

LSE Research Online

Tanja A. Börzel and Ulrich Sedelmeier Larger and more law abiding? The impact of enlargement on compliance in the European Union

Article (Accepted version) (Refereed)

Original citation:

Börzel, Tanja A. and Sedelmeier, Ulrich (2017) *Larger and more law abiding? The impact of enlargement on compliance in the European Union*. *Journal of European Public Policy*, 24 (2). pp. 197-215. ISSN 1350-1763

DOI: [10.1080/13501763.2016.1265575](https://doi.org/10.1080/13501763.2016.1265575)

© 2017 Taylor & Francis

This version available at: <http://eprints.lse.ac.uk/68669/>

Available in LSE Research Online: February 2017

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's final accepted version of the journal article. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

Larger and More Law Abiding? The Impact of Enlargement on Compliance in the European Union

JOURNAL OF EUROPEAN PUBLIC POLICY, 2016; <http://dx.doi.org/10.1080/13501763.2016.1265575>

Tanja A. Börzel and Ulrich Sedelmeier

Abstract Although enlargement increases the preference diversity in the EU, this paper shows that enlargement has not led to a deterioration of compliance with EU law. In three of the EU's four enlargement rounds, the new member states comply better with EU law than the old member states. The southern enlargement in the 1980s is the only one that led to a substantial increase in non-compliance. Particularly surprising for the main compliance theories, which focus on state power, adjustment costs, administrative capacities, or legitimacy, is the good performance of the post-communist Central and Eastern European new member states after the eastern enlargement in the 2000s. Our analysis suggests that the use of pre-accession conditionality in the eastern enlargement explains why these new members perform so well - unlike their Southern counterparts who faced equally unfavourable country-level conditions for compliance.

Keywords accession, compliance, conditionality, enlargement, European Union

Introduction

Research on European integration tends to assume that a larger membership does not only weaken the decision-making capacity of the European Union (EU) (Toshkov 2017) but also its legal system through growing non-compliance. Our paper presents the first longitudinal analysis of compliance by the EU's new member states since the first enlargement in 1973. It shows that – enlargement has not led to a deterioration of compliance with EU law. In three of the EU's four enlargement rounds, the

new members comply better with EU law than the old member states. Only the southern enlargement round in the first half of the 1980s led to a substantial increase in non-compliance.

None of the main theories of compliance with international law is able to explain fully the compliance patterns across the four enlargement rounds. Particularly surprising is the good compliance of the post-communist new member states in the eastern enlargement in the mid-2000s. This paper suggests that their good compliance is not simply the result of a temporary 'newness effect', nor of more generous transition periods and (temporary) exemptions, nor of a decoupling of good formal transposition of EU directives into national law from their practical implementation on the ground. Instead, we argue that the use of pre-accession conditionality in the eastern enlargement round explains why these new members perform so well.

In order to establish our argument, the paper proceeds in four steps. First, we set out the contrasting expectations of three main approaches to compliance, which focus on state power and adjustment costs, administrative capacities, and on the perceived legitimacy of the EU, for the four enlargement rounds. Second, we present the empirical evidence of how these enlargement rounds have affected non-compliance. None of the compliance theories can fully account for the differential patterns we find, particularly with regard to the eastern enlargement. The third section of the paper demonstrates that alternative *ad hoc* explanations for the good performance of the eastern enlargement round also do not hold. The fourth section conducts a systematic regression analysis of compliance of all acceding states during their respective first ten years of membership. We show that the use of pre-accession conditionality in the eastern enlargement explains why these new members perform better than their Southern counterparts despite equally unfavourable country-level characteristics, such as low administrative capacities and high adjustment costs. Our findings have key implications for future enlargement(s): since in most prospective new member states domestic conditions for compliance are unfavourable, pre-accession conditionality plays an important role to ensure that compliance does not suffer after accession.

Enforcement, Management and Legitimacy: compliance theories and the impact of enlargement

The literature features three prominent approaches to explain non-compliance with international law (cf. Tallberg 2002; Checkel 2001; Börzel *et al.* 2010). Enforcement approaches focus on governments' deliberate decisions not to comply in order to avoid the costs of compliance. This is precisely the mechanism underpinning the hypothesis that greater preference diversity through enlargement leads to an increase in non-compliance. A key source of preference diversity and related costs of compliance is wealth: richer states with more demanding regulatory standards generally face lower costs in adjusting to EU legislation than poorer states. Enforcement approaches also identify the size of a member state as a key factor that determines its power to resist compliance (Börzel *et al.* 2010): big member states whose votes are more important in EU decision-making can afford to care less about the reputational damage associated with non-compliance.

Most of the countries that have joined the EU are small, although each enlargement round, with the exception of the European Free Trade Association (EFTA) enlargement in 1995, also included at least one larger member state (figure 1 depicts the differences in voting power of member states across the various enlargement rounds). Power-based enforcement approaches would thus expect non-compliance to be particularly problematic in the Northern enlargement of 1973 (that included the United Kingdom (UK)) and the Southern enlargement (with Spain). Conversely, compliance would be less problematic in the Eastern enlargement (although it included Poland, it did so alongside 11 smaller states) and especially for the EFTA enlargement (that only included small states). With regard to differences in compliance costs, a focus on wealth, measured in terms of Gross domestic product (GDP) per capita (see figure 2) would lead us to expect fewer problems especially with regard to the EFTA enlargement, but also the Northern enlargement, and more problems with the southern and eastern enlargements.

[Figure 1 and Figure 2 about here]

Management approaches assume that non-compliance is a question of lacking capacities rather than political willingness. Countries that use their administrative capacities efficiently in the implementation of EU law are better compliers than those with weak and corrupt administrations (Börzel *et al.* 2010; Hille and Knill 2006).¹ Administrative capacities clearly separate the Northern and EFTA enlargement rounds, on the one hand, and the Southern and Eastern enlargement rounds, on the other (see figure 3). The UK and Denmark (and to a lesser extent Ireland) in the Northern enlargement, as well as Austria, Finland, and Sweden in the EFTA enlargement have high administrative capacities. By contrast, the Southern, Central and Eastern European countries which joined in the 1980s and 2000s, respectively, share some features of their political and administrative systems that undermine their capacity to effectively implement and comply with EU law: inefficient administrations ridden by patronage and corruption, legacies of authoritarianism, weakly organized societal interests, and low levels of socio-economic development (Sedelmeier 2008; Börzel 2009; Crawford and Lijphart 1997; Cirtautas and Schimmelfennig 2010). From a management perspective, the Southern and Eastern enlargement rounds should, hence, have resulted in a significant increase of non-compliance whereas the Northern and EFTA enlargement rounds should have had little effect on non-compliance.

For legitimacy approaches, finally, a key determinant of states' decisions about compliance is the extent to which states identify with the EU and consider the EU in general (and specific EU rules) legitimate. At its most general, the perceived legitimacy of EU law can be seen as a function of the duration of membership. Joining the EU transforms candidate states into member states (Sandholtz 1996) that comply with EU law as a habit of obedience once they have internalized EU law. Compliance with EU law is then taken for granted and constitutes a value in itself. Socialization of both elites and publics into EU law takes time, so duration of membership matters. Widening of European integration by accepting new members could, hence, undermine compliance. However, for two of the enlargement rounds, institutional frameworks for the adoption of EU legislation prior to full membership could have alleviated this effect. The partial membership of Austria, Finland, and Sweden

in the Single Market through the European Economic Area, and the pre-accession legislative alignment process of the Central and Eastern European countries might have fostered the internalization of EU law into the domestic legal systems before they joined. Nevertheless, socialization, especially beyond government elites, requires time. From this perspective, we should then generally expect compliance problems at the beginning of membership and improvement over time.

Another strand of legitimacy approaches does not focus on the length of membership, but on prevailing attitudes within a state towards European integration as a key determining factor for compliance. Governments (and publics) that have a strong normative attachment to European integration are more likely to consider compliance with EU law as appropriate behaviour. In this respect, the Northern and the EFTA enlargement rounds again broadly contrast with the Southern and Eastern enlargements (see figure 4). The countries that joined in 1973 and 1995 are generally considered Eurosceptic, showing a low net support for EU membership (with the exception of Ireland, and to some extent Finland); they had initially chosen to remain outside the integration project and eventually joined as a result of economic considerations despite continued reservations against political integration. By contrast, for the Southern and Eastern European countries that joined the EU after their successful transition to democracy, EU membership was not only considered to be materially beneficial, but part of a return to the European community of states with which they share constitutive norms. From this perspective, these two enlargement rounds should have led to less compliance problems than the northern and EFTA enlargements.

Non-compliance and Enlargement: Empirical Evidence

To assess compliance with EU law, we use data on infringement proceedings that the European Commission has been opening against member states for violating EU law. The European Commission records aggregate data of the infringement proceedings in its Annual Reports on Monitoring the Application of Community Law. The Berlin infringement database (Börzel and Knoll 2012) contains the

raw data, obtained from the Commission, of the over 12.000 individual infringement cases in which the Commission issued a Reasoned Opinion to member states between 1978 and 2012. We update these data for the years 2011-2015 with the information contained in the regular updates about the Commission's infringement decisions published online by the Commission's Secretariat General. The number of Reasoned Opinions – the second formal stage of the infringement procedure – is used as a measure for non-compliance. Reasoned Opinions concern the more serious cases of non-compliance as they refer to conflicts which could not be solved through informal negotiations at earlier stages. At the same time, they are not limited to the most politicised cases that the Commission eventually refers to the Court of Justice of the EU.

In general, we should be careful when using infringement data as an indicator of compliance (cf. Falkner *et al.* 2005). First, the infringement data only includes non-compliance cases that the Commission is aware of, and detection is particularly difficult for cases of incorrect application of EU law. However, the infringement data do not only include (late, incomplete, or incorrect) transposition of directives, but also incorrect application of directives, regulation, and treaty articles. Still, especially to detect incorrect application, the Commission depends strongly on complaints sent by EU citizens, businesses, and civil society and private interest organizations. To examine whether cross-country differences in the role of such societal groups could bias the data, we explicitly consider the possibility of a decoupling of formal and practical compliance. Second, infringement cases record the Commission's view of what constitutes a violation of EU law and the Commission has discretion in pursuing suspected non-compliance. Crucially, however, there is no evidence that infringement data is systematically biased towards certain member states (cf. Börzel *et al.* 2010). Certain caveats notwithstanding, infringement cases are thus not only the most systematic and comparable source of information on non-compliance available, but also adequate- especially for cross-national comparisons.

For comparisons over different time periods, additional considerations are necessary. Simple comparisons of the absolute number of Reasoned Opinions across different time periods are misleading. The Commission's practice and procedures to pursue, and informally solve, infringement cases have changed over time, and crucially, the numbers of legal acts that can be potentially infringed has increased more than tenfold between 2010 and 1978. To control for these changes over time, we compare the non-compliance of old and new member states for each enlargement round. Figure 5 (below) depicts the annual average number of Reasoned Opinions by the new member states as a share of the median number of infringements of the (then) old members over a ten-year period after their accession, starting from the second year of membership (to allow for the time it takes for infringement procedures to reach the stage of Reasoned Opinion). Recording the infringements of new members relative to the annual median of the old members not only controls for changes in violative opportunities (the volume of legislation in force) but also changes in the EU's compliance system and the Commission's practice, since they affect old and new members equally at a given point in time.²

Figure 5 about here

Figure 5 reveals that the southern enlargement is the only enlargement round that substantially increased non-compliance in the EU. Greece, Spain and Portugal display a considerably higher number of average infringements than the (then) old member states. By the sixth year of membership, the new members had exceeded the average infringements of the old member states, more than doubling them. Since then average infringements have dropped, but remain clearly above the level of the old members. Greece and Portugal quickly joined Italy and France in the group of compliance laggards, while Spain belongs to the middle group. The southern enlargement, hence, accounts for the peak in the overall infringements we observe in the early 1990s (Börzel 2001).

In the other three enlargement rounds, the newcomers performed consistently better than the old member states. These enlargement rounds are also more homogenous with regard to the variation in the non-compliance rates of individual new members and they also remain fairly stable within a few

years of accession. The non-compliance rates in these enlargement rounds are close, with the Northern enlargement round (data are only available from 1978) performing slightly better than the EFTA and Eastern enlargements. With Denmark, the Northern enlargement also brought one of the EU's consistent compliance leaders into the EU. In the EFTA enlargement, Finland and Sweden quickly joined the group of leading performers.

Finally, the Eastern enlargement has not increased non-compliance either. The 12 new member states that joined in 2004 and 2007 have generally scored better than the average of the EU15. Indeed, a number of studies suggest that there is no particular compliance problem in the East (Sedelmeier 2006; Sedelmeier 2008; Sedelmeier 2012; Toshkov 2008; Dimitrova and Toshkov 2007; Steunenberg and Toshkov 2009; Zhelyazkova *et al.* 2014; Zhelyazkova *et al.* 2017). Moreover, they do not only transpose directives as fast, or even faster, than the old member states but also tend to settle their infringement procedures more swiftly (Dimitrova and Toshkov 2007; Sedelmeier 2008; Toshkov 2007a; Toshkov 2008; Steunenberg and Toshkov 2009).

While most of the new member states outperform nearly all the old member states (Sedelmeier 2008, Sedelmeier 2012), there is variation (see figure 6). Poland and the Czech Republic have been lagging behind the other new member states. While the Czech Republic has made marked progress since 2010, Poland, in contrast, has become a compliance laggard in the enlarged EU. Bulgaria and Romania range in the middle of the eastern enlargement group alongside Estonia, Slovenia, Hungary, Malta and Cyprus. Lithuania, Latvia and Slovakia are consistently the best performers not only among these new members, but in the enlarged EU as a whole.

Qualitative and quantitative case studies of specific policy areas also show that similarly to the old member states, the eastern members differ significantly when it comes to complying with EU law (Toshkov 2007b; Toshkov 2008; Sedelmeier 2009; Schwellnus 2009; Zhelyazkova *et al.* 2017). The variation across the eastern new members is not too surprising, but it should also not be overstated, not least since the performance of many newcomers also fluctuates – albeit generally at a very good

level – over the first ten years of membership. While variation across the new members does not necessarily deny the effect of common socialist legacies on compliance in Central and Eastern Europe, “these legacies do not carry equal weight across the region” (Cirtautas and Schimmelfennig 2010: 428; cf. Seleny 2007).

In sum, despite continuous widening, non-compliance has decreased rather than increased in the EU. None of the main approaches to compliance can fully explain the non-compliance patterns across enlargement groups. For enforcement approaches, the generally positive performance of new members is unexpected, particularly in the case of the Northern enlargement. Due to its size, the UK should have caused substantial compliance problems, rather than demonstrating some of the lowest non-compliance rates. Differences in compliance costs resulting from wealth differentials could explain the compliance problems resulting from the Southern enlargement, but they fail to account for why the even less wealthy post-communist new members performed so well. By the same token, management approaches capture well the poor performance of the southern enlargement round, which is largely due to these countries’ weak administrative capacities. However, similar administrative deficiencies have not led to similar compliance problems in the eastern enlargement. Legitimacy approaches, finally, are contradicted by the positive performance of the broadly Eurosceptic states in the Northern and EFTA enlargements as well as the negative record in the Europhile southern new members. Duration of membership does not seem to make a difference either given this variation among newcomers and the consistently bad performance of three of the founding members.

In view of the difficulties of the main compliance theories to account for the variation across enlargement rounds, we first discuss and reject alternative explanations for the unexpectedly good compliance of the new members. In the subsequent section we conduct a systematic analysis of the compliance of all new member states across the various enlargement rounds during their first ten years after accession in order to get a better understanding of what is specific to the eastern enlargement round that might bolster compliance.

Newness, differentiated integration and decoupling: alternative explanations for the good compliance of new members

We identify three sets of alternative explanations for the good compliance of new members more generally, as well as for the particularly puzzling performance of the eastern new members. These explanations are rather ad hoc, since they are not systematically derived from any specific compliance theory. The first set focuses on the possible temporary nature of new members' good compliance. The second alternative explanation identifies the trade-off between compliance and differentiated integration as crucial; and the third a decoupling between good formal compliance and undetected deficient behavioural compliance in the practical application of EU rules on the ground.

Are early compliance patterns misleading? Periods of grace and honeymoon

Positive early compliance patterns might not be indicative of longer terms trends for two main reasons. First, it has been suggested that the Commission might grant new members a 'period of grace' during which it does not pursue infringement cases as quickly as in the other member states in order to ease them into the EU's compliance system. In particular the southern new members are said to have initially benefitted from a more lenient treatment (Börzel 2000), which would explain why their compliance became inferior to that of the old member states only by the fourth year after accession. A second reason for the initial good compliance patterns is that newcomers might feel under particular reputational pressures to establish a track record of good performance. They would then make extraordinary efforts during their first years of membership, but this effect should wear off once they do not feel any longer under particular observation. If such periods of grace and 'honeymoon periods' indeed exist, they might cast doubts on whether the good record of new member states can be maintained after more than a decade after their accession.

In order to test the validity of this alternative explanation, we use descriptive statistics to compare infringements of new members relative to old members over time. Figure 7 shows the average number of Reasoned Opinions for the new members of each enlargement round relative to the median number for the old member states for each year after accession. While we do not yet have much data on the eastern new members' compliance after a decade of membership and the most recent year seems to indicate some deterioration in compliance,³ descriptive statistics of the longer-term records of the new members in earlier enlargement rounds suggest that early compliance patterns are indeed indicative of longer-term trends. Compliance during the very first few years of membership seems to have benefitted from a period of grace or a honeymoon in the case of the southern, and even the EFTA enlargement. But the compliance patterns during the first ten years remain otherwise fairly stable afterwards. While there is some fluctuation over time for the different enlargement rounds, there is certainly no general deterioration of compliance.

Figure 7 about here

Easing compliance through differentiated integration?

Differentiated integration may explain why non-compliance has not increased more after the various enlargement rounds. Exemptions from the obligations of EU law for newcomers can ease their compliance problems. While they are only temporary, especially in the case of eastern enlargement, some of these exemptions still applied 12 years after accession.

The use of differentiated integration in the EU's primary and secondary law has increased over the years, whereby opt-outs from EU treaty changes only started to take off after the Maastricht Treaty (Schimmelfennig and Winzen 2017). The growing opportunity for member states to avoid legal obligations that would be costly, resource intensive or politically controversial, could have helped to bring down non-compliance. Yet, the member state have never made use of more than 12 per cent of the opt-out opportunities granted by the EU treaties in any given year (Schimmelfennig and Winzen 2014, 2017). Moreover, the relative importance of differentiated integration for the EU's secondary

law has declined. Rules that exempt member states from their obligations to comply with EU legal acts (almost exclusively directives) increased over the years and peaked in the early 2000s. Their share in the legislation in force, however, has been decreasing over time. There are four peaks in the early 1970s, early 1990s, the late 1990s, and the mid-2000s, which are the result of temporary exemptions granted to new member states that joined in these periods – the enlargement rounds of 1973, 1995, 2004/2007, as well as German unification in 1990, but not in the case of the southern enlargement in the 1980s (Schimmelfennig and Winzen 2017). Could these differences in the use of differentiated integration explain why only the Southern enlargement led to an increase in non-compliance?

Yet most of these opt-outs are temporary and are phased out 10-15 years after accession. Only the UK, Denmark, and Ireland have continued to obtain opt-outs. For the eastern new members, it may be still too early to tell but the number of exemptions granted to them is only slightly above the old member states (except the UK, Denmark, and Ireland). Exemptions after the eastern enlargement resulted in a considerably smaller increase in the share of differentiated rules than in 1973 and 1995. They also seemed to have diminished rather quickly, partly because many entailed discrimination that old member states imposed on the new members in the accession negotiations to mitigate the costs of enlargement, related e.g. to the opening up of labour markets, the redistribution of EU funds, or the abolishing of border controls (Schimmelfennig and Winzen 2014, 2017). Of course such discriminatory differentiation would also not have a positive impact on compliance as opposed to temporary exemptions from obligations with regard to applying EU law.

Decoupling of formal and behavioural compliance

Another alternative interpretation of the good compliance of the new members has been particularly prominent in the case of eastern enlargement. Some case study research suggests that the infringement data does not capture serious violations of EU rules by the post-communist new members in their practical application and domestic enforcement (Falkner et al. 2008; Batory 2012; Sedelmeier 2012; Cirtautas and Schimmelfennig 2010; Avdeyeva 2010; Dimitrova 2010; Trauner 2009;

Slapin 2015). These findings may point to a decoupling between good legal, or formal, compliance with regard to the transposition of EU legislation into national law, on the one hand, and behavioural compliance – poor practical application on the ground – on the other. In the ‘world of dead letters’ (Falkner *et al.* 2008), EU law gets swiftly and correctly incorporated into national law but is not put into action. Such decoupling was already observed during the pre-accession phase of the eastern enlargement, where ‘many rules have been only formally transposed into national legislation but are not fully or reliably implemented’ (Schimmelfennig and Sedelmeier 2005: 226; see also Hughes *et al.* 2004; Jacoby 2004; Sissenich 2005; Goetz 2005).

Still, the compliance behaviour of the new member states cannot be simply reduced to their being transposition leaders and application laggards. To start with, infringement proceedings capture both transposition and practical application. Also, the formal compliance records of the eastern new members vary too much for decoupling to be a uniform phenomenon. More substantively, case studies have so far failed to establish ‘dead letters’ as a pervasive problem for all eastern new members. Evidence for this claim relies primarily on the study of social policy directives in the new members by Falkner *et al.* (2008). Yet, the social policy directives examined, and particularly gender equality at the workplace, are generally highly prone to decoupling in old and new members alike. To some extent, decoupling might thus be characteristic of issue-area specific difficulties of enforcement, even if the relevant domestic enforcement bodies for workplace regulation are particularly weak in post-communist new members (Falkner 2010). Little evidence of a general ‘eastern world of dead letters’ is found by other case studies. Toshkov’s detailed analyses of three policy areas – electronic communications, consumer protection and animal welfare – suggest that shortcomings with practical implementation and application of EU law in the eastern member states are not ‘of a greater scale and different nature in Central and Eastern Europe (CEE), and there is no evidence that the EU rules have been mindlessly copied and forgotten’ (Toshkov 2012, 108). The comparative analysis by Zhelyazkova *et al.* (2017) that draws on in-depth conformity studies of practical application of 24 directives across four policy areas (Internal Market, environment, social policy, and Justice and Home Affairs) suggests

that decoupling is not more prominent in the new members than in the old members, with the exception of social policy.

Of course such counter-evidence to decoupling can also be criticised for relying on evaluation reports (the quality of which can also be contested, see Mastebroek *et al.* 2015) and/or on a still limited number of policy areas. Clearly, there is evidence for some serious compliance problems regarding the practical application of EU law in the post-communist member states that merit further investigation. While it might therefore be too early to dismiss decoupling completely as a possible explanation for the positive infringement record of the eastern new members, it appears equally questionable that decoupling is a pervasive phenomenon that explains away their positive infringement records.

Analysis of compliance across new members and enlargement rounds: does pre-accession conditionality matter?

The discussion of *ad hoc* alternative explanations shows that these cannot overcome the difficulties that general compliance theories have in explaining the unexpectedly good compliance of the new members, and the post-communist new members in particular, either. As a next step, we seek to identify whether there is something specific to the eastern enlargement round that affects compliance favourably. We focus on the use of pre-accession conditionality as a key element that differentiates it from earlier rounds, and conditionality seems an obvious candidate for such a difference.

For this analysis we disaggregate the enlargement rounds, and focus on compliance in individual new members. Figure 8 shows that post-accession compliance varies indeed across the states involved in each of the four enlargement rounds. It is possible that the main approaches to compliance might struggle to explain compliance records for entire enlargement rounds that we focused on earlier, but are better able to account for individual new members' performance.

Figure 8 about here

We conduct different regression analyses of the four explanatory factors identified by the main compliance approaches, using the following indicators: Shapley Shubik Index (Shapley and Shubik 1954; Rodden 2002) for power, GDP/capita for adjustment costs, the bureaucratic quality indicator developed by the *International Country Risk Guide* for administrative capacities, and net support for EU membership (Eurobarometer) for legitimacy. In order to test whether the experience of pre-accession conditionality can explain the surprisingly good performance of the eastern new members, we include a dummy variable for the 14 countries that were subjected to conditionality.⁴ The units of analysis are country/years for each new member during their first ten years of membership (excluding the first year). We run stepwise regressions to compare the effect of collinear variables, testing, as a robustness check, three models that operationalize the dependent variable – non-compliance – in different ways to control for time-varying factors that affect all member states equally. In addition, due to the high correlation between the indicators for wealth (GDP/capita) and administrative capacity, we run each model first excluding administrative capacity and then excluding wealth.

The dependent variable in our first model is a new member state's annual number of Reasoned Opinions as a share of the median for the old member states. It is tested by Ordinary Least Squares (OLS) with robust standard errors. In this model, although the accession conditionality dummy has the expected sign, it does not reach significance. In fact, barely any of the variables do: only support for EU membership (legitimacy) does, but its significance is low and –contrary to the expectation of the legitimacy hypothesis– it contributes to non-compliance.

The other two models provide support for the importance of pre-accession conditionality. In the second model, the dependent variable is the annual Reasoned Opinions of the new member states, expressed as the annual mean of all member states. It is tested by OLS with robust standard errors. In this model, the dummy for accession conditionality reaches significance when including GDP/capita (although not very strongly so), but not when including instead bureaucratic quality. In the former

case, GDP/capita also reaches significance, while in the latter case, both power and bureaucratic quality do.

The third model uses as its dependent variable the absolute number of infringements. It uses a negative binomial regression with robust standard errors. The dummy for pre-accession conditionality is significant both when using GDP/capita (alongside support for EU membership – again with a positive sign) and especially when using bureaucratic quality (again alongside support for the EU, with a positive sign) (Table 1).

Table 1 about here

In sum, the models do provide preliminary evidence that pre-accession conditionality has a positive impact on compliance after accession, and it helps explain the unexpectedly good performance of the new member states despite otherwise largely unfavourable conditions suggested by the main theories of compliance. While the analysis suggests that conditionality matters, it does not tell us what it is that makes conditionality have a lasting impact on compliance after accession.

It is beyond the scope of this paper to provide a systematic analysis of the causal mechanisms through which conditionality affects post-accession compliance. Existing research points to at least two main ways in which the experience of conditionality could continue to affect compliance positively (Sedelmeier 2008: 820-22; Sedelmeier 2016). First, the creation of highly specialised administrative and legislative capacities during the pre-accession period to transpose large amounts of EU law in a short time may compensate for the relatively low general administrative capacities of the post-communist countries. Second, pre-accession conditionality may also explain why government attitudes towards European integration mattered in the new members after the eastern enlargement although they do not have much of either a positive or negative effect on non-compliance in other member states. The experience of regular monitoring and assessments of progress with alignment during the pre-accession period has created for decision-makers in the post-communist countries a clear link between compliance and being a deserving and acceptable member state. Europhile

governments in these countries are therefore more inclined to endeavour to comply well, while in the old member states, they do not perceive such a link.

Are these largely positive findings about post-accession compliance, and the role of pre-accession conditionality in sustaining it, contradicted by evidence of democratic backsliding and non-compliance with the liberal democratic principles contained in Article 2 Treaty on European Union (TEU) in Hungary or Poland? The contrast between these two issue areas relates partly to differences in EU leverage (see also Börzel and Schimmelfennig 2017). Illiberal governments can exploit the difficulties of mobilising the sanctions contained in Article 7 TEU, while otherwise complying with the *acquis* to continue enjoying the benefits of EU membership. To the extent that pre-accession conditionality helped to build capacities for post-accession compliance with the *acquis*, compliance will continue to benefit even if illiberal governments do not consider it important for their country's image as good community members.

Conclusions

This paper has shown that concerns that enlargement inevitably weakens the EU's legal system through increasing non-compliance by the new member states are unfounded. The net effect of the EU's enlargement rounds has instead been to improve compliance in the enlarged EU. The Southern enlargement round has been the only enlargement in which the new members have performed worse than the older member states. The positive record of new member states in general, and of the compliance patterns across the various enlargement rounds is difficult to explain for the main compliance theories that focus respectively on state power and adjustment costs, administrative capacity, and the EU's perceived legitimacy. Particularly puzzling is the positive record of the eastern enlargement round that contrasts with the Southern enlargement where the conditions were broadly similar. In order to test whether the experience of pre-accession conditionality, which was specific to the eastern enlargement, can explain the positive record of these new members, we conducted

regression analyses of all new member states during their first ten years of membership. These preliminary results suggest that conditionality indeed has a positive impact on compliance after accession is achieved.

Although we could not conduct a systematic analysis of what aspects of conditionality have such a more durable impact, our findings and previous research suggest some lesson for future enlargements. Concerns about compliance after accession should not be an impediment to accepting new members. However, to avoid a negative impact on compliance, pre-accession conditionality has an important role to play and needs to be taken very seriously. Rather than a newcomer bonus or differentiated integration, the creation of highly specialised administrative and legislative capacities during the pre-accession period may compensate for the otherwise limited administrative capacities. The pre-accession experience of regular monitoring of compliance has created for decision-makers in the post-communist countries a clear link between compliance and being a deserving and acceptable member state, which makes Europhile governments in these countries more inclined to endeavour to comply well. The importance of conditionality for post-accession compliance is particularly salient with regard to current candidate countries in South-eastern Europe, where key conditions for compliance – such as administrative capacities and adjustment costs – are generally unfavourable.

Biographical notes: Tanja A. Börzel is Professor for European Integration at the Freie Universität Berlin. Ulrich Sedelmeier is Associate Professor (Reader) in International Relations at the London School of Economics and Political Science.

Addresses for correspondence: Tanja A. Börzel, Otto-Suhr-Institute of Political Science, Freie Universität Berlin, Ihnestr. 22, D-14195 Berlin, email: tanja.boerzel@fu-berlin.de. Ulrich Sedelmeier, London School of Economics and Political Science, Houghton Street, London WC2A 2AE, UK, email: u.sedelmeier@lse.ac.uk

ACKNOWLEDGEMENTS

Research for this paper has been supported by the FP7 program of the EU (project 'Maximizing the integration capacity of the European Union: Lessons and prospects for enlargement and beyond MAXCAP'). The authors would like to thank Antoaneta Dimitrova, Heather Grabbe, Julia Langbein, Frank Schimmelfennig, Bernard Steunenbergh, Asya Zhelyazkova and three anonymous reviewers for valuable comments on previous versions of this paper. Special thanks go to Moritz Knoll for his assistance with the statistical analysis.

NOTES

¹ Another factor that weakens the capacity of states to comply with their international commitments are domestic veto players (Putnam 1988; Haverland 2000; Tallberg 2002). Yet, since the findings are at best inconclusive (Mbaye 2001; Toshkov 2010; Börzel *et al.* 2010) and depend heavily on measurement, we do not include it in our analysis.

² We calculate the (average) annual infringements of new members relative to the median (rather than the mean) of the old members, since there are extreme outliers among the old member states (especially Italy, and for later rounds, Greece). The median appears therefore a better indicator of non-compliance of old members than the mean.

³ Absolute numbers of infringement cases (which need to be used with caution, since, as discussed above, they do not control for factors that change over time) suggest that their relative deterioration is mainly the effect of a general improvement in the other member states.

⁴ Of course the regression results as such would not be able to tell us whether it is conditionality or something else that is specific to this round, and we therefore discuss below possible ways in which conditionality could have such a positive effect on compliance.

REFERENCES

- Avdeyeva, O.A. (2010) 'States' Compliance with International Requirements: Gender Equality in EU Enlargement Countries', *Political Research Quarterly* 63(1): 203-17.
- Batory, A. (2012) 'Why Do Anti-corruption Laws Fail in Central Eastern Europe? A Target Compliance Perspective', *Regulation and Governance* 6(1): 66-82.
- Börzel, T.A. (2000) 'Why there is no Southern Problem. On Environmental Leader and Laggards in the EU', *Journal of European Public Policy* 7(1): 141-62.
- Börzel, T.A. (2001) 'Non-Compliance in the European Union. Pathology or Statistical Artefact?', *Journal of European Public Policy* 8(5): 803-24.
- Börzel, T.A. (2009) 'New Modes of Governance and Accession. The Paradox of Double Weakness', in T.A. Börzel (ed.), *Coping with Accession to the European Union. New Modes of Environmental Governance*, Houndmills: Palgrave Macmillan, pp. 7-31.
- Börzel, T.A., Hofmann, T., Panke, D. and Sprungk, C. (2010) 'Obstinate and Inefficient. Why Member States Do Not Comply With European Law', *Comparative Political Studies* 43(11): 1363-90.
- Börzel, T.A. and Knoll, M. (2012) 'Quantifying Non-Compliance in the EU. A Database on EU-Infringement Proceedings', *Berlin Working Paper on European Integration No. 15*, Freie Universität Berlin, Berlin Center for European Studies.
- Börzel, T.A. and Schimmelfennig, F. (2017) 'Coming Together or Driving Apart? The EU's Political Integration Capacity in Eastern Europe', *Journal of European Public Policy* (forthcoming).
- Checkel, J.T. (2001) 'Why Comply? Social Learning and European Identity Change', *International Organization* 55(3): 553-88.

- Cirtautas, A.M. and Schimmelfennig, F. (2010) 'Europeanisation Before and After Accession: Conditionality, Legacies and Compliance', *Europe Asia Studies* 62(3): 421-41.
- Crawford, B. and Lijphart, A. (1997) 'Explaining Political and Economic Change in Post-Communist Eastern Europe. Old Legacies, New Institutions, Hegemonic Norms, and International Pressures', *Comparative Political Studies* 28(2): 171-99.
- Dimitrova, A.L. (2010) 'The New Member States in the EU in the Aftermath of Accession. Empty Shells?', *Journal of European Public Policy* 17(1): 137-48.
- Dimitrova, A.L. and Toshkov, D. (2007) 'The Dynamics of Domestic Co-ordination of EU Policy in the New and Candidate Member-States', *West European Politics* 30(5): 961-86.
- Falkner, G. (2010) 'Institutional Performance and Compliance with EU Law: Czech Republic, Hungary, Slovakia and Slovenia', *Journal of Public Policy*, 30(1): 101-16.
- Falkner, G., Treib, O., Hartlapp, M. and Leiber, S. (2005) *Complying with Europe. EU Harmonization and Soft Law in the Member States*, Cambridge: Cambridge University Press.
- Falkner, G., Treib, O. and Holzleitner, E. (2008) *Compliance in the European Union. Living Rights or Dead Letters?*, Aldershot: Ashgate.
- Goetz, K.H. (2005) 'The New Member States and the EU: Responding to Europe', in S. Bulmer and C. Lequesne (eds), *The Member States of the European Union*, Oxford: Oxford University Press, pp. 254-80.
- Haverland, M. (2000) 'National Adaptation to European Integration: The Importance of Institutional Veto Points', *Journal of Public Policy* 20(1): 83-103.
- Hille, P. and Knill, C. (2006) 'It's the Bureaucracy, Stupid'. The Implementation of the *Acquis Communautaire* in EU Candidate Countries, 1999-2003', *European Union Politics* 7(4): 531-52.

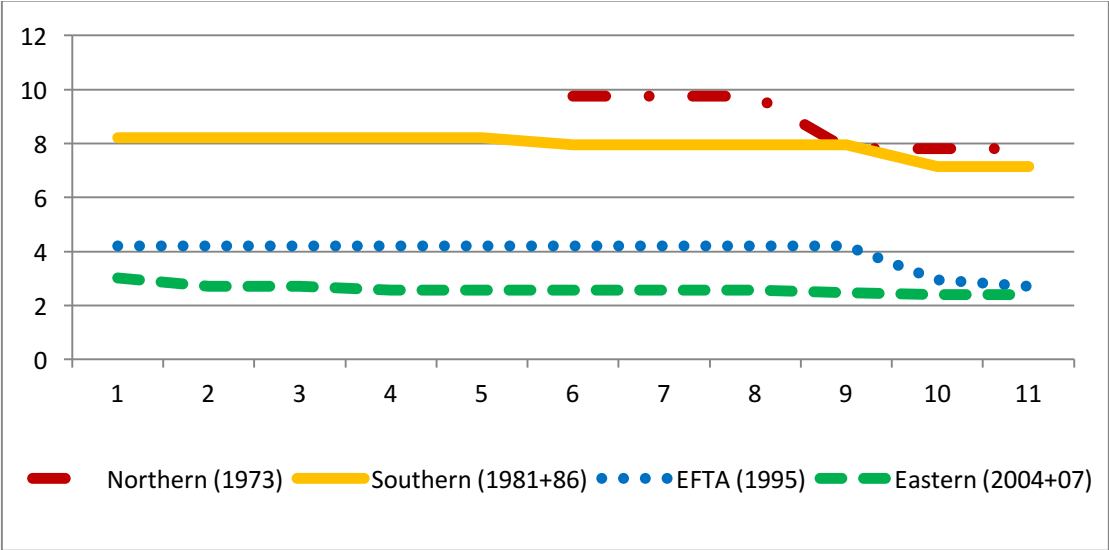
- Hughes, J., Sasse, G. and Gordon, C. (2004) *Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe. The Myth of Conditionality*, Houndmills: Palgrave Macmillan.
- Jacoby, W. (2004) *The Enlargement of the European Union and NATO. Ordering from the Menu in Central Europe*, Cambridge: Cambridge University Press.
- Mastenbroek, E., van Voorst, S. and Meuwese, A. (2015) 'Closing the Regulatory Cycle? A Meta Evaluation of Ex-post Legislative Evaluations by the European Commission', *Journal of European Public Policy* 23(9): 1329– 48.
- Mbaye, H.A.D. (2001) 'Why National States Comply with Supranational Law. Explaining Impementation Infringements in the European Union 1972-1993', *European Union Politics* 2(3): 259-81.
- Putnam, R.D. (1988) 'Diplomacy and Domestic Politics: The Logic of Two-Level Games', *International Organization* 42(3): 427-60.
- Rodden, J. (2002) 'Strength in Numbers? Representation and Redistribution in the European Union', *European Union Politics* 3(2): 151-75.
- Sandholtz, W. (1996) 'Membership Matters: Limits of the Functional Approach to European Institutions', *Journal of Common Market Studies* 34(3): 403-29.
- Schimmelfennig, F. and Sedelmeier, U. (2005) 'Conclusion. The Impact of the EU on the Accession Countries', in F. Schimmelfennig and U. Sedelmeier (eds), *The Europeanization of Central and Eastern Europe*, Ithaca: Cornell University Press, pp. 210-28.
- Schimmelfennig, F. and Winzen, T. (2014) 'Instrumental and Constitutional Differentiation in the European Union', *Journal of Common Market Studies* 52(2): 354-70.

- Schimmelfennig, F. and Winzen, T. (2017) 'Eastern Enlargement and Differentiated Integration: Towards Normalization', *Journal of European Public Policy* (forthcoming).
- Schwellnus, G. (2009) 'It Ain't Over When it's Over: The Adoption and Sustainability of Minority Protection Rules in New EU Member States', *European Integration Online Papers* 13(Art. 24): <http://eiop.or.at/eiop/texte/2009-024a.htm>.
- Sedelmeier, U. (2006) 'Pre-accession Conditionality and Post-accession Compliance in the New Member States: A Research Note', in W. Sadurski, J. Ziller and K. Zurek (eds), *Après Enlargement: Legal and Political Responses in Central and Eastern Europe*, Florence: European University Institute, pp. 145-60.
- Sedelmeier, U. (2008) 'After Conditionality: Post-accession Compliance with EU Law in East Central Europe', *Journal of European Public Policy* 15(6): 806-25.
- Sedelmeier, U. (2009) 'Post-accession Compliance with EU Gender Equality Legislation in Post-communist New Member States', *European Integration Online Papers* 13(Art. 23): <http://eiop.or.at/eiop/texte/2009-023a.htm>.
- Sedelmeier, U. (2012) 'Is Europeanisation Through Conditionality Sustainable? Lock-In of Institutional Change After EU Accession', *West European Politics* 35(1): 20-38.
- Sedelmeier, U. (2016) "Compliance after Conditionality: Why Are the European Union's New Member States So Good?", *MAXCAP Working Paper No. 22, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond"*, Berlin: Freie Universität Berlin.
- Seleny, A. (2007) 'Communism's Many Legacies in East-Central Europe', *Journal of Democracy* 18(3): 156-70.
- Shapley, L.S. and Shubik, M. (1954) 'A Method for Evaluating the Distribution of Power in a Committee System.', *American Political Science Review* 48(3): 787-92.

- Sissenich, B. (2005) 'The Transfer of EU Social Policy Transfer of EU Social Policy to Poland and Hungary', in F. Schimmelfennig and U. Sedelmeier (eds), *The Europeanization of Central and Eastern Europe*, Ithaca: Cornell University Press, pp. 156-77.
- Slapin, J.B. (2015) 'How European Union Membership Can Undermine the Rule of Law in Emerging Democracies', *West European Politics* 38(3): 627-48.
- Steunenberg, B. and Toshkov, D. (2009) 'Comparing Transposition in 27 Member States of the EU: The Impact of Discretion and Legal Fit', *Journal of European Public Policy* 16(7): 951-70.
- Tallberg, J. (2002) 'Paths to Compliance. Enforcement, Management, and the European Union', *International Organization* 56(3): 609-43.
- Toshkov, D. (2007a) 'In Search of the Worlds of Compliance: Culture and Transposition Performance in the European Union', *Journal of European Public Policy* 14(6): 933-54.
- Toshkov, D. (2007b) 'Transposition of EU Social Policy in the New Member States', *Journal of European Social Policy* 17(4): 335-48.
- Toshkov, D. (2008) 'Embracing European Law: Compliance with EU Directives in Central and Eastern Europe', *European Union Politics* 9(3): 379-402.
- Toshkov, D. (2010) 'Taking Stock: A review of Quantitative Studies of Transposition and Implementation of EU Law', *eif Working Paper 01/2010*.
- Toshkov, D. (2012) 'Compliance with EU Law in Central and Eastern Europe', *L'Europe en Formation*(2): 91-109.
- Toshkov, D. (2017) 'The Impact of the Eastern Enlargement on the Decision-Making Capacity of the European Union', *Journal of European Public Policy* (forthcoming).

- Trauner, F. (2009) 'Post-accession Compliance with EU Law in Bulgaria and Romania: A Comparative Perspective', *European Integration Online Papers* 13(Art. 21): http://eiop.or.at/eiop/index.php/eiop/article/view/2009_021a/135.
- Zhelyazkova, A., Börzel, T.A., Schimmelfennig, F. and Sedelmeier, U. (2014) 'Beyond Uniform Integration? Rearchiving the Effects of Enlargement on the EU's Legal System', *MAXCAP Deliverable 2.2* Berlin, Freie Universität, November 2014.
- Zhelyazkova, A., Kaya, C. and Schrama, R. (2017) 'Notified and Substantive Compliance with EU Law in Enlarged Europe: Evidence from Four Policy Areas', *Journal of European Public Policy* (forthcoming).

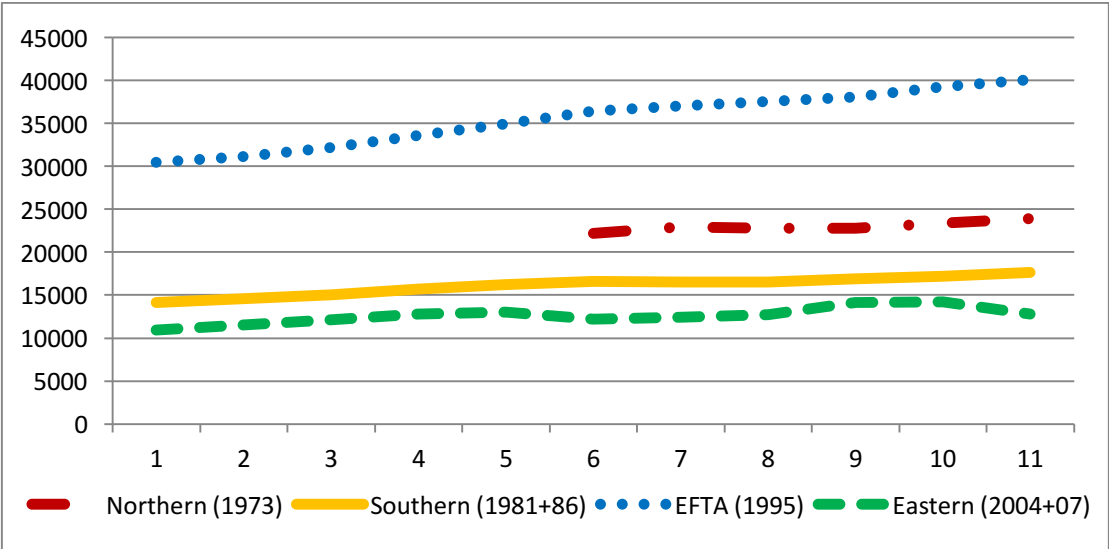
Figure 1: Average Council Voting Power (SSI) of new members across enlargement rounds during their first ten years of membership



Note: Since the infringement data are only available from 1978, we omit the first 5 years of the Northern enlargement from Figures 1-4.

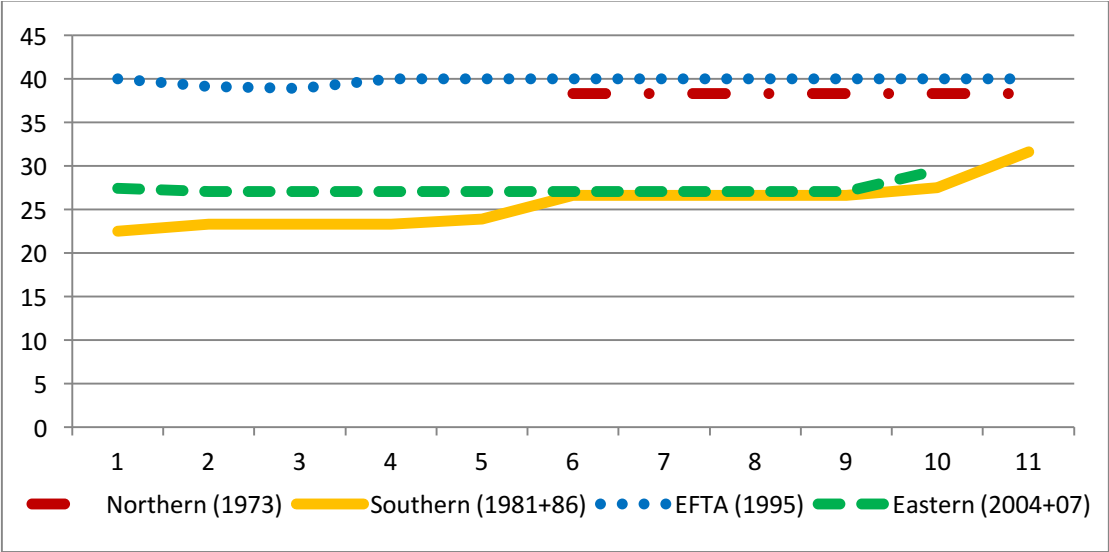
Voting power is measured by the *Shapley Shubik Index* (SSI) which captures the proportion of times when a member state is pivotal (and can, thus, turn a losing into a winning coalition) under qualified majority voting in the Council of Ministers (Shapley and Shubik 1954; Rodden 2002).

Figure 2: Average GDP/capita of new members across enlargement rounds during their first 10 years of membership



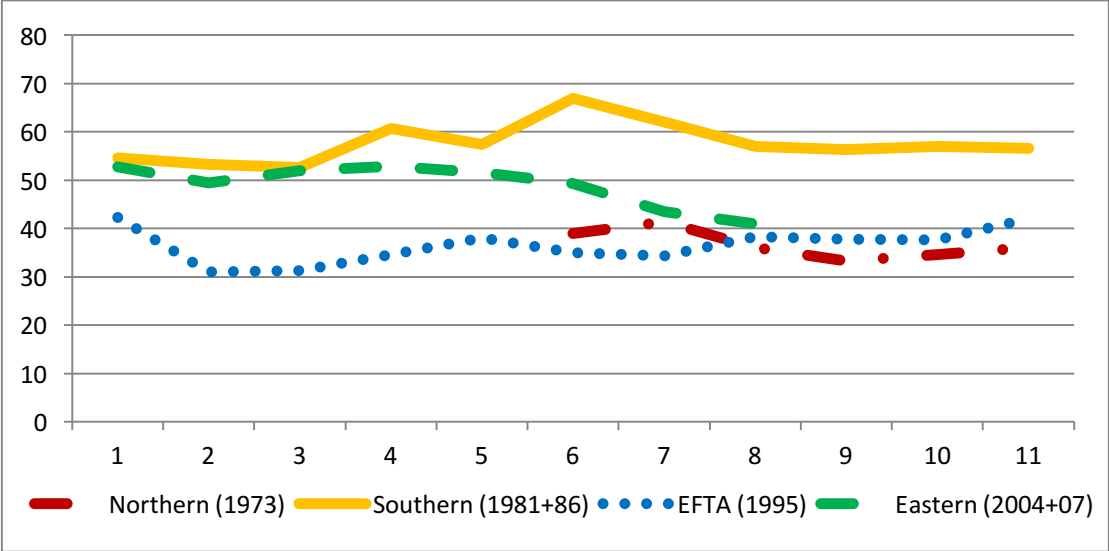
Note: Calculated from The World Bank, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>

Figure 3: Bureaucratic quality (ICRG) of new members across enlargement rounds during the first 10 years of membership



We use the bureaucratic quality indicator developed by the *International Country Risk Guide* (ICRG). It captures the ability and expertise of states to govern without drastic changes in policy or interruptions in government services, the extent to which their bureaucracy is autonomous from political pressure and has an established mechanism for recruitment and training, and also evaluates policy formulation and day-to-day administrative functions.

Figure 4: Net support for EU membership (Eurobarometer) in new members across enlargement rounds during the first ten years of membership



Net support for EU membership is measured by the percentage of respondents in Eurobarometer surveys who consider membership in the EU ‘a good thing’ minus the percentage of those who consider it ‘a bad thing’. Unfortunately, Eurobarometer dropped the question in 2011, so we are missing values for Eastern Enlargement since year 9 (2012) and for Romania and Bulgaria since year 6.

Figure 5: Average Reasoned Opinions per enlargement group compared to old member states (median) during the first 11 years of membership

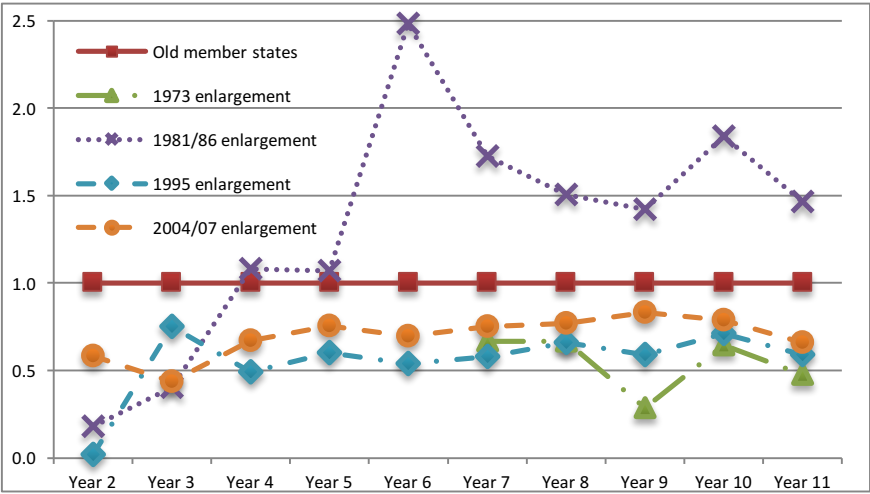
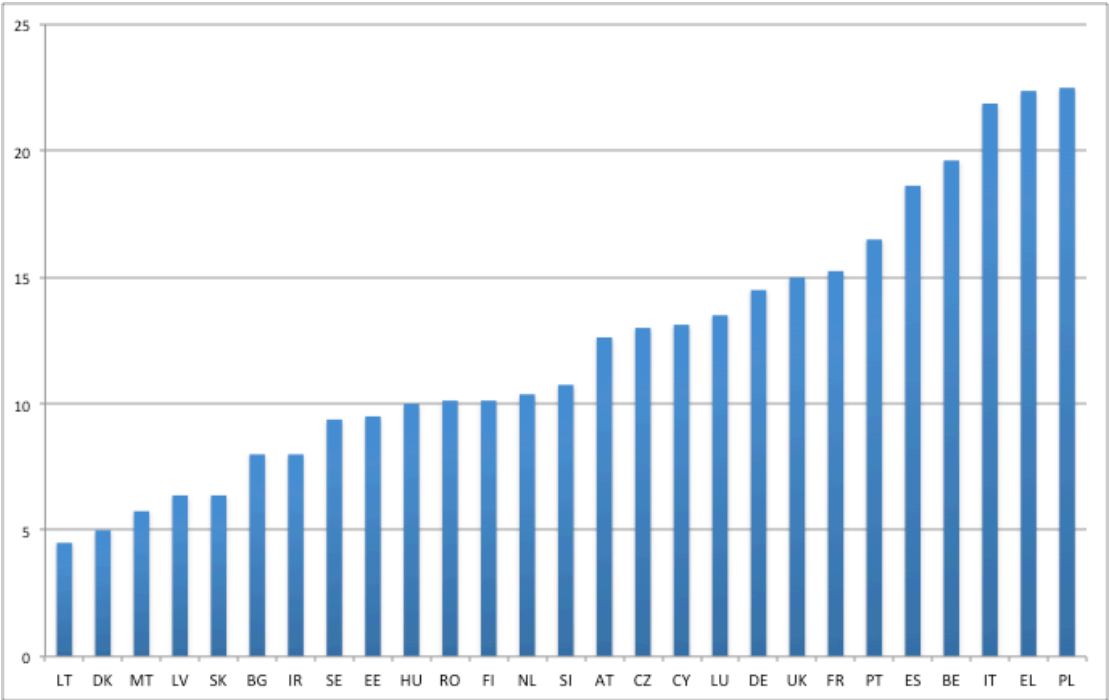


Figure 6: Average annual number of Reasoned Opinions by Member State (2008-2015)



We chose the period of 2008-2015 since it covers all EU member states (except for Croatia that joined in July 2013). The data start in 2008 rather than 2007 (the accession year of Romania and Bulgaria), since the lead-time to process infringement cases could have biased the data in their favour)

Figure 7: Compliance (Reasoned Opinions) of new member states relative to the old member states

