# Bachelorproject 2

# The Complexity of Compliance: Why do member states fail to comply with EU directives?

**Authors: Garth Vissers & Simone Zwiers**

**University of Utrecht, 2009**

**Introduction**

The European Union (EU) has played an important role for its members. It has developed from a purely economical organisation to having influence on the policies of member states on different topics, ranging from health to environment. The EU is divided into four different organs: the European Parliament, the European Commission, the European Court of Justice (ECJ) and the Council of the EU. The European Parliament is an institution which represents the people of the member states of the EU whom are elected by the people of the concerning member state (Hix, 2005). The Commission's primary functions are to carry out common policies, managing funds and oversee the correct implementation of the Treaties and European law and in some cases they play a role in the decision-making process (Brussels, 2007). The ECJ's function is to make sure that the European laws are upheld by the member states and to oversee the implementation of EU law. The Council consists of the representatives of the EU such as the ministers, who are responsible for the decision-making process (Hix, 2005).

The Parliament, Commission and Council all play a part in the policy-making process. When the European Commission has made a proposal for a policy the Council can either reject or accept the proposal. When the Council has accepted the proposal the Commission's task is to oversee the adoption of this accepted proposal by the member states. Once an EU law or policy has been adopted the member states are required to implement it. By being member of the EU they are obliged to translate these laws and policies, also known as directives into a national level. Implementing such a directive and doing it correctly, meaning doing it according to the EU criteria, is called compliance. The opposite, non-compliance, is when a member state fails to implement a directive in time, correctly or even at all. If they do not comply the ECJ may impose sanctions on them.

Non-compliance is strange when you consider that the member states influence the design of the directive and that the final goal of the directive is to benefit (albeit directly or indirectly) all the member states of the EU (Hix, 2005). Previous research has tried to explain the phenomenon of non-compliance by member states using three categories of explanation: state-based, preference-based and institutional-based. The state based explanations assume that non-compliance is caused due to the governmental system of the member state and that non-compliance is caused

involuntary. Opposed to this there are the preference-based explanations which suggest that non-compliance is a choice of the member state and is thus voluntary (Thomson et al., 2007). Finally the institutional-based explanations look at the system creating the directives and also look at the directives themselves as possible explanations for non-compliance (Falkner et al., 2004).

The focus of this paper will be on involuntary non-compliance. When a member-state does not comply sanctions may be imposed upon them by the ECJ. Furthermore we also wish to examine the directive design, part of the institutional-based explanations which is also a form of involuntary non-compliance (Vissers & Zwiers, 2009). It is not unlikely that the way the directive has been written will influence the rate of non-compliance. For instance a more complexly directive will be harder to implement than a fairly easy to understand directive (Falkner et al., 2004). The state-based explanations and the directive design form the core of our research and we thus wish to find an answer to following two questions:

To what extent do state-based explanations influence the rate of non-compliance?
To what extent does the directive design influence the rate of non-compliance ?

However we wish to go further than answering these two questions. Why merely assume that these explanations act independently and not interact with each other? It is possible that the directive design may influence the way a state-based explanation influences non-compliance. We therefore also wish to find an answer to the following question:

To what extent does the effect of state-based explanations on the rate of non-compliance depend on the directive design?

Before we continue to the theories we would like to explain more on non-compliance as it plays a key role in this study. As has been explained non-compliance is when a member state does not implement a directive (correctly) according to the EU criteria. In particular we will look at the infringement procedures which in short would be the non-compliance which has actually been observed by the Commission. .Infringement definition according to the Treaty Establishing the European Community Article 226 is the following: when an infringement proceeding is pursued, the Commission sends

the member state concerned an initial legal assessment through a letter of formal notice, and invites the member state to present its views regarding the facts. if the commission considers that a member state has failed to fulfil an obligation under this treaty, it shall deliver a reasoned opinion on the matter, after giving the state concerned the opportunity to submit its observations. If the state concerned does not comply with the opinion within the period laid down by the commission, the latter may bring the matter before the Court of Justice (Commission of the European Communities, 1998). It is possible that another group of member state has filed a complaint against the member state. When the Commission observes or believes that a member state is not complying, they first send them a letter to which they may respond, then a reasoned opinion follows and finally a referral to court. When the Commission has filed a case with the ECJ and the ECJ has ruled that the member state has not complied, then the member state usually has three more months to conform to the directive (Frye, 2004). Note that when using infringement as an indicator for non-compliance it is rarely discussed which directive is not being implemented or in which manner they are not doing what they are told. It can be something really minor to something very serious, such as forgetting to add an additional star the EU flag to not conforming to new environmental policies. To find an answer to our research questions we will be using quantitative data, which has been collected by Thomson et al.

**Theory**

In this section we will explain the theories used in our research. We will start with explaining the state-based explanations, after that we will explain the institutional-based explanations. Finally we will clarify why we think the institutional-based explanations can have an influence on the state-based explanations.

<u>State-based explanations</u>

State-based explanations refer to the capacity of the governments of the member states to implement laws correctly (Thomson et al., 2007). It implies that a member state (might) desire to implement a directive, but due to national circumstances are unable to do so. State-based explanations thus attempt to explain non-compliance by assuming that non-compliance is involuntary and looks at the constraints causing non-compliance at the member state level. We will discuss two types of state-based explanations, administrative constraints within member states and decentralization.

Administrative constraints

The administrative systems are different for each member state. Where one member state may be lacking in efficiency the other may have many available resources to implement a directive. Here we will discuss the constraints a member state may have when we look at their administrative system. Here we will use Mbaye's (2001) example, who assumes that fiscal resources, bureaucratic efficiency and corruption influence the administrative system. We will begin by explaining fiscal resources.

Fiscal resources are very important for a member state. Fiscal resources refer to the financial capacity of a member state and to the size of their bureaucracy (Mbaye, 2001). A government needs money to finance the bureaucracy so that they will implement the directives. In the end the implementation of directives requires people to work and this simply requires money. When there is a lack of fiscal resources it is possible that a member state will not comply or at least not as fast as other member states who have more fiscal resources. A member state with a lack of fiscal resources is not able to finance their bureaucracy which could cause non-compliance. Based on this assumption we pose the  following hypothesis:

*H1a: When the Member State has less fiscal resources a member state is less likely to comply*

The bureaucratic efficiency refers to the number of people who are part of the administrative system and the level of expertise (do mostly highly educated people perform this task or less educated people?). Different parts of the directive need to be interpreted by different people, so it has to go through numerous stages before it can finally be applied. When this process goes faster we may find that the member state has an efficient bureaucracy. Mbaye (2001) finds in her study that bureaucratic efficiency is connected to compliance. Efficient bureaucracies are more able to translate directives than inefficient bureaucracies. For example Luxembourg, in relation to other countries, has a small administration. Luxembourg is a rich country but is also a very small country, so they do not have the manpower to implement many directives at one time. They have to implement the same directives as all the other member states but with a smaller administration. Based on the assumption that the bureaucratic efficiency effects the rate of non-compliance we therefore pose the following hypothesis:

H1b: *When the Member State has a less efficient bureaucracy there will be more non-compliance*

Corruption can be placed in different contexts. As this study has the EU and the member states as its main focus, corruption will be placed in a political context. Corruption roughly means the misuse of power, or in this context the misuse of governmental powers. For example when a government official participating in the implementation process intentionally does not perform his duties as it was originally intended or they perform it in an improper way they will hinder the implementation of the directive. It is possible that they may use finances originally intended for the implementation of the directive for their personal gain. Mbaye finds that if a state with a lower level of corruption has a lower level of non-compliance than member states with a higher level of corruption (Mbaye, 2001). We pose the following hypothesis:

H1c: *When the Member State is more corrupt there will be more non-compliance*

When a directive is to be implemented it has to be done so by the 27 different member states. This means that each member state has to give their own interpretation to the directive in order to translate the directive so it meets both the requirements of the EU and of their own country. Each member state distributes the power of decision-making and implementing laws differently. Some governments disperse this power over several sub national actors within their government. Federal states for instance such as Germany have a more decentralized government than the U.K., which is a unitary state and is governed as a single unit.

When a government consists of different levels responsible for the implementation of the directive, it is possible that the directive will be interpreted and implemented differently by each institution of that government. This form of decentralization is also called the Multi Level Governance model where the sub national actors play a big role (Hoogh & Marks 2001).

Each member state must implement the directive and must do it correctly. For instance when the EU has composed a directive The Netherlands must implement this directive. However The Netherlands consists of many different governmental organizations going from the parliament to provinces to the local communities. Overijssel is an example of a province. The latter may be considered as sub national actors who will give their own interpretation and meaning to the EU directive. When a government is decentralized there will be a higher chance that the member state will not comply because there will be more actors that are involved in the implementation process (Hoogh & Marks 2001). More different actors will lead to more different interpretations and thus to different implementations. Thus we pose the following hypothesis:

*H2: When a member state has a more decentralized government it will have a higher rate of non-compliance than a member state with a more centralized government.*


Institutional-based explanations

Institutional-based explanations aim to seek an explanation for non-compliance looking at the EU, which creates directives and imposes the implementation of these directives on the member state. We look at the directives themselves. A directive is a type of policy or law designed by the EU. Institutional-based explanations assume that non-compliance is not only due to the failure of the member states but also because of institutional factors related to the decision-making process. Institutional-

based explanations do not refer to the member states' willingness to implement directives, but they refer to flaws within the EU itself which causes non-compliance (Vissers & Zwiers, 2009). It is the task of the EU to design clear and well-elaborated policies. The policies designed by the EU form a type of constraint for the member states. Due to unclear policies, member states come across difficulties implementing them. We will discuss the directive design.

Directive design

Directives are the result of extensive and elaborate debates between the member states in the decision-making stage at the Council of Ministers. A directive is meant to specify in words 'the results to be achieved' but leave 'to the national authorities the choice of form and methods' (Keading, 2006). When the results are put into text it is possible that the design of a directive is very clear and the member states will know exactly how to implement a directive. On the other hand when a directive is not clear member states can have problems on how to interpret the directive. This in effect may result in different applications of the directive (Falkner et al., 2004).

In this study we will examine two different ways a directive design can be interpreted: its complexity and its ambiguity. Although complexity and ambiguity seem very similar they have very different meanings. A directive is considered complex when it consists of many different requirements for the member state. For example The Maritime Directive had four articles on one page whereas the Annexes consist of twenty-six pages. We argue that when a directive becomes more complex it will be more difficult for the member state to implement the directive (correctly), because member states must comply to more requirements (Keading, 2006).

When a word or phrase can be interpreted in more than one way it can be called ambiguous. The same goes for directives, which can also be ambiguous. When a directive design is not clear it can be interpreted in more than one way, this can lead to non-compliance (Falkner., 2004). As the ambiguity increases and member states are uncertain of the exact intentions of the EU for the directive we believe that their non-compliance may increase. Though ambiguity may not necessarily lead to an incorrect implementation of the directive, it may lead to a delay of the implementation of the directive. As different interpretations are possible it may take longer for a member state to implement the directive. In order to study whether the complexity

and ambiguity cause the rate of non-compliance to increase we pose the following hypotheses:

*H3a: When a directive is complex there will be more non-compliance.*

*H3b: When a directive is ambiguous there will be more non-compliance.*

<u>Interaction effects</u>

As stated earlier we aim to research to what extent the effect of state-based explanations on the rate of non-compliance depends on the directive design. How does the design of the directive influence non-compliance when a member state has administrative constraints? When a member state has a lack of fiscal resources, does not have an efficient bureaucracy or has a high level of corruption, it will take a lot longer and become more difficult to implement the directive. The design of the directive will amplify this effect, because a more complex or ambiguous directive requires more effort and resources from a member state to implement. The directive complexity contributes to additional difficulty in the implementation process.

Now we will pose the following question; How does the design of the directive influence non-compliance when a member state has a more decentralized government? We anticipate that when a member state is federal, like Germany, the implementation will go a lot slower or less efficient than in a centralized state such as the U.K. The centralized state interprets the directive and implements it. The decentralized state has to implement the directive in all the sub national actors. The existing sub national actors of the member state may interpret the directive differently, especially when the directive is ambiguous or complex. Because when a directive is complex or ambiguous it can be interpreted in more than one way. The more actors that are involved the more different interpretations of a directive that is complex or ambiguous there are possible.

*H4a: A higher level of complexity amplifies the probability that administrative constraints and the level of decentralization will result in more non-compliance by member states.*

*H4b: A higher level of ambiguity amplifies the probability that administrative constraints and the level of decentralization will result in more non-compliance by member states.*

**Research Method**

This research project aims to predict the outcome of non-compliance for different member states  The time limit and the ability to generalize has made us choose to use an already existing dataset which contains quantitative data. Most research conducted on non-compliance uses case studies. Case studies require a fair amount of time, but allow for more detailed information, however it also allows for less generalization. To test the hypotheses this research will use an updated dataset which Thomson et al. (2007) used for their study. The reason we chose to use this dataset, is because it contains most of the data which we will require to research our hypotheses. Data on infringement procedures, bureaucratic efficiency and directive ambiguity were already part of the dataset. The other required data can be obtained by searching for different resources, as we will elaborate on below.

Thomson et al. (2007) have collected the data by applying three selection criteria: the Commission proposals were subject to either consultation procedure or the co-decision legislative[1] the selection covers proposals discussed in the Council between January 1999 and December 2000 and finally the directives had to raise some minimum level of controversy (Thomson et al., 2007).

We will now describe the content of the dataset. This dataset contains information on non-compliance of 15 different member states for 22 different directives. This means we should have  approximately 330 cases. However for 10 of the directives the infringement procedure has been started more than once against the same member states and thus we actually have 340 cases. Each directive was supposed to be implemented by 15 different member states. The following member states in the data set are: Denmark, Sweden, Finland, Netherlands, Luxembourg, Austria, Germany, Ireland, UK, Belgium, France, Spain, Portugal, Italy and Greece. Because the dataset contains data from directives from 1999 to 2004 it was not possible to include all member states, as some member states only joined after 2004. Despite this we believe this should not affect the results of the research. We are not

---

[1]    Consultation: Based on a proposal from the Commission, the Council consults Parliament, the European Economic and Social Committee and the Committee of the Regions.
    Co-decision: Parliament does not merely give its opinion: it shares legislative power equally with the Council. If Council and Parliament cannot agree on a piece of proposed legislation, it is put before a conciliation committee, composed of equal numbers of Council and Parliament representatives. Once this committee has reached an agreement, the text is sent once again to Parliament and the Council so that they can finally adopt it as law (europa.eu.).
    .

going to test whether the effects are different for new and old member states, so not having the newer member states included should be of no consequence.

The directives covered the following policy areas:  internal market, economic and financial affairs, agriculture, transport, justice and home affairs, employment, energy and health. The majority of the directives covered the policy area of internal market whereas justice and home affairs, employment, energy and health were less strongly represented.  The dataset already has information on bureaucratic efficiency and the directive design. This dataset will be extended with indicators for decentralization, by specifying whether a member state has a federal government or not and it will be extended with indicators for the Gross Domestic Product (GDP) and the Corruption Perception Index (CPI). To determine non-compliance we will use the infringements and delays in transposition as indicators.  As we have mentioned we will be studying interaction effects. To be more precise we will be studying the effect of the directive design on the effect of several state based explanations on non-compliance.

Dependent variables: indicators for non-compliance

Infringements

Infringements take place when the Commission has observed that a member state is not complying and has sent it an official letter. The data on infringement proceedings were gathered from the Annual Report of the Application of Community Law from the years 1999 to 2004. The infringements have been separated into three different stages: the first formal letter sent, a reasoned opinion and finally a referral to the court. As the stages continue the number of observations decrease. We will look at all of the different stages of the infringement procedure. In the dataset the sending of the initial letter is the variable 'let' where 0 means that the member state has not received a letter and 1 means the member state has received a letter for a specific directive. The reasoned opinion has been coded as 'ro' where 0 means that no reasoned opinion has been sent and where 1 means there has. Similar with the referral which has been coded as 'referral' where 0 means it has not occurred and 1 means it has.

Figure 1 Frequencies of the infringement procedure
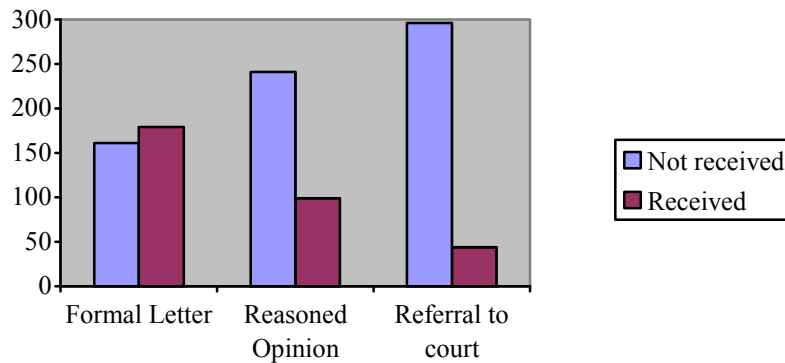


As the stages continue, so going from the letter to reasoned opinion to a referral to court, the numbers decline. This can be seen in the figures 2.1, 2.2 and 2.3, where the rate of non-compliance is 52,65%, 29,12% and respectively 12,94%. This makes sense as the first stage could be seen as a 'warning'. After receiving the first warning member states will most likely change the implementation of the directive to conform to the Commissions wishes. This leads to less member states receiving a reasoned opinion. When they receive a reasoned opinion anyway they will have a stronger incentive to comply leading to even less member states receiving a referral to court. When ending up in the final stage the Court may impose a sanction upon the member state. Even though we do not know the exact reason for non-compliance, it is possible that member states' non-compliance is at first an honest mistake. As the non-compliance declines as the stages proceeds it is possible that their reasons for non-compliance is more severe.

Independent Variables:explanations for non-compliance

One important thing to mention about the independent variables is their level of measurement: some indicators for instance vary only between member states, but they are constant when we talk about the same member state implementing different directives (decentralization for instance), other variables vary only between the directives (complexity and ambiguity), but they are constant when different member states are implementing the same directive. Here we will explain which variables we will use.

Fiscal resources

Taking on the example of Mbaye (2001) we will use the GDP as an indicator for the fiscal resources of a member state. The GDP allows us to measure a member state's fiscal resources. GDP is usually to indicate the national income and output for a given country's economy. It is calculated by using the following formula: GPD = consumption + gross investment + government spending + (exports − imports). Considering government spending is included it gives us an indication of the member state's fiscal resources. We choose this to be a suitable indicator for fiscal resources, because it does include government spending and it is likely that the government spending is higher when the GDP is as well. Information on the GDP will be gathered from The World Bank[2] (worldbank.org). To determine which GDP we should take for which year we used the deadline year of the directive. Each directive had a deadline on which it had to be implemented. We have used this deadline as an indicator to see from which year we should use the data on GDP, because most member states do not immediately implement the directives, but do that around the deadline year (Mastenbroek, 2005). For each of the years and the member states we have collected the data on the GDP, this is for the fifteen member states which have been stated above and for the years 1999, 2001, 2002, 2003 and 2004.


Level of corruption

The Corruption Perception Index (CPI) is an index which ranks countries to what the degree corruption is perceived to exist among public officials and politicians. The Transparency International[3] defines corruption as the abuse of public office for private gain. It focuses on the public sector, which is exactly what we want to measure when we measure corruption as a state-based explanation. The Transparency International has formed this index based on 14 different polls and 12 independent institutions. The CPI has perceptions of corruption around the world, including those of experts. A score of 0 means the country has a lot of corruption and a score of 10 means the country has very little or no corruption at all. Considering the Transparency International has measured corruption of different counties all over the world for

---

[2] The World Bank is not a bank in the common sense but is an organization which monitors the financial sector of the world. Its primary objective however is monitoring and aiding poor or third world countries (www.worldbank.org).

[3] Transparency International is the global civil society organisation leading the fight against corruption (www.transparancy.org).

several years we believe that there simply is no better indicator for the level of corruption than the CPI (transparency.org). Using this index thus gives us a reliable indicator for corruption. To determine which years we should take for the CPI we have used the deadline year, similar to what we did for the GDP.

Bureaucratic Efficiency

Bureaucratic efficiency is measured by using the government effectiveness measured by Kaufman et al. (2008) in a study where they measured several indicators to determine the quality and effectiveness of a government. Government effectiveness is defined by Kaufman et al. as follows: "measuring perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies" (Kaufman et al., 2008). That it is a perception may be considered a disadvantage, however effectiveness is fairly subjective in itself and is hard to measure in an actual objective manner. Furthermore the government effectiveness takes into account different aspects which are closely related to the bureaucratic efficiency. Therefore we do not change the indicator except for that we will simply name it bureaucratic efficiency.

Decentralization

To measure whether a member state has a centralized or a decentralized government we will indicate whether a member state has a federal or a unitary state. This data is collected from wikipedia.com where a list was found of what kind of government a member state has. A federal state is considered to have a decentralized structure and a unitary state is considered to have a centralized structure. Federal states (read decentralized states) use a system where the power is delegated to different levels of authorities in the country. For instance the Netherlands has twelve provinces and each province has a  community where decisions are made. Unitary states, such as the UK, have a government system where the power lies mostly within one level of authority within the country. In our dataset we have added this variable by determining the state's government's, where 0 is a unitary state and thus is not a decentralized state and 1 is a federal state and this is a decentralized state. Table 1. provides the division.

Table 1 Decentralization of States

| Unitary state (0) | Federal state (1) |
| --- | --- |
| United Kingdom | Germany |
| Greece | Netherlands |
| Luxembourg | Austria |
| Sweden | Belgium |
| Finland | France |
| Portugal | Denmark |
| Spain | |
| Italy | |
| Ireland | |

We created the new variable in the data called 'federal'. We recoded the variable 'ms' into different variables and have given the federal states the value 1 and the remaining non-federal states the value 0.

Ambiguity

To measure the ambiguity of the directive we will use the discretion that a directive grants to a member state. This indicator was used by Thomson et al. (2007). They have based it on Franchino's (2004) adaptation of Epstein which in short means the freedom to maneuver for a member state. The directive will allow the member state to make choices between several options, so that a directive is not one strict path a member state must follow. Discretion is the possibility for the member state to deviate from the directive. Because they have this possibility the directive is not strictly formulated and is therefore considered ambiguous. This is the variable 'rms100' in the dataset. The higher the score the higher the discretion level and thus the higher the ambiguity of the directive (Franchino, 2004).

Complexity

To determine the complexity of a directive we will use the number of recitals. Recitals are certain criteria or items a member state must achieve or perform to implement the directive correctly. They are meant to state the purpose of the directive and to describe each of the main provisions (Keading, 2006). In this case the number

of recitals is related to the complexity, because the more one has to do the more challenging and difficult it becomes. So the higher the number of recitals the more complex a directive is. This is the variable 'recitals' in the dataset. Table 2. provides all the distribution of the independent variables.

Table 2 Distribution of the indicators: descriptive statistics

| Indicator | N | Minimum | Maximum | Mean | Standard Deviation |
|---|---|---|---|---|---|
| Fiscal resources | 340 | 17 561 | 2 740 551 | 611 551 | 668 988.5 |
| Corruption | 340 | 4.2 | 10 | 7.62 | 1.54 |
| Government Effectiveness | 340 | .68 | 2.26 | 1.173 | .424 |
| Complexity | 340 | 3 | 65 | 25.14 | 32.1 |
| Ambiguity | 340 | 0 | 42.86 | 17.32 | 12.71 |
| Com vs member | 335 | 0 | 100 | 50.652 | 25.444 |
| Importance | 340 | 0 | 100 | 31.668 | 32.103 |

Com vs member = The difference in policy differences between the Commission and a member state
Importance = The level of importance placed by a member state on a directive

Control Variables

We have controlled these variables for two so called preference-based explanations. Preference -based explanations try to explain non-compliance by assuming that non-compliance was voluntary and done deliberately. Two of them are the difference in policy preferences between the Commission and a member state (dmscom_av) and the level of importance placed by a member state on a directive (av_sal). Information on the difference in policy preferences was gathered by a group of researchers by interviewing key informants, where the measure was based on the preference of the member state when the directive was still in its proposal stages (Thomson et al., 2007). The score indicates to which extent a member state disagreed with the proposal. So the higher the score the higher the difference in policy preferences between the Commission and a member state. Information on the level of importance placed by a member state on a directive was gathered in a similar way. This was done by asking a key informant how important a directive was to the member state.

**Analysis**


The Models

We checked whether the independent variables correlated with each other or not. Because when the independent variables correlate highly with each other it is not possible to put them in the same model for analysis. On the basis of this we created the following table. When they correlate highly it means that the variables resemble each other and it would be as if you are measuring the effect of the same variable twice. The N of the variable Com vs member is 335 and the N of all the other variables is 340.


Table 3 Correlations

|  |  | Bureacratic efficiency | Fiscal resources | Corrup-tion | Decentrali-zation | Impor-tance | Preference | Ambiguity | Complexity |
|---|---|---|---|---|---|---|---|---|---|
| Bureacratic efficiency | $\rho$ | - | - | - | - | - | - | - | - |
| Fiscal resources | $\rho$ | -.189** | - | - | - | - | - | - | - |
| Corruption | $\rho$ | .887** | -.149** | - | - | - | - | - | - |
| Decentralization | $\rho$ | .297** | .231** | .165** | - | - | - | - | - |
| Importance | $\rho$ | -.040 | .206** | -.074 | .085 | - | - | - | - |
| Com vs member | $\rho$ | -.003 | .110* | -.042 | .052 | .316** | - | - | - |
| Ambiguity | $\rho$ | .011 | -.026 | -.019 | -.013 | .061 | .032 | - | - |
| Complexity | $\rho$ | .047 | .000 | .005 | -.008 | .178** | .102 | .612** | - |

*Correlation is significant at the 0.05 level (2-tailed).
**Correlation is significant at the 0.01 level (2-tailed).
Com vs member = the difference in policy preferences between a member state and the Commission.
Importance= the level of importance placed by a member state on a directive.
$\rho$=Pearson correlation


As can been seen in table 3 government effectiveness correlates highly with the CPI (.887) and is highly significant The same goes for recitals which correlates well with the discretion level of a directive (.612). Their high correlation gives us a good reason to put these variables in different models and not in the same one.


Type of analysis

To test our hypotheses we will use logistic regressions. Logistic regression can be used to test when a dependent dichotomous (1 and 0) variable and one or more independent variables are associated. Logistic regression is used for the prediction of the occurrence of an event (Agresti&Finlay, 2008). In our study this means that we

are going to test whether the probability of receiving a formal letter, a reasoned opinion or a referral to court increases or decreases with the influence of the independent variables. When using linear regression one would assume that the distribution of the variables is normal and continuous. Using a dichotomous dependent variable means that the distribution of the variables is not continuous but consists of isolated points. When interpreting results we can only state that the increase of the independent variable causes the dependent variable to increase or decrease with an average probability.

For each dependant variable we will use four different models to test our hypotheses. Each model is based on the theories we used for our research. The GDP, CPI and decentralization and government effectiveness represent state-based explanations. Recitals and level of discretion represent the theory on directive design. The control variables, preference differences between the member states and the Commission and the level of importance placed by a member state on a directive, represent the preference-based explanations and are the controls. Because the variables government effectiveness and CPI correlate highly as did the variables recitals and level of discretion, we had to put them in different models. Based on this we created the following models:

Model 1: bureaucratic efficiency, fiscal resources, decentralization, complexity, level of importance placed on a directive by a member state and preference differences between a member state and the Commission

Model 2: bureaucratic efficiency, Fiscal resources, decentralization, ambiguity, level of importance placed on a directive by a member state and preference differences between a member state and the Commission

Model 3: corruption, fiscal resources, decentralization, complexity, level of importance placed on a directive by a member state and preference differences between a member state and the Commission

Model 4: corruption, fiscal resources, decentralization, ambiguity level of importance placed on a directive by a member state and preference differences  between a member state and the Commission

**Results**

The probability of non-compliance: analysis on the formal letter

When the Commission detects non-compliance they first send a letter to the concerning member state. What causes the member state to not comply and thus receive such a letter is analysed in the tables below. Each table represents a different model. The models are explained above.

Table 4 The formal letter

| | Model 1 | | Model 2 | | Model 3 | | Model 4 | |
|---|---|---|---|---|---|---|---|---|
| | b | S.E. | b | S.E. | b | S.E. | b | S.E |
| Bureaucratic efficiency | -.296 | .322 | -.114 | .291 | - | - | - | - |
| Corruption | - | - | - | - | -.043 | .081 | -.019 | .074 |
| Fiscal resources | .000 | .000 | .000 | .000 | .000 | .000 | .000 | .000 |
| Decentralization | .182 | .282 | .060 | .254 | .118 | .268 | .037 | .242 |
| Complexity | .073*** | .010 | - | - | .072*** | .010 | - | - |
| Ambiguity | - | - | .036*** | .009 | - | - | .036*** | .009 |
| Importance | .000 | .005 | .004 | .005 | .000 | .005 | .004 | .005 |
| Com vs member | .000 | .004 | .001 | .004 | .000 | .004 | .001 | .004 |
| Constant | -1.261 | .649 | -.667 | .590 | -1.429 | .772 | -.718 | .656 |
| N | | | | 335 | | | | |

*p=0.05 **p=0.01 ***p=0.001.
Importance= the level of importance placed by a member state on a directive.
Com vs member = the difference in policy preferences between a member state and the Commission.

Looking at table 4 we see that none of the variables in all of the models from the state-based explanations are significant. We thus find no evidence to support hypotheses 1a, 1b, 1c and 2. This means that bureaucratic efficiency, the level of corruption, fiscal resources and decentralization most likely do not have a lot of influence on the probability that a member state will receive a formal letter or not. The level of complexity is significant which means that hypothesis 3a is supported. This suggest that the complexity of a directive is likely to cause more non-compliance when looking at the letter received by a member state. According to table 4 the level of complexity will lead to the average probability increases of receiving a letter by 7,3% in model 1. In the second model we have added the level ambiguity instead of the level of complexity. Table 4 provides us evidence to support hypothesis 3b. An increase of the level ambiguity will on average lead to an increased probability of

receiving a letter by 3,6%. In the fourth model we found the same evidence to support hypothesis 3b. For the third model, where we have corruption instead of bureaucratic efficiency, we also found similar results as in the first model. An increase of the level of complexity leads to an average increased probability of receiving a letter by 7,2%. The control variables seem to have no effect on the letters received as they are not significant

<u>The probability of non-compliance: the reasoned opinion</u>

When the member state has not responded to the letter and have not complied or adjusted the implementation of the directive accordingly they receive a reasoned opinion. Here we will see how much evidence we can find for our hypothesis when looking at the reasoned opinions received by the member states.

Table 5.1 Reasoned opinion

|  | Model 1 | | Model 2 | | Model 3 | | Model 4 | |
|---|---|---|---|---|---|---|---|---|
|  | b | S.E. | b | S.E. | b | S.E. | b | S.E |
| Bureaucratic efficiency | -.962** | .340 | -.715** | .313 | - | - | - | - |
| Corruption | - | - | - | - | -.248** | .087 | -.197** | .080 |
| Fiscal resources | .000 | .000 | .000 | .000 | .000 | .000 | .000 | .000 |
| Decentralization | .146 | .307 | .053 | .285 | .004 | .290 | -.043 | .270 |
| Complexity | .057*** | .008 | - | - | .057*** | .008 | | |
| Ambiguity | - | - | .037*** | .010 | - | - | .037*** | .010 |
| Importance | -.002 | .006 | .002 | .005 | -.003 | .006 | .002 | .005 |
| Com vs member | -.008 | .005 | -.005 | .004 | -.009 | .005 | -.006 | .004 |
| Constant | -.520 | .647 | -.337 | .620 | -.230 | .729 | -.025 | .696 |
| N | | | | 335 | | | | |

*p=0.05 **p=0.01 ***p=0.001.
Importance= the level of importance placed by a member state on a directive.
Com vs member = the difference in policy preferences between a member state and the Commission.

In table 5.1 we find evidence to support hypothesis 1b in model 1 and 2. Looking at table 5.1 we can say that as bureaucratic efficiency increases it will lead to an average probability decreases of receiving a letter by 96,2% for model 1 and respectively 71,5% for model 2. In model 3 and 4 we find evidence to support hypotheses 1c. This means, that looking at table 5.1, that an increase of the level of corruption will lead to the average probability decreases of receiving a letter by 24,8% in model 3 and 19,7% respectively for model 4. We would like to state that the higher the score a member

states has for corruption, the less corruption there is. This means that as corruption increases (when the level of corruption is low) the rate of non-compliance decreases. We do not find evidence for the remaining hypotheses 1a and 2, which are part of the state-based explanations.

All the models in which we included complexity suggests that we find an indication that it is probable that an increase in complexity will lead to the average increase of receiving a reasoned opinion. We thus find evidence to support hypothesis 3a. The same goes for the hypothesis 3b concerning ambiguity. All the models in which we included ambiguity suggests that we find an indication that the probability that an increase in ambiguity will lead to the average increase of receiving a reasoned opinion.

The preference differences between the member state and Commission appears to have an effect. One would expect that a difference of preferences between the member state and the Commission would lead to a higher rate of non-compliance or in this case the higher probability of receiving a reasoned opinion. According to table 5.1 this is not the case and it actually leads to a lower chance of receiving a reason opinion. It could be argued that when their preferences are so different they debate and discuss more about it, until they reach some sort of compromise. This could in fact lead to a lower rate of non-compliance.

Because we found evidence that the complexity, ambiguity, bureaucratic efficiency and corruption have an effect on the reasoned opinion a member state receives, we may study probable interaction effects. Model 1 consists of the variables bureaucratic efficiency, complexity and bureaucratic efficiency*complexity. Model 2 consists of the variables bureaucratic efficiency, ambiguity and bureaucratic efficiency*ambiguity. Model 3 consists of the variables corruption, complexity and corruption*complexity. And model 4 consists of the variables corruption, ambiguity and corruption*ambiguity.

Table 5.2 Interaction effects on reasoned opinion

| | Model 1 | | Model 2 | | Model 3 | | Model 4 | |
|---|---|---|---|---|---|---|---|---|
| | b | S.E. | b | S.E. | b | S.E. | b | S.E. |
| Bureaucratic efficiency | -.747 | .596 | -.961 | .502 | | | | |
| Corruption | - | - | - | - | -.251 | .165 | -.292* | .144 |
| Complexity | .064 | .035 | - | - | .05 | .039 | - | - |
| Ambiguity | - | - | .013 | .039 | - | - | .001 | .047 |
| Bureaucratic efficiency*complexity | -.005 | .019 | - | - | - | - | - | - |
| Bureaucratic efficiency*ambiguity | - | - | .014 | .022 | - | - | - | - |
| Corruption*complexity | - | - | - | - | .001 | .005 | - | - |
| Corruption*ambiguity | - | - | - | - | - | - | .005 | .006 |
| Constant | -.1.134 | 1.032 | .057 | .858 | .619 | 1.077 | -.496 | 1.241 |
| N | | | | 340 | | | | |

*p=0.05 **p=0.01 ***p=0.001.

Table 5.2 shows that there is no evidence to support an interaction effect of corruption and complexity and corruption and ambiguity. This means that the effect of corruption on the reasoned opinion does not differ depending on the level of complexity or ambiguity. We find the same results for the interaction effect of the bureaucratic efficiency and complexity and bureaucratic efficiency and ambiguity. Table 5.2 shows that the effect of bureaucratic efficiency on the reasoned opinion does not differ depending on the level of complexity or ambiguity.

The probability of non-compliance: the referral to court

When a member state has received a reasoned opinion and still has not complied this will lead to a referral to court. The amount of referrals is a lot lower than the reasoned opinions and the letter. After receiving two warning you would expect a member state to think twice before not complying as the sanctions may become more severe. Here we will examine what causes a member state to not comply even though it already has received a letter and a reasoned opinion and thus why they have received a referral to court.

Table 6 Referral to court

| | Model 1 | | Model 2 | | Model 3 | | Model 4 | |
|---|---|---|---|---|---|---|---|---|
| | b | S.E. | b | S.E. | b | S.E. | B | S.E |
| Bureaucratic efficiency | -.052 | .442 | .040 | .427 | - | - | - | - |
| Corruption | - | - | - | - | -.019 | .113 | -.008 | .108 |
| Fiscal resources | .000 | .000 | .000 | .000 | .000 | .000 | .000 | .000 |
| Decentralization | .135 | .381 | .047 | .366 | .131 | .363 | .064 | .350 |
| Complexity | .045*** | .010 | - | - | .045*** | .010 | - | - |
| Ambiguity | - | - | .025* | .013 | - | - | .025* | .013 |
| Importance | -.004 | .007 | .000 | .007 | -.004 | .007 | .000 | .007 |
| Com vs member | -.014* | .007 | -.010 | .006 | -.014* | .007 | -.010 | .006 |
| Constant | -2.684 | .872 | -2.247 | .863 | -2.623 | .979 | -2.114 | .955 |
| N | | | | 335 | | | | |

*p=0.05 **p=0.01 ***p=0.001.
Importance= the level of importance placed by a member state on a directive.
Com vs member = the difference in policy preferences between a member state and the Commission.

Again we find no support in all of the models for the state-based explanations in relation to the referral to court, which represents hypotheses 1a, 1b, 1c and 2. This means that bureaucratic efficiency, the level of corruption, fiscal resources and decentralization most likely do not have a lot of influence on the probability that a member state will receive a referral to court or not. In model 1 and 3 we find support for hypothesis 3a concerning complexity. According to the regression the level of complexity will lead to the average probability increases of referral to court with 4,5% in both model 1 and 3. In model 2 and 4 we find support for hypothesis 3b. The level of ambiguity will lead to the average probability increases of 2,5% for referral to court. In model 1 and 3 the level of importance placed by a member state on a directive is significant and when this increases the average probability increases that this will lead to a referral to court with 1,4%. It is thus likely that when a member state believes a directive is more important they will put more effort into realizing the implementation of that directive. Why this variable is significant for referral to court and not in the prior two stages, the letter and the reasoned opinion, remains the question. One would expect that the level of importance placed by a member state on a directive would also be significant in the other two stages if it is significant in the last stage. It is possible that as the referral to court is the last stage of the infringement procedure the member state perceives more stress to implement the directive and thus the effect of the importance they have placed on the directive increases.

**Conclusion**

This study aimed to research what causes non-compliance by member states concerning the directives designed by the EU. To be more precise we looked at the state-based and institutional-based explanations. This was done by using the fiscal resources, level of corruption, bureaucratic efficiency and decentralization (the state-based explanations) and the level of complexity and ambiguity (the directive design, part of the institutional-based explanations) of a directive as probable causes for the rate of non-compliance. Non-compliance was defined by looking at the infringement procedure: the formal letter, the reasoned opinion and the referrals to court. Finally we studied what effect the directive design had on the effect of the state-based explanations on the rate of non-compliance.

Little evidence was found that state-based explanations had an effect on the rate of non-compliance. An effect of the level of corruption and bureaucratic efficiency was found when looking at the reasoned opinions received by a member state. Why did we only find evidence for this for the reasoned opinion? The sending of the formal letter is in some cases not that formal. Sometimes the Commission discusses it informally with a member state who did not comply and the Commission did not register this. The Commission can do this when a directive requires a small change. As for the referral to court, we found evidence for one voluntary explanation which makes us to believe that it is possible that member states may disagree with a directive to such an extent that they refuse to implement it. This implies that trying to explain why a member state has received a referral to court could be done by looking at voluntary explanations. Finally we could argue that very few member states received a referral to court which provided us with too little data to do a proper analyses.

Further we found an effect of the level of complexity and ambiguity of a directive for every form of non-compliance of the infringement procedure. This suggests that most of the non-compliance can be explained by the way the directive is designed by the EU and that a directive which is less ambiguous, more clear, less complicated and better defined should lead to less non-compliance. So when directives indeed become less complicated and ambiguous member states will have less problems complying with the EU directives. It also suggests that non-compliance is because of the member state's willingness or its resources but is due to what

happens at the EU. We found no evidence to support our interaction effects. It appears that the state-based explanations and directive design affect non-compliance independently.

Though satisfied with the results, there is always room for improvement. First of all we used the infringement procedure as an indicator for non-compliance. Many different studies have used the delays have implementation as an indicator for non-compliance, such as Thomson et al. (2009) and Bursens (2002). As of all, just because the Commission has not started the infringement procedure does not mean the member state is complying. It would therefore be viable to look at the delays as well. This also means that a different measurement could be used instead of logistic regressions allowing for more defined predictions. Second we were not entirely satisfied with the indicator for the fiscal resources. In this study we used the GDP as an indicator, but in retrospect the GDP does not tell us that much. For instance it is logical that a bigger country has a higher GDP. This would imply that a bigger country who has a higher GDP would have less non-compliance, should you follow the logic of the theory of the fiscal resources. It would be better to use a form of GDP which would give a more an indication relative to the size of the member state, for example depending on its population. Unfortunately we were unable to find a better indicator at the time. It is suggested for future research to use an indicator which is more relative than the GDP, one that does take the size or number of inhabitants of the member state into consideration. It is possible that with such an indicator an effect of fiscal resources on the rate of non-compliance will be found.

Because we found evidence that the directive design had an effect on non-compliance it is possible more explanations can be found looking at the institution. In the end it is the EU which creates the directive and therefore they are, to an extent, responsible for the compliance by member states. It would be interesting to explore more about the directive design apart from its complexity or ambiguity, such as the topic it addresses. Furthermore it is possible to look at whether new member states are different than older member states when looking at non-compliance. Newer member states may be glad to have finally joined and thus do their best to make the EU proud whereas older member states have come used to the process and simply do as less as possible for as much as possible.

**Literature**

Agresti, A. Finlay, B. (2008). Statistical Methods for the Social Sciences

Bursens, P. (2002). Why Denmark and Belgium Have Different Implementation Records: On Transposition Laggards and Leaders in the EU. S*candinavian Political Studies.* 26:2.

Commission of the European Communities. (2007). Governance Statement of the European Commission

Falkner, G., Hartlapp, M., Treib, O. (2004). Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor*?. West European Politics*,27:3,452 — 473

Franchino, F.(2004). Delegating Powers in the European Community; Epstein and O'Halloran. *Delegating Powers*. 90–112.

Frye, S. (2004). An Examination of EU Infringement Procedures. *GAIN Report.*

Hix, S. (2005). The Political System of the European Union.

Hooghe, L., Marks, G. (2000). European Integration and Multi-level Governance. *Boulder, CO: Rowman&Littlefield*

Kaeding, M. (2006). 'Determinants of Transposition Delay in the European Union', *Journal of Public Policy* 26: 229-253

Mastenbroek, E. (2005). 'EU compliance: Still a black hole?' *Journal of European Public Policy*, 1466-4429, Volume 12, Issue 6, 1103 – 1120

Mbaye, Heather A. D. (2001). 'Why National States Comply with Supranational Law: Explaining Implementation Infringements in the European Union, 1972-1993', *European Union Politics* 2: 259-281

Thomson, R., Torenvlied, R., Arrequi, J. (2007). The Paradox of Compliance: Infringements and Delays in Transposing European Union Directives. *British Journal of Political Science* 37: 685 – 709.

Vissers, G., Zwiers, S. (2009). Non-compliance of EU directives by the EU Member States: Non-compliance revealed.

Europa (2009)
http://europa.eu/institutions/decision-making/index_en.htm

Transparency International (2009)
http://www.transparency.org/policy_research/surveys_indices/cpi/previous_cpi__1

Wikipedia (2009)
http://en.wikipedia.org/wiki/Unitary_state

World Bank (2009)
http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20535285~menuPK:1192694~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html