Tradeoffs in Implementation Among EU Member States

Abstract: Countries help draft EU directives yet many fail to comply with the agreements they crafted. Furthermore, this noncompliance can take different forms, inactivity and substantive noncompliance. Under what conditions do states opt for one over the other? Compliance with EU directives continues to be an ongoing focus for the European Commission and there have been numerous attempts to understand why states fail to comply. Despite these inquiries, because previous work has considered noncompliance as a single phenomenon, a clear consensus has yet to emerge on the incidence of infringements. I make a novel distinction between types of infringements and clearly distinguishing two separate phases of the implementation process: late and substantive infringement and transposition initiation and enactment. I identify factors relevant to late infringement, namely ministerial approval of the relevant policy, and to substantive infringement, domestic political actors. I find that ministers are most influential in the first stage of implementation while domestic actors are most influential in the second stage.

Introduction

Membership in the European Union requires compliance with European Union legislation, legislation that is drafted collectively by member states. Despite their strong role in crafting these agreements, many states struggle to comply with them. Noncompliance is a problem in the EU but is not unique to European Union member states. Compliance issues plague agreements more generally at both the international level in treaties and international organizations and within states themselves often in the form of bureaucrats implementing policy. Understanding why and how states fail to comply can provide useful insight into why some agreements fail while others succeed.

I focus upon European Union member state noncompliance and make a novel distinction between two types of noncompliance, late and substantive. While research has emphasized the role of timeliness in satisfying legislative mandates, less attention has focused upon whether or not states substantively comply with the body of legislation. In previous studies, the emphasis has been upon explaining why states fail to comply with directives as indicated by enacting legislation past a deadline or by the sheer number (or proportion) of infringements incurred by a member state. Although this is certainly an important component of compliance, compliance is a nuanced concept that has different facets. For example on both measures, number of infringements and timing, Italy performs quite poorly. However, if the question of interest is how states fail to meet their obligations, rather than whether or how often, we see that although Italy consistently obtains high numbers of infringements overall, patterns among types of noncompliance emerge. For example, despite Portugal’s reputation for poor compliance, Portugal had fewer substantive infringement cases under investigation (201) than either Germany or the UK (at 286 and 216, respectively) between 2002 and 2009. These distinctions are not captured by the two primary focuses upon infringements: the timing of implementation or the number of infringements in member states.
Work that has explored the relationship between timing and infringement indicates that there is, at best, little connection between the timing and ultimate correctness of legislation (Mastenbroek 2007). This is borne out in my analysis, which finds a correlation of 0.50 between late and substantive infringements across member states between 2002 and 2009. It is likely that instead of no connection, the relationship between timing and implementation is negative: Thomson (2007) and Konig and Mader (2013a) suggest that there is a tradeoff between timely implementation and the quality of transposition. Literatures that focus only on timeliness assume substantive compliance while studies of infringements assume similar underlying processes. Distinguishing between late and substantive infringements enables us to study the important phenomenon of substantive infringement. While late infringements are certainly important, substantive infringements are likely to have a greater impact on the functioning of the EU, as substantive infringements are more likely to go on longer before, if, they are discovered. Thus, distinguishing between the two is essential for understanding the conditions under which each emerge: holistic approaches can’t address this.

In addition to combining late and substantive infringements, the literature also does not make clear distinctions regarding how the different aspects of the policymaking process contribute to negative outcomes, be they delay or infringements. For example, the preferences of actors are thought to lead to delay and infringements, but whose preferences and how they matter remains unsettled. Veto players, for example, are thought to delay implementation but this effect has not been consistently significant in the literature. For example, at times, the number of veto players has been determined to have a significant and negative effect on transposition timing (Steunenberg and Rhinard (2010)) but at others, it has the findings have been weak (Mbaye 2001, Borzel 2007). Secondly, while preferences are thought to delay implementation, Thomson 2007 and Konig and Mader (2013a) find that actors who disagree may actually transpose measures more quickly and do so in a way inconsistent with directives. Then, preferences are hypothesized to increase delay but also increase substantive infringements while reducing delay. Again, this indicates that the role of preferences may not be equally influential for the incidence of both late and substantive infringements and there may be some tradeoff made between timing and substance. Furthermore, it may also be that how preferences are measured—those of ‘states’ (Thomson 2007, Thomson et al 2007, 2012, Konig and Mader 2013a) as compared with national actors (Konig and Luig 2013) or even subnational actors in policy-specific domains (Steunenberg 2007)—contribute more to either late or substantive infringements.

Finally, while a general consensus exists regarding the factors of directives that contribute to problematic implementation, such as length and policy-specific factors, the role of discretion is not consistently theorized. Discretion is thought to contribute either to more problems in delay, as directives with more discretion may be more complex and ambiguous, or to better implementation as states are able to adapt legislation to meet national needs. For example, Thomson et al (2007) argue that less discretion leads to more infringements when states disagree with legislation because states don’t have leeway to adapt measures and Franchino (2006) makes a similar argument.
Thus, while implementation of EU legislation has received considerable attention, previous approaches have not distinguished late from substantive failures. This broad approach misses the distinct processes contributing separately to late and substantive infringements. Those who have undertaken work to compare timing to infringements overall have posited that a negative relationship exists between the two as states choose to prioritize either timeliness or substance. As a result, there are not clear predictions regarding when these types of noncompliance might occur and the means through which each type of noncompliance develops. I address this lacuna, explain the conditions under which late and substantive infringement occur, clarifying the role of preferences and how the design of directives contribute to each of these outcomes. I construct a model that contrasts late and substantive infringements against one another to best evaluate the “tradeoff” that states make in the implementation process. I find that ministerial actors are influential in the incidence of late implementation but domestic political actors are able to shape relevant legislation and the incidence of substantive infringements. Implementation can be thought of as a two-stage process, one of initiation and enactment with timing and inaction more predominantly affected in the first stage and substance more affected in the second.

**Background**
Membership in the European Union requires compliance with mandates set forth in directives for states to implement. Enacting national legislation to comply with EU directives is referred to as the process of ‘transposition’ and entails the drafting, enactment and application of legislation. Directives have come to play an increasingly large role in the European Union: although there were few pieces of legislation in effect in the 1970s, by 2012 there were 1,989 directives in force (COM 2013).

The Commission emphasizes *correct* and *timely* compliance, meaning that states enact legally compliant policies by a given deadline. Failing to meet the deadline for transposition, typically entailing inaction on the part of the member state, results in what I term a “late” infringement. Noncompliance with the substance of a directive, meaning that the implementation is not correct, is a “substantive” infringement. Substantive infringements can relate to both the writing of the legislation and the application of legislation, as I later explain. The Commission ensures compliance with EU legislation and works to ensure the conformity of member legislation.¹ The Commission verifies compliance and has the power to initiate infringement proceedings. Commission awareness of infringements occurs through Commission checks (focusing upon areas which are prone to infringement and upon countries which are prone to infringement) and through complaints by member states (against other states), citizens, and even opposition groups reporting their own member state (Jensen et al 2013). Regardless of how an infringement is detected, once a case of non-compliance is detected, the same procedure is followed: letter of formal notice, reasoned opinion, referral to the Court of Justice (COJ) and then a decision from the Court.²

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¹ For further information, see: http://ec.europa.eu/eu_law/infringements/infringements_en.htm
² If state non-compliance persists, the Commission can again refer the state to the COJ.
³ More on calculation of infringement sanctions here:
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Once a possible infringement has been detected through a complaint or the Commission’s efforts, the process of information gathering begins. This stage is devoted to determine whether a state has infringed on the legislation. The number of open cases under investigation has historically been around 2000 cases per year between all the stages of infringement proceedings. Before the infringement process formally begins, the Commission sends a letter of formal notice to a state regarding suspected noncompliance. It is the first public stage of what some call the infringement process, but technically it is categorized as ‘pre-infringement’. Following this preliminary investigation, infringement proceedings begin. There are two stages within the formal infringement process, a reasoned opinion and referral to the Court of Justice.

The infringement process is designed to ensure implementation of legislation rather than focusing upon noncompliance through punishment or sanctions. As such, only when states move through all stages of the infringement process do they receive a referral to the Court of Justice. Once referred to the Court of Justice, the Court can side with either the member state (and the case is closed) or the Commission (and the state must comply with the directive). The Court’s judgment is binding and may include sanctions. These sanctions can be either flat amounts (referred to as “lump sum”), daily/monthly recurring sums (“penalty”) or a combination of each. Recurring sums continue to accrue until a state complies. Although the Commission can suggest sanction amounts, only the Court can set them. Failure to comply can lead to subsequent re-referrals to the Court.

Factors in Transposition Complications
The literatures on timing and implementation have reached consensus regarding categories of factors that influence outcomes, such as preferences, institutions, capacity and directive-design elements. However, the expectations developed in the literatures do not yield clear predictions for when these factors are influential for different types of negative outcomes. For example, disagreement with a policy is thought to contribute to both infringements and delay, but in works that have considered both delay and infringements, scholars have found evidence for a negative relationship between the two (Thomson 2007). Furthermore, it is not clear whose preferences are influential and when, as I later explain. In the sections that follow, I present the primary factors that are thought to influence negative outcomes and compare expectations from each literature’s analysis. As described before, there is some inconsistency in the literature, both when comparing timing-based to infringement-based approaches and within each of these literatures themselves.

Preferences
The preferences of relevant actors, be they state representatives (Thomson et al 2007, 2012), state ministers (Konig and Luig 2013) the Commission (Konig and Mader 2013b, Thomson et al 2007) and the Council (Zhelyazkova & Torenvlied 2009) are thought to influence the implementation process. Primary arguments are that disagreement with a

More on calculation of infringement sanctions here:
http://ec.europa.eu/eu_law/infringements/infringements_en.htm
directive will lead to delay or incomplete implementation. This produces conflicting predictions: that disagreeing states will implement a directive slowly, if at all, or that states will act on their disagreement though “the back door” (Falkner et al 2007). A third approach argues that there is a tradeoff between delay and infringement with states opting to implement disliked directives more quickly (Thomson et al 2007).

Late implementation is expected to occur when states disagree with a directive. States are considered to delay implementation because relevant policy actors, such as ministers, disagree and have sufficient power to block implementation by effectively keeping the ‘gates’ shut (Konig and Luig 2013). This approach, novel for its use of one single actor in the implementation process, demonstrates that the preferences of national ministers are crucial in determining whether or not measures are notified, a key step in the transposition process and a primary contributor to late infringements. This suggests that preferences are influential in late infringements and that the preferences of certain actors may have more influence on delay.

Disagreement is also argued to contribute to incorrect implementation, increasing the odds of infringement, as states will ignore the mandate of a directive. This sets the stage for ‘opposition through the back door’ in which states submit measures to the Commission under the guise of complying, but these states actually are not compliant. This finding has received limited support: Falkner et al (2007) find that compliance does occur after a member state failed to have its preferences incorporated into legislation. However, they attribute the bulk of failures to poor administrative capacity and interpretation, rather than disagreement with substance.

In contrast, Thomson et al (2007) finds that there may be a tradeoff states make between timing and implementation. In a comparison between the delay of implementation and whether an infringement was observed in a member state implementing one of 21 controversial directives, he finds that often states may opt to implement legislation more quickly but later will suffer an infringement. Steunenberg (2007) shifts the argument to emphasize both the necessity of implementation of EU legislation and the role preferences may play in diverging from a directive’s mandate. Disagreement is more likely to produce substantive violations given the pressures to comply rather than simply delay or inaction, he argues.

Furthermore, Konig and Leutgert (2009) use preferences, of states (using data from Thomson et al 2007) to demonstrate that legal noncompliance occurs more frequently when states disagree with legislation. As legal noncompliance is one type of substantive infringement, state preferences (coded by Thomson using EU documents and meetings with state representatives) were found to be influential in whether a state complied substantively or not. However, the selection of cases, ‘controversial’ directives, may not be representative of the phenomenon of noncompliance: Konig and Mader (2013a) find, for example that Germany has a ‘perfect compliance record’ in the sample, yet Germany is among the leaders in substantive infringement between 2002 and 2009. As highlighted in studies on preferences and delay, a decision to comply may hinge upon something aside from broad calculations of preferences. Thus, there is no clear expectation for the
relationship between preferences and type of outcome, other than disagreement by classes of relevant political actors is likely to lead to some type of poor outcome.

**Veto Players (Institutional Perspective)**

The role of veto players is thought to be significant, because these actors are crucial for enacting policy change (Tsebelis 1995, 2002). As implementing national legislation to become compliant with EU directives almost always requires policy change, it would be surprising in some sense to find that veto players do not play a significant role in state compliance with directives. Yet, the role of veto players, has indeed received inconsistent support, perhaps because the representation of veto players has been argued to fulfill different roles: preferences, as these are actors in the policy process (Mbaye 2001; Toshkov 2007; Kaeding 2006); as hurdles, representing multiple steps to overcome (Franchino 2004); or as a reflection of the government potential to create policy change (Borzel et al 2007). In general, veto players have been consistently demonstrated to play a role in the timing of implementation but their relationship to outcomes has been less clear, particularly whether they contribute primarily to delay, inaction or infringement.

From the perspective of the timing-based literature, the number of veto players in the implementation process adds delay. This is because different veto players are thought to hinder implementation (Treib 2008). Using an index of the number of veto players involved in a domain-by-domain basis in five EU states, Steunenberg and Rhinard (2010) find that the number of veto players also contributes to delay. The expectations in this literature have been generally consistent and associate veto players with delay. However, Borghetto et al (2006) put forth a similar argument when considering the timing of transposition of 2,179 directives in Italy. They find that having more veto players involved, as indicated by the use of legislative instruments in the process of transposition, does not significantly increase delay. Legislative measures procedurally take much longer in the best of circumstances when compared to ministerial orders, and this is generally borne out in the accompanying research. However, with the exception of Borghetto et al (2006), who consider the likelihood of notifying any measures at all, the bulk of this literature does not provide a foundation upon which to anticipate the conformity of enacted legislation.

Expectations regarding the relationship between veto players and infringements are unclear: veto players are thought to lead to delay, which could produce late infringements as actors block legislation (Borghetto et al, 2006, who also consider whether measures are notified (late infringements)), or veto players could force policy compromise (Steunenberg 2007). It’s possible that they do both, as Haverland argues in the evaluation of the packing directive’s transposition across the UK, Germany and the Netherlands (Haverland 2000). However, the number of veto players has not been found to play a consistent role in the number or level of infringements overall (Borzel et al 2007, Mbaye 2001) and some have

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4 Different scholars make distinctions between veto players, veto points and veto-like actors but I consider them all here. The primary difference is how these actors get their power, either through formal institutions (Tsebelis 1995, 2002), if the actors are simply counted as hurdles or if some actors are able to function as veto players in practice, despite lacking formal powers (Steunenberg and Rhinard 2010)).
found that more veto players lead to fewer infringements (Börzel, Hofmann, and Sprungk 2003, cited in Borzel et al 2007 and Borghetto et al 2006).

It seems, based on quantitative and qualitative work, that veto players are part of national-level factors generally associated with transposition difficulties but small samples and different categorizations of veto players makes it difficult to reach a consensus. Mastenbroek (2005) argues in favor of a politics-based explanation for outcomes and veto players theory seems promising, despite existing mixed support. Berglund (2009) echoes this, arguing that varied findings may also stem from different approaches to measuring the number of veto players or points in the system, a finding Steunenberg (2007) echoes. Veto players seem to have two means to affect implementation: delay and substantive interference with legislation. While the former, delay, has moderate support, the relationship between veto players and substantive infringements seems to be more established qualitatively instead of quantitatively. The likely effect of veto players is nuanced: depending upon the policy and how states implement the policy—and thus who the different veto players are—the effect may be inaction or substantive.

**Institutional Capacity**

The tension between choice and ability is a big theme in research on international organizations (Chayes and Chayes 1993). Disagreement exists regarding whether states choose to infringe or whether they lack institutional or administrative structures to enact and enforce legislation (Downs, Rocke and Barsoom 1996). Some support has been found regarding the potential relationship between administrative resources within a state and overall compliance. However, these findings have not been conclusive within the literature potentially because of the different ways of operationalizing capacity and measuring non-compliance: the dependent variable has been total infringements per year (Mbaye 2001 (total), Borzel et al 2007 (fraction)), whether an infringement occurred (Konig, Thomson 2007, whether a policy was enacted late or not (Mastenbroek 2003) or the duration of period after a deadline before a policy was enacted (Franchino and Hoyland 2009).

High institutional capacity, particularly the ability to write and implement legislation,\(^5\) is thought to be important for reducing overall infringements and improving timeliness (reducing delay in enacting a policy), but support has been mixed, particularly regarding to whether the factor is indeed significant or not. For example, in a summary overview of the EU literature, in which the authors estimate the robustness of studies’ empirical findings, Angelova et al (2012) find that of the 23 studies that consider administrative efficiency, the results from case studies are robust (and their claims of the positive compliance-enhancing effect is most likely sound) but the results from quantitative studies are likely not significantly different from zero, despite the positive theorized effect. Thus, while it seems as though state ability to administratively enact and apply legislation would be a crucial component of overall success, the literature has been unable to fully support this claim.

\(^5\) Note that capacity here is distinct from the potential for gridlock. Capacity is about the ability to write legislation, not necessarily, whether a state is able to change policy. Obviously this second point is important for implementing legislation, but that is not the type of capacity discussed here.
Directives
Finally, certain features of directives themselves have been identified to contribute to difficulties in the transposition process. They include the complexity of the directive, the policy area of the directive, and the amount of discretion permitted to state actors in implementing that directive.

Legislation complexity, typically referring to issues that touch on many topics or require a high amount of technical knowledge or skill to execute, have been demonstrated to negatively affect timely compliance. Complexity has alternately been measured as the length of recitals on a directive (Kaeding 2007), the number of issues covered (Konig and Luig 2013, Franchino 2004). When topics are more complex, they may be more difficult for states to implement but they may also offer more discretion to states in the implementation process in recognition of their complexity (Franchino 2004). Previous work has determined that more complex directives can be associated with delayed implementation as granting discretion can permit states more freedom in implementing but lead to delays as states interpret the directive (Thomson et al 2007).

A similar measure to complexity, long directives, frequently measured in the number of pages in the Official Journal, can be burdensome to implement. Long and/or detailed directives can require more of states as they move to enact compliant legislation because these pieces of legislation may provide many restrictions that may be difficult for states to satisfy (Kaeding 2006). These concerns a bit more ambiguous as length is not always a clear indicator of the detail or requirements contained within legislation. For example, a statement may outline items that are not possible or those that are possible in the same number of words. Despite taking the same number of pages, the second may prove more restrictive. Thus, while this measure is included as an additional proxy in the literature and analysis, what it measures is not entirely clear. As Stuenenberg and Rhinard (2006) point out, there also may be additional annexes in more technically complicated measures that consume additional pages that do not contribute directly and, if anything reduce, the level of overall difficulty in transposing the legislation. The effect of increased detail is thought to increase delay because states may not have other avenues for the disagreement with a directive and potentially influence the number of infringements as these directives may be more prone to conflict within coalitions (Konig and Luig 2013).

Discretion itself is also measured in individual directives. The discretion permitted to member states has two sides: when more discretion is granted, it may be more likely for states to enact compliant legislation as they are better able to adapt the directive requirements to conform to national legislation. At the same time, more discretion can often mean more ambiguity for states, increasing the difficulty of enacting complaint legislation, as Toshkov and Steunenberg find (2009). There are different measures for discretion, including the ratio of provisions granting autonomy to states relative to the number of provisions overall (Franchino 2004), or whether the Council or Commission initiated the directive (Council directives typically permit more discretion to states). Discretion has been associated with increased delays (Mastenbroek 2003). However, the
relationship between discretion and infringements is unclear: discretion may enable better compliance because states have more latitude to adjust the directive to national systems or the directive may prove to ambiguous for states to properly implement.

Policy Area
Finally, the policy domain of different directives is thought to be influential in how states transpose measures. The significance of policy domains pertains both to the topic area itself and addresses potential differences in how legislation regulates. For the former, different domains may have different levels of public salience or interest: social policies, such as those on worker rights, and environmental directives are frequently more salient than many agriculture policies. The salience of these directives can also be tied to whether the directive, or modal directive of that policy type, is redistributive or regulative. Redistributive policies are akin to zero sum games in that there are winners and losers. Regulative polices are often about coordinating. Different policy domains feature different mixtures of these policy types. This mixture, in combination with relative salience for an issue can contribute to challenges in implementation, both because national actors may be more divisive on an issue and because the issue at hand will be more relevant. Finally, it may be that different directive domains are more technical or require different levels of expertise to implement, thus certain domains, such as telecommunications, will require longer deadlines and may incur more delay. This argument is difficult to evaluate empirically without individual coding of each directive and member states’ enacting legislation, but seems to be supported by Haverland et al (2010) who find stark differences across policy sectors in compliance rates. In particular, while many policies are enacted late, those suffering from particular lateness are those that may require more change in social and economic systems, such as directives on Health and Safety.

In short, there are domain-specific factors that can speed or slow transposition and that make infringements more likely. Accounting for different domains in the overall analysis is a first step toward addressing these factors.

Infringements
I argue that by focusing upon the types of infringements incurred by member states, specifically whether the infringements are for inaction or substantive implementation, we can separate the motivations for and factors contributing to noncompliance. I distinguish between late and substantive infringements, arguing that focusing only upon timeliness or upon infringements holistically does not capture the mechanisms behind infringement. Late infringements are instances where a member state has been cited for late implementation of a directive, also called ‘non-notification.’ This means that a state has not notified measures after a deadline has passed for a directive. Substantive infringements, in contrast, refer to the content of legislation enacted. Here, a state is cited for not meeting a directive’s mandate, for example, by failing to enforce water treatment quotas in a region.

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6 However, not all agriculture policies are uninteresting. For example, in 2009 protests farmers and protesters upset over failing milk prices (linked to EU agriculture policies and milk quotas) “poured milk onto the streets, hurled eggs and other missiles, and started fires that filled the air with black smoke.” http://www.nytimes.com/2009/10/06/business/global/06milk.html?_r=0
Late infringements occur before the potential for substantive infringement as late infringement means that a state has not yet notified the commission of enacted legislation.

Incurring a late infringement does not preclude a state from incurring a substantive infringement but a state cannot be cited for both types simultaneously. Substantive infringements only occur once measures have been notified. The holistic approach of previous analyses implicitly assumes that late and substantive infringements occur in tandem or at least have a strong positive relationship to one another.

To illustrate differences between types of infringement, I present comparisons from two points in time: 1978-1999 using infringement data released by the Commission and made available by Borzel et al (2001) and a second compiled from annual Commission reports between 2002 and 2009. Both include infringement cases reaching at least reasoned opinion or later (the ‘official’ stage of the implementation process) and both focus upon the EU15. The number of late infringements by state has a weaker association with substantive infringements over time, indicating that the relationship between the two is weakening over time. Late infringements stem from state inaction while substantive infringements occur when states have indicated that they are in compliance with EU legislation. Furthermore, late infringements are easy to detect and evaluate while substantive infringements are not. Substantive infringements are therefore more likely to have a significant impact on the overall functioning of the EU as these instances of noncompliance are currently understudied and difficult to detect.

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The weakening correlation between the two indicates that previous focus on late infringements cannot speak to the incidence of substantive infringements. As Mastenbroek says, "On the whole, there seems to be no automatic relationship between transposition and actual application and enforcement. Future research should pay more attention to this relationship." (Mastenbroek 2007, pg 161)

Preferences

Previous research has argued that ministerial approval is key to the initiation of transposition. Indeed, when distinguishing between directives supported or disliked by a policy minister, there are more instances of non-notification. In the figure below, I distinguish between instances where the policy-area minister’s policy position was similar to that of the council (High Ministerial Approval) and when this ideal point is far from the core of the Council (Low Ministerial approval).7

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7 For more information on this variable and measurement, see the ‘Analysis’ section.
We see that late infringements comprise the bulk of infringements when approval is low and that substantive infringements are approximately 30% of total infringements when approval is high. This distinction is not captured nor anticipated by the literature. Although some have focused upon ministerial approval, notably König and Luig (2013), none have explored the role of substantive infringements in this context. Thomson et al (2007) and König and Mader (2013a) do explore state-based positions and find state disagreement plays a pivotal role in legislative compliance but this position is based on measures for the member state and only on 21 highly controversial and salient directives. What can explain why there is a negative relationship between preferences and substantive infringements as illustrated in the figure one, despite the anticipation of a positive relationship? Although the literature has discussed timing as related to ministerial preferences, it has not addressed what happens in instances where ministers approve. Secondly, the graphs demonstrate that in these instances of ministerial approval, a different type of infringement is more prevalent as compared to cases where ministerial approval is high.

Thus, the two types of infringements I distinguish are distinct from one another and existing approaches don’t anticipate why the share of substantive infringements would be so high when infringements are theorized to be less frequent.

**Theory**

There are two stages to the implementation process: initiation and enactment. In the first stage, initiation, the relevant policy-area minister is crucial. She essentially acts as a lone
veto player and her preferences influence whether a state will move to transpose the directive. Once the first stage has been completed, the minister has begun drafting legislation, the enactment stage begins. In the enactment stage, the state reverts to its normal level of veto players. As I will explain, states have different measures at their disposal to implement legislation. The majority of these measures require parliamentary review. In most states, ministerial measures do not require parliamentary review (Denmark is one exception) but there are often limitations on the instances in which ministerial measures may be employed. Thus, in the enactment stage, the implementation of national instruments requires the involvement of national domestic actors.

There are two consequences of this two-stage process: first, the environment of each stage leads to different types of infringement—late or substantive—and second, these different infringement types have different consequences for the overall success of directives as substantive infringements can be much more difficult to detect and enforce. Previous research has anticipated that veto players would be associated with delays in implementation, and they are. However, the first stage of implementation typically revolves around the relevant minister and not the entire constellation of domestic political actors. This means that ministers can control whether or not implementation is initiated, making veto players less influential in the first stage of the transposition process.

Initiation
Once a directive is issued, states have a period of time before the deadline, typically a period of two years. In most states, the implementation process is headed by the minister of the relevant policy area (for example, as Denmark commonly does (EP 2007)) (Kaeding 2007, Mastenbroek 2007, König and Luig 2013). These ministers are frequently the ministers involved in drafting the directive-level policy (Kaeding 2007, Mastenbroek 2007, König and Luig 2013) and thus are likely to have some level of agreement with the policy. There are some exceptions: the implementing minister may not necessarily be the same minister who helped draft the EU policy—there could be a shift in government between the drafting of the directive and the final version, as occurred in Germany during the Data Retention directive ((2006/24/EC), König and Luig 2013). This level of agreement is very important with respect to the transposition process getting underway (König and Luig 2013).

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8 Depending upon the policy area, the minister undertakes draft measures of legislation with the relevant civil servants and social partners, but during the initiation of legislation, the power belongs to the minister.

9 This holds for most, but not all states, and has changed over time. Greece, for example, uses a system nearly identical to the means through which national legislation is passed and transposing measures move primarily through the parliament. Ministerial decisions are less commonly used. (EP 2007).

10 The process varies by member state and even across policy domains within states. A typical procedure in Denmark is as follows: ministry prepares draft, government tables proposal in parliament and then passes act using normal legislative procedure, ministry adopts orders and relevant actors (agencies or local authorities) implement the act. (EP 2007).
Within the EU15, most states use their own national systems to enact relevant legislation (there are no special transposition-only measures or offices charged with transposing all directives). However, to combat delay and streamline transposition, states have increasingly moved to expedite the legislative process. This has shifted more power to the minister, who is often empowered to push legislation through, given the importance of timely transposition. Often the ‘legislation’ used is ministerial orders or acts, and this legislation frequently does not go through the typical channels, including a thorough debate in parliament. Some states vary (for example, Portugal used to require that all legislation go through the parliament (OECD) and Denmark still uses parliamentary review for most legislation (Steunenberg and Voermans (2006)) but for the most part, state ministers have a large amount of power and discretion in implementation. Thus, initiating legislation is very often in the domain of the relevant minister and it is this minister whose preferences shape the resulting policy. Ministerial approval increases the odds of transposition, reducing the potential for late infringement.

**Enactment**

Although ministers are crucial within states for initiating the transposition process and drafting relevant measures, they are not the only actors involved. Despite the strong agenda powers permitted to ministers in deciding whether to initiate transposition and the comparatively high use of ministerial orders to transpose directives, the frequent use of ‘typical’ legislation ensures the involvement of domestic political actors. These actors, potentially excluded in the first stage of implementation, are often involved in the enactment stage.

**National Implementation Measures**

There are different ways states can implement transposing measures but the three primary pathways are though national legislation, government decrees and ministerial orders. The first two methods typically involve parliamentary review in some form and the third, ministerial orders, typically does not. Ministerial orders, then, are often the fastest means to policy implementation as they enable a minister to forgo the timely review process that typical bills undergo (such as multiple readings, committee referral).

The choice of instrument often lies in precedent (how have similar directives been transposed), national customs and laws (under whose domain does the topic fall), and, to a limited extent, choice (with ministerial orders often being the instrument of choice by the policy-area minister). Some argue that parliamentary review is more likely when agenda control is weak (and there are many actors in the political process) (Franchino and Hoyland 2008). When other actors are involved in transposition, particularly in cases where draft legislation is subject to parliamentary review, substantive infringements are more likely. Overall, ministerial orders comprise approximately 40% of measures used to transpose legislation, although this number varies (Steunenberg 2007, Steunenberg and Voermans 2006, own calculations using data from Franchino and Borghetto).

In figure two, below, I show the prevalence of different types of measures across the EU15. Although states favor ministerial orders, for the efficiency reasons highlighted before, we can see that they are not the only form of legislation used. Interestingly, in Denmark, which
has a preference for ministerial orders and a history of minority government, these orders are also vetted before parliament (Steunenberg and Voermans 2006). Thus, while ministers can decide whether to open the gate to transposition, once it is indeed open, political actors are able to influence legislation.

Figure 2: Types of National Implementing Measures (sample of 835 directives)

This influence may or may affect the substance of proposed measures, depending upon the actors involved in national politics. In countries with single-party government, the policy preferences of the minister and the government are expected to be quite similar. This is not necessarily true when there are many parties in government.

When there are many actors whose preferences must be taken into account for legislative change, these different preferences can make compromise necessary to pass transposing measures. Furthermore, this influence can shape the content of the draft measures and whether they fully satisfy the directive mandate. For example, in the context of the 1991 Packaging directive (91/441/EEC), the government worked to draft legislation that would reduce the quota for drinks sold in refillable containers. Local business favored the high quota because it indirectly favored national produces over foreign companies. The government, a coalition of Christian Democrats (CDU/CSU) and the Free Democratic Party (FDP), faced a strong opposition, the Social Democratic Party of Germany (SPD). The opposition was able to use its power in the Bundesrat, where it held a majority, to veto the
government’s proposal, and affected the final quota set. Germany ultimately faced infringement proceedings for the substance of the enacted legislation (Haverland 2000).

Previous applications of veto players or veto points theories to transposition had considered that the number of veto players would slow implementation if not lead to a stalemate (Borzel and Risse 2000, Borzel et al 2007). However, the Commission has increased pressure for states to implement legislation, indicated by increased emphasis on timeliness in annual reports, and the setting of transposition guidelines. As such, states frequently compromise on incorrect implementation in the name of appearing to comply, as the Netherlands did on a directive on the patentability of plants and animals (directive 98/44/EC) (Mastenbroek 2007). Thus, while delay also occurs when there are more veto players involved, often these players’ lasting influence is on the substance of legislation.

The potential for disagreement, and resulting substantive infringement, is heightened given that ministers often hold sole power in the decision to initiate transposition. Should coalition members’ preferences not be incorporated to the coalition member’s satisfaction, these actors have additional avenues to influence draft measures. For example, the parliament provides an additional arena in which these actors’ preferences might be incorporated. Because the national parliament is a veto player and parliamentary scrutiny is often involved in the national measures used to transpose a directive, parliamentary assent is essential for enactment (Franchino and Hoyland 2008). Coalition members have the opportunity to influence in the parliament as the parties in government typically have a majority in parliament. Parliament can also present the opportunity for opposition members to influence legislation, particularly when the opposition holds the majority in a bicameral legislature. These actors become an additional veto point in the enactment process, as illustrated in the Packaging directive’s implementation in Germany.

Overall, the enactment stage is where veto players can leverage their power over the substance of legislation. When there are few veto players, it is likely that the minister’s perspective in the initiation stage mirrors that of the government. Thus, there will be little disagreement and the parliamentary scrutiny necessitated by legislation will be more routine than rigorous. However, when there are multiple veto players in the enactment stage of the transposition process, substantive infringements are more likely to occur because these agents will demand compromise. Under pressure by the Commission to implement legislation, compromise by political actors in the member state becomes increasingly more attractive as a means to avoid time-consuming late infringements. Given the number of diverse preferences that must be incorporated in the process, these compromises are likely to produce legislation that does not fulfill the substantive demands of the corresponding directive.

 директор Factors

11 Here, I don’t discuss whether involvement of the parliament is strategic or the circumstances under which such involvement might occur. For more on this, see Franchino and Hoyland (2008, 2009).
The different approaches to transposition have consistent expectations regarding the complexity of directives: that they are likely to lead to delays in the implementation process because they are likely to be technical. Furthermore, complex issues are designated as covering multiple topic areas, which necessitates the coordination between ministries. Thus, the two-stage distinction becomes less clear and it may be that complex issues are prone to delay for difficulty and substantive infringements given the multiple actors coordinating on drafting.

With respect to the discretion permitted to states, predictions are less clear. I anticipate that directives permitting greater discretion, Council authored directives, will be associated with more substantive infringements because actors will work to maximize latitude permitted to them, and thus are more likely to drift from the text of the directive. The anticipated relationship is positive also because more discretion is also anticipated to be associated with directives on which agreement was difficult to reach: these directives will be more prone to disagreement, all else equal. The length of directives, represented by the number of pages in the Official Journal will be associated with substantive infringements for three reasons: first, this is an additional potential measure of complexity as these directives require more description and explanation; secondly, these directives are also likely to have longer recitals (opening number of paragraphs); thirdly there may be some association between directive length and detail where more detailed provisions are more likely to be prone to substantive infringement. Some work (Kaeding 2006?) has looked into the number of recitals to evaluate whether there is an association between salience of a topic and the number of opening paragraphs devoted to the ‘purpose’ of the directive (these recitals are legally meaningless but are often used to appease losing parties).

In summary, transposition can be thought of as a two-stage process. First, ministers determine whether or not transposition is to be initiated. Once transposition is initiated, the preferences of veto players at the domestic level become crucial. More veto players, particularly when one of these veto players is ideologically far from the transposing minister, increases the possibility of substantive infringement. Directive-level factors will likely affect substantive infringements more than late.

<table>
<thead>
<tr>
<th>Expectations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Variable</strong></td>
</tr>
<tr>
<td>Ministerial disagreement</td>
</tr>
<tr>
<td>More veto players</td>
</tr>
<tr>
<td>Institutional Capacity</td>
</tr>
<tr>
<td>Complexity</td>
</tr>
<tr>
<td>Discretion</td>
</tr>
<tr>
<td>Length</td>
</tr>
<tr>
<td>Policy-specific</td>
</tr>
</tbody>
</table>

16 | 26
Analysis
In the analysis that follows, I ask what leads to substantive infringement relative to late infringement. The selection of cases is limited to instances in which an infringement case occurred. Instances where no infringement was observed may indicate that there is no infringement or that there is an unobserved infringement. I consider these cases of unobserved infringements in a chapter of my dissertation but in the following section I only compare two types of infringement to one another. This reflects the phenomenon described by existing work that states face a tradeoff between the two.

Data
I use data from two sources: Commission Data (via Börzel et al (2001)) and directive-level data (König and Luig (2013)). These two datasets enable detailed study of noncompliance. The Börzel data on infringements I use for information on the type of infringement. It includes all infringement cases reaching at least the stage of Reasoned Opinion (the first public stage) for all secondary legislative acts from 1978 to 1999. These data encompass over 7000 infringement cases pertaining to directives and regulations.

I use data from König and Luig (2013) to explore directive-level details and the degree of ministerial approval. However, using the infringement and König & Luig datasets together does reduce the overall sample of infringement cases (this combination contains 45% of all infringement cases between 1978-1999. Part of the reduction comes from König and Luig’s focus solely on directives and exclusion of regulations). In the preliminary analysis that follows, I focus upon directives, in part because the majority of the literature has focused upon directives, typically from the perspective of explaining delays during the transposition process. These initial data cover approximately 3,200 cases of incorrect transposition (late and substantive infringements in 15 countries). I have combined these data with indicators from the Quality of Governance dataset to incorporate measures of institutional capacity and veto players.

Variables
Ministerial disagreement: the distance between the ideal point of the relevant transposing minister in the policy domain and the Council of Ministers on that domain. The national party government position is used to estimate the length of the EU core as the maximum ideological distance between negotiating member-state governments (Konig and Leutgert 2009) with the assumption that the final directive will lie in the Council core (Konig and Luig 2013). Ministerial disagreement is measured as the distance between the

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12 There are two ways to consider combining infringement data as infringement cases often mention multiple EU directives or regulations when citing noncompliance, particularly substantive noncompliance. Counting each directive mentioned separately risks ‘over counting’ these measures since they were involved in the same infringement procedure. Right now I am conservative and only include citations that contain a mention of a single directive.

13 For now, I focus solely on regulations although later work will likely include regulations.
policy area minister’s party’s
ideal point and the EU core. Larger distances indicate stronger disagreement. This variable comes from estimation using party manifesto data. (Note: I have also estimated the model using a 0/1 measure where ideal points outside the range of the council of Ministers is measured as 0 (no disagreement) and other ideal point locations are measured as 1 (disagreement) and the results are consistent in direction and significance).

**Veto Players:** The primary measure of veto players I use here is compiled in the Quality of Governance dataset (Teorell et al 2013), and is obtained from the Database of Political Institutions. This index represents the feasibility of policy change and is composed of the number of independent branches of government with veto power over policy change. In parliamentary systems, the variable is incremented by one for every party in the government coalition as long as the parties are needed to maintain a majority, and by one for every party in the government coalition that has a position on economic issues closer to the largest opposition party than to the party of the executive. (The prime minister’s party is not counted as a check if there is a closed rule in place.) (Excerpted from the QOG codebook, Teorell et al 2013). This measurement is robust to some alternate measures of veto players (for example Polcon 5), but measures must be sensitive to factors that influence fluctuation of veto players depending upon political circumstances, such as the role of the opposition.

**Quality of Government (ICRG):** The mean value of the ICRG variables “Corruption”, “Law and Order” and “Bureaucracy Quality”, scaled 0-1 (excerpted from the QOG codebook, Toerell et al 2013). Corruption is an assessment of corruption within the political system. Law and order is the strength and impartiality of the legal system and a measure of the observance of rule of law. Bureaucracy quality refers to the ability of bureaucracy to govern without drastic changes in policy or interruptions in government services.

**Complexity:** the number of topics covered by a directive, from one to four distinct policy areas. The majority of directives cover one or two topics, although some agricultural policies are complex. The measure comes from the number of areas listed in the EUR-Lex database for the directive. (source: König and Luig 2013)

**Page Length:** the length of pages (standardized by ministerial portfolio and policy domain) the directive takes in the Official Journal of the European Communities, where all directives are officially published upon their enactment. (source: König and Luig 2013)

**Discretion (Council):** whether the directive was authored by the Council (0, 1), with Council directives typically affording more discretion. The question of whether Council directives are inherently more flexible has been discussed at length in the literature, although some scholars have chosen to use other measures in place of the dummy for Council authorship (Franchino 2004, Franchino & Hoyland 2009). Upon my calculation, the

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14 This is an important distinction that I don’t develop here. The minister is assumed to have strong party allegiance, implementing a policy corresponding to his or her party’s preferences (acting as a faithful agent of his/her party).
correlation between an alternate measure of discretion—the number of provisions granting power to member states relative to the number of provisions within the directive—and whether a directive is a Council directive is approximately 0.8. This is high enough to justify using the Commission measure for now as this indicator is much more widely available and does not require subjective coding of provisions. (source: König and Luig 2013)

Policy factors: Work suggests (Haverland et al 2000, Börzel 2001, Börzel 2007, among many others) that policy domains are important and influential with respect to policy outcomes. For example, some domain areas may entail more technical details, more mundane policies, or more controversial topics. Although I don’t delve into these arguments here, I include dummy variables for the policies to demonstrate that even when accounting for factors known to influence implementation, the effects are consistent.

Variable Summary

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
<th>N</th>
<th>Mean [St.Dev]</th>
<th>Late [3,191]</th>
<th>Sub [837]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Late_Sub</td>
<td>Whether the infringement observed is a late infringement (0) or substantive (1)</td>
<td>7325</td>
<td>0.245 [0.430]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disapproval</td>
<td>The distance between the minister's party and that of the Council of Ministers. Larger values indicate higher disapproval.</td>
<td>4028</td>
<td>-0.031 [0.131]</td>
<td>-0.019 [0.132]</td>
<td>-0.079 [0.118]</td>
</tr>
<tr>
<td>Veto Players</td>
<td>The number of impediments (branches of government) to policy change.</td>
<td>4028</td>
<td>4.605 [0.164]</td>
<td>4.541 [1.543]</td>
<td>4.849 [1.954]</td>
</tr>
<tr>
<td>Quality of Government</td>
<td>The mean value of the ICRG variables “Corruption”, “Law and Order” and “Bureaucracy Quality”, scaled 0-1</td>
<td>3678</td>
<td>0.872 [0.099]</td>
<td>0.872 [0.096]</td>
<td>0.871 [0.112]</td>
</tr>
<tr>
<td>Complex</td>
<td>Number of topics coered by a directive.</td>
<td>4028</td>
<td>1.226 [0.478]</td>
<td>1.237 [0.491]</td>
<td>1.183 [0.422]</td>
</tr>
<tr>
<td>Pages</td>
<td>Number of pages (standardized) when published in the Official Journal</td>
<td>4028</td>
<td>0.082 [0.121]</td>
<td>0.070 [0.110]</td>
<td>0.128 [0.146]</td>
</tr>
<tr>
<td>Council</td>
<td>Council directive (0/1). More discretion under Council.</td>
<td>4028</td>
<td>0.735 [0.441]</td>
<td>0 (1042)</td>
<td>0 (26)</td>
</tr>
<tr>
<td>Agriculture</td>
<td>Policy Area</td>
<td>4028</td>
<td>0.282 [0.450]</td>
<td>0 (2079)</td>
<td>0 (812)</td>
</tr>
<tr>
<td>Environment</td>
<td>Policy Area</td>
<td>4028</td>
<td>0.111 [0.314]</td>
<td>0 (3006)</td>
<td>0 (574)</td>
</tr>
<tr>
<td>Industry/Trade</td>
<td>Policy Area</td>
<td>4028</td>
<td>0.407 [0.491]</td>
<td>0 (1845)</td>
<td>0 (545)</td>
</tr>
<tr>
<td>Social Affairs</td>
<td>Policy Area</td>
<td>4028</td>
<td>0.055 [0.227]</td>
<td>0 (3030)</td>
<td>0 (778)</td>
</tr>
</tbody>
</table>
Models
Below I present the findings from my analysis, primarily that disagreement is negatively associated with substantive infringements, indicating, as before that ministers who disagree with a policy are more likely to choose inaction. These models, instead of considering the universe of cases, are restricted to late or substantive infringements to explore what influences the observation of one over the other. Significance is in relation to the comparison, or base, case. So, significance means that a variable is significant for our outcome, substantive infringement, relative to the comparison case, late infringement. If we do not observe significance, this means that these variables are not influential on the incidence of substantive infringement relative to late infringement, or that the hypothesized effect of the variable is not distinct between late and substantive infringements. Significance, particularly in the direction anticipated, would indicate that the two types of infringement are indeed significant and would provide support for my arguments. I introduce and interpret the models below.

<table>
<thead>
<tr>
<th>VARIABLES</th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministerial Disapproval</td>
<td>-3.073***</td>
<td>-3.566***</td>
<td>-3.054***</td>
</tr>
<tr>
<td></td>
<td>(0.347)</td>
<td>(0.331)</td>
<td>(0.346)</td>
</tr>
<tr>
<td>ICRG Indicator of Quality</td>
<td>-0.203</td>
<td>-0.813*</td>
<td></td>
</tr>
<tr>
<td>of Government</td>
<td>(0.425)</td>
<td>(0.449)</td>
<td></td>
</tr>
<tr>
<td>Veto Players</td>
<td>0.0932**</td>
<td>0.106***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.0223)</td>
<td>(0.0242)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-1.416***</td>
<td>-1.961***</td>
<td>-1.374***</td>
</tr>
<tr>
<td></td>
<td>(0.373)</td>
<td>(0.115)</td>
<td>(0.373)</td>
</tr>
<tr>
<td>Observations</td>
<td>3,726</td>
<td>4,001</td>
<td>3,726</td>
</tr>
</tbody>
</table>

*Standard errors in parentheses
***p<0.001, **p<0.01, * p<0.05

Model 0 tests ministerial disagreement and institutional capacity as significantly influencing the outcomes of substantive violations relative to late infringements. The insignificance of institutional capacity indicates that there may be no significant relationship between this variable and the incidence of substantive infringements relative to late infringements. However, disagreement makes substantive infringement less likely—meaning that the use of delay as a means to express disagreement is corroborated in our data. Thus, in this simple framework, we do not have statistical support for the argument that substantive infringements are distinct from late infringements on an institutional capacity grounds, but we do find support for ministerial preferences.
We see that things change in Model 0b with the exclusion of the state capacity variable and inclusion of a measure of veto players: both approval and the constraints imposed by veto players make substantive infringements more likely the higher the values of each. Substantive infringements are positively associated with the number of veto players is high and this occurrence is distinct from late infringements. Approval is significant here but, given our understanding that approval is necessary for the possibility of substantive infringements, we should not find it as surprising. The inclusion of institutional capacity measures in Model 1 does not diminish the effect but strengthens that of veto players. This model provides support for my argument that capacity and institutional frameworks play a significant role in the incidence of substantive infringements. Model 1 supports this argument, demonstrating that both institutions and veto players have a significant effect distinct from that influencing the incidence of late infringements.

In Model 2, I incorporate directive-specific effects including topic complexity, length, and discretion. Complexity is not significant, though the sign is in the anticipated direction. Both length and discretion are influential on the incidence of substantive infringements, with increasing length and discretion contributing to more substantive infringements relative to late infringements. The political constraints represented by veto players remains a strong and influential factor in the incidence of substantive infringements.

<table>
<thead>
<tr>
<th>VARIABLES</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministerial Disapproval</td>
<td>-1.880***</td>
<td>-1.166**</td>
</tr>
<tr>
<td></td>
<td>(0.363)</td>
<td>(0.387)</td>
</tr>
<tr>
<td>Veto Players</td>
<td>0.107***</td>
<td>0.0965***</td>
</tr>
<tr>
<td></td>
<td>(0.0256)</td>
<td>(0.0279)</td>
</tr>
<tr>
<td>ICRG Indicator of Quality of Government</td>
<td>-1.069*</td>
<td>-0.598</td>
</tr>
<tr>
<td></td>
<td>(0.460)</td>
<td>(0.483)</td>
</tr>
<tr>
<td>Council</td>
<td>2.456***</td>
<td>2.317***</td>
</tr>
<tr>
<td></td>
<td>(0.218)</td>
<td>(0.222)</td>
</tr>
<tr>
<td>Complexity</td>
<td>-0.0747</td>
<td>-0.167</td>
</tr>
<tr>
<td></td>
<td>(0.0934)</td>
<td>(0.0992)</td>
</tr>
<tr>
<td>Page length</td>
<td>2.798***</td>
<td>1.692***</td>
</tr>
<tr>
<td></td>
<td>(0.333)</td>
<td>(0.374)</td>
</tr>
<tr>
<td>Agriculture</td>
<td>-2.809***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.228)</td>
<td></td>
</tr>
<tr>
<td>Industry/trade</td>
<td>-0.437***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.123)</td>
<td></td>
</tr>
<tr>
<td>Environment</td>
<td>0.609***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.149)</td>
<td></td>
</tr>
<tr>
<td>Social affairs</td>
<td>-0.218</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.184)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-3.418***</td>
<td>-2.874***</td>
</tr>
</tbody>
</table>
Observations 3,726 3,726

*Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05

In Model 3, I also add variables for four common policy domains, Agriculture, Industry, Environment and Social Affairs. All are coded 0,1. The significant value indicates that they likely have domain-specific features that contribute to substantive over late infringements (or vice versa). Institutional capacity is not significant which may indicate that substantive infringements do not differ from late infringements when incorporating these other variables, or that institutional capacity affects different types of substantive infringements differently when incorporating these variables. The number of veto players is again a significant contributing factor to substantive infringements over late infringements.

Conclusions
In conclusion, I have demonstrated that there is a distinct difference between late and substantive infringements, which has not been previously recognized by the literature. I have outlined the different features contributing to late and substantive infringements, finding that institutional capacity and ministerial agreement are more influential for the incidence of late infringements. I also demonstrated the role of veto players in influencing substantive infringements.

In light of these findings, I have emphasized the importance of distinguishing late and substantive infringements. Different measures must be taken to reduce the occurrence of late and substantive infringements separately. While increased guidance on policy objectives could reduce late and substantive infringements, emphasis on states with poor institutional capacity is likely to affect levels of late infringements without doing much for the incidence of substantive infringements. Thus, Commission efforts to reduce late infringements may not only leave substantive infringements unaffected, the number of substantive infringements may be increasing over time. The overall effectiveness of community legislation hinges upon understanding the existence of and contributing factors to substantive infringement. Given this has not yet been understood, the actual levels of substantive infringement may be quite different from that reported by the Commission.
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