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Examining Compliance Rates of European Union Member States

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Abstract: *Theories of European integration suggest that supranational institutions of the European Union are the central and driving force behind European integration. These theories imply that member states will in practice comply with European Union legislation. Thus, compliance rates should be comparable across all member states. Contrary to this premise, however, data suggests that rates of compliance vary significantly between the member states. Although nearly all member states typically have a high level of compliance on an annual basis, there is still variation in compliance rates even among the less Eurosceptic member states. What explains the variations in compliance rates between member states? This thesis posits that the more veto players a member state contains; the less likely they are to comply with the European Union.*

Introduction

By many accounts, it is clear that the EU has an implementation 'deficit'. Often measures adopted by the Union are not applied correctly or even not applied at all by many of its twenty-seven member states. This is a serious dilemma that plagues policy-making in the European Union today. Indeed, as expressed by the European Commission (charged with ensuring that member states comply with implementing EU measures) in its Strategic Objectives for 2005-2009, "failure to apply European legislation on the ground damages the effectiveness of Union policy and undermines the trust on which the Union depends. The perception that 'we stick to the rules but others don't', wherever it occurs, is deeply damaging to a sense of European solidarity…prompt and adequate transposition and vigorous pursuit of infringements are critical to the credibility of European legislation and the effectiveness of policies."[1]

For this thesis, I attempt to assess the levels of non-compliance and provide an explanation as to why variations exist between member states in the broader context of compliance and the power of domestic institutions over supranational ones. Based on the data for the years I examine (1997-2008), significant variation exists among EU member states in regards to compliance, which suggests that domestic institutions trump the influence of supranational policy pressures and forces when it comes to implementing and applying EU law. We might expect that European member states that are more Eurosceptic would be less inclined to comply with EU directives. Based on traditional theories of European integration such as Neofuctionalism, Intergovernmentalism, and most recently, Europeanization, we might also expect that as supranational institutions become more powerful over time, variations should be minimized. My hypothesis, however, is that the problem lies at the institutional level within

[1] "Strategic Objectives 2005 – 2009: *Europe 2010: A Partnership for European Renewal Prosperity, Solidarity and Security*".

member states, as the number of veto players determines whether it is more compliant or not.

EU Policy-Making and Compliance

As a legislative act of the EU, *regulations* become enforceable immediately as law in all member states simultaneously. In this sense, regulations are equivalent to "Acts of Parliament". Though not required to be mediated into national legislation by each member state, but they are nonetheless technically binding and are on par with national laws.[2] The Council of Ministers can delegate legislative authority to the Commission, which in effect allows both institutions to create regulations.

In addition to regulations, *directives* are legislative acts of the EU that require member states to achieve a particular policy result without overtly dictating the means to achieve the policy change. Unlike regulations, however, directives must be mediated into national law by means of implementing the measure in each member state. Similar to the creation of directives, the Council of Ministers can delegate legislative authority to the Commission, which in effect allows both institutions to create directives.

When directives are adopted by the EU, they must be implemented within a certain timeframe by each member state. On occasion, the laws of member states may already comply with what is stipulated in the directive, which simply means that the member states keep their own individual laws in place. More commonly, however, member states are required to change their own domestic laws in order to comply with the existing directive. The process by which this occurs is known as transposition, in which member states give force to a directive by passing

[2] From the EU Commission: "Regulations are the most direct form of EU law - as soon as they are passed, they have binding legal force throughout every Member State, on a par with national laws. National governments do not have to take action themselves to implement EU regulations. They are different from directives, which are addressed to national authorities, who must then take action to make them part of national law, and decisions, which apply in specific cases only, involving particular authorities or individuals. Regulations are passed either jointly by the EU Council and European Parliament, and by the Commission alone."
http://ec.europa.eu/community_law/introduction/what_regulation_en.htm

appropriate implementation measures. Transposition is completed either by primary or secondary legislation, and the effective implementation of directives within the set time frame of two years typically depends on factors related to the administrative, legal, and legislative systems of the member states. The Commission closely scrutinizes the timing and correctness of the transposition process for each member state. If a member state fails to pass the required national legislation that incorporates the directive into domestic law, or if the enacted legislation does not comply with the requirements of the directive, the Commission has the right to initiate legal action against the member state in the European Court of Justice (ECJ). As of 2008, nearly 1,298 such cases were heard before the Court.

Indeed, according to the 2004 annual report of the ECJ, the Commission initiated 193 proceedings against member states for violations of compliance. During the same year, the Court found in 144 cases out of a total of 155 that member states had failed to fulfill their obligations when implementing directives. Thus, in more than ninety percent of cases the Commission referred to the Court of Justice, the Court declared that the Commission had a reasonable right to take action against one or more member states. In determining why a member state is compliant or not, the issue is often broad and has many different aspects—legal, political, institutional (administrative), and economic. A member state deemed non-compliant may be a) unwilling to comply (i.e., domestic political opposition), b) unable to comply (i.e., legal and administrative obstacles), *c)* lack the lack of human and material resources needed to comply, or d) simply unaware of its obligations to do so (Talberg, 2002, 609-643).

One of the fundamental principles of the Maastricht Treaty signed in 1992 that created the union that exists today is the principle of the ‘loyalty’ of Member States to the Community through prompt compliance with its rules. Article 10 of the Maastricht Treaty provides that

"member states shall take all appropriate measures…to ensure fulfillment of the obligations arising out of this Treaty… they shall facilitate the achievement of the Community tasks [and]… they shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty."[3] Despite the fundamental principles outlined in the Maastricht Treaty, which provides the current foundation for the contemporary framework for today's European Union, the European Commission annually initiates hundreds of proceedings against member states before the European Court of Justice (ECJ) in an effort to induce them to comply with their obligations.

As the executive body of the EU, the appointed European Commission is charged with proposing legislation, implementing decisions, upholding Union treaties, and the daily operation of the institution. Since the Commission alone has the power of legislative initiative, no other institution (i.e., Council of Ministers and the Parliament) can make formal proposals for legislation. The Commission's powers in proposing law have typically centered around economic regulation and have often propose stricter legislative requirements than the member states themselves. In this sense, the Commission operates as a supranational institution, in which decision-making is transferred or delegated to a central authority by governments of the member states (McCormick, 2005).

As the principal decision-making institution of the EU, the Council of Ministers is one of two bodies that, along with the European Parliament, shares legislative authority. Composed of the twenty-seven national ministers from the member states, the presidency of the Council rotates every six months to set an agenda. Some of its decisions are made by qualified majority voting and others are by unanimity. In most policy areas, the Council of Ministers and the

[3] Article 10 of the Maastricht Treaty. (February 1992.). http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html

Parliament share legislative and budgetary powers equally.

The European Council consists of the group of heads of state or government in the member states and is responsible for the general policy direction and priorities of the Union. In this sense, the Council is an example of Intergovernmentalism in which the decision-making power is solely vested with the governments of the member states. Although the Council has no formal legislative power, the institution typically deals with issues of importance to the entire Union and meets four times a year in Brussels.

The European Parliament (EP) shares the legislative as well as budgetary authority of the EU with the Council of Ministers. All 736 members of the EP are elected directly by the voters in the twenty-seven individual member states every five years. As such, the EP is the only directly elected body to the EU. In the broader context of the institutional structure of the EU, the EP acts as a partner with the Council and Commission, although its legislative initiative powers are limited in some policy areas.

To the extent member states have variations in compliance, how best can that be explained? In order to answer this question, I give an outline of the theoretical approaches associated with Neofunctionalism, Intergovernmentalism, and Europeanization and how they can help account for the compliance of member states. Following that, an outline of the veto player theory will be given, showing how it is applicable to the hypothesis — namely, the more veto players a member state has, the less likely it is to be compliant then, the infringement data analyzed followed, by a conclusion examining the policy implications of non-compliance.

I. Theorizing Member State Compliance

Neofuctionalism was the original theoretical approach to understanding European integration. It suggests that supranational institutions have been the driving force behind European integration, which has allowed for an expanded mandate of EU legislation across more diverse policy areas (Cini, 2003). Therefore, since member states are likely to heed this expanded mandate, they should behave in a way that would suggest compliance with the EU. As a component of integration, compliance acts as a bond between the supranational levels of power in Brussels and Strasbourg and the domestic capitals in each member state. If a member state is not compliant, further integration is therefore hindered. Neofuctionalists use the concept of spillover to provide an explanation as to why national governments take steps towards integration, and get swept further along than they anticipate (Lindberg, 1963, 10). In other words, the notion that integration in one policy area creates opportunities or problems that can only be resolved or exploited by further integration in other policy areas. Two distinct types of spillover are suggested. First, functional spillover argues that modern industrial economies consist of interconnected components and therefore one sector can not be isolated from another. The Neofuctionalist argument states that, if member states integrate one 'functional' sector of their own economy, the interconnected sector would inevitably lead to 'spillover' in additional sectors, which would prompt integration, since all sectors would need to be integrated in order to work with each other (George and Bache, 2001, 10-11).

In addition, the Neofuctionalists added the idea of political spillover to explain the process of integration. In essence, political spillover is the culmination of political pressures in favor of further integration within the member states involved since functional integration requires shared decision-making. Once a particular component of the economy of a member state

was integrated, interest groups operating in that particular sector have to exert political pressure at the supranational level (Cini, 2003). Once interest groups switch the focus of their activity to the European level, they would come to appreciate the benefits available to them as a result of integration of their own sector. Additionally, these interest groups would also become aware of the barriers that would prevent benefits of further integration from being fully realized. The main barrier would be that integration in one sector would as a whole not be effective without the integration of other sectors, and therefore, interest groups would become advocates for further integration. The mere fact that functional or political spillover may take place implies that compliance should not be an issue for individual member states (George and Bache, 2001, 10-11). Therefore, the theory of Neofuctionalism would not suggest great variation in compliance rates among member states.

The theory of Intergovernmentalism, associated above all with Stanley Hoffmann (1964, 1966), was a counter-argument against Neofuctionalism and other supranational approaches to integration. In its essence, Intergovernmentalism suggests that member state governments retain full sovereignty over integration, and thus the policy decisions made at the supranational level (e.g., in the Councils) are often but not always made by unanimity or at least reflect national interests. European integration had to be viewed in a global context, as regional integration was only one component of the development of the global international system. Hoffmann argued that the Neofuctionalists neglected to do this, as they focused on the internal dynamics of the European Community itself, rather than the dynamics of the international community at large. Indeed, the Neofuctionalists implied that international conditions would remain fixed. Intergovernmentalism also stipulated that national governments were just as powerful actors in the process of European integration, as they were the ones that controlled the nature and pace of

integration at large. Intergovernmentalism rejected the Neofuctionalist notion that governments would be overwhelmed by the pressures from interest groups to integrate. In this sense, regional integration was not a self-contained domestic process, but rather influenced by a wider international context. In addition, member states are uniquely powerful actors because they themselves possess formal sovereignty and democratic legitimacy and integration in 'low' political sectors would not necessarily spillover into 'high' political sectors. Despite this, intergovernmentalism does acknowledge that actors other than national governments play a role in the process of integration, although national governments are the key decision-makers and have much more autonomy than in the Neofuctionalist view. Therefore, Intergovernmentalism would suggest that once measures are agreed to at the Council level, implementation should be unproblematic in adopting non-controversial measures that do not negatively impact the formal sovereignty and domestic legitimacy that member states possess. Based on this perspective, Intergovernmentalism could even suggest general compliance among member states, albeit less so than Neofuctionalism.

Among political scientists, there is also an increasing focus on the impact Europeanization has on the domestic systems of governance in EU member states. Simply, the concept of Europeanization refers to the process by which EU political and economic dynamics become a component of the policy-making of member states. In other words, Europeanization is an explanation of *how* integration takes place, unlike Neofuctionalism and Intergovernmentalism which seeks to explain *why* integration takes place. Once integration occurs, Europeanization can help explain the convergence of national policy processes and policy outcomes. The implementation of EU directives is one of the many examples of the broader phenomenon of Europeanization (Falkner, Treib, et al, 2005, 11). This perspective has produced numerous

studies directly dealing with the question of the impact membership in the EU has on domestic institutions such as parliaments (Maurer and Wessels, 2001; Dimitrakopoulos, 2001; Raunio and Hix, 2001), party systems (Ladrech 2001; Mair 2001), administrations (Olsen 2002), and state-society relationships (Schmidt 1999; Falkner 2000). In addition to the study and analysis of the impact of membership, there has been close scrutiny of the patterns of adjustment to European policies, in particular, the national implementation of EU law. In this sense, implementation refers to the transposition of European legislation into domestic law, as well as to the enforcement of all legal provisions, both of which influence proper and correct application in the member states themselves. In the compliance literature, particular attention is paid towards directives, which as noted earlier, do not have direct effect in national law, but require legislative enactment (Falkner, Treib, et al, 2004, 452-473). Unlike regulations passed by the EU in which direct effect is limited at best, directives must be incorporated into domestic law first.

Europeanization refers to a number of slightly different phenomena that are located on at least four distinct political levels. Attention is particularly placed on the influence of supranational institutions such as the EU and the decisions made at the European level on national politics and structures (Rometsch and Wessels 1996; Börzel and Risse 2000, Green, Cowles et al 2001; Schmidt 2002). The central contention in much of the current research is that implementation is eased the more EU policies 'fit' existing national policy. Empirical investigation into this alignment argument has been restricted to case studies, simply as a result of the difficulty posed by measuring the compatibility of EU legislation with existing domestic policies and structures of the member states.

In regards to the 'fit' and 'misfit' distinction, "adjustment processes are expected to be more problematic if the degree of misfit between European rules and existing institutional and

regulatory traditions is high" (Falkner, Treib, et al, 2004, 11). In these cases where misfit results, national governments, parliaments, and administrations are equally expected to act as "guardians of the status quo, as the shield protecting national legal-administrative traditions" against conflict from the European supranational level of governance (Duina, 1997). Thus, according to Falkner and Treib, deliberate opposition of national veto players during any form of compliance may be expected in the context of Europeanization, if there is enough 'misfit'. With the degree of 'misfit' with new EU standards, the implementation of European directives seems to confront two political systems. This coincides with the perspective that EU is a federal institution with two disparate levels of government — national and supranational.

The institutional 'fit' or 'misfit' between European rules and existing national ones has been interpreted as one of the central factors that determine overall implementation performance. Some studies have stressed the salience of institutional 'fit' or 'misfit' (i.e., the actual degree of compatibility or incompatibility between EU policies and national legislative or administrative structures) (Knill and Lenschow 2000a; Knill 2001; Knill and Lenschow 2001). This strand of literature shares the view that there is some degree of compatibility between domestic actors and other entities. In addition, this misfit-centered approach has suggested numerous mediating factors, which may lead to an adaptation of policy changes despite the possibility of incompatibility. These factors include institutional decision-making structures, such as veto players.

A possible explanation for non-compliance in the Europeanization literature relates to a member state's lack of willingness or capacity to implement a particular piece of legislation (Tallberg, 2002). This argument would suggest potentially divergent policy preferences between the EU level and the domestic level. In addition, some of the literature focuses on the actor-

oriented view on preferences and argues that domestic opposition to a directive or regulation among distinct domestic players contributes to non-compliance. We would expect Europeanization, therefore, to have a positive impact on compliance. If the conventional approaches to EU integration and policy-making do not fully account for the varying rates of compliance among member states, then what does?

II. Veto Player Theory

Most theoretical approaches to European integration imply overall compliance by member states, but do not provide fully adequate accounts of non-compliance. Therefore, I believe the theory of veto players may provide a more compelling explanation as to the variations in compliance that exists between member states. It draws upon the theory of veto players, identified most closely with political scientist George Tsebelis. Tsebelis defines veto players as simply the individuals or collective bodies that must agree to any policy change before it is adopted. The failure of these entities to accept a policy change effectively amounts to a veto of the policy proposal. Tsebelis argues that political systems with large numbers of veto players are likely to have much policy stability, since one or more veto players is likely to prevent major policy changes.

Generally, parliamentary systems have fewer veto players than presidential systems and unicameral (single-chamber) legislative bodies have fewer veto players than bicameral legislatures. Although the institutional structure of any given country is vital in order to assess how many veto players exist within the policy-making process, Tsebelis contends that other criteria must be assessed as well. This includes examining the political party system and the ideological divisions that separate the main parties. For instance, if the president is from the same party as the party in control of the legislature, there could be fewer veto players compared to a parliamentary system fractured into a coalition of small parties with divergent policy preferences, termed "partisan veto players".

Tsebelis argues that in order to change policies or the legislative status quo, a particular number of individual or collective actors have to agree to the proposed change. Typically, veto players are either specified in constitutions or located in the overall political systems (i.e.,

various parties that form a state's coalition government). Tsebelis thus distinguishes between into 'institutional' and 'partisan' veto players (Tsebelis, 2002, 79). The central argument of veto player theory is that the number and interest-ideological polarization of policy-making players, whose approval is required to alter the policy status quo — i.e., of veto players — reduces the probability of (agreement upon enacting) policy change and/or the (maximum possible) magnitude of policy change. The size of the win-set (*W[SQ]*)[4] of the status quo shrinks as the number or polarization of veto players increases. Thus, as the win-set of the status quo expands (as the number and/or polarization of veto players declines), the veto player theory predicts a greater range of possible policy-changes, suggesting that as the expected policy-change increases, the variance of policy and policy-change increases. Conversely, as the win-set diminishes (i.e., the number and/or polarization of veto players expands), the less likely a policy-change is to result (Tsebelis, 1995, 289-326).

Tsebelis identifies what counts as a veto player by several broad criteria such as 1) the electoral system of a state (majoritarian v. proportional), 2) parliamentary v. presidential, 3) federalism v. bicameralism, 4) constitutional rules and the jurisdiction of constitutional courts. First, if a country's constitution identifies individual or collective actors that are required to agree for a change of the status quo, then those are counted as institutional veto players. Therefore, the level of centralization of any government is examined in order to count how many veto players there are. This becomes quite simple for a unicameral parliamentary system (such as Denmark or Greece, for instance, and the United Kingdom for purposes of this thesis) when the constitution does not specifically define other veto players as there is only one defined veto player. It is clear through empirical evidence that political parties in parliamentary democracies are much more disciplined than those in presidential systems. The literature often finds that in

[4] The shared winset of outcomes which meet each veto player's requirement of being superior to the status quo.

electoral systems where candidates compete for a personal vote from the electorate, they are more likely to heed the demands of their constituency than that of their political party, which is an example of what occurs in most presidential systems. Therefore, political party discipline is likely to be significantly higher than in electoral systems without personal votes from the electorate (Carey and Shugart, 1995). From this perspective, variables such as political party cohesion, unicameral and bicameral institutional structures, and presidential or parliamentary systems must all be considered jointly in examining the number of veto players a country may have.

Second, whether a coalition government exists is important. Several assumptions can be made based on the information available (if not stated in a constitution) — if a single party controls the government, this party "is by definition the only veto player in the political system…it can implement any policy change it wishes, and no policy change that this party disagrees with will be implemented" (Tsebelis, 2002, 78). The number of veto players may be difficult to determine, however, simply because political parties may lose majorities, split, merge — all of which impact the final number of veto players. Tsebelis suggests that a five-party parliament in a unicameral parliamentary system may act a certain way based on the constitution of the member state. Assuming that the five political parties are rather cohesive and that any three of them can control a majority, significant variations can result in defining which entity has the most power. Tsebelis explains that three individual veto players may reduce a win-set of the status quo compared to one collective veto player.

Third, whether a country has a judiciary that can interpret and overrule statute based on disagreement over constitutionality or some other legal precedent that can also be counted as a veto player. As Tsebelis explains in his analysis of the judiciary as a possible veto actor, there is

a distinction in comparative law between countries with legal traditions of common law and civil law. In common law countries (i.e., the United Kingdom and its former colonies such as the United States, Australia, New Zealand, and Ireland), laws are seen not solely as acts of the legislature, but rather as the accumulation of rulings and interpretations by judges. The importance of precedent in the common law tradition allows for the judiciary to effectively act as a veto player. Although technically the judiciary of any given common law country is not a veto player, since it can be overruled by legislation, the opposite is true with respect to the constitutional interpretation of any law. A rejection by a constitutional court (such as the U.S. Supreme Court) does effectively abrogate legislation approved by the legislature and are consequently veto players.

In summary, veto player theory focuses on legislative politics and how lawmaking decisions are made in order to explain a set of policies. The number of institutional veto players can differ based on regime type. Whether a country has a presidential or parliamentary system as well as who controls the legislative agenda and by how much impact veto player configuration (Tsebelis, 2002, 284). Federal and unitary countries can also differ in the number of institutional veto players. Multiparty coalitions and single political party governments also differ in the number of partisan veto players. In addition, strong and weak political parties differ in party cohesion which inevitably affects the number of institutional veto players. These variables suggest that all political systems differ in the number of veto players, which inevitably impacts policy stability. Since veto player theory places its focus on the legislative process of individual countries, predictions about policy outcomes can be determined. For instance, if a state contains multiple veto players, then it can be assumed that changing the legislative status quo will be

more difficult. Therefore, this would assume that the more veto players an EU member state contains, the less likely that state is to be compliant.

In conclusion, the variety of theoretical arguments rooted in Neofuctionalisim, Intergovernmentalisim, and Europeanization does not seem sufficient to explain why there are variations between member states in compliance. The expectation provided by Neofuctionalisim and Europeanization is that member states should be compliant due to the increasing convergence of policy-making at the supranational level rather than the domestic level. Based on the data of compliance among member states, however, this does not seem to be the case. The variations in compliance among member states are rather significant. My explanation is that veto players may perhaps explain these variations. In the next section of this thesis, I illustrate through statistical methods that this is indeed the case.

III. Data Analysis

In this section, I present empirical evidence on veto players and compliance in the EU. I first discuss my data on the number of infringement cases brought against fifteen member states by the European Commission and the ECJ and the number of veto players in each of these fifteen member states for the years 1997-2008, before discussing the findings of my statistical analysis. I use both cross-tabulations and regression models in order to test the accuracy of my hypothesis.

All three stages of the EU's official procedure to determine whether a member state is non-compliant are laid down in Article 226 of the European Community Treaty (ECT). These stages include the posting of a letter of formal notice to the member state in question, a reasoned opinion by the European Commission that states the act of non-compliance and includes an elaborate description of the violation the member state has committed, and finally the opening of an ECJ court case against the suspected violator that is to determine whether the member state in question is compliant or not. One way that the Commission classifies infringements is member states' failures to notify that individual directives have been transposed (i.e., incorporated into national law by national legislatures or other veto players) by the set deadline as determined by the directive itself, which is adopted by the Council and the Parliament. Veto players, according to my hypothesis, would delay or even prevent transposition of EU directives, therefore causing non-compliance.

My dependent variable is the number of infringement cases per member state and year. It is operationalized by the number of times a member state is deemed non-compliant by the Commission and the ECJ each year. If a member state has a lower number of infringement cases, it can be considered to have a higher rate of non-compliance than a member state that has more infringement cases.

For the period 1997 to 2008, four member states, Belgium, France, Germany, and Italy, accounted for over 45 percent of all infringement proceedings in the EU. In other words, the available data on infringements of Community law reveal that these founding member states are consistently responsible for close to half of all infringement cases. This suggests that the implementation deficit is not an EU-wide problem, but rather seems to be a problem only associated with certain member states. It is clear that these numbers do not support the view that there is a generic problem with directives themselves, but rather highlight that the causes of non-compliance are located in the national arena.

As I mentioned in the previous paragraph, some of the original or older member states are amongst the worst violators. Therefore, inexperience or unfamiliarity with EU rules and regulations is not a plausible explanation for why member states are consistent infringers. In addition, it is not the case that the countries in question are persistently outvoted in the Council of Ministers and are forced to adopt directives they are less inclined to support (Falkner, Treib, et al, 2004). If one of the fifteen member states did not want to adopt something, they would make their preference clear. In fact, some of the non-compliant members are often at the forefront of initiating directives in their favor. Therefore, it is unlikely that the problem is of being on the losing side at the decision-making supranational level. That is why I argue that is the problem has to lie at the national level, and the number of domestic veto players can determine whether a member state is more compliant or not.

Table 1. ***New EU Infringement Cases per Member State, 1997-2008***

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Totals
Belgium	19	22	13	5	13	8	17	13	8	11	10	17	**137**
Denmark	0	1	1	0	2	2	3	2	3	0	0	0	**14**
Germany	20	5	9	12	13	16	18	14	13	11	15	10	**156**
Ireland	6	10	13	14	12	8	16	3	9	7	10	19	**127**
Greece	10	17	12	18	15	17	16	27	18	25	26	21	**222**
Spain	7	6	7	9	15	11	28	11	6	19	21	15	**155**
France	15	22	35	25	20	22	22	23	11	9	14	10	**228**
Italy	20	12	29	22	21	24	20	27	36	25	23	17	**276**
Luxembourg	8	8	14	11	10	12	16	14	19	28	20	15	**175**
Netherlands	3	3	1	12	5	5	9	13	8	5	8	4	**76**
Austria	0	4	8	8	7	15	20	14	9	12	6	10	**113**
Portugal	15	5	13	10	7	10	10	7	7	13	23	14	**134**
Finland	0	1	0	4	3	1	6	8	10	7	2	5	**47**
Sweden	0	1	1	3	3	2	5	5	5	4	10	6	**45**
United Kingdom	1	1	6	4	11	15	8	12	7	4	2	13	**84**
EU 15 (Total)	124	118	162	157	157	168	214	193	169	180	190	176	**1884**

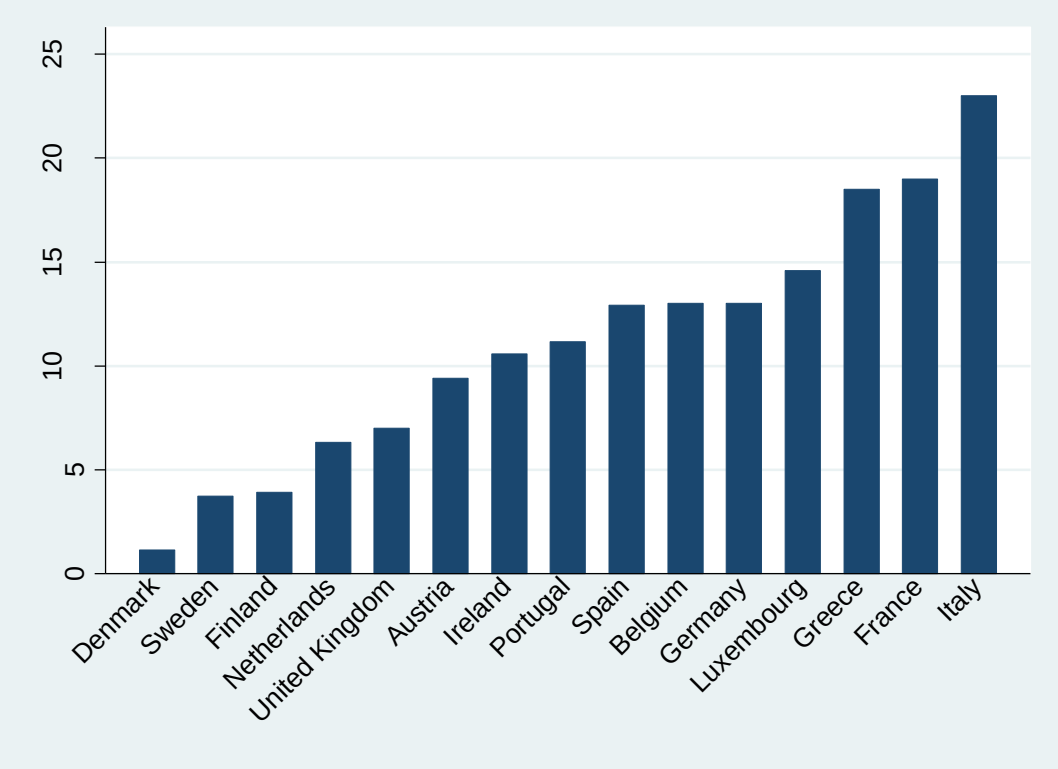
Source: *Eurostat.*

As one can see in table 1, it is clear that the fifteen member states are fairly consistent in their infringement behavior over the time period of eleven years. Although it would be interesting to also analyze the ten newest member states from central, eastern, and, southern Europe that joined the EU in 2004 and to compare their compliance rates to those of the older member states, I had to exclude the new member states due to missing data. That is why I am left with fifteen EU member states and the time period of 1997-2008. Together, these fifteen member states and eleven years form the largest available balanced panel of EU compliance data.

Graph 1 presents the average annual number of infringement cases from 1997-2008 for each of the fifteen member states. It is sorted by the number of infringements and clearly illustrates the variation in infringements between the member states. Taking a closer look at the ranking of countries, we can observe an interesting geographic clustering of member states. The

Nordic countries Denmark, Sweden, and Finland have the lowest number of infringement cases, whereas Italy, France, and Greece 'lead' with the most number of infringement cases.

Graph 1. ***Average Annual Number of EU Infringement Cases (per member state) 1997-2008)***



Data source: *Eurostat.*

As the dependent variable, the average number of infringement cases per year illustrates the considerable variation that exists between member states on an annual basis. The average number of infringement cases was calculated by taking the number of each member state through the years 1997-2008 and placing them in order from most compliant (Denmark, which violates EU law one to three times on average) to least compliant (Italy, which has the highest level of non-compliance, significantly greater than any other member state on average). In examining the

mean numbers presented in this graph, we see extensive variation in infringements of the member states.

Graph 2. ***Histogram of the Annual Number of Infringement Cases, 1997-2008***

Graph 2 displays the frequencies of infringement cases for the fifteen member states over the time period 1997-2008. On the *x*-axis, the number of annual infringement cases is listed (0 through 40) and the frequency of the occurrence can be read off on the *y*-axis. For most member states and years, the number of infringement cases is in the 1-16 range, with particularly many in the 10-14 range and 0-2 range.

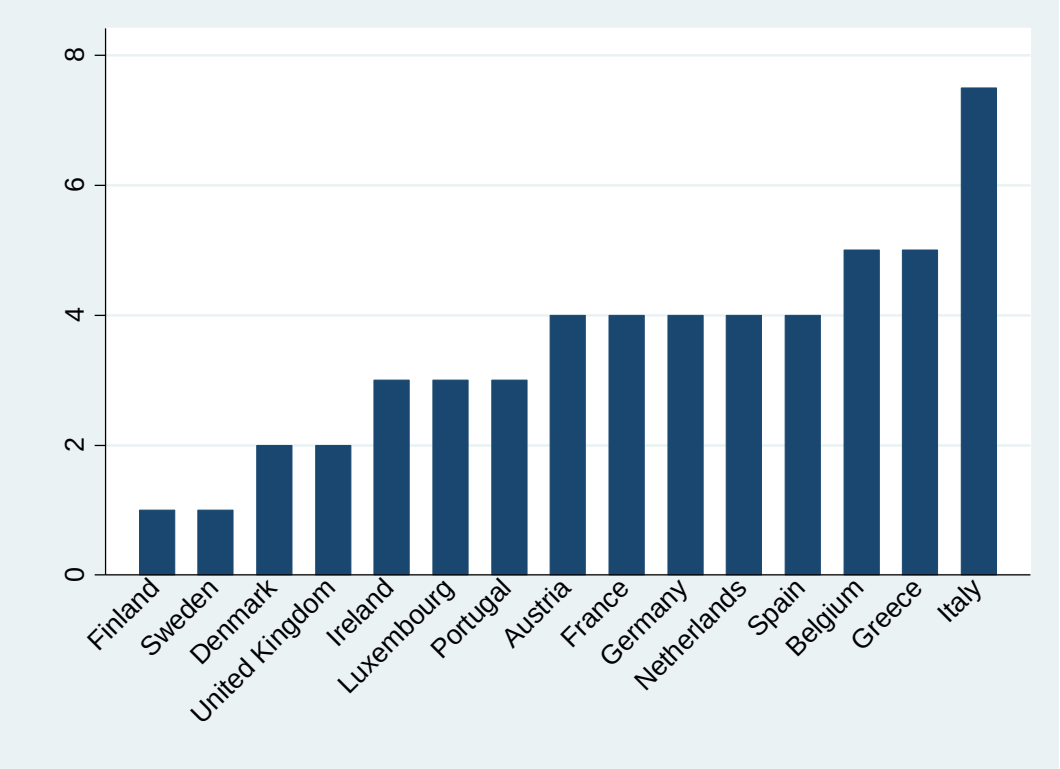
To test my hypothesis that veto players are responsible for variation in non-compliance across the member states, I developed my own veto player index, which counts the number of veto players in each of the fifteen member states on an annual basis for the years 1997-2008. The

coding scheme of veto players is based on a number of factors, which includes unicameral (1 veto player) vs. bicameral legislatures (2 veto players), the power of a president or prime minister to veto legislation (1 veto player), and the power of opposition parties, particularly in country-years with coalition governments (based on Hunt and Laver's mean index scale of the power of opposition parties, which is also included in my analysis as a separate control variable).

Although there is little variation from year to year for most member states, there were changes in the number of veto players in France (cohabitation with during Chriac's second term in office from 1997-2002) and Italy (during Prodi's Government from 2006 to 2008). The average annual number of veto players per member state based on my coding scheme for the years 1997-2008 is illustrated in graph 3.

In the coding process, veto players that could be directly involved with vetoing EU directives were coded for. Those that did not have any veto power were not included in my coding scheme. Therefore, my coding scheme only references the number of veto players that are involved in the transposition of EU directives in each member state. For instance, although a member state may have localities, regions, or states that may have the power to veto domestic legislation; they may not have that power when it comes to EU law. Thus, they are not included in my original coding scheme.

Graph 3. ***Average Number of Veto Players***



Inspecting graph 3, it becomes clear that Italy has the highest number of veto players (anywhere from 7-9 veto players) and Finland, with its unicameral parliament and a president who cannot veto legislation, has the least with only one veto player per year on average, tied with Sweden. Especially in the regression analysis, I include additional independent variables besides my own veto player index (*Veto Players 1*). The first group of independent variables is related to domestic political constraints. The variable *Veto Players 2* is based Tsebelis's coding scheme. *Veto Players 3*, on the other hand, is based on a veto player-like index developed by Witold Henisz. This variable measures the political constraints of government actors in any given year by examining the political and economic determinants of substantive changes in government policy (Henisz, 2006).

Table 2. ***Correlation Matrix of the Three Veto Player Indices***

	Veto Players 1	Veto Players 2	Veto Players 3
Veto Players 1	1.0000		
Veto Players 2 (Tsebelis)	0.4936	1.0000	
Veto Players 3 (Henisz)	0.1260	0.4419	1.0000

Table 2 is a correlation matrix of the three veto player indices discussed above. Comparing my index to the one by Tsebelis, we find a fairly high correlation of .49. However, when comparing my index to Henisz's index of political constraints, the correlation is only .12. This clearly indicates that the three veto player indices capture different aspects of political constraints. On the positive side, this should erase the possible problems of multicollinearity, which can occur when two independent variables are very highly correlated with one another. Since this correlation matrix suggests that the correlation between my index and the ones by Tsebelis and Henisz is less than .5, multicollinearity should not become an issue in the regression analysis. It even becomes possible to estimate regression models that control for two or all veto player coding schemes at the same time (cf. regression models 7-9 in table 5).

The remaining independent variables are, first, Laver and Hunt's opposition party mean scale index (*Opposition Party Impact*), which tests for effects of the power of opposition parties on member states' compliance records. I expect that the higher the impact that opposition parties have on a member state government, the less likely compliance is to occur. Second, the general public support of the EU (*EU support*) is measured by opinion poll data from the years 1997-2008.[5] The hypothesis behind the inclusion of this control variable is that if the general public in a member state is more supportive of EU policies, the member state will in turn be more

[5] Poll results from European Commission taken from the dates November 1997, November 1998, November 1999, June 2000, November 2001, May 2002, and April 2004. The survey question asked of participants was, "*Taking everything into consideration, would you say that (your country) has on balance benefited or not from being a member of the European Community (Common Market)?"*

compliant. Third, I include the variable *GDP per capita* to test whether the financial capability of member states makes them more compliant with EU law. While I expect that more GDP per capita leads to better compliance records, it could also be that the relative poor member states have stronger incentives to comply. After all, the strict financial penalties that the ECJ can impose on member states for non-compliance should be a stronger deterrent for the poor member states than those, which can afford to pay such penalties. Fourth, I include the independent variable trade openness (*Trade*) that measures the importance of trade for each member state. It is calculated by dividing total trade, i.e., imports plus exports, by GDP. I expect that the importance of trade for a member state has an impact on whether or not this member state violates European law. For instance, if a member state is more reliant on trade with its EU neighbors, it should be interested in further integration and, thus, comply at higher rates than member states that rely less on trade with their fellow member states. Finally, the variable *Population* controls for the number of people that lived in a member state during the time period 1997-2008. I expect member states with larger populations to have higher rates of compliance simply because they have more representation at the EU level. This holds particularly true for the European Parliament, since population by and large determines the number of seats a member state is given.

Table 3 provides descriptive statistics for all the variables discussed above. The reduced number of observations for Tsebelis's veto player index (*Veto Players 2*) as well as the *Trade* variable is due to missing data.

Table 3. ***Descriptive Statistics for Variables***

	Country years	Mean	Standard Deviation	Minimum	Maximum
Dependent variable:					
Infringements	180	11.16	7.64	0.00	36.00
Independent variables:					
Veto Players 1	180	3.50	1.65	1.00	8.00
Veto Players 2	156	2.77	1.65	1.00	6.00
Veto Players 3	180	.49	.10	.25	.72
Population (in mill.)	180	25.45	26.08	.42	82.54
GDP per capita	180	24164.31	8816.30	9867.72	56189.02
Trade	164	97.37	58.88	46.59	314.44
EU Support	180	.55	.17	.20	.89
Opposition Party Impact	180	3.97	1.47	2.00	7.10

Table 4. ***Cross-Tabulation of Veto Players and Infringements***

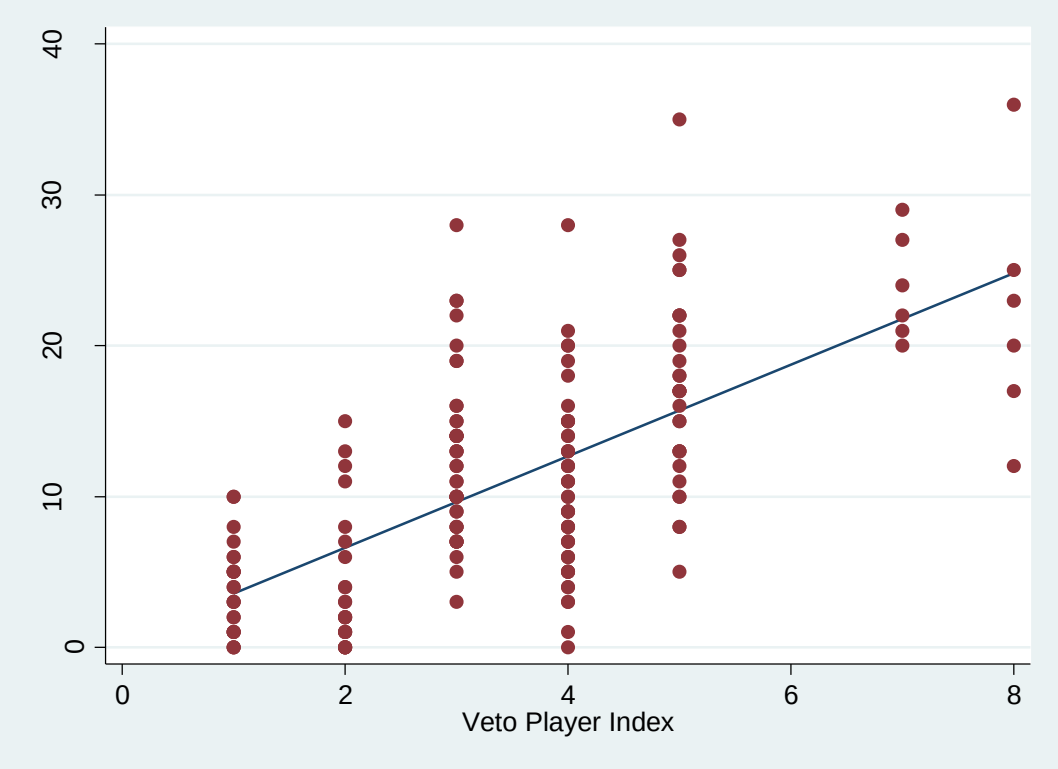
	Veto Players 1:			
Infringements:	**Few**	**Average**	**Many**	**Total**
Few	12 (6.67)	20 (11.11)	0	32
Average	12 (6.67)	101 (56.11)	2 (1.11)	115
Many	0	23 (12.78)	10 (5.56)	33
Total	24	144	12	180

Cross-Tabulation of veto players and infringements (frequencies with cell percentages in parentheses) *Note:* Few infringements/veto players equals mean minus one standard deviation and less. Many infringements/veto players equals mean plus one standard deviation and more.

Table 4 cross-tabulates the number of infringements and veto players based on the data collected for the years 1997-2008. The table illustrates that member states with few veto players have few infringements. On the other hand, if a member state has many veto players, that state has many infringements. In addition, if member states have a more average number of veto players, they are also likely to have an average number of infringements against them. The combination average-average accounts for 56.11% of the total number of infringement cases examined during the time period between the years 1997-2008. Based on the data for these years, it is clear that if a member state has few veto players (according to my veto player index), it will

not have many infringements. Conversely, many infringements for a member state are a fairly reliable indicator for it having many domestic veto players.

Graph 4. ***Scatter Plot of Veto Players and Infringement Cases***



Scatter Plot with Linear Prediction (i.e., Regression Curve)

Graph 4 depicts a scatter plot of my veto player index on the *x*-axis and the number of infringement cases for each member state and year on the *y*-axis. In addition, it includes the regression curve, which has a strong positive slope. Even without the regression curve, it is immediately evident from this graph that as the number of veto players increase in any given state, the number of infringement cases against them increases as well. This graphical evidence

further supports my hypothesis that if the number of veto players in a member state increases, the number of infringement violations increases and compliance with the EU declines.

Table 5. ***Regression Analysis of Veto Players and Infringement Rates***

	(1)	**(2)**	**(3)**	**(4)**
Veto Players 1	3.037***	3.080***	2.788***	2.966***
	(0.307)	(0.334)	(0.340)	(0.571)
Veto Players 2				
Veto Players 3				
Population (in mill.)			0.066*	0.051
			(0.036)	(0.038)
GDP per capita			0.000	0.000
			(0.000)	(0.000)
Trade			0.008	-0.004
			(0.039)	(0.043)
EU Support			4.868	5.281
			(6.061)	(5.860)
Opposition Party Impact				-0.411
				(0.613)
Constant	0.527	2.395	-3.009	-2.696
	(1.315)	(1.616)	(5.951)	(5.988)
Year controls	no	yes	yes	yes
Observations	180	180	164	164
Adjusted R-squared	0.428	0.459	0.492	0.493

OLS regression with robust standard errors (in parentheses) and clustering on member states; *** p<0.01, ** p<0.05, * p<0.1

Table 5. ***Regression Analysis of Veto Players and Infringement Rates*** **(continued)**

	(5)	(6)	(7)	(8)	(9)
Veto Players 1			2.428***	3.143***	2.648***
			(0.746)	(0.466)	(0.544)
Veto Players 2	0.568		-0.002		0.680
	(1.022)		(0.860)		(0.650)
Veto Players 3		-18.390*		-23.213**	-25.406***
		(9.911)		(7.982)	(7.949)
Population (in mill.)	0.217***	0.177**	0.105*	0.030	0.056
	(0.065)	(0.063)	(0.054)	(0.039)	(0.044)
GDP per capita	-0.000	-0.001*	-0.000	-0.000	-0.000
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
Trade	0.110*	0.110**	0.036	0.029	0.042
	(0.059)	(0.048)	(0.062)	(0.034)	(0.044)
EU Support	-0.484	3.691	1.638	-1.414	-0.008
	(13.526)	(8.683)	(9.372)	(5.891)	(7.871)
Opposition Party Impact	1.478	1.046	0.285	-0.146	-0.136
	(1.289)	(1.115)	(1.185)	(0.486)	(0.851)
Constant	-3.582	15.114	-6.983	11.359	6.738
	(7.201)	(9.162)	(5.999)	(7.491)	(7.399)
Year controls	yes	yes	yes	yes	yes
Observations	142	164	142	164	142
Adjusted R-squared	0.360	0.332	0.451	0.550	0.511

OLS regression with robust standard errors (in parentheses) and clustering on member states; *** p<0.01, ** p<0.05, * p<0.1

The number of infringement cases is the dependent variable in all nine regression models of table 5. In model 1 of the regression analysis, we see a positive and significant coefficient for my coding of veto players. Indeed, even when I include additional independent variables in the regression model (models 3-4), my veto player variable remains positive and highly statistically significant. This is even the case when the two veto player indices by Tsebelis and Henisz are included in the regression for the purposes of assessing the robustness of the effect of my own veto player variable on non-compliance (models 7-9).

The only other independent variable that is consistently significant is *Population* (models 3, 5, 6, and 7). However, the algebraic sign of the coefficient is counterintuitive. Larger member states seem to violate European law more frequently, even though they have more influence in the decision-making process than smaller member states. The variables *GDP* and *Trade* are only

statistically significant in models 5 and 6, and the other control variables seem to have no impact on the number of infringement cases at all.

Based on my statistical analyses, I can conclude that veto players have a positive and significant impact on the number of infringements by member states. In other words, as the number of veto players increases in a member state, more violations of Community law are committed by that particular member state, even when controlling for large variety of independent variables.

IV. Conclusion

This thesis has examined the variations of compliance among fifteen EU member states for the years 1997-2008. Most theoretical approaches to European integration imply overall compliance by member states, but do not provide fully adequate accounts of non-compliance. I have formulated a hypothesis that provides an adequate explanation as to why these variations exist. The hypothesis posits that the more veto players a member state contains; the less likely they are to be compliant. Based on statistical modeling, veto players do indeed have a positive and significant impact on the compliance rates of member states.

The three political constraint indices were all highly significant, even when all variables were controlled for in the regression model. This is entirely consistent with the hypothesis that veto players, as a measure of domestic political constraint, inevitably impact rates of compliance among the member states. EU public support does not appear to have a direct effect on the infringement rates of member states. Therefore, I can also conclude that Euroscepticism among the citizens of a member state has little to no impact on whether a member state may be compliant or not.

My research into this policy-making dilemma raises many questions regarding the implementation of directives into the domestic law of the member states. The complexity of numerous EU rules, which in itself can make implementation difficult for the member states, is reinforced by the fact that all directives require transposition into the national law by member states. For this reason it has been suggested by some reformists of the current status quo that the implementation of EU law and policies would be improved if the there was more reliance on regulations (which automatically become law once enacted by the EU) and less on directives (Knill and Lehmkuhl, 2002, 255). This policy would seem to be quite plausible if implemented

correctly. For instance, transposition inevitably introduces an extra stage in the process of applying EU rules and standards. At the minimum, transposition will cause delay, which affects the entire Union.

In addition to these implementation dilemmas, newly established procedures as mandated by directives may suffer from "inherent weakness" (Nicolaides, Oberg, 2006). Given that directives have this inherent weakness in force, the solution to these problems appears to be quite simple — just eliminate the requirement to transpose directives entirely. This is a strong argument in favor of this change, particularly as some feel that regulations must be applied uniformly by all member states. This raises an important question — does the discretion of the legal instrument weaken or strengthen the compliance of member states with the detailed requirements of EU law?

It is unlikely that the requirement of the transposition of directives will be discontinued. Even if that were the case, and directives would not be required to be transposed, "legal and institutional adaptation and innovation within member states will not be avoided" (Ibid). Possibly in an effort to induce member states to comply with their obligations as mandated by treaty obligations, the Commission recently has adopted a policy of tougher penalties for infringements of non-compliance. Despite this, some scholars continue argue that perhaps a more stringent approach may not be an effective deterrent to non-compliance (Shavell, 2004).

A growing body of literature suggests applying economic concepts to the assessment of law suggests that rational agents would comply with costly rules only if non-compliance of EU directives would be more costly (Friedman, 2000). This would be the case whenever the penalty for non-compliance is larger than the fiscal sum required for compliance (Friedman, 2000). Assuming that member states act as rational agents base on this theoretical approach, the choice

of legal instrument by the EU must be irrelevant to the willingness of member states to abide by law set by the Union as long as there is no effect either on the probability of detection or the size of the penalty for particular infringements. Generally, penalties for infringements are determined according to the severity of the violation of EU law and the length of that violation. Since the severity appears to be independent of the actual form of the legal instrument, it follows that the most salient factor that could influence the behavior of member states is the possibility of detection of a violation (Mastenbroek, 2005, 1107).

It is expected that all EU member states will have their own views on how EU legislation should be implemented, commencing with the process of transposition. The various policy preferences from among member states may provide an additional explanation in the variations that exist in compliance. Decision-making is inevitably a multi-level process in which many domestic actors are involved. Therefore, it is clear that national contexts are necessary in examining the compliance rates of EU member states. Since the record among all member states is imperfect as judged by the number of infringement cases that come up each year, one can assume that legal action against non-complying member states is the clear solution. What may happen if the EU only relied on the legal proceedings initiated by the Commission in order to induce member states to respect their obligations? This question obviously has significant impact on the policy-making process across the EU.

In conclusion, my research suggests that several indicators must be examined in order to determine whether a member state is compliant with EU law. The variety of theoretical arguments rooted in Neofuctionalisim, Intergovernmentalisim, and Europeanization does not seem sufficient to explain why there are variations among member states in compliance. The expectation provided by Neofuctionalisim, Europeanization, and to some extent,

Intergovernmentalism is that member states should be compliant due to the increasing convergence of policy-making at the supranational level rather than the domestic level. This does not seem to be the case based on the data of compliance between member states however. Veto player theory provides a sufficient explanation to account for the variations among member states. Since veto player theory places its focus on the legislative process of individual countries, predictions about policy outcomes can be determined. For example, if a state contains multiple veto players, then it can be assumed that changing the legislative status quo will be more difficult. Therefore, this would suggest that the more veto players a member state contains, the less likely they are to be compliant, which is evident in the testing of my hypothesis.

My findings may have implications for future interpretations of the theoretical arguments associated with European integration, since a number of these theories do not take into account the extent of the variations of compliance among member states. The implications of non-compliance have yet to be fully elaborated in the context of Neofuctionalisim, Intergovernmentalisim, and Europeanization, which seek to explain how and why integration takes place. As a unique component of EU decision-making, directives have blurred the traditional political and policy-making boundaries at the supranational and domestic level. As a result of my research, emphasis should be placed domestic political actors, such as veto players, in examining the overall compliance of EU member states.

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