Why Noncompliance

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WHY THERE IS NO GROWING NONCOMPLIANCE

This chapter solves the puzzle of why noncompliance has decreased rather than increased ever since the EU deepened and broadened its political authority and widened its membership. The PCP model argues that conditions for noncompliance today are different from what they were forty years ago because the nature of EU law has changed. EU institutions have made noncompliance less costly. The first part presents a dynamic analysis of the extent to which the PCP factors that reduce compliance costs and their politicization have changed over time and whether these changes correspond to the decline in noncompliance we observe since the 1990s. Because of the limited number of years covered by the analysis, I mostly rely on descriptive data to show that the increasing adoption of amending and delegated legislation since the completion of the Internal Market is inversely related to the decreasing numbers of infringements. In the second part, I use a static statistical analysis to test whether time-sensitive PCP variables have a significant effect on noncompliance. The results confirm that amending and delegated legislation, which is less prone to politicization since it reduces parliamentary involvement, renders noncompliance less likely. The third part zooms in on the ten most infringed directives to corroborate that issue- or legal-act-specific PCP variables have a major influence on the chances of noncompliance. The chapter concludes by discussing the broader implications of these findings.

Depoliticization through delegation has helped reduce noncompliance. However, this has come at a price—the marginalization of parliaments results in “policy without politics” (V. Schmidt 2006). To put it differently, the depoliticization
of EU policies exacerbates the democratic deficit of the EU and contributes to the politicization of the EU as a polity by nationalist populist forces.

The Iceberg Is Melting

EU scholars and policy makers alike have claimed that the EU suffers from a growing compliance problem, which they believe to be systemic or pathological to the EU (Krislov, Ehlermann, and Weiler 1986; Weiler 1988; Snyder 1993; Mendrinou 1996; Tallberg 2003; Cremona 2012; Commission of the European Communities 2011). They base their assessment on the increasing number of infringement proceedings the European Commission has been opening against member states for violating EU law (figure 4.1). The year 2004 saw a record high of more than nineteen hundred letters of formal notice sent to the member

![Figure 4.1](image_url)

**FIGURE 4.1.** Letters of formal notice and reasoned opinions, absolute numbers, 1978–2017

*Source:* Own compilation, with data from the Berlin Infringement Database. The annual number of reasoned opinions was aggregated from the data set by year of the infringement proceeding (YearIN). The number of letters of formal notice sent per year can be directly retrieved from the European Commission's Annual Reports on Monitoring the Application of EU Law (for years 1978–2010) or from the online database on the Commission's infringement decisions (for years 2011–2017).
states. This was four times more than what they had received twenty years before. Yet these numbers have to be put into context. Strictly speaking, infringement proceedings do not allow us to draw any valid conclusion about whether the EU has a compliance problem (see chapter 1). At the same time, the evidence we have gives us no reason to be pessimistic. The European community of law appears to be working quite well. Overall, less than 20 percent of the 14,132 laws that entered into force in the EU until 2012 have received at least one reasoned opinion. The vast majority of these infringements refer to around eighteen hundred directives. The more than twelve thousand regulations that make up for the bulk of EU law that member states have to comply with are hardly violated (less than 2 percent). This is not to deny that infringements depict only “the tip of the iceberg” (Hartlapp and Falkner 2009). Rather, we have no means to measure how large the iceberg really is. We should be careful to make any statements about its absolute size.

What the data allows us to do is to assess whether the visible part of the iceberg has changed its size over time. Simply comparing the number of infringement proceedings across time does not say much about changes in the level of noncompliance in the EU. Infringement numbers have to be measured against the number of legal acts that can be potentially infringed on, as well as the number of member states that can potentially infringe on them. The amount of legal acts in force has increased almost four times since 1978. Nineteen more member states have joined the EU that can potentially violate them. If we control for violative opportunities (see chapter 1), noncompliance in the EU had steadily increased before it started to decline in the early 1990s (figure 1.4 in chapter 1). Since 2005, the decline is even visible without controlling for the multiplication of violative opportunities. Moreover, the time trend does not depend on the measurement. It also shows with letters of formal notice (figure 4.1).

The trend of increasing noncompliance with EU law reversed in the early 1990s—despite an exponential increase in EU laws to be complied with and the accession of three more states that could violate them (Austria, Finland, and Sweden). After 1994, the number of infringements is inversely related to the violative opportunities—despite the “big bang” enlargement of 2004/2007, which almost doubled the number of member states.

Research on noncompliance in the EU has been quite insensitive to time. Researchers have been predominantly interested in why member states do not comply with EU law or why some are less compliant than others. They tend to start from the assumption that the EU is facing a compliance problem and seek to explain why that is. The member states are considered as the main source of noncompliance. Eastern enlargement triggered a debate as to whether the accession of twelve new member states, with their limited capacity to cope with costs, has
exacerbated the EU’s noncompliance problems (Sedelmeier 2008, 2012; Falkner, Treib, and Holzleitner 2008)—which chapter 3 finds no evidence for. Whether there is a time effect independent of changes in membership has not been systematically explored.

**Explaining Noncompliance over Time**

Member state variation in noncompliance is rather stable over time. So are key factors that affect states’ ability to shape and take compliance costs (see chapter 3). Accordingly, the PCP model would expect noncompliance to decline over time when compliance costs are decreasing and are less likely to become politicized at the shaping stage because of changes in EU decision-making rules or in the nature of EU law. At the taking stage, more effective EU enforcement and management, respectively, should make member states less likely to violate EU law because they face higher noncompliance costs and receive assistance in coping with the costs.

**Shaping Compliance Costs: EU Decision-Making Rules and the Nature of EU Law**

**MORE SUPRANATIONAL DECISION MAKING: QUALIFIED MAJORITY AND CO-DECISION**

Supranational decision making mitigates the ability of member states to shape compliance costs by depriving them of their individual veto power. The Single European Act of 1986 systematically introduced QMV in the Council and started to elevate the European Parliament (EP) from a consultative to a real decision-making body. Subsequent treaty reforms extended supranational decision making in the EU. Since 2010, QMV is the default decision rule under the ordinary legislative procedure. Moreover, the introduction of the co-decision procedure has made the EP an equal co-legislator with the Council, which has absolute veto over any legislative proposal. Member states increasingly have to accept EU laws that do not correspond to their preferred outcome because they have to compromise twice—one in the Council, and then with the EP. The literature has found that directives adopted under co-decision are indeed more frequently violated than directives adopted by the Council or the Commission only (König and Luetgert 2009; Luetgert and Dannwolf 2009; Börzel and Knoll 2013). Finally, the case law of the ECJ can increase compliance costs even after the Council and the EP passed an EU law (Schmidt and Kelemen 2014; S. Schmidt 2018). Through the preliminary ruling procedure, societal and economic actors seek to extend
their rights under EU law, to which the ECJ has often responded positively in its ruling. As we will see in chapter 5, some of the most infringed directives have been shaped by ECJ case law.

Yet, overall, noncompliance has decreased despite the extension of QMV in the Council, co-decision with the EP, and case law of the ECJ. In fact, the supra-nationalization of EU decision making, which rendered member states less able to shape compliance costs, on the one hand, and the declining noncompliance with EU law, on the other hand, appear to be opposite trends.

MORE FLEXIBILITY: DIFFERENTIATED INTEGRATION

In a community of law, members are subject to uniform legal obligations. By widening its membership, however, the EU has become increasingly more diverse. Differentiated integration is a major instrument to achieve the flexibility to make “unity in diversity” work (Kölliker 2005; Leuffen, Schimmelfennig, and Rittberger 2013).

Differentiated integration has been used since 1958, when the Treaty of Rome came into force. It took off with the Maastricht Treaty in 1993. Some member states started to become more reluctant to deepen and broaden European integration by extending majority voting in the area of the Internal Market, centralizing monetary policy, and extending EU competencies into internal and external security. The most prominent form of differentiated integration is the so-called opt-outs. They allow member states that oppose EU law by blocking its adoption at the shaping stage, or by not complying with it at the taking stage, to stay behind when others move toward deeper (vertical) and broader (horizontal) integration. The loosening of integration for member states objecting to costly or politically controversial EU law could have helped bring down noncompliance.

EU institutions have indeed responded to the progressive deepening, broadening, and widening of the EU. Differentiated integration became a major tool to mitigate the conflict between the majority of member states supporting further integration and the more reluctant Europeans. The overall share of treaty articles with provisions on differentiated integration has steadily increased after it had jumped up with the Maastricht Treaty establishing the euro as the common currency and the Schengen Agreement on free travel entering into force (figure 4.2). Differentiation of primary or treaty law was pushed again by eastern enlargement and climbed to an all-time high of 43 percent with the Lisbon Treaty and the euro crisis (cf. Schimmelfennig and Winzen 2014, 2017).

At the level of secondary law, rules that exempt member states from their obligations to comply with EU legal acts (almost exclusively directives) also increased over the years and peaked in the early 2000s. Their share in the legislation in force, however, has been decreasing over time, from 17 percent in 1958 to only
There is no growing noncompliance in 2012. Less than 10 percent of all legal acts in force, mostly directives, contain opt-out clauses that have been used by at least one member state. There are four peaks, in the early 1970s, early 1990s, the late 1990s, and the mid-2000s (figure 4.2). They are the result of temporary exemptions granted to new member states that joined in these periods—the UK, Denmark, and Ireland in 1973 (northern enlargement); Eastern Germany in 1990 (German unification); Austria, Finland, and Sweden in 1995 (EFTA enlargement); and the ten post-communist countries in 2004 and 2007 (eastern enlargement), respectively (cf. Schimmelfennig and Winzen 2014, 2017).

Only the use of differentiated integration in the EU’s primary law has increased over the years. Opt-outs from EU treaty changes took off after the Maastricht Treaty when noncompliance started to decline. Yet the member states have not made use of more than 12 percent of the opt-out opportunities granted by the EU treaties in any given year (Schimmelfennig and Winzen 2014). Most of these opt-outs are temporary—that is, are terminated by member states opting in (Sion-Tzidkiyahu 2012). This is particularly the case for differentiation originating from enlargement. New member states want to end discrimination, which old member states managed to impose on them. As part of the accession negotiations, differentiated integration was introduced to delay economic and financial losses the newcomers might incur on the old member states when they have to

**FIGURE 4.2.** Deepening, widening, and loosening

open up their labor markets or redistribute EU funds. Old member states have an interest in terminating those temporary exemptions, which the EU granted to newcomers to help them adapt to market pressures and further build up their capacities to comply with EU regulatory standards (Schimmelfennig and Winzen 2014). Each enlargement round resulted in a rise of differentiated integration. Most of the opt-outs, however, phased out ten to fifteen years after accession, with the number of exemptions for the newcomers converging with those of the old member states. Only the UK, Denmark, and Ireland have continued to obtain opt-outs. For the CEE countries, it is still too early to tell, but the number of exceptions granted to the newcomers is only slightly above for the old member states (Schimmelfennig and Winzen 2017), with the exception of the UK, Denmark, and Ireland, of course. Differentiated integration obtained in the revisions of the EU treaties, by contrast, tends to be long-term or even permanent, since it is to buy out member states that object to a deepening or broadening of integration. While the majority of the member states move forward—for example with the euro as the common currency, the Schengen border-free zone, or the fiscal compact—opponents can stay behind.

In sum, differentiated integration is likely to have contributed to the fact that noncompliance has not increased after enlargements of the EU. Exemptions for newcomers helped ease their compliance costs. Such easing is only temporary, though. The exceptions are Denmark, the UK, and Ireland, which, however, obtained most of their current opt-outs as part of treaty revisions that introduced the euro and the Schengen zone. Moreover, fiscal policy is not subject to infringement proceedings; the euro zone has its own monitoring and sanctioning regime. Finally, Denmark, the UK, and Ireland opted in on a fair amount of JAIN legislation. Opt-outs, therefore, hardly account for the overall trend in declining noncompliance. Nor do they explain the exemplary compliance record of the UK and Denmark as they outperform the other member states in policy sectors of which they have not opted out.

LESS COMPLEXITY: REGULATIONS
Complexity is a major cost factor. The more complex EU law is, the more compliance requires legal and administrative measures to enact new and adopt existing national legislation at the domestic level and the more actors need to be involved to bring about the necessary institutional and behavioral changes (Mastenbroek 2003; Kaeding 2006; Thomson 2007; Haverland and Romeijn 2007; Steunenberg and Kaeding 2009; Steunenberg and Rhinard 2010).

Complexity substantially varies between regulations and directives as the two main forms of secondary EU law. As framework legislation, directives require legal adoption at the domestic level. Incorporating a directive into national law
may involve between forty and three hundred legislative measures at the national level, ranging from statutory law, government decrees, to ministerial orders. Depending on the legal system of the member states, governments need the approval of their national parliaments (Steunenberg 2006). This offers national parliaments the opportunity to block or delay compliance that does not exist for regulations making noncompliance with directives considerably more likely (Dimitrova and Steunenberg 2000; Steunenberg 2006; Kaeding 2006; Jensen 2007; König 2007; König and Luetgert 2009; Haverland, Steunenberg, and van Waarden 2011; Angelova, Dannwolf, and König 2012).

Directives are more complex and more prone to noncompliance than regulations. The EU has always used more regulations than directives. In 1992, the ratio between the two was still 4:1, lower than what it used to be in 1982. In 2012, however, regulations outnumbered directives already by 5:1; three years later, it was almost 7:1. The number of legal acts in force has increased almost four times since 1978, spanning virtually all policy sectors in which member states have been legislating. After the turn of the millennium, this expansion of EU law appears to be largely driven by the growing adoption of regulations, which account for more than 87 percent of the legislation in force (figure 4.3).

The increasing adoption of regulations relative to directives is linked to the completion of the Internal Market (Ciavarini Azzi 2000). In 1985, the Delors Commission published a white paper identifying three hundred measures to

![Figure 4.3. Legislation in force, 1978–2017; regulations and directives compared](source)

Source: Statistics on directives and regulations in force as provided by the EUR-Lex Helpdesk.

Note: Because of continuous inconsistencies in the online database EUR-Lex with regard to “legislation in force” per year, data on “incoming” and “outgoing” directives and regulations was retrieved directly from the EUR-Lex Helpdesk on request on 11 April 2019.
complete the Internal Market by 31 December 1992. The Single European Act (Article 100a EEC Treaty) provided the legal basis for the adoption of these measures by qualified majority. The prohibitions of discriminatory behavior and other restrictive practices by the member states and the approximation of their laws and standards were issued as directives. The use of such framework legislation corresponded to the approach of the Delors Commission to avoid exhaustive harmonization (cf. Pelkmans and Winters 1988). After the Internal Market had been official launched on 1 January 1993, the EU continued to increase its use of regulations to put the Internal Market into practice. While their numbers more than doubled since 1993, the growth of directives in force has been more modest and even started to recede in 2008.

The rising numbers of less complex regulations after the completion of the Internal Market correspond to the decline in noncompliance, which started in the mid-1990s. Regulations account for only around 18 percent of the infringement proceedings reaching the official stage (reasoned opinions). More than 60 percent of directives have been infringed at least once. For regulations, it is less than 2 percent. The relative share of regulations and directives in the legislation in force is inversely related to their relative share in the infringements (compare figures 4.3 and 4.4).

Yet, a closer look at the data reveals that the declining trend of noncompliance has been largely driven by decreasing infringements of directives (figure 4.4). Noncompliance with regulations has always been substantially lower in comparison to directives. Violations of directives (tov_1, tov_2 + 3) had reached their highest peak in 1994, before their numbers plummeted quite substantially, shortly peaked again at a lower level in 2001 and then 2006, before they returned to a steady decline (figures 4.4 and 4.5). Distinguishing between different types of violations also reveals that infringement dynamics are largely driven by one particular type of violation of directives, namely delayed and incomplete transposition into national law (figure 4.5). Delayed or incomplete transpositions (tov_1) account for more than half of all official infringements of EU law. The higher noncompliance with directives should not be too surprising, as transposition provides domestic veto players with a formidable opportunity to block or at least substantially delay the coming into force of costly EU law and to water down costly provisions by not fully or not correctly transposing them into national law.

A final factor related to complexity that according to the PCP model renders directives more prone to noncompliance is time. Member states often have difficulty in meeting implementation deadlines because of strong domestic opposition or the lack of necessary resources to adapt their legislation to complex EU laws (Ciavarini Azzi 2000; Mastenbroek 2003; Thomson 2007; Haverland, Steunenberg, and van Waarden 2011; Kaeding 2008; König and Luetgert 2009;
There is no growing noncompliance (Luetgert and Dannwolf 2009; Steunenberg and Kaeding 2009; Steunenberg and Rhinard 2010).

In sum, if the EU has had a noncompliance problem, it has been with the transposition of directives into national law. Their need for transposition renders directives more complex than regulations. What explains the decline in noncompliance with directives is a change in their nature.

**LESS NOVELTY: AMENDING LEGISLATION**

The PCP model would expect the more effective transposition of directives to be related to decreasing compliance costs. One major cost-reducing factor at the shaping stage is that the EU has increasingly amended existing directives rather than setting new ones. This is indeed what we can observe (figure 4.6). The completion of the Internal Market reduced the need for new legislation (see above). Moreover, the rise of subsidiarity (Nugent 2016) and the shift of
the policy agenda toward more politicized issues related to the extent to which the completed Internal Market should be regulated (Hix 2008) made it increasingly difficult for the Commission to table proposals for entirely new legislation. Amendments fill regulatory voids left in the original directive, specify general regulations, or update regulatory standards. They are rather technical in nature and incur lower costs on the member states because of the lower misfit. Member states have to adjust already existing legislation rather than create new laws (Knill 1998; Haverland, Steunenberg, and van Waarden 2011). The causal relevance of misfit is contested in the compliance literature (see, e.g., Duina 1997; Börzel and Risse 2003; critical: Falkner et al. 2004; Haverland 2000). Amending directives, however, are less likely to give rise to delayed transposition than are directives that enact new stipulations (Mastenbroek 2003; Kaeding 2006; Haverland and Romeijn 2007; Haverland, Steunenberg, and van Waarden 2011; Steunenberg and Rhinard 2010; König and Luetgert 2009; Luetgert and Dannwolf 2009).

**MORE DELEGATION: COMMISSION DIRECTIVES**

While amending directives reduce compliance costs according to the PCP model, delegation makes their politicization less likely. Politically sensitive and visible EU legal acts carry a higher probability of noncompliance, as domestic actors are more likely to mobilize against compliance costs (Kaeding 2006; Falkner, Hartlapp, and Treib 2007; Versluis 2007; Steunenberg and Kaeding 2009; Dimitrova and Toshkov 2009). A means for the Council and the Commission to avoid

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**Figure 4.5.** Reasoned opinions according to types of violation and relative to violative opportunities, 1978–2017

*Source:* Own compilation, with data from the Berlin Infringement Database. The number of reasoned opinions per year was counted according to the year when the infringement proceeding was launched.
Delegated acts involve the further elaboration or updating of standards and technical issues of an existing legislative act (Héritier et al. 2013). The legal act must delegate to the Commission the power to “supplement or amend certain non-essential elements of the legislative act” (Article 290 TFEU). It has to specify the objective, content, scope, and duration of delegation (Kaeding and Hardacre 2013). Before the entering into force of the Lisbon Treaty in 2009, delegated acts used to be passed through the so-called comitology procedure, which involved committees consisting of member state representatives with voting power and the Commission, which set the agenda and chaired the committee meetings (Blom-Hansen 2011). The Commission drafted an act and sent it to the competent comitology committee for review. If approved by a qualified majority, the act was adopted as a Commission directive. If the Commission’s proposal was rejected, the Commission could amend its original proposal or submit it to an appeals committee to negotiate a compromise. Decision making in these trans-governmental networks took place behind closed doors and was in stark contrast to the adoption of directives by the Council and the EP or by the Council only, where the EP is still involved. The EP was informed since it had the right to comment on whether a draft exceeded the implementing powers of the Commission. Unlike with the ordinary legislative procedure, however, the EP had no...
power to amend or reject the directive. The Lisbon Treaty abolished the comitology procedure for delegated acts, reducing the power of the member states to revoking the delegation or canceling the legal act altogether. The option has to be explicitly laid down in the legal act that authorizes delegation. The Lisbon Treaty also elevated the role of the EP, since it now shares these powers with the Council. Both can either revoke or cancel. Overall, however, the autonomy of the Commission in adopting delegated acts has been strengthened “to the greatest extent” (Héritier, Moury, and Granat 2016, 117), since the rights of objection or revocation of the two co-legislators are only ex post—that is, after the Commission adopted the delegated legal act.

Implementing acts include measures to ensure the uniform application of EU legal acts. Their adoption by the Commission is based on the implementing powers that legal acts delegate to the Commission (Article 291 TFEU). Unlike with delegated acts, the member states remain involved in decision making through the comitology (see above). As with executive acts, the EP only has to be informed. Not surprisingly, since 2010, the vast majority of Commission directives have taken the form of implementing acts, which are preferred by both the Commission and the member states, since they minimize the role of the EP (Héritier, Moury, and Granat 2016).

The literature finds that member states violate directives delegated to the Commission far less frequently than Council directives or directives jointly adopted by Council and EP under co-decision (Mastenbroek 2003; Kaeding 2006; Borghetto, Franchino, and Giannetti 2006; Steunenberg and Rhinard 2010; König and Luetgert 2009; Luetgert and Dannwolf 2009; Haverland, Steunenberg, and van Waarden 2011). Until the Treaty of Maastricht introduced the co-decision procedure, which established the EP as a co-legislator, we can observe a steady growth of Commission and Council directives (figure 4.7). After the Maastricht Treaty entered into force in 1993, Council directives were rapidly replaced by co-decision directives, whose relative share started to decline, though, while the relative share of Commission directives continued to rise. The increasing adoption of Commission directives since 1994 is related to the completion of the Internal Market. Once the legal framework had been put in place, its technical specification was done by regulations (see above) and more detailed directives, whose adoption was delegated to the Commission. This also explains why almost 50 percent of Commission directives are amending legislation.

To conclude, both EU decision-making rules and the nature of EU law have changed substantially since the completion of the Internal Market in the mid-1990s. The expansion of QMV in the Council and of the co-decision powers of the European Parliament should have resulted in more, not less noncompliance, though. The growing use of differentiated integration has provided member
There is no growing noncompliance. Changes in the nature of EU law, in contrast, closely correspond to the decline of noncompliance. While noncompliance remains confined to directives, these have become less costly over time by being less novel and less complex. Moreover, the adoption of amending directives has been increasingly delegated to the Commission, which has made compliance costs less prone to be politicized.

Taking Compliance Costs: EU Enforcement and Management

EU ENFORCEMENT: BETTER MONITORING AND TOUGHER SANCTIONING

According to the PCP model, the declining trend in noncompliance could be (also) driven by higher noncompliance costs due to more-effective monitoring and sanctioning by EU institutions.3

In order to detect violations of EU law, the Commission follows a “two-track approach” (Tallberg 2002, 616). With regard to the transposition of directives, Commission officials systematically collect and assess data through inhouse monitoring (centralized “police patrol supervision,” Tallberg 2002, 610; cf. Jensen 2007). Monitoring whether EU law is properly applied and enforced within the member states is more difficult. The Commission carries out its own
investigations (Steunenberg 2010). Since it has no central investigation unit, it is up to the DGs to set up such units, and many DGs have done so. Their investigation units maintain numerous contacts with national implementation authorities, NGOs, consultancies, researchers, and corporations in the member states. Cases of noncompliance that Commission officials have found on their own initiative are reported to the legal service of the Commission’s Secretariat General. Occasionally, they send out inspectors to visit a member state. However, such on-the-spot checks are labor intensive, tend to be time consuming, politically fraught, and can be blocked by member states. Therefore, the Commission heavily relies on monitoring by external actors (decentralized “fire-alarm supervision,” Tallberg 2002, 610; Hobolth and Sindbjerg Martinsen 2013).

The most important sources of information are complaints lodged by citizens, firms, and public interest groups. The threshold for lodging a complaint is extremely low, since the complainant does not have to prove a personal interest in the case and simply has to download a form from the Commission’s website. Petitions may also be sent to the European Parliament and the European ombudsperson. Similar to national parliaments questioning their executives, the EP has the right to send parliamentary questions to the Commission regarding member state violations of EU law. The Maastricht Treaty established an ombudsperson who holds the power to investigate an EU institution on the grounds of maladministration.

Complaints, petitions, and parliamentary questions are complemented by decentralized surveillance instruments, such as SOLVIT and EU Pilot, which rely on national authorities. They are to help detect and redress compliance problems in the member states as an alternative to resorting to infringement proceedings. Finally, the obligation of the member states to notify the Commission about the transposition of directives into national law provides the Commission with an indirect monitoring mechanism. Noncommunication of transposition after the deadline expires results automatically in the sending of a letter of formal notice, the preliminary stage of the infringement proceedings (see chapter 1).

The Commission publishes data on the different sources of monitoring information in the Annual Infringement Reports as “suspected infringements.” The consistency and availability of information on suspected infringements vary significantly, though. Between 1988 and 2010, the Commission launched two hundred to three hundred own investigations per year—with the exception of the late 1980s, where the numbers were three times as high, probably due to the intensified effort of the Commission to enforce EU law to complete the Internal Market. The numbers increased again after eastern enlargement but quickly returned to previous levels and have been dropping to an overall low in 2010. This may be related to the introduction of SOLVIT and EU Pilot, which provide
the Commission with information on potential cases of noncompliance, reducing the need for launching own investigations (see below).

Complaints steadily increased until the early 1990s, then started to drop but rose again in the mid-1990s to an overall high in 2004. Afterward, numbers have continuously declined, particularly after 2004. This, again, may be due to SOLVIT and EU Pilot (Koops 2011, 180–181). Both offer alternative venues for business, societal organizations, and citizens to articulate their grievances about noncompliance.

Parliamentary questions and petitions have been more limited overall, but also peaked around the completion of the Internal Market and the Maastricht Treaty in the first half of the 1990s. Parliamentary questions and petitions briefly flared up in 1991, probably related to the completion of the Internal Market, and again around eastern enlargement (2002–2004). Ever since, they have declined.

SOLVIT and EU Pilot are designed to assist the Commission in detecting noncompliance (Heidbreder 2014). At the same time, they help redress compliance problems without resorting to infringement proceedings. SOLVIT and EU Pilot provide informal, low-cost dispute settlement mechanisms for the improper application of directives that are intended to prevent serious violations in the first place. As management tools, they will be analyzed in more detail below. SOLVIT was established in 2002 as a network of national help desks (SOLVIT centers) located at the national authority in charge of the application of EU law. It is to assist citizens and business complaining about the improper application of Internal Market directives. Complaints are lodged online and handled by the member state authorities through the Internal Market Information System (IMI). IMI is an IT-based network launched in 2008 that links public bodies and allows public administrations at the national, regional, and local level to identify their counterparts in other countries and exchange information with them. The basic idea of SOLVIT is that the member state responsible for the grievances shall try to work out a redress within ten weeks. If it fails to do so, the Commission considers opening an infringement proceeding (Hobolth and Sindbjerg Martinsen 2013; Koops 2011). EU Pilot, created in 2008, complements SOLVIT by applying to directives outside the Internal Market. Unlike SOLVIT, however, the Commission directly interacts with the member state and the complainant. The Commission enters a complaint or inquiry into an interactive database (EU pilot database). The EU pilot contact point of the member state concerned, which is tasked to ensure coordination between the various domestic authorities and Commission services, has ten weeks to report back on how it intends to remedy the issue. The Commission notifies the complainant of the proposed solution, and if it does not hear back within four weeks, it considers the case as settled.
Noncommunication patterns are more diverse and appear to be driven by enlargement effects. Numbers were high in 1996, after Austria, Finland, and Sweden had joined, skyrocketed in 2004 after the EU had admitted ten new members, and peaked once more in 2007 when Bulgaria and Romania joined.

In sum, monitoring information fluctuates considerably over time. There is no linear upward or downward trend in own investigations, complaints, petitions, parliamentary questions, and noncommunication, which would match the overall decline in infringements.

What we are likely to observe instead is an information effect, similar to what has been discussed in the human rights literature: when monitors look harder and in more places, they tend to find more human rights abuses, which, however, is not necessarily an indication of a worsened human rights situation (Clark and Sikkink 2013; Fariss 2014). Thus, the more information the Commission obtains and the more efficient it is in processing this information, the more likely it is that it opens a higher number of infringement proceedings. These information effects, however, are only temporary. The numbers of opened infringement proceedings shot up for the first time in 1984, after the Commission published its First Annual Report. With the very first systematic compilation of data on member state noncompliance, the numbers almost doubled in this year. They peaked again in 1992–93, 2004, and 2007, years around which complaints and own investigations were high. The numbers in 1997 were propelled by a reform the Commission had implemented in 1996 to speed up the opening of infringement proceedings. The “intended meaning” of the formal letters was restated as the mere “requests for observations” rather than warnings of the Commission. Avoiding any accusations, letters of formal notice were to be issued more rapidly than before. In a similar vein, the Commission changed its reporting methods in April 2004, arguably to make them more efficient. Since then, it reports the noncommunication not only of “Directives applicable on the reference date (not repealed),” but of all “Directives whose deadline for implementation has passed by the reference date,” irrespective of whether they are still in force. This change temporally inflated the numbers of noncommunication, which had already gone up because of ten new member states joining.

Information effects coincide with a growth of infringement numbers until the first half of the 1990s. They cannot account for the downward trend we observe when we control for violative opportunities, however (figure 1.4). This clearly indicates that the rise in absolute numbers (figure 4.1) has been driven by the growing body of EU laws and the rising numbers of member states that can violate them. If there was still a systematic information effect, the relative numbers of infringement proceedings should be even smaller.
When it comes to sanctioning, the Commission started to pursue a more aggressive enforcement strategy in the late 1980s, in order to ensure the effective implementation of the Internal Market program (Tallberg 2002). At the same time, it focused its efforts on the three Southern European countries that had joined in the first half of the 1980s once the period of grace, which the Commission grants new member states, had expired (Börzel 2001b). In the case of Greece, the Commission started to initiate proceedings two years after accession; for Spain and Portugal, the Commission waited up to four years. Because of these combined effects, both absolute and relative infringement numbers went up. As we saw in chapter 3, Spain, Portugal, and Greece are the only newcomers that have continuously violated more EU laws than older member states.

The Maastricht Treaty introduced the possibility of imposing financial sanctions on member states that failed to comply with judgments of the ECJ (see chapter 1). The financial penalty does not only incur monetary noncompliance costs. Sanctioning rulings of the ECJ receive broader coverage in the public media. Such naming and shaming involves reputational costs, particularly for member states whose publics are supportive of European integration. Article 260 became effective in 1993, just when infringement numbers relative to violative opportunities had started to decline. The ECJ invoked Article 260 for the first time in 2000, in a procedure the Commission had started against Greece in 1997 for not taking measures against the disposal of toxic and dangerous waste into the Kouroupitos, a river in Crete. It is questionable whether the mere anticipation of financial sanctions started to bring infringements down seven years before the member states learned that the ECJ was prepared to impose them.

In 2009, the Lisbon Treaty abolished the three pillars of the EU, which the Maastricht Treaty had introduced to fence off the newly created JAIN and Common Foreign & Security Policy from the reach of supranational institutions. As a result, JAIN became fully subject to infringement proceedings. Yet this has had no effect on the declining trend—even though JAIN has become one of the most noncompliant sectors (see chapter 5). The Lisbon Treaty also simplified and accelerated the procedure for imposing financial penalties. Article 260 (2) of the Lisbon Treaty removed the necessity for the Commission to send a reasoned opinion before asking the ECJ to impose a financial penalty for noncompliance with its ruling to redress a violation of EU law. This may speed up the sanctioning procedure by between eight to eighteen months. Article 260 (3) also introduced a fast-track procedure allowing the Commission to ask the ECJ to impose financial sanctions without initiating another procedure under Article 258 if a member state has not notified the transposition of a directive. It is too early to tell whether this will further propel the decline in noncompliance.
The Internal Market Scoreboard, established in 1997, provides another naming and shaming mechanism. Twice a year, it reports on the performance and progress of member states in implementing Internal Market directives. The statistics convey information on all types of infringements: delayed, incomplete, and incorrect transposition, as well as improper application. The scoreboard allows for a direct comparison of member state performance. It is to “promote peer pressure between the member states by creating a forum of mutual monitoring of efforts to apply European legislation” (Commission of the European Communities 2002, 5). The worst performers are put on the spot, not only among fellow governments but also in the public media (Tallberg 2002, 63). However, the Internal Market Scoreboard, at best, reinforced the downward trend of non-compliance, particularly since it applies only to infringements related to Internal Market directives. Cases of delayed or incomplete transposition in this sector had already dropped before 1997 and started to rise in 1998 until they reached overall highs in 2004 and 2007 (figure 4.8). Cases of incorrect transposition (tov_2) are harder to trace because of changes in the reporting method. Since the annual report of 2004, the proceedings no longer allow differentiation between incomplete and incorrect transposition (tov_2) and incorrect application (tov_3). I therefore aggregated the tov_2 and tov_3 cases for the years from 1988, the first year for which complete data is available on all three types of violation, until

![Figure 4.8](image-url)  
**FIGURE 4.8.** Official infringements for non-notification, nonconformity, and improper application of Internal Market directives, 1988–2012  
*Source: Own compilation, with data from the Berlin Infringement Database.*
2005, the year after the change in reporting methods (for reasoned opinions, the effect shows only after two years). From 2006 on, I took the aggregate numbers reported in the annual reports. Cases of incomplete and incorrect transposition and incorrect application of directives reached a high in 1995. Then they dropped but climbed up again until they reached their overall high in 2006 before they entered into a steady decline. These roller-coaster dynamics are unlikely to have been driven by the introduction of the Internal Market Scoreboard.

Finally, the literature has argued that the preliminary ruling procedure provides the EU with a decentralized enforcement mechanism that relies on “fire alarm” rather than “police patrol.” Instead of the European Commission, national courts enforce the rights citizens and companies enjoy under EU law (Tallberg 2002; Conant 2002; S. Schmidt 2018; Hofmann 2019). This includes the possibility to award damages to individuals who suffered from member state noncompliance under the principle of state liability the ECJ introduced in 1991 (Tallberg 2000b; cf. Craig 1993, 1997). The decline in infringement proceedings could be the result of the Commission increasingly relying on decentralized enforcement through courts (Hofmann 2018, 2019). The total number of preliminary rulings has indeed risen continuously. However, once we control for the number of member states in a given year, preliminary rulings started to grow substantially only in 2010, the year in which the Lisbon Treaty came into force and made JAIN subject to the jurisdiction of the ECJ (figure 4.9). Citizen rights have become

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**FIGURE 4.9.** Annual average number of preliminary rulings per member state, 1978–2018

a key target for litigation and judicial lawmaking (Schenk and Schmidt 2018; S. Schmidt 2018). As argued in chapter 1, preliminary ruling procedures appear to be driven by judicial activism rather than enforcement.

In sum, the EU has responded to the growing body of EU law and the increasing number of member states through a series of reforms meant to strengthen its ability to monitor compliance and sanction noncompliance. If these efforts had been effective, infringement numbers should have remained stable or dropped when controlling for the growth in EU law and in membership, because member states are more likely to face noncompliance costs. Both letters of formal notice and reasoned opinions in relation to the violative opportunities in a given year have clearly declined over the years (figure 4.1). Yet the downward trend does not follow the oscillating flow of monitoring information available to the Commission. Nor does it correspond to the timing of the strengthening of the EU’s sanctioning mechanisms through legal and administrative reforms or a possible shift from centralized to decentralized monitoring and enforcement.

EU MANAGEMENT: CONTRACTING AND CAPACITY BUILDING

Besides increasing noncompliance costs, the PCP model expects EU institutions to help member states cope with compliance costs at the taking stage through contracting and capacity building.

Poor drafting of EU law can result in imprecision, open texture, and ambiguous objectives, granting the member states considerable leeway in interpreting and applying European legislation. This may lead to diverging understandings between the Commission and the member states of what constitutes (non)compliance with European law. The Commission installed a series of mechanisms of consultation and negotiation (contracting) to weed out cases caused by legal uncertainty and misunderstandings.

The Commission frequently adopts communications and other measures to provide the member states with guidelines on how to interpret EU directives and regulations. They are soft law, as they are not legally binding. Recommendations, resolutions, guidelines, action plans, or white and green papers substitute for hard law if the EU lacks the competence to adopt hard law and the member states are unable to agree on adopting a directive or regulation. Such “steering” soft law aims at realizing the same objectives as EU hard law but entails no legal obligations (Senden 2004), so noncompliance is not an issue. Or soft law complements hard law by fostering its effective and uniform implementation, for instance through guidelines on how to implement and enforce hard law (Scholten 2017; Maggetti and Gilardi 2014; Falkner et al. 2005). Guidelines, informational notices, and compliance templates help member states avoid noncompliance arising from
problems of legal uncertainty and misinterpretations. Either way, the increasing use of soft law should reduce noncompliance.

The share of soft law rose from 9 percent in 2000 to 40 percent in 2007. The vast majority of these measures are Commission communications and information notices that inform the European Parliament about the progress of member states in the application of EU law and provide the member states with guidelines on implementing EU law, particularly in the field of state aid policy (Zhelyazkova et al. 2015; cf. Blauberger 2009b). Overall, the use of soft law has increased since 2000 but has been too selective, too concentrated in a few policy areas, to explain the trend of declining noncompliance. More importantly, the downturn in violations of EU hard law had set in already in the second half of the 1990s.

The SOLVIT network and the EU Pilot centers do not only work as decentralized monitoring instruments. They also provide an informal, low-cost dispute settlement mechanism for the improper application of directives. Since the inception of SOLVIT in 2002, the caseload has increased from 285 in that first year to 2,228 in 2015. Over the past years, SOLVIT has managed to solve more than 80 percent of the cases submitted (Hobolth and Sindbjerg Martinsen 2013, 1417). It is hard to tell whether the successful resolution of compliance problems through SOLVIT has resulted in a decline of infringement proceedings. The Commission does not provide data on letters of formal notice by sector, year, and type of violation. Moreover, as already mentioned, in 2003, the Commission collapsed cases of incorrect transposition (tov_2) and incorrect application (tov_3). The overall number of letters sent based on complaints went down after SOLVIT had been introduced. SOLVIT is intended to provide an alternative venue for citizens and companies to seek redress for violations of EU law that affect their rights and interests (Koops 2011, 180). However, the aggregate number of reasoned opinions for both types of violations of Internal Market directives has not declined since the introduction of SOLVIT in 2002 (figure 4.8). They oscillate around 150 per year.

EU Pilot, though similar to SOLVIT, has worked for cases outside Internal Market law. The Commission has processed more than two-thirds of the files submitted for these cases (Commission of the European Communities 2014, 10). Since EU Pilot was introduced only in 2008, it is too early to tell whether it has helped reduce problems of improper application of directives outside the Internal Market. Moreover, only fifteen of the twenty-seven member states initially participated; the others joined a year later. Like SOLVIT, EU Pilot initially saw its workload increase over the years; in 2013, about 1,500 new files were opened. Two years later, however, the numbers went down to 881. Complaint-based infringement proceedings dropped sharply after 2008 (Koops 2011, 30). Yet it is unclear whether this is related to the introduction of EU Pilot
The Commission ceased publishing data on the source of infringements in 2010.

In sum, EU institutions have developed a series of what management approaches refer to as contracting instruments. Yet, these instruments were introduced and took effect after noncompliance had started to decline in the mid-1990s.

Capacity building through EU funds, funding programs, and trans-governmental networks has increased over time. The volume of EU Structural Funds and the Cohesion Fund has subsequently expanded. The funds still account for the largest part of the EU budget. Likewise, sector-specific funding programs have multiplied. For example, the Action for the Protection of the Environment in the Mediterranean Region (MEDSPA), the Regional Action Programme on the Initiative of the Commission Concerning the Environment (ENVIREG), or the Financial Instrument for the Environment (LIFE), provide funding to assist member states in complying with EU environmental legislation (cf. Börzel 2003b). Finally, the EU established pre-accession funding schemes in the eastern enlargement process. The tailor-made capacity-building programs of PHARE (Poland and Hungary: Aid for Restructuring of the Economies), ISPA (Instrument for Structural Policies for Pre-Accession), and SAPARD (Special Accession Program for Agricultural and Rural Development) supplied the CEE candidate countries with significant financial and technical assistance (cf. Sissenich 2007, 54–57). Technical assistance was also channeled through twinning programs and TAIEX, the EU’s Technical Assistance Information Exchange Office. Member state experts assist candidate states in developing the legal and administrative structures required to effectively implement selected parts of EU legislation. Civil servants who have specific knowledge in implementing certain EU policies are delegated to work inside the ministries and government agencies of the accession countries, usually for one or two years (Dimitrova 2005).

Trans-governmental networks and EU agencies have expanded, too. In the European administrative space, administrators from the EU, national, and local levels exchange best practices and negotiate guidelines for the application of EU law (Heidbreder 2011; Trondal 2010; Egeberg 2008; Hobolth and Sindbjerg Martsensen 2013). In 1992, the Sutherland Report recommended that the EU develop a more cooperative approach to the enforcement of Internal Market legislation. Ten years later, European Governance: A White Paper restated the importance of networks for more effective and inclusive governance of the Internal Market (Commission of the European Communities 2001). The Commission has encouraged the formation of trans-governmental networks to help solve non-compliance problems at the “decentral” level and to promote the uniform application of EU law throughout the member states. Prominent examples include the European Competition Network (ECN), the European Regulators Group (ERG),
the Consumer Safety Network (CSN), the Consumer Protection Cooperation Network (CPC), the Product Safety Enforcement Forum of Europe (Prosafe), the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), and the European Safety Assessment of Foreign Aircraft Steering Group (ESSG) (cf. Dehousse 1997; Coen and Thatcher 2008; Yesilkagit 2011; Hobolth and Sindbjerg Martinsen 2013; Scholten 2017). Such networks are part of the “New Strategy for the Single Market,” which Mario Monti proposed in 2010 to make the implementation of existing regulations more effective. Acknowledging the importance of administrative capacity, the Commission has made horizontal administration coordination almost a policy goal in its own right (Heidbreder 2014, 7). Besides SOLVIT and EU Pilot, the IMI, an IT-based information network that links up national, regional, and local authorities across borders, fosters transborder communication and cooperation, strengthening the capacities of member state administrations to execute EU law.

Finally, the Commission has pushed the creation of EU agencies carrying out technical, scientific, and managerial tasks in the implementation of EU law in different policy sectors, to “improve the way rules are applied and enforced across the Union” (Commission of the European Communities 2001, 24; cf. Kaeding and Versluis 2014; Scholten 2017). Their number has more than tripled since 2002 (Scholten 2017; Kaeding and Versluis 2014). Similar to trans-governmental networks, EU agencies formulate implementation guidelines, monitor implementation activities of national authorities, and provide training for them (Gehring and Krapohl 2007; Egeberg and Trondal 2009; Groenleer, Kaeding, and Versluis 2010; Versluis and Tarr 2013). For instance, the European Chemicals Agency is in charge of the technical, scientific, and administrative aspects of the implementation of the EU’s Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). Its Forum of Exchange of Information on Enforcement (FEIE) coordinates a trans-governmental network of member state authorities responsible for developing enforcement strategies and identifying best practices. Other examples include the European Medicines Agency, the European Fisheries Control Agency, the European Markets and Securities Authority, and the Anti-Fraud Office (OLAF), all of which assist the Commission and the member states in the implementation of EU law and also have direct enforcement powers.

The effects of increased EU financial and technical assistance are hard to quantify. Correlating euros and administrators with reasoned opinions not only fails to produce significant results; it does not make much sense either, since funds, networks, and agencies are sector specific or even issue specific and rarely serve merely the purpose of helping member states cope with compliance costs. Country studies provide ample evidence of how EU capacity building and the
EU’s insistence on good governance, particularly the fight against corruption, have helped accession countries and (new) member states improve their compliance with EU law. Pre- and post-accession financial instruments and twinning programs have played a major role in improving bureaucratic quality in the new member states and may explain why eastern enlargement has not exacerbated the EU’s compliance problems (Dimitrova 2002; Grabbe 2003; Schimmelfennig and Sedelmeier 2004; Leiber 2007; Börzel 2009a). It is less obvious how funds, networks, and agencies that were established since the turn of the millennium should have brought down infringements of directives in the old member states. The more effective transposition of directives drives the downward trend that started before the enlargement rounds of 1995, 2004, and 2007.

In sum, improvements in the ability of EU institutions to impose noncompliance costs on the member states, on the one hand, and help them cope with compliance costs, on the other, cannot explain the overall secular trend of declining noncompliance in the EU. Descriptive data and narrative evidence suggest that changes in the nature of EU law account for the decline in noncompliance. The trend is driven by a more effective transposition of directives, which have become less complex, less novel, and less likely to be politicized. Since complexity, novelty, and politicization, or lack thereof, are properties of legal acts, we can test their significance for noncompliance in a statistical analysis that correlates these properties with infringements. First, however, I will briefly discuss social constructivist factors that could have helped bring down noncompliance.

EU Legitimacy: Socialization and EU Support

The social constructivist compliance literature has focused on two sources of legitimacy, which could explain a decline in noncompliance in the EU: First, through processes of socialization, EU law is increasingly internalized into the domestic legal systems of the member states, and compliance becomes habitual for and taken for granted by domestic actors. Second, domestic actors are pulled into compliance by the increasing parliamentary involvement in EU policy making or their growing support for EU law and the EU as the law-making institution.

Socialization into EU law takes time, which could explain why noncompliance only started to decline later in the European integration process. Duration of membership should matter, then. The longer a state has been a member of the EU, the more its policy makers and administrators should have internalized the EU legal system and learned how to deal with it (Checkel 2001; Berglund, Grange, and van Waarden 2006; Dimitrakopoulos 2001). As a country-specific
variable, socialization over time does not seem to affect noncompliance. The most recent newcomers comply on average better than the founding members (see chapter 3). A systemic effect, however, could emerge from a substantial widening of European integration by accepting groups of new members. Joining the EU transforms states into member states (Sbragia 1994; Bickerton 2012), which comply as a habit of obedience once they have internalized EU law. Compliance with EU law is taken for granted and constitutes a value in itself (Hurrell 1995, 59). Particularly the acceptance of twelve new member states in 2004/2007 should have resulted in a temporary increase of noncompliance because of the need to socialize them into EU law. The opposite is the case, though. Southern enlargement is the only enlargement round that systematically increased noncompliance in the EU (Börzel and Sedelmeier 2017; cf. chapter 3).

PARLIAMENTARY INVOLVEMENT AND EU SUPPORT

Procedural and institutional legitimacy promote voluntary compliance. Right and fair decision-making processes depend on the inclusion of those affected by the decision. The taking of EU law involves a variety of domestic actors, which cannot possibly all be involved at the shaping stage. The member states’ executive authorities are represented by their national governments and at least partly involved through administrative networks that help prepare and negotiate EU proposals at the supranational and the national level (Kassim et al. 2000, 2001). The issue is parliamentary involvement. More democratic accountability should result in higher acceptance of EU laws (Schimmelfennig 2010) and therefore less noncompliance.

Parliaments have been increasingly empowered in the shaping and taking of EU law, both at the EU and the national level. Until 1987, the Council was free to consult the EP on the passing of EU legislation. In 1980, the ECJ ruled that the EP had to be heard on EU legislation. While its opinion was not binding, the EP could use its power to delay giving a formal opinion (Kardasheva 2009). By this, it obtained some leverage over proposals it disliked, stalling the legislative process. The EP’s right to be consulted also gave lobbyists an indirect channel of access to the European Commission (Bergström, Farrell, and Héritier 2007, 357). The Single European Act (1987) introduced the cooperation procedure under which the EP could make amendments, which the Council could overrule only by unanimity. The Maastricht Treaty (1992) started to put the EP on equal footing with the Council as a “genuine co-legislator” (Crombez 1997, 115) when it established the co-decision procedure. The EP thereby received the power in selected areas to veto the adoption of EU laws. The Amsterdam Treaty (1999) extended the co-decision procedure from fifteen to thirty-eight treaty articles. The Treaty of Lisbon (2010), finally, made co-decision the ordinary legislative procedure of the
EU (Article 294 of TFEU). It also extended it to policy sectors previously subject to other legislative procedures, for example Agriculture and JAIN, as well as to newly conferred competencies, such as Energy.

Unlike the EP, national parliaments have been considered “the losers” (Maurer and Wessels 2001) or “the victims” (Raunio and O’Brienunn 2007) of European integration because their role was reduced to taking EU law. Yet they started to fight back in the 1990s, demanding to be formally involved in the shaping of EU law at the domestic level. By now, all member state legislatures have obtained the right to scrutinize EU legislation before it gets adopted at the EU level by receiving information on the goals and contents of legislative proposals and on the position of their national government; on the latter, they may issue statements that their governments have to take into consideration in the Council negotiations (Raunio and O’Brienunn 2007; Sprungk 2010; Winzen 2013). The Lisbon Treaty for the first time formally acknowledged the role of national parliaments in EU law making (Article 5.3, 102, 12 TEU). It seeks to facilitate national parliamentary scrutiny at the domestic level. National parliaments must now receive all legislative and budgetary proposals eight weeks in advance of Council deliberation on the matter to give them time to examine proposals and shape their governments’ bargaining position according to national procedures. At the EU level, Protocol 2 in conjunction with Article 5.3 TEU establishes an early warning mechanism, which member state parliaments can invoke to have the Commission review a draft proposal, if one-third of them consider it a violation of the principle of subsidiarity (“yellow card”), as happened in the cases of the law on strikes (Cooper 2015), the European Public Prosecutor’s Office, or the tobacco directive (Héritier, Moury, and Granat 2016, 120–126). If the majority of national parliaments do so, the Council or the European Parliament can vote the proposal immediately down.

Overall, parliamentary involvement in the shaping of EU law at the EU and the domestic level has significantly increased over the past thirty years. As expected, infringements in general, and problems of delayed transposition in particular, have substantially decreased since 1994. Is this correspondence indicative of a causal effect?

The EP is a crucial shaper of EU law but not involved at all in its taking by the member states. This is the responsibility of the national parliaments when directives are concerned. The participation of the EP could, of course, affect the acceptance of EU law by the national parliaments. So could their own involvement in EU decision making. The empowerment of national parliaments in EU policy making was meant not only to counter the EU’s democratic deficit but also to improve the implementation of EU directives (Sprungk 2011). However, even if members of national parliaments are more prepared to swiftly transpose directives because of their increased possibilities to participate in the decision-making
process or because of the co-decision powers of the EP, this is unlikely to have made a big difference. First, research has found that directives adopted under co-decision—that is, with strong participation of the EP—result in more, not less noncompliance (König and Luetgert 2009; Börzel and Knoll 2013). Second, scrutiny of EU law making by national parliaments has at best a weak effect on the effective transposition of directives (König 2007; Luetgert and Dannwolf 2009; Sprungk 2011). This is related to the limited involvement of national parliaments in the implementation of EU law. Most directives are implemented by non-parliamentary measures. Only the Nordic countries, Austria, and Germany substantially involve their parliaments in the transposition of directives (cf. König 2007; Steunenberg 2006; Raunio and O’Brien 2007; Sprungk 2013). Third, in those cases where national parliaments participate in the taking of EU law, they tend to delay transposition (Haverland, Steunenberg, and van Waarden 2011; Kaeding 2006; Mastenbroek 2003; Steunenberg and Rhinard 2010). Chapter 3 has shown that parliamentary scrutiny is positively related to noncompliance because it increases the propensity of politicization of costly EU law.

Institutional legitimacy provides no compelling explanation of the decline in noncompliance either. Support for the EU as the rule-setting institution has remained rather stable over time (figure 4.10). During the first

![Figure 4.10](image-url)

**FIGURE 4.10.** Assessment of one’s country’s membership in the EU (EU population), 1973–2015

twenty-five years, European integration progressed essentially by stealth and left Europeans largely detached from the EU. Their “permissive consensus” (Lindberg and Scheingold 1970) was sufficient for European and national elites to move forward with integration. This started to change with the completion of the Internal Market in the early 1990s. When European citizens became aware of how much “Europe hits home” (Börzel and Risse 2000), their support for European integration started to decline. In 1988, an all-time high of 66 percent of EU citizens considered EU membership a good thing. After the Internal Market had been completed and the Economic and Monetary Union (EMU) launched, public approval rates returned to previous levels and experienced an all-time low of 48 percent in 2003, compared to 93 percent of national elites who still thought that their country’s EU membership was on balance a good thing (Hooghe 2003, 283).

Somewhat ironically, the series of crises the EU has experienced ever since the French and the Dutch rejected the Constitutional Treaty in 2005 appears to have bolstered rather than undermined public support for the EU—in 2015, almost as many EU citizens approved of EU membership as had done more than forty years before. The gulf between the publics and elites of Europe has always been wide, but it has not permanently widened. What has changed is that the EU has become increasingly politicized. Eurosceptic populist parties and movements have been more and more able to mobilize the less than 30 percent of EU citizens that hold a negative attitude toward the EU to go to the polls and turn to the streets in protest. The rise of Euroscepticism (Hooghe and Marks 2007; McLaren 2006) has been fueled by the political and social consequences of the economic and financial crisis and globalization more broadly speaking (Risse 2015b; Börzel 2016). With pro-EU attitudes being rather stable and the mobilization of Euroscepticism increasing, we should see more rather than less noncompliance since the mid-1990s. Thus, variation in EU support over time cannot account for the identified temporal patterns of noncompliance.

To sum up, while support for the EU has overall remained stable, socialization and parliamentary involvement have increased since the 1990s and may therefore account for the decline in noncompliance. Yet the Southern European member states appear to be resilient to socialization effects. So are France and Italy, which are both founding member states of the EU but continue to rank among the worst compliers (chapter 3). The twelve most recent newcomers, in contrast, have been good compliers from the very beginning of their membership. Parliaments have become increasingly empowered in the shaping and taking of EU law at the EU and the domestic level. However, particularly the involvement of national parliaments remains limited and makes noncompliance more, not less, likely.
The PCP Model at Work: The Depoliticization of EU Law

The previous section has shown that the decline in noncompliance corresponds to changes in the nature of EU law, which the PCP model expects to reduce compliance costs and the risk of their politicization. In the following, I will use a statistical analysis to show that novelty and delegation—the two major properties of EU law that have changed over time—have a significant negative effect on noncompliance. The model will include the variables discussed in the previous section as controls.

Data and Method

Novelty and delegation are properties of EU law that have changed over time. To evaluate whether they have a significant effect on noncompliance, I use a data set of all 2,793 directives adopted between January 1978 and December 2009. Unlike almost all research on noncompliance with directives, my sample includes not only those 1,791 directives that were subject to at least one official infringement proceeding. It also covers the other 1,002 directives the member states could have potentially violated but did not. The full sample enables me to avoid selection bias (cf. Toshkov 2010).

Overall, member states violated about 64 percent of the 2,793 directives the EU adopted between 1978 and 2009 at least once. Between 1978 and 2005, it was at least half of the adopted directives, with the exception of one year (1981). The share of infringed directives peaked in 1998, with 93 percent of the adopted directives being infringed. Since 2006, the ratio of infringed directives dropped below 50 percent (figure 4.11). This confirms once again that the accession of twelve additional member states in 2004 and 2007 has not inflated the level of noncompliance with directives adopted after 2004.

There is a mean of 3.33 official infringements per directive. The number of reasoned opinions based on a directive varies between 0 and 152. There are two extreme cases that drew more than one hundred official infringement proceedings: the fauna, flora, habitat directive (152) and the directive on the common system of value added tax (114).

The older a directive is, the more frequently it can be violated. This does not apply to the around 54 percent of the adopted directives that get repealed or replaced by new directives or that contain a sunset clause. It takes on average three years after the entry into force (4.5 years after adoption) until a reasoned opinion initiates the official stage of the proceeding. Directives are most likely to be violated relatively soon after they enter into force. This makes sense, since
around 80 percent of the infringements refer to delayed, incorrect, or incomplete transposition rather than improper application.

**THE NATURE OF EU LAW: NOVELTY AND DELEGATION**

EU directives that do not demand the introduction of new legislation at the domestic level require less capacity. I use a dummy variable dividing directives into new directives versus amending or modifying directives (Mastenbroek 2003; Kaeding 2006; Haverland and Romeijn 2007).

EU directives adopted as delegated legislation by the Commission are less likely to become politicized since they tend to deal with technical issues. The variable is coded as a dummy variable; it is either a Commission directive (1) or a Council or Council-EP directive (0).

**CONTROLS**

Complexity varies between directives and regulations (see above). There is no obvious reason why complexity should change over time beyond the type of legal act. I still include it in the model as an issue- or legal-act-specific variable that the PCP model would expect to increase compliance costs and require more capacity.
Complexity is measured by the number of recitals (Mastenbroek 2003; Kaeding 2006; Thomson 2007; Haverland and Romeijn 2007). Recitals are stated at the beginning of each directive and list the areas of application the directive affects.

**Time** for transposition is measured by the years between the adoption of the directive and the deadline set for the member states in the directive to notify the Commission of the transposition into national law. The length of the transposition deadline varies between a few days for minor delegated directives to up to thirty-six months in the case of substantial secondary directives.

A factor that is time sensitive and can increase compliance costs is workload and ministerial approval. The workload is defined by the number of directives the member states have to transpose in a given year. The more EU laws member states have to take, the more compliance costs they have to cope with and the more capacity they require (Mastenbroek 2003; Kaeding 2006; Haverland and Romeijn 2007). The variable is based on the average annual output of adopted directives in the period under observation. The difference between the annual and the average output is used to operationalize the workload. Directives adopted in years with less than average output numbers have negative values.

*Ministerial approval* taps into compliance costs due to preferential misfit (see chapter 3). There are various constellations in which the minister in charge of a member state has to implement an EU legal act that is not in line with his or her preferences (Börzel and Knoll 2015; König and Luig 2014). A change in government, for instance, can bring a new minister into office who has to transpose into national law a directive that was negotiated by her predecessor. Ministerial approval is operationalized by the distance of the outcome of the directive and the party preferences of the ministers in charge of transposition at the time of notified transposition or the transposition deadline (König and Luig 2014). The originally country-directive-specific variable from the PUCH data set was aggregated by the mean on the directive level. Positive values represent party preferences in line with the final text of the directive, and negative values indicate opposing preferences.

EU decision-making rules have changed over time but should increase rather than decrease compliance costs (see above). They are therefore only included as control variables. The **voting rule** in the Council is formally prescribed by the treaties. To distinguish between majority and unanimity voting, I use a dummy variable. Directives adopted by QMV (1) differ concerning possible outvoted member states from directives that were passed under unanimity (0).

The **voting outcome** refers to the actual voting behavior of member states. Directives adopted by all member states being in favor (0) are distinguished from those adopted with dissent in the Council because (a minority of) member states abstained or voted against (1).
Co-decision should increase compliance costs because the member states are likely to compromise with the EP. Unlike consultation and cooperation, the co-decision procedure gives the EP an absolute veto over any EU law, forcing the member states to accept its amendments or forgo EU legislation altogether. To distinguish between the three different legislative procedures according to the growing power of the EP, I weight them by giving the consultation procedure a value of 0.33, the cooperation procedure a value of 0.66, and the co-decision procedure a value of 0.99. Directives adopted by the Commission or the Council alone were coded as zero.

There is a high correlation between co-decision, on the one hand, and other variables related to EU decision making, such as QMV and Commission directives, on the other (see table A1.2). This should not be surprising, since the ordinary legislative procedure (previously Community Method) couples QMV in the Council with co-decision powers of the EP, while delegated legislation provides for neither any voting in the Council nor any involvement of the EP. I therefore drop co-decision. Instead, I use *inter-institutional EU level conflict* to tap into the compliance costs the EP creates for member states. It is measured by the degree to which the EP makes actual use of its power as co-legislator and pressures the Council to make concessions by accepting amendments to the legal act (Kreppel 1999, 2002; Selck and Steunenberg 2004). Minor and uncontroversial EP amendments may be accepted by the Council in the first reading. Substantial and controversial amendments, in contrast, provoke long-lasting conflicts between the Council and the EP, which need several rounds of negotiations to get settled. The values of the conflict variable follow a three-step scale, where (1) and (2) refer to EP amendments at first and second readings, respectively, increasingly reducing the Council’s leeway. Directives passed without an EP amendment are coded as zero. Finally, co-decision procedures that include a conciliation committee and therefore reach the third reading were assigned the maximum value (3), as they force the Council to accept a compromise by QMV or risk the failure of the legislative proceeding.

Parliamentary involvement in the EU depends on the legislative procedure. For the EU level, it would be the same proxy as the one used for capturing compliance costs incurred by the need of the Council to compromise with the EP. For the *involvement of national parliaments* (König and Luig 2014), I use dummies for each member state in which the national legislature was involved and take the mean of those—that is, the share of member states in which the national legislator was involved. The information is published by the Commission in the EUR-Lex sector 7 database, which provides information on national implementation measures of EU directives (cf. König, Luetgert, and Dannwolf 2006).

EU support is usually measured at the country level. The Commission has been collecting public opinion data on European integration over a long time.
period in Eurobarometer surveys. To operationalize the attitude of the population toward EU legislative powers on a directive, I use *EU opposition*, measuring the percentage of replies opposing EU membership at the time of transposition of the directive as a proxy.

With the exception of *EU opposition*, *involvement of national parliaments*, and *ministerial approval*, the independent variables of the model were hand coded based on general information and the legislative document provided by EUR-Lex.31 Specific information on the legislative proceeding was gathered from the Pre-Lex dossiers. Since Pre-Lex only offers information on inter-institutional legislation, data on Commission directives is not available. Data on the comitology procedures is available only since 2003, which does not match with the period of my study.

The dependent variable is of count nature. Because of overdispersion, I use a negative binomial regression model with robust standard errors. The summary statistics are provided in table A2.2. To control for violative opportunities, I include the age of the directive.

**Results and Discussion**

The results support the argument of the PCP model that the changing nature of EU directives drives the decline in noncompliance over time (table 4.1).

*New directives* produce higher compliance costs and lead to substantially more noncompliance than amending and modifying directives, since most of the adjustments have to be made when a policy is introduced at the EU level. Amending directives tend to update technical aspects of existing regulation. Major reforms in newly reregulated areas are scarce because of the necessity to find a new majority in the Council. The task of amending directives is often delegated to the Commission, to be passed by comitology. This finding confirms studies on transposition delays, which conclude that new directives need more time to get transposed (Borghetto, Franchino, and Giannetti 2006; Kaeding 2006; Luetgert and Dannwolf 2009; Steunenberg and Rhinard 2010).

As expected, delegated legislation has a negative but not significant influence on noncompliance. This is not too surprising, since Commission directives started to become more prominent only with the entering into force of the Maastricht Treaty (figure 4.7). Once I control for this change, the effect turns significant, while all the other results stay the same. *Commission directives* tend to be technical and therefore less visible and salient. This is in line with studies indicating that Commission directives cause less problems in the transposition phase (Borghetto, Franchino, and Giannetti 2006; König and Mäder 2014b; Mastenbroek 2003; Steunenberg and Rhinard 2010). Nearly all Commission directives
are transposed into national law by ministerial decree, which deprives national parliaments of the possibility to politicize compliance costs (see below).

The two variables favored by the PCP model are significant and show the expected signs. This is also the case for some of the control variables, which relate to power, capacity, and politicization.

The complexity of a directive increases noncompliance because of higher costs. The broader the area of application of a directive, the more member states have to adjust existing laws in order to comply. Moreover, *recitals* are sometimes used by the member states to insert provisions they have failed to get into the text, by the Commission to insert normative provisions that have not attracted

---

**Table 4.1** Novelty, delegation, and noncompliance (EU-15, 1978–2009)

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nature of EU law</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New directive</td>
<td><strong>0.463</strong>*</td>
<td><strong>0.494</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.0607)</td>
<td>(0.0610)</td>
</tr>
<tr>
<td>Commission directive</td>
<td>−0.105</td>
<td>−<strong>0.149</strong></td>
</tr>
<tr>
<td></td>
<td>(0.0831)</td>
<td>(0.0844)</td>
</tr>
<tr>
<td><strong>Control variables</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recitals</td>
<td><strong>0.172</strong>*</td>
<td><strong>0.173</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.0398)</td>
<td>(0.0380)</td>
</tr>
<tr>
<td>Time</td>
<td><strong>0.0846</strong></td>
<td><strong>0.116</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.0334)</td>
<td>(0.0334)</td>
</tr>
<tr>
<td>Adopted directives</td>
<td>0.0138</td>
<td><strong>0.0748</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.0154)</td>
<td>(0.0170)</td>
</tr>
<tr>
<td>Ministerial approval</td>
<td>−<strong>1.772</strong>*</td>
<td>−<strong>1.715</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.345)</td>
<td>(0.349)</td>
</tr>
<tr>
<td>QMV (voting rule)</td>
<td>0.148</td>
<td>0.115</td>
</tr>
<tr>
<td></td>
<td>(0.100)</td>
<td>(0.105)</td>
</tr>
<tr>
<td>Dissent (voting outcome)</td>
<td>−0.0261</td>
<td>−0.0536</td>
</tr>
<tr>
<td></td>
<td>(0.0561)</td>
<td>(0.0559)</td>
</tr>
<tr>
<td>EP amendments</td>
<td><strong>0.156</strong>*</td>
<td><strong>0.132</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.0439)</td>
<td>(0.0442)</td>
</tr>
<tr>
<td>Involvement of national parliaments</td>
<td><strong>1.845</strong>*</td>
<td><strong>1.860</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.157)</td>
<td>(0.159)</td>
</tr>
<tr>
<td>EU opposition</td>
<td>−<strong>0.369</strong>*</td>
<td>−<strong>0.666</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.104)</td>
<td>(0.114)</td>
</tr>
<tr>
<td>Age</td>
<td><strong>0.0314</strong>*</td>
<td><strong>0.0729</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.00512)</td>
<td>(0.00819)</td>
</tr>
<tr>
<td>Maastricht</td>
<td><strong>0.733</strong>*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.129)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>−0.0890***</td>
<td>−<strong>0.997</strong>*</td>
</tr>
<tr>
<td></td>
<td>(0.232)</td>
<td>(0.280)</td>
</tr>
</tbody>
</table>

Observations: 2,793, 2,793

Robust standard errors in parentheses

*** p < 0.01, ** p < 0.05, * p < 0.1
agreement (Kaeding 2006, 236), and by the EP to increase the political visibility of a directive (Steunenberg and Kaeding 2009; Steunenberg and Rhinard 2010). Finally, recitals indicate the number of issues that have remained unresolved during the decision making in the Council, since member states use them to express their reservations and to insert provisions they have failed to get into the text or to state clarifications (Kaeding 2006; Steunenberg and Rhinard 2010). Not surprisingly then, studies on transposition delay already concluded that a high number of recitals slows down transposition (Kaeding 2006; König and Mäder 2014b; Steunenberg and Rhinard 2010; Thomson 2007).

The time granted to the member states to comply with the directive matters too. Yet, more time leads to more noncompliance, not less. Studies of transposition delay have shown that member states take more time when more time is given to them by the deadline (Haverland, Steunenberg, and van Waarden 2011; Kaeding 2008; König and Luetgert 2009; Luetgert and Dannwolf 2009; Steunenberg and Rhinard 2010). The effect of annually adopted directives, which have to be transposed into national law, is positive as expected. Higher workload delays transposition.

The strong effect of ministerial approval corroborates the pivotal position member state governments have in the PCP model. Ministers appear to dodge the costs of compliance when a directive is not in line with their party preference. König and Luig (2014, 515) find that ministers try to keep the national parliament out and to pursue the ideological interests of their own political parties. It seems that they hide the transposition of unwanted or costly policies in their ministries to contain the risk of compliance costs becoming politicized.

Voting rule and voting outcome have no significant effect on noncompliance; dissent does not even take the expected sign. The result confirms the findings of previous research that majority voting and conflict in the Council do not delay transposition (Mbaye 2001; Kaeding 2006; Haverland and Romeijn 2007; Linos 2007; König and Luetgert 2009; Luetgert and Dannwolf 2009; Zhelyazkova and Torenvlied 2011). The extension of majority voting has not changed the consensual culture in the Council. The Council still tends to avoid dissenting votes even when the treaties would allow it to outvote member states (Hayes-Renshaw, Van Aken, and Wallace 2006; Kleine 2013).

The degree of inter-institutional EU-level conflict between the Council and the EP about the inclusion of an EP amendment seems to be a better indicator of compliance costs than voting rules and voting outcomes in the Council. By politicizing issues, the EP is able to move the final text in its favor and force some ministers to make concessions in order to achieve an agreement. EP amendments result in higher compliance costs at the shaping stage but also increase the propensity of their politicization at the taking stage. Raising public awareness is a prominent strategy of the EP to increase its influence in EU policy making.
Finding a consensus between two separate institutions is more difficult than in the Council alone, especially when the two institutions operate in different modes. In the Council, members of national governments can reach agreement by negotiating among themselves behind closed doors. The EP, by contrast, needs salience and publicity to influence legislative output. This finding supports the argument that noncompliance functions as opposition through the backdoor for overruled member states (Falkner et al. 2004; Thomson 2010)—but only if the compromises they had to strike get politicized. The involvement of the EP has a positive effect on noncompliance, if it forces the member states to compromise in public. This is in line with the finding of previous studies that an increased number of EU actors involved in the legislation process lowers the chances of a timely transposition by the member states because of the higher compliance costs caused by the concessions member states have to make (cf. König and Luetgert 2009, 189). I argue, however, that it makes a crucial difference for the noncompliance costs whether the involvement of the EP actually leads to concessions by the member states. Moreover, the role of the EP is an indicator, if not a driver, for the politicization of an EU legal act. The strong involvement of the European Parliament in the adoption of an EU directive fosters public visibility because of the political debates in the parliament (Häge 2010). The positive effect involvement of national parliaments has on noncompliance corroborates the expectation of the PCP model that costs are particularly relevant for noncompliance if they are publicly visible. Public visibility and potential domestic opposition crucially depend on whether transposition is done by the ministerial bureaucracy hidden from the public or whether it is subject to parliamentary debate. Conversely, compliance costs are more likely to get politicized when the national parliaments are involved at the taking stage, since highly salient directives might mobilize political opposition (Dimitrakopoulos 2001; Falkner et al. 2005; Versluis 2004). Of the 1,569 directives that the member states transposed between 1986 and 2003, for instance, less than 15 percent involved legislative measures adopted by parliament (König 2007). For the time period of 1986 to 2009, it was around 20 percent (König and Mäder 2014a, 12). The UK, Ireland, Portugal, and Greece practically exclude their parliaments from the transposition process. Most of the other member states have enabling clauses that authorize executive agencies to enact implementation measures during particular time periods or for certain policy sectors. These measures are subject to parliamentary scrutiny to ensure some ex post control (Siedentopf and Ziller 1988; Steunenberg 2006). The La Pergola Law (86/1989), for instance, gave the Italian government the power to directly transpose directives by issuing a law via government regulation or ministerial decree, without requiring parliamentary approval. These measures are only subject to report to parliament. In the new
member states, the parliaments were already marginalized in the legal adoption of the *acquis communautaire* during the accession process. Having all the essential EU laws on the books was a major precondition for membership. The Commission was willing to grant (temporary) exemptions only in exceptional cases. The immense workload, the time pressure, and the strict accession conditionality centralized the legal implementation of EU law in the hands of the core executives (Goetz 2005; Grabbe 2006; Börzel 2009a). The administrative standard operating procedures have not changed much after accession, which may explain why most of the new member states are top of the class in the transposition of directives (Sedelmeier 2008, 2012; Toshkov 2008).

Finally, more EU opposition leads to less noncompliance with directives, confirming the findings in the previous chapter on Eurosceptic member states being better compliers because they can tie their hands at the shaping stage.

This regression model refers to the EU-15. I ran it again adding five more years (2017), thereby also including violations by the thirteen member states that joined the EU in the 2000s (see table A4.3). The results are robust, with one exception: voting rule turns significant. This could be related to the subsequent extension of qualified majority rule that started with the Maastricht Treaty. After the Lisbon Treaty, which made QMV the ordinary procedure, took effect, the share of directives adopted by qualified majority increased from 24 percent to 39 percent.

**New and Not Delegated**

The findings of the statistical analysis are further corroborated by comparing the ten directives adopted between 1978 and 2012 that have received more than fifty reasoned opinions (table 4.2). All of them are new directives. None was delegated to the Commission for adoption.

The ten directives are extreme cases, since only 9 percent of the infringed directives have received more than ten reasoned opinions. Four of the “top 10” concern the environment, including the fauna, flora, habitat (FFH) directive adopted in 1992, which is the most violated legal act in the history of the EU. Closely related to FFH is the wild birds directive, passed in 1979. These two policies aim at protecting biodiversity in Europe. The urban waste water directive of 1991 requires the collection and treatment of waste water in agglomerations with a population of over two thousand, and more advanced treatment in agglomerations with more than ten thousand inhabitants in sensitive areas. The EIA directive of 1985 prescribes administrative procedures that shall ensure that public authorities take into account the environmental consequences of a plan, policy, program, or project requiring a license. Moreover, the public is to be informed and heard in the process.
### Table 4.2 The 10 most infringed directives

<table>
<thead>
<tr>
<th>CELEX</th>
<th>SUBJECT MATTER</th>
<th>N_RO</th>
<th>NEW</th>
<th>COM.DIR</th>
<th>QMV</th>
<th>CON.VOTE</th>
<th>EPINTER</th>
<th>NP</th>
<th>MIN.AP</th>
<th>WORK</th>
<th>RECT</th>
<th>TIME</th>
<th>EPPOW</th>
<th>EUOPP</th>
</tr>
</thead>
<tbody>
<tr>
<td>31992L0043</td>
<td>Fauna-flora-habitats (FFH)</td>
<td>152</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0.67</td>
<td>0.05</td>
<td>29.6</td>
<td>21</td>
<td>2.06</td>
<td>1</td>
<td>0.12</td>
</tr>
<tr>
<td>32006L0112</td>
<td>Value-added tax (VAT)</td>
<td>114</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.73</td>
<td>0.17</td>
<td>51.6</td>
<td>67</td>
<td>1.09</td>
<td>1</td>
<td>0.14</td>
</tr>
<tr>
<td>31992L0050</td>
<td>Public service contracts</td>
<td>86</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0.25</td>
<td>0.12</td>
<td>29.6</td>
<td>27</td>
<td>1.04</td>
<td>2</td>
<td>0.12</td>
</tr>
<tr>
<td>31979L0409</td>
<td>Wild birds</td>
<td>74</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1.00</td>
<td>0.17</td>
<td>-25.4</td>
<td>17</td>
<td>2.02</td>
<td>1</td>
<td>0.15</td>
</tr>
<tr>
<td>31993L0037</td>
<td>Public works contracts</td>
<td>72</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0.18</td>
<td>-0.02</td>
<td>26.6</td>
<td>14</td>
<td>0.06</td>
<td>2</td>
<td>0.13</td>
</tr>
<tr>
<td>32004L0018</td>
<td>Public works, supply &amp; services contracts</td>
<td>72</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>0.50</td>
<td>0.14</td>
<td>22.6</td>
<td>51</td>
<td>1.84</td>
<td>3</td>
<td>0.15</td>
</tr>
<tr>
<td>31985L0337</td>
<td>Environmental impact assessment (EIA)</td>
<td>60</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0.80</td>
<td>0.14</td>
<td>-14.4</td>
<td>13</td>
<td>3.02</td>
<td>1</td>
<td>0.09</td>
</tr>
<tr>
<td>32005L0036</td>
<td>Recognition of professional qualifications</td>
<td>60</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>0.87</td>
<td>0.19</td>
<td>3.6</td>
<td>44</td>
<td>2.12</td>
<td>3</td>
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<tr>
<td>31991L0271</td>
<td>Urban waste water treatment</td>
<td>59</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0.50</td>
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<td>14.6</td>
<td>11</td>
<td>2.11</td>
<td>1</td>
<td>0.10</td>
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<tr>
<td>31983L0189</td>
<td>Technical harmonization</td>
<td>57</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.20</td>
<td>0.15</td>
<td>-30.4</td>
<td>12</td>
<td>1.01</td>
<td>1</td>
<td>0.11</td>
</tr>
<tr>
<td>Min</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0.00</td>
<td>-0.26</td>
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<td>0.00</td>
<td>0</td>
<td>0.06</td>
</tr>
<tr>
<td>Max</td>
<td></td>
<td>152</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1.00</td>
<td>0.29</td>
<td>59.6</td>
<td>142</td>
<td>11.55</td>
<td>3</td>
<td>0.18</td>
</tr>
<tr>
<td>Mean</td>
<td></td>
<td>3.12</td>
<td>0.64</td>
<td>0.64</td>
<td>0.08</td>
<td>0.48</td>
<td>0.13</td>
<td>0.02</td>
<td>7.3</td>
<td>10.2</td>
<td>0.97</td>
<td>0.92</td>
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<tr>
<td>Median/p50</td>
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<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0.00</td>
<td>0.01</td>
<td>8.6</td>
<td>7</td>
<td>0.81</td>
<td>0</td>
<td>0.13</td>
</tr>
</tbody>
</table>
The second-most-infringed directive is the VAT directive of 2006.36 If we control for time, the VAT directive tops the FFH directive; the latter has thirty-eight more violations but has been in force three times longer. The VAT directive aims at the harmonization of value added tax law in the EU.

There is a cluster of three directives related to the coordination of procedures for the award of public service contracts (1992),37 public works contracts (1993),38 and public works, supply, and service contracts (2004).39 Together, they account for 230 reasoned opinions. In a similar vein, the technical standards and regulations directive of 1983 aims at harmonizing technical standards and regulations.40 It has been amended in 198841 and is the only amending directive among the “top 20” in the data set.

The directive on the recognition of professional qualifications (2005), finally, sets up the legal framework for the recognition of professional qualifications not ruled by specific legal provisions. It is intended to enable the free movement of professionals, such as doctors or architects, within the EU.42 The directive has already drawn sixty reasoned opinions in the first ten years.

In all, the most infringed directives either seek to advance the Internal Market by harmonizing national regulations that may impair competition (market making), or they aim at protecting the environment against negative externalities of market activities (market correcting). Altogether, ten of the twenty most infringed directives relate to the environment and account for slightly less than half of all reasoned opinions. Internal Market accounts for about 20 percent of both directives and infringements (cf. chapter 5).

Besides confirming that new and non-delegated directives are more prone to noncompliance, the sample corroborates some of the other (non)findings. Only a third of the directives were adopted by QMV, and all but one (recognition of professional qualifications) were not contentious. This confirms that voting in the Council has no significant influence on compliance costs. Conflict between the EP and the Council, in contrast, occurred in all those cases in which the EP had at least a formal voice, if not a vote, in decision making, with the exception of the 1993 directive on the award of public works contracts. The involvement of national parliaments in the transposition was above average. Ministerial approval shows a less clear pattern, being higher than we would expect.

The ten directives practically cover the entire spectrum of possible workload (from almost the maximum of adopted directives to close to the minimum) and vary significantly in transposition deadlines (from three weeks to more than three years). What they share is a high level of complexity. The FFH directive may feature only 21 recitals and 24 articles, compared to the VAT directive, with 67 recitals and 414 articles. The annex, however, contains an endless list of plants and animals that merit protection.43 All directives were adopted with
the maximum EP involvement the treaties provided for at the time of adoption. Finally, opposition to EU membership is around 13 percent, corroborating the counterintuitive results of the statistical analysis.

The combined results of the multivariate regression analysis and the closer examination of the ten most violated directives confirm that declining noncompliance with EU law is driven by its changing nature, reducing compliance costs and rendering their politicization less likely.

Research on noncompliance in the EU has focused on violations of EU law by the member states. Despite an ongoing debate on whether the EU suffers from a compliance problem, little attention has been paid to changes in noncompliance over time. Eastern enlargement led many to expect an increase in noncompliance. Yet this is not what the data shows. Noncompliance had started to decline more than ten years before twelve new member states got admitted to the EU, and their accession has done nothing to reverse the declining trend.

Member state properties cannot account for this secular trend, since they have remained largely constant. The causes lie with systemic or EU-level factors. The PCP model identifies the changes in the nature of EU law as the key driver. With the completion of the Internal Market and the establishment of the EMU by the Maastricht Treaty in the mid-1990s, the EU has increasingly adopted technical rules in the form of directly applicable regulations, on the one hand, and of Commission directives that execute or amend existing laws, rather than enact new legislation, on the other. Implementing technical amendments is less costly for the member states and requires less capacity. Compliance costs of amending legislation are also less likely to become politicized since their adoption tends to be delegated to administrative bodies. Delegation reduces the role of both the European Parliament and the national parliaments at the shaping and the taking stage, respectively. Since the Maastricht Treaty, both have been continuously empowered to interfere at the shaping stage of the compliance game. Yet these attempts at the parliamentarization of EU policy making, with the aim to address the democratic legitimacy deficit of the EU, have been counteracted. Depoliticization and delegation strengthen the executive at all levels of the EU’s system of multilevel governance (König 2007; Börzel and Sprungk 2009). At the same time, delegation does not only disempower the EP at the shaping stage. National parliaments are only involved in the taking of about a fifth of EU directives. Where directives amend existing rather than create new legislation and are (therefore) delegated to the Commission, member states tend to delegate implementation to their administrative bodies that have the necessary expertise and can draw on previous legislation as the legal basis. Some national variation
notwithstanding, the “trend towards bureaucratic implementation of directives is visible for almost all member states over time and across most policy sectors” (König 2007, 421).

Somewhat paradoxically, the changes introduced by the Lisbon Treaty to boost the role of national parliaments in EU law making, on the one hand, and the right of the Council and the EP to object or revoke delegation, on the other, have empowered the Commission in using delegation. The Council shares the Commission’s preferences for delegation de facto undermining parliamentary involvement (Héritier, Moury, and Granat 2016). Since member states have lost their influence in the adoption of delegated acts, they support the use of implementing acts, where the comitology is still involved and the EP has no right of objection or revocation. The PCP model thereby accounts for the ambivalent findings in the literature on the effect of parliamentary involvement on noncompliance. National parliaments only tend to delay or water down transposition, if they have not been involved at the shaping stage, are required to give their approval at the taking stage, and deal with highly politicized issues (Sprungk 2011, 2013). Since directives are increasingly technical, tend to amend existing legislation, and are adopted by the Commission, national parliaments are only marginally involved at the taking stage. If they are involved, however, these directives are likely to be of high issue salience and therefore are prone to flawed transposition, owing to the politicization of compliance costs.

Whether less politicization results in more delegation, or vice versa, is not clear. Council and Commission seek to avoid politicization by using delegation (Bergström, Farrell, and Héritier 2007). Likewise, the Commission is more likely to initiate delegated acts if it anticipates legislative gridlock in the Council or the EP (Junge, König, and Luig 2015). This seems to suggest that delegation is an instrument rather than the result of depoliticization. Findings on the management of the euro crisis corroborate the supposition that delegation drives depoliticization and not the other way round (Börzel 2016). To avoid political controversy, the governments of the euro group delegated far-reaching competencies to the European Commission (e.g., European Semester) and the ECB (e.g., banking supervision), circumventing the involvement of both the European Parliament and national legislatures (Schimmelfennig 2014b; Genschel and Jachtenfuchs 2016; cf. chapter 6).

In any case, my analysis suggests that the effect of depoliticization through delegation has reduced noncompliance by making EU law less costly for the member states and the politicization of compliance costs less likely. This is not to deny that EU laws have been subject to domestic politicization. If citizens, companies, interest groups, or advocacy networks become aware of the economic,
social, or political costs market integration may incur, denouncing Brussels and the European Commission for its “obsession with regulation” provides a useful argument in the political debate. For instance, trade unions and large parts of industry have effectively joined forces in blocking the EU-induced liberalization of the German service sector (Eckert 2015). The pan-European outcry against the Bolkestein directive that aims at establishing an Internal Market for services offered them a formidable pretext to curb and contain attempts of the federal government to open the German service sector to foreign competition (Crespy 2012). Such politicization, however, tends to arise already at the shaping stage, resulting in a substantial revision or, as in the case of the infamous regulation banning olive oil jugs in restaurants, the ultimate withdrawal of the proposed EU legislation. Politicization is less pronounced at the taking stage, and if so, less related to the EU origin of the law. Improper application of directives and regulations on the ground may give rise to local contestation, which, however, often remains isolated and confined to a specific case with its particularities. More often than not, “once transposed, Community Law is applied no better or worse than domestic law” (Ciavarini Azzi 2000, 58). While violations of the wild birds directive and the FFH directive have made headline news in many member states, EU legislation has provided environmental groups with an additional weapon to protect nature against economic interests. Attempts of transnational mining companies or local developers to expand their activities into nature conservation areas would have outraged the public irrespective of whether there were some EU laws that protected these areas (Börzel and Buzogány 2010).

Finally, improving compliance through delegation comes at a price. While multilevel executive federalism helps ensure the effectiveness of EU law, it exacerbates the “parliamentary deficit” (König 2007) in EU policy making and the democratic deficit of the EU more broadly speaking. The treaties of Maastricht, Amsterdam, Nice, and Lisbon may have continuously empowered the European Parliament and national parliaments in EU policy making. Parliamentarization, however, has done little so far to undermine the dominance of supranational and national bureaucrats. Quite on the contrary, the financial crisis has further increased their roles. The marginalization of the European Parliament and the national parliaments produces “policy without politics” (V. Schmidt 2006). The depoliticization of EU policies stands in stark contrast to the growing politicization and contestation of the EU as a polity. “Politics without policy” is increasingly replaced by “politics about polity” (De Wilde, Leupold, and Schmidtke 2016, 14). EU citizens have not only become more aware of the EU and its policies; they increasingly care and mobilize against the technocratic logic of EU policy making (De Wilde and Zürn 2012, 140; cf. Chalmers, Jachtenfuchs, and Joerges 2016). Depoliticization has fueled Eurosceptic populism in the member
states, which in turn undermines the capacity of the EU to take forceful action in areas in which its competencies are limited, the migration crisis being a case in point (Börzel 2016). The backlash against depoliticization has made it increasingly difficult for member state governments to honor the commitments they made to manage the historic influx of migrants. Overall compliance with EU law, however, has not been affected yet.