

# OPINIONS, REFERRALS, AND JUDGMENTS

## Analyzing *Longitudinal* Patterns of Non-Compliance

Tanja A. Börzel, Tobias Hofmann, and Diana Panke  
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## Die Autoren / The Authors

Tanja A. Börzel ist Professorin für Politikwissenschaft und seit Dezember 2004 Leiterin der Arbeitsstelle Europäische Integration am Otto-Suhr-Institut für Politikwissenschaft der Freien Universität Berlin. Seit September 2006 hält sie einen Jean Monnet Lehrstuhl für Europäische Integration.

*Tanja A. Börzel is professor of political science and directs since December 2004 the Center for European Integration of the Otto Suhr Institute of Political Science at the Freie Universität Berlin. Since September 2006, she holds a Jean Monnet Chair for European Integration.*

Tobias Hofmann ist seit August 2007 Gastdozent am Government Department des College of William & Mary in Williamsburg, VA.

*Tobias Hofmann is since August 2007 a Visiting Instructor of the Government Department at the College of William & Mary in Williamsburg, VA.*

Diana Panke ist Dozentin für Europäische Politik am University College Dublin.

*Diana Panke is a Lecturer for European Politics at the University College Dublin.*

## Abstract

Why do European Union (EU) member states respond differently to getting caught for violating EU law? How come that some member states shy away from conflict with the European Commission while others do not even bother to comply with rulings of the European Court of Justice (ECJ) after being convicted twice – once for infringing on EU law (Article 226 ECT) and the second time for not acting upon the court's first judgment (Article 228 ECT)? Can power, capacity, and legitimacy approaches, which explain a country's number of prosecuted violations at the first formal stage of the infringement proceedings, also account for the number of court referrals and judgments? Why are some infringement proceedings settled faster and at an earlier stage than others? To answer these questions, this paper tests the explanatory value of our previously developed power-capacity model (cf. Börzel et al. 2007) over the different stages of the EU infringement procedure and over time. We find that it works quite well, but loses explanatory power across the stages of the infringement procedure. It becomes clear that administrative capacity helps member states avoid and overcome involuntary forms of non-compliance, while power enables them to sit out long and escalating infringement proceedings.

## 1. Introduction

The European Union (EU) has an elaborated infringement procedure with the European Commission as a supranational compliance monitoring institution. Nevertheless, non-compliance of member states with European law occurs on a regular basis (Tallberg 1999; Börzel 2001; Mbaye 2001; Tallberg/Jönsson 2001). States with low administrative capacities violate European rules more frequently than member states with highly efficient public services (cf. Börzel et al. 2007). The same holds true for (politically) powerful states, which feature a higher propensity to infringe on EU law than their weaker counterparts (Börzel et al. 2007). Since non-compliance can never be completely prevented, a major task for international institutions is to facilitate the transformation of non-compliance into compliance. To cope with this task, the EU can rely on managerial, adjudication, and enforcement mechanisms (Zangl 2001). The EU's infringement procedure (Article 226 ECT) starts off with an informal and formal managerial dialogue between the Commission and the accused member state, followed by a Reasoned Opinion. When non-compliance prevails after the Commission has sent such a Reasoned Opinion, the Commission can refer the case to the ECJ and thereby initiate the adjudication phase. If no settlement occurs, this phase ends with a judgment by the ECJ. If the state still does not comply with European law, the Commission can initiate an enforcement procedure (based on Article 228 ECT), in which the ECJ may impose financial penalties.

Empirically, the EU infringement procedure is a success as it ultimately succeeds in settling all non-compliance cases (Börzel/Cichowski 2003). However, this can take between a couple of weeks and several years. Sometimes, it requires only managerial instruments, but penalties have to be imposed in other instances. As the institutional design of the EU's infringement procedure is constant, it cannot explain why some infringement cases are settled more quickly or at an earlier stage of the procedure than others. Therefore, this paper inquires the following questions: Why are some cases settled quickly, while others take many years and/or are carried on over many stages of the EU infringement procedure? Why do some states shy away from conflict with the European Commission while others do not even bother to comply after having been convicted by the ECJ?

A combined power and capacity model explains a large amount of the variation in the frequency to which member states' non-compliance occurs in the first place (Börzel et al. 2007). Yet, so far it is unclear whether capacity is as important for the success of the official infringement proceedings as it is for the explanation of the occurrence of non-compliance. Likewise, does power equally matter at all infringement stages? In other words, does the explanatory power of the combined model vary between the managerial, adjudication, and enforcement stages?

To answer these questions, this paper proceeds in the following steps. Firstly, we outline the empirical puzzle by focusing on the variation in transformational patterns across stages of the infringement proceedings and over time (2). In order to explain the compliance restoring dynamics in the EU infringement proceeding, the subsequent section develops a set of separate and integrated process-oriented hypotheses on the likelihood for the settlement of non-compliance (3). The fourth section empirically tests the multivariate hypotheses as well as the integrated models using statistical methods for both variants of the dependent variable (4). The paper concludes with a summary of the main findings – namely that administrative capacity helps member states avoid and overcome involuntary forms of non-compliance, while power enables them to sit out long and escalating infringement proceedings – and some considerations on future research (5).

## 2. Compliance Dynamics in the EU

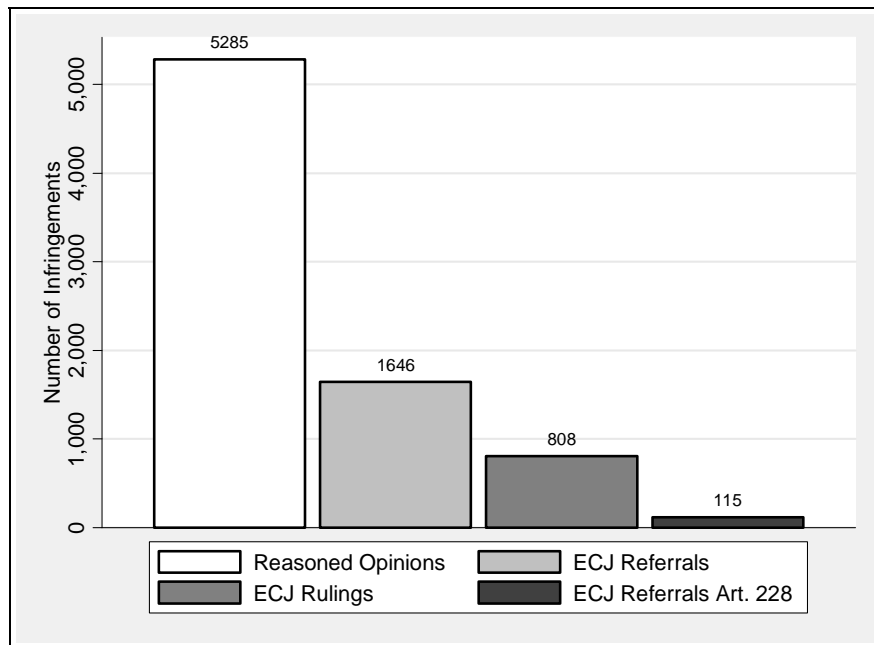
In the European Union, as in any other dispute settlement or arbitration system of international institutions, non-compliance of states can vary over time and across stages. Some infringements are quickly resolved within a couple of months, while others require several years. Also, some cases can be solved at the managerial stage through bilateral interactions between the Commission and the respective state, while others are referred to the European Court of Justice (ECJ) which issues a judgment or require even a threat of financial penalties to be resolved. In order to systematically analyze to what extent the power-capacity model can account for these variations and to highlight which additional variables are important for compliance dynamics, this paper distinguishes between two dependent variables. First, it focuses on the stages of the infringement proceedings, which it takes for a case to be settled and compliance to be restored (*'Stages of the Infringement Proceedings'*). The second variant of the depend-

ent variable focuses on the time it takes to close an infringement case (*'Duration of the Infringement Proceedings'*). In general, the more stages a case is carried on to, the more time it requires until non-compliance is abolished. Nevertheless, the distinction between time and stages is important, since individual cases can be pending for a long time within a particular stage, while other cases might be quickly transferred from one stage to the other. Such disparities between speed and stages sometimes have implications for the prospects of individual variables to foster compliance. The deterrence approach, for example, expects that cases of states successfully deterring the Commission are not carried quickly from one stage to the other, but rather stay for long durations in early stages of the infringement procedure.

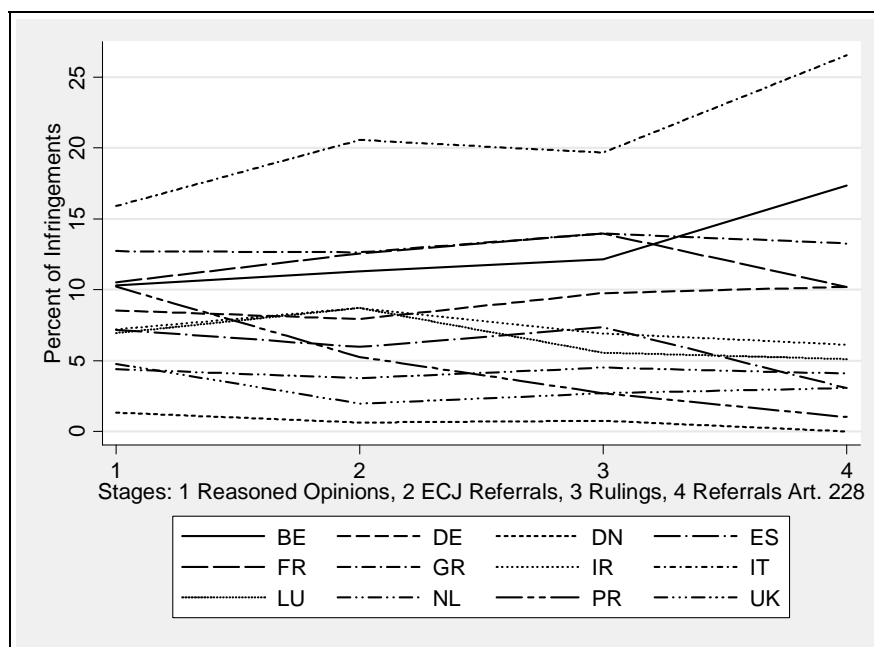
## 2.1. Stages of Infringement Proceedings

In the European Union, the vast majority of infringement cases is solved during the early stages of the infringement procedure (cf. Mendrinou 1996; Tallberg/Jönsson 2001; Tallberg 2002). Of the more than 5,000 cases, which entered the official infringement proceedings between 1978 and 1999 for the EU 12 member states, less than one third is referred to the ECJ. Of those 1,646 referrals, the ECJ ruled on 808 cases – in 19 out of 20 times against the member states. Only about 100 cases are referred to the ECJ a second time as member states do not comply with a first judgment of the ECJ in accordance with article 226 of the EC treaty (cf. graph 1). In fewer than a dozen cases, the ECJ has imposed financial penalties.

Graph 1: Number of Infringements by Stage, EU 12, 1978-99<sup>1</sup>



Graph 2: Member States' Non-Compliance across Stages, EU 12, 1986-99<sup>2</sup>



<sup>1</sup> This graph and all the following graphs cover only infringements by the 12 oldest EU member states. The newer members are not included in these graphs in order to prevent them from being biased by a combination of relatively short membership and the requirement to fully transpose and implement the *aquis communautaire* on accession.

<sup>2</sup> This graph covers only the EU 12 member states and the time period 1986-99, i.e. the longest balanced subpanel of the available data.



While the overall number of infringements drops sharply from stage to stage, we find significant variation regarding the member states' propensity to transform non-compliance into compliance across the stages (cf. graph 2). At the management stage, which is still unofficial, the difference between member states is rather modest. However, in the subsequent official stages, the initial spread of 14.6 percentage points for Reasoned Opinions starts to widen. It dramatically increases for the first ECJ referrals (20.9 percentage points) and widens another 6.5 percentage points to a maximum of 26.5 points at the second ECJ referrals stage. However, if we ignore Italy as an extreme outlier, the variance becomes somewhat less pronounced.

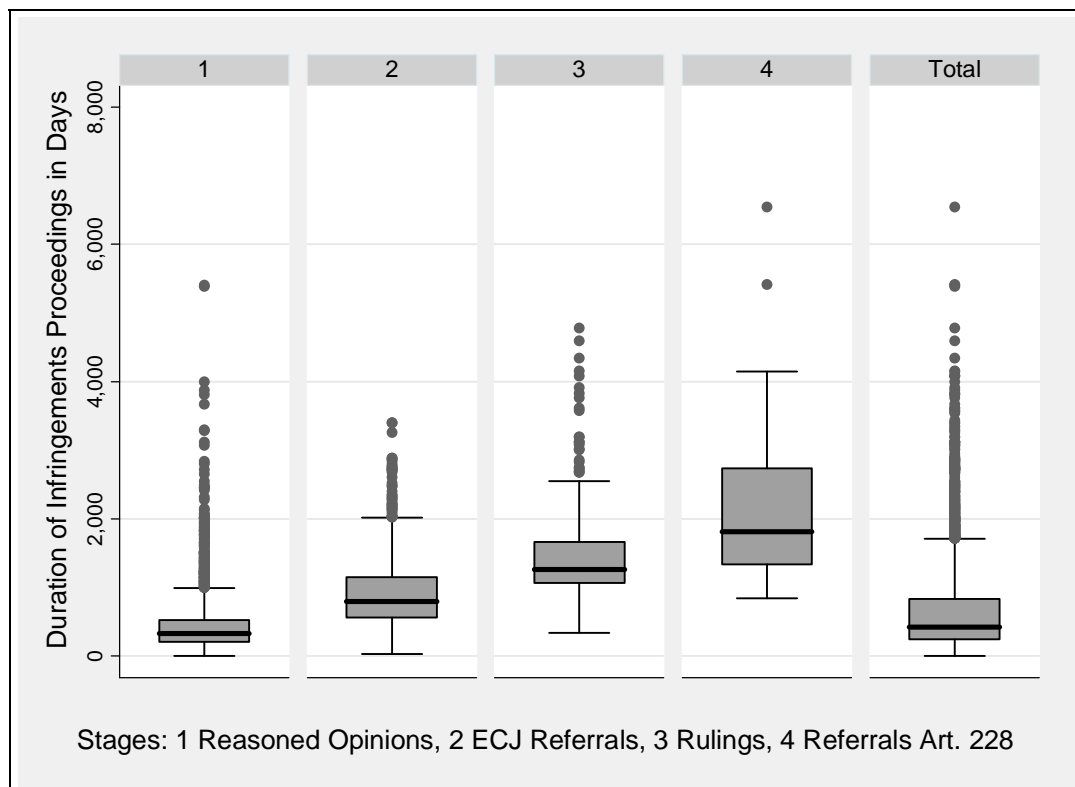
The majority of the member states show a relatively 'decent' level of non-compliance. Five countries – Denmark, the Netherlands, the UK, Luxembourg, and Ireland – remain well below the Community average of infringements while Spain and Germany oscillate around it. The only member states that reveal a consistent pattern of non-compliance across the stages of the infringement procedure are Italy, France, Belgium and Greece. Portugal's initial performance is also rather poor, but improves significantly when entering the adjudication stage. The same applies to France, which remains, however, among the 'top laggards'. The group is led by Italy, whose non-compliance record almost makes it a class of its own. Italy is followed by Greece, whose records remain consistently bad, and Belgium, whose performance even deteriorates with each stage. The share of Italy, France, Belgium, and Greece at the different infringement stages starts with an already staggering 49.4% of all the reasoned opinions of the EU 12 and 57.1% of their ECJ referrals, only to reach 59.7% at the ECJ judgment stage and 67.3% of the cases of delayed compliance with the first ECJ judgments.

Having described and mapped this dependent variable, several questions arise: What explains the fact that some cases of non-compliance are settled at an early stage, while others drag on? Why do EU member states respond differently to the referral of their cases to the ECJ? How come that some member states shy away from conflict with the European Commission, while others do not even bother to comply with orders of the ECJ after being reprimanded twice – once for infringing on EU law and the second time for not reacting on the court's first judgment?

## 2.2. Duration of Infringement Proceedings

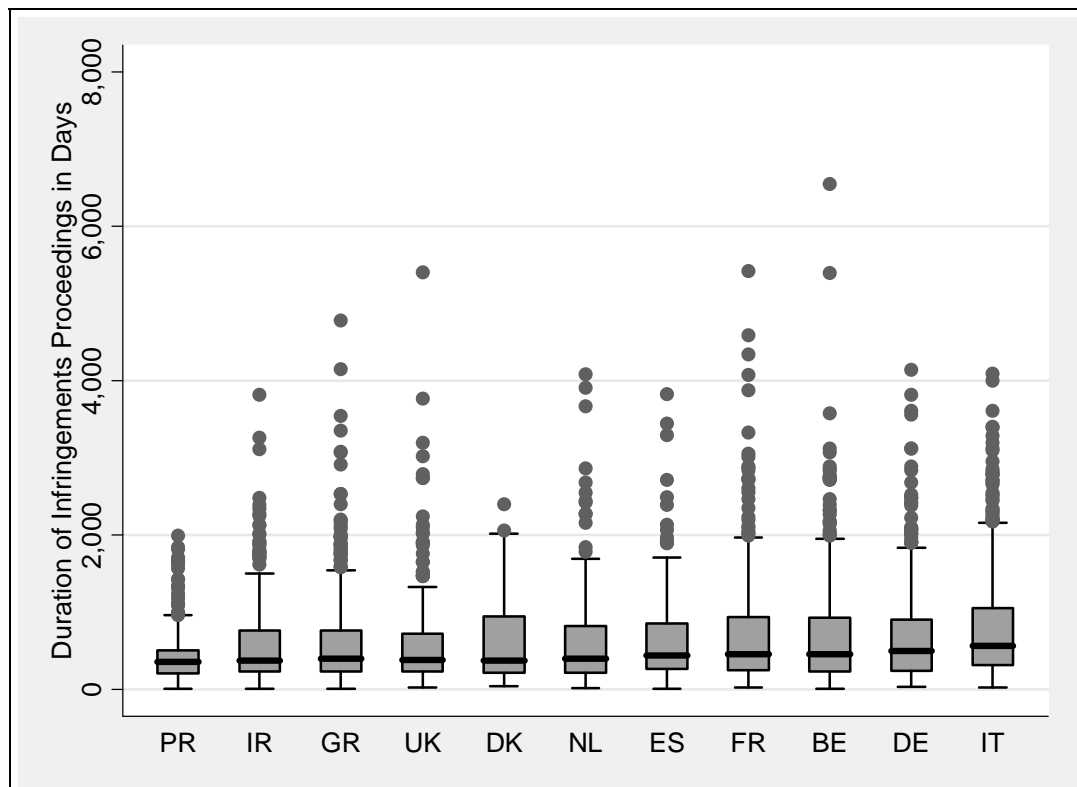
In regard to the second dependent variable, which measures the duration of infringement proceedings over time, we also find significant variation – not only between the member states. First, the length of proceedings varies between the official stages of the infringement proceedings. As can be seen in graph 3 below, we find enormous variance in the length of individual cases even if we control for the number of stages these cases reach. The same holds true if we control for countries, policy sectors, or years. While some cases are settled within less than ten days, others go on for more than a decade. For obvious reasons, cases that reach later stages of the infringement proceedings last – on average – longer than the cases, which are settled at the Reasoned Opinion stage. Also, given that the number of infringements drops sharply from stage to stage (cf. graph 1), it is not surprising that the box plot for all the infringements looks pretty similar to those that are never referred to the ECJ.

Graph 3: Length of Proceedings by Stage, EU 12, 1978-99



If we focus on the second dependent variable from the member state perspective, we find that each member state has cases that have been settled quickly within less than one year after the Commission sent a reasoned opinion. Also, virtually all member states have instances in which non-compliance continued for multiple years. While the most extreme cases took place in Belgium, France, the UK, and Greece and required 17.9, 14.8, 14.8, and 13.1 years to be settled, respectively, implementation leaders and laggards have their fair share of short-term and long running infringements (cf. graph 4).

Graph 4: Length of Proceedings by Member State, EU 12, 1978-99



In terms of the average duration of non-compliance once the European Commission has opened infringement proceedings against a member state, Portugal is the compliance leader (1.1 years of average duration), since the majority of its cases is settled much more quickly than those of the other member states. Particular long durations can be found for Italy (2.1 years), Germany (2 years), France, and Belgium (both 1.9 years).

### 3. Theoretical Explanations

In this section, we develop a number of hypotheses in order to explain cross-country variation in the prevalence of non-compliance between EU member states. The hypotheses are derived from the most prominent theoretical compliance approaches, i.e., enforcement, management, and legitimacy (cf. Börzel et al. 2007), and focus on our two dependent variables (persistence of non-compliance over time and across stages). Since our analysis on the occurrence of non-compliance has revealed strong interaction effects, this section will additionally develop hypotheses on interactions between power and capacity, autonomy, and legitimacy, as well as between legitimacy and government autonomy for both variants of the dependent variable.

#### 3.1. Prevalence of Non-Compliance across the Stages of the Infringement Procedure

The *enforcement approach* assumes that states as strategic rational actors violate international law willingly, if compliance costs exceed its benefits (e.g. Martin 1992a; Fearon 1998; cf. Börzel et al. 2007). From the enforcement approach, we can derive two alternative hypotheses on power and non-compliance. On the one hand, powerful member states should be less sensitive to the costs that come with the prosecution of their established non-compliance cases. As they can be recalcitrant to sanctions, more stages of the infringement procedure should be needed until compliance is restored than is the case for infringements on European law by weaker member states. On the other hand, powerful member states can not only deter the EU's enforcement authorities – the Commission and the ECJ – from opening non-compliance proceedings, but also from pushing and escalating these proceedings once they have been started. As a consequence, we expect the infringement proceedings against powerful states to be settled at earlier stages than those against the less powerful ones. While we assume that the power of recalcitrance and the power of deterrence play an important role when it comes to the prevalence of non-compliance across the stages of the EU infringement procedure, we do not expect to see any effects of the power of assertiveness to be present after the initial occurrence of non-compliance. Assertiveness affects the potential misfit of European legislation and whether member states comply or do

not comply with legal acts from Brussels. Yet, the assertiveness approach is not useful when we want to analyze the prevalence of non-compliance.

Table 1: Enforcement Hypotheses

<b>Power of recalcitrance</b>	<b>Power of deterrence</b>
The more powerful a state is, the <u>more</u> stages of the infringement procedure it takes until non-compliance is abolished.	The more powerful a state is, the <u>less</u> stages of the infringement procedure it takes until non-compliance is abolished.

One basic assumption of the *management approach* is that insufficient capacities of states bring about involuntary non-compliance (e.g. Chayes/Handler-Chayes 1993). From this approach, we can derive two hypotheses that are very similar to those derived for the effects of government autonomy and capacity on the initial occurrence of non-compliance (cf. Börzel et al. 2007). First, since veto players can delay and/or block necessary decision for the settlement of infringement cases, we expect infringements of member states with many veto players – i.e., low levels of government autonomy – to take more stages of the infringement procedure until non-compliance is abolished. Second, if the governments of member states did not have the necessary capacity to prevent non-compliance in the first place, they might also struggle with overcoming it once it has been established by the Commission and/or the ECJ. Therefore, member states with few material resources and inefficient bureaucracies require more stages of the infringement procedure before they can transform non-compliance into compliance.

Table 2: Management Hypotheses

<b>Government autonomy</b>	<b>Government capacity</b>
The lower the level of government autonomy is, the more stages of the infringement procedure it takes until non-compliance is abolished.	The lower the level of government capacity is, the more stages of the infringement procedure it takes until non-compliance is abolished.

A third source of alternative explanation for compliance dynamics are *legitimacy approaches* (cf. Börzel et al. 2007). If non-compliance is perceived as being less appropriate by member states with high levels of support for the principle of the rule of law once cases enter the judicial arena, it is obvious that these member states will do their best to settle their infringement cases at early stages of the infringement procedure, while states with a low salience for the rule of law could not care less. However, it is not only the support for the principle of the rule of law that should make a difference, but

also the support for the European Union itself and its institutions. Since member states with low public support for the EU feel less obliged to comply with EU law, their infringement cases are dragged on over a larger number of stages of the infringement procedure. If the EU is respected as a rule-setting institution, member states will work hard to abolish non-compliance at early stages of the infringement procedure.

Table 3: Legitimacy Hypotheses

Rule of law	Support for the EU
The lower the level of support for the principle of the rule of law is, the more stages of the infringement procedure it takes until non-compliance is abolished.	The lower the level of public support for the EU as a rule-setting institution is, the more stages of the infringement procedure it takes until non-compliance is abolished.

### 3.2. Prevalence of Non-Compliance over Time

This section develops hypotheses on the effects of power, government capacity and autonomy, and support for the rule of law and the European Union on the temporal duration on non-compliance. To this end, this section draws once again on enforcement, management, and legitimacy approaches.

If member states have the power to be recalcitrant, it is only natural that they can take their time when it comes to transforming non-compliance into compliance. Therefore, it follows from the *enforcement approach* that it takes longer until compliance is restored when member states are involved that are less sensitive to costs imposed by sanctions than when member states are involved that are less powerful and therefore sensitive to these costs. While we expected that the effect of the power of deterrence on our first dependent variable are substantially different from those of the power of recalcitrance, i.e., recalcitrance leads to more cases and more cases at later stages of the infringement procedure, while deterrence prevents the European Commission from pressing charges in the first place and referring cases to the ECJ once infringement proceedings have been started, we expect the power of recalcitrance to have similar effects on the duration of the infringement proceedings as the power of deterrence. Recalcitrance increases the duration and so does deterrence. Because powerful member states deter enforcement authorities from pushing their infringement cases, these cases take longer to be resolved. As before, there is no hypothesis on the effect of the power of asser-

tiveness on our dependent variable as the assertiveness approach is not useful when it comes to analyzing the prevalence of non-compliance. Assertiveness only matters for the occurrence of infringements in the first place.

Table 4: Enforcement Hypotheses

<b>Power of recalcitrance</b>	<b>Power of deterrence</b>
The more powerful a state is, the longer it takes until non-compliance is abolished.	The more powerful a state is, the longer it takes until non-compliance is abolished.

From the *management approach*, we derive the same two hypotheses as above. Both, government autonomy and capacity are supposed to be causally related to a speedy settlement of non-compliance cases. While veto players can delay and/or block necessary decisions in the autonomy case, sufficient material resources and an efficient bureaucracy can make a significant difference when it comes to transforming non-compliance into compliance.

Table 5: Management Hypotheses

<b>Government autonomy</b>	<b>Government capacity</b>
The lower the level of government autonomy is, the longer it takes until non-compliance is abolished.	The lower the level of government capacity is, the longer it takes until non-compliance is abolished.

Since non-compliance is perceived as being less appropriate in member states that value the rule of law, we expect in line with the *legitimacy approach* that it takes less time to settle infringement cases in these states than in those that only mildly support the principle of the rule of law. Second, member states that feel obliged to comply with EU law due to their general support for European integration and the rule-setting institutions in Brussels are also expected to settle their cases as soon as possible.

Table 6: Legitimacy Hypotheses

<b>Rule of law</b>	<b>Support for the EU</b>
The lower the level of support for the principle of the rule of law is, the longer it takes until non-compliance is abolished.	The lower the level of public support for the EU as a rule-setting institution is, the longer it takes until non-compliance is abolished.

### 3.3. Interaction Effects

The compliance literature has been rather skeptical about combining management, enforcement, and legitimacy approaches because of their different assumptions regarding “how the international system works, the possibilities for governance with international law, and the policy tools that are available and should be used to handle implementation problems” (Raustiala/Victor 1998: 681; cf. Raustiala/Slaughter 2002: 543). Yet, empirical studies support explanations based on power, capacity, as well as legitimacy (Haas 1998; Mbaye 2001; Reinhardt 2001; Steinberg 2002; Mastenbroek 2003, 2005; Steunenberg 2006). Likewise, the European Union and many international organizations use a combination of management, enforcement, and legitimacy mechanisms to induce member state compliance (Mitchell 1996; Tallberg 2002; Zürn/Joerges 2005). Combining explanatory factors of the different approaches makes not only empirically sense. Their theoretical assumptions are not always that incompatible either (cf. Börzel et al. 2007).

#### ***Power and Capacity***

The power of recalcitrance and capacities can interact in various ways. States with high powers of recalcitrance can afford to resist compliance more easily and are less inclined to restore compliance so as to avoiding that a particular infringement case is referred to the next stage. Capacity shortages hinder the transformation of non-compliance into compliance. Structural deficits, such as an ineffective administration or a high number of veto players, cannot be easily evaded during ongoing infringement procedures. Hence, we expect that resource shortcomings and low government autonomy negatively affect states' ability to restore compliance. Thus, it becomes increasingly likely that the ECJ or the Commission take a case to the next stage of the infringement procedure and that the overall duration of non-compliance increases: With increasing capacity, the positive effect of the power of recalcitrance on the continuation of non-compliance across the stages of the infringement procedure is reduced. While more power leads to more stages and longer periods of recalcitrance, this effect should be less pronounced for member states that have efficient bureaucracies.

Even though one can envision capacity to interact with the power of deterrence, the causal story behind such an interaction is far-fetched. One would have to argue that



high government capacity and sufficient resources could make the threats of member states vis-à-vis enforcement authorities more credible. However, this is not very plausible and, therefore, we do not expect that capacity interacts with the power of deterrence in any of the two following ways. Neither does high government capacity reinforce the negative effect of the power of deterrence on the number of stages reached before a settlement, nor does it reinforce the positive effect of the power of deterrence on the duration of non-compliance. While enforcement authorities might hesitate to transfer cases to subsequent stages and eventually enact penalties in response to member states' power of deterrence, this effect is not conditional on the bureaucratic efficiency or financial resources of the threatening state.

Finally, we already pointed out before that the power of assertiveness does not affect the number of stages or the length of time it takes until non-compliance is abolished. Consequently, we do not hypothesize interactions between the power of assertiveness and government capacity or autonomy, either.

Table 7: Integrated Power and Capacity Hypotheses

<b>Stages:</b>	<b>Time:</b>
With increasing capacity, the positive effect of the power of recalcitrance on the number of stages of the infringement procedure it takes until non-compliance is abolished is reduced.	With increasing capacity, the positive effect of the power of recalcitrance on the time it takes until non-compliance is abolished is reduced.

### ***Power and Legitimacy***

On a first glance, combining enforcement and legitimacy approaches seems problematic given that they are based on different theories of social action (cf. Börzel et al. 2007). However, as powerful states can do as they please, what pleases them may well be defined by a normative logic that makes compliance the socially expected and accepted behavior – if their population is supportive of the rule of law and the EU, respectively.

As before, when we integrated power and capacity approaches, we do not draw on the power of deterrence or assertiveness for our integrated power and legitimacy hypothesis. This is because the power of deterrence approach takes on the perspective of the

enforcement authority, and we can safely assume that the European Commission is not more or less deterred by a powerful member state depending on its support for the rule of law or support for the EU. Rather, lack in support might add ‘credibility’ to a member state’s recalcitrance. While this leads us to expect that with decreasing support for the rule of law and the EU, the positive effect of the power of recalcitrance of a member state to continue infringement cases is increased, it is not clear whether the European Commission would respond to such increased recalcitrance by pressing harder or shying away from conflict. What is clear, however, is that because support for the rule of law and support for the EU influences the cost sensitivity of a recalcitrant member state, that state is more inclined to settle infringements at an earlier stage. Similarly, since support for the rule of law and the EU can increase the cost sensitivity of a recalcitrant states, even powerful member state might be more inclined to settle infringement cases faster than they would do otherwise.

Table 8: Integrated Power and Legitimacy Hypothesis

<b>Stages:</b>	<b>Time:</b>
With increasing support for the rule of law and the EU, the positive effect of the power of recalcitrance on the number of stages of the infringement procedure it takes until non-compliance is abolished is reduced.	With increasing support for the rule of law and the EU, the positive effect of the power of recalcitrance on the time it takes until non-compliance is abolished is reduced.

### ***Autonomy and Legitimacy***

Two final interaction effects concern the government autonomy and legitimacy. Even if governments prefer compliance, domestic veto players can slow down transposition and implementation processes. However, their inclination to do so might heavily depend on the support for the rule of law and the public support for the EU they perceive. While low support means low legitimacy of the European Union and its legislative activities, veto players can use low support justify their use of veto power before domestic elites and the general public, as well as the European Union and its institutions. Even if these audiences regard compliance as the appropriate course of action, low levels of support for the EU and the rule of law can provoke veto players to haven an even stronger impact on the duration of infringement proceedings and the number of stages of the infringement procedure it takes until non-compliance problems are resolved.

Table 9: Integrated Government Autonomy and Legitimacy Hypotheses

<b>Stages:</b>	<b>Time:</b>
With decreasing support for the rule of law and the EU, the negative effect of government autonomy on the number of stages of the infringement procedure it takes until non-compliance is abolished is reduced.	With decreasing support for the rule of law and the EU, the negative effect of government autonomy on the time it takes until non-compliance is abolished is reduced.

## 4. Quantitative Analyses

This section reports the results of our multivariate quantitative analysis. However, before we do so, we discuss the operationalization of our covariates in a first subsection. The second subsection focuses on the results for non-compliance over the stages of the infringement procedure, the third subsection tests the hypotheses on the persistence of non-compliance over time, and the fourth and final subsection empirically analyses the interaction effects for both variants of the dependent variable.

### 4.1. Operationalization and Data Sources

To empirically test the hypotheses on the prevalence of non-compliance over the stages of the EU infringement procedure and over time, we revert to the same independent variables that we successfully used to test the effects of power, capacity, and support on the relative number of infringements per member state, year, and legal act, i.e., on the occurrence of non-compliance, in our previous analyses (cf. Börzel et al. 2007).

In order to test the influence of both relevant forms of power (i.e., recalcitrance and deterrence), we incorporate two power indicators into our analysis. These indicators are widely used in the literature and account for different aspects of power – economic size and EU-specific political power. Gross domestic product (*GDP*) is our proxy for economic power (Keohane 1989; Martin 1992b; Moravcsik 1998; Steinberg 2002). The data come from the World Development Indicators (World Bank 2005). For direct EU-specific political power, we use the proportion of times when a member state is pivotal (and can, thus, turn a losing into a winning coalition) under qualified majority voting

(QMV) in the Council of Ministers (*'Shapley Shubik Index'*) as an indicator (Shapley/Shubik 1954; Rodden 2002).

Government autonomy is a function of the number of veto players in the political system of a member state (Immergut 1998; Tsebelis 2002). However, even if the number of the institutional and partisan veto players remains constant over time, the interests of these actors – for example regarding (non-) compliance – may change. Therefore, we use an alternative veto player index (*'Constraints'*), which allows for the interests of veto players in such a way that interdependences between veto players and the respective political system are taken into consideration (Henisz 2002). It is based on a simple spatial model of political interaction among government branches, measuring the number of independent branches with veto power and the distribution of political preferences across these branches. They can be interpreted as a measure of institutional constraints that either preclude arbitrary changes of existing policies or produce gridlock and so undermine the ability of the government to change policies when such change is needed.<sup>3</sup> Two alternative indicators of government autonomy are discussed in the literature: the executive control of the parliamentary agenda measured by the extent to which the government can successfully initiate drafts and rely on stable majorities for in the legislative branch, (Döring 1995; Tsebelis 2002) and the parliamentary oversight of government measured by the material (e.g. number of committees) and ideational resources (e.g. information processing capacity) relevant for the oversight of the legislative on the government (Harfst/Schnapp 2003). We do not include these two variables, because of multicollinearity concerns.

To test for the influence of government capacity, we include two indicators that are prominent in the literature. First of all, we incorporate *'GDP per capita'* (Brautigam 1996). It is a general measure for the resources on which a state can draw to ensure compliance. The data come from the World Development Indicators (World Bank 2005). Whether a state has the capacity to mobilize these resources shall be captured by the variable bureaucratic *'Efficiency'*. In the operationalization, we use an index of bureaucratic efficiency and professionalism of the public service based on work by Auer and

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<sup>3</sup> Some scholars argue that political variables, such as partisan preferences of the governments in power, can explain variation in compliance with EU law (e.g. Mastenbroek 2005). This explanatory variable can be operationalized with the frequency of government changes. However, if partisan preferences do matter, it is more likely that they account for variation in compliance between specific policies than for variation between countries

her colleagues (Auer et al. 1996; Mbaye 2001). This index consists of three components of bureaucratic efficiency: performance related pay for civil servants, lack of permanent tenure, and public advertising of open positions. Bureaucratic efficiency highly correlates with measures of corruption, e.g. the Corruption Perception Index of Transparency International (Herzfeld/Weiss 2003). For issues of multicollinearity, we include only bureaucratic efficiency in our analysis. Other potential indicators of government capacity – such as bureaucratic quality from the International Country Risk Guide and the World Bank governance indicators (Kaufmann et al. 2006) – are not used due to the fact that they cover only part of the time period analyzed in this paper and lack sufficient variance for comparative studies of the EU member states.

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

## 4.2. Results for Non-compliance across Stages of the Infringement Procedure

Even though the discussion of the six enforcement, management, and legitimacy hypotheses on the prevalence of non-compliance over the stages of the EU infringement procedure only mentions the number of stages of the infringement proceedings (see 3.1.), there actually are several alternative operationalizations of this first dependent variable. All these operationalizations are covered in our empirical findings in table 10. First, whether cases are settled at earlier or later stages of the procedure affects the number of cases at the consecutive stages of the infringement procedure. Therefore, our first operationalization, which we use for models 1-3 in table 10, measures the relative number of referrals to the ECJ according to Article 226 and 228 ECT, respectively, and the relative number of ECJ rulings per member state and year. Second, whether cases make it to later stages affects how many percent of the cases from a preceding stage are actually referred to the next one. Therefore, our second operationalization, which we use for models 4-6 in table 10, measures exactly these percentages. Third, we can directly measure the number of stages that it takes for specific infringement cases to be settled. We use this operationalization for model 7 in table 10. The different operationalizations imply the use of different estimation techniques (OLS for models 1-6 versus ordered probit for model 7 in table 10) as well as units of analysis (country years for models 1-6 versus individual infringement cases for model 7 in table 10).

Table 10: Capacity, Power, Legitimacy, and Infringements

Models:	(1)	(2)	(3)
	ECJ Referrals (Art. 226)	ECJ Rulings (Art. 226)	ECJ Referrals (Art. 228)
<i>Power:</i>			
GDP	0.0000 0.0000	0.0000 0.0000	0.0000 0.0000
Shapley Shubik Index	0.0134*** -0.0041	0.0057 -0.0039	0.0009* -0.0004
<i>Capacity:</i>			

GDPpc	0.0000 0.0000	0.0000 0.0000	0.0000 0.0000
Efficiency	-0.1152** -0.0392	-0.0469* -0.024	-0.0064 -0.0045
Constraints	0.0974 -0.0864	0.0652 -0.0713	0.0426 -0.0255
<i>Legitimacy:</i>			
Rule of law	0.0015 -0.0043	0.0011 -0.0027	0.0001 -0.0005
EU support	0.0002 -0.0011	0.0002 -0.0005	0.0002 -0.0001
Constant	0.0054 -0.0449	0.0314 -0.0241	-0.0049 -0.0044
Year dummies	yes	yes	yes
Observations	233	233	233
Adjusted R-squared	0.43	0.24	0.12

Regressions with two-tailed t-tests and robust (Huber-White) standard errors with clustering on member states. \*\*\* = p 0.01, \*\* = p < 0.05, \* = p < 0.1.

For the relative number of ECJ referrals and rulings, we can see a very similar picture as for the relative number of Reasoned Opinions per member state and year (cf. Börzel et al. 2007). What matters whether member states have more or less non-compliance cases at the later stages of the EU infringement procedure are bureaucratic efficiency and voting power. While capacity matters for the first ECJ referrals and rulings in the hypothesized way, EU specific political power has the correct sign, but is only significant at the first and second ECJ referral stages. Hence, even though the overall model fit becomes smaller from stage to stage, models 1-3 in table 10 overall suggest that (i) the more political power a member states has, the more recalcitrant it is to settle cases at an early stage and (ii) the more efficient the bureaucracy of a member state works, the fewer of its non-compliance cases make it to the later stages. Legitimacy, by contrast, does not influence whether cases are settled early or make it to the later stages. Neither EU support nor the extent to which the rule of law is institutionalized matter for compliance dynamics.

These regression results are very much in line with the observation that for instance Italy, with its limited capacity and strong political power of recalcitrance, is a compliance laggard across all stages of the infringement procedure. Greece, Belgium, and

France are compliance laggards as well. While the power to be recalcitrant is limited in Greece and Belgium, both suffer from capacity shortcomings due to inefficient bureaucracies. France, on the other hand, can afford to continue non-compliance due to its EU specific power. Denmark and the Netherlands are compliance leaders across all infringement stages. As predicted by our hypotheses, both countries combine high government capacity with low power of recalcitrance.

Table 10: Capacity, Power, Legitimacy, and Infringements (continued)

Models:	(4)	(5)	(6)	(7)
	Make it to ECJ Refer- rals (Art. 226)	Make it to ECJ Rulings (Art. 226)	Make it to ECJ Refer- rals (Art. 228)	Number of Stages
<i>Power:</i>				
GDP	-0.0004 -0.0019	0.0002 -0.0024	0.0008*** -0.0003	0.0001** -0.0001
Shapley Shubik Index	0.3862 -0.3726	0.3224 -0.5022	0.0243 -0.0538	-0.0095 -0.0097
<i>Capacity:</i>				
GDPpc	0.0004* -0.0002	0.0001 -0.0001	0.0000 0.0000	0.0000** 0.0000
Efficiency	-9.4795** -3.2258	-1.5957 -2.4852	-0.5126 -0.3734	-0.2717*** -0.0549
Constraints	13.5642* -7.5468	14.074 -8.3426	4.6195 -3.5487	0.3702* -0.1907
<i>Legitimacy:</i>				
Rule of law	0.1906 -0.3373	0.1449 -0.2805	0.0018 -0.0368	0.0078* -0.0045
EU support	-0.0309 -0.1056	-0.0023 -0.0657	0.0176 -0.0127	0.0022 -0.0019
Constant	23.1003*** -6.9152	18.1363** -6.5118	-0.2471 -0.3105	



Cut point 1				0.6207*** -0.1759
Cut point 2				1.1580*** -0.1768
Cut point 3				2.1619*** -0.1777
Year dummies	yes	yes	yes	yes
Observations	233	233	233	5,181
Adjusted R-squared	0.15	0.01	0.12	

Now, when we look at the percentage of cases that are carried over from one stage to the following stage, the findings are less pronounced, but, at least in model 4 in table 10, we find a significant and negative effect for efficiency. The more efficient a member state's bureaucracy, the less infringement cases make it from the Reasoned Opinion to the ECJ referral (Article 226) stage. In line with this finding, very efficient states, such as Denmark, settle more cases at earlier stages than states with inefficient bureaucracies, such as Belgium, Greece, France, or Italy. For the following stages, we still see a negative algebraic sign for efficiency – and a positive sign for the Shapley Shubik Index, for that matter – in line with our predictions, but the coefficients lack significance.

As expected, the number of domestic veto players positively influences the percentage of cases that are carried on. However, this effect is only significant for the move from the first to the second stage (model 4, table 10). Non-compliance cases of states with many domestic veto players, such as Germany and Belgium, are more likely to be referred to the ECJ than in states with more government autonomy, such as Ireland or Luxembourg. After the first infringement stage, the negative effect of veto players on compliance disappears because veto players tend to delay transposition processes, while negotiating compromises, but rarely block compliance altogether.

The last column of table 10 shows the findings of an ordered probit estimation of the effects of the dependent variables on the probability that a specific case reaches one of the stages of the infringement procedure. Therefore, our units of analysis are not the 233 country years anymore, but 5,181 individual infringement cases. As we can see, member states' bureaucratic efficiency makes a difference once again. Non-compliance cases from highly efficient member states, such as Denmark, the Netherlands, or the UK, are far less likely to make it to the later stages than those from their

less efficient European counterparts, such as Greece or Italy. This strongly supports our government capacity hypothesis. Also, there is some support for the other capacity hypothesis: Member states with many veto players find it obviously harder to settle their non-compliance cases at early stages of the infringement procedure, which increases the probability that these cases make it to subsequent stages. Another significant variable is the rule of law. However, other than expected, more support for the rule of law seems to lead to a significantly higher share of cases carried on to subsequent stages. This counterintuitive finding cannot be easily explained. Also the rule of law variable is not significant in any of the other models (cf. models 1-6 in table 10).

Overall, we find evidence for the hypotheses that we derived from the management approach to compliance – more so for the effect of bureaucratic efficiency than that of veto players, but ultimately of both. Especially settlements at early stages of the EU infringement procedure seem to be driven by capacity. At the same time, we also find some support for the positive effect of the power of recalcitrance, but none for the negative one of the power of deterrence. Last, but not least, legitimacy variables do not cause member states to shy away from the ECJ or settle their infringement cases quickly.

### 4.3. Results for Non-compliance over Time

To test the effects of power, capacity, and legitimacy on the duration of non-compliance, we use the same independent variables as before, when we were testing their effects on the prevalence of non-compliance over the stages of the infringement procedure. However, our dependent variable is different. It measures the time it takes a specific instance of non-compliance to be settled in days. This operationalization of the dependent variable makes the use of a different statistical method necessary: survival analysis. Survival models (Cox Proportional Hazard Models) look at how many days individual cases survive until they finally ‘die’. In other words, we analyze how long it takes these cases from Reasoned Opinion to termination. In table 11, we test whether power, capacity, and legitimacy make an early ‘death’ more probable or not.

In this simple regression without interaction effects, the coefficients for political power (Shapley Shubik Index), government capacity, and legitimacy have the expected algebraic signs, but are not significantly different from zero. For capacity, this could be the

case because – in principle – once infringements reach the ECJ, all member states should have the necessary capacities to correctly transpose, implement, and enforce EU law. If member states run into capacity shortcomings, they should theoretically be able to redistribute resources internally and push their bureaucracies to focus their efforts on prioritized cases. In particular, since only a few cases are usually in front of the ECJ at any given time, even poor and bureaucratically inefficient EU member states should be in a position to domestically reallocate financial means or administrative attention and support once it comes to judicial discourses, judgments, and the threat of sanctions. Still, if one peeps at the empirical findings reported in the next subsection, one can clearly see that bureaucratic efficiency plays a significant role in the context of compliance dynamics. In other words, it is too early to write off the importance of government capacity at this point.

Table 11: Duration and Survival

	Duration	
<i>Power:</i>		
GDP	0.0000 -0.0001	
Shapley Shubik Index	-0.0133 -0.0097	
<i>Capacity:</i>		
GDPpc	0.0000 0.0000	
Efficiency	0.0455 -0.0454	
Constraints	-0.3667* -0.1903	
<i>Legitimacy:</i>		
Rule of law	-0.0017 -0.0039	
EU support	-0.002 -0.0017	
Year dummies	yes	
Observations	4,377	
Time at risk	2,905,849	

Regressions with two-tailed t-tests and robust (Huber-White) standard errors with clustering on member states. \*\*\* = p 0.01, \*\* = p < 0.05, \* = p < 0.1.

Only government autonomy seems to have the predicted effect in table 11. That is, veto players prevent a quick settlement of non-compliance cases and cause the longer duration of the non-compliance cases of such member states as Italy, Germany, and Belgium (cf. graph 4). We have seen similar results in models 4 and 7 of table 10. How come that veto players make a difference for the duration and persistence of non-compliance, but has been shown to have no significant effect on its occurrence (Börzel et al. 2007)? One way to interpret this finding is that veto players might find it hard to exert their influence across the board in an anti-compliance way, but can employ their veto powers in the specific and focused cases that make it to the later stages of the official infringement proceedings. By denying their approval to specific new European legislation, they significantly contribute to the dragging on of non-compliance cases.

#### 4.4. Results for the Interaction Effects

We test our integrated hypotheses using the same models estimated in the previous section, but augment them by the hypothesized interaction effects between the power, capacity, government autonomy, and legitimacy variables. What do we find?

When we take a look at the effects of power, capacity, and legitimacy on the relative number of infringements at the later stages of the infringement procedure in table 12, models 1-9, we find strong and consistent support for our power of recalcitrance and government capacity hypotheses, but only mixed or next to no support for the two legitimacy hypotheses. At the ECJ referral stage, Article 226 ECT, the ECJ ruling stage, and the second ECJ referral stage, Article 228 ECT, voting power in the Council of Minister is significantly and positively correlated with the relative number of non-compliance cases (cf. models 1, 2, 4, 5, 6, and 7 in table 12), while bureaucratic efficiency has the reverse effect, i.e., member states with better bureaucracies have fewer infringements at all stages of the infringement procedure (cf. models 1, 3, 4, 6, 7, and 9 in table 12). However, only at the first ECJ referral stage, the hypothesized interaction effect between power and bureaucratic efficiency is supported, i.e., increasing government capacity reduces the positive effect of the power of recalcitrance on the number of cases at each stage. For powerful states with high bureaucratic efficiency, such as the UK, the power of recalcitrance matters less. Due to their high government capacity, they face lower compliance costs in general and, therefore, feel the urge to employ their political power less often. However, if compliance costs are relatively high

for individual cases, states are more inclined to make use of their power of recalci-  
trance and hesitate to settle them early, regardless of their bureaucratic capacities.

Table 12: Integrated Capacity, Power, Legitimacy, and Infringements

Models:	(1)	(2)	(3)	(4)
	ECJ Referrals (Art. 226)	ECJ Referrals (Art. 226)	ECJ Referrals (Art. 226)	ECJ Rulings (Art. 226)
<i>Power:</i>				
GDP	0.0000 0.0000	0.0000 0.0000		0.0000 0.0000
Shapley Shubik Index	0.0127*** -0.0034	0.0183*** -0.0045		0.0057* -0.003
<i>Capacity:</i>				
GDPpc	0.0000 0.0000		0.0000 0.0000	0.0000 0.0000
Efficiency	-0.1023*** -0.011		-0.1761*** 0.0521	-0.0381*** -0.007
Constraints	0.0772 -0.109		-0.0453 0.1340	0.0594 -0.0741
<i>Legitimacy:</i>				
Rule of law		-0.0058** -0.0024	0.0081 0.0051	
EU support		0.0026** -0.0012	-0.0009 0.0015	
<i>Interaction Effects:</i>				
SS Index * Efficiency	-0.0043** -0.0018			-0.0023 -0.0015
SS Index * Rule of law		0.0004 -0.0005		
SS Index * EU support		0.0005* -0.0003		

Const. * Rule of law			0.0133	
			0.0147	
Const. * EU support			0.0055	
			0.0032	
Constant	0.0147	0.0455	0.0054	0.0368
	-0.0429	-0.0474	0.0395	-0.0235
Year dummies	yes	yes	yes	yes
Observations	233	233	233	233
Adjusted R-squared	0.44	0.39	0.35	0.26

Regressions with two-tailed t-tests and robust (Huber-White) standard errors with clustering on member states. \*\*\* =  $p < 0.01$ , \*\* =  $p < 0.05$ , \* =  $p < 0.1$ .

The coefficients for the support of the European Union turn out to be only significant when we do not control for government capacity (cf. models 1, 5, and 8 versus 3, 6, and 9 in table 12). Also, they have all the wrong algebraic sign. While our hypotheses ask for a non-compliance reducing effect of support, we find an increasing one. The counter-intuitive finding and the lack of robustness can be explained by a strong direct and negative relation between the covariates capacity and legitimacy, which leads to the positive, albeit spurious correlation between EU support and non-compliance that we observe if we do not control for bureaucratic efficiency. The literature has found that support for the EU and the rule of law, respectively, are directly linked to a lack of state capacity. Citizens of states with weak capacities show low support for the rule of law since domestic legislation is hardly enforced (Putnam 1993; Levi 1998; Tyler 1998). They turn to the EU as an institution that may be more effective in providing public goods (Lampinen/Uusikylä 1998; Sánchez-Cuenca 2000). As a consequence, those member states most supportive of the EU can be among the worst compliers. Even if the EU produces rules for the provision of public goods, these member states still lack the capacity to effectively implement them on the ground. This finding is corroborated by IR scholars, who argue that states have an incentive to delegate authority to international institutions to achieve policy outcomes that cannot be realized at the domestic level due to powerful veto players or lacking resources (Keohane/Nye 1977; Ruggie 1983; Keohane 1984; Putnam 1988; Simmons/Martin 1998; Simmons 2002). In essence, if government capacity and EU support measure the same underlying concept, the coefficients of public support for the EU and the significant and positive interaction effects between the Shapley Shubik Index and support (cf. models 2, 5, and 8 in graph

12) actually give additional support to our argument that power and capacity are inter-related with respect to the occurrence and continuation – across stages and time – of non-compliance.

Overall, models 1-12 in table 12 clearly point to the importance of power and capacity at all stages of the official infringement proceedings. On average, member states with many votes in the Council and inefficient bureaucracies at home feature significantly more Reasoned Opinions, ECJ Referrals (Article 226 and 228 ECT), as well as ECJ Rulings. These findings are extremely robust. At the same time, we find only mixed evidence for an influence of legitimacy on non compliance. The empirical findings for the effects of public support for the EU and its institutions as well as the rule of law are counterintuitive and weak at best.

Table 12: Integrated Capacity, Power, Legitimacy, and Infringements (continued)

Models:	(5)	(6)	(7)	(8)
	ECJ Rulings (Art. 226)	ECJ Rulings (Art. 226)	ECJ Referrals (Art. 228)	ECJ Referrals (Art. 228)
<i>Power:</i>				
GDP	0.0000 0.0000		0.0000 0.0000	0.0000 0.0000
Shapley Shubik Index	0.0085*** -0.0028		0.0010* -0.0005	0.0011* -0.0005
<i>Capacity:</i>				
GDPpc		0.0000 0.0000	0.0000 0.0000	
Efficiency		-0.0766** 0.0290	-0.0067*** -0.0015	
Constraints		-0.0200 0.0879	0.0436* -0.0232	
<i>Legitimacy:</i>				
Rule of law	-0.0018 -0.0013	0.0043 0.0030		-0.0002 -0.0003
EU support	0.0012* -0.0006	-0.0004 0.0006		0.0003** -0.0001

<i>Interaction Effects:</i>				
SS Index * Efficiency			-0.0001	
			-0.0003	
SS Index * Rule of law	0.0003			0.0001
	-0.0003			-0.0001
SS Index * EU support	0.0003**			0.0001***
	-0.0001			0.0000
Const. * Rule of law		0.0044		
		0.0088		
Const. * EU support		0.0018		
		0.0029		
Constant	0.0467	0.0296	-0.005	-0.0036
	-0.0268	0.0220	-0.0036	-0.0037
Year dummies	yes	yes	yes	yes
Observations	233	233	233	233
Adjusted R-squared	0.24	0.17	0.12	0.12

Table 12: Integrated Capacity, Power, Legitimacy, and Infringements (continued)

Models:	(9)	(10)	(11)	(12)
	ECJ Refer- rals (Art. 228)	Make it to ECJ Refer- rals (Art. 226)	Make it to ECJ Refer- rals (Art. 226)	Make it to ECJ Refer- rals (Art. 226)
<i>Power:</i>				
GDP		-0.0009	-0.0003	
		-0.0015	-0.0034	
Shapley Shubik Index		0.5756*	0.5502	
		-0.3197	-0.4144	
<i>Capacity:</i>				
GDPpc	0.0000	0.0004*		0.0005*
	0.0000	-0.0002		0.0002
Efficiency	-0.0115*	-7.5189***		-11.5311***
	0.0061	-0.8769		3.4727
Constraints	0.0207	16.6171**		10.2234
	0.0240	-7.6184		9.5474



<i>Legitimacy:</i>				
Rule of law	0.0007 0.0006		-0.4118 -0.247	0.4078 0.3102
EU support	0.0001 0.0002		0.1858 -0.1248	-0.0754 0.1235
<i>Interaction Effects:</i>				
SS Index * Efficiency		0.0201 -0.1553		
SS Index * Rule of law			-0.0103 -0.0404	
SS Index * EU support			0.0083 -0.0213	
Const. * Rule of law	-0.0012 0.0023			1.0410 0.8232
Const. * EU support	-0.0001 0.0007			0.4181 0.5215
Constant	-0.0056 0.0048	23.6211*** -7.3551	26.7154*** -8.0448	22.8982*** 6.4262
Year dummies	yes	yes	yes	yes
Observations	233	233	233	233
Adjusted R-squared	0.10	0.15	0.10	0.15

Now, if we shift our attention to the second operationalization of our second dependent variable, i.e., the percentage of infringements that are passed on to subsequent stages (models 10-18 in table 12), we find relatively strong support for separate effects of bureaucratic efficiency, but also some for government autonomy, and the power of recalcitrance – especially in the models 10, 12, 16, and 18 of table 12. This is in line with the empirical finding that states with high capacities and low power, such as Denmark, tend to settle cases at earlier stages, while powerful states with limited capacities, such as Italy, tend to carry cases to later stages of the EU infringement procedure. However, there is no indication for a significant and negative power-capacity interaction effect. Also, none of the other hypothesized interaction effects is supported by the empirical evidence in models 10-18 of table 12.

Model 17 of table 12 seems to lend additional support to the recalcitrance hypothesis. In this case, economic power correlates positively with the percentage of cases that are carried on to the next stage. However, this finding is not robust. The same holds true

for the somewhat counter intuitive finding for GDP per capita, which – as an indicator for capacity in terms of financial resources – points in the wrong direction in two of the models (cf. models 10 and 12) of table 12. Similarly, support for European integration is significant in only one single model. As before, the coefficient does not have the hypothesized sign, but rather supports our argument about the link between capacity and support. Overall, it becomes clear that as we move to the later stages of the infringement procedure, all our models become less stable, which is at least partly due to technical reasons, i.e., the reduction of variation on the dependent variable from stage to stage, which, in essence, makes non-compliance less predictable. Therefore, it is not too surprising that none of our interaction terms turns out to be significant in the hypothesized way.

Table 12: Integrated Capacity, Power, Legitimacy, and Infringements (continued)

Models:	(13)	(14)	(15)	(16)
	Make it to ECJ Rulings (Art. 226)	Make it to ECJ Rulings (Art. 226)	Make it to ECJ Rulings (Art. 226)	Make it to ECJ Refer- rals (Art. 228)
<i>Power:</i>				
GDP	-0.0002 -0.0022	-0.0005 -0.0029		0.0007*** -0.0002
Shapley Shubik Index	0.3543 -0.3668	0.3846 -0.4754		0.0559 -0.0381
<i>Capacity:</i>				
GDPpc	0.0000 -0.0001		0.0001 0.0002	0.0000 0.0000
Efficiency	-0.2331 -0.6953		-3.4350 2.2784	-0.6878*** -0.1106
Constraints	14.1372 -8.5129		8.3804 9.1532	5.1792* -2.7272
<i>Legitimacy:</i>				
Rule of law		0.0272 -0.1608	0.3533 0.2443	
EU support		0.0481 -0.061	-0.0389 0.0620	

<i>Interaction Effects:</i>				
SS Index * Efficiency	-0.2107			0.0509*
	-0.1404			-0.0266
SS Index * Rule of law		-0.027		
		-0.034		
SS Index * EU support		0.0028		
		-0.0193		
Const. * Rule of law			0.4539	
			0.9219	
Const. * EU support			-0.2013	
			0.5038	
Constant	18.7966**	19.2334**	18.1748**	-0.3855
	-6.6061	-6.8635	6.3377	-0.2213
Year dummies	yes	yes	yes	yes
Observations	233	233	233	233
Adjusted R-squared	0.02	0.01	0.00	0.12

Table 12: Integrated Capacity, Power, Legitimacy, and Infringements (continued)

Models:	(17)	(18)	(19)	(20)
	Make it to ECJ Referrals (Art. 228)	Make it to ECJ Referrals (Art. 228)	Number of Stages	Number of Stages
<i>Power:</i>				
GDP	0.0004		0.0001***	0.0001
	-0.0004		0.0000	0.0001
Shapley Shubik Index	0.0588		0.0038	0.0043
	-0.0657		0.0025	0.0123
<i>Capacity:</i>				
GDPpc		0.0000	0.0000***	
		0.0000	0.0000	
Efficiency		-0.8912*	-0.2282***	
		0.4710	0.0137	
Constraints		1.7765	0.4937***	
		2.7611	0.0154	

<i>Legitimacy:</i>				
Rule of law	-0.0261	0.0375		-0.0056
	-0.0257	0.0486		0.0070
EU support	0.0322***	0.0122		0.0083**
	-0.01	0.0142		0.0034
<i>Interaction Effects:</i>				
SSI * Efficiency			0.0006	
			0.0022	
SSI * Rule of law	0.0044			-0.0004
	-0.0054			0.0010
SSI * EU support	0.0039**			0.0001
	-0.0013			0.0004
Const. * Rule of law		-0.4023		
		0.2603		
Const. * EU support		0.0123		
		0.0987		
Constant	-0.1822	-0.4589		
	-0.2812	0.4019		
Cut point 1			6.1634***	0.4644*
			0.0093	0.2627
Cut point 2			6.7003***	0.9988***
			0.0068	0.2634
Cut point 3			7.7037***	1.9988***
			0.0054	0.2858
Year dummies	yes	yes	yes	yes
Observations	233	233	5,181	5,181
Adjusted R-squared	0.10	0.10		

Table 12: Integrated Capacity, Power, Legitimacy, and Infringements (continued)

Models:	(21)	(22)	(23)	(24)
	Number of Stages	Duration	Duration	Duration
<i>Power:</i>				
GDP		-0.0000 0.0001	-0.0000 0.0001	
Shapley Shubik Index		-0.0214*** 0.0080	-0.0113 0.0112	
<i>Capacity:</i>				
GDPpc	0.0000** 0.0000	-0.0000 0.0000		-0.0000* 0.0000
Efficiency	-0.2778*** 0.0726	0.0546*** 0.0180		0.1007 0.0713
Constraints	0.2712 0.2341	-0.3853* 0.2149		0.0209 0.1813
<i>Legitimacy:</i>				
Rule of law	0.0111 0.0072		-0.0013 0.0036	-0.0071 0.0060
EU support	0.0003 0.0025		-0.0037* 0.0020	-0.0021 0.0036
<i>Interaction Effects:</i>				
SSI * Efficiency		-0.0044 0.0048		
SSI * Rule of law			0.0003 0.0009	
SSI * EU support			-0.0002 0.0002	
Const. * Rule of law	0.0288 0.0338			0.0271 0.0250
Const. * EU support	0.0157 0.0239			-0.0048 0.0169

Cut point 1	0.6755*** 0.2106			
Cut point 2	1.2124*** 0.2171			
Cut point 3	2.2148*** 0.2374			
Year dummies	yes	yes	yes	yes
Observations	5,181	4,377	4,377	4,377
Time at risk		2,905,849	2,905,849	2,905,849

Models 19-21 of table 12 turn our attention to the third and final operationalization of our first dependent variable. Do power, capacity, and legitimacy determine at which stage individual infringement cases are settled? It is obvious that government capacity and, to a lesser extent, government autonomy matter. Infringements, which are committed by member states with efficient bureaucracies and few veto players, are settled at earlier stages of the infringement procedure. By contrast, states with inefficient bureaucracies and many veto players, such as Belgium and Italy, carry many cases on to later stages of the infringement procedure (cf. graph 2). However, our empirical findings do not support the idea of interactive effects – neither between power and capacity, nor of the any of the other hypothesized combinations.

Last, but not least, we analyze the predictive quality of our theoretical models for the duration of non-compliance (cf. models 22-24 in table 12). We find some support for the power of deterrence and recalcitrance and the capacity hypotheses. Infringements take longer for more powerful states, while cases are quickly settled for states with high capacities. Again, the findings for support of the EU and the rule of law do not support the legitimacy hypotheses. More support for the EU seems even to increase the amount of time it takes before cases can be resolved (cf. model 23 in table 12). While this finding is counter intuitive, it fits in very well with the findings of models 2, 5, 8, 17, and 20 in table 12, which all highlight that support for European integration goes hand in hand with later settlements. As argued above, this can be explained by the fact that citizens in states with weak government capacities tend to shift their support to the EU level, so that these states have high EU support rates, but, at the same time, lack the capacities to transpose, implement, apply, and enforce European law, which brings about the long duration of non-compliance. Finally, all our interactive hypotheses have to be rejected. At least for the duration of non-compliance, there is no significant inte-

reaction effect between power and capacity, power and legitimacy, or government autonomy and legitimacy.

## 5. Conclusion

Why do some member states shy away from conflict with the European Commission while others do not even bother to comply with orders of the ECJ after being convicted twice – once for infringing on EU law (article 226 ECT) and the second time for not concurring with the court's first judgment (article 228 ECT)? We inquired to what extent power, capacity, and legitimacy approaches to norm violations and compliance, which explain a country's number of prosecuted violations at the first formal stage of the infringement proceedings, can also account for the number of court referrals and judgments. Are non-compliance settlement dynamics guided by the same set of variables as the occurrence of norm violations? We analyzed whether power, capacity and legitimacy influence why some infringement proceedings are settled faster and at an earlier stage than others. The paper proceeded in two major steps. First, we developed separate and integrated hypotheses on the effects of power, capacity, and legitimacy on the time and the number of stages of the EU infringement procedure it takes to settle infringements and restore compliance with European law. Second, we extensively tested these hypotheses with quantitative methods.

Our findings are very much in line with the enforcement and management approaches' predictions on the effect of power of recalcitrance and, especially, government capacity. The analyses clearly show that high bureaucratic efficiency and, to a lesser extent, a low number of domestic veto players help member states to avoid and overcome involuntary forms of non-compliance. At the same time, the power of recalcitrance can enable member states to sit out long and escalating infringement proceedings. While the combined power and capacity model seems strong and both capacity and power have their significant effects on non-compliance across time and the stages of the infringement procedure, the explanatory power of our model declines somewhat the further we move towards the end of the EU infringement procedure.

What about our other hypotheses beyond capacity and power of recalcitrance? While the power of recalcitrance is an important predictor for compliance settlement dynam-

ics, the power of deterrence cannot explain why some states tend to settle cases early – like Portugal and the UK – while others wait until the later stages (e.g. Italy and Belgium). Legitimacy does not crucially influence whether states shy away from the ECJ or not. While the support for the rule of law tends to have the correct, positively algebraic sign, it is not significant. By contrast, the support for the EU sometimes seem to have a significant influence, but points into another direction than expected by our hypothesis. Apparently, high support for the EU correlates with later rather than early settlements. This mirrors the finding for the occurrence of non-compliance. There, we convincingly showed that the counter intuitive link between infringements and support for Europe is spurious (cf. Börzel et al. 2007).

Coming back to our initial question of why some member states tend to shy away from conflict with the Commission, while others can only be forced into compliance by ECJ judgments and the threat of sanctions, the answer is simple: states with efficient bureaucracies and few constraints on government autonomy can more easily overcome involuntary forms of non-compliance and tend to settle cases at early stages. At the same time, states with higher shares of power can afford to be recalcitrant, carry cases to the ECJ, and risk adverse ECJ judgments or even Article 228 proceedings. Therefore, states combining high capacities with low power, such as Denmark and the Netherlands, are compliance leaders across the stages of the infringement procedure. Conversely, states that lack capacities, while being politically relevant in the EU, are compliance laggards across the EU infringement procedures.

Do some member states give in quickly while others inhibit the effectiveness of European law for a much longer time? Again, the answer is that capacity and the power of recalcitrance are crucial predictors (cf. especially model 22 in table 12). However, if we take an even closer look at the duration of non-compliance, we can also see that, besides capacity and the power of recalcitrance, the power of deterrence becomes important. The more powerful member states are, the longer is the average overall duration of the proceeding and the longer it takes until cases are resolved. This is not only in line with recalcitrance, but also with the power of deterrence explanation. A deterred European Commission refrains from pressing ahead with legal proceedings thereby prolonging the duration of non-compliance. In essence, restoring compliance takes longer for more powerful member states. At the same time, member states with high government autonomy and efficient bureaucracies settle their cases faster. Therefore,



the slowest states are powerful and have limited capacities, and member states, which combine low political weight with high capacities, such as Portugal or the states that joined the EU in 1995, manage to keep their infringement proceedings relatively short.

Overall, we do not find conclusive support for our integrated, interactive hypotheses. While power and capacity matter individually for the duration of non-compliance and number of stage it takes for infringements to be resolved, they hardly affect each other in their relations to our two dependent variables. Similarly, none of the other tested interaction effects of power and legitimacy and government autonomy and legitimacy produced any robust results. On the one hand, this speaks for a straight forward model to explain variation on the dependent variables. On the other hand, our findings and the non-stellar fit of the simple power and capacity model also show that we have to include non-country related factors in future research. These factors should play an important role with respect to the time and the number of stages it takes to settle specific cases of non-compliance. While preliminary tests with policy effects clearly indicate that policy matters, future research still has to pinpoint and specify which particular policy-related factors are at work as fixed policy effects can only statistically 'explain' parts of the overall variance, but cannot provide us with substantial answers. It remains to be analyzed which characteristics are responsible for differences between policies and policy sectors. For now, we hypothesize that cross-policy variance is due to the distributional implications of different policies. These can vary with respect to the scope and reach or the market making (negative integration) and market shaping (positive integration) nature of European legislation (cf. Majone 1993; Zürn 1997; Scharpf 2002). Also, policies differ in their respective compliance costs and benefits for a state, and the issue salience of policies can vary within a state, e.g. fishery-related norms may matter less than environmental ones in Austria, but more in Spain. Therefore, future research needs to refine our existing hypotheses that primarily focus on member states, their power and capacity. Besides policy factors, these new hypotheses could also account for the characteristics of individual legal acts (e.g. degree of precision or regulatory scope) and the types of violation (e.g. delayed, incomplete, or incorrect legal transposition).

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