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Do Membership Benefits Buy Regulatory Compliance?

An Empirical Analysis of EU Directives 1978–99

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ABSTRACT

Underlying several theories of European integration is the idea that countries' willingness to sign up to supranational rules is dependent on the expectation and/or realization of various benefits. In this paper, we explore whether such benefits also affect member states' implementation of these rules. Using econometric techniques, we estimate the influence of several measures of membership benefits on the annual number of legal infringements received by 15 member states over the period from 1978 to 1999. Our results provide qualified support for the idea that benefits positively influence compliance. We find that greater intra-EU trade dependence and voting power in European institutions relative to population size are negatively associated with legal infringements. Yet, contrary to a priori expectations, net fiscal transfers are positively correlated with infringements.

KEY WORDS

- compliance
- European integration
- implementation
- membership benefits

Introduction

Although policy-making in the European Union (EU) remains highly centralized, responsibility for implementation ultimately resides with national administrative actors. Evidence suggests that the extent to which these actors have discharged this responsibility has varied considerably. Statistics on the number of infringement proceedings raised by the European Commission point to significant differences – both between and within individual member states over time – in the degree of compliance with Treaty obligations to implement EU policy (Börzel, 2001).

Such variations have not escaped the attention of academics. In recent years, scholars of European governance have advanced a wide range of explanations for spatio-temporal variations in member state (non-)compliance. Broadly speaking, these explanations have centred around two basic determinants (Börzel, 2000; Falkner et al., 2004; Lampinen and Uusikylä, 1998). The first is the ability of administrators to comply with EU policy, and the second their willingness to do so. The focus of our article is on this latter set of determinants.

Typically, differences in the willingness of administrators to comply have largely been explained according to the degree of compatibility ('goodness-of-fit') between EU policy requirements and domestic institutional characteristics (Bursens, 2002). In this article, however, we examine a different and altogether less well researched thesis. Specifically, we explore the possibility that variations in the willingness to comply are shaped by the extent to which national actors benefit from EU membership. Membership benefits would appear to offer considerable explanatory potential in the present context. The EU is a supranational body that effectively distributes costs and benefits between individual member states (Eichenberg and Dalton, 1994: 510). Yet the distribution of these costs and benefits is uneven. It is our contention that member states that derive greater benefits from the EU will demonstrate higher levels of compliance.

With a view to empirically scrutinizing this thesis, we use econometric techniques to estimate the influence of several hypothesized measures of membership benefits on the number of annual infringements for 15 member states over the period 1978–99. Our study is unique in two important respects. First, we go far further than past studies in investigating the influence of different membership benefits. Although past quantitative research has examined membership benefits, it has often done so by proxy, using Eurobarometer data on public support for the EU (Lampinen and Uusikylä, 1998; Mbaye, 2001). Yet there is growing recognition that public attitudes are, at best, a blunt measure of membership benefits. Recent work therefore shows

that, as well as objective benefits, citizens' attitudes towards European integration are strongly influenced by their perceptions of the performance of domestic political institutions (Brinegar and Jolly, 2005; Kritzinger, 2003; Sánchez-Cuenca, 2000). By contrast, our study centrally analyses a total of three conceptually distinct membership benefits, derived respectively from Europe-wide trade rules, fiscal redistribution and the apportionment of votes in European law-making institutions. In doing so, we attempt to provide a more proximate, wide-ranging and disaggregated analysis of the influence of national gains on compliance with EU policy.

Second, although adopting the number of reasoned opinions as our principal measure of non-compliance, we additionally analyse non-compliance at a further stage of infringement proceedings, namely, referrals to the European Court of Justice (ECJ). Significantly, we demonstrate that our main results are consistent across both stages, suggesting that the influence of membership benefits is not simply confined to the reasoned opinions stage of Commission proceedings.

The remainder of our paper is structured as follows. First, we outline the nature and enforcement of directives. Then we introduce three key membership benefit variables hypothesized to explain variations in legal infringements. After describing our research design, we present our results. As anticipated, both levels of intra-EU trade dependence and per capita voting power in European institutions are negatively correlated with the number of infringements received by the Commission. However, contrary to expectations, higher levels of net fiscal transfers are associated with more legal infringements. The last section concludes and discusses the wider implications of our findings.

Complying with the EU Directives

The most important form of EU law – and the focus of the present study – is the Directive. Under the Treaty of Rome, responsibility for implementing Directives falls to competent authorities within member states, who must complete two steps in order to comply with European legal requirements. First, they must formally incorporate ('transpose') Directives into national law. And, second, states must institute appropriate administrative measures to ensure that Directives are effectively applied and enforced on the ground (Lampinen and Uusikylä, 1998: 233; Weale et al., 2000: 297). Breaches of Treaty obligations can occur at either of these stages. Thus, non-compliance may arise from late and/or incorrect legal transposition of Directives, or else from failure to institute adequate monitoring and enforcement mechanisms.

Where the Commission suspects a state of not fulfilling its obligations to implement EU law, it is empowered under the Treaty of Rome to launch infringement proceedings (Davies, 2001: 87). These proceedings invariably begin informally with a series of bilateral discussions between the Commission and the competent national authorities. Where dialogue and mediation fail, infringement proceedings may become formal in nature. These formal proceedings take place over three sequential stages. In the first, the Commission issues a 'formal letter of notice', in which the relevant state is asked to submit its observations regarding the suspected breach. If the formal letter fails to resolve the dispute, a 'reasoned opinion' may be served against the concerned state, setting out the Commission's view of how the member state has breached its legal obligations and establishing a timetable for action (Börzel, 2001: 806–8; Cairns, 2002: 122–4; Davies, 2001: 87–9). Continued non-compliance with the terms of the reasoned opinion may prompt the Commission to move to a further stage: 'referral to the European Court of Justice'.

The European University Institute in Florence has compiled data on the annual number of infringement cases taken against individual member states for the period 1978–99. Table 1 shows reasoned opinions – aggregated over three-year blocs for ease of exposition – for this time period. The table reveals

Table 1 Number of reasoned opinions issued (aggregated over three-year periods)

Year	*1978–81*	*1982–84*	*1985–87*	*1988–90*	*1991–93*	*1994–96*	*1997–99*
Austria	–	–	–	–	–	2	113
Belgium	54	43	80	85	94	122	141
Denmark	12	16	13	15	10	15	15
Finland	–	–	–	–	–	0	29
France	56	83	95	70	64	112	204
Germany	28	36	51	60	66	128	111
Greece	0	33	82	123	119	163	122
Ireland	19	35	42	53	65	86	92
Italy	93	81	119	190	165	167	168
Luxembourg	34	16	38	47	85	73	91
Netherlands	31	24	31	43	61	33	50
Portugal	–	–	0	24	146	125	142
Spain	–	–	8	34	97	98	80
Sweden	–	–	–	–	–	0	35
United Kingdom	31	21	25	34	39	50	76

Source: European University Institute's Database on EU Member State Compliance with Community Law.

significant differences in the number of legal infringements, both within and between individual member states over time.

The central purpose of the present article is to explore the role of membership benefits in explaining these spatio-temporal variations. Membership of the EU provides states with a number of potential (additional) benefits that might plausibly affect the willingness of national political and administrative actors to implement directives. We hypothesize that spatial and temporal variations in these benefits explain some of the observed differences in legal infringements.

Theorizing the influence of membership benefits

Although the benefits from EU membership are multiple, complex and potentially ambiguous, there are a number of reasons they can be expected to influence compliance with Directives. Most fundamentally, the gains from membership are likely to influence, directly and indirectly, the willingness of political actors to implement EU policy (Mattli, 1999; Mbaye, 2001). Two broad mechanisms are likely to be important in this respect. The first is rational, calculative and self-interested behaviour (Underdal, 1998). Implementing EU policy is rarely without its costs, raising the possibility of opposition from a wide range of market, civil society and political actors. Assuming that actors behave rationally, therefore, it follows that compliance with EU law will be better where derived benefits are greater. Directly, membership benefits potentially offset some of the costs of adjusting to EU policy and are therefore likely to increase actors' acceptance of EU policy (Börzel, 2000; Molle, 2001). Indirectly, to the extent that continued functioning of the EU is in the self-interests of domestic actors benefiting from membership, it makes sense that they should avoid jeopardizing its workings by supporting and/or tolerating non-compliance.

More specifically, political actors benefiting directly from EU membership are likely to show a greater willingness to support and expedite the passage of EU Directives into domestic law and to devote greater resources on the administrative infrastructures required for the practical application of these Directives. Lower-level administrative actors charged with designing measures to transpose and/or practically implement Directives might also be less prone to policy delay and/or 'bureaucratic' drift (Steunenberg, 2006). Similarly, where politically active groups such as consumers and producers benefit or, indeed, anticipate benefiting from EU Directives, they are likely to 'mobilize' against instances of non-compliance, generating pressures for political and bureaucratic actors to legally transpose and apply Directives in

a timely and correct manner (Börzel, 2000). More generally, membership benefits accruing to non-state actors are likely to facilitate the process of legal transposition and implementation, by reducing the likelihood of opposition to EU policy requirements.

Yet it seems unlikely that implementation will be driven entirely by rational, self-interested motives (Chayes and Handler Chayes, 1993). According to a growing body of work, compliance behaviour is shaped by social norms, which collectively provide a template for appropriate action (Checkel, 2001; Simmons, 1998). Within the European context, for example, Beach (2005) has argued that member state implementation should improve as domestic actors come to accept the normative force of EU law.

A second potential mechanism through which generic membership benefits might influence implementation, therefore, is by strengthening the normative power of EU law. In particular, we expect domestic actors in countries benefiting more from the EU to be persuaded to identify with the EU, accept the legitimacy of its laws, and find themselves 'pulled' towards compliance. Conversely, the normative force of European rules is likely to be far lower in states that derive only limited membership benefits. Indeed, domestic actors' acceptance of the legitimacy of EU law might plausibly be damaged by the perception that their country is disadvantaged in some way.

Note, neither of the above instrumental or normative mechanisms relies directly on sanctions to motivate compliance. Although compliance may be partly driven by concerns that non-implementation may evoke a reciprocal response from other member states, ultimately undermining the effective functioning of the EU, we do not anticipate that states comply out of fear that they will lose any of their wider membership benefits (e.g. fiscal transfers) granted by European institutions and/or fellow member states. Nor do we anticipate that states comply in the hope of securing a higher level of membership benefit. Instead, the emphasis of our argument is on unconditional membership benefits and their role in strengthening the rational incentives and/or normative basis to comply.

These predictions are broadly supported by mainstream theories of European integration. Although diverse with respect to the emphasis that they place on different actors, processes and motives, integration theories are nevertheless united in the role lent to rewards and benefits. For neo-functionalists, therefore, unification takes place as nationally-constituted elites, who believe that their interests are served by integration, are persuaded to shift loyalties to the supranational level (Haas, 1958; Lindberg and Scheingold, 1970; Nye, 1971). Similarly, for intergovernmentalists, integration is primarily driven by the distinctive self-interests and priorities of nation-states, with critical decisions over whether to cede authority to supranational government made

according to the utilitarian calculations of national governments (Hoffman, 1966). More recent ('liberal') modifications to intergovernmentalism have also emphasized the role of domestic societal pressures in shaping state goals, suggesting that unification is influenced by subnational interest groups who weigh up the costs and benefits from additional supranational integration (Moravcsik, 1993).

In the remainder of this section, we develop three key hypotheses regarding the influence of specific membership benefits on domestic implementation. Our first two hypotheses relate to the economic benefits from EU membership, and our third hypothesis seeks to capture the potential political advantages obtained by certain member states. We begin with intra-EU trade.

Economic benefits: Intra-EU trade

Foremost in any discussion about the economic rewards from EU membership is trade (Eichenberg and Dalton, 1994; Hitiris, 2003). Members of the EU have benefited not only from the abolition of intra-country tariff barriers but also from the harmonization of national standards and regulations that might otherwise have acted as barriers to trade. Together, these developments have reduced transaction costs, facilitated the free movement of goods and services, and created the conditions for the realization of further economic gains (Mattli, 1999; Molle, 2001; Sandholtz and Stone Sweet, 1998).

According to several theoretical models, it is precisely these economic gains from a harmonized set of rules, regulations and laws that provided the original catalyst for European integration. For traditional (Haas, 1958; Lindberg and Scheingold, 1970) and modified (Sandholtz and Stone Sweet, 1998) accounts of neo-functionalism, therefore, growing cross-border economic transactions generated demand for European-level coordination, rules and regulations to reduce obstacles to intra-EU trade. Similar transaction-based motives may have also helped to sustain and reinvigorate subsequent demands for further European integration (Mattli, 1999).

The gains obtained from market liberalization and legal harmonization are likely to vary (Jovanovic, 2005; Molle, 2001). Specifically, we expect member states that depend more in their trade on other EU partners to benefit more from Europe-wide rules. Thus, the overall gains derived by consumers – in terms of lower prices from the abolition of tariffs within the EU – will be greater in countries that obtain a larger share of their imports from other member states. Similarly, countries that send a larger share of their exports to other EU countries stand to gain more from European rules guaranteeing the security, stability and efficiency of trade (Mattli, 1999). Owing to such

benefits, countries with a high ratio of intra-EU trade to total trade are more likely to support harmonized, Single Market policies at the European level.

A similar logic can be applied to the politics of implementation. Where a country trades extensively with other EU members, and therefore benefits from the creation and maintenance of free market rules, we expect to find stronger support for the implementation of Directives (Hitiris, 2003). Aware of their reliance on the functioning of the Single Market, market actors in countries exporting a large share of their exports to other member states are less likely purposefully to undermine EU rules, for example by lobbying against timely and/or correct transposition. Legislators, politicians and civil servants in such countries might similarly be expected to treat compliance with EU Directives as a matter of wider strategic importance. In fact, both sets of actors are likely to favour setting a good example, fearing that non-compliance might trigger a reciprocal response by other member states in areas related to free trade, ultimately threatening the functioning of the Single Market. EU export-oriented countries are likely to end up losing out most from such an outcome.

Likewise, domestic actors benefiting from obstacle-free imports and competition rules – represented most forcefully by consumer groups – are likely to actively monitor the implementation of EU Directives favouring their interests. Moreover, where non-compliance is detected, they will mobilize behind Directives, for example alerting the media and lobbying politicians (Börzel, 2000). Where a large share of a member state's imports is from other EU member states, and therefore subject to EU trade and competition laws, such pressures for implementation are likely to be stronger, reflecting the greater losses from non-observance of EU laws.

More generally, as the gains from European trade grow, so member states' normative acceptance of EU rules is likely to increase. Thus, we expect (economically beneficial) trade between member states to foster growing commitment to EU integration, in doing so naturalizing the legitimacy of European-level law. Directly, this is likely to induce implementation as civil servants, legislators and politicians respond to a re-scaled 'logic of appropriateness' (March and Olsen, 1979) by legally transposing Directives. Indirectly, growing acceptance of the EU and its laws by citizens is likely to increase normative and instrumental (i.e. electoral) pressures on governments to transpose and apply European policies, which should plausibly improve implementation (Duina, 1997). Reinforcing these internal dynamics may be external, reputational ones (Downs and Jones, 2002; Simmons, 1998). Thus, domestic political actors may strive to implement EU Directives in order to avoid appearing 'backwards' and/or 'uncooperative' amongst their peers in other member states with which they are closely linked through international

trade. The importance of reputation has been widely invoked in the international relations literature to explain why states – and especially states exposed to international scrutiny through trade openness – enter into and, moreover, comply with their international legal obligations (Chayes and Handler Chayes, 1993). We believe that reputational dynamics may similarly assume a regulatory role in the European context (e.g. see Lægreid et al., 2004; Steunenberg, 2006).

Conversely, actors in countries that trade relatively little with their European counterparts are less likely to re-scale their preferences, interests and identities towards Europe and therefore accept the legitimacy of EU law. They are instead more likely to continue to regard domestic law as the prime locus of regulatory authority (Falkner et al., 2004). In fact, precisely for this reason it should be easier for political and bureaucratic actors in countries that are less economically integrated into the EU to ignore European Directives.

Inevitably, neither instrumental nor normative dynamics are likely to guarantee member state compliance. Thus, whereas material incentives to preserve the EU legal order governing competition and trade may be strong in countries with high intra-EU trade dependence, Directives in other fields (e.g. environmental protection) are more likely to be accepted and/or rejected according to their respective merits.[1] Similarly, where European policy requirements are especially costly and/or disruptive, the normative power of EU law may fall foul of short-term material imperatives (Olsen, 2002). Yet we expect overall support for implementation to be higher in member states that rely more heavily on intra-EU commerce as part of their total trade.

Redistributive benefits: Net fiscal transfers

Another potentially significant economic benefit derived from EU membership comes in the form of fiscal transfers (Eichenberg and Dalton, 1994; Jovanovic, 2005). Through its budgetary powers, the EU collects and redistributes significant financial resources. For example, the budget for the EU-15 in 2004 totalled €94.6 billion in commitment appropriations. The majority of these resources is spent in just two areas, the Common Agricultural Policy (CAP) and Structural Funds.

This redistributive feature of the EU budget creates fiscal 'winners' and 'losers'. Thus, certain states benefit from the budget in that they are net recipients, i.e. receiving more from the EU than they contribute. Conversely, other member states are net donors, losing out in the overall distribution of EU funds.

We anticipate that net recipients of EU resources will have a better record of implementing EU law. From a rational choice perspective, net transfers represent potentially important financial benefits derived from EU

membership, offsetting some of the costs of legal harmonization. In principle, therefore, they should increase the probability of compliance. Of course, cost–benefit calculations of this sort are unlikely to be widespread. Yet, amongst domestic actors benefiting significantly from EU subsidies, such considerations might plausibly assume considerable importance. Aware of wider compensatory benefits derived from membership, groups such as farmers may be more willing to accept the costs of complying with relevant Directives. More importantly in the present context, they are less likely to mobilize against legal transposition, making it easier for domestic political actors to take the steps required to comply.

At a more general level, the redistributive economics of the EU may influence wider acceptance of the legitimacy of the EU and normative commitment to its laws (see Gabel, 1998; Van Kersbergen, 2000). The net budgetary position of states often features prominently in national media coverage of the EU, provoking considerable public debate about the merits of integration (McCormick, 1999). Indeed, evidence suggests that the level of fiscal transfers has a positive influence on attitudes towards the EU by national publics and political elites (Anderson and Reichert, 1996; Bourantonis et al., 1998; Mattilla, 2004). Thus, it follows that domestic actors in states that are fiscal winners are more likely to conflate their interests with Europe and therefore come to accept the normative force of EU law. As in the case of intra-EU trade, the growing legitimacy of Europe and its laws might be expected to influence positively, directly and indirectly, the willingness of political actors to transpose and apply Directives (Duina, 1997).

Conversely, where the budget settlement is deemed 'unfair', we expect resentment towards Europe and its laws. Rather than being seen as a legitimate entity, the EU is more likely to be viewed as inimical to the national interest, imposing significant financial burdens on domestic actors. Lacking normative attachment, the underlying pressure on civil servants, legislators and politicians to transpose and apply Directives will inevitably be lower.

Curiously, results from the only study to investigate the influence of fiscal transfers contradict these expectations. For a sample of 15 member states, Börzel et al. (2004) found that net transfers are positively correlated with infringements. However, this result was derived without control variables. Our research design is able to show whether this counter-intuitive result is upheld once the impacts of other variables are controlled for in a multivariate regression.

Political benefits

Although the EU remains a predominantly economic union, we nevertheless expect political gains accruing to domestic political elites to influence the

logic of compliance. Such expectations are consistent with state-centric, intergovernmental approaches, which suggest that countries' willingness to cede sovereignty to the EU is ultimately determined by the extent to which (further) integration fulfils the functional self-interests of national political executives (Rosamond, 2000).

Within the context of the EU, one of the most potentially important payoffs derived by political actors is the enhancement of executive capacity and power. At the broadest level, EU integration benefits all member states, to the extent that it provides national executives with the capacity to solve collective action problems (Moravcsik, 1998; Wessels, 1997). Yet the EU also provides some states with enhanced political authority relative to their size, in that they are overrepresented in European legislative institutions.

Decisive in this respect is countries' voting power in the Council of Ministers and the European Parliament, the two central institutions for the representation of member states' interests in EU policy-making. The formula for apportioning votes within these institutions has changed over time, in response to both Treaty revisions and successive enlargements. However, it has consistently favoured smaller member states, with the least populous countries apportioned vastly more votes per head of population than the most populous ones. This favouring of the smaller member states has been widely noted in the literature, as has the dissatisfaction with these arrangements amongst the larger member states (e.g. Bindseil and Hantke, 1997; Heisenberg, 2005; Kandogan, 2005).

According to Rodden (2002), the overrepresentation of small states is most apparent in the case of unanimous voting within the Council, but also applies to qualified majority voting (QMV), as well as to voting in the Parliament. An important corollary is that political actors in overrepresented countries enjoy political clout in European-level institutions far beyond their population size. They are therefore potentially able to 'punch above their weight' within intergovernmental negotiations, enhancing their historically limited political powers. In our empirical analysis below, we use an index of a priori voting power per capita to capture differences in individual states' (potential) ability to influence voting outcomes within the European Council and the Parliament relative to their size.

As with economic gains, we hypothesize that the benefits derived by states with voting power disproportionate to their population size will positively shape their compliance with EU law. All else equal, we expect member states with more voting power per capita – that is, with greater potential power to influence the outcome of votes relative to their population size – to infringe EU law less frequently.

An obvious objection to this hypothesis, of course, is the idea that it is not relative power that matters but absolute power. Besides, populous states

with large numbers of votes ultimately command greater absolute power to influence EU legislative developments, and therefore are better placed to achieve policies that suit their self-interests. Adopting a rationalist 'goodness-of-fit' logic, this would suggest that such states will have a better record of compliance, in that they will generally find it cheaper and/or less disruptive to adapt to European requirements. Yet this argument – which equates absolute voting power with political benefits from EU membership – overlooks two important factors.

First, the idea that populous states with large numbers of votes, and greater potential voting power, recurrently prevail over others and always obtain the policies they want is not consistent with the empirical record. True, evidence suggests that larger states exercise their veto power more frequently, for example abstaining or voting 'no' against the majority within the Council (Heisenberg, 2005; Mattilla, 2004). However, there is only limited evidence to suggest that larger, more populous states are able to use their voting power consistently to achieve policies that are close to their interests, preferences and styles, and, even then, only under certain conditions (Bailer, 2004; Mokken et al., 2000). In reality, no single member state alone commands decisive influence over legislative proposals (Raunio and Wiberg, 1998), suggesting that absolute voting power cannot be taken as a robust predictor of favourable outcomes.

Indeed, where states with a large number of votes are overrun by smaller states, we anticipate considerable resentment towards the resulting EU policy by domestic political elites and their electorates. Historically, countries such as Germany, France and the UK have wielded considerable power, and generally faced limits on their authority only from other large states. However, the overweighting of smaller countries within decision-making forums, together with the EU's voting rules, means that larger countries' size no longer guarantees them control over decisions that affect them. In the event, policies arising from EU decision-making institutions that do not reflect the interests of larger countries are unlikely to be easily accepted by state or non-state actors accustomed to 'getting their way'. Legislators and civil servants in such countries might well be expected to face considerable domestic pressure – especially from regulated parties – to delay transposition or else water down the requirements enshrined in the relevant Directive within domestic legislation. Conversely, smaller, overrepresented states have gained more than they have lost. Although they may not be as (potentially) powerful as states with a large number of absolute votes, the EU provides smaller, overrepresented states with supranational political influence beyond their population size.

A second reason to question the political benefits as absolute power argument is that it is not only consequentialist factors that matter. Equally if

not more important are issues of procedural equity. Thus, scholars have long suggested that rules are more likely to be obeyed where they conform to commonly held notions of equity and fairness (Fisher, 1981). Applied in the present context, this might suggest that states with more votes, or, more precisely, greater (potential) voting power relative to their population size, will have a better record of compliance. Political representatives from countries with disproportionate influence over EU decision-making are more likely to feel they have been granted a 'fair' and 'just' opportunity to represent their national interests. They are therefore also more likely to feel that the substance of EU laws is fair. In fact, precisely because of the perceived legitimacy and fairness of EU decision-making rules, European law will acquire greater normative force amongst political actors in smaller, overrepresented states (see Simmons, 1998). The appearance of fairness in EU decision-making processes is also important since it might be expected to reduce resentment, opposition and negative mobilization by regulated parties.

Conversely, despite commanding greater absolute voting power, we expect larger, populous states to feel more aggrieved by the (under-) apportionment of votes and EU voting rules. Thus, unable automatically to convert their size into influence over EU decision-making, political representatives from larger, underrepresented states are likely to look on EU law-making arrangements, and, indeed, EU laws themselves, as 'unfair'. Particularly where large, powerful member states lose out to a winning coalition of smaller states over an issue of national importance, such grievances may assume wider political salience. Indeed, they are likely to fuel anti-European sentiment amongst the wider public, with negative consequences for state compliance. Where citizens feel that EU policies are being dictated or unduly influenced by smaller, less powerful states, therefore, domestic political actors may gain electoral capital from openly defying EU directives. Either way, the result will be a worse record of implementation.

Research method

Dependent variable

Our dependent variable – that is, our measure of the degree of legal non-compliance with EU Directives – is the annual number of infringement cases raised against individual member states. These data are taken from the European University Institute's Database on EU Member State Compliance with Community Law and cover 15 member states for the period 1978–99 (European University Institute, n.d.).

The use of infringement data requires some explanation. Infringement cases cover only a fraction of the total number of legal infractions committed by member states in any year (Börzel, 2001; Bursens, 2002; Mastenbroek, 2003). There are two reasons for this. One is that not all cases of potential non-compliance are detected (McCormick, 1999; Weale et al., 2000). Another is that only a small proportion of potential infringements brought to the Commission's attention are prosecuted, with the majority of cases being resolved informally (Börzel, 2001; Davies, 2001; Weale et al., 2000).

The existence of unrevealed non-compliance inevitably reduces the explanatory power of our statistical estimations. However, provided that unrevealed cases are randomly distributed across the sample, they should not invalidate the use of infringement data in the present context. There are two possible scenarios where this assumption might not hold. First, rates of detection and reporting of non-compliance may vary between member states (Mastenbroek, 2003); and, second, the Commission might be more willing to prosecute certain states than others.

Yet, investigating these scenarios, Börzel (2001) found scant evidence of systematic bias. According to Börzel, neither societal activism nor state monitoring capacity – two factors that might conceivably bias disclosure – are related to the number of national infringements. Similarly, she found no consistent relationship between country rankings by total infringements to any of the factors – state power, level of Euro-scepticism, etc. – previously hypothesized to influence the Commission's willingness to initiate official proceedings. These observations, of course, do not entirely rule out the existence of systematic bias. Yet they do suggest that some of the potential biases typically considered in the literature may be relatively unimportant.

Of the possible infringement stages, we opt for so-called reasoned opinions as our main dependent variable. These represent the first fully 'official' indication that a member state is failing to comply with its legal obligations and are especially well suited to the present research task. Unlike formal letters, reasoned opinions exclude a substantial share of infringement cases arising from ambiguities and misunderstandings of EU law, neither of which are of central interest in the present study. At the same time, unlike referrals to the ECJ, reasoned opinions do not exclude potentially instructive cases of non-compliance. Only the most persistent and intransigent cases of non-compliance end up being referred to the ECJ, with the result that a large number of genuine cases of non-compliance are missing from referrals statistics (Börzel, 2001). Despite our preference for reasoned opinions, we additionally report results for ECJ referrals. These are correlated with reasoned opinions at $r = .68$ and are similar to the dependent variable used in Mbaye (2001).

Main explanatory variables

Similar to scholars who have studied the effect of economic membership benefits on citizen support for European integration (Anderson and Reichert, 1996; Eichenberg and Dalton, 1994; Gabel and Whitten, 1997), we measure the influence of a country's trade dependence on other EU states using the share of intra-EU trade as a percentage of a member state's overall world trade, calculated using data from the OECD (2005). As our measure of redistributive fiscal benefits, we employ data from Rodden (2002) on real net transfers from the EU per capita. From the same source, we take our measure of political benefits, namely, an index of a priori voting power per capita, which is the average of voting power within: (i) the Council under unanimity rules; (ii) the Council under QMV rules; and (iii) the Parliament.[2] Rodden (2002) uses the Shapey–Shubik (SS) formula to compute his indices of voting power. The SS index considers all possible coalition permutations and represents the fraction of all coalition permutations for which the vote of a particular actor – in this case, political representatives from a member state – is critical. By weighting the SS index on a per capita basis, Rodden's measure provides us with a more relevant indicator of a priori voting power, capturing differences in states' potential power to shape outcomes relative to their population size. In order to ensure that our measure truly captures political benefits in the form of disproportionate potential influence over decision-making, and is not simply a proxy for country size, we include the natural log of population size as a control variable.

Control variables

As well as our explanatory variables capturing different aspects of membership benefits, we include several control variables. These do not include several 'institutional variables' (e.g. policy styles) identified in past qualitative studies as determinants of compliance (Knill, 2001). Although such idiosyncratic institutional characteristics are useful in explaining cross-national variations in the implementation of particular Directives, it remains unclear whether their influence extends to all Directives. Instead, we restrict our focus to well-established generic determinants.

Our first variable is (the log of) population size, which, as noted above, is included to ensure that our measure of political benefits is not simply picking up a country size effect (data from World Bank, 2003). The next two variables seek to capture a country's ability to comply with the requirements of EU directives. The first is bureaucratic quality, widely identified in previous work as a positive correlate of legal compliance (Börzel et al., 2004; Falkner

et al., 2004; Hille and Knill, 2006; Lampinen and Uusikylä, 1998; Mbaye, 2001; Weale et al., 2000). We measure bureaucratic quality using a score provided by the International Country Risk Guide (PRS Group, 2004), which runs from 1 (worst) to 4 (best). The second capacity variable is GDP per capita. All else equal, richer countries are likely to have a better legal, fiscal and administrative infrastructure to comply with Directives. Data are taken from Heston et al. (2002).

A fourth control variable is political constraints, which have been shown to limit the ability of executives to transpose Directives into domestic law (Giuliani, 2003; Haverland, 2000; Steunenberg, 2006). In the present study, we use an index of political constraints developed by Henisz (2000) to capture these restrictions on political authority. The index measures the extent to which political actors are constrained in their future policy choices by the existence of other political actors with veto power.

A fifth control variable is EU membership length. Countries that have been members of the EU for longer breach its laws more often than do more recently acceded countries (Giuliani, 2003; Mbaye, 2001). A number of possible explanations for this observed relationship exist, although perhaps the most plausible is that recent entrants are more eager to demonstrate their status as 'legitimate' members of the EU by fully complying with its rules (Bengtsson et al., 2004). As our measure of membership length we take the natural log of the number of years of EU membership, because the negative influence of EU membership length is unlikely to increase linearly with time. As a caveat, it is important to acknowledge that the Commission has historically granted accession states a 'grace period' of approximately two years, during which time they have been exempt from their obligations to implement Directives (Börzel, 2001; Sverdrup, 2004). To account for this newcomer effect, we include a dummy variable for the first two years after accession, which we expect to have a negative effect on the number of infringements received.

Our final set of control variables consists of dummy variables for the legal system, distinguishing between countries with Scandinavian civil law (Denmark, Finland and Sweden), French civil law (Belgium, France, Greece, Italy, Luxembourg, Netherlands, Portugal and Spain), German civil law (Austria and Germany) and common law (Ireland and United Kingdom). The omitted (reference) category in the estimations is the Scandinavian civil law category (data taken from La Porta et al., 1999). The importance of legal systems stems from their influence over the process of legal incorporation (Alter, 2000). Relevant here are styles of conflict management, the complexity of legal procedures and norms of compliance, all of which can potentially facilitate and/or impede transposition. Indeed, legal characteristics

– specifically, a low degree of litigiousness, procedural simplicity and norms of 'faithful compliance' – are said to explain the comparatively low number of infringement proceedings taken against the EU's Nordic states, particularly beyond the formal letters stage (Bengtsson et al., 2004; Bursens, 2002; Goldsmith and Larsen, 2004; Sverdrup, 2004). Table 2 provides summary descriptive variable statistics.

Estimation technique

We estimate the following model

$$y_{it} = \alpha + \beta_1 \mathbf{x}_{it} + \gamma_t T_t + u_{it}.$$

The subscript i represents each member state of the EU in year t, y is the number of legal infringements and $\mathbf{x}$ is the vector of explanatory variables. The year-specific dummy variables T are of particular importance in the context of the present study, capturing general developments common to all member states but changing over time. They include annual increases in the number of Directives, which might plausibly affect member state compliance. Additionally, they also include modifications to the procedures used by the Commission to record official infringements (Börzel, 2001); changes in the Commission's willingness to pursue infringement proceedings against member states; developments in the European legal regime for enforcing and sanctioning non-compliance (Alter, 2000); as well as institutional

Table 2 Descriptive summary variable statistics

Variable	*Obs.*	*Mean*	*Std. Dev.*	*Min.*	*Max.*
Reasoned opinions	259	22.247	18.722	0	94
ECJ referrrals	256	6.223	6.540	0	36
Intra-EU trade (% of world trade)	259	65.420	7.876	46.974	80.471
Net transfers from EU p.c.	259	0.053	0.199	–0.253	0.770
Political power in EU institutions p.c.	259	0.012	0.022	0.001	0.105
Population (logged)	259	16.403	1.489	12.800	18.222
Bureaucratic quality	259	3.672	0.550	2	4
GDP p.c. (logged)	259	9.774	0.259	9.170	10.675
Index of political constraints	259	0.759	0.088	0.350	0.890
EU membership length (logged)	259	2.934	0.907	0	3.871
Period of grace	259	0.066	0.248	0	1
Common law	259	0.170	0.376	0	1
French civil law	259	0.602	0.490	0	1
German civil law	259	0.104	0.306	0	1

developments such as Treaty revisions and enlargement (Börzel et al., 2004). Year-specific time dummies can control for all these developments, so long as they affect all member states approximately equally, without the need for explicitly controlling for each factor.

Because the dependent variable is a discrete, strictly positive count variable, ordinary least squares (OLS) is not well suited as a regression technique because its underlying distributional assumption is that of a normally distributed continuous variable. A common technique for count data is an estimator based on the assumption that the underlying data are Poisson distributed. However, it implicitly assumes that the conditional mean and the variance functions of the dependent variable are equal. If this assumption is violated, then Poisson regression is overly anti-conservative and underestimates the standard errors of variables (Cameron and Trivedi, 1998). We therefore use a popular alternative that does not make this assumption, namely the negative binomial regression, together with standard errors that are robust toward arbitrary heteroscedasticity. The presence of autocorrelation can create problems for statistical inference. We therefore tested for autocorrelation in our panel data, using Wooldridge's (2002) *F*-test for panel data. Autocorrelation would call for clustering observations at the panel level, which then produces consistent, but inefficient, estimations. Fortunately, our test results clearly fail to reject the hypothesis of no first-order autocorrelation.

Results

Table 3 shows our estimation results. We concentrate first on reasoned opinions as the dependent variable. As expected, the coefficient for share of intra-EU trade dependence is negative and statistically significant. Likewise, we estimate a negative and statistically significant relationship between voting power per capita in EU institutions and the number of reasoned opinions issued by the Commission. Similar estimations are obtained for ECJ referrals: coefficients for share of intra-EU trade dependence and for voting power per capita are both negative and statistically significant.

Yet, contrary to expectations, we estimate a positive and statistically significant relationship between net fiscal transfers per capita and legal infringements. Countries benefiting most from the EU budget are more likely to have a greater number of reasoned opinions and, indeed, ECJ referrals. This result is very robust to permutations in the possible ways of measuring fiscal benefits. For example, replacing the preferred measure with net transfers relative to GDP, with a transfer to payments ratio or with gross transfers rather than net transfers leads to the same surprising result.

Table 3 Estimation results

	Reasoned opinions	*ECJ referrals*
Intra-EU trade (% of world trade)	–0.023	–0.026
	(3.02)***	(2.66)***
Net transfers from EU p.c.	0.562	1.278
	(2.56)**	(3.23)***
Political power in EU institutions p.c.	–6.954	–13.601
	(1.99)**	(2.67)***
Population (logged)	–0.055	–0.116
	(0.84)	(1.23)
Bureaucratic quality	–0.272	–0.681
	(2.16)**	(4.57)***
GDP p.c. (logged)	0.234	0.973
	(0.78)	(2.38)**
Index of political constraints	0.772	1.684
	(1.53)	(2.60)***
EU membership length (logged)	0.084	0.536
	(0.90)	(4.07)***
Period of grace	–1.228	–0.781
	(3.71)***	(1.81)*
Common law	0.895	1.160
	(4.50)***	(4.02)***
French civil law	1.594	1.965
	(7.26)**	(6.51)***
German civil law	1.385	–1.630
	(5.58)**	(4.83)***
No. of observations	259	259
No. of countries	15	15
Pseudo R^2	0.16	0.17
Wald test	954.7	538.2
	(0.0000)	(0.0000)
Panel test of autocorrelation	0.158	1.656
	(0.6972)	(0.2190)

Notes: Estimation is done by negative binomial regression with robust standard errors. Constant and year-specific time dummies are included, but coefficients are not reported. Wald test is asymptotically chi-squared distributed with *p*-value in brackets. Wooldridge's (2002) panel test of autocorrelation is an *F*-test with *p*-values in brackets.
* significant at .1 level ** at .05 level *** at .01 level.

Regarding our control variables, for reasoned opinions as the dependent variable, only bureaucratic quality, the period of grace and the legal system dummies are statistically significant with the anticipated coefficient signs. Countries with higher bureaucratic quality and newly acceded states have fewer infringements. Member states with a common law, French civil law or

German civil law tradition all have a higher number of infringements than countries with a Scandinavian legal system, the omitted reference category. For ECJ referrals, in addition to the control variables already mentioned, EU membership length and the index of political constraints have the anticipated positive effect. Surprisingly, countries with a higher GDP per capita face more ECJ referrals.[3] Population size is not statistically significant in either estimation.

Discussion and conclusion

Countries' participation in the EU integrationist project has historically been sold on the basis of the various benefits that accrue to members. Indeed, precisely because of these rewards, it is suggested that it is in the self-interests of member states to ensure the functioning of the EU through the proper application of its laws. In this paper, we explore whether member states respond to this logic. That is, do states that benefit more from membership have a better record of complying with EU laws?

With a view to answering this question, we use quantitative regression techniques to estimate the influence of several hypothesized benefits on the number of infringements for 15 member states over the period 1978–99. Our findings provide overall support for the idea that compliance with Directives is influenced by the level of benefits derived from the EU. As anticipated, states with higher levels of intra-EU trade dependence are subject to fewer infringements, presumably because such countries are amongst the chief beneficiaries of a common set of rules that promote the stable, predictable and impediment-free movement of goods and services (Mattli, 1999).[4] Similarly, to the extent that per capita voting power in EU institutions is negatively correlated with legal infringements, our results suggest that countries deriving greater political benefits from European integration relative to their country size have a better record of compliance.

Our only surprising result concerns fiscal transfers. Whereas we would intuitively expect member states receiving more from the EU budget in per capita terms to have a better record of compliance, our results suggest that such countries are actually subject to more infringements. What might explain this counter-intuitive result? One possible explanation for the absence of a positive relationship is that, in reality, financial transfers have little or no influence over the willingness of member state governments to make the potentially costly domestic adjustments required to comply with EU law. Although inconsistent with several strands of European integration theory, this reasoning nevertheless squares with the findings of recent work on foreign aid to developing countries and the recipient country's quality of

governance. According to several studies, foreign aid granted to low-income countries has not improved institutional quality, despite some donors requiring recipients to improve their governance as a condition of assistance (e.g. see Bräutigam and Knack, 2004).

More puzzling, perhaps, is the apparent existence of a positive relationship between EU transfers and non-compliance. Although we readily admit that there may be a range of possible explanations for this relationship, we offer two of the most potentially plausible here. One is that the transfer variable picks up an effect of insufficient capacity to comply with EU Directives in recipient countries, which is not fully captured by our variables measuring state capacity. Thus, separating transfers into agricultural, Structural (regional development) and other funds – using data taken from Rodden (2002) – we find that both agricultural and other funds have a negative coefficient, although neither is statistically significant. Conversely, Structural Funds have a positive and highly statistically significant effect (detailed results are available from the authors on request). Truly comparable data on disaggregated transfers are available only for 1995 onwards, meaning that these findings need to be treated with considerable caution. Yet they tentatively suggest that the positive correlation between transfers and non-compliance reflects the higher level of financial support given by the EU to precisely those member states that are least capable of complying with European legal requirements.

A second possible explanation is that our transfer variable captures an effect of Euroscepticism. It may be that more Eurosceptic countries receive more transfers, largely in order to secure their support for continued integration. And since governments in countries whose populations are less supportive of European integration might plausibly be less willing to comply with EU Directives, this might explain the positive sign of our estimated coefficient. Indeed, this interpretation would be consistent with Carrubba (1997), who found evidence that countries with more Eurosceptic electorates receive more transfers. According to Carrubba, EU transfers potentially function as a tool to further integration, with more pro-integrationist states willing to 'bankroll' less pro-integrationist ones with a view to gaining their support for deepening the EU. Supporting this assertion, Zimmer et al. (2005) found evidence of a redistributive cleavage in the Council of Ministers, with conflict and negotiation structured around financial transfers. Thus, the preferences of poorer, net recipient states tend to be oriented towards additional financial transfers, whereas richer, net donor states tend to advocate further liberalization of the Single Market.

Our findings have a number of wider implications. First, they suggest that the implementation of Directives is shaped by the generic benefits

derived from membership of the EU. Past research has similarly hypothesized a role for benefits in motivating compliance. However, the primary emphasis of previous work has been on the benefits associated with individual policies and on the role of nationally idiosyncratic institutional factors in shaping these (Börzel, 2000; Knill, 2001). By contrast, we find evidence that the wider, diffuse rewards associated with European polity, policy and governance also influence member states' compliance with EU Directives. The importance of reciprocity, benefits and rewards in providing the nation-state with the legitimacy to govern has long been recognized by scholars of domestic government. Our study is unique in providing support for the role of such factors in shaping countries' willingness to implement EU law.

Second, our findings suggest that theories of European integration are right to emphasize economic and political rewards in political unification. The implementation of a harmonized body of EU law is crucial to the success of the EU integrationist project (Mattli, 1999). To the extent that we find that a larger share of intra-EU to total trade and per capita voting power in European institutions influence the implementation of EU law, our study supports theoretical predictions regarding the role of membership benefits in fostering commitment to European unification (Rosamond, 2000).

At the same time, our results underline the need to distinguish between different membership rewards. That intra-EU trade and per capita voting power emerge as statistically significant predictors of compliance, but net transfers do not, strongly indicates that not all rewards translate into increased commitment to European integration. Clearly, certain types of benefit are more influential than others.

Yet, although these differences might seem puzzling, it is worth noting that they are not necessarily inconsistent with theories of integration. Traditional and revised neo-functionalist accounts, in particular, have long privileged cross-border transactions, and especially economic exchanges, as a central catalyst for European integration (Haas, 1958; Nye, 1971; Sandholtz and Stone Sweet, 1998). Similarly, intergovernmental approaches have recognized instrumental political authority and power as a central driver of European integration. Although side-payments have been mentioned as a means for gaining the support of interest groups, they have rarely been assigned the same explanatory significance as either cross-border economic transactions or political authority and power (Lindberg and Scheingold, 1970). Hence the empirical findings presented in our paper are not entirely without theoretical precedent.

Third, from a policy perspective, our findings suggest that fiscal transfers are not a panacea for compliance problems. Although payments may encourage member states to accede to the EU and sign up to its rules

(Mattli, 1999), they do not guarantee the implementation of these rules. Instead, if policy-makers wish to use fiscal transfers as an incentive for compliance, they might need to make redistributive payments far more conditional. Whether such a move is possible, or indeed economically, politically or ethically desirable, is open to discussion. However, our findings should caution policy-makers against the intuitive assumption that transfers foster compliance.

Notes

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1 Note, we do not believe that the strength of opposition to such Directives will be significantly greater in countries with high levels of intra-EU trade dependence.
2 A referee rightly pointed out that our measure of a priori voting power should ideally be adjusted for temporal changes in EU voting rules and in the relative importance of the European Council versus the Parliament in EU decision-making. Unfortunately, these dynamics are highly complex and we therefore resort to a simple average.
3 Note, however, that dropping the bureaucratic quality variable from the model renders the GDP per capita variable statistically insignificant.
4 A reviewer noted that this result could be subject to simultaneity bias: countries with a good compliance record will trade more with EU countries if compliance with Directives promotes intra-EU trade (e.g. because of reductions in tariffs before the Single Market and in non-tariff barriers). We have no good instrumental variables to address this issue directly. However, our results are upheld if we lag the trade variable by one or two years, which should reduce any potentially existing simultaneity bias.

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