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# DISCUSSION PAPER

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# Law and Order in the European Union: Explaining Variations in Compliance with the European Community Treaty

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# Zusammenfassung

Recht und Ordnung in der Europäischen Union: Eine Erklärung der Unterschiede zwischen Mitgliedstaaten bezüglich der Einhaltung europäischer Normen

Die Einhaltung (compliance) europäischer Normen kann durch die einschlägigen Erklärungsansätze der Enforcement- und Management-Schule nicht hinreichend erklärt werden, weder hinsichtlich der zwischen den Mitgliedsstaaten variierenden Zahl von Normverletzungen noch der Zahl, der durch den Europäischen Gerichtshof geregelter Fälle. Eine Erklärung der hier beschriebenen Muster der Nicht-Einhaltung benötigt zusätzlich eine Analyse der Verfahrensdimension, die den Grad der Autonomie der EU-Kommissare gegenüber ihren eigenen nationalen Parlamente berücksichtigt. Mit Hilfe einer multivariaten Analyse der EG-Vertragsverletzungen zwischen 1978 und 2000 wird untersucht, warum Normeinhaltung durch den Europäischen Gerichtshof in bestimmten Fällen erreicht wurde, in anderen jedoch nicht. Es wird unter anderem gezeigt, dass eine Erhöhung der demokratischen Legitimität europäischen Regierens negative Auswirkungen auf seine Effektivität im Hinblick auf die Einhaltung europäischen Primärrechts hat, das heißt der ratifizierungspflichtigen Verträge bzw. Vertragsänderungen. Die Ergebnisse haben erhebliche Implikationen für das Verständnis des europäischen Integrationsprozesses, gerade angesichts des nach wie vor bestehenden Demokratiedefizits der EU. Bevor den Bürgern nicht eine stärkere Kontrolle der EU Gesetzgebung über das europäische Parlament zugestanden wird und Europäisches Recht damit stärker dem nationalen Recht entspricht, wird eine Mitgliedschaft in der EU im immer stärkeren Maße weniger Privilegien bedeuten aber mehr lästige Rechtspflichten.

**Schlüsselwörter**

gesetzmäßige Einhaltung, demokratisches Defizit, EU-Recht, einheitlicher Binnenmarkt

## Abstract

Law and Order in the European Union: Explaining Variations in Compliance with European Union Law

Neither the enforcement nor the management schools of compliance can explain cross-national variation in the number of violations of European Union law or in the number of cases settled by the European Court of Justice (ECJ). These patterns of non-compliance require the inclusion of the procedural dimension of compliance, which is affected by the degree of autonomy executives have vis-à-vis their national parliaments. Multivariate analysis was applied to a database of violations of the European Community Treaty from 1978 to 2002, to determine why violations may or may not be settled by the ECJ. The results show that increasing the amount of democratic legitimacy in the European governance process can limit its effectiveness in the area of compliance with EU primary legislation, namely, the EC Treaty. This has important implications for understanding the process of European integration, given the continued existence of a democratic deficit in the EU. Unless democratic pathways are created which would allow EU citizens to shape the EU legislative process via their national representatives to the European Parliament such that European law would conflict less with national law, EU membership will increasingly mean fewer privileges and more onerous legal obligations.

#### Keywords

compliance; democratic deficit; EU law; single internal market

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## I. Introduction

The European Union (EU) can challenge democratically approved legislation by targeting national laws and practices as not being in compliance with primary EU legislation, namely, the Treaty of the European Communities (EC Treaty), and associated regulations. Even though changes in these laws were not the original intent or cause for the member states' decisions to cooperate, national governments increasingly face the dilemma of either following the preferences of their constituents and maintaining the status quo, or complying with the demands of EU supranational institutions and fulfilling their supranational obligations. Thus, the governments of the member states face a constant political dilemma. They must either comply with their supranational legal obligations or maintain current national policies that are approved through democratic institutions. This article addresses the question as to how national governments deal with this dilemma across fifteen member states of the European Union.

The contrasting patterns of compliance with the EU's legal rules and obligations serve as an excellent laboratory to determine how this political dilemma is solved comparatively across the EU-15.[1] Looking closer at the cross-national distribution of violations of EU law and the stage at which they are settled, there are clear differences between the reasons why some states violate the EU law more often than others, and the capacity or willingness to settle these violations. Current theories of compliance in the international relations literature cannot readily explain these differences, because the theories operationalize compliance in simple, dichotomous terms. Instead, compliance with any law beyond the nation-state should be conceived as containing a politics of process as well as political conflict over the substance of the violation. The degree to which national executives can deliberate and legislate independently of the influence of national parliaments affects how smoothly this process operates. Using quantitative methods with data covering over 1200 violations of the articles and regulations associated with the Treaty of the European Community, my findings suggest that increased parliamentary involvement in the process of compliance inhibits European governance under certain circumstances. The empirical analysis implies important consequences for the future of governance in the EU. If national governments choose to increase the amount of democratic space available to deliberate and contest the nature of EU governance, they may be jeopardizing the effectiveness of EU governance as well.

## II. The Process of Compliance in the EU

The supranational institutions constituting the EU have increased their power and authority over their member states to an extent that is more than any other global-level institution in any other region of the world. With the exception of judicial affairs and

1 The "EU-15" include: Austria, Belgium, Denmark, Germany, Greece, Finland, France, the Netherlands, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, and the United Kingdom.

foreign and defense policies, Pillars Two and Three of the European Union, respectively, almost no area of national policymaking is immune to interference by supranational European institutions.[2] Unlike many other institutional settings, the European Union now possesses a set of institutions and mechanisms in order to enforce the goals associated with negative integration (Pollack 1997; Tallberg 2002). Thus, it is difficult to dismiss the fact that EU institutions have reconstituted international politics within the region into a new type of polity (Jachtenfuchs and Kohler-Koch 1996; Kohler-Koch 1999; Stone Sweet 1999). As the European Commission addresses issues "behind national borders" that threaten completion of the internal market, the European Court of Justice (ECJ) serves as the final arbiter over any dispute between the Commission and a member state.[3] In addition, suspected conflicts between national and European law are settled through adjudication in national courts under article 234 of the EC Treaty (Alter 2000; Conant 2002). Together with legal integration fostered by cooperative actions by the Commission, the ECJ, and transnational interest groups, the EU is now a case *par exemplar* of an international regime in the "post-national constellation," which is able to intervene in the domestic affairs of its members by targeting national legislation approved by an elected majority, which clashes with EU norms and rules (Zürn 2004).

One must clearly define what is meant here by compliance, especially given its diverse conceptualizations within the EU studies literature.[4] The dependent variable in compliance studies in the EU, whether qualitative or quantitative, ranges from the amount of time necessary to transpose a directive correctly, to whether these directives are applied correctly or enforced domestically (Krislov, Ehlermann et al. 1986; Siedentopf and Ziller 1988; Duina 1997; Lampinen and Uusikyla 1998; Ciavarini Azzi 2000; Börzel 2001; Falkner, Treib et al. 2005; Mastenbroek 2005). In contrast to these studies, non-compliance is defined here as a particular type of state behavior, action, or policy that violates an established rule. What compliance means can change over time as a national law is re-interpreted and comes into conflict with new supranational precedents or rules. Non-compliance also emerges frequently simply because it is impossible to fully anticipate the diverse ways states can behave, and how or when they may come into conflict with their international legal obligations. Nevertheless, it is still possible to observe objectively whether states are complying with the rules as the latter are inter-subjectively understood among authorized actors (Zürn 2005). In contrast, correct legal implementation and application of a directive are instances in which legislative output and its effects are measured against a policy's goals, not whether current practices or behaviors are permitted by a particular rule. Moreover, given that directives allow the member states to devise their own methods to accomplish EU policy aims, the comparative politics of EU directive

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2 The extent to which EU institutions and laws govern state practices varies according to policy. Nevertheless, since EU law is superior and prior to national law, any policy that falls under Pillar One of the EU Treaty is governed and subject to EU monitoring and supervision.

3 See Tallberg (2002) for the reasons why the Commission was awarded these powers.

4 For an excellent survey of the literature and statement on the state of the art, see Mastenbroek (2005).

implementation is not the most fruitful realm to compare theories of compliance.[5] As figures 1 and 2 show, the cross-national variation and change over time, which one seeks to explain, depend significantly on the type of law under investigation.

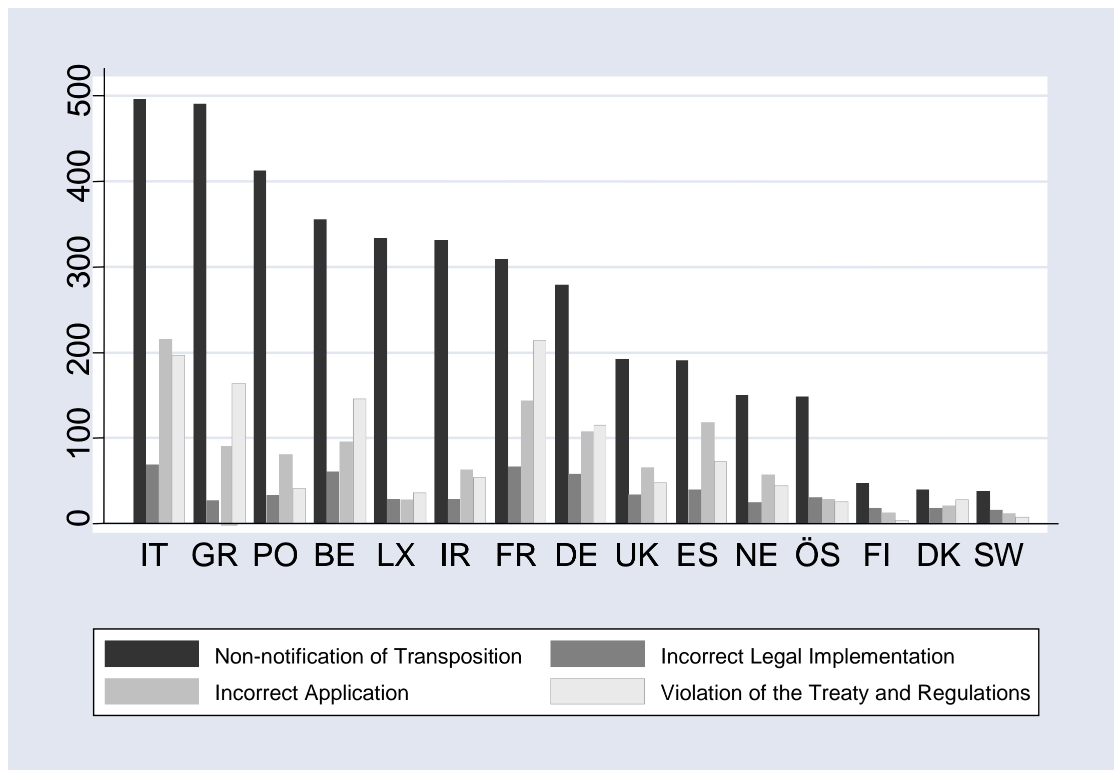


**Figure 1: EU Infringements by Type of Law; Number at Reasoned Opinion Stage**

*Source*: European Commission, Annual Reports on Monitoring the Application of Community Law, 1978-2002, Brussels

Whenever there are conflicts between national laws and EU rules, the Commission uses a series of highly legalized procedures in order to obtain compliance. Once a violation is detected, the Commission initiates a series of informal discussions with the member state in attempt to settle the issue without resorting to the formal procedures under articles 226 and 228 of the EC Treaty. If the Commission considers the state's practice a violation of

5 Since I am testing whether the procedural or substantive dimension of non-compliance better explains the variation in EU compliance and not whether compliance is a problem or not, using the EC Treaty and its associated regulations as the source of non-compliance does not generate selection bias. Furthermore, directives as a form of supranational rulemaking are relatively unique to the EU context. Given that my interest here is to develop a theory of comparative compliance for a wide variety of international institutional settings, it is more reasonable to focus on the hard law of the EU.

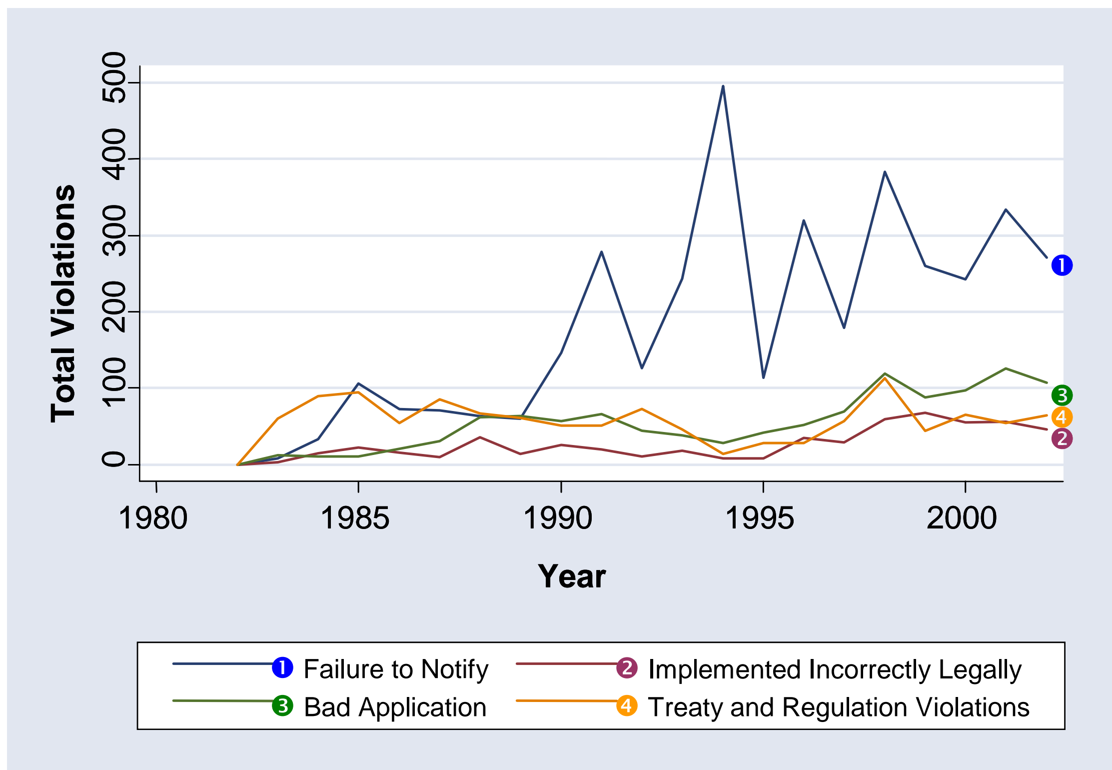


**Figure 2: Violations of EU Law Over Time, 1982-2002, per Type of EU Law**

*Source:* European Commission, Annual Reports on Monitoring the Application of Community Law 1978-2002, Brussels

supranational law, or if the state has not responded to the communication sent by the Commission within a specific time period, a Formal Letter of Notification is sent. It explains the nature of the violation and calls for the member state to meet its legal obligations, without necessarily determining what methods that would involve. If the Commission still believes that the state has not taken the necessary measures to comply, formal procedures under article 226 begin with the public issuance of a Reasoned Opinion.

The Reasoned Opinion stipulates the legal grounds by which the Commission determines that a violation has occurred, why the arguments presented by the member state are unsatisfactory, and/or why the changes in national practices, either suggested or implemented, are insufficient. If the member state still fails to respond or address the Commission's concerns, the case is referred to the ECJ for settlement. The notice of referral to the ECJ provides the member state and the Commission with one last chance to come to a settlement before the ECJ makes a ruling. If the member state still refuses to comply with the ECJ's ruling, the Commission can invoke article 228 and the violation process begins again. If the Court finds that the member state still has not complied with the demands of the Commission, the Commission can impose financial penalties.

As Jonas Tallberg and others have shown, compliance is eventually obtained through the use of these procedures (Tallberg 2002; Börzel 2003). For example, Tallberg points

out that the number of cases declines almost exponentially as one moves from one stage of the compliance process to the next, such that eventually 100% compliance is obtained (Tallberg 2002: 619). Tracing the stage at which violations of just the Treaty of the European Community and its associated regulations are settled confirms the claim that the member states eventually comply. But is this evidence of the effectiveness of the mechanisms associated with the enforcement school of compliance? A closer analysis of the evidence within the European Union suggests that it is premature to consider the use of these procedures as evidence in support of the enforcement approach.

## The Explanatory Limits of Enforcement and Management Mechanisms

The enforcement school of compliance argues that states only comply with international law if it is in their interest to do so. If an agreement or other form of international regulation does not reflect a state's own interest (Downs, Rocke et al. 1996; Goldsmith and Posner 2005), then only the application of sanctions which impose sufficiently high costs on the violating state will deter cheating (Downs and Rocke 1995; Downs 1998). There are good reasons to doubt whether these mechanisms explain the EU's excellent record on compliance. First, in the EU, the threat of sanctions is not very credible. Fines have only been imposed three times in the EU's history.[6] While the sanctioning device is designed to discourage any non-compliance by making non-compliance more costly economically than maintaining the status quo, article 228 is rarely employed (less than 5% of violations reach this stage). Moreover, states had complied with EU law even before the sanctioning mechanism was awarded to the governing institutions by the Maastricht Treaty in 1993.[7] For almost 30 years, the member states complied with ECJ decisions in the vast majority of cases, even though the EU lacked any sanctioning mechanism whatsoever.

If an international institution hopes to sanction an offender of the law, monitoring must also be included. While the Commission possesses the power to sanction, it cannot account for the widespread variation in the number of violations committed by the member states. The Commission certainly lacks a sufficient amount of resources to adequately police the correct implementation and application of hundreds of EU directives, as well as whether states are following the tenets of the EC Treaty and its associated regulations or hard law. As a result, the Commission relies on private individuals, inquiries from the European Parliament, and, albeit rarely, other member states, in addition to its own investigations, to monitor the application of EU law. However, despite these limitations, the Commission cannot explain why some states violate EU law more often than others.

6 See Commission v. Greece (Kouroupitos Rubbish Tip II) Case C-387/97, [2000] ECR I-5047; Case C-304/02 Commission v. France [2005] ECR 0001; Case C-278/01, Commission v Spain, [2003] ECR I-14141.

7 Tallberg (2002) provides no methodologically sound evidence that deterrence is working. For example, it is unclear whether the presence of a sanctioning mechanism and the absence of non-compliance prove that sanctions are responsible.

If the sanctions were sufficient to deter all violations, we would not just observe little variation among the states that violated EU law, but also little variation in the distribution of those cases that were settled by the ECJ. For example, figure 3 displays the total number of violations of the EC Treaty and the total number of European Court cases across the member states. However, when considering the percentage of violations for each state that are settled by the ECJ, there is a clear transformation in the ranking of member states (see figure 4).

France, Italy, and Greece violate the EC Treaty and its associate regulations most often. In terms of settlement, however, while the usual suspects—Greece, Belgium, and Italy—rank relatively high, a significant proportion of violations committed by Denmark and Luxembourg are settled by the European Court of Justice as well, albeit those violations occur quite infrequently.

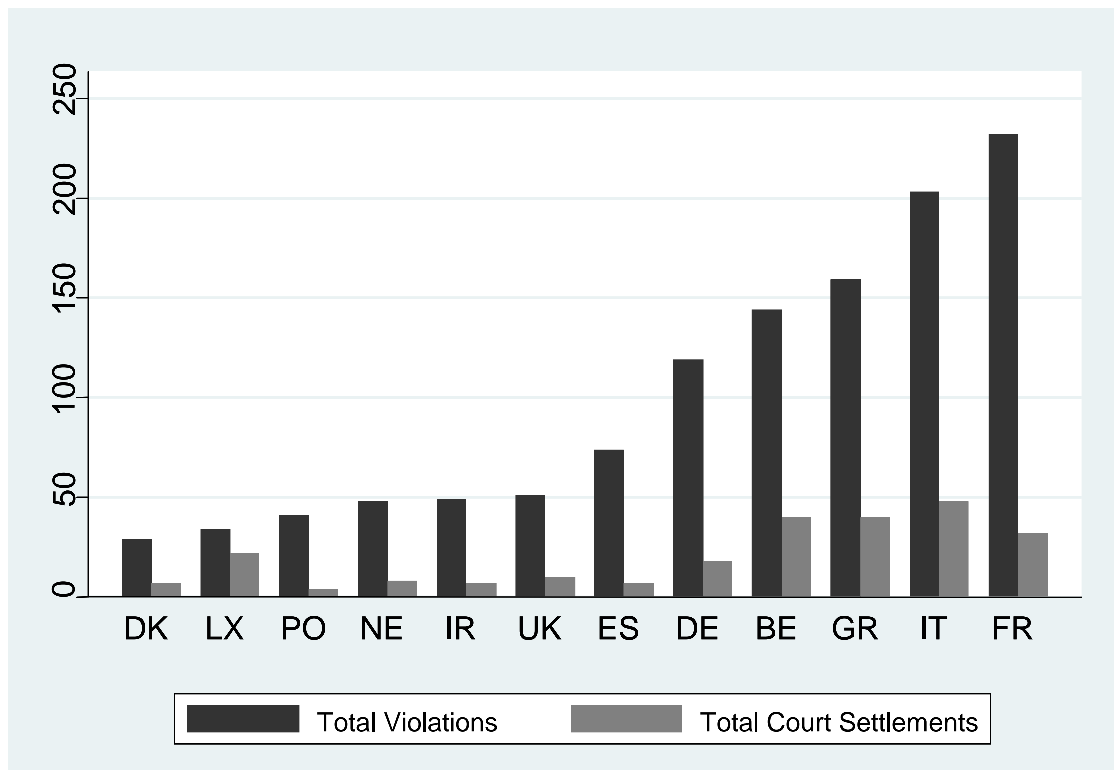


**Figure 3: Total Number of Violations and ECJ Decisions 1978-2000**

*Source*: European Commission, Annual Reports on Monitoring the Application of Community Law, Brussels

Tallberg suggests that compliance is eventually achieved because the EU employs mechanisms which are characteristic of the management school of compliance. The management approach proffered argues that non-compliance is often inadvertent and unintentional (Chayes and Chayes 1995). Rather than the result of rational calculation, non-

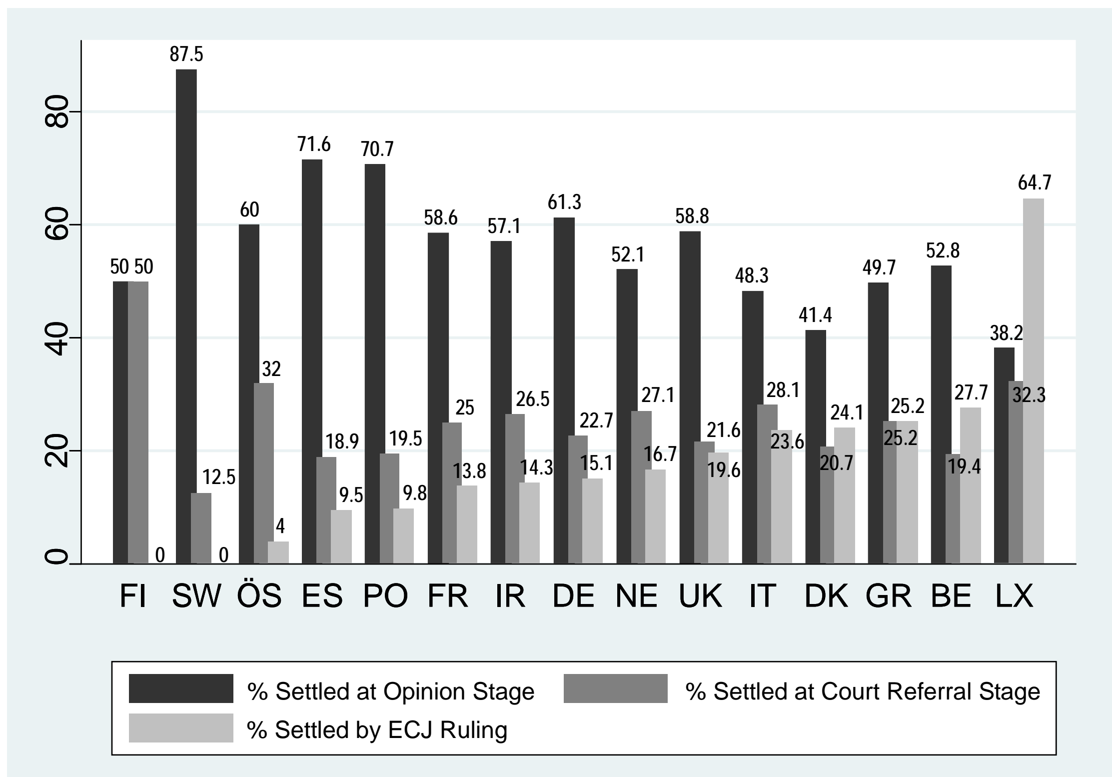


**Figure 4: Settlement Practices Among 15 EU Member States**

*Source*: European Commission, Annual Reports on Monitoring the Application of Community Law, 1983-2002, Brussels

compliance occurs because states do not possess sufficient resources and are not given the necessary technical, financial, or administrative resources to comply (Chayes and Chayes 1995; Jacobson and Weiss 1995). Again, the EU does provide a significant amount of resources in the form of financial and technical assistance, especially to poorer regions of the EU (Tallberg 2002: 630). Yet, even if some states are granted additional aid to meet the demands of EU law, the management approach cannot explain why some states are more reluctant than others to settle their violations of EU law. Controlling for the number of violations that states commit, we see a diverse set of countries exhibiting a wide range of technical, economic, and administrative capacity, from wealthy states like Denmark and Luxembourg, to Greece, the state which most often goes to court. There is also little evidence that the member states are given financial assistance while attempting to comply with a particular rule. In addition, in most cases, the rules and regulations contained in the Treaty of the European Community require states to abstain from certain practices, not meet newly specified targets or policy goals, which suggests that capacity issues are irrelevant to compliance problems.

### The Process of Compliance

The management and enforcement schools share a common misconception of the problem of compliance. Complying with the law, either domestic or international, is not a condition limited to two separate categories—compliance and non-compliance. Rather, compliance with the law often involves a process that moves from the detection of a violation, to deliberation, debate over the nature of the violation, then development of a shared interpretation of the law, until, finally, actions are taken to prevent further infractions in the future. As such, most international institutional settings require that national political actors, usually governmental executives, engage in a process of legalized dispute resolution with international institutions, in order to generate compliance or avoid non-compliance (Franck 1995; Koh 1997; Chayes, Chayes et al. 1998; Abbott, Keohane et al. 2001).

What I call the procedural dimension of compliance shares some of the key theoretical assumptions and mechanisms developed in the social constructivist literature. For example, the legal procedures employed to secure compliance in the EU are an excellent illustration of how justificatory discourse and deliberation, or "arguing," occurs in the international system (Kratochwil 1989; Risse 2000). States must deliberate with international institutions composed of highly trained experts, chiefly lawyers, to defend the country's actions under the principles of law as defined and interpreted at that time. When national governments and international institutions charged with enforcing the law cannot agree on the meaning and intent of the law, states will comply with the dictates of international courts, especially in the European Union, because to do so is perceived as the appropriate form of state practice in an international system constituted by the norm of multilateralism (Reus-Smit 1999; Reus-Smit 2003; Reus-Smit 2004).

While constructivist accounts of international law are sufficient to explain why states in the contemporary international system will comply with their international legal obligations, such accounts fail to consider that the content of these norms and rules will often conflict with at least equally legitimate norms and rules at the national level. National governments must comply with their domestic legal obligations, particularly those that are approved by a democratic majority, and at the same time comply with their EU legal obligations. Just as legal authority and obligation is constituted in the international system, national leaders obviously must follow the rule of law at the national level as well. Therefore, the question posed here is not whether states follow their international legal obligations: states in the modern international system do so for a variety of reasons (Henkin 1979; Franck 1990; Simmons 1998; Young 1999; Abbott, Keohane et al. 2001; Goldsmith and Posner 2005). Rather, we are interested in how national governments balance these conflicting principles when the policies and practices of a state violate supranational rules. Just as national governments and international institutions deliberate with each other over the meaning of the law, justify particular types of behavior, and consider what the proper remedies are, individual parliamentarians must also be persuaded of these new interpretations of the law. If national parliamentarians are not convinced, an interpretation of the

law must be imposed on a member state by the European Court of Justice. When disputes are settled by the ECJ, a final, authoritative interpretation of EU law is given. If members of parliament still refuse to change the status quo, they risk violating the higher norm of challenging the authority of the Court and the EU legal system itself. Since this norm is more firmly entrenched than any specific legal norm about the meaning of the free movement of goods, for example, members of parliaments will cede to the Court's interpretation of the law. In the European Union, given the relatively meager level of democratic input and the amount of power the Commission and ECJ have, it is crucial to understand how national executives balance these two types of normative and legal demands.

### The Benefits of Moral Hazard

The ability of national executives to balance these often conflicting demands depends on the relative autonomy they have from their respective national parliaments. As in many other areas of national policymaking, members of parliament face a fundamental tradeoff between granting significant powers to the national executive to make foreign policy decisions while maintaining influence over the policy outcome (Destler 1978; Haggard 1990; Lohmann 1994).[8] The tradeoff resembles the fundamental debate all democracies must address. While the policies that governments propose should reflect the preferences of a majority of the electorate, some degree of autonomy and independence is often granted to national executives in order for these policies to be efficiently implemented.

The reasons parliaments delegate to national executives are widely recognized. Delegation to national executives takes place in order to reap the gains from allowing those individuals or groups with particular expertise to solve complex social problems. Delegation also occurs so that parliamentarians can manage the task of governing more efficiently and concentrate on issues that are of more direct concern to their constituents. The dangers of delegation are also well known. Agents can often act against the interests of the principals, either by "shirking" their duties or pursuing goals which are not in the interests of the principals. Although the problem of "moral hazard" is prevalent in many different policy areas, it is a constant threat vis-à-vis matters of foreign policy. Problems of delegation are solved through both *ex ante* mechanisms such as effective screening and contract design, and *post hoc* mechanisms which include monitoring and reporting requirements as well as institutional checks (Kiewiet and McCubbins 1991). In parliamentary democracies, there is a greater reliance on *ex ante* mechanisms of control because there are generally fewer institutional constraints, fewer agents directly accountable to voters, and fewer competing agents. The reliance on these screening mechanisms coin-

8 This argument contradicts the assumptions in Lisa Martin's (2000) theory of democratic commitment. While Martin may be correct about the ability of legislative participation to control the outcome of international agreements, inevitably, due to ambiguity in the rules, changing circumstances, or redefined state interests, problems of compliance will develop. When these problems develop, low amounts of delegation will inhibit the ability to cooperate.

cides with the stronger role political parties have in parliamentary systems relative to presidential ones (Strøm 2000). However, this does not imply that national parliaments are entirely devoid of *post hoc* mechanisms for monitoring and control. In fact, all four mechanisms suggested by Kiewiet and McCubbins (1991) are present among the EU member states, albeit to varying degrees.

The most effective way for national parliaments to limit the possibility of moral hazard is for national parliamentarians to develop monitoring mechanisms which increase their own expertise regarding a particular matter and the amount of information available to them. Committee systems do exactly that. According to Ingvar Mattson and Kaare Strøm, committees can obtain private information about policy being made, they can make tradeoffs with other committee members in order solve collective action problems, and they are extensions of the party system whereby party discipline can be maintained (Mattson and Strøm 1995).

Whenever member states attempt to comply with EU rules, strong committee structures will make it more difficult to reach a shared interpretation of a rule. Committees amplify the voice of a legislative representative or groups of representatives. They not only allow the parliament to better monitor deliberations between the national executive and international bodies, but also begin, themselves, to participate, bringing diverse interests and points of view of the law with them. Committee strength also increases the ability of members of parliament to determine the precise impact that compliance with an international rule will have domestically. Assuming that a national executive would be more concerned about the long-term reputation and interests of the state than would an individual member of parliament, we should expect that, as parliamentary committees increase in power, the parochial interests of these members are more likely to be articulated than the collective interests of the state.

Parliamentary committees, therefore, make deliberation more difficult by increasing the number of participants, thereby reducing the chance that a settlement is easily reached. Since members of parliament are also likely to be more concerned with meeting the demands of their local constituencies than complying with the demands of international law, they are more likely to delay the settlement process. Members of parliament can monitor national executives and their dealings with international organizations, regardless of whether parliamentary representatives obtain their desired outcomes or not. My first hypothesis is:

> $H_1$: *The more powerful committees are in national parliaments, the more likely it is that violations of international law will be settled by an international court.*

Once a shared understanding is reached, state policy must be corrected. In most cases, this means the passage of national legislation. If members of parliament are able to influence the legislative product that is meant to regenerate compliance, it is more likely that this new legislative product will deviate from the demands of the European Commission or ECJ. In contrast, if the national executive can control the legislative process, it is less likely that the final legislative product will significantly deviate from the EU's legal de-

mands. When national parliamentarians can affect the course and content of the "compliance bill," delays in compliance will occur. More importantly, their participation will limit the transformative effect of compliance. Rather than completely transforming national law to comply with international obligations, legislators make changes only at the legal margins, creating the risk that similar problems of non-compliance will occur in the future.

> *$H_2$: As national executive autonomy increases in terms of both the control of the legislative agenda and less parliamentary oversight, violations are less likely to be settled by the European Court of Justice.*

If national parliaments are able to more effectively monitor the actions of the national executive and co-deliberate, the process of compliance will be slowed. National parliamentarians must be effectively persuaded that changes to the law are necessary. However, in the European Union, there exists a final authority concerning conflicts between national and European law: the European Court of Justice. The ECJ, therefore, serves as one last stop in the compliance process to force a member state to comply with international law. When national parliaments refuse to make changes in the national status quo and comply, often only a ruling by the ECJ will generate the sufficient amount of "compliance pull" to force parliaments to accept changes in the legislative status quo. As long as a ruling by the ECJ, or the ECJ itself, is viewed as legitimate, the ruling has the force of law and parliamentary opposition is suspended. When the ECJ makes a ruling, even national parliamentarians are now persuaded that they must abide by their international legal obligations due to the normative requirement of obeying the law.

## III. Data and Analysis

### Measuring Parliamentary Structures

The input of national parliaments in the compliance process is measured in two ways: the extent to which the national executive dominates the legislative agenda and the role of parliamentary committees. Herbert Döring (1995), in an exhaustive analysis, created an index of executive power based on the government's ability to guide a bill through the legislative process without influence from parliamentary committees or the opposition. However, the legislative process is only one setting in which the executives exercise their dominance over legislatures. Other factors include an executive's relative power in general and the strength of individual members of parliament (King 1994). Alan Siaroff (2003) moves beyond previous measures by assembling each of these factors into a single index of executive dominance of the legislature.[9] Independent from an executive's dominance in

9 Through factor analysis, Siaroff (2003) determines which variables constituting the legislative-executive relationship most often group together. His findings suggest that the following variables are most strongly associated with qualities describing the nature of the executive-legislature relationship: government control of the plenary agenda, restrictions on the introduction of private members' bills, the ple-

the parliamentary system is the ability of parliamentary committees to monitor and oversee the activities of the national executive. This is a function of the degree to which public officials or members of parliament outside the government can participate in decision making and shape the development of policy. Siaroff's (2003) variable, "levels of policy centralization," best captures the ability of committees and other institutional actors to influence policy.[10] Together, these two variables capture the degree to which we are likely to observe moral hazard or the ability of national executives to escape accountability and monitoring by a national parliament.

### The Enforcement and Management Approaches: Interests and Capacities

If the structure of executive-parliamentary relations affects the process of settling a violation, then the reasons why states fail to settle their violations should be independent from the reasons why these violations are committed. If not, then the reasons for the violation should explain both the number of violations committed by a member state over time and those settled by the ECJ. Next, I briefly outline those possible causes as they relate to the EC Treaty and then test these hypotheses using data collected from the Commission's *Annual Reports Monitoring the Application of European Community Law*.

In order to test the enforcement hypothesis, we need to know what policies or practices states are carrying out that challenge the rules and regulations contained in the EC Treaty and its associated regulations. If the enforcement approach is correct, then states only comply when the threat of sanctions outweighs the benefits of maintaining the status quo. Those benefits depend on the policies in place at the national level, which, in turn, shape a state's interest in complying. While some states violate specific policy areas more often than others, there is little evidence that this affects the general patterns of either the number of violations that states commit each year or the stage at which they are settled. Most violations of the EC Treaty and associated regulations are in the area of the single market (see figure 5).

There are several ways to account for the general distribution of violations. First, since the EC Treaty is directed towards establishing a single market, we should expect those countries who trade more with other EU countries to comply more often than countries who trade less with other member states. This is measured as national trade with the EU, as percentage of total gross domestic product. Second, if violations of the

nary first determines the principles of a bill, the ability of committees to rewrite legislation, the influence of committee members on party positions, are money bills a prerogative of government, the ability to curtail debate before the final vote in a parliamentary bureau or presidium, there is a recognized leader of the opposition, the presence of single-member electoral system and, finally, the general power of the prime minister.

10 Policy centralization consists of: not over 10 standing committees corresponding to government departments, government control of committee chairs, ability to dissolve parliament easily, ministers are members of parliament or cannot be, ministers are generalists or specialists, and levels of corporatism (Siaroff 2003: 458).

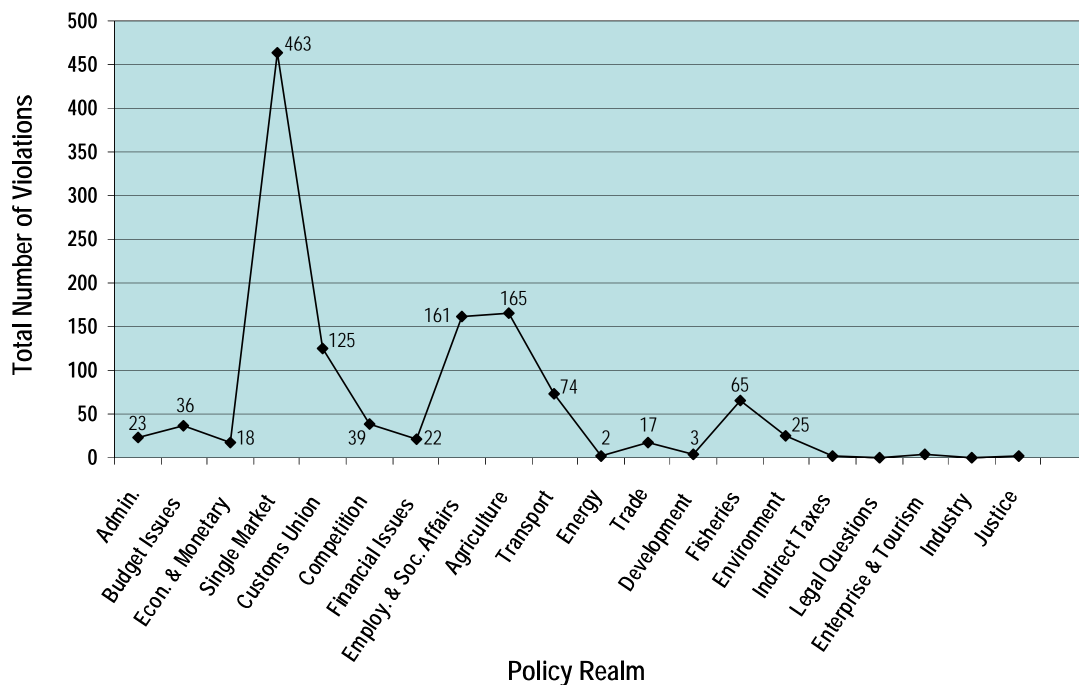


**Figure 5: Policy Areas of the EC Treaty Violated (1982-2002)**

EC Treaty reflect conditions at the status quo rather than the prospect of future gains related to EU trade, then we should expect that the extent to which regulatory obstacles exist at the national level would determine both the number of violations and the ability to settle them. These restrictions are measured by Kaufmann et al.'s (2003) indicator of "regulatory quality". Constructed from a variety of sources, regulatory quality refers to the number of "market-unfriendly" policies such as price controls and perceptions of excessive regulation in the area of foreign trade and business development.[11]

European integration within the EU can also challenge the institutional regimes used to govern the "mixed economy" as it is practiced differently across the EU member states, especially in the case of EU hard law related to the EC Treaty (Scharpf 1999; Van Apeldoorn 2002). If so, we should expect center-left or social democratic governments to violate EU law most often. Partisanship of national government is measured as the relative political center of gravity of the governing cabinet, or the political party's share of seats in parliament multiplied by the party's ideological position, according to the Left-Right index developed by the Comparative Manifestos Project (Budge et al. 2001).[12]

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11 Regulatory quality is a composite measure of several surveys that rate the effectiveness and discriminatory nature of government regulations. They include the use of unfair competitive practices, price controls, discriminatory tariffs, and excessive protection of particular industries. Regulatory quality is also a function of whether necessary business laws are in place and the efficiency of the governance tax system. For a complete list of sources and factors that comprise this variable, see Kaufmann et al. (2003: 94).

12 Thomas Cusack kindly provided the data. The ideological dimension is based on Budge et al.'s (2001)

There is also increasing evidence that cleavages regarding relative support and opposition to the EU are becoming increasingly salient among the member states (Marks and Steenbergen 2004). If true, and assuming that these preferences towards the EU are salient and operative at the political level, then those countries with higher percentages of their general population in opposition to the EU should violate the EC Treaty most often and be most reluctant to comply. Support for the EU is measured as the net approval of the EU by individuals in the member states from 1978 to 2002.[13] Including individual attitudes towards the EU raises the issue of relevancy to the problem of compliance. A better measure of how EU attitudes affect compliance would be a measure of the preferences of political parties in office. However, since comprehensive cross-national and cross-temporal data are not yet available, Eurobarometer responses serve as the best source of cross-national and cross-temporal domestic attitudes towards the EU.[14] Testing the relationship between citizens' attitudes and compliance patterns must not imply a direct causal connection. Instead, my purpose here is to test how public attitudes towards the EU are associated with compliance outcomes and whether institutional factors at the state level either ignore or overcome those attitudes.[15]

The non-compliance we observe may also be a function of those who actually create the rules and hence based on their national interests. If the EU merely represents another international institution which provides mutual benefits to its members, and the rules are based on the relative bargaining capacities of the member states, then we should expect the largest EU member states to be the ones controlling the regulatory process (Moravcsik 1998: chapter 2). Similarly, Geoffrey Garrett (1992, 1995) argues that the decisions made by the ECJ towards an increasingly integrated Europe reflect the latent preferences of the largest member states, in particular France and Germany.[16] If either argument is

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CMP scale, which ranges from –100 for very left governments to 100 for very right wing governments. The ideological dimension was constructed from a composite of twenty-four salience measures of policy positions based on the categorical system of the CMP project. It reflects the degree to which the party's electoral manifesto emphasizes either left or right policy positions.

13 The specific question asked by the Eurobarometer is: "Generally speaking, do you think your country's membership is a good thing, a bad thing, or neither good or bad." Net approval is constructed as the percentage of people in each member state that view EU membership as a good thing minus those who choose a "bad thing." Most of the data was kindly provided by Richard C. Eichenberg and updated to include Luxembourg.

14 Most surveys of political parties' attitudes to the EU are based on Leonard Ray's (1999) survey, updated by Marks and Hooghe (1999). The survey is limited, however, to quadrennial intervals and does not code for whether a particular party is in government.

15 If a robust relationship is determined to exist, then further research must determine the mechanisms that connect or disconnect the impact of public attitudes towards the EU and governmental behavior regarding compliance with EU law.

16 Rational neo-institutionalism in the study of the EU offers a strong critique of the theoretical foundations of Morvavsik's approach. This research focuses on the everyday politics of the EU and the ways in which the institutional rules structure decision-making the in EU (Tsebelis and Garrett 2000). The authors show that the European Parliament's role in EU legislative matters has strengthened considerably through reforms enacted by the Maastricht and Amsterdam Treaties. However, these conclusions do not challenge my argument. Tsebelis and Garrett (op. cit.) argue that political integration will proceed as long as members of the European Parliament continue to support integration, while ignoring the demands of the European citizenry. If true, and given that the content of "integrationist" legislation is

correct, then we should expect the smaller member states to violate EU law most often and to comply only reluctantly. The relative strength of a member state is measured as a function of the number of votes a member state has in the Council of Ministers.

Each of the hypotheses above tests the enforcement approach by identifying the relative interest states have in complying. If the enforcement approach explains both the origin and settlement process of an infringement, then no change should be observed in terms of the variables that explain the number of infringements committed and the likelihood that an infringement is settled by the ECJ. The management approach, on the other hand, suggests that non-compliance does not result from a state's lack of interest, but from the lack of resources to adequately meet a rule's obligations. And, the *acquis communautaire* is a plethora of rules, regulations, and technical standards which require extensive training and expertise in their mastering. The more professional and efficient bureaucracies are, the more likely it is that we would witness not only fewer violations, but also quicker settlement of violations. Moreover, once a particular interpretation of EU law is made regarding a conflicting item of national law, professional and efficient bureaucracies are more likely to make extensive changes in national regulatory practices, such that the violation does not recur. In order to gauge a bureaucracy's relative ability to internalize EU legal interpretations of the law, I rely on Kaufmann et al.'s (2003) indicator of relative government effectiveness.[17] Weaker and ineffective bureaucracies are expected to have more problems adjusting to the plethora of legal demands established at the EU level.

Some important caveats about the nature of these variables and their measurement are worth mentioning. First, the scores for regulatory quality and government effectiveness are only available for biennial periods starting in 1996, 1998, 2000, and 2002. In order to make use of as much data as possible, the average scores for each of these variables was calculated and then assigned to previous years in the sample. While a questionable technique, there are several good reasons why this is acceptable here. First, there is not a great deal of variation over time among these countries. Therefore, there is little reason to expect that a state's relative ranking among other EU member states would change significantly. If there was any significant change over time, we can assume that a country's scores related to government effectiveness have only improved over time. Thus, any bias produced as a result would work against my hypothesis. Summary statistics of the independent variables by country are presented in table 1.

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most often "market-making," there is little reason to suggest that increased powers for the European Parliament and weakened powers for the member states will lead to increased positive integration. Furthermore, since there is such a strong status-quo bias in the EU given the constrictive and complex decision-making rules in the EU, there is little to suggest that the legislation that is produced at the EU level would rollback economic or negative integration.

17 Government effectiveness refers to the quality of public service provision, the bureaucracy in general, the competence of civil servants and the independence of the civil service from political pressures. See Kaufmann et al. (2003) for a complete list of sources and breakdown of the indicator's components.

### Dependent Variables

Based on the *Annual Reports on Monitoring the Application of European Community Law*, each violation of the EC Treaty and its associated regulation is coded by the year it occurred and tracked according to which stage the violation was settled. The first dependent variable counts the number of violations that occurred in 15 EU member states from 1978 to 2002.[18] The second model then assesses the probability that a violation will be settled by the European Court of Justice. If the null hypothesis is correct, the factors that explain the relative distribution of violations across countries and time should also explain which violations are settled by the European Court of Justice.

Whether a violation occurred or not can only be determined if it was reported by the European Commission, which would have been at the Reasoned Opinion stage,[19] and registered accordingly in the *Annual Reports*. The Reasoned Opinion stage is the first step in the *formal* compliance process; there may be many violations which are settled prior to being reported, through informal discussions or at the Formal Letter of Notification stage (Börzel 2001). Yet, there is no reason to suspect that there is any national bias as a consequence. A summary of how infringements have been detected is given in table 2. If there is, then the relative capacity of a state to answer the Commission's demands before a Reasoned Opinion is issued should also be reflected in their relative ability to settle a violation before going to the ECJ.

A violation also cannot be coded as to how it was detected, whether by an individual lodging a complaint or the Commission initiating its own investigation. However, the Commission relies to a great extent on individual complaints to detect violations. Therefore, to determine if there is a reporting bias, I include the number of cases referred to the ECJ under article 234 of the EC Treaty, per country per year, in both the count and probability models as a proxy for this fact.[20] Summary statistics for the dependent variables by country appear in table 3.

18 Each violation was coded according to the year the Commission began violation proceedings and not the year in which it was settled.

19 This is the case for almost all violations. There are situations, especially early in the reporting process, when the Commission identifies some violations and sends only a Formal Letter of Notification, or when the reports state that a violation was dismissed without determining at which stage the violation was settled. Recording a violation at the Reasoned Opinion stage is the only consistently reliable method to count the number of violations over the time period covered here.

20 Data originate from Stone Sweet and Brunnel (1999).

**Table 1: Independent Variables by Country, 1975-2002 (means)**

| Member State | Average Regulatory Quality | Average Bureaucratic Effectiveness | Executive Control | Policy Centralization | Cabinet Ideological Center of Gravity | Net Approval of EU | Article 234 References | Votes in the Council | Total EU Trade (% GDP) |
|---|---|---|---|---|---|---|---|---|---|
| ÖS | 1.411 | 1.6600 | 6 | 6 | -1.030 | 13.31 | 11.75 | 4 | 27.5 |
| DE | 1.358 | 1.7550 | 8 | 3 | 2.6717 | 47.13 | 37.33 | 29 | 19.0 |
| DK | 1.473 | 1.9094 | 7 | 6 | 2.3570 | 19.07 | 2.88 | 7 | 25.0 |
| SW | 1.357 | 1.7894 | 4 | 1 | -7.0010 | -2.313 | 5.50 | 4 | 22.0 |
| FI | 1.618 | 1.8700 | 3 | 6 | -15.235 | 18.12 | 2.50 | 3 | 17.3 |
| NE | 1.688 | 2.1648 | 3 | 2 | -9.3330 | 72.45 | 16.30 | 13 | 46.7 |
| BE | 1.079 | 1.4900 | 6 | 6 | -1.7880 | 54.03 | 14.22 | 12 | 67.5 |
| LX | 1.552 | 2.0674 | 9 | 2 | -18.132 | 72.24 | 1.30 | 4 | 47.9 |
| FR | 0.9905 | 1.5410 | 14.9 | 8 | -3.2117 | 48.35 | 20.89 | 29 | 16.8 |
| IT | 0.8550 | .86333 | 4 | 12 | 1.3311 | 66.53 | 18.81 | 29 | 13.2 |
| GR | 0.8764 | .73108 | 14.5 | 12 | -3.752 | 46.46 | 2.83 | 12 | 15.1 |
| PO | 1.2299 | 1.1172 | 9 | 4 | 4.5657 | 45.93 | 2.00 | 12 | 28.5 |
| ES | 1.2226 | 1.6646 | 12 | 7 | -10.320 | 50.37 | 8.54 | 27 | 12.9 |
| IR | 1.5424 | 1.7140 | 18 | 12 | -6.317 | 52.60 | 1.31 | 7 | 51.7 |
| UK | 1.9080 | 2.0557 | 22 | 12 | 13.457 | 9.433 | 9.73 | 29 | 16.7 |

**Table 2: Detection of Infringements**

| Year | Total | Individual Complaints | Cases Detected by the Commission | | | Failure to Notify[1] |
|---|---|---|---|---|---|---|
| | | | Parliamentary Questions | Petitions | Total | |
| 2000 | 2434 | 1225 | 15 | 5 | 313 | 896 |
| 2001 | 2179 | 1300 | 5 | 1 | 272 | 607 |
| 2002 | 2356 | 1431 | 30 | 20 | 318 | 607 |
| 2003 | 2709 | 1290 | 23 | 20 | 253 | 1166 |
| 2004 (EUR 15) | 2146 | 1080 | 23 | 13 | 285 | 781 |
| 2004 (EUR 25) | 2993 | 1146 | 23 | 13 | 328 | 1519 |

1 This number refers to whether national officials have informed the Commission as to whether EU directives have been implemented or not.

*Source:* European Commission (2005), Annual Report Monitoring the Application of European Community Law, Brussels.

### Statistical Results

A negative binomial count regression model was used to estimate the relative effect parliamentary institutions and executive agenda-setting power have on the number of violations.[21] The unit of analysis is a country-year.[22] Model 1 includes all independent variables of interest for fifteen EU member states, while model 2 excludes Austria, Sweden, and Finland from the sample.[23] Table 4 displays the statistical results with and without a control for the number of violations committed the previous year.

21 I selected a count model because the dependent variable is heavily skewed to the left with frequent values of zero and small, discrete values. The likelihood ratio test on each of the models showed that we could reject the hypothesis that there was no overdispersion in the data and the use of a Poisson count regression model.

22 Due to the high number of country-specific and time-constant regressors, the model does not include fixed effects; random effects were included instead. Also, auto-correlation is not expected to be a problem, given that the decision of the Commission to pursue violations in one year is independent of the number of violations a state committed the year before. Still, inclusion of a lagged, dependent variable did not significantly affect the results.

23 These three countries were excluded because they only recently joined the EU in 1995. Therefore, we could expect that the numbers are artificially low for Austria, Sweden, and Finland, pending the establishment of increased transnational activity or the expiration of EC Treaty derogations.

**Table 3: Dependent Variables by Country, 1975-2002**

| Member State | | Number of EC Treaty Violations | Number of Court Cases per Year |
|---|---|---|---|
| Austria | mean | 3.125 | .125 |
| | minimum | 0 | 0 |
| | maximum | 7 | 1 |
| Germany | mean | 3.83 | .6 |
| | minimum | 0 | 0 |
| | maximum | 10 | 3 |
| Denmark | mean | 0.967 | 0.226 |
| | minimum | 0 | 0 |
| | maximum | 4 | 1 |
| Sweden | mean | 1 | 0 |
| | minimum | 0 | 0 |
| | maximum | 2 | 0 |
| Finland | mean | .5 | 0 |
| | minimum | 0 | 0 |
| | maximum | 2 | 0 |
| Netherlands | mean | 1.548 | .308 |
| | minimum | 0 | 0 |
| | maximum | 5 | 2 |
| Belgium | mean | 4.64 | 1.54 |
| | minimum | 0 | 0 |
| | maximum | 15 | 5 |
| Luxembourg | mean | 1.10 | 0.88 |
| | minimum | 0 | 0 |
| | maximum | 6 | 4 |
| France | mean | 7.48 | 1.14 |
| | minimum | 0 | 0 |
| | maximum | 19 | 3 |
| Italy | mean | 6.55 | 1.92 |
| | minimum | 0 | 0 |
| | maximum | 22 | 6 |
| Greece | mean | 7.57 | 1.905 |
| | minimum | 0 | 0 |
| | maximum | 22 | 9 |
| Portugal | mean | 2.2778 | .25 |
| | minimum | 0 | 0 |
| | maximum | 6 | 1 |
| Spain | mean | 4.11 | .411 |
| | minimum | 0 | 0 |
| | maximum | 12 | 2 |
| Ireland | mean | 1.633 | .27 |
| | minimum | 0 | 0 |
| | maximum | 7 | 2 |
| United Kingdom | mean | 1.654 | .385 |
| | minimum | 0 | 0 |
| | maximum | 7 | 2 |

**Table 4: Initial Results for the Number of Infringements**

| | 15 EU Member States | 15 EU Member States with Lagged Dependent Variables | 12 EU Member States | 12 EU Member States with Lagged Dependent Variables |
|---|---|---|---|---|
| Quality of market regulation | -1.599*** | -1.237*** | -1.567*** | -1.041*** |
| | (0.347) | (0.310) | (0.354) | (0.353) |
| Bureaucratic effectiveness | -0.015 | -0.074 | -0.025 | -0.125 |
| | (0.277) | (0.251) | (0.281) | (0.266) |
| Executive control of legislature | 0.021* | 0.013 | 0.022* | 0.015 |
| | (0.012) | (0.012) | (0.012) | (0.012) |
| Policy centralization | 0.007 | -0.008 | 0.006 | -0.011 |
| | (0.023) | (0.020) | (0.023) | (0.022) |
| Cabinet ideological center of gravity | -0.002 | -0.002 | -0.003 | -0.002 |
| | (0.003) | (0.002) | (0.003) | (0.003) |
| National net approval of EU | 0.001 | -0.001 | 0.002 | -0.001 |
| | (0.003) | (0.002) | (0.003) | (0.003) |
| Total trade with EU | 0.241 | 0.328 | 0.203 | 0.220 |
| | (0.362) | (0.274) | (0.374) | (0.349) |
| Votes in the Council | 0.023** | 0.027*** | 0.023** | 0.022** |
| | (0.009) | (0.007) | (0.009) | (0.009) |
| Number of article 234 references | 0.008* | 0.000 | 0.008* | 0.003 |
| | (0.005) | (0.004) | (0.005) | (0.004) |
| Lag number of treaty violations | | 0.056*** | | 0.059*** |
| | | (0.007) | | (0.009) |
| Constant | 2.187*** | 2.199*** | 2.083*** | 1.945*** |
| | (0.466) | (0.349) | (0.510) | (0.510) |
| Observations | 234 | 230 | 222 | 221 |
| Number of member states | 15 | 15 | 12 | 12 |
| Wald $Chi^2$ | 168.29 | 370.42 | 157.72 | 251.32 |
| Log-likelihood | -543.99 | -553.09 | -521.80 | -502.35 |

Standard errors in parentheses

*significant at 10%; **significant at 5%; ***significant at 1%

We observe that the single most common factor associated with a violation is the degree to which national regulations discriminate against free market exchange. Larger member

states, represented by the number of votes on the Council of Ministers, are also associated with a higher number of violations and statistically significant. This leads us to reject the hypothesis that EU law is a function of those states with the most bargaining power. However, in addition to the quality of regulation, as an executive's autonomy increases, the number of violations also increases, but only without a lagged dependent variable. The result is generated most likely because those countries with high levels of executive autonomy, such as Greece and France, violate EU law most often, especially when compared with those states with low levels of executive, autonomy such as the Netherlands and Denmark.

The results are relatively robust. There is a good fit between the actual number of violations committed by each country per year and their predicted values generated by the model. The average difference between predicted and observed values is less than 0.1%. There is a strong linear relationship between the quality of market regulation and the number of treaty violations (see figure 6).

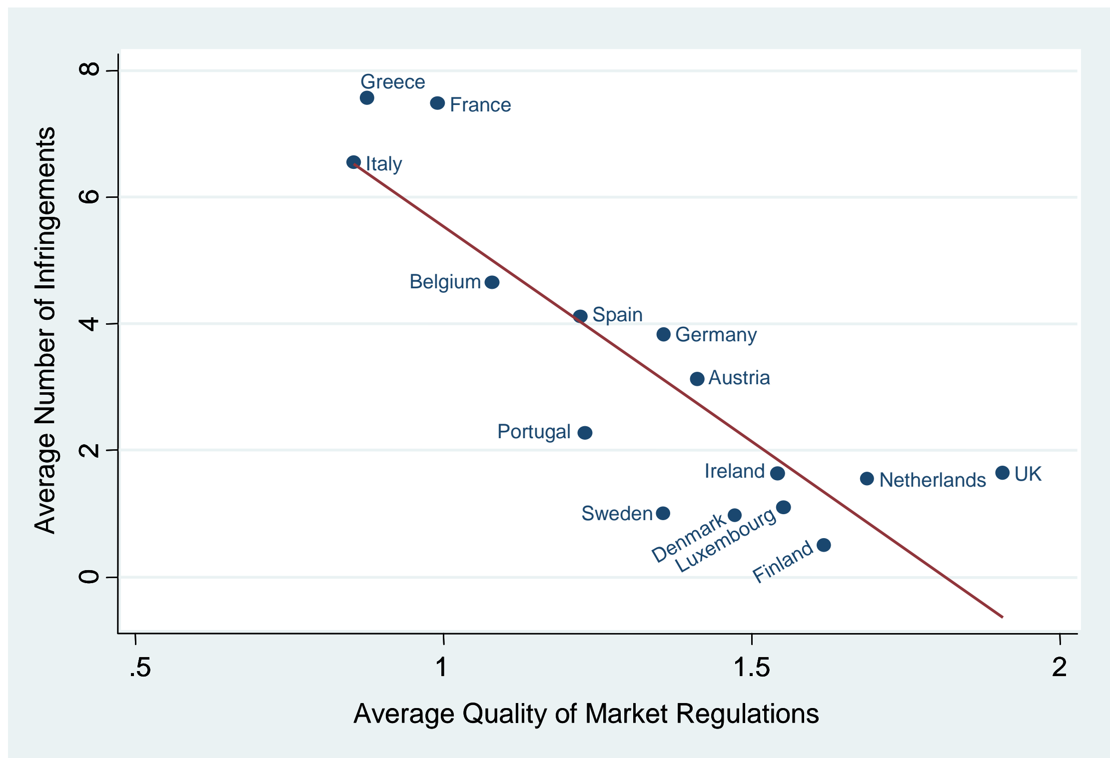


**Figure 6: Infringements and the Status Quo**

What substantial impact do these factors have on the number of violations states commit? Changing a state's quality of market regulation by one unit decreases the number of violations expected by a factor of .1441 or 85.1% (see table 5 below).

**Table 5: Change in the Number of Violations**

| | 15 EU Member States | | 12 EU Member States | |
|---|---|---|---|---|
| | Factor Incr./Decr. in Count for Unit Change in X | Factor Incr./Decr. in Count for One S. D. in X | Factor Incr./Decr. in Count for Unit Change in X | Factor Incr./Decr. in Count for One S. D. in X |
| Average quality of market regulation | -.1441 | -.5402 | -.1457 | -.5357 |
| (% Change) | -85.6 | -46.0 | -85.4 | -46.4 |
| Executive control of legislature | 1.0238 | 0.594 | 1.028 | 1.173 |
| (% Change) | 2.4 | 14.6 | 2.8 | 17.3 |
| Votes in the Council | 1.024 | 1.28 | 1.023 | 1.30 |
| (% Change) | 2.4 | 27.3 | 2.7 | 30.0 |

In comparison, both the amount of national executive autonomy and votes in the EC Council increase the likelihood of a violation by only around 2%. The evidence therefore shows that what policies exist at the national level do affect the pattern of infringements observed. Infringements cases are not random. They are caused by objective differences the Commission observes between national laws or regulations, and the demands of primary EU legislation.

Next, using probit analysis, table 6 reports the conditional effect the same variables have on the probability that a violation would be settled by the ECJ. The unit of analysis, now, is the violation itself and the likelihood that the ECJ must impose a settlement. This model seeks to determine if national parliamentary influence inhibits the process of compliance.

The first model assesses whether changes in the status quo determine compliance behavior, and none of the factors hypothesized has an effect on the probability of an ECJ ruling. The second model tests the enforcement approach to compliance by outlying the factors that will affect a state's interest in complying with EU law. In this case, only relative support for the EU affected the probability of an infringement, but in the opposite direction to that predicted. There are several reasons to be skeptical of these results.

First, the comparatively low levels for Denmark and the United Kingdom generate spurious results by influencing the relative fit of a regression line, when otherwise there would be no statistically significant relationship among the remaining member states. Second, citizens in these countries may actually rely on the EU and its rules and regulations to reform their national economies through the implementation of better legislation. Thus, just as Italy, Greece, and Spain commit a high number of EC Treaty violations, their respective national populations support the EU's efforts to prosecute their own states and change regulatory patterns at home (see figure 7).

**Table 6: Probability of a Court Imposed Settlement**

| | Status Quo Change | Enforcement Model | Procedural Politics | Full Model | Full Model without Public Opinion |
|---|---|---|---|---|---|
| Quality of market regulation | -0.233 | | | -0.112 | -0.100 |
| | (0.202) | | | (0.413) | (0.406) |
| Votes in the Council | -0.007 | -0.008 | -0.004 | 0.004 | 0.006 |
| | (0.006) | (0.008) | (0.007) | (0.010) | (0.010) |
| Number of article 234 references | -0.003 | -0.007 | -0.004 | -0.006 | -0.006 |
| | (0.003) | (0.004) | (0.004) | (0.004) | (0.004) |
| Number of Treaty violations | 0.009 | 0.020* | 0.010 | 0.006 | 0.007 |
| | (0.009) | (0.009) | (0.010) | (0.013) | (0.012) |
| Cabinet ideological center of gravity | | 0.004 | | 0.001 | -0.001 |
| | | (0.003) | | (0.004) | (0.004) |
| National net approval of EU | | 0.008** | | 0.007 | |
| | | (0.003) | | (0.004) | |
| Total trade with EU | | 0.026 | | 0.413 | 0.509 |
| | | (0.299) | | (0.341) | (0.326) |
| Executive control of legislature | | | -0.021* | -0.020 | -0.031* |
| | | | (0.010) | (0.015) | (0.014) |
| Policy centralization | | | 0.016 | 0.042 | 0.036 |
| | | | (0.017) | (0.025) | (0.024) |
| Bureaucratic effectiveness | | | | 0.345 | 0.268 |
| | | | | (0.350) | (0.335) |
| Constant | -0.473 | -1.171** | -0.756** | -1.907** | -1.365* |
| | (0.314) | (0.217) | (0.168) | (0.630) | (0.551) |
| Observations | 1084 | 1020 | 934 | 870 | 870 |
| Wald $Chi^2$ | 9.33 | 22.32 | 9.33 | 17.29 | 14.11 |
| Log-likelihood | -532.38 | -504.35 | -442.93 | -418.12 | -419.92 |

Robust standard errors in parentheses.

*significant at 5%; **significant at 1%

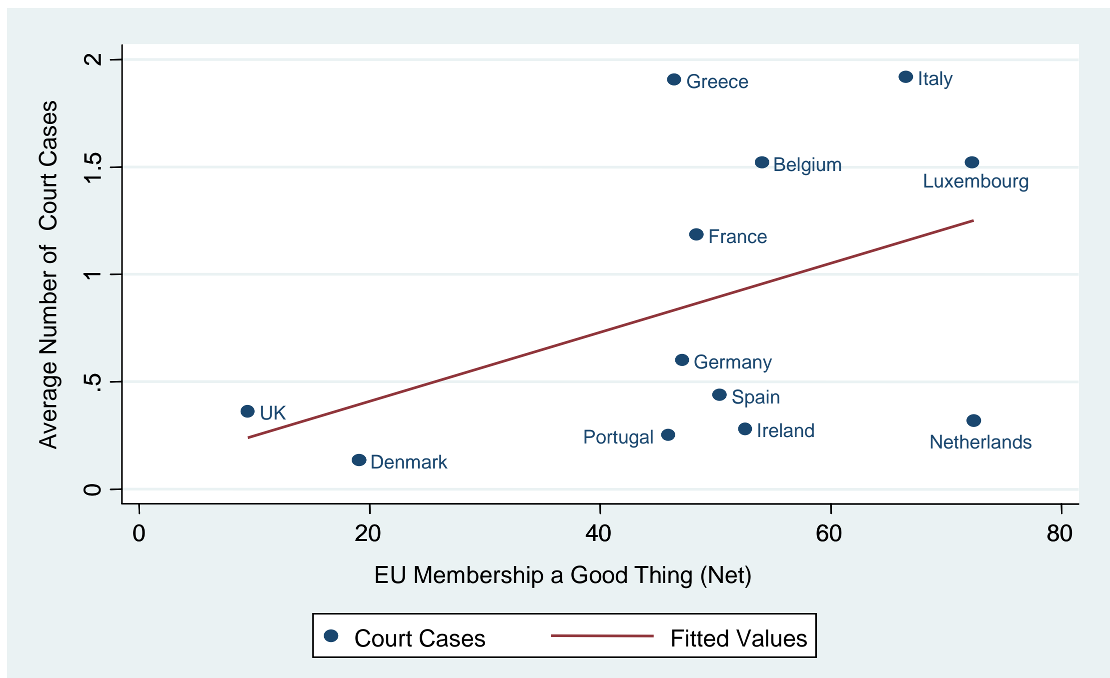


**Figure 7: Court Cases and Support for the EU**

The third model then tests the procedural dimension alone, and the coefficient for executive autonomy is in the predicted direction and statistically significant. However, the degree to which committees can monitor the executive is not significant nor in the expected direction. We can conclude that the ability of a national executive to shape the legislative agenda significantly affects the likelihood of an ECJ ruling. The next two models present the results of the full model and a model with EU public opinion excluded. Without public opinion in the model, the national executive's control of the legislature reduces the chance of an ECJ settlement.[24] The probability of a court settlement decreases by approximately 12% from minimum to maximum levels of executive control, while net approval of EU membership increased the chances of an EU settlement by almost 18% (see table 7).

Moving from countries with extremely low levels of autonomy such as the Netherlands, the predicted probability of an ECJ ruling is 25%, while countries with high levels of executive autonomy such as the United Kingdom reduce the predicted probability to as low as 10% (see figure 8).

Despite the robustness of the results, the lack of variation over time in the key variables of interest prevents us from excluding the possibility that other factors specific to

24 Introduction of alternative measures of executive autonomy, including Liphardt's (1999) measure of executive strength, the duration of cabinets, as well as George Tsebelis' (2002) measure of an executive's control of the legislative process, produced similar results. Siaroff's (2003) measure is applied here because it constitutes the most comprehensive measure of executive autonomy or dominance of the legislature currently in the literature.

each state affect the analysis. Because we cannot introduce fixed effects into the model, I excluded each country successively from the dataset to determine if any country adversely influences the results. Exclusion of France and Italy reduced the statistical significance of executive autonomy, but its coefficient maintained the same direction.

**Table 7**

| Executive Control of Legislature | Predicted Probabilities |
|---|---|
| Change from minimum to maximum value | -0.1488 |
| Change in 1 unit of executive control | -0.0105 |

| Country | Executive Control | ECJ Ruling | No ECJ Ruling |
|---|---|---|---|
| Netherlands | 3 | 0.25 | 0.75 |
| Italy | 4 | 0.24 | 0.76 |
| Belgium | 6 | 0.22 | 0.78 |
| Denmark | 7 | 0.21 | 0.79 |
| Germany | 8 | 0.20 | 0.80 |
| Luxembourg | 9 | 0.19 | 0.80 |
| Portugal | 10 | 0.18 | 0.81 |
| Spain | 12 | 0.17 | 0.82 |
| France | 14.1 | 0.15 | 0.84 |
| Greece | 14.5 | 0.15 | 0.85 |
| Ireland | 18 | 0.12 | 0.87 |
| United Kingdom | 22 | 0.10 | 0.89 |

The statistical analysis produces relatively robust results. It also makes it clear that the ability of a national executive to control the legislative process influences settlement activities. The participation of committees as checks and balances on the role of the executive proved not to have a statistically significant effect on the rate of settlement. We may be able to tentatively conclude, therefore, that when committees are informed about the reasons why a national law violates EU law, they may be more likely to consent to the Commission's legal logic. If, however, committees are excluded from the deliberations and then can affect the legislative process, they are more likely to hinder the process of compliance. Thus, the most important factor affecting the settlement process is the ability of the national executive to change the legislative status quo easily, when national parliamentarians are not included in the compliance process. The settlement patterns of France and Greece remain puzzling. Despite high levels of executive autonomy, ECJ rulings are often imposed upon them. This may simply be due to the high levels of market discriminatory regulation in these countries or due to some additional factor not captured by the model, which inhibits deliberation.

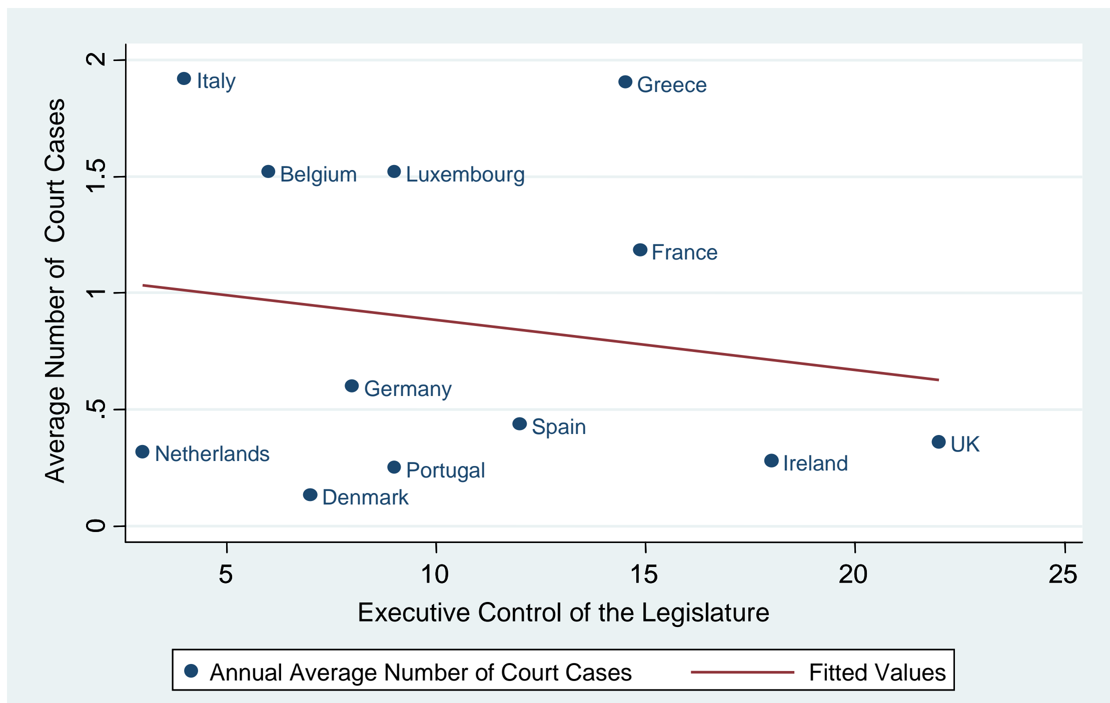


**Figure 8: Court Cases and Executive Autonomy**

## IV. Conclusion: The Legitimacy Dimension

The results presented here demonstrate that increasing the amount of democratic legitimacy in the process of European governance can inhibit its effectiveness in the area of compliance with EU primary legislation, namely the EC Treaty. Mechanisms associated with either the enforcement or management schools of compliance fail to explain the cross-national variation in the number of violations or in the process of settling those violations. To the extent that there are conflicts between national law and EU law, allowing national parliaments to participate in the deliberative and legislative process of compliance increases the chances that the European Court of Justice will impose a settlement upon the member state. Thus, the politics of the compliance process matter as much as, but are different from, the sources of these violations.

These findings have important consequences for the future of European integration. The most effective method to reduce the number of infringements of EU law is to raise the level of democratic participation in the EU policymaking process, although there will always be winners and losers in this process. Due to the current condition of support for increased political integration in the EU, this proposition has a relatively low probability of succeeding. A second solution to the problem of less democratic legitimacy is to make full use of EU directives, which enables member states to devise their own national solutions to EU objectives. Yet, assuming that the European Commission is driving the process of European integration and can serve as an agenda setter in the EU policymaking process, it is inevitable that disputes will develop between EU and national law, for

which the ECJ is the solely responsible adjudicator. The remaining national institution capable of defending the national status quo and laws approved by a democratic majority is a national constitutional court or its equivalent across the member states. However, even in this case, the legal and political relationship between constitutional courts, if they exist, and national governments vary considerably according to the extent to which they can serve as a check on legislative activities. Moreover, national courts themselves often served as the engines of European integration by subsuming their authority under EU legal doctrine. Therefore, the last resort states face when confronted with conflicts between national and EU law is exit from the institution itself, an extremely remote possibility. However, unless democratic pathways are created, which allow EU citizens to shape the legislative process in the European Union, through their national parliamentary representatives, such that EU law conflicts less with national laws, EU membership will increasingly contain fewer privileges and more onerous legal obligations.

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