

Assessing Competing Explanations for Compliance and Non-Compliance with European Union Policies

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The last decade has seen an explosion in Europeanization research. However, this concept has not been applied to compliance directly. This paper examines Europeanization and the goodness of fit hypotheses in light of the focus in the international regulatory regimes literature on political decisions not to comply versus management barriers faced in implementing European Union policies. The dataset spans nearly 40 years of EU law infringements and crosses national borders and policy areas.

The past decade has seen the emergence of a new agenda in European Union studies. While in the past, the treaty making process and policy bargaining were the focus of much research, many authors now focus on the output of the EU. The primary question many are asking is whether EU membership changes patterns of behavior among elites and the public in Europe – in other words, we are now asking whether EU membership has caused “Europeanization”. While the definition of “Europeanization” remains somewhat contested, the sheer number of research projects reliant upon this concept has exploded since the mid-1990s. Primarily, academics have conceptualized Europeanization as the adaptation of governmental structures and actors at the national level as a reaction to policies made at the European level. Scholars now examine changes at the member-state level that can be traced to integration (see, for example, Graziano and Vink 2007; Risse, Green Cowles, and Caporaso 2001).

This concept has been applied tangentially to compliance with those same EU policies. While focused on whether EU policies change national states, we can also use this concept of adaptation and the “goodness of fit,” the degree to which EU policy suits national norms and institutions, to examine the differential success of states in complying with policy. Rather than viewing Europeanization as a result of EU policy, we can examine Europeanization as a causal factor in compliance with EU policies. The European Union has neither the budgetary nor bureaucratic capability to directly implement its own laws; as an international organization, it must therefore depend on member-states to implement. Nonetheless, officials within the member-states often take actions (or fail to take them) which cause the member-state to fail to comply with EU policy.

This paper uses the concepts of compliance and implementation almost interchangeably, due to the sources of theory I utilize. Treib (2008, 4) suggests that

implementation has grown out of domestic politics, and “...refers to ‘what happens after a bill becomes a law’”. Compliance, on the other hand, is a concept that “...refers to ‘a state of conformity or identity between actors’ behavior and a specified rule’” (Treib 2008, 4). He further argues that “[i]rrespective of these semantic differences, most compliance and implementation research is interested in both the process of how a given norm is being put in practice and in the outcome in terms of rule conformity” (Treib 2008, 4). This definition for both concepts is the one used herein.

This paper seeks to identify and analyze those factors that influence the level of EU member-state compliance or non-compliance with EU policy. First, I use the framework of international regulatory regimes literature and apply Europeanization and the goodness of fit ideas that arise from that literature within regime literature. Second, I turn to the hypotheses on compliance at the European level. Third, the paper examines the European Union’s compliance regime, the difficulty of measuring compliance, and the creation of the dependent variable dataset. Based on theory and case study evidence, primary predictors of non-compliance should be state bargaining power and economic importance in creating policies which fit the state’s own interests, and institutional learning as an indication of Europeanization. Finally, after a discussion of the operationalization of the predictors, the paper presents the results of the tests of the predictors on EU policy compliance at the EU level, and discusses the power of the “Europeanization” agenda in creating an understanding of compliance.

Theorizing EU Policy Compliance

Within EU compliance studies, theorizing is varied and contradictory (see Mastenbroek 2005 for a review of the abundant theoretic developments in compliance studies, and for a list of variables that authors have tested), and methodology is both quantitative and qualitative (see Falkner et al. for case studies of particular policies). This paper follows Börzel et al. (2007) in attempting to quantitatively explain EU compliance using international regulatory regimes theory (Chayes and Chayes, 1995; Downs, Rocke and Barsoom, 1986), but in addition, I add to their approach an heuristic that is designed to demonstrate variation in compliance at multiple levels. Following the finding from Mbaye (2001) that the EU’s multiple levels of authority impact compliance, I present an orthogonal theoretical framework that is designed to facilitate the categorization of the many hypotheses discussed by Mastenbroek 2005, and indeed, to make clear the relationship between multi-level governance and regulatory regime theory (see Figure 1). Compliance in the European Union can be understood, using this multidimensional model of compliance, as both a problem of the “top-down” and the “bottom up”, to borrow from American federalism literature; this paper is concerned

with compliance at the upper levels, asking whether regulatory regime theory is able to explain compliance at the supranational EU level.

Figure 1: Dimensions of Approaches to EU Compliance Politics vs. Management

<i>Top-down Political Enforcement</i>	<i>Top-down management</i>	
<ul style="list-style-type: none"> • Enforcement in International Regulatory Regimes literature • Limiting Shirking • State preferences • Bargaining power in the Council 	<ul style="list-style-type: none"> • Management approaches in International Regulatory Regimes literature • Commission management 	
<i>Bottom-up Political enforcement</i>	<i>Bottom-up management</i>	Top-down vs. Bottom-up
<ul style="list-style-type: none"> • Horizontally fragmented authority • Regional political decisions (MLG) • Bureaucratic choices • Veto players • Coalitional politics • Public Opinion 	<ul style="list-style-type: none"> • Local elite socialization • Regional autonomous management • State capacity • Poor communication • Bureaucratic inefficiency 	

According to international regulatory regimes literature, failures to comply, or infringements, may be the outcome of conscious *political* decisions. Bargaining strategy, the lack of bargaining power, and enforcement may affect the observed level of non-compliance. In other words, a country's power, strength, and importance affect the kinds of choices that the government may make. In addition, there are *management* factors at the highest level that affect compliance. Chayes and Chayes (1993) contend that states often fail to fulfill their international obligations for reasons other than self interest. They argue that primarily, ambiguity and state capacity are at the heart of implementation failure. This multi-pronged approach demonstrates that top-down approaches sometimes contain both political and managerial dimensions.

The Political Enforcement Approach. This paper begins from the premise that the EU is like many international regimes, and thus faces many of the problems of compliance faced by those regimes. The international regulatory regimes literature provides a framework within which the Europeanization hypotheses can be tested. First, proponents of the political enforcement approach suggest that the best method of ensuring compliance is to create coercive procedures that limit state choice and make compliance an attractive option (for examples see Axelrod and Keohane 1986; Yarbrough and Yarbrough 1992; and Downs, Rocke, and Barsoom 1996). State

officials are faced with a choice: to comply with an international law or not to comply. State officials are more likely to comply with a policy they themselves created, which is closer to their own ideal points.

The political hypotheses presented here revolve around power and influence at the bargaining table. James Fearon (1998) argues that non-compliance should be viewed as a state choice. He further contends that studies of compliance ought to begin with the negotiation of the agreement that is to be enforced. Bargaining is the key to understanding implementation. States that are able to negotiate an agreement close to their own ideal points will implement that agreement, whereas states that fail to win an arrangement close to their own ideal points will not comply as well or as often. Fearon's argument suggests that state executive ability to bargain effectively in the Council of Ministers¹ should be reflected in the number of infringements that a state incurs. Hence Germany, with a larger relative number of votes in the Council, should be able to achieve policy outcomes that it prefers more often than Luxembourg, with a much smaller relative number of votes. The small states literature reinforces this idea as well: small states must behave in coalition building, and they must choose "smart" policies that are particularly significant. They cannot influence all policies (see, for example, Arter's explanation of Finland's strategy and influence on the Northern Dimension Initiative, 2000).

Certainly it is the case that policy is easier to implement if the policy is already very close to national standards. For example, Risse, Green Cowles, and Caporaso identify "goodness of fit" as a key factor in examining the ultimate effectiveness of Europeanization within member-states (2001). The regulatory regimes literature suggests that the degree of "fit" between a policy and national norms and institutions is determined by the bargaining process that created those policies; therefore, it is to be expected that powerful countries would be more likely to craft such policies. These states are not faced with Europeanization pressures, and can implement policies with less effort. States will comply more often when they are able to negotiate bargains that are close to their own ideal points

H₁: States with more bargaining power in the Council of Ministers (more weighted votes in the Council) will have a lower level of non-compliance than states with less power (fewer weighted votes in the Council).

Both the number of votes in the Council and the relative importance of countries matter in bargaining. Aguilar-Fernandez (1994) argues that Spain is peripheral both

¹ The Council of Ministers, or Council, formally denoted the Council of the European Union, is the more powerful of the decision making bodies that make up the legislative branch of the European Union. The other, the European Parliament, represents the people of Europe. However, historically the parliament has not been powerful at all. The Council, as the more powerful branch, represents national state governments and, in the past, has had all legislative power at its disposal. Inter-state bargaining goes on primarily in the Council of Ministers. The Council consists of one minister for each state, but states have different numbers of votes based somewhat loosely on population.

in terms of wealth and power in the EU. Aguilar-Fernandez' argument indicates that countries with low comparative economic importance (i.e., highly peripheral) will infringe more frequently because they are not able to influence policy-making. Influential countries will not infract as often as states that are secondary. Again, Germany and France, with about 20 percent and 15 percent of total intra-EU trade respectively, would be more able to influence policy. The other members, well aware of just how central those countries and their economies are, give intangible respect to the wishes and needs of those countries' governments. This stands in contrast to Austria • contributing only about 3 percent of EU trade, Ireland, with only about 2 percent, or Luxembourg, only encompassing about one half of one percent. These countries, while important, are certainly not central to the EU market, and would, therefore, find themselves at a disadvantage in terms of influencing policy. Because they will be able to positively influence the types and content of policies produced by the European Union, states that are more important to the economy will infringe less often.

H₂: States that are more important economically (in terms of their relative proportion of intra-EU trade) will have a lower level of non-compliance than states with less economic importance (proportionally lower intra-EU trade).

The Management Approach. Management theory tends to be pitted as an alternative hypothesis to enforcement. Management theorists see non-compliance as a problem of limited state capacity and ambiguity, rather than deliberate choice. By and large, states comply because it is the norm to do so. When compliance fails it is not a deliberate state choice: rather, states fail to abide by agreements because they do not have the capacity to conform. Management proponents contend that compliance can be better achieved through cooperative problem solving and capacity building (for examples see Young 1992, Mitchell 1994, Chayes and Chayes 1995, and Keohane and Levy 1996).

The management predictors presented here are consciously cast at the EU level, rather than national or local, so as to be comparable to the bargaining power hypotheses above. Compliance is structured here as a problem of management by elites to ensure implementation. In the EU context, it may be that the European Commission² affects the number of infringements for each member-state. An activist Commission • one whose leader is a more dynamic, proactive, and high profile

² The European Commission, or Commission, formally denoted the Commission of the European Communities, is the executive branch of the European Union. The Commission is appointed by the member-states, has the power of agenda setting and legislative proposal, and is responsible for enforcing laws. The Commission runs the EU on a day to day basis, and oversees the bureaucracy. Finally, as "guardian of the treaties", it is the responsibility of the Commission to perform oversight functions to make sure member-state governments are fulfilling their obligations.

figure• may bring more cases before the European Court of Justice³ (ECJ), whereas a passive Commission• one whose leader prefers not to “rock the boat”• may bring fewer cases. Hard data on Commission activism is not available at this time, but if the Commission style is influencing the rate of noncompliance, we should see temporal spikes and troughs in the level of non-compliance across states when the Commission leadership changes. However, Maria Mendrinou (1996, 3) argues, persuasively, that the Commission’s enforcement actions in fact have *not* been related to the style or nature of the Commission. Mendrinou suggests that *as time passes*, more non-compliance is found across member-states. Indeed, one might assume this would be the case, simply due to the ever-growing size of the *acquis*⁴. Due to the growing amount of legislation that must be enforced and growing detection of non-compliance by the Commission, member-states will be more non-compliant over time. Hypotheses three will be found null if activist Commissions are responsible for non-compliance.

H₃: As time passes, more noncompliance will be found across all states.

Institutional learning forms a fundamental part of national adaptation to European norms, and hence shapes non-compliance. Paraskevopoulos (1998, 2001) argues that elite socialization to European models of governance helps explain the relative success of structural fund programs⁵. Structural funds are better implemented when elites understand the prevailing norms at the European level, including policy-making and policy implementation norms. This is a fundamental tenet of Europeanization. It is elites who must reorient themselves to a “European” way of behaving. Therefore, the success or failure to implement EU policies at large should relate to the learning process of elites. Managers at the elite, Commission level and managers in both national and subnational governments may have to learn to work within the European context. Elites in states that have been in the European Union for a longer period of time will be better able to interpret and implement policy, working within Commission expectations with which they are already familiar. These elites have had more time to adapt and they have faced longer pressures to adapt. The actions of these elites will create fewer compliance problems than elites in newer member-states. States that have been members for a greater length of time will give rise to fewer compliance cases because their elites will have had a greater length of time for Europeanization to take place.

H₄: Officials in states that have been members longer will be better compliers with EU law.

³ The Court of Justice, or Court, formally denoted the Court of Justice of the European Communities, is the highest court in the EU. It has the final word on matters of EU law, in order to ensure equal application of that law across all EU member-states.

⁴ The *acquis*, or *acquis communautaire*, is the total body of EU law accumulated so far.

⁵ Structural funds are allocated by the EU for two related purposes: support for the poorer regions of Europe and support for integrating European infrastructure.

Measuring Infringement and the European Union's Compliance Regime

Testing these hypotheses requires a dataset of compliance or non-compliance. However, this is not particularly easy to create. Counting compliance with any law is a little like trying to count safe car trips. How many months does compliance have to take place before a state is “compliant”? Do all the state actors have to comply, or can one actor ruin it for everyone? These are difficult and subjective questions that can be avoided if non-compliance is measured instead. It is easier• and, indeed, less subjective• to count the number of auto accidents rather than safe trips. Non-compliance is defined herein as a function of whether the Commission has decreed non-compliance to be present, as assessed during the procedure laid out below.

The first step is opening a dossier. The Commission does so when a suspect case comes to its attention. Informal negotiations occur at this point in order to weed out unintentional violations that can arise due to misunderstandings. However, if a state is found to be non-compliant, the Commission then sends a formal letter to the state concerned, informing it of the alleged infringement. This part of the procedure is the ‘administrative’ phase (Fernandez-Martin, 1996). If the issue remains open at the end of the administrative phase, the case is referred to the Court of Justice for the ‘judicial’ phase. According to the European Commission, the overwhelming majority of the cases that come to its attention are resolved before they reach the judicial phase of the enforcement procedure. The data herein measures non-compliance at two stages: reasoned opinions and ECJ data. These are the cases in which the state is facing political realities or management deficits that cannot be easily resolved. This paper uses, first, a count of the number of reasoned opinions the Commission issued for each year and for each country between 1979 and 1999, provided by Tanja Börzel, which can be found at the EUT’s website (<http://www.iue.it/>).

The second set of non-compliance data is an expansion of a dataset used by Mbaye (2001). The dataset is a count of court decisions for each year and for each member (see Mbaye 2001 for a detailed discussion of the creation of the dataset). The data in Mbaye (2001) covered 1972-1993; in this dataset every case in which the ECJ declared that a failure to fulfill treaty obligations from the years 1961 to 2004 was counted. It is thus within the scope of this paper to investigate the possible differences between cases in the administrative phase and the judicial phase. The cases were counted by country and by year of filing of the case, rather than by year of the decision; only cases in which there has been a decision have been included in the dataset. The Commission brought 1,464 cases to the Court of Justice between 1961 and 2004. Of those, the Court found that non-compliance was present in 1,318. The dataset contains all the EU member-states up to 2004 but none thereafter. The lengthy administrative and judicial compliance procedure, combined with the fact

that some court cases can take up to two years from filing to judgment make any data from 2004 forward incomplete at best and misleading at worst. Eastern countries only joined in 2004.

While it can be argued that selection bias is present, it is important to note that data on implementation is very difficult to collect. The Court records indeed produce a skewed picture; however, it is one of the few data sources to which researchers have full access. The Commission may act strategically when selecting cases that are to go before the ECJ• or indeed, which cases will be issued reasoned opinions. In addition, there is evidence to suggest that the Commission tries very hard to treat all cases equally and that it has endeavored, particularly since the 1970s, to depoliticize the process of non-implementation (Tallberg, 1999, Mendrinou, 1996). This study does not and cannot address those underlying biases in the Commission with this dataset. Secondly, it may be that the Court acts strategically in deciding cases of non-compliance. However, the Commission has lost an incredibly small number of cases before the Court.

A summary of the count data by country may be found in Table 1. What is most interesting about the means, apart from the obvious argument that countries are different, is that country means are not perfectly stable relatively• the ranks of

Table 1: Average yearly non-compliance rate in the EU, by member country

Country	<i>Reasoned Opinions Issued by the Commission 1978-1999</i>	<i>Cases Adjudicated By the Court of Justice 1961-2004</i>
Austria	28.75	4.00
Belgium	28.17	5.12
Denmark	4.36	.63
Finland	7.25	1.44
France	31.09	5.06
Germany	21.82	3.39
Greece	35.67	5.55
Ireland	17.82	2.13
Italy	44.68	8.76
Luxembourg	17.45	2.09
Netherlands	12.41	1.67
Portugal	31.21	2.06
Spain	22.64	4.94
Sweden	8.75	1.11
United Kingdom	12.55	2.03

countries move depending upon how they are measured. Therefore, it is necessary to examine both the judicial and the administrative to get a more complete picture of compliance.

Operationalization

Table 2 presents a summary of the top-down non-compliance predictors. The bargaining power in the Council of Ministers is the vote of each member-state in the Council, weighted by the total percentage of the vote a state controls. . This varies across states and time, since the accession of new states changes the number, and thus the proportion, of votes. Comparative economic power is measured as a country's percentage of the total intra-EU trade figures for each year, and the total of all percentages equals 100. It is not the size of the economy that matters; rather, it is the relative importance of each country to the primary focus of the EU• the common market. This varies across states and time.

Table 2: Descriptive Summary Statistics of Top-Down Predictors

<i>Variable</i>	<i>N</i>	<i>Mean</i>	<i>Standard deviation</i>	<i>Minimum</i>	<i>Maximum</i>
<u>Political Approach</u>					
H ₁ :Bargaining power in the Council of Ministers	382	10.61	6.26	2.3	23.53
H ₂ :Comparative economic power	380	10.79	8.46	.14	37.75
<u>Managerial Approach</u>					
H ₃ :Year	382	1982	11	1959	1999
H ₄ :Length of membership	382	17.36	11.53	1	41

N=number of member-state/year combinations in the data.

I test the hypothesis that *as the EU gets older* more non-compliance will be found across member-states by using the year variable as a proxy for passing time. This variable is not the length of time an individual state has been a member of the EU; rather it is the year itself, used to represent the length of time the EU has existed (since the size of the *acquis* is the same for all states each year, irrespective of when that state became an EU member). Finally, length of membership, as it relates to institutional learning, is measured by counting the number of years a state has been a member at the time of the infraction. Some states are much younger members, and some are older; theoretically speaking, whether a state is a young member, an old member, or something in between has no relation to the age of the Union itself. Theoretically speaking, Italy has had nearly 35 years more to get accustomed to the

Union than Spain has had. Therefore, Italy should infringe less often. However, in a given year they are both faced with the same *total amount* of legislation, and this poses the same challenge to both.

Analysis and results

Table 3 presents a correlation matrix of the variables. Bargaining power and economic importance are highly correlated at 0.79; they are tested in alternate models in Tables 4 and 5 and represented by the alternate columns in those tables. The two dependent variables have a cross-national, event-count, time-series structure. A single case is a country-year in both datasets. In addition, countries are only included for the period of time they are members. Therefore, not every country is included in the analysis for the entire period. I use a negative binomial regression to analyze both dependent variables, as the dependent variable is in count form.⁶

Table 3: Correlation Matrix of Top Down Predictors of Non-compliance

	RO Cases	ECJ Cases	Bargaining power in the Council of Ministers	Comparative economic power	Year	Length of membership
Reasoned opinion cases	1.00					
ECJ Cases	.55***	1.00				
Bargaining power in the Council of Ministers	.13**	-.001	1.00			
Comparative economic importance	.07	-.02	.79***	1.00		
Year	.43***	.38***	-.54***	-.40***	1.00	
Length of membership	.33***	.57***	-.19***	.07***	.57***	1.00

*Significant at the $p < .10$ level **Significant at the $p < .05$ level ***Significant at the $p < .01$ level

I have included the lagged dependent variable as a predictor in each model for two related reasons. First, this variable guards against autocorrelation of the dependent variable. As Baker (2007) has found, omitted explanatory variables typically autocorrelated, bias results unless a lagged dependent variable is included in the model. However, it is theoretically preferable to look seriously into the

⁶ OLS is not appropriate for count data. The data are strongly skewed to the right (see figures 1 and 2). Count data often follow a Poisson distribution, so some type of Poisson analysis is usually suitable. In a Poisson distribution, the mean and the variance must be the same. However, the variance for both dependent variables is many times the mean. Therefore, a negative binomial analysis is appropriate.

reasons that the dependent variable is autocorrelated, and to specify those causes in an *a priori* predictor (or several predictors). The reasons that the dependent variables are autocorrelated are to be found in the differences amongst countries. Many differences among countries on a large number of national and local factors may predict compliance• *but those state and local factors are beyond the scope of this paper*, which seeks the causes of non-compliance at the EU level. Therefore, the lagged dependent variable is included because it is a good proxy for the omitted variables. In the extreme, the lagged dependent variable acts as a country dummy for each case. Since the means of countries are significantly different (see Table 1, above), the lagged dependent variable will be highly significant

Table 4: Negative Binomial Regression Models of Implementation Infringement for Compliance in the Administrative Phase ^a

<i>Variables</i>	<u>Reasoned Opinions with Bargaining Power^b</u>	<u>Reasoned Opinions with Economic Importance^b</u>
<u>Political Approach</u>		
H ₁ :Bargaining power in the Council of Ministers	.033* (.018)	•
H ₂ :Comparative economic importance	•	.006 (.010)
<u>Managerial Approach</u>		
H ₃ :Year	.050*** (.010)	.040*** (.011)
H ₄ :Length of membership	.010 (.007)	.009 (.007)
Lagged Dependent Variable	.018*** (.005)	.020*** (.005)
Constant	-97.706*** (21.02)	-78.276*** (22.611)
α^c	.396	.402

*Significant at the p<.10 level **Significant at the p<.05 level ***Significant at the p<.01 level ^a The coefficients presented are the negative binomial estimators. The standard errors are in parentheses. Note that the coefficients presented are not interpreted as in a multiple regression model. b N=241.

^cThe α statistic suggests that the use of the negative binomial model is correct. If zero, the Poisson model would be the accurate model.

Table 4 displays the results of the negative binomial regression models on the administrative phase dependent variable, reasoned opinions. Table 5 displays the results of the negative binomial regression models on the judicial phase dependent variable, court cases. Robust cluster estimation has been used to adjust the standard errors for clustering on countries. Immediately striking is that even with robust clustering in place, many of the predictors are significant. It is important to be very careful in interpreting the results, since a negative binomial regression model is not the same as a multiple regression model.

Table 5: Negative Binomial Regression Models of Implementation Infringement for Compliance in the Judicial Phase^a

<i>Variables</i>	<i>Court Judgments with Bargaining Power^b</i>	<i>Court Judgments with Economic Importance^b</i>
<u>Political Approach</u>		
H ₁ : Bargaining power in the Council of Minister	.051** (.025)	•
H ₂ : Comparative economic importance	•	.006 (.021)
<u>Managerial Approach</u>		
H ₃ : Year	.069*** (.014)	.051** (.022)
H ₄ : Length of membership	.017 (.013)	.017 (.017)
Lagged Dependent Variable	.171*** (.030)	.192*** (.032)
Constant	-138.656*** (27.459)	-102.475** (42.475)
α^c	.598	.638

*Significant at the p<.10 level; **Significant at the p<.05 level; ***Significant at the p<.01 level

^a The coefficients presented are the negative binomial estimators. The standard errors are in parentheses. Note that the coefficients presented are not interpreted as in a multiple regression model.
^b N=326

^c The α statistic suggests that the use of the negative binomial model is correct. If zero, the Poisson model would be the accurate model.

The results for individual predictors each have coefficient values that can be interpreted in approximately the same way as in a multiple regression model. First, however, it is important to note that the predictors hold both significance and direction *across* two different dependent variables measured at two different stages in the compliance procedure of the EU. This is confirmation of the robustness of these predictors.

Political Enforcement Hypotheses Results. Hypothesis 1 relates to bargaining power in the Council. The hypothesis suggests that states with more bargaining power are less likely to commit an act of non-compliance, but models for both dependent variables suggest that the reality is opposite to H₁. Table 4, column one and table 5, column one both demonstrate that bargaining power matters; however, contrary to expectations, more powerful states produce *more* cases of non-compliance. How can we explain this finding?

Perhaps it is the case that the sheer number of relative votes does not matter. Perhaps small countries, like Luxembourg, which only has two votes but is overrepresented in the Council even at that low level, do not really have a chance to influence the vote as much as Germany, with 10 votes• five times as many as Luxembourg and mathematically having five times as much influence. Perhaps Germany has more than five times as much influence Luxembourg, and the mathematical formula in the model is an incorrect way to judge relative bargaining power. However, I doubt this is the case, as substituting a Banzhaf power index does not change the result. A Banzhaf power index estimates the importance of a voter by calculating the probability of casting the swing vote. Calculating the voter's power requires listing all possible winning coalitions, then counting the critical voters. A critical voter is the voter who changes the outcome of the vote. Again, using such an index does not change the results.

While bargaining power may have a significant impact on whether a state government is able to create policy close to its own ideal point, it is more probable that strength of preferences and the ability to broker a coalition around those preferences has more influence on crafting policy. We can see this in the case of the Dutch implementation of the Urban Waste Water Treatment Directive, wherein the strong Dutch interest in the case influenced the final outcome, regardless of the relative number of votes that the Netherlands has in the Council (Kelder 2000). To some extent this is enforced by most of the small state literature. It would be very difficult to specify relative national interests for every state, for every year, and for every policy, and test it quantitatively. Therefore I rely on the *absence* of confirmation of the alternative and the nuanced evidence presented in the case study literature that suggests that state interest, not voting power, determined bargaining in the Council (for examples, see Kelder 2000, Hanf and Soetendorp 1997, and Arter 2000).

An additional alternate hypothesis exists regarding political power. It is the case that all states can *lose* in the Council: no state has the veto. Therefore, governments in larger states, when they have lost on an issue, may be more likely to decide that they are not going to implement the particular directive in question. It certainly seems to be the case that the more powerful states engage in non-compliance more often, and perhaps this is not as odd as it seems. The alternate hypothesis is much more complex. It is certainly more rational for those governments in larger states to consider the option of deciding not to comply more seriously in than do officials in smaller, more dependent states. While this result does provide evidence that the enforcement school's hypothesis does not hold in the EU.

The second hypothesis relates to comparative economic importance, which is not significant. Contrary to H₂, economic importance does not seem to be critical in determining whether a state government has the ability to craft good-fit policies *or* thumb its collective nose at the Commission. While insignificant, the predictor also acts in the wrong direction. This contradicts known case study findings. For example, Aguilar-Fernandez (1994) argues that Spanish difficulty in complying with EU law results from its inability to craft preferred outcomes and influence partners in the Council. Spain's preferred outcomes are not important to the EU as a whole, since its economy is peripheral (Aguilar-Fernandez 1994). It may be that in cases of economic importance, as above, member-state governments feel secure in doing as they please in deciding not to comply. However, in cases like Spain's, relatively low levels of economic importance lead to an inability to get the voice of the member-state heard. In addition, low economic importance is also connected with a generally less active economy and with lower levels of government resources• which may be the real reason states cannot comply. In the end, however, it may be that the strong experience of Spain and one or two other states runs contrary to the general direction of the data, and leads to non-significant results.

Managerial Hypotheses Three and Four: Results. I examine two claims made by the Europeanization/ managerial school regarding compliance. These hypotheses relate to Europeanization of elites• institutional learning• and the passage of time. The results for H₃: year confirm the hypothesis that as time passes, the size of the *acquis* contributes to the non-compliance count for each state. Compliance cases do not rise and fall with the changing Commission outlook on enforcement. There are no peaks and valleys in the data. Rather, there has been a steady increase in the number of cases over time. H₄, the elite learning hypothesis (as measured by the length of membership) presents insignificant results. The literature predicts that elites will learn, over time, how to better comply with the EU. However, according to the model, length of tenure has no impact on non-compliance. In fact, it may be just the opposite• length of tenure leads to more non-compliance as a result of political choices and the growing *acquis*. The implication is clear: neither management approaches to regulatory regime theory nor Europeanization can

explain compliance using length of membership.

Table 6: Estimating the Effects of the Predictors on Infringement in the Administrative and Judicial Phases^a

<i>Variable</i>	<i>Effect on Reasoned Opinions</i>	<i>Effect on Court Judgments</i>
H ₁ : Bargaining power in the Council of Ministers	9.860	1.431
H ₃ : Year	18.810	3.067

^a This table denotes changes in the predicted number of the Commission's Reasoned Opinions and the Court's Judgments for a country and year, when changing the independent variable from its minimum value to its maximum value.

Estimating absolute effects of predictors. It is important for all researchers to take stock of their findings in light of the real world. Table 6 presents the predicted number of the Commission's Reasoned Opinions and the Court's Judgments for a country and year, when changing the independent variable from its minimum value to its maximum value. In this way, it is possible to estimate the impact of the predictor in the real world if we were able to change it from its highest value to its lowest value. In the administrative phase, bargaining power can increase the number of compliance infringements by nearly ten cases per year, while the highest value of year compared with the lowest increases cases by nearly *nineteen cases of noncompliance per year*. In the judicial data, bargaining power increases the expected number of cases by about one and a half cases per year, while the variable year is expected to increase Court non-compliance cases by three per year. These numbers make clear the very real impact of the predictors of non-compliance presented herein.

Conclusions

Several conclusions may be drawn from the research presented herein. International regulatory regimes theory provides a framework for case study evidence of the kinds of factors that are significant to the EU compliance regime. In addition, the international regulatory regimes literature fits very well with some of the primary insights into Europeanization. Secondly, the regulatory regimes literature infighting is counter-productive: *both* political and managerial factors could affect the way that national states implement a policy, but in general *these theories are unable to explain the supranational level compliance problems represented by the data herein*. While these theories are often cast as competitors, neither is capable of explaining the underlying problem of compliance. We must therefore look elsewhere for compliance predictors at the European level. Perhaps

domestic politics theories and the political elements of Europeanization studies would be more productive.

Finally, it is difficult to use the concept of Europeanization to get a grasp on the overall levels of non-compliance. Using a simple conception of the ability to craft ideal policies (bargaining power: H_1 and economic power, H_2) does not explain the pattern of non-compliance. Case study literature suggests that national adaptation to European norms is tempered by a number of mitigating factors, including governmental veto points, national cooperative cultures, institutions like corporatism, distribution of power among national actors, and institutional learning (Risse, Green Cowles, and Caporaso 2001). Most of these cannot be captured by looking only at the European level and actions that take place there, and they are encapsulated instead by the “country-dummy” of the dependent variable. Therefore, relying on negative results for bargaining power suggests that national state bargaining at the EU is far more complex than traditional regulatory regimes literature suggests. Indeed, the ways in which states behave when bargaining on specific issues will depend in large part on the extent to which the EU and the policy issues it addresses have been *politicized* at home.

Politicization of the EU has made it very difficult for the technocrats to get on with the old business of deepening and widening integration and European policy making. Marks and Hooghe (2009) suggest that the EU has entered a phase of “constraining dissensus”. Indeed, they argue that the EU has become politicized, that outcomes at the EU level are the product of domestic political conflict, and that identity politics is critical in that political conflict (Hooghe and Marks, 2009). National governments are no longer operating under the public’s radar, so to speak, and national identities and national interests are being taken up not only by governments but also by national polities. This has made governmental action at the EU level often very constricted in scope. Officials must now act to win public approval by their actions at the EU level; politicization of issues can act to limit Europeanization.

The length of time a state has been in the EU (H_4) also seems to have little impact on the Europeanization of officials, contrary to expectations. Instead, an older EU has a bigger compliance problem than a younger EU (H_3). However, it may be the case that adaptation is sectoral. Case study evidence provides some evidence that in some areas, adaptation is easier, whilst in others, adaptation, Europeanization, and compliance come smack up against national identity, pride, and norms (see for example Graziano and Vink, 2007; Risse, Green Cowles, and Caporaso, 2001). To the extent that an issue is politicized and involves identity, it may be very difficult to adapt and officials may resist all EU encroachment. For example, many of the cases in this study in which Germany was found to be non-compliant are cases revolving around alcohol, and specifically beer. Germany’s brewers have a long history, of

pride in German beer is legendary. Therefore, changes in these laws are made against a background of centuries of tradition and identity. However, in other areas Germany does very well, and officials in those areas do not face the same political pressures to resist EU compliance. Further research, therefore, is needed to unpack many of these country-specific concepts as they relate to compliance.

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