infringements. There are two things to note about this framework: 1) the size of the dataset may obviate the need for such a framework and 2) the reported correlation between the two

equations, while significant, is quite small (rho is less than 0.10). Thus, while the model may be the best fit theoretically, the advantages it offers over simply estimating two probit models, one for late and one for substantive, may be minimal.

Contributions of the Dataset

This dataset provides an innovative look at noncompliance in the European Union. Data on noncompliance have never been examined on a by-case basis like this. Previous work has been aggregated to the state level or focused upon a small sub-set of cases. Furthermore, I have disaggregated the data available from the commission to include every directive mentioned in a citation (explained in greater detail above).

By combining these data with data on state preferences, I provide a means to scrutinize and evaluate noncompliance at the state-directive level. These data can be used to analyze the relationship between preferences and noncompliance systematically, something previous research has not been able to accomplish for lack of data.

Summary

In conclusion, the combination of variables here provides a unique dataset capable of exploring unanswered questions of member state noncompliance. By structuring data in this way, I can explain differences between late and substantive infringements. I also use a different model to approach the question of noncompliance, addressing the distinct types of noncompliance while permitting the relationship of the incidence of late and substantive infringements. I determine that the most suitable model for analysis is a bivariate probit, the results of which are to be discussed in the following chapter.

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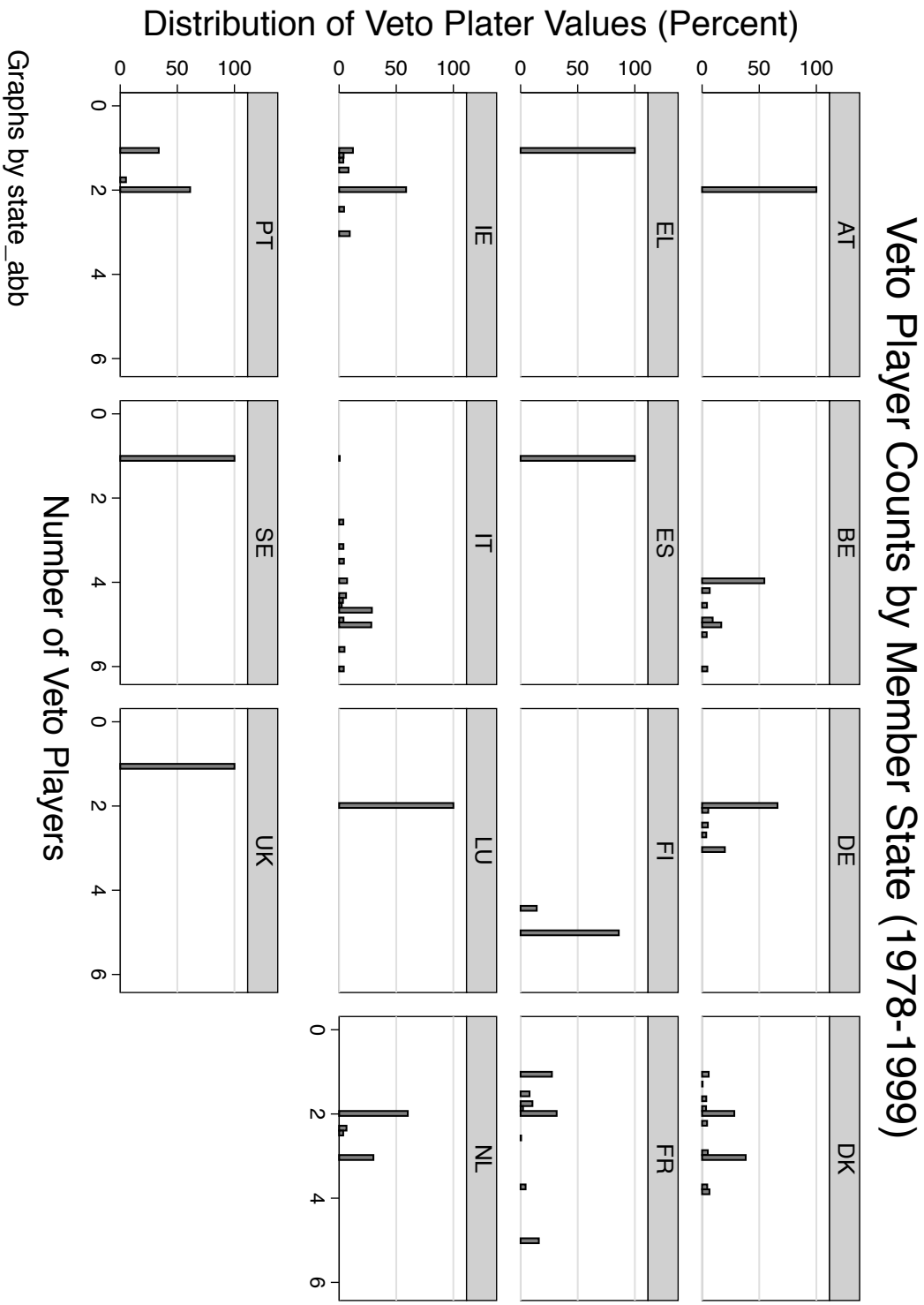
Appendix: Veto Players Plot



Chapter IV: Analysis

Now that we understand the magnitude of the problem presented by noncompliance, and the data and theory used to analyze this problem, I turn to an empirical evaluation. In this chapter, I provide a short background on previous empirical approaches to the problem of noncompliance. I then introduce my model, providing evidence for why a distinction between late and substantive infringements is necessary before moving to the model itself. I emphasize the inability of previous approaches to capture the distinction between late and substantive infringements and their associated factors. This failure mischaracterizes the relationship between institutional frameworks, national actors and noncompliance. Having demonstrated the need for a more nuanced approach, I next introduce the model, interpret its results and provide graphical support for the effect of the involvement of a strong national[49] parliament in the face of potential conflict among national actors—the case of multiple veto players. Finally, I provide an analysis on the overall suitability of my model, including assessments of the model fit, and relationship between variables. The appendices, introduced where relevant, provide additional support and analysis.

[49] As mentioned in chapter two, all references to a parliament, unless otherwise noted, are to the national parliament of the country.

Existing Approaches

Existing studies of infringements have often considered either timing alone or infringements from the state-year level. The first model I present illustrates how the distinction between late and substantive infringements provides more clarity in the understanding of state infringements. The model is a probit with the outcome being whether an infringement is observed or not. Positive (and significant) coefficients indicate a positive relationship between the independent and the dependent variable. Negative (and significant) coefficients indicate a negative relationship between the independent and dependent variables (increases in that variable lead to a reduction in the probability of observing the dependent variable).

An additional factor to consider is the theoretical approach behind the choice of a particular model. For example, a model that considers a question of infringement or not, implies that the important question is whether an infringement arises or not. It also implicitly assumes that all infringements are similar, similar enough to be grouped into the same category of 'noncompliant'. In contrast, a model that distinguishes between late and substantive infringement can contribute to four different types of conclusions: 1) whether something contributes to late infringements alone, 2) whether something contributes to substantive infringements alone, 3) whether something contributes to both late and substantive infringements and 4) whether something contributes to *neither* late *nor* substantive infringements. In this modeling scenario, the distinction between late and substantive infringements allows the same question of the previous infringement-or-not model but also provides for the possibility that not all infringements are the same. In the infringement-or-not model, any form of noncompliance is considered problematic and deriving

from the same root causes. Such a view is theoretically misguided as there are different types of noncompliance that can occur, each under distinct conditions. In a model that conflates the two, this confusion leads to unclear results and explanations, as we will see. Practically, this confusion becomes clear in the value and significance of important predictors: several covariates are not significant (such as the interaction between a strong and involved national parliament with many veto players).

As we will see in the models analyzing late and substantive infringements, some factors, such as ministerial approval, are positively associated with one type of infringement (substantive) while negatively associated with the other type (late). In the joint model, this distinction is missed. For these variables (also including whether prior measures are reported in transposition), their interpretation would lead to incorrect results. For example, a researcher evaluating results from the infringement-based model would conclude that approval by the policy-area minister is not a significant factor in infringements at the 0.05 level, despite strong significance in the late infringement model and existing research (König and Luig 2014) pointing to its significance. Such a conflation would understate the power and significance of policy-area ministers in the implementation process, something necessary to understand when studying late infringements since hasty implementation can lead to incorrect transposition.

Perhaps more troubling is the relationship between whether a state reports pre-existing legislation in the transposition process and the incidence of infringements. States that report previously existing legislation are less likely to have a late infringement, likely because it does not take any time to enact or approve this legislation. However, the use of prior legislation is strongly and positively associated with substantive infringements, but this association is

missed in the aggregate analysis. Thus, the use of these measures would lead to an *increase* in difficult-to-detect substantive infringements, rather than a decrease in overall infringements. These types of measures are associated with faster implementation, but faster is not always best when all types of infringements are included.

While there are some relationships that are captured by focusing holistically on infringements, such a broad approach is unable to capture distinctions between late and substantive infringement. This is true particularly in cases where the same variable has different relationships with the different types of infringement, as in the cases of ministerial approval and the use of prior legislation. It is precisely these types of factors that we are most interested in, yet they would not be detected using previous approaches. Furthermore, the role of in-coalition conflict and the strength and involvement of national parliamentary institutions is completely missed in such an approach because it is relevant for only substantive infringements. Thus, the extant approach gives an incomplete and misleading picture of how infringements arise.

Table 4.1: Model 0, Consideration of Infringements

VARIABLES	Infringement
Notification prior to the adoption date	-0.0658+
	(0.0342)
Ministerial approval	-0.182+
	(0.0943)
Strong	-0.125***
	(0.0175)
Veto Players	-0.127***
	(0.0302)
Strong x Veto Players	0.0574***
	(0.00883)
Parliamentary involvement = 1	0.635***
	(0.167)
Parliament Involved x Strong	0.0393

	(0.0531)
Parliament Involved x Veto Players	-0.0856
	(0.0936)
Parliament Involved x Strong x Veto Players	0.000792
	(0.0277)
Agriculture	-0.0885
	(0.0543)
Environment	0.292***
	(0.0654)
Interior	0.287+
	(0.172)
Industry/trade	-0.106*
	(0.0532)
Public administration	0.410***
	(0.121)
Public health	-0.210*
	(0.0911)
Finance	-0.842***
	(0.0873)
Transport	-0.135*
	(0.0666)
Council = 1	0.312***
	(0.0258)
Page length	1.169***
	(0.105)
Complexity	-0.0180
	(0.0231)
Bureaucratic Efficiency	-0.392***
	(0.0174)
Constant	-0.239**
	(0.0857)
Observations	17,371

Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05, + p<0.10

If we base our interpretation of when infringements occur from the above model, we would conclude that the driving factors are veto players, national parliaments and that a strong national parliament is associated with more infringements when combined with many veto players. The use of previously existing national measures and (policy-area) ministerial approval are associated with fewer infringements but have a very low level of significance. These results will appear very familiar when we turn to the results of considering late

infringements. Because so many late infringements occur, focusing upon infringements jointly produces results that appear similar to those for late infringements only. This leads to spurious relationships (prior measures seem to lead to fewer infringements overall, despite a positive association with substantive infringements as we later see) or weaker relationships (for example, the strength of the relationship between policy-area ministerial approval and late infringements is stronger than for the whole body of infringements). Finally, some results are not significant at all, despite significance in both late and substantive models separately. This includes the relationship between strong, involved national parliaments when many veto players are present and policy-area factors, such as: industry/trade, public health and transport.

While these missed connections many not appear to be important for our understanding of cases in which late and substantive infringements arise, circumstances where late and substantive infringements diverge are particular important for understanding state compliance. Because late infringements are much easier to detect and comprise the bulk of Commission enforcement, any model that compares both late and substantive together will miss circumstances favoring substantive infringement. Because factors contributing to substantive infringement are increasing over time (such as the involvement of national parliaments), there is reason to suspect that substantive infringements are likely to be increasing. Thus, a joint model will miss circumstances that contribute to substantive infringement, as we see above. Only a model that distinguishes between late and substantive infringements will be able to explain the incidence of both types of infringement, which will contribute to a clearer picture of noncompliance.

Model: Seemingly Unrelated Probit

'Seemingly unrelated' models allow for modeling a scenario in which actors may decide to delay or infringe and may make these two seemingly unrelated decisions simultaneously. A seemingly unrelated probit is an estimation using two probit equations to model the two decisions facing actors. These decisions may not be completely unrelated and a multinomial logit would not be appropriate since there is overlap in some of the categories (for example, there may be some delay that occurs, either by choice or not) as a result of the decision to substantively deviate from the mandate of the directive. Thus, we can adequately distinguish between late and substantive infringements. See Chapter Four for more information on model selection and seemingly unrelated probit in particular. Using seemingly unrelated probit allows the inclusion of multiple dependent variables and allows for correlation in the error terms of the two equations.

Logic of Bivariate Probit

In the model, there are two probit equations: in the first, actors decide to **substantively** infringe, or not; in the second, they make the choice between **late** infringement or not. The two choices may appear to be independent but, for a number of reasons (including the correlations between late and substantive infringement cases we explored before), we believe there is a potential underlying relationship guiding the choice in the two equations.[50]

50 The use of a bivariate probit is meant to address the underlying correlation between the two dependent variables of interest. Little correlation between the two results in an inefficient estimation. In this case, although the correlation between late and substantive infringement is quite low (~0.05), there is reason to believe that

Interpretation

The model is essentially two probit models and the results from each model can be interpreted as one would interpret a probit model. Positive values indicate a positive relationship between the independent variable and the dependent variable. Negative values indicate a negative relationship between the independent and dependent variable. There are two dependent variables: the incidence of either substantive infringements or late infringements. The two columns of coefficients are associated with the two distinct outcomes of interest (1) substantive infringements and (2) late infringements. Aside from the sign (and significance) of the coefficients, it is also worthwhile to note whether the signs are similar or different across the columns. For example, when an independent variable has the same sign for the substantive (1) *and* late infringement (2) equations, this indicates that the variable is positively associated with both substantive *and* late infringements. When there are different signs in the two columns, as with 'Notification prior to the adoption date,' this indicates that the variable has a positive relationship with the incidence of one type of infringement (in this case, substantive) and a negative relationship with the incidence of the other type of infringement (in this case, late infringement). Thus, we can understand that if a state uses previously-enacted national legislation, there will be a positive relationship with substantive infringements and negative with late. In other words, the use of this legislation is likely to save time but to be substantively incorrect with respect to the directive at hand.

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the underlying processes contributing to late and substantive infringements are related. Thus, despite the low correlation, the model is appropriate for the situation. Separate probit estimations are included in Appendix B (substantive) and Appendix C (late). Note that using a bivariate probit framework provides a *stronger* test for my argument than using two probits: the permitted correlation between the two estimations produces larger standard errors, thereby making significance of coefficient estimates potentially lower than in a probit estimation.

To understand the relationship between different factors and both types of infringements, we must note the signs within each model and observe whether these signs are consistent across the two models. If all the signs were the same across the two equations, then it would make no difference to distinguish between late and substantive infringements. Differences in signs across the two equations indicate that the variable in question has a different effect on the two types of infringements.

Expectations, Revisited

As a reminder, here are the expectations developed in chapter two:

1. Approval by the policy-area minister will be negatively associated with late infringements.
2. Late infringements are also likely to arise when there exists conflict amongst actors and no institutional opportunities to voice that disagreement, specifically:
    a. Strong National Parliament x National Parliament involved
    b. In-coalition Conflict x (any) National Parliament involved
    c. In-coalition Conflict x Strong National Parliament
3. Substantive infringements are likely to arise when there exist disagreements among coalition members *and* strong national parliamentary institutions that are *also* involved in legislating.

We will consider these expectations when evaluating the model.

Operationalization

A brief note on variables: There are different ways to capture coalition conflict and institutional strength. Conflict is measured either as the distance between the furthest coalition partner and the policy-area minister *or* the number of veto players (Tsebelis 1999). Institutional strength is either measured using a categorical variable based on arguments from

Martin and Vanberg (2011) *or* reversing the scale for a government's control of the agenda. For a deeper discussion of this, please see Chapter Four.

The different measurement possibilities lead to four combinations of power and conflict (vp * strong, vp * agenda, coalition conflict * strong, coalition conflict * agenda). I include results for the estimation with my preferred operationalization of these variables, but the other three estimations are consistent with the results presented in the following section. A master table comparing the four different estimations is included in Appendix E.

For our purposes, we will focus upon the factors that distinguish late from substantive infringements. I outline expectations for the two models in the sections that follow.

Goals

Our goal is to understand the relationship between different important factors and our two outcomes of interest: substantive and late infringements. We theorized that substantive infringements—when the national measures enacted fall short of the directive's mandate—occur when three conditions are *simultaneously* present: (1) actors not only *disagree* with a directive, (2) they have the *power* to affect national legislation, and (3) they have the *opportunity* to do so, in the parliament. Late infringements, in contrast, arise when only *some* of these conditions are present: when actors disagree but lack tools to substantively influence legislation, e.g. when they have weak parliamentary powers but disagree with content, or when strong national parliaments are involved in the passage of legislation during the transposition process.

To evaluate these claims, we will focus on each of the two columns in Model 1

separately. In the first, substantive infringement, we will focus upon an interaction term to address the simultaneity requirement for our three conditions—more specifically, a triple interaction between the involvement of the national parliament, its strength, and the number of veto players. In the second, late infringement, we will focus upon the 'two of three' scenarios, represented by double interactions. For ease of review, I've bolded both the variable and coefficient for the discussed elements in the upcoming analysis. Let us now turn to our evaluation.

Table 4.2: Model 1

VARIABLES	(1) Substantive Infringement	(2) Late Infringement
Notification prior to the adoption date	**0.310*** **	**-0.210*** **
	(0.0483)	(0.0372)
Ministerial approval	0.250	-0.281**
	(0.163)	(0.0974)
Strong Parliament	-0.138***	-0.116***
	(0.0313)	(0.0181)
Veto Players	-0.205***	-0.117***
	(0.0573)	(0.0311)
Strong Parliament x Veto Players	**0.0723*** **	**0.0532*** **
	(0.0165)	(0.00909)
Parliamentary involvement	**1.353*** **	**-0.115**
	(0.213)	(0.180)
Parliament x Strong Parliament	**-0.235*** **	**0.234*** **
	(0.0677)	(0.0568)
Parliament x Veto Players	**-0.433*** **	**0.178+**
	(0.130)	(0.0988)
Parliament x Strong Parliament x Veto Players	**0.129*** **	**-0.0846** **
	(0.0375)	(0.0292)
Agriculture	**-0.548*** **	**0.190** **
	(0.0840)	(0.0589)
Environment	0.633***	0.159*
	(0.0833)	(0.0698)
Interior	**0.841*** **	**-0.0811**
	(0.184)	(0.204)
Industry/trade	-0.192**	0.0601
	(0.0742)	(0.0569)
Public administration	0.944***	0.175
	(0.132)	(0.130)

Public health	0.0606	-0.225*
	(0.119)	(0.0991)
Finance	-0.303**	-0.862***
	(0.109)	(0.111)
Transport	**-0.224***	**0.0295**
	(0.0980)	(0.0710)
Council	0.817***	0.157***
	(0.0680)	(0.0272)
Page length	0.876***	0.970***
	(0.151)	(0.107)
Complexity	0.0644+	
	(0.0386)	
Bureaucratic Efficiency	-0.201***	-0.409***
	(0.0285)	(0.0186)
Deadline length		0.145***
		(0.0145)
Constant	-1.914***	-0.543***
	(0.149)	(0.0872)
Observations	17,371	17,371

Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05, + p<0.10

Substantive Infringements

The most salient expectation for substantive infringements is expectation three. 3: Substantive infringements arise when three conditions are present: actors disagree with a directive, they have the power to affect national legislation, and they have the opportunity to do so in the national parliament. I capture this using an interaction between the involvement of the national parliament, the strength of the national parliament, and the number of national veto players. This effect is positive and statistically significant (**Parliament * Strong Parliament * Veto Players**).

When these factors are not met, that is, when there are only two of the three conditions met, we anticipate late infringements. Because substantive infringements cannot occur until a measure has been transposed, it is perhaps unsurprising that while these factors (where two

conditions are met) are positively associated with late infringements but, at times, negatively associated with substantive infringements. We see that substantive infringements are *less* likely when there is a strong national parliament involved (but few veto players) (**Parliament * Strong Parliament)** and when the parliament is involved and there is disagreement over the substance over material but the parliament is weak (not strong) (**Parliament*Veto Players**). We do see that strong parliaments and the presence of disagreement over content are associated with substantive infringements, even without the involvement of parliament, perhaps because these actors have additional power and could threaten the involvement of parliament and thereby extract compromises (**Strong Parliament * Veto Players**).

As we anticipated, substantive infringements occur when three elements are simultaneously present: disagreement over the directive, the national parliament is strong, and the national parliament is involved. This relationship is supported when jointly testing whether these three coefficients (in a probit model) are distinct from zero: they are significantly different at p=0.01. Thus, the combination of preferences, power, and institutions are strongly associated with substantive infringements.

Late Infringements

Expectations one and two apply to the incidence of late infringements. Late infringements arise primarily when policy-area ministers disagree with a proposed policy (ministerial approval is low). We anticipate late infringements in the following circumstances: when ministerial approval is low and when two of the three 'ingredients' for substantive infringement are present (the three elements being the involvement of parliament, a strong parliament, and many national veto players). We also see that while strong national

parliaments are negatively associated with late infringements, strong, involved national parliaments are positively associated with late infringements, most likely due to the involvement of additional veto players in the political process.

Our expectations are fulfilled; ministerial approval is negatively associated with late infringements. Higher levels of ministerial approval are negatively associated with late infringements while lower levels of ministerial approval are positively associated with late infringements (**Ministerial Approval**).

Similarly, cases where two of the three elements are present (strong parliament involved and many national veto players, parliament and many veto players, parliament involved and a strong parliament) are all positively associated with late infringements. We do, however, see variation in whether these coefficients are significant or not. For the presence of a strong national parliament and many veto players (**Strong Parliament * Veto Players**), these actors are able to delay the process, perhaps using the threat of their power to drag out transposition. Similarly, the involvement of a strong national parliament (**Parliament * Strong Parliament**) is positively and significantly associated with delay: the involvement of more actors slows transposition.

Finally, the involvement of a national parliament and presence of many veto players also is positively associated with delay (**Parliament * Veto Players)**, although the relationship is not significant. We see that the involvement of a strong parliament in the presence of disagreement over the directive (**Parliament * Strong Parliament * Veto Players**) is negatively associated with late infringements, perhaps because these actors are effective in securing the concessions they demand.

Thus, we see strong statistical support for the arguments presented above: substantive

infringements require the simultaneous presence of three distinct elements while late infringements occur when two of these elements are present. Substantive infringements arise when three conditions are simultaneously present: the national political actors not only *disagree* with a directive, AND they have the *power* to affect national legislation, AND they have the *opportunity* to do so, in the national parliament. Late infringements arise when only some of these conditions are present: when national political actors disagree but lack tools to substantively influence legislation, e.g. when coalition members have weak parliamentary powers but disagree with directive content, or when strong national parliaments are involved in the passage of legislation during the transposition process.

These results are stable even when accounting for different measurements of the key predictors, as demonstrated in the appendices. I also consider the possibility that separating the multiple case-citation convention in the case of substantive infringements affects the results. To address this possibility, I cluster standard errors by state and by directive. The results are still consistent and supportive of my argument. See Appendix F for details.

Marginal Effects

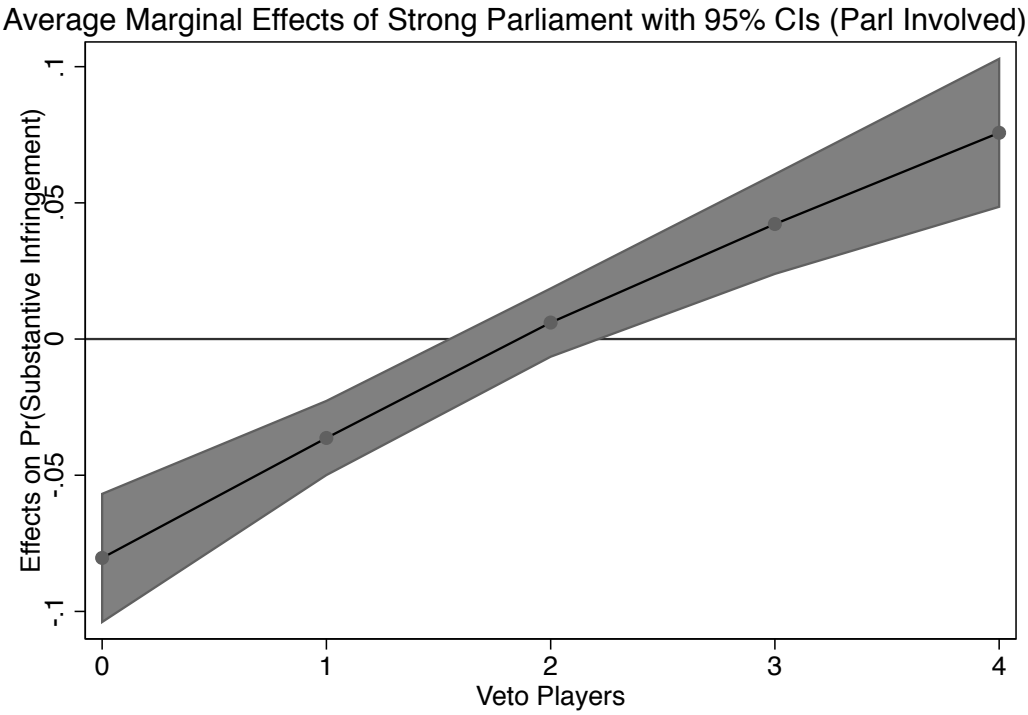
In this section, I illustrate the marginal effect of key variables from the model. Because these estimations are not possible using the bivariate probit framework in Stata, the graphs are produced by using a single probit. The effect of this choice is to have smaller standard errors than in the bivariate probit, but consistent results.

Substantive Model

In the substantive model, as the number of veto players increases, the involvement of a strong parliament leads to increasingly higher marginal probabilities of observing substantive infringement. In the figure below, we can see how the presence of multiple veto players is positively associated with the likelihood of substantive infringement in cases where a strong parliament is involved. This represents the marginal effect of the triple interaction from the model.

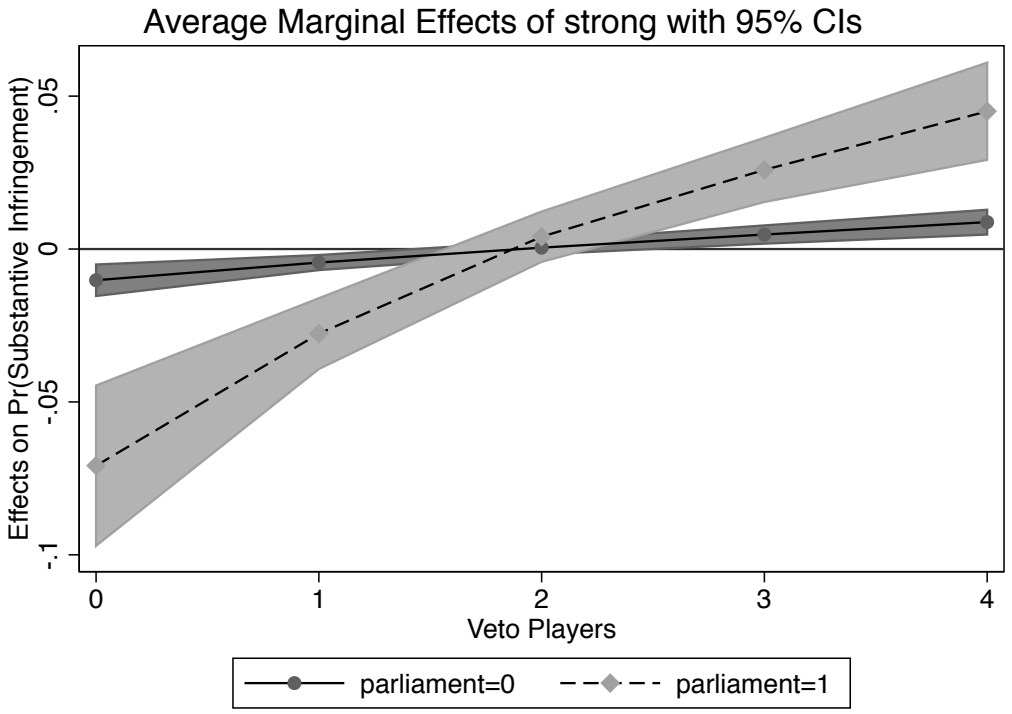
This effect is significantly distinct from zero at the p=0.05 level as indicated by the shaded confidence band. Furthermore, we see that the effect of parliamentary involvement is not always positive—when there are few veto players and the parliament is involved, there is a *lower* marginal effect on the probability of substantive infringement. That is, when there is a unitary government, the involvement of parliament is negatively associated with substantive infringements, most likely because the government is in consensus and the use of parliament is to enact compliant legislation.

Figure 4-1: Average Marginal Effects of Strong Parliament, Parliament Involved, on Substantive Infringement (over Veto Players)



We *do not* see the same degree of strength between the increase of veto players and the likelihood of substantive infringement when a strong parliament is not involved. This is illustrated in the figure below. Instead, the relationship, while distinct from zero, has a very small effect, particularly in comparison to parliamentary involvement of a strong parliament.

Figure 4-2: Average Marginal Effects of Strong Parliament on Substantive Infringement (over Veto Players)



Thus, we see that not only is the key factor from my model significant, its significance has substantive meaning—the effect is not trivial and does have influence on the outcome.

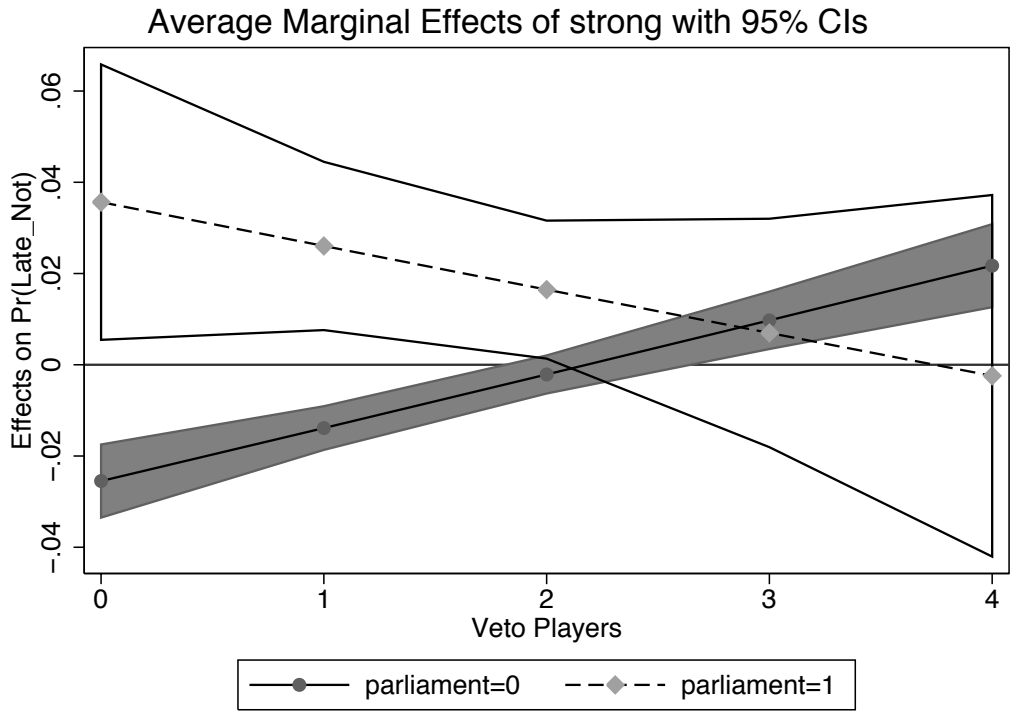
Late Model

Here, there are a number of important differences from the substantive model that provide an avenue for future research. I present the same figure for the late infringement model as in the substantive model (figure 4-2). Note three differences: 1) the results for parliamentary involvement are not significant (unlike in the substantive model), 2) the involvement of parliament has a negative effect (unlike the positive effect in the substantive model) and 3) the relationship between veto players and the marginal effect on the likelihood

of late infringement can be positive or negative *depending upon whether a strong parliament is involved* (unlike in the case of substantive infringement). These differences a) demonstrate the justification for separating late and substantive infringement and b) point to a potentially contradictory role for veto players in late infringements.

Thus, the effect of a strong, involved parliament is *not* the same for substantive and late infringements. And, in the case of late infringements, veto players play a complex role. This likely stems from national efforts to meet deadlines by empowering policy-area ministers.

Figure 4-3: Average Marginal Effects of Strong Parliament on Late Infringement (over Veto Players)



In this section, we have observed further evidence supporting the role of strong and involved parliaments for substantive infringements. We have also seen evidence supporting

the need for a distinction between late and substantive infringements. The next step is to then evaluate the fit and suitability of the model itself.

Robustness Tests

To further evaluate the model, I also conducted a number of robustness tests. In the sections that follow, I investigate the specification of the model, the fit of the model, and the relationship between the variables in the model. I find that on the whole, my model performs very well, although the fit of the late model could be better. This will be evaluated in future work.

Specification Error

The first test I perform is to see whether the model is correctly specified, that is, whether there are additional predictors that are omitted from the model. Significant predictors omitted from the model should only be significant by chance (the 0.05 probability for type I error).

To perform this test, I first do a probit analysis of the independent variables included in the bivariate probit for each of my two dependent variables and evaluate the square of the linear predicted value. Should this value be positive, there is a possibility that the model is not correctly specified. However, for both models, this value is not significant: 0.516 (substantive) and 0.884 (late). Thus, specification error is not a pressing concern.

Goodness-of-Fit

Now that I have evaluated the specification of the model, I turn to the fit of the model. The question being evaluated in the next sub-sections is how well the current model fits the data. I do this through two approaches: one to evaluate the fit through comparing the match between the predicted and actual values for the data using the Hosmer and Lemeshow's goodness-of-fit test; the second test compares two nested models and evaluates whether the addition of variables fits the data better than the model without this variable. In both tests, the models presented here (Model 1) fit the data and does so better than the exclusion of my key explanatory variable (the triple interaction of strong, involved parliaments with many veto players).

Hosmer

The Hosmer and Lemeshow test provides a measure of how closely the predicted and actual frequency of the dependent variable matches one another. The Hosmer and Lemeshow statistic is calculated as the Pearson chi-square from the contingency table of observed and expected frequencies. A good fit is indicated by a large p-value.[51]

I conducted this test on two probit equations, one for substantive infringements and one for late infringements. For substantive infringements, the probability was quite high (0.4068) while for late infringements, the value was not significant at p=0.05 (0.0553). This p-value is a bit low and indicates that future research should more thoroughly examine the model for late infringement to determine if there might be a better way to evaluate late infringements.

51 When there are continuous predictors in the model, the convention is to combine the patterns formed by the predictor variable into 10 groups. This is because continuous variables, when not broken into groups, would yield artificially higher p-values and thus make it appear as though the model is a good fit.

Fitstat

The next measure of goodness-of-fit focuses upon the core of my explanation for infringement. The models I present are similar in composition to those in previous research in that they contain 'the usual suspects'—factors about national political systems, preferences and directives. How my approach differs from previous research is in *how* I approach infringements, distinguishing late from substantive infringements, and my focus on the simultaneous presence of key factors, strong parliaments with many veto players. I have already demonstrated that this interaction is significant. I can use *fitstat* to compare the fit of a model that does not include the interaction to one that does. Doing so enables me to look at the Bayesian Information Criterion (BIC) to see whether the model with the triple interaction better fits the data.[52]

When I compare two models, one with and without the triple interaction, the BIC values differ by 20.029 (substantive) and 11.640 (late) in favor of the interaction model.[53] This means that there is very strong support for using the model with the triple interaction over one without in both models. Thus, the model that best tests my theory, developed in Chapter Three, also provides a better fit than a model that does not include this aspect of my argument.

Multicollinearity

The final step is to consider the particular variables included in the model and their

52 To be clear: in this test, I evaluated a model with the variables alone (e.g. logit sub vp parl strong, etc) in comparison to a model that had these variables and their interactions.

53 The value of the BIC reflects the strength of the comparative fit. The larger the value, the better one model fits in comparison than the other. BIC values from 0-2 are weak, 2-6 are positive, 6-10 are strong and 10+ are very strong.

relationship to one another. I evaluate whether there are relationships between the independent variables that might prove troublesome. To determine whether multicollinearity, near-perfect correlation between variables, is present, I conducted two separate logit estimations[54] using the same variables from the bivariate probit. Here, we will focus upon the odds ratio, reported in the table below. If the odds ratio for a particular coefficient is rather large, we will have reason to suspect multicollinearity between some of the variables. There is no set cutoff for 'large,' but odds ratios of hundreds or higher deserve a closer look. As the table below shows, we do not have large coefficients that merit further scrutiny and thus multicollinearity is likely not a problem.

Table 4.3: Model 1B, Odds Ratios

VARIABLES	(1) Substantive Infringement	(2) Late Infringement
Notification prior to the adoption date	1.859***	0.673***
	(0.178)	(0.0464)
Ministerial approval	1.792+	0.607**
	(0.611)	(0.104)
Strong	0.764***	0.825***
	(0.0512)	(0.0270)
Veto Players	0.672**	0.827***
	(0.0824)	(0.0464)
Strong x Veto Players	1.152***	1.093***
	(0.0403)	(0.0178)
Parliamentary involvement = 1	12.58***	0.782
	(5.050)	(0.241)
Parliament Involved x Strong	0.654***	1.532***
	(0.0839)	(0.148)
Parliament Involved x Veto Players	0.438**	1.393*
	(0.110)	(0.234)
Parliament Involved x Strong x Veto Players	1.274***	0.857**
	(0.0914)	(0.0424)
Agriculture	0.305***	1.415***

54 Note: I used a logit estimation here because log odds are not possible with a probit. While a probit provides a better fit for the model (the difference in log likelihood is small but provides positive support for probit estimation over logit), the results using logit estimation are consistent with those from a probit estimation.

	(0.0542)	(0.146)
Environment	3.391***	1.339*
	(0.531)	(0.162)
Interior	4.459***	0.833
	(1.446)	(0.306)
Industry/trade	0.667**	1.108
	(0.0983)	(0.110)
Public administration	5.391***	1.376
	(1.255)	(0.300)
Public health	1.172	0.670*
	(0.265)	(0.119)
Finance	0.544**	0.182***
	(0.120)	(0.0422)
Transport	0.623*	1.034
	(0.127)	(0.130)
Council = 1	6.984***	1.349***
	(1.201)	(0.0661)
Page length	5.868***	5.043***
	(1.672)	(0.906)
Complexity	1.155+	
	(0.0941)	
Bureaucratic Efficiency	0.664***	0.468***
	(0.0397)	(0.0169)
Late Infringement		
Deadline length		1.280***
		(0.0318)
Constant	0.0215***	0.420***
	(0.00694)	(0.0650)
Observations	17,371	17,371

Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05, + p<0.10

Conclusions

This chapter comes to demonstrate that there exist key substantive differences between late and substantive infringements, as reflected in the data. I have outlined the different features contributing to late and substantive infringements. Furthermore, I have demonstrated the robustness of my model, specification and the role of particular cases in determining the fit of the overall model. My model provides a test of my argument that

demonstrates the strong relationship between three factors—parliaments, their strength and national actors—and the incidence of infringement. It provides support for my argument that substantive infringements arise when there exists disagreement, power, and opportunity for actors to act on their disagreement with a directive and late infringements arise when actors dislike a directive but lack the elements to shift policy outcomes.

References

Martin, L. W., & Vanberg, G. (2011). Parliaments and Coalitions: The Role of Legislative Institutions in Multiparty Governance. OUP Oxford.

Tsebelis, G. (2002) *Veto Players: How Political Institutions Work*. Princeton, NJ: Princeton University Press/Russell Sage Foundation.

Appendix A: Correlation Table

Table 4.4: Correlation Table

	Late Infringement	Substantive Infringement	Notification prior to the adoption date	Ministerial approval	strong	Coalition conflict	Parliamentary involvement	Agriculture	Environment	Interior	Industry/trade	Public administration	Public health	Finance	Transport	Council	Page length	Deadline length	Complexity	Bureaucratic Efficiency	year of directive
Late Infringement	1.00																				
	0.00																				
Substantive Infringement	0.05	1.00																			
	0.00	0.00																			
Notification prior to the adoption date	-0.05	0.07	1.00																		
	0.00	0.00	0.00																		
Ministerial approval	-0.01	0.07	0.05	1.00																	
	0.07	0.00	0.00	0.00																	
strong	0.00	0.00	0.01	0.11	1.00																
	0.52	0.89	0.12	0.00	0.00																
Coalition conflict	0.01	0.01	0.01	0.07	**0.38**	1.00															
	0.21	0.38	0.08	0.00	0.00	0.00															
Parliamentary involvement	0.08	0.18	0.06	0.10	0.10	0.09	1.00														
	0.00	0.00	0.00	0.00	0.00	0.00	0.00														
Agriculture	0.02	-0.11	-0.02	-0.12	0.00	-0.03	-0.15	1.00													
	0.02	0.00	0.01	0.00	0.95	0.00	0.00	0.00													
Environment	0.04	0.19	0.06	0.11	0.00	-0.01	0.05	-0.17	1.00												
	0.00	0.00	0.00	0.00	0.53	0.28	0.00	0.00	0.00												
Interior	0.00	0.07	-0.02	0.05	0.00	0.00	0.05	-0.04	-0.01	1.00											
	0.80	0.00	0.02	0.00	0.96	0.63	0.00	0.00	0.06												
Industry/trade	-0.02	-0.05	-0.04	0.00	0.00	0.02	0.01	**-0.61**	**-0.21**	-0.05	1.00										
	0.05	0.00	0.00	0.86	0.68	0.01	0.15	0.00	0.00	0.00											
Public administration	0.03	0.14	-0.01	-0.01	0.00	0.01	0.04	-0.06	-0.02	-0.01	-0.08	1.00									
	0.00	0.00	0.07	0.31	0.80	0.43	0.00	0.00	0.00	0.48	0.00										
Public health	-0.01	0.04	0.02	0.01	0.00	0.03	0.07	-0.10	-0.03	-0.01	-0.13	-0.01	1.00								
	0.35	0.00	0.00	0.05	0.67	0.00	0.00	0.00	0.00	0.26	0.00	0.09									
Finance	-0.08	0.01	0.00	0.13	0.00	-0.01	0.11	-0.14	-0.05	-0.01	-0.18	-0.02	-0.03	1.00							
	0.00	0.51	0.68	0.00	0.86	0.26	0.00	0.00	0.00	0.11	0.00	0.02	0.00								
Transport	-0.01	-0.01	-0.01	-0.02	0.01	0.01	-0.04	-0.19	-0.07	-0.02	**-0.23**	-0.02	-0.04	-0.05	1.00						
	0.23	0.14	0.06	0.18	0.00	0.00	0.19	-0.15	0.08	0.04	-0.08	0.07	0.05	0.13	0.14	1.00					
Council	0.07	0.00	0.00	0.00	0.57	0.88	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00						
	0.00	0.00	0.00	0.00	0.01	0.03	0.06	-0.01	**0.22**	-0.01	-0.16	0.15	0.11	-0.04	-0.05	0.07	1.00				
Page length	0.09	0.11	0.02	-0.01	0.01	0.03	0.06	-0.01	**0.22**	-0.01	-0.16	0.15	0.11	-0.04	-0.05	0.07	1.00				
	0.00	0.00	0.01	0.24	0.48	0.00	0.00	0.36	0.00	0.12	0.00	0.00	0.00	0.00	0.00	0.00					
Deadline length	0.12	0.15	0.04	0.08	0.00	0.01	**0.22**	**-0.22**	0.09	0.00	0.07	0.00	0.07	-0.11	0.01	**0.27**	0.13	1.00			
	0.00	0.00	0.00	0.00	0.56	0.20	0.00	0.00	0.00	0.66	0.00	0.57	0.00	0.00	0.24	0.00	0.00				
Complexity	0.00	0.00	-0.02	-0.03	0.00	0.01	0.01	-0.05	-0.10	0.07	0.02	-0.04	-0.05	-0.06	0.18	0.09	0.03	-0.01	1.00		
	0.97	0.73	0.02	0.00	0.71	0.31	0.39	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.14			
Bureaucratic Efficiency	-0.17	-0.05	0.13	0.01	-0.01	-0.04	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	
	0.00	0.00	0.00	0.50	0.14	0.00	0.05	0.69	0.77	0.83	0.71	0.54	0.90	0.64	0.95	0.94	0.97	0.84	0.55		
year of directive	0.12	-0.05	**-0.04**	**-0.31**	0.06	0.12	0.04	0.01	-0.07	0.04	-0.03	0.03	0.03	-0.04	0.07	-0.07	0.11	-0.07	0.08	-0.04	1.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	

Appendix B: Probit Results (Substantive)

Table 4.5: Probit Model (Substantive)

VARIABLES	(1) Substantive Infringement
Notification prior to the adoption date	0.309***
	(0.0483)
Ministerial approval	0.257
	(0.163)
Strong	-0.139***
	(0.0313)
Veto Players	-0.209***
	(0.0575)
Strong x Veto Players	0.0733***
	(0.0165)
Parliamentary involvement = 1	1.349***
	(0.213)
Parliament Involved x Strong	-0.234***
	(0.0678)
Parliament Involved x Veto Players	-0.431***
	(0.130)
Parliament Involved x Strong x Veto Players	0.129***
	(0.0376)
Agriculture	-0.542***
	(0.0840)
Environment	0.635***
	(0.0834)
Interior	0.842***
	(0.184)
Industry/trade	-0.192**
	(0.0743)
Public administration	0.949***
	(0.132)
Public health	0.0632
	(0.119)
Finance	-0.301**
	(0.109)
Transport	-0.225*
	(0.0982)
Council = 1	0.813***
	(0.0679)
Page length	0.865***
	(0.151)
Complexity	0.0649+

	(0.0386)
Bureaucratic Efficiency	-0.201***
	(0.0285)
Constant	-1.907***
	(0.148)
Observations	17,371

Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05, + p<0.10

Appendix C: Probit Results (Late)

Table 4.6: Probit Model (Late)

VARIABLES	(1) Late Infringement
Notification prior to the adoption date	-0.209***
	(0.0372)
Ministerial approval	-0.281**
	(0.0974)
Strong	-0.116***
	(0.0181)
Veto Players	-0.117***
	(0.0311)
Strong x Veto Players	0.0532***
	(0.00909)
Parliamentary involvement = 1	-0.118
	(0.180)
Parliament Involved x Strong	0.234***
	(0.0568)
Parliament Involved x Veto Players	0.178+
	(0.0988)
Parliament Involved x Strong x Veto Players	-0.0849**
	(0.0292)
Council = 1	0.157***
	(0.0272)
Page length	0.967***
	(0.107)
Deadline length	0.147***
	(0.0145)
Agriculture	0.192**
	(0.0589)
Environment	0.161*
	(0.0698)
Interior	-0.0765
	(0.203)
Industry/trade	0.0613
	(0.0569)
Public administration	0.178
	(0.130)
Public health	-0.225*
	(0.0992)
Finance	-0.862***
	(0.111)
Transport	0.0306

	(0.0710)
Bureaucratic Efficiency	-0.409***
	(0.0186)
Constant	-0.546***
	(0.0872)
Observations	17,371

Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05, + p<0.10

Appendix D: State Dummies Included

Table 4.7: Model with State Dummies

VARIABLES	(1) sub_not	(2) late_not
Notification prior to the adoption date	0.305***	-0.199***
	(0.0491)	(0.0379)
Ministerial approval	0.295+	-0.445***
	(0.172)	(0.103)
Strong	-0.206+	-0.0325
	(0.123)	(0.0520)
Veto Players	-0.218**	0.229***
	(0.0810)	(0.0442)
Strong x Veto Players	0.0686*	-0.0875***
	(0.0267)	(0.0151)
Parliamentary involvement = 1	1.223***	0.0679
	(0.216)	(0.185)
Parliament Involved x Strong	-0.204**	0.173**
	(0.0686)	(0.0579)
Parliament Involved x Veto Players	-0.334*	0.145
	(0.131)	(0.101)
Parliament Involved x Strong x Veto Players	0.106**	-0.0709*
	(0.0377)	(0.0295)
Agriculture	-0.562***	0.196***
	(0.0848)	(0.0593)
Environment	0.634***	0.177*
	(0.0840)	(0.0704)
Interior	0.813***	-0.0699
	(0.185)	(0.204)
Industry/trade	-0.201**	0.0650
	(0.0749)	(0.0574)
Public administration	0.943***	0.177
	(0.133)	(0.132)
Public health	0.0609	-0.224*
	(0.120)	(0.0995)
Finance	-0.313**	-0.873***
	(0.109)	(0.113)
Transport	-0.221*	0.0289
	(0.0993)	(0.0716)
Council = 1	0.807***	0.172***
	(0.0684)	(0.0275)
Page length	0.920***	0.955***
	(0.153)	(0.109)
Complexity	0.0751+	

	(0.0391)	
Bureaucratic Efficiency	0.129	-0.499***
	(0.268)	(0.103)
BE	1.007***	0.0665
	(0.290)	(0.118)
DE	0.731**	0.423***
	(0.282)	(0.127)
DK	-0.135	-0.171
	(0.383)	(0.173)
EL	0.522	-0.167
	(0.437)	(0.167)
ES	0.918***	-0.344***
	(0.252)	(0.102)
FI	-0.545	-0.382*
	(0.451)	(0.194)
FR	0.649	-0.774***
	(0.539)	(0.211)
IE	0.389	-0.741***
	(0.541)	(0.211)
IT	0.857**	0.749***
	(0.300)	(0.143)
LU	0.580*	-0.181+
	(0.274)	(0.0994)
NL	0.388*	-0.180*
	(0.190)	(0.0911)
PT	0.748*	-0.100
	(0.344)	(0.128)
SE	-	-
UK	-	-
Deadline length		0.146***
		(0.0146)
Constant	-2.768***	-0.456
	(0.815)	(0.318)
Observations	17,371	17,371

Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05, + p<0.10

Appendix E: Master List of Analysis

Table 4.8: Master Table of Analysis

VARIABLES	(1) Sub	(2) Late	(4) Sub	(5) Late	(7) Sub	(8) Late	(10) Sub	(11) Late
Notification prior to the adoption date	**0.297*** **	**-0.214*** **	**0.297*** **	**-0.213*** **	**0.310*** **	**-0.210*** **	**0.307*** **	**-0.211*** **
	(0.0482)	(0.0372)	(0.0482)	(0.0372)	(0.0483)	(0.0372)	(0.0484)	(0.0372)
Ministerial approval	**0.312+**	**-0.183+**	**0.353***	**-0.164+**	**0.250**	**-0.281** **	**0.328***	**-0.253** **
	(0.162)	(0.0964)	(0.163)	(0.0972)	(0.163)	(0.0974)	(0.164)	(0.0975)
Strong	**-0.0610***	**-0.0777*** **			**-0.138*** **	**-0.116*** **		
	(0.0252)	(0.0144)			(0.0313)	(0.0181)		
Parliamentary Strength (Agenda Reversed)			**-0.283***	**-0.395*** **			**-0.891*** **	**-0.531*** **
			(0.140)	(0.0829)			(0.195)	(0.112)
Coalition conflict	-0.793*	-0.896***	0.728+	0.989***				
	(0.325)	(0.176)	(0.372)	(0.216)				
Veto Players					-0.205***	-0.117***	0.178***	0.121***
					(0.0573)	(0.0311)	(0.0376)	(0.0211)
Strong x Conflict	**0.340** **	**0.434*** **						
	(0.124)	(0.0681)						
Agenda_rev x Conflict			**1.585***	**1.762*** **				
			(0.627)	(0.358)				
Strong x Veto Players					**0.0723*** **	**0.0532*** **		
					(0.0165)	(0.00909)		
Agenda_rev x Veto Players							**0.502*** **	**0.184** **
							(0.109)	(0.0570)
Parliamentary Involvement = 1	1.029***	0.127	0.158	0.849***	1.353***	-0.115	0.0324	0.959***
	(0.145)	(0.135)	(0.210)	(0.172)	(0.213)	(0.180)	(0.219)	(0.175)
Parliament Involved x Strong	**-0.158** **	**0.148** **			**-0.235*** **	**0.234*** **		
	(0.0595)	(0.0513)			(0.0677)	(0.0568)		
Parliament Involved x c.agenda_rev			**-1.016** **	**0.779***			**-1.478** **	**0.993***
			(0.349)	(0.311)			(0.467)	(0.392)
Parliament Involved x Conflict	-2.238**	0.387	1.184	-1.736**				
	(0.840)	(0.725)	(0.767)	(0.641)				
Parliament Involved x Veto Players					-0.433***	0.178+	0.196*	-0.194**
					(0.130)	(0.0988)	(0.0840)	(0.0677)

VARIABLES	(1) Sub	(2) Late	(4) Sub	(5) Late	(7) Sub	(8) Late	(10) Sub	(11) Late
Parliament Involved x Strong x Conflict	**0.758***	**-0.452+**						
	(0.304)	**(0.256)**						
Parliament Involved x Agenda_rev x Conflict			**3.030***	**-2.140+**				
			(1.418)	**(1.253)**				
Parliament Involved x Strong x Veto Players					**0.129*****	**-0.0846****		
					(0.0375)	**(0.0292)**		
Parliament Involved x Agenda_rev x Veto Players							**0.593***	**-0.301**
							(0.247)	(0.196)
Agriculture	-0.538***	0.193**	-0.526***	0.197***	-0.548***	0.190**	-0.528***	0.191**
	(0.0835)	(0.0589)	(0.0835)	(0.0588)	(0.0840)	(0.0589)	(0.0839)	(0.0588)
Environment	0.636***	0.152*	0.636***	0.151*	0.633***	0.159*	0.643***	0.158*
	(0.0830)	(0.0698)	(0.0830)	(0.0697)	(0.0833)	(0.0698)	(0.0834)	(0.0697)
Interior	0.833***	-0.0836	0.824***	-0.0962	0.841***	-0.0811	0.844***	-0.0856
	(0.183)	(0.203)	(0.183)	(0.203)	(0.184)	(0.204)	(0.183)	(0.203)
Industry/trade	-0.192**	0.0632	-0.180*	0.0657	-0.192**	0.0601	-0.180*	0.0599
	(0.0740)	(0.0569)	(0.0738)	(0.0569)	(0.0742)	(0.0569)	(0.0742)	(0.0569)
Public administration	0.950***	0.182	0.948***	0.181	0.944***	0.175	0.952***	0.177
	(0.131)	(0.129)	(0.131)	(0.129)	(0.132)	(0.130)	(0.132)	(0.130)
Public health	0.0525	-0.226*	0.0563	-0.222*	0.0606	-0.225*	0.0620	-0.222*
	(0.119)	(0.0991)	(0.119)	(0.0990)	(0.119)	(0.0991)	(0.119)	(0.0990)
Finance	-0.304**	-0.874***	-0.306**	-0.874***	-0.303**	-0.862***	-0.298**	-0.863***
	(0.108)	(0.112)	(0.108)	(0.112)	(0.109)	(0.111)	(0.108)	(0.111)
Transport	-0.219*	0.0311	-0.211*	0.0293	-0.224*	0.0295	-0.210*	0.0265
	(0.0976)	(0.0711)	(0.0975)	(0.0710)	(0.0980)	(0.0710)	(0.0980)	(0.0710)
Council = 1	0.815***	0.156***	0.808***	0.155***	0.817***	0.157***	0.812***	0.158***
	(0.0677)	(0.0271)	(0.0675)	(0.0271)	(0.0680)	(0.0272)	(0.0679)	(0.0272)
Page length	0.866***	0.971***	0.864***	0.967***	0.876***	0.970***	0.885***	0.962***
	(0.151)	(0.107)	(0.151)	(0.107)	(0.151)	(0.107)	(0.151)	(0.107)
Complexity	0.0577		0.0584		0.0644+		0.0622	
	(0.0386)		(0.0385)		(0.0386)		(0.0386)	
Bureaucratic Efficiency	-0.223***	-0.436***	-0.227***	-0.439***	-0.201***	-0.409***	-0.203***	-0.404***
	(0.0289)	(0.0188)	(0.0299)	(0.0196)	(0.0285)	(0.0186)	(0.0289)	(0.0188)
Deadline length		0.146***		0.146***		0.145***		0.145***

		(0.0145)		(0.0145)		(0.0145)		(0.0145)
Constant	-2.093***	-0.582***	-2.364***	-0.949***	-1.914***	-0.543***	-2.642***	-1.121***
	(0.128)	(0.0744)	(0.142)	(0.0813)	(0.149)	(0.0872)	(0.153)	(0.0881)
Observations	17,371	17,371	17,371	17,371	17,371	17,371	17,371	17,371

Standard errors in parentheses

*** p<0.001, ** p<0.01, * p<0.05, + p<0.10

Note: Different operationalizations of variables in same color (e.g. conflict and veto players represent veto player dimension and are orange).

Appendix F: Models With Correlated Standard Errors

Table 4.9: Model With Correlated Standard Errors (State)

VARIABLES	(1) sub_not	(2) late_not	(3) athrho
Notification prior to the adoption date	0.310***	-0.210***	
	(0.0516)	(0.0419)	
Ministerial approval	0.250	-0.281	
	(0.216)	(0.224)	
Strong	-0.138**	-0.116	
	(0.0495)	(0.0836)	
Veto Players	-0.205*	-0.117	
	(0.101)	(0.132)	
Strong x Veto Players	0.0723**	0.0532	
	(0.0237)	(0.0370)	
Parliamentary involvement = 1	1.353***	-0.115	
	(0.215)	(0.126)	
Parliament Involved x Strong	-0.235***	0.234***	
	(0.0579)	(0.0354)	
Parliament Involved x Veto Players	-0.433**	0.178*	
	(0.148)	(0.0882)	
Parliament Involved x Strong x Veto Players	0.129***	-0.0846***	
	(0.0384)	(0.0232)	
Agriculture	-0.548***	0.190*	
	(0.0747)	(0.0852)	
Environment	0.633***	0.159*	
	(0.105)	(0.0740)	
Interior	0.841***	-0.0811	
	(0.191)	(0.297)	
Industry/trade	-0.192**	0.0601	
	(0.0677)	(0.0862)	
Public administration	0.944***	0.175	
	(0.189)	(0.132)	
Public health	0.0606	-0.225+	
	(0.0980)	(0.122)	
Finance	-0.303***	-0.862***	
	(0.0587)	(0.150)	
Transport	-0.224+	0.0295	
	(0.115)	(0.115)	
Council = 1	0.817***	0.157**	
	(0.0753)	(0.0535)	
Page length	0.876***	0.970***	
	(0.128)	(0.127)	
Complexity	0.0644		

	(0.0398)		
Bureaucratic Efficiency	-0.201**	-0.409***	
	(0.0624)	(0.0795)	
Deadline length		0.145***	
		(0.0134)	
Constant	-1.914***	-0.543	0.0601+
	(0.254)	(0.351)	(0.0347)
Observations	17,371	17,371	17,371

Standard errors in parentheses

*** p<0.001, ** p<0.01, * p<0.05, + p<0.10

Appendix F (con't) Correlated Standard Errors by Directive

Table 4.10: Model With Correlated Standard Errors (Directive)

VARIABLES	(1) sub_not	(2) late_not	(3) athrho
Notification prior to the adoption date	0.310***	-0.210***	
	(0.0565)	(0.0417)	
Ministerial approval	0.250	-0.281*	
	(0.236)	(0.137)	
Strong	-0.138***	-0.116***	
	(0.0283)	(0.0171)	
Veto Players	-0.205***	-0.117***	
	(0.0520)	(0.0304)	
Strong x Veto Players	0.0723***	0.0532***	
	(0.0149)	(0.00884)	
Parliamentary involvement = 1	1.353***	-0.115	
	(0.211)	(0.188)	
Parliament Involved x Strong	-0.235***	0.234***	
	(0.0695)	(0.0584)	
Parliament Involved x Veto Players	-0.433**	0.178+	
	(0.134)	(0.101)	
Parliament Involved x Strong x Veto Players	0.129**	-0.0846**	
	(0.0393)	(0.0299)	
Agriculture	-0.548***	0.190+	
	(0.150)	(0.113)	
Environment	0.633***	0.159	
	(0.157)	(0.132)	
Interior	0.841*	-0.0811	
	(0.428)	(0.240)	
Industry/trade	-0.192	0.0601	
	(0.139)	(0.108)	
Public administration	0.944***	0.175	
	(0.248)	(0.229)	
Public health	0.0606	-0.225	
	(0.254)	(0.180)	
Finance	-0.303	-0.862***	
	(0.188)	(0.154)	
Transport	-0.224	0.0295	
	(0.191)	(0.139)	
Council = 1	0.817***	0.157***	
	(0.119)	(0.0459)	
Page length	0.876***	0.970***	
	(0.263)	(0.217)	
Complexity	0.0644		

	(0.0685)		
Bureaucratic Efficiency	-0.201***	-0.409***	
	(0.0279)	(0.0181)	
Deadline length		0.145***	
		(0.0273)	
Constant	-1.914***	-0.543***	0.0601+
	(0.203)	(0.132)	(0.0347)
Observations	17,371	17,371	17,371

Standard errors in parentheses

*** p<0.001, ** p<0.01, * p<0.05, + p<0.10

Chapter V: Conclusions

This dissertation explored the conditions under which European Union member countries fail to comply with European Union legislative mandates. Membership in the European Union requires compliance with European Union legislation, legislation that is drafted collectively by member states. Despite their strong role in crafting these agreements, many states struggle to comply with them. Noncompliance is a problem in the EU but is not unique to European Union member states. Compliance issues plague agreements more generally at both the international level in treaties and international organizations and within states themselves often in the form of bureaucrats implementing policy. Understanding why and how states fail to comply can provide useful insight into why some agreements fail while others succeed.

I focus upon European Union member state noncompliance and make a novel distinction between two types of noncompliance, late and substantive. While research has emphasized the role of timeliness in satisfying legislative mandates, less attention has focused upon whether or not states substantively comply with the body of legislation. In previous studies, the emphasis has been upon explaining why states fail to comply with

directives as indicated by enacting legislation past a deadline or by the sheer number (or proportion) of infringements incurred by a member state. Although this is certainly an important component of compliance, compliance is a nuanced concept that has different facets. For example on both measures, number of infringements and timing, Italy performs quite poorly. However, if the question of interest is *how* states fail to meet their obligations, rather than whether or how often, we see that although Italy consistently obtains high numbers of infringements overall, patterns among types of noncompliance emerge.

Work that has explored the relationship between timing and infringement indicates that there is, at best, little connection between the timing and ultimate correctness of legislation (Mastenbroek 2007). This is borne out in my analysis, which finds a correlation of 0.50 between late and substantive infringements across member states between 2002 and 2009. It is likely that instead of no connection, the relationship between timing and implementation is negative: Thomson (2007) and König and Mäder (2013) suggest that there is a tradeoff between timely implementation and the quality of transposition. Literatures that focus only on timeliness assume substantive compliance while studies of infringements assume similar underlying processes. Distinguishing between late and substantive infringements enables us to study the important phenomenon of substantive infringement. While late infringements are certainly important, substantive infringements are likely to have a greater impact on the functioning of the EU, as substantive infringements are more likely to go on longer before, *if,* they are discovered. Thus, distinguishing between the two is essential for understanding the conditions under which each emerges: broad strokes approaches can't address this.

Beyond combining late and substantive infringements, the literature also does not make clear distinctions regarding how the different aspects of the policymaking process

contribute to negative outcomes, be they delay or infringements. Thus, while implementation of EU legislation has received considerable attention, previous approaches have not distinguished late from substantive failures. This broad approach misses the distinct processes contributing separately to late and substantive infringements. Those who have undertaken work to compare timing to infringements overall have posited that a negative relationship exists between the two as states choose to prioritize either timeliness or substance. As a result, there are not clear predictions regarding when these types of noncompliance might occur and the means through which each type of noncompliance develops. I addressed this lacuna, explaining the conditions under which late and substantive infringement occur, clarifying the role of preferences and how the design of directives contributes to each of these outcomes. I constructed a model that contrasts late and substantive infringements against one another to best evaluate the 'tradeoff' that states make in the implementation process.

I found that late infringements occur when states delay in implementing legislation while substantive infringements arise when states implement legislation at odds with the intent of the directive, either by failing to meet all the objectives of the directive or by failing to enforce enacted legislation.

More precisely, substantive infringements arise when three conditions are simultaneously present: actors not only *disagree* with a directive, AND they have the *power* to affect national legislation, AND they have the *opportunity* to do so, in the parliament. Late infringements arise when only some of these conditions are present: when actors disagree but lack tools to substantively influence legislation, e.g. when they have weak parliamentary powers but disagree with content, or when strong parliaments are involved in the passage of

legislation during the transposition process. My approach demonstrates that distinguishing between late and substantive infringements captures a phenomenon that is likely to increase over time as parliaments become increasingly involved in transposition. Furthermore, my analysis provides an explanation for why and when late and substantive infringements are likely to occur, something the literature has so far overlooked.

Implications

The increasing role of parliaments in drafting and transposing directives is likely to contribute to higher levels of substantive infringements while appearing to reduce late infringements. Parliaments are becoming more and more involved in implementation and design. New research by Finke et al (2015) points to how the involvement of national parliaments in negotiations is becoming increasingly more common and can potentially affect in-country negotiations on potential directives. The involvement of parliaments is important to understand, then, not only for understanding the timing of implementation, but how the potential substance of enacted measures corresponds to states' legislation. Finke et al find that the involvement of parliament prior to a directive's passage, during the drafting stages, slows down discussion but ultimately is associated with faster implementation after a directive is passed. Thus, the role of a parliament can be to both slow implementation (in the case of information asymmetries) and to effectively speed implementation (in the absence of such asymmetries).

Because infringements stem from conflict, analyzing them jointly can seem logical but approaches that conflate these two types of infringements will miss the potential tradeoff between timing and substance. Combining late and substantive infringements will lead

researchers to not only misunderstand the mechanisms behind these distinct types of infringements, but they will conclude that the involvement of parliament will potentially move member states toward greater levels of compliance when it indicates the opposite: more opportunities for unrecognized substantive noncompliance.

Final Remarks

In conclusion, I have demonstrated that there is a distinct difference between late and substantive infringements, which has not been previously recognized by the literature. I have outlined the different features contributing to late and substantive infringements. Substantive infringements arise when there exists disagreement, power, and opportunity for actors to act on their disagreement with a directive. Late infringements arise when actors dislike a directive but lack the elements to shift policy outcomes.

In light of these findings, I have emphasized the importance of distinguishing between late and substantive infringements and demonstrated why considering them together is insufficient and misleading. Different actions must be taken to reduce the occurrence of late and substantive infringements separately. Providing policy guidance may help reduce uncertainty about implementation and thus speed transposition, but it will likely not reduce substantive infringements if member-state-level disagreements remain. To reduce substantive infringements, it may prove more fruitful to involve all member state actors in the drafting process, lest these opinions come out during the negotiation of national transposing measures, resulting in stalemate or substantive shortcomings. Some steps have already been made in this direction, with the Commission's attempts to involve national parliaments more

directly in earlier phases of policy design with the 'Yellow Card' System.[55] However, more inroads could still be made in the consultation process at both the EU and national levels.

Beyond the application to the European Union, certainly an important domain of study, this dissertation has broader applicability to more general questions of law. Lawmakers grapple with questions of what makes laws 'work'—why do some laws succeed while others fail? This dissertation provided a unique means to address these questions by focusing upon 15 states working to enact the same legislative goals in the same period with differing levels of institutional ability and institutional structures. The differing levels of preferences by veto players and, specifically, policy-area ministers, combined with the different topics and complexity of EU directives provides a unique opportunity to conduct a study on legislation.

The dissertation permits a closer inspection of the different elements of legislation to find what contributes to a directive's success and failure from the perspective of design and function. For design, I included such elements as the policy domain, length, and complexity of the directive. For function, I included the different actors and their preferences and capacities (at the national level). Never before have these two factors been able to be investigated in this manner at this scale.

While this dissertation surely has not addressed the entire problem of noncompliance, nor have I answered every question that may arise. However, I have provide the first steps in moving toward a more comprehensive outlook toward legislative design and then *evaluating* the role the respective factors play. I demonstrate the power possessed by the actor charged with initiating the draft legislation, in the EU case, the policy-area minister. I also show how different types of legislation can fail at different rates depending upon the *type* of legislation,

55 http://www.cer.org.uk/insights/eus-yellow-card-comes-age-subsidiarity-unbound

although this is not evaluated in-depth within the dissertation.

I provide a means to not only place the successes and failures of the European Union's policy agenda into a broader context, but I also provide an *explanation* for these successes and failures, testing them empirically. This cohesive approach provides a foundation for future research into both the EU in particular and into legislation more generally. With the recent referendum by the United Kingdom and the popular vote to leave the EU, understanding how to evaluate possible non-compliance by non-member states will become increasingly more relevant if other member states choose a path similar to that of the UK. The face of the EU, and its ability to monitor and sanction noncompliance, will likely continue to evolve. This dissertation offers the means to analyze that evolution.

References

Finke, D., & Dannwolf, T. (2015). Who let the dogs out? The effect of parliamentary scrutiny on compliance with EU law. *Journal of European Public Policy*, *22*(8), 1127-1147. 10.1080/13501763.2014.1000364