

# **Compliance with European Union Legislation**

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A Comparative Study on the Reasons of Variation in the Frequency  
of Non-compliance in Central and Eastern Europe

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## Author's Declaration

I, the undersigned Eszter Palotai hereby declare that I am the sole author of this thesis. To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or non-degree program, in English or in any other language.

This is a true copy of the thesis, including final revisions. Date: 10 July 2017

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## Abstract

This paper seeks to explain variation in the frequency of non-compliance with EU law in Central and Eastern European countries from 2005 to 2015. While the overall pattern of non-compliance has decreased over time, there are member states, which violate EU law on a more regular basis than others. Moreover, the paper shows that besides the inter-state variation, there is considerable differences in terms of policy sectors. In order to explain this variation, the paper draws on the three most prominent International Relations perspectives on compliance, i.e. enforcement, management and legitimacy, and develop a set of hypotheses for each of the approaches. The paper also seeks to find an explanation for cross-sectoral differences and builds on the previous literature on compliance in the EU 15 in deriving hypotheses about the variation in non-compliance with regards to policy fields. The empirical analysis of the hypotheses suggest that integrating the various approaches, most importantly power and capacity based explanations with sectoral ones explain a very high proportion of the observed variation. Consequently, it may be concluded that non-compliance is expected in the fields of market creating activities by member states with a higher level of comparative economic power and lower level of bureaucratic capacities

## Introduction

The implementation and effective enforcement of European Union (EU) rules are crucial in the EU, which is essentially a community of states tied together by a complex set of directives, rules and regulations. Issues such as car emission trading, illegal landfills, and water pollution illustrate that the problem is not the lack of EU legislation, rather, the fact that EU law is not applied effectively (European Commission, 2017). Non-compliance not only undermines the internal market, negatively affect European citizens and firms, but the credibility and trustworthiness of the Union can also be harmed. Consequently, a robust and efficient enforcement system is needed to ensure the effective application of EU law. The European Commission's enforcement approach involves the monitoring of the application and implementation of EU law as a 'Guardian of the Treaties', entering in a dialogue with member states in order to remedy potential breaches of law, and to take infringement decisions when breaches are not rectified during the administration phase. Should settlements of the breach fail, the Commission initiates the adjudication phase, whereby the member state in question is referred to the European Court of Justice (ECJ), which issues binding rulings and has the authority to impose fines (Börzel et al. 2011). However, the decentralised system of implementation and enforcement, i.e. that decision-making happens in Brussels, but the application of these decisions is at the discretion of member states poses the risk of 'diversity in unity' concerning compliance with EU law.

The topic of compliance has generated vast scholarly interest due to both the practical relevance and implications of findings, and the aforementioned implementation system, which resembles a natural quasi-experiment where EU law is processed by a number of administrations at the same time (Toshkov, 2010). The salience of compliance peaked when eight post-communist countries were acceded to the Union during the largest enlargement round of 2004. Scholars,

inter alia Sedelmeier 2008 and Falkner and Treib 2008, were concerned about both the ability and willingness of central and eastern European countries (CEECs) to fully apply the enormous amount of EU legislation. The assumption about the problematic implementation performance of CEECs is lined to the transitional nature of both their economies and legal systems. Moreover, besides the issue of their capacity to incorporate EU law, the external incentive structure, i.e. compliant behaviour conditional on the possibility of membership, was altered significantly following 2004. In light of this, CEECs rather successful post-accession performance with regards to implementation observed by, inter alia, Knill and Tosun (2009) and Toshkov (2012) is puzzling. Even more intriguing is the fact that, contrary to the assumptions of Falkner and Treib (2008), who argue that CEECs can be clustered in a separate ‘world of compliance’ characterised by formal transposition and problematic application, amounting to a ‘world of dead letters’, the performance of CEECs is not uniform. Hille and Knill (2006) show that differences already existed during the pre-accession period. Moreover, empirical analysis of CEECs in the years following the accession show a variation among these countries. However, the typology based on national cultures rests on the assumption that the “primary axis of variation” in compliance is across countries (Steuenberg and Toshkov, 2009: 6).

Börzel et al. (2011) suggest that cross-sectoral variance was even larger in the EU15 in 1978-99 than across nations. Consequently, this analysis aims to provide a comprehensive investigation of and explanation for the variance in the frequency of non-compliance in CEECs and includes both state-, and policy-related factors.



As of today, considerably little attention has been devoted to the comprehensive analysis of the compliance patterns in CEECs over a long period of time, whereby both state- and policy-level factors are explored. Hence, the aim of this paper is to empirically assess the variation in the frequency of non-compliance among CEECs from 2005 to 2015, and investigate the most significant factors accounting for this variation.

The primary research question is the following:

*Which are the most important factors in explaining the variation in the frequency of non-compliance with EU law in Central and Eastern European countries?*

To achieve this, the paper will build on insights that have been developed so far regarding the explanatory factors of non-compliance. The theoretical orientation in the literature on compliance is primarily rooted in International Relations (IR) theories, and considers the behavioural dimension, i.e. willingness to comply, and the technical dimension, i.e. the capability to comply. A third emerging approach builds on social constructivism, and highlights the role that rule of law and legitimacy play in creating compliant behaviour. Testable hypotheses of each of the power, capacity and legitimacy approaches are derived and combined with policy-specific explanations, in order to analyse cross-country variance in the frequency of non-compliance.

In terms of methodology, the paper utilises quantitative methods in order to explore post-accession patterns and dynamics of non-compliance in the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and Slovakia. The selection of these countries is justified on the ground that the length of membership is equal, which is crucial since Knill and Tosun

(2009) argue that immediate post-accession implementation performance differs from later stages of membership. The paper will seek to explain variation in the annual number of Reasoned Opinions (RO) received per legal act between 2005 and 2015. Analysing the variation in the frequency of non-compliance over time allows for the exploration of the consistency of explanatory factors. The choice of RO as a proxy for non-compliance as opposed to the issuing of Formal Letter of Notice is justified on grounds that the latter is considered to be a preliminary, less serious, stage in the infringement process. Moreover, operationalising non-compliance based on transposition rates was decided against, since at this stage, member states are incentivised to exaggerate their performance, which might obscure non-compliance. Conversely, the paper acknowledges that stages of the infringement procedure as a proxy for non-compliance do not capture the full picture of compliance and cannot account for the practical aspect of law application.

The paper argues that treating state-based approaches as competing explanations for non-compliance overlooks the fact that the factors of each model interact with each other. The paper shows that non-compliance is primarily a function of power and capacity, but importantly, the interplay of these explanations can account for the performance of some countries. Moreover, it is established that focusing solely on domestic-level factors cannot account for the entirety of variation in CEECs, and importantly, sectors-specific factors can improve our understanding about the sources of non-compliance.

## Outline

The first chapter will review relevant literature on compliance in the EU context with the aim of examining how compliance has been dealt with in the literature from a methodological and practical perspective. The literature review reveals that the field of compliance has given rise

to methodological pluralism ranging from single-case study analysis to large-N, comparative quantitative studies, to nested analysis based on a mixed method approach. The paper will reflect on the limitations of each method and the data alike.

The following chapter will theorise compliance based on the three most prominent IR approaches, i.e. enforcement, management and legitimacy. Moreover, policy-related explanations will be discussed with regard to the nature of policy sectors in the EU. For each of the approaches, a corresponding hypothesis will be developed.

The third chapter addresses the operationalisation of the dependent variable and the independent variables related to the theoretical approaches. The presumed effect of the variables are presented at the end of the chapter.

The final chapter will present the descriptive statistical analysis of the dependent and independent variables, and test the hypotheses using quantitative methods. The method of analysis is the ordinary least squares regression (OLS), which allows for the analysis of multiple independent variables at the same time. The discussion of the findings of the regression analysis concludes chapter 4.

The paper will conclude with the summary of findings, while addressing limitations and discussing avenues for future research in light of the findings. In doing so, the paper aims to contribute to the literature on compliance in CEECs, identifying the gaps and bringing it up to date.

## Chapter 1: Literature review

The roots of compliance research may be found in the third wave of European integration research. Implementation is a crucial concept of more recent Europeanisation studies, which primarily focus on the impact of European integration on member states (Exadaktylos and Radelli, 2012). In fact, Panke (2012) argues that the implementation of EU law is a means of Europeanisation through which domestic environments are altered in order to fulfil the demands stated in Directives. The implementation of EU law encompasses the processes of timely and correct transposition and application, and refers to the process by which the effect of a certain legislation is realized in practice (Prechal, 1995). This analysis treats implementation and compliance as concepts referring to the same processes in the EU context, and uses these terms interchangeably (Toshkov, 2008). Since the 1980s, attention on policy development has been complemented with studies denoting the importance of implementation, or the lack thereof, and the literature on compliance has experienced a considerable expansion. Previous studies have explored a series of different but interrelated issues regarding several aspects of compliance. Initially, scholars' aim was to establish whether the EU suffers from an implementation deficit, and if so, how large this deficit is (e.g. Börzel, 2001). More recent studies turned their attention to exploring compliance patterns with regard to the performance of countries (Hille and Knill, 2006; Mbaye, 2009; Sedelmeier, 2008), policy sectors (Börzel et al., 2001; Haverland et al., 2011), and the nature of the resolution of implementation problems over the course of the infringement procedure (Börzel and Knoll, 2012). Although studies have focused on both old and new member states and the comparison of these groups, considerably less attention has been devoted to the post-accession performance of the post-communist countries acceding in 2004 (see for instance Knill and Tosun, 2009). For illustration, databases of both quantitative and qualitative studies on compliance, with 46 and 68 pieces respectively, reveal that over 86% of statistical and 80% of case study analysis are concerned with the EU15

or some other constellation of old member states (Toshkov, 2010; Toshkov, Knoll and Wewerka, 2010). Similarly, significantly less focus is directed towards the inclusion of policy sectors, especially with regards to quantitative analysis, when analysing variation in the frequency of non-compliance. Consequently, this paper aims to bridge the gap and offer a comprehensive exploration of non-compliance in CEECs with regard to cross-country and cross-sectoral variation alike.

As far as the factors explaining non-compliance are concerned, *inter alia* differing rates across countries, policies and over time, are concerned, the literature is not uniform as to which the most significant variables are, with findings often contradicting one another. The main reason for the contradictory findings and the large number of variables studied (according to Svedrup (2008) there are more than 300 different factors mentioned in the literature), lies in the distinct research designs and the operationalisation of dependent and independent variables. The following sections are devoted to the overview of the methodological, data-related and empirical issues related to the research question of this paper.

### 1.1 Methodological considerations

As it has been established before, methodological pluralism prevails in the field of compliance with EU laws. Generally speaking, qualitative and quantitative analysis are equally spread across the field, with a few studies employing nested analysis based on mixed methods (*inter alia* Kaeding, 2007; and Mastenbroek, 2007). Qualitative analyses based on a case-study research design exhibit a greater concern with internal, rather than external validity, and focus more on the precise causal mechanisms, instead of the estimation of the effects of causal mechanisms (Toshkov, Knoll and Wewerka, 2010). These studies are more appropriate for theory building and producing insights, as opposed to generating testable hypotheses and evaluating their results. In line with this, the main strength of these studies is that they allow for the in-depth analysis of the sources of non-compliance and the substantive evaluation of

non-compliance, i.e. transposition, applications or application. Similarly, due to the great precision of case studies, qualitative research is suited to analyse how laws are applied in practice, as they are not constrained by the availability of data. However, the downside of precision is the fact that the data, which is often collected from the field and analysed in a subjective manner, is not comparable and implies only a small number of cases, in terms of countries or sectors, over a short period of time. In other words, the generalisability of these studies is problematic. A further limitation is the lack of consideration given to the associations between variables (Toshkov, Knoll and Wewerka, 2010). As far as the scope of qualitative studies are concerned, the policy sectors they analyse resemble a skewed sample with three out of four studies examining environmental and social policies, which only have a limited legislative significance vis-à-vis internal market and agriculture legislation (Toshkov, Knoll and Wewerka, 2010). This is problematic since Toshkov (n.d.) reveals that while over 30% of EU legislation is concerned with agriculture and about 20% with internal market issues, only 15% of the laws concern environmental and social policies.

Conversely, employing quantitative methods ensures a higher level of generalisability, and the possibility of comparison across a large number of countries and policy areas, over a long period of time. The difference between the dependent and the independent is clearly spelled out, and operationalisation of the variables is explicit and objective. The rationale behind applying statistical methods is three-fold. Firstly, analysing a larger, i.e. the 2004 enlargement CEECs, number of cases improves our understanding of patterns because measurement errors cancel out in the aggregate (Toshkov, 2010). Secondly, quantitative analysis enables researchers to make causal inferences and discover what makes the occurrence of an event more or less likely given a set of conditions. Finally, due to the many possible explanations for non-compliance and the interactions among them, a statistical approach is necessary. The main

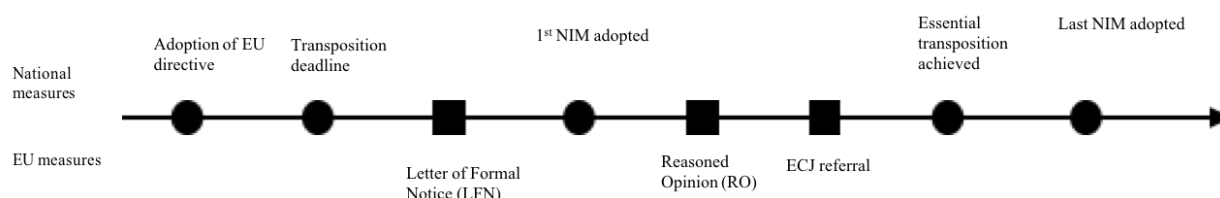
setback of a quantitative research design is the data. Statistical analysis is constrained by the availability of reliable data on both the dependent, i.e. non-compliance, and the independent variables, which may deem the analysis theoretically less interesting due to this practical reason. In the same vein, quantitative studies are concerned with the formal aspect of compliance, rather than the practical application and often employ one of the stages of infringement proceedings as a proxy for non-compliance (e.g. Knill and Tosun, 2009).

In a nutshell, both qualitative and quantitative approaches offer certain benefits besides their strengths. A mixed-method approach, therefore, could benefit from maximising the strengths of both qualitative and quantitative research designs, while minimising their drawbacks. However, due to time constraints, this approach was decided against. Instead, considering the aim of this paper, which is to offer a comprehensive explanation of compliance in CEECs with regards to countries and sectors, a statistical approach is deemed most appropriate.

## 1.2 Variables – selection and operationalisation

The aim of this section is to highlight the ways how the dependent variable and the factors which account for member states non-compliance, as they have been presented in previous studies on EU compliance. Börzel et al. (2010) argue that studies on compliance with EU laws face the methodological challenge of measuring their dependent variable. In general, there are three avenues of EU law violation. Firstly, notification failure denotes, a failure to notify the European Commission of the national implementing measures (NIMs) taken to legally apply the requirements of a directive within the deadline. Secondly, incorrect transposition refers to the timely, but incomplete or incorrect transposition of regulations and directives (Börzel et al., 2010). Finally, the last category of violation concerns the incomplete implementation of measures. In turn, scholars employ two types of data when analysing compliance; either transposition measures or infringement proceedings are taken as a proxy for non-compliance.

Figure 1 illustrates the timeline of a transposition of an EU directive with both national and EU-level events. Most analyses have focused on the first NIM as a relevant indicator of EU compliance. Some studies, however, attempt to identify when correct transposition has taken place as opposed to looking simply at timely transposition (Toshkov, 2010).



**Figure 1** *The process of compliance with EU directives*

Alternatively, some studies focus on the measures of the European Commission and analyse one of the stages of the infringement proceeding, i.e. Letter of Formal Notice, Reasoned Opinion or Referral to the ECJ. After the discussion of the selection and operationalisation of the explanatory variables, the following section will highlight the limitations of the data with regards to both types of data.

In terms of the independent variables, Svedrup (2008) has identified over 300 explanatory factors accounting for the potential sources of non-compliance. In broad terms, two main categories of national-level factors may be identified in the literature on compliance with EU law, namely, political and administrative variables. On the one hand, the behavioural aspect of compliance denotes the importance of countries' willingness in the process of compliance. i.e. that non-compliance is a result of a deliberate, rational and strategic decision. This approach, referred to as the enforcement strand, considers factors, which influence the decisions of states faced with the urge of compliance (Börzel et al., 2007). The most important variables discussed are the economic and political strength of countries. Conversely, the management strand highlights the importance of the technical aspect of compliance, i.e. that countries may be



willing to comply with EU law, but they lack the necessary resources to correctly implement the often costly directives. The lack of resources, which hinders compliance, concerns the human and material resources as well as the ineffective channelling of such resources. A third possible approach, which is less prominent in the literature on compliance, is the legitimacy strand. The legitimacy approach bases its premise on constructivism and concentrate on the support for rule-making institutions and the respect for the principle of rule of law in the national context.

As far as the policy-related aspect is concerned, a significantly smaller amount of studies focus on the importance of sector-specific features. However, Haverland et al. (2012) argue that, similarly to state-specific explanations, policy-specific factors can delay or speed-up compliance. Majone (1993) argues that there is a difference between regulatory and non-regulatory policy areas with regard to the costs of implementing measures at the national level. Besides that, some policy sectors require bigger commitments from member states of the EU in terms of altering their domestic environments rendering compliance difficult as well as costly.

The operationalisation of both the dependent and independent variables in quantitative studies requires the use of available, as opposed to, the most appropriate type of data. Indexes are often based on easily and freely accessible data, which may hinder the reliability of the research findings unless the constraints are addressed.

### 1.3 Constraints of the data

As it has been established in the introduction of the paper, the proxy for non-compliance in this analysis is based on infringement proceedings, more specifically, the annual number of ROs in relation to the number of legislation in force during that year. Although infringement proceedings as a source of data has its constraints, it is arguably more reliable than data on transposition for two reasons. Firstly, the source of transposition data is member state reporting,

which is problematic due to the incentives of countries to sugar-coat their performance in light of the possible sanctions (Börzel and Knoll, 2012). Secondly, the relevance of transposition as a measure for non-compliance is dubious since the transposition rates of the past decade are very high, around 95-95%, which does not reveal large variations across countries and sectors. Beyond the formal legal process of compliance, more problems exist and may be revealed by choosing a different proxy, such as infringements (Toshkov, 2010).

Infringements are a more reliable measure for non-compliance since the data comes from the European Commission based on its own cases and notifications of third parties, i.e. civil society organisations, other countries and firms. Relying on infringements may improve the estimates of the implementation gap in the EU, since it is possible to detect the cases in which member states submitted NIMs, even though they did not transpose a directive. However, utilising infringement data as an indicator for non-compliance has its limitations as well.

Infringement data can only provide a partial perspective on compliance, since the Commission lacks the necessary resources to monitor the entire body of EU legislation, and it has to be strategic in terms of prioritising the most significant areas where non-compliance may occur. Moreover, infringements do not capture the practical application and enforcement of legislation, which is often more problematic than the formal stages of implementation of EU law. On balance, however, Commission data is the most comprehensive source of data for researchers who wish to study compliance from a quantitative perspective for an important reason. The nature of the concept of compliance is essentially subjective, which means that the limitations of the data should be contextualised. There is no perfect measure for compliance in objective terms (Toshkov, 2010). In this vein, interpreting the rates of non-compliance in CEECs should not be compared to an ideal standard of full compliance, which is unheard of even in unitary state settings.

## Chapter 2: Theoretical framework

This part of the paper turns to the theoretical underpinnings of compliance research and review the most prominent arguments put forward in the literature for understanding the sources of non-compliance. As far as country-level explanations are concerned, compliance research finds its roots in IR, and scholars usually present the two most prominent approaches, namely enforcement and management models, which primarily focus on institutional design, i.e. monitoring, sanctioning, capacity-building, and adjudications (Börzel et al., 2010). Since these approaches account for, first and foremost, variation in compliance across different international organisations, a slight reformulation is necessary to account for country-level variation in compliance with EU law. The most relevant explanatory factors considered are power, capacity and legitimacy. In terms of the policy-level explanations, the theoretical basis is less pronounced; however, there are four approaches which will be introduced in this section. The four models consider certain characteristics of policy fields, i.e. whether a sector is regulatory, redistributive, wide in its scope, and concerns positive or negative activities.

While these approaches are usually portrayed as competing approaches accounting for the sources of non-compliance, this paper will argue that it is possible to integrate the three country-level explanations. Therefore, after outlining the main arguments of each approach and deriving hypotheses, the paper will attempt to offer a way of combining these approaches to offer a comprehensive picture about non-compliance in CEECs.

### 2.1 Country-specific compliance approaches

#### 2.1.1 The enforcement approach

The enforcement perspective is rooted in the subfields of game- and collective action theory strands of the political economy tradition and is based on the assumption that states are self-

interested and rational actors. In line with this assumption, states choose to violate EU law based on their strategic calculation of costs and benefits associated with compliance. Both the sources and the remedies of non-compliance are conditioned by the incentive structure of states (Tallberg, 2012). States decide against non-compliance when faced with an incentive structure in which the cost of non-compliance is lower than the benefits of compliant behaviour. From this rationalist perspective of non-compliance, which follows the logic of consequences, non-compliance is perceived as a top-down process. Thus, achieving compliance is a matter of an effective enforcement mechanism, which can alter the cost-benefit calculation of member states by increasing the cost of non-compliance. The establishment of an institutionalised monitoring and sanctioning mechanism, and the higher likelihood of detection increases the anticipated costs of compliance both in a material sense, i.e. financial penalties, and in an immaterial sense, i.e. reputation (Börzel et al., 2010). However, states draw on significantly different power resources, which considerably alter the extent to which they are affected by the costs of compliance (Börzel et al., 2007). Consequently, state power, both in a political and economic sense, is crucial for the analysis.

Power-based IR theories provide a useful starting point in the analysis of the concept of power in relation to violation of EU law. State power matters at two important stages of the EU policy-making process. Firstly, power may have an impact on the decision-making phase since powerful states may be able to negotiate a deal closer to their preferences (Mbaye, 2009). Börzel et al. (2010) argue that goal attainment during negotiation has an impact on the costs of implementation; therefore, it conditions a state's willingness to comply with EU law. In other words, less powerful states are expected to infringe EU laws on a more regular basis because of their inability to decrease the costs of compliance at the decision-making stage by shaping outcomes, which are in line with their preferences. However, some scholars highlight the nature

of the power relationship between the Commission and member states, which qualifies the above stated assumption. Tallberg (2002) argues that following the reasoning of principal-agent theory, the principals, i.e. member states, may curtail the enforcement authority of the Commission, i.e. the agent, which, in turn, may act strategically and prosecute states with a considerable political power less often. Secondly, power matters at the enforcement phase since more powerful states are faced with a different incentive structure in light of the possible ECJ sanctions or the costs related to their reputation. Keohane and Nye (1977) argue that states with less economic weight are more sensitive in terms of sanctions and reputation losses, since they face a higher cost of non-compliance. Consequently, a positive relationship between state power, and the frequency of infringements is predicted by the power-based enforcement approach.

Although CEECs are characterised by largely similar economic features, with the exception of Poland, it is important to include power-based variables for three reasons. Firstly, an important methodological consideration is that of the omitted variable bias, which implies that the exclusion of potentially important factors results in a biased outcome. Secondly, Schimmelfenning and Sedelmeier (2011) argue that the primary reasons of rule transfer in the CEECs are explained by the external incentives model, which emphasises the role of the domestic costs of rule adoption and the threat of sanctions. Importantly, they argue that the lock-in of the external incentives model is important in explaining post-accession implementation performance (Schimmelfenning and Sedelmeier, 2011). Finally, the length of the timeframe allows for considering fluctuations in power-relationships. Dietrich et al. (2011) argue that CEECs were heavily affected by the global financial crisis, but the extent of the effect differs across countries. The argument is based on CEECs different capacity to deal with the crisis-induced economic stress. While the Baltic states were able to defend their fixed

exchange rate regimes, the currencies of the Czech Republic and Poland were depreciated to a larger extent (Dietrich et al., 2011). Moreover, these countries also differ in terms of the loss of confidence, which was higher in the Baltic states (Dietrich et al., 2012).

By qualifying the meaning of EU-related power, it is possible to observe considerable variation across CEECs. Therefore, the paper will examine the relative importance of countries in terms of peripherality in the EU context. In light of this, countries with high comparative economic importance, i.e. low peripherality, will violate EU laws more often than states with low comparative economic importance.

Along the line of the assessment of the concept of power, the hypotheses derived from the enforcement approach are the following:

**H1.1** Member states with considerable *political power* will infringe on EU law on a more regular basis than politically weaker member states.

**H1.2** Member states with high *comparative economic power* will infringe on EU law more often than countries with low comparative economic power.

### 2.1.2 The management approach

The underlying assumption behind the management approach is that non-compliance is a result of involuntary action, whereby states are constrained by structural restrictions in their ability to implement EU law (Mbaye, 2009). Member states intend to comply with EU law in the interest of the effective functioning of the international institution to which they voluntarily joined. Limited state capacities prevent states from acting in accordance with the requirements of international organisations due to the presence of certain restrictions such as the lack of

government capacity. The previous literature is not uniform as to what the concept of capacity entails (Börzel et al., 2007). Chayes and Chayes (1993) employ the resource-centred approach and define state capacity as states' ability to act in light of their legal authority, military and human resources, and how efficient they are in drawing on these resources. Consequently, these two notions, i.e. resource endowment and the efficiency of mobilising resources, should be differentiated. States in which administrations are constrained by the lack of, especially fiscal, resources are expected to infringe EU law more often. Similarly, in countries where bureaucracies are ineffective due to, inter alia, high levels of corruption are predicted to violate EU law on a more regular basis. In other words, a negative relationship is expected both in relation to administrative capacities and corruption. Knill and Tosun (2009) emphasise the role of these factors in the context of post-communist countries.

Post-communist countries had to invest heavily into reforms in order to fulfil the conditions of membership posed by the *acquis*. However, treaty provisions do not contain requirements as to the specific design of the public administrations which implies the possibility of considerable variation across the administrations of CEECs (Dimitrova, 2002).

Based on the assumptions of the management model, the following hypotheses may be derived:

**H2.1** Member states with lower government capacity will violate EU law more often than countries with higher government capacity.

**H2.2** Member states with high levels of corruption will violate EU law more often than countries with low levels of corruption.

### 2.1.3 The legitimacy approach

Besides the oft-cited and utilised power-capacity models, a third approach is emerging in some of the more recent analyses (Börzel et al., 2010; Saurugger, 2012). In contrast with the enforcement and management approaches, which are based on rationalistic considerations of self-interest and follow the logic of consequences, the legitimacy model draws on the logic of appropriateness and emphasises the role of norms and social learning in explaining non-compliance. The source of compliance in this model stems from a normative belief that rules ought to be obeyed, rather than self-interested cost-benefit calculations about the yields of compliance. In other words, non-compliant behaviour is not a result of material considerations, rather the lack of the internalisation of the norms, which render compliance the appropriate behaviour. The dominant mechanisms of rule-internalisation and compliant behaviour are social learning and persuasion as opposed to litigation and coercive threats (Börzel, 2004). Finnemore (1993) argue that international organisations are drivers of the socialisation process through teaching their members about norms and appropriate behaviour.

Börzel et al. (2010) argue that the sense of moral obligation is a function of legitimacy of the sources of rules, i.e. the rule-making institutions or the rules themselves. Since cross-country variations require state-level comparisons, the focus is on member states' support for the rule-making institutions of the EU and their rule of law cultures (Börzel et al., 2007).

Legal sociological scholars highlight the relation between states' inclination of compliance with norm and their legal cultures (Börzel et al., 2010). Accordingly, the frequency of non-compliance is dependent on the extent to which citizens accept and support the legitimacy of the rule of law. At the EU level, this means that countries' acceptance of certain directive and



their implementation results from the popular support for law-making as a legitimate means to ensure political order (Börzel et al., 2010).

Compliant behaviour is not solely attributable to the acceptance of law as a means to ensure political order in a community. Compliance may stem from the acceptance of the rule-setting organisation as a legitimate actor; therefore, states obey the rules of institutions with a high degree of public support. Moreover, Lampinen and Uusikyla (1998) argue that the rational, vote-maximising behaviour of national decision-makers influences implementation, since they want to ensure to make popular policy choices. Consequently, if the support for EU membership or institutions is high, it is assumed that popular support for compliance is also high. This institutional facet of legitimacy implies that in countries where the support for EU institutions is high are expected to violate EU law less often than in countries with low levels of support.

Following the outline of the legitimacy approach to compliance in the EU context, two hypotheses are derived:

**H3.1** Member states with low level of support for the principle of the rule of law will infringe EU law more often than member states with high level of support for rule of law.

**H3.1** Member states with low support for EU institutions are expected to violate EU law more often than member states with high levels of public support for EU institutions.

#### 2.1.4 The integration of the country-specific compliance approaches

The outline of the three approaches and the derived hypotheses treats the models as separate, competing explanations of variation in the occurrence of non-compliance between EU member

states. However, previous literature on the topic suggests that none of the approaches alone can account for the performance of countries in terms of non-compliance (e.g. Börzel et al., 2007). Moreover, the enforcement mechanism of the Commission, which includes both capacity-building and sanctioning, may also imply that the integration of the three approaches may yield fruitful results (Tallberg, 2002).

The integration of power and capacity approaches is rather obvious, since the rational, cost-benefit analysis of states, and therefore the estimates about the cost of non-compliance, is affected by the resources available to them. Even though powerful member states can more easily afford non-compliance, governments with higher capacities and efficiency will violate EU law less often, as the price of compliance is lower for them than for less efficient states. In other words, a negative interaction effect of power- and capacity-based explanations is expected, with higher levels of capacity reducing propensity of states to resist the enforcement activities of the Commission (Börzel et al., 2010).

The second interaction effect between capacity and legitimacy is also straightforward. The conditioning effect of capacity is plausible with regards to the relationship between non-compliance and legitimacy. States which harbour a high support for the rule of law and EU institutions will be able to comply with EU law in a less problematic manner if the resources they draw on are sufficient and used efficiently. Thus, the negative effect of the legitimacy hypotheses on non-compliance is expected to be reinforced by higher government capacity, i.e. a positive interaction effect of capacity and legitimacy should be observed (Börzel et al., 2007).

Finally, the integration of the power and legitimacy models is the most problematic due to the dissimilar starting points of the underlying theories with regards to social action. However, a

possible scenario in the EU context is the interplay between societal support for the institutions and the principle of the rule of law and power in a sense that the accepted norms drive cost-benefit calculations. In other words, member states which could afford non-compliant behaviour may choose to comply if the appropriate course of action is compliance. Therefore, the positive effect of power on non-compliance is expected to reduce with increased levels of public support for the rule-setting institutions and the rule of law (Börzel et al., 2010)

## 2.2 Sector-specific compliance approaches

The state of art research on compliance with EU law is primarily concerned with country-specific explanations (e.g. Hille and Knill, 2006; Börzel et al., 2007; Mbaye, 2009). While models based on state power and capacity explain part of the reasons behind occurrence of non-compliance, these explanations leave a substantial part of the variation in the frequency of non-compliance unexplained. Börzel et al. (2010) argue that the main reason for this is the neglect of explanations, which relate to specific sectors. This is problematic with regard to explaining the variation in the frequency of non-compliance because, as Toshkov (2010) argues, cross-sector variation is at least as important as differences across countries. In order to give a comprehensive account of the occurrence of non-compliance, this section develops sector-specific hypotheses, which may explain why certain policy fields attract more infringements than others. The theoretical basis of policy-explanations is less well-grounded than the IR based state-centred explanations; however, there are four approaches which highlight the differences between sectors.

The first two approaches are both concerned with the underlying fiscal aspect of policy sectors, and resemble arguments of the management approach, which highlight the inability of countries to comply due to the high costs of implementation. Firstly, Majone (1993) differentiates regulative from non-regulative policy fields and argues that a feature of the

former sectors is the limited budgetary constraints on the activities of decision-makers. While decision-making in non-regulatory areas is limited by budgetary appropriations and the size of tax revenues, the costs of policy formulation in regulatory sectors is less costly and the implementation of such policies are borne by local authorities (Majone, 1993). The effect of this feature of regulatory policies is even more evident in the multi-level context of the EU, where the economic, political and administrative costs of implementing and enforcing EU laws has to be borne by the member states. Secondly, Börzel et al. (2011) argue that the scope of policy sectors may serve as an explanation for the variable violations of EU law. This approach highlights that in areas where the competencies of the EU are more pronounced, i.e. are characterised by a wide scope, implementation is more costly than in areas of limited EU interference. In other words, the wider the scope of a sector, the higher the likelihood of infringements is, due to the inability to bear the costs of implementation and enforcement.

The third approach argues that there is a cleavage between redistributive and non-redistributive policies (Windhoff-Héritier, 1980). The logic behind this distinction refers to the domestic level opposition, which national governments face when implementing EU law. An important feature of redistributive policies is to create winners and losers, whereby some parts of a society may be at a disadvantageous position following the implementation and enforcement of a directive (Olson, 1965). Consequently, in line with the enforcement approach, the willingness of governments to enforce redistributive policies may be affected considering the domestic opposition.

Finally, Zürn (1997) differentiates policy sectors along the dimensions of market-making and market-correcting policy fields. Implementation in the areas of negative integration are believed to be less problematic in terms of EU law violation since they require implementers

to abstain from making certain decisions in order to enable the free flow of market principles (Knill and Lenchow, 2005). In contrast, market-correcting areas are more likely to be violated due to their nature, i.e. they require member states to take a precise course of action. Consequently, as Börzel et al. (2011) emphasise, in areas of positive policies, member states are faced with more opportunities of non-compliance.

The four testable hypotheses derived on the basis of the above-outlined theoretical approaches are presented below.

**H4.1** Policy sectors with a *regulatory character* will experience more frequent non-compliance than policy sectors with non-regulative features.

**H4.2** Policy areas with a *wide regulative scope* will experience more frequent non-compliance than policy sectors with a more narrow scope.

**H4.3** Policy sectors with a *redistributive character* will experience more frequent non-compliance than non-redistributive policy areas.

**H4.4** Policy sectors with a *market-correcting or positive character* will experience more frequent non-compliance than policy sectors with a market-making or negative character.

### 2.3. Summary of hypotheses

This section of the paper has outlined the theoretical basis of compliance in the EU. It has been identified how the most important approaches are relevant in the context of CEECs. The table

below illustrates the summary of country-, and sector-specific variables and their predicted effect on the dependent variable.

Explanatory variables	Predicted effect of the explanatory variables on the dependent variable (where + indicates more ROs per legal act)
<b>Country-specific explanations</b>	
Willingness to comply	
Political power	+
Economic power	+
Capacity to comply	
Government capacity	-
Corruption	-
Legitimacy	
Support for the rule of law	-
Support for EU institutions	-
<b>Sector-specific explanations</b>	
Regulatory character	+
Wider Scope	+
Redistributive character	+
Market-correcting character	+

**Table 1** Independent variables and their predicted effect on the dependent variable

## Chapter 3: Variables and operationalisation

Following on from the theoretical discussion, which presented the relevant country-, and policy-specific factors, this section will turn to the operationalisation of these factors and a discussion about the dependent variable.

### 3.2 Operationalisation of the dependent variable

The subject of interest of this paper is the variation in the frequency of non-compliance in CEECs. As it has been established in the previous sections, compliance is a broad concept, especially in the multi-level context of the EU, and there are several choices as to the operationalisation of the dependent variable.

Since the paper wishes to engage with compliance beyond timely transposition, examining NIMs is avoided; instead, the analysis utilises infringement proceedings as a proxy for non-compliance. Relying on infringements may improve the estimates of the implementation gap in the EU, since it is possible to detect the cases in which member states submitted NIMs, even though they did not transpose a directive. Therefore, data on infringements provides a more reliable indicator for non-compliance.

Figure 1 in the literature review has engaged with the timeline of a hypothetical directive, and it highlighted the different stages of the proceeding. Reasoned Opinions constitute the dependent variable of the analysis, since it is often considered as the first official dialogue of the process, which follows from an unsettled dialogue and a Letter of Formal Notice (Mbaye, 2001). An important consideration with regards to utilising infringement proceedings is the growing body of legislation in force. To control for this tendency, i.e. that opportunities of non-compliance increase with the number of potential acts to be infringed on, the paper uses the

relative number of ROs in force per legal act, rather than an absolute, aggregate estimate (Börzel et al., 2007).

The dependent variable of the analysis is the annual number of ROs as a percentage of the annual legal acts in force in the given years by member states and policy sectors between 2005 and 2015. The tables below illustrate the mean number of the dependent variable to give a snapshot of the variation among CEECs and policy sectors. Table 2 shows the variation across countries, and Table 3 illustrates the sectoral differences

Country	Mean annual ROs per legal act (%)
Czech Republic	0.51
Estonia	0.32
Hungary	0.33
Latvia	0.23
Lithuania	0.16
Poland	0.67
Slovenia	0.33
Slovakia	0.28

**Table 2** Mean annual ROs per legal act (%) by member state, 2005-2015



Policy sector	Mean annual ROs per legal act (%)
Communications and Networks	0.84
Competition	0.06
Education, Employment and Social Affairs	0.36
Energy	1.69
Enterprise and Industry	0.61
Environment	1.56
Health and Consumers	0.49
Home Affairs	0.44
Internal Market and Services	0.75
Justice, Fundamental Rights and Citizenship	1.28
Mobility and Transport	1.55

**Table 3** Mean annual ROs per legal act (%) by policy sector, 2005-2015

### 3.3 Operationalisation of the explanatory variables

The hypotheses derived from the theoretical approaches feature country-based and policy-based sectors. Regarding the former, six variables are identified, four preference-based ones, i.e. comparative economic power, bargaining power, regulatory capacity and corruption, and two legitimacy-based, i.e. support for the rule of law and support for EU institutions. The operationalisation of these variables is presented below.

#### 3.3.1 Country-specific factors

Power matters both from an economic and a political point of view. Economic strength is important when countries weigh the costs of non-compliance. The threat of financial and reputation-related sanctions conditions member states' decisions about non-compliance. A measurement is needed, which enables the comparison of the economic and political strengths of CEECs. As far as economic power is concerned, many studies utilise gross domestic product (GDP) as an indicator. Although GDP is a reliable and available data, it does not capture the context fully. In light of this, the paper turns to an EU-related power indicator, Comparative

economic power, which is measured as a percentage of the total of intra-EU imports and exports for each year. The source of the data is Eurostat.

Regarding the political aspect of power, an obvious EU-specific indicator is the number of votes in the Council of the European Union. While this is a reliable indicator, the literature often combines the number of votes with the share of votes a member state controls (e.g. Mbaye, 2001). Weighted votes or bargaining power depicts the assertiveness of member states at the decision-making stage and arguably influences states' ability to influence policy outcomes.

The management model hypothesises the importance of government capacity and efficiency in explaining variation in non-compliance. Both of these measures are operationalised in a myriad of ways in the literature, ranging from GDP per capita to field-work induced estimates of the efficiency of civil service (e.g. Börzel et al., 2004; Laminen and Uusikyla, 1998). As far as regulatory capacity is considered, the World Bank Governance Indicators published by the World Bank on an annual basis is a reliable data source. The indicator 'Regulatory Quality' captures the ability of governments to formulate sound policies independent from pressures, and the quality of the civil service (World Bank, 2017). The measurement of this indicator ranges from -2.5 to 2.5. Corruption, on the other hand, hinders the effective channelling of resources as officials might have an interest in non-implementation as a result of side-payments. The Governance Indicator dataset includes this measure as well. While the Transparency International Corruption Perception Index is also a reliable source, the World Bank includes this proxy as well along with a range of other sources. The measurements are on a scale from -2.5 to 2.5.

The first legitimacy hypothesis expects the negative effect of the support for the rule of law on non-compliance. Similarly to the management variables, the source of this factor is the World Bank. Although the Sustainable Governance Indicators provide a reliable estimate, indicators are not available in the years of immediately following accession. This measure captures agents' confidence in the quality of the enforcement of social contracts (World Bank, 2017).

The data for the final state-level variable, i.e. support for EU institutions, comes from the Eurobarometer surveys of the European Commission. The Eurobarometer survey asks citizens about their confidence in the three most important EU institutions (Eurobarometer, 2017). The measurement is expressed as a share of positive opinions about the institutions (Eurobarometer, 2017). The paper combines the levels of support for each institution.

Variable	<i>N</i>	Mean	Standard deviation	Minimum	Maximum	Data source
<b>Willingness to comply</b>						
Comparative economic power (EU trade)	88	0.12	0.10	0.02	0.32	Eurostat
Bargaining power in the Council	88	0.39	0.66	0.01	2.06	Eurostat
<b>Capacity to comply</b>						
Regulatory quality	88	1.05	0.21	0.62	1.68	World Bank (WGI)
Corruption	88	0.45	0.31	0.03	1.27	World Bank (WGI)
<b>Legitimacy</b>						
Support for the rule of law	88	0.80	0.22	0.35	1.36	World Bank (WGI)
Support for EU institutions	88	50.2	8.0	35.0	69.7	Eurostat

**Table 4** Descriptive summary statistics of the independent variables

### 3.3.2 Policy-specific factors

The theoretical accounts concerning policy-related explanations require the categorisation of policy sectors. Categorisation of highly complex policy fields of the EU, especially along the binary lines identified in the theoretical section, are not without problems. European legal acts in every policy area contain both elements of regulation and redistribution, and some form of market creation and correction (Börzel et al., 2011). By looking at the previous literature on potential ways of grouping policy sectors, it is apparent that most qualitative studies focus on areas of action where the categorisation is more straightforward. For instance, Scharpf (1996) analyses air quality regulation, along with consumer protection. This paper will follow Börzel and her co-author's categorisation and argue that by looking at the mission statements of individual Directorate-Generals, the goals of the EU with regards to fields of actions, and the policy instruments utilised to achieve these goals enables the identification of the primary character of sectors (2011:14). Table 3 presents the categorisation of policy areas.

	Regulatory	Redistributive	Scope	Market creation
Communications and Networks	X			
Competition	X		X	
Employment and Social Affairs	X	X	X	X
Energy	X	X	X	
Internal Market and Services	X		X	
Enterprise and Industry	X	X	X	
Environment	X	X	X	X
Health and Consumers	X	X	X	X
Home Affairs	X		X	
Justice, Fundamental Rights and Citizenship	X		X	
Maritime Affairs and Fisheries		X		
Mobility and Transport	X	X	X	

**Table 5** Categorisation of policy sectors, source: based on Börzel et al. (2011)

As far as the Majone's (1997) distinction about the regulatory nature of policies is concerned, most sectors have been identified as ones with a predominantly regulatory character. Maritime and fisheries is the exception, which is characterised by instruments for protecting participants (Börzel et al., 2011). Enterprise and industry, environment, social affairs, consumer protection, transport and mobility, and energy policies primarily concern measures with redistributive implications, but regulatory lines are present (Börzel et al., 2011).

Regarding the wide vs. narrow regulatory scope of fields of action, The widest regulatory scope arguably characterises to environmental, internal market, and social affairs policies, which regulate wide-ranging and diverse issues from green economy to water pollution in the former, and from better working conditions to healthcare. Fisheries and communication concern a fewer number of issues compared to other sectors.

Finally, the market-correcting aspect of distinction is considered. The areas of social affairs, environmental policies and health and consumer protection has been identified as sectors with a predominantly positive character (Börzel et al., 2011). These sectors concern the correction of market-failures by setting health and safety and product standards.

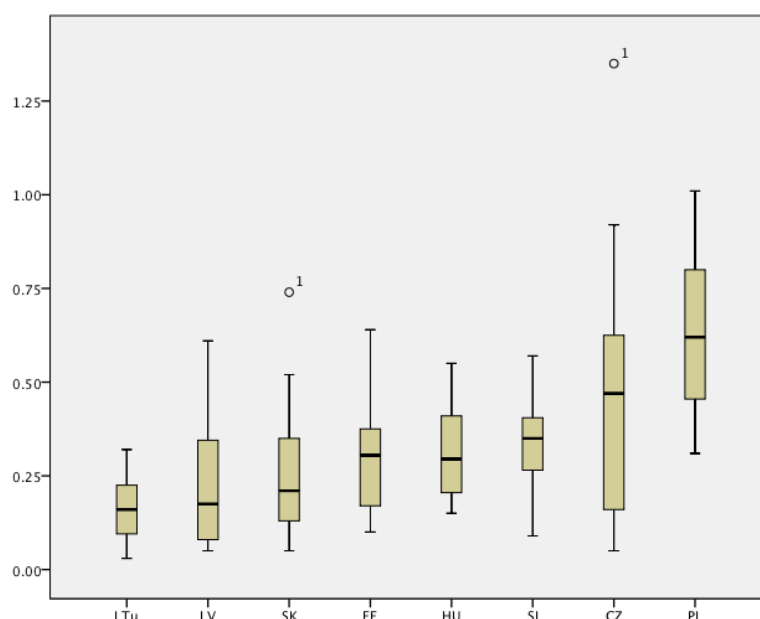
## Chapter 4: Empirical analysis and findings

### 4.1 Descriptive statistical analysis of the data

In the previous chapter, both the dependent variables and the explanatory factors have been operationalised. This section of the paper will turn to the descriptive statistical analysis of the research question. Data from the European Commission enables the examination of both cross-county and cross-sector variation. Mapping non-compliance between 2005-2015 by member states and sectors is a prerequisite of the empirical analysis of the factors, which might account for the variation.

#### 4.1.1 Cross-country variation

European Commission data on the number of ROs allow for the comparison of the member states in question. Figure 1 shows the annual number of ROs as a percentage of the number of legal acts in force in that year. This measure takes into account the growing number of legal acts in force. Although member states face the same requirement in terms of complying with the number of legal acts in force, it is illustrated that there is considerable variation across member states.



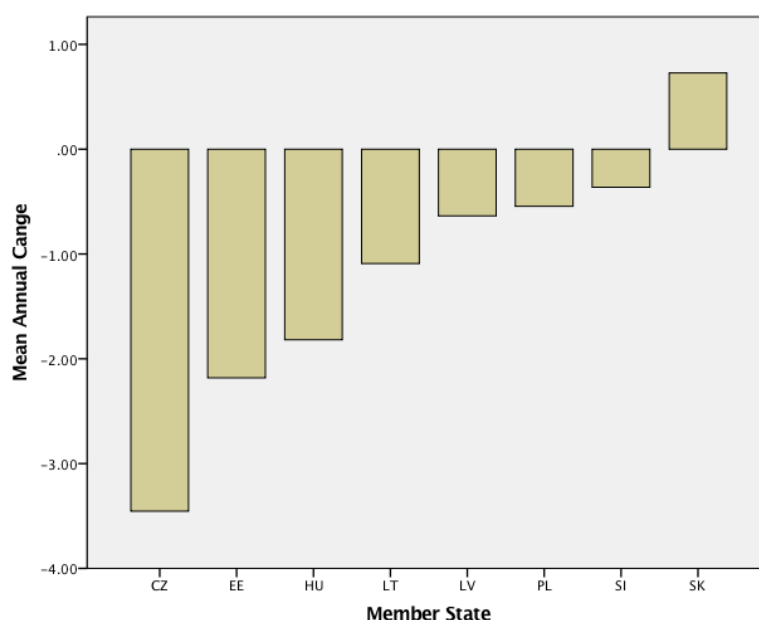
**Figure 2** Annual number of Reasoned Opinions per Legal Act (in %) by CEECs, 2005-2015<sup>1</sup>  
The box and whisker plots depict the lowest and highest number of Reasoned Opinions per annum. The individual plots are sorted in an ascending order based on the average number of annual infringements per legal act by member state.

Based on the figure, it is possible to identify a group of leaders, middle-field and laggards. Two of the Baltic states, i.e. Lithuania and Latvia, as well as Slovakia are the best performers. The worst compliance rates are recorded in Poland and the Czech Republic. The distribution of non-compliance is somewhat puzzling as none of the compliance approaches alone can account for the performance of all countries. Power-based models would expect similar performance of Hungary and the Czech Republic, and Slovakia and Slovenia due to their similarities in terms of economic and political power. However, this is not reflected in the graph. Management theories would expect the Baltic states with highly efficient bureaucracies to do well, which is depicted in the cases of Lithuania and Latvia, but Estonia is not among the best compliers. The legitimacy approach cannot explain why Latvia and Slovakia are performing well with regard to their support for EU institutions and rule of law traditions respectively.

<sup>1</sup> Country codes refer to the following countries: LTu=Lithuania, LV=Latvia, SK=Slovakia, EE=Estonia, HU=Hungary, SI=Slovenia, CZ=Czech Republic, PL=Poland

Consequently, the interaction effects of these approaches might reveal the performance of the above mentioned countries.

One of the values of analysing performance across time is to be able to discover more about the dynamic nature of compliance, which the above presented snapshot is unable to provide. By looking at the annual changes in non-compliance rates over the course of CEECs' membership, the dynamic nature of compliance may be better illustrated. Figure 2 shows the mean annual change in the number of ROs received (on an aggregate level, rather than as a percentage of the annual legal acts in force) by member states between 2005 and 2015.



**Figure 3** Mean annual change in the number of ROs received by CEECs, 2005-2015

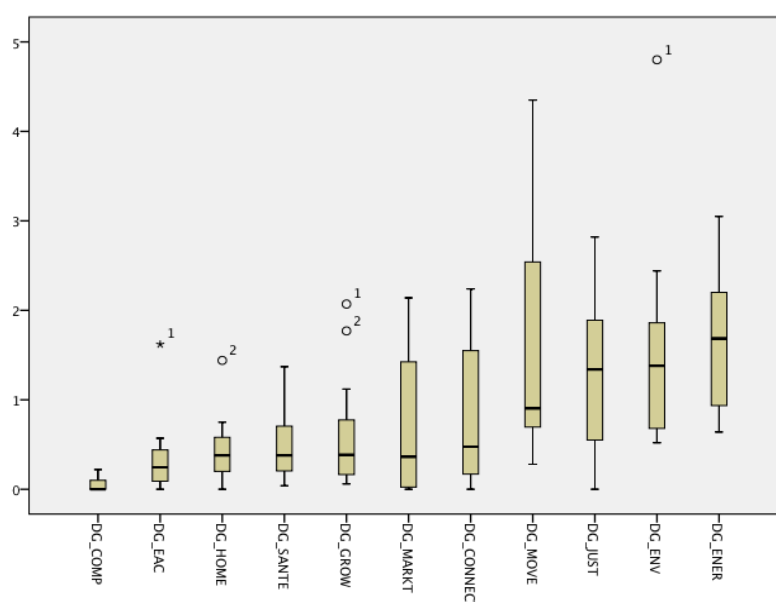
This figure captures both the overall downwards trend in the number of infringements and the individual performance of member states. Slovakia, which is among the best performers is the only country where the number of ROs increased. The other relevant observation is that of the performance of the Czech Republic, which has shown the biggest improvement in the number of ROs received. Thus, over time, the Czech Republic's performance is expected to improve



to an extent that it could join the middle field. The rest of the countries receive between one and two less ROs on an annual basis.

#### 4.1.2 Cross-sectoral variation

By turning to the analysis of sectoral variation in the frequency of non-compliance, it can be established that cross-sectoral variation is even more pronounced than cross-country variation. Figure 2 illustrates the performance of policy sector over the period of 2005 and 2015. Those sectors, i.e. maritime and fisheries, agriculture, financial stability, climate action and taxes and Customs Union, where the number of annual ROs are negligible, were excluded for the sake of clarity.



**Figure 4** Annual number of Reasoned Opinions per Legal Act (in %) by policy sectors, 2005-2015<sup>2</sup> The box and whisker plots depict the lowest and highest number of Reasoned Opinions per annum. The individual plots are sorted in an ascending order based on the average number of annual infringements per legal act by member state.

<sup>2</sup> Sector codes refer to the following policy areas: COMP=Competition, CONNECT= Communication Networks, Content and Technology, EAC=Education, Employment and Social Affairs, ENER=Energy, ENV=Environment, GROW=Enterprise and Industry, HOME=Home Affairs, JUST=Justice, Fundamental Rights and Citizenship, MARKT=Internal Market and Services, MOVE=Mobility and Transport, SANTE=Health and Consumers.

The graph clearly shows that member states violate EU law in certain policy areas more often than in other fields. Many of the policy fields, especially considering that some were excluded, are performing well in terms of the number of infringements. However, in the Energy, Environment, Justice and Mobility and Transport sectors, member states violate, on average, 1.5 percent of the legal acts in force. This trend is in line with previous studies, which identify transport, environmental and internal market policies to be problematic (e.g. Börzel et al., 2011).

## 4.2 Empirical analysis

As established in the section above, there is considerable variation in the frequency of non-compliance both in terms of countries and sectors. In order to explain this variation, this section is devoted to the reporting of the results of the empirical analysis. In order to test the six country-specific and four sector-specific hypotheses, the paper will utilise multivariate regression. Since the explanation of infringement patterns is multivariate, it is important to include all factors which are expected to be relevant in terms of explaining non-compliance to counter the possibility of omitted variable bias, and the reporting of wrong causal inferences (Steuenberg and Toshkov, 2009). However, the problem of multicollinearity should be avoided as well, which can be an issue when using multiple variables, which may co-vary together. To this end, explanatory factors were tested for multicollinearity. The type of the data in the analysis is balanced panel data, i.e. each cross-sectional unit (country) is observed for the same time-period (2005-2015). The units of analysis for the empirical examination, therefore, are 88 country years, i.e. the eight post-communist countries in the years between 2005 and 2015. Taking into account the type of the data, ordinary least squares (OLS) regression is performed to test whether the independent variables can account for the variation in the dependent

variable<sup>3</sup>. Year fixed effects are included in each model to control for (i) period effects, which are beyond the growing number of legal acts per annum, and (ii) unobserved temporal heterogeneity (Börzel et al., 2007). The results of the linear OLS regression of the six independent variables and their interaction effect on the dependent variable yields the following outcome, displayed in Table 6. In the discussion below, regarding the results of the regression, the paper will refer to Models 1 to 4, which estimate the effects of each approach while controlling for the other approaches. Model 1 constitutes the base model, while Models 2 to 4 include the integration of the approaches, i.e. power and capacity, legitimacy and capacity and power and legitimacy.

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<sup>3</sup> Tests of heteroscedasticity were performed. With regard to unobserved country heterogeneity, the use of a fixed-effect was avoided since it does not allow for the inclusion of time-invariant covariates and disregards the cross-country information in the data (Börzel et al., 2010).

## 4.2.1 Findings of the country-specific explanations

	(1)	(2)	(3)	(4)
<b>Power</b>				
Comparative economic power	7.135*** (1.74)	9.321** (3.71)		14.494** (9.47)
Bargaining power	0.066 (0.24)	0.474 (0.68)		0.709 (0.35)
<b>Capacity</b>				
Regulatory capacity	-3.709** (0.91)	-1.921** (0.76)	-2.646* (0.96)	
Corruption	-0.009 (0.25)	0.568 (0.63)	-0.091 (0.66)	
<b>Legitimacy</b>				
Support for rule of law	-2.018* (0.93)		3.597 (2.16)	-0.708 (0.57)
Support for EU institutions	0.011 (0.02)		0.012 (0.02)	0.023 (0.16)
<b>Interaction effects</b>				
Power and Capacity		-15.621** (10.02)		
Legitimacy and Capacity			-1.800 (1.51)	
Power and Legitimacy				20.598 (11.531)
Constant	1.789 (1.10)	1.777 (1.18)	2.127 (2.19)	0.716 (1.24)
Observations	88	88	88	88
Adjusted R <sup>2</sup>	.56	.58	.32	.45

**Table 6** Country-specific explanations for the occurrence of non-compliance  
 Dependent variables are Reasoned Opinions per legal act in force. Entries are OLS coefficients.  
 Standard errors clustered on countries are presented in parentheses.  
 \*p<.1. \*\*p<.05 \*\*\*p<.001

The first set of results indicated in the table above concern the assumptions of the *enforcement approach*, and relate to countries' willingness to comply, based on the costs of non-compliance. The results support the first hypothesis (H1.1), which states that countries with higher levels of comparative, EU trade-related, economic power receive more ROs. In other words, the

expected positive relationship between economic strength and the annual number of ROs received can be established following the empirical analysis. In terms of comparative economic power, Poland, the Czech Republic and Hungary tops the list of post-communist countries, while the Baltic countries are more peripheral with regards to EU trade. However, the performance of Slovenia is slightly unexpected, since its economic power is not great, but still has a high number of ROs. The results confirm this, and we can establish that economic strength increases the likelihood of the occurrence of non-compliance. Conversely, the second hypothesis, i.e. bargaining power in the Council of the European Union is not significant in the context of CEECs.

Although the effect of the relationship is positive, which is in line with the theoretical expectations, the influence CEECs may assert during the decision-making stage is not significant in accounting for their variable performance in terms of non-compliance. A better estimate of political power might be able to capture more of the variation across CEECs since the share of votes in CEECs is rather low and largely similar, with the exception of Poland.

To better understand the variable performance of CEECs, the effect of government capacity and efficiency are considered. The *management approach* hypothesises that there is a negative relationship both the capacity of governments to make effective policy and the effectiveness of channelling their resources. The first variable addresses governments' capacities and abilities to make policy independent of pressures and the quality of the implementation of these policies. The predicted effect is confirmed by the analysis as well as the relevance of this factor in accounting for the number of annual ROs. Countries where regulatory capacity is high, infringe EU law on a less regular basis than those with ineffective public service. This variable also helps us understand the performance of Slovenia, where regulatory capacity is the lowest. Even

though Slovenia is in the mid-field in terms of economic strength and has a low share of Council votes, it receives more Ros due to the lack of capacities its administration may draw on. The third hypothesis, which relates to how effective governments are in channelling their resources is not confirmed by the analysis.

Corruption seems to positively influence infringements, but this relationship is not significant. This finding is consistent with Mbaye's (2001) study, which also confirms the effect of the variable corruption, but not its significance. One revelation is important, the high levels of Corruption in Estonia counteract its regulatory capacities, which explains why it is not among the top performers.

The final set of variables build on the *legitimacy approach*, and considers the effect of the role of norms, socialisation and public support. The analysis supports the first legitimacy hypothesis, i.e. where the support for the rule of law is high, the number of infringements is lower. Although the strength of the coefficient gives limited support for the hypothesis across the different models, it may be stated that countries where law-making is a respected means of sustaining political order, infringements are lower. Poland, Hungary and Slovenia are among the worst performers in relation to the support for the rule of law, which reflects in the high number of ROs they receive. The Czech Republic, however, ranks high in terms of support for the rule of law, but it is still the second worst performer. This might be explained by the high economic and political power, which is more significant than the normative aspect of compliance in this case. The final country-specific explanation has to be rejected.

Contrary to the expectation based on the legitimacy approach, there is an insignificant positive relationship between public support for the EU institutions and the number of infringements.

The explanation for this might lie in the interplay of the variables. In countries where government effectiveness is low, the support for the rule of law is also expected to be low because of the ineffective enforcement of rules. Therefore, citizens might turn their attention towards the EU, as a legitimate institution with the ability to provide public goods in a more efficient manner (Börzel et al., 2010). Hence, countries where the support for EU institutions is high, such as in Hungary, may be among the worst performers since the capacity to enforce EU laws is limited.

In sum, of the six relationships examined, three results are significant. Importantly, one of each of the hypotheses of the compliance approaches has resulted in a confirmed, relevant results in relation to explaining the variation in the frequency of non-compliance. Comparative economic power, regulatory capacity and the support for the rule of law represent the relevance of the enforcement, management and legitimacy approaches respectively. Consequently, all three of the country-specific accounts are relevant for a comprehensive explanation of the compliance rates in CEECs. In short, the results imply that less powerful countries with high regulatory capacity, and high support for the rule of law are the best performers. This finding confirms that the Baltic countries are among the top performers. Moreover, the analysis implies that there might be an important interplay between the variables related to the three approaches. Hence, the next section will evaluate whether the integration of the enforcement, management and legitimacy models are fruitful in terms of explaining the variable compliance rates of CEECs.

#### 4.2.2 An evaluation of the integration of the approaches

Central to the theoretical argument of the paper is the assumption that the integration of the three approaches is helpful in accounting for the variance in the frequency on non-compliance. In order to examine the utility of the interplay of the three compliance approaches, the three

most relevant variables of the regression analysis are examined together, which is presented in Models 2-4 in the table above.

The results illustrate that only the interplay between power and capacity is relevant with a strong negative significant outcome. The negative relationship between power and capacity implies that the positive effect of power is reduced by the presence of effective administrations. This explanation informs the explanation for the difference between countries such as Latvia and Slovenia. While these two countries have the same number of votes in the Council, and are also very similar in terms of comparative economic power, Latvia's administration is more efficient than Slovenia's, which reflects in less infringements with regards to Latvia. The performance of Poland is also in line with this hypothesis, since it lacks the administrative efficiency that characterises the leaders, which means that the positive effect of power is not mitigated by the negative effect of efficient bureaucracies.

#### 4.2.3 Findings of the sector-specific explanations

As both the literature review and the descriptive statistical analysis has established, there is considerable variation across the number of ROs policy sectors attract. Similar to the nature of data with regards to cross-country explanations, the type of sectoral data is balanced panel data, i.e. each sector is observed between 2005-2015. However, this dataset is only appropriate to examine the first four policy-specific hypotheses. As far as the interaction effects are concerned, Zürn (1997) highlights the importance of country-specific control variables. Consequently, the second model includes variables of the two most prominent compliance approaches, i.e. enforcement and management. The unit of analysis in model two is positive vs. negative country year, i.e. for each country year there is an observation focusing on non-compliance with positive policies, and another one concerning non-compliance with negative



policies (Börzel et al., 2011). The linear OLS regression of the effect of the four independent variables on the dependent variable yields the results presented in the table below.

	(1)	(2)
Regulative	0.512* (0.160)	
Scope	0.0256 (0.200)	
Redistributive	0.131** (0.947)	
Positive	2.364** 0.062	0.0491** (0.021)
<b>Enforcement (Power)</b>		
Comparative economic power		10.08* (2.056)
<b>Management (Capacity)</b>		
Regulatory capacity		-0.971** (0.663)
<b>Interaction effect</b>		
Market correcting policies and capacity		-0.336* (0.14)
Constant	1.168 (4.15)	0.880 (1.19)
Observations	144 Policy years	88 Negative vs. positive country years
Adjusted R <sup>2</sup>	.67	.86

**Table 7** Sector-specific explanations for the occurrence of non-compliance  
Dependent variables are Reasoned Opinions per legal act in force. Entries are OLS coefficients. Standard errors clustered on policy sectors (Model 1) and countries (Model 2) are in parentheses.  
\*p<.1. \*\*p<.05 \*\*\*p<.001

The first model confirms the effects of the hypotheses, but the significance of these effects varies considerably. There is a weak positive relationship between the number of infringements and the regulatory character of policy fields. However, since most of the policy sectors included

in the analysis have a regulatory nature, the significance of this finding is not great. The hypothesis about the scope of policy fields does not seem to account for the variation in the frequency of non-compliance across sectors. Conversely, the third hypothesis, which expects weaker compliance in fields of action with a redistributive character, is confirmed, and the effect of the relationship is significant at the five per cent level. This reflects the findings of the descriptive statistical analysis, which shows that there is a higher rate of non-compliance in the fields of environmental, home, and justice affairs related policies. Finally, the results show that market-correcting policies attract more non-compliance than market-making sectors. In this regard, the areas of employment, education and social affairs, along with environmental policies have a weaker compliance record.

In the second model, control variables based on the characteristics of member states are introduced, the positive relationship between the market-correcting nature of policy sectors and the number of infringements is strong and significant. Moreover, there is support for the interaction effect between state capacities and the number of infringements. In line with the theoretical expectations based on Zürn's (1997) arguments, it may be concluded that sufficient bureaucratic resources reduce the positive effect of market-correcting policies on non-compliance. In other words, the more efficient governments are in using the available resources, the less the number of infringements is in areas such as the environmental policy (Börzel et al., 2011).

## Conclusion

This paper analysed the post-accession compliance-patterns of the post-communist countries, which joined the 2004 enlargement. The descriptive statistical analysis established that there is considerable variation across member states in terms of the number of annual ROs in relation to the legislative body in force, but importantly, the paper showed that cross-sectoral differences are significant. The aim of the paper was to identify the factors, which account for the variation in the frequency of non-compliance in CEECs. Identifying compliance patterns, and understanding the sources of non-compliance has important practical implications. Differences in compliance rates weaken the competitive position of those who obey the rules and put certain actors on an unequal footing. Besides, high levels of non-compliance undermine the credibility of the EU and have a negative impact on the integration process. Therefore, it is vital to understand the extent of non-compliance and the reasons for variation in non-compliance to better tailor the enforcement regime of the Commission.

In order to account for the variation in the occurrence of non-compliance, the paper focused on the state-level factors based on the most prominent IR approaches, enforcement, management and legitimacy. Importantly, the paper argued that there is empirical justification for the integration of these approaches as opposed to treating them as alternative explanations. Although these explanations are important in explaining a large portion of the variation in the occurrence of non-compliance, previous empirical evidence suggest that analysing policy sectors is a worthwhile endeavour. Therefore, the paper mapped sectoral differences along with cross-country differences and identified that certain sectors, i.e. energy, environment and mobility and transport, are violated on a more regular basis. Knill and Tosun (2012) identified the need for a sector-specific analysis of infringements in order to understand whether the same dynamics occur in ‘old’ and ‘new’ member states with regards to problematic areas of action.

To account for this variation, a set of four testable hypotheses was developed along the different characteristics of policy sectors.

The quantitative tests of the state-level variables reveal that the most powerful model in explaining non-compliance in CEECs is the integrated power-capacity model, which integrates the enforcement and management approaches. On the one hand, the analysis establishes that the comparatively more powerful states, namely Poland and the Czech Republic experience more non-compliance, but it does not account for the least powerful Slovenia. On the other hand, it may be concluded that higher regulatory capacity results in stronger compliance, and the best compliers are two of the Baltic countries with high administrative capacity. By combining these two explanations, it is possible to explain the performance of Slovenia. Although it is comparative less powerful, its low level administrative capacities prevent the mitigation of the cost of non-compliance as it may happen in the cases of the Baltic states. The negative effect of legitimacy explanations is inconclusive and not powerful. In sum, member states with low comparative economic power and high administrative capacity are the best performers. However, not all variation is explained by the country-specific explanations. Therefore the paper turned to the analysis of the sectoral arguments.

The regression analysis confirms that the regulative, redistributive and positive character of sectors have a positive effect on the number of ROs received. Since Zürn (1997) identifies the importance of domestic level characteristics as a factor important for the analysis of policy-sectors, the paper combined the approaches. Testing the effect of power and capacity along with the positive character of sectors confirms that the integration of the approaches is relevant in terms of explaining the variation in the frequency of non-compliance. The worst compliers are countries with higher comparative economic power and low bureaucratic capacity.

Moreover, all member states are more likely to violate EU law in areas of market creation, such as the environment and mobility and transport.

These results are in line with the literature in the EU fifteen where the primary predictors of non-compliance stem from the enforcement and management approaches, with political and economic power being the most important variables. Moreover, Börzel et al. (2011) identified that the most problematic sectors in the old member states are enterprise and industry, and environmental policies. Consequently, it may be concluded that over the course of their membership, the explanation for non-compliance in CEECs is, on balance, similar to that of the EU15. As it has been pointed out in the analysis, these results have to be interpreted against the backdrop of the limitations in the data. Improving the data set, which reflects on both the practical aspect of implementation and the potential rule-specific factors would improve our understanding of non-compliance even more. Therefore, future research should focus on analysing non-compliance at a low-level of aggregation, identify rule-specific variables and combine quantitative analysis of the predictors with the analysis of rule application. Moreover, a future avenue is to combine the analysis of member states with that of the Commission and try to reflect on the enforcement strategies of the latter.

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