

National Research University Higher School of Economics

As a manuscript

Aleksei B. Sorbale

**The effects of state autonomy and state capacity of the European union  
member states on their (non-)compliance with the EU directives**

SUMMARY OF THE PhD DISSERTATION

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Anna A. Dekalchuk

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## Statement of research problem

The phenomenon of compliance in the systems of multilevel governance: international organizations<sup>1</sup>, federal entities<sup>2</sup> and interstate alliances<sup>3</sup>, is observed through the prism of the principal-agent problem. The lack of compliance or limited compliance on the part of ‘agents’ with respect to the rules of the game and commitments established by the ‘principals’ is often explained by the asymmetry of information between the upper and lower levels of multilevel systems<sup>4</sup>, voluntarist strategies of agents (the example of the UN<sup>5</sup> is noteworthy) and the vagueness of instructions from the principal itself.<sup>6</sup> The European Union, as a multi-level system that faces related governance challenges, can be seen as a unique case in this row. As M. Pollack<sup>7</sup> points, the EU architecture defines the “situational roles of principals and agents” for the national level of political decision-making (EU member states) and supranational institutions. That is, in certain contexts of political interaction, member states act as agents, which are forced to follow the rules of the game that are established by the EU institutions, while other contexts give the EU states the role of principals voting and bargaining on the Union’s directives.

Taking the supranational institutions as a collective principal, offers a

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<sup>1</sup> George W. Downs and Michael A. Jones, ‘Reputation, Compliance, and International Law’, *The Journal of Legal Studies* 31, no. S1 (1 January 2002): S95–114, <https://doi.org/10.1086/340405>; Jonas Tallberg, ‘Orchestrating Enforcement: International Organizations Mobilizing Compliance Constituencies’, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 2013), <https://doi.org/10.2139/ssrn.2106593>.

<sup>2</sup> Edward William Barnett, ‘PROBLEMS OF COMPLIANCE—CONFLICTS IN STATE AND FEDERAL ANTITRUST ENFORCEMENT’, *Section of Antitrust Law* 29 (1965): 285–300; Camille K. Gourdet et al., ‘Carrots and Sticks: Compliance Provisions in State Competitive Food Laws—Examples for State and Local Implementation of the Updated USDA Standards’, *Journal of School Health* 84, no. 7 (2014): 466–71, <https://doi.org/10.1111/josh.12168>.

<sup>3</sup> Sara McLaughlin Mitchell and Paul R. Hensel, ‘International Institutions and Compliance with Agreements’, *American Journal of Political Science* 51, no. 4 (2007): 721–37, <https://doi.org/10.1111/j.1540-5907.2007.00277.x>; Vanessa A. Lefler, ‘Strategic Forum Selection and Compliance in Interstate Dispute Resolution’, *Conflict Management and Peace Science* 32, no. 1 (1 February 2015): 76–98, <https://doi.org/10.1177/0738894214544618>.

<sup>4</sup> John Brehm and Scott Gates, ‘When Supervision Fails to Induce Compliance’, *Journal of Theoretical Politics* 6, no. 3 (1 July 1994): 323–43, <https://doi.org/10.1177/0951692894006003004>; Stéphane Paquin, ‘Federalism and Compliance with International Agreements: Belgium and Canada Compared’, *The Hague Journal of Diplomacy* 5, no. 1–2 (1 January 2010): 173–97, <https://doi.org/10.1163/1871191x-05010108>.

<sup>5</sup> Yf Reykers and Niels Smeets, ‘Losing Control: A Principal-Agent Analysis of Russia in the United Nations Security Council’s Decision-Making towards the Libya Crisis’, *East European Politics* 31, no. 4 (2 October 2015): 369–87, <https://doi.org/10.1080/21599165.2015.1070729>.

<sup>6</sup> Brehm and Gates, ‘When Supervision Fails to Induce Compliance’; Sarah E. Anderson et al., ‘Non-Governmental Monitoring of Local Governments Increases Compliance with Central Mandates: A National-Scale Field Experiment in China’, *American Journal of Political Science* 63, no. 3 (2019): 626–43, <https://doi.org/10.1111/ajps.12428>.

<sup>7</sup> Mark A. Pollack, ‘Delegation, Agency, and Agenda Setting in the European Community’, *International Organization* 51, no. 1 (1997): 4, <https://doi.org/10.1162/002081897550311>.

perspective where the main goal of the principal is to force EU member countries to transpose, implement and apply<sup>8</sup> the parts of *acquis communautaire*.<sup>9</sup> The desire of the EU institutions to force all member countries to comply with the EU directives is determined by two reasons. The first reason is that the unified normative space is directly related to the idea of creating a functioning supranational EU governance.<sup>10</sup> The second reason is the commitment to the ideological position “one size fits all”, which implies not only normative, but also political, economic and cultural unification of the EU member states.<sup>11</sup> It is clear though that different degree of compliance of the member countries becomes an obstacle to the implementation of the “united Europe”<sup>12</sup> project.

Since the mid-1990s, researchers track the growing differentiation in the pool of the EU member states in terms of their compliance with the European Union directives. Over the past 25 years, countries such as Estonia, Lithuania and Slovenia have been incorporating parts of the EU legislation with minimal violations<sup>13</sup>, while France, Italy and Portugal demonstrate failures in this process almost every year.<sup>14</sup> These observations confirm the thesis that the EU member states are not always the “silent agents”<sup>15</sup>, which main role is reduced to the adoption of the rules of the game set by Brussels. On the contrary, they find themselves acting as situational principals:

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<sup>8</sup> Tanja A. Börzel et al., ‘Obstinate and Inefficient: Why Member States Do Not Comply with European Law’, *Comparative Political Studies* 43, no. 11 (2010): 1363–90, <https://doi.org/10.1177/0010414010376910>; Ulrich Sedelmeier, ‘Is Europeanisation through Conditionality Sustainable? Lock-in of Institutional Change after EU Accession’, *West European Politics* 35, no. 1 (2012): 20–38, <https://doi.org/10.1080/01402382.2012.631311>; Robert Thomson, ‘Time to Comply: National Responses to Six EU Labour Market Directives Revisited’, *West European Politics* 30, no. 5 (2007): 987–1008, <https://doi.org/10.1080/01402380701617407>; Frank Schimmelfennig, *Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe, International Institutions and Socialization in Europe*, 2007, <https://doi.org/10.1017/CBO9780511618444.003>.

<sup>9</sup> The accumulated legislation, legal acts, and court decisions that form the basis of the European Union law.

<sup>10</sup> Thomas Banchoff and Mitchell Smith, *Legitimacy and the European Union: The Contested Polity* (Routledge, 2005).

<sup>11</sup> Tania Börzel and Thomas Risse, ‘From Europeanisation to Diffusion’, *West European Politics* 35, no. 1 (2012): 1–19, <https://doi.org/10.1080/01402382.2012.631310>.

<sup>12</sup> Richard Swedberg, ‘The Idea of ‘ Europe ’ and the Origin of the European Union - A Sociological Approach’ 23 (1994): 378–87; Antony Smith, ‘National Identity and the Idea of European Unity’ 68, no. 1 (2008): 55–76.

<sup>13</sup> Jonas Tallberg and Christer Jönsson, ‘Compliance Bargaining in the European Union’, 2001; Klaus H. Goetz, ‘The New Member States and the EU Klaus H. Goetz Forthcoming in Simon Bulmer and Christian Lequesne’, 2004; Tony Verheijen, *Administrative Capacity in the New EU Member States: The Limits of Innovation?*, *World Bank Working Paper*, 2007, <https://doi.org/10.1002/jor.23313>; Tanja A. Börzel, ‘The Transformative Power of Europe Reloaded: The Limits of External Europeanization’, *KFG Working Paper Series 11*, 2010, 1–30.

<sup>14</sup> Pollack, ‘Delegation, Agency, and Agenda Setting in the European Community’; Thomson, ‘Time to Comply: National Responses to Six EU Labour Market Directives Revisited’; Börzel, ‘The Transformative Power of Europe Reloaded: The Limits of External Europeanization’.

<sup>15</sup> Pollack, ‘Delegation, Agency, and Agenda Setting in the European Community’, 3.

promoting or blocking the relevant agenda using a whole spectrum of resources of the national and supranational levels. Thus, the question of the reasons for (non-)compliance in the multilevel system of the European Union goes beyond the classical two-dimensional model of principal-agent relations, and forces to focus on the complex set of characteristics of the EU member states. This study targets state autonomy and state capacity as two potential explanations for a differentiation in the level of compliance of the EU members with the European Union directives.

The empirical puzzle associated with different progress of the EU member countries in the implementation, transposition and application of the *acquis* is the subject of controversy in two theoretical approaches: (1) structural and (2) consociational. The structural and consociational approaches offer two broad explanations for the different levels of compliance with the EU law. For the structural approach, the reason for the compliance failures in some countries is that they are not able to follow the Brussels' guidelines due to a lack of necessary economic, administrative and bureaucratic resources, that is low state capacity. One can distinguish two levels of state capacity: the "upper" and the "lower". The "upper" level means the country's ability to participate in the bargaining process at the level of supranational institutions and build coalitions to push its agenda.<sup>16</sup> The "lower" level focuses on the basic economic, administrative and bureaucratic resources and the mechanisms of their distribution and allocation at the national level in order to achieve compliance. The consociational approach, in turn, considers the reasons for non-compliance with the EU law through the prism of state autonomy: states can violate the EU law not only because of the lack of respective resources, but because of the inability to reach a compromise on the compliance agenda. Mainly, those are the conflicts between the ruling elites and the key veto actors: opposition parties, regional elites and various interest groups. It follows that some states violate EU law

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<sup>16</sup> Michael Winkler, 'Coalition-Sensitive Voting Power in the Council of Ministers: The Case of Eastern Enlargement', *JCMS: Journal of Common Market Studies* 36, no. 3 (1998): 391–404, <https://doi.org/10.1111/1468-5965.00116>; Jeffrey Lewis, 'Institutional Environments And Everyday EU Decision Making: Rationalist or Constructivist?', *Comparative Political Studies* 36, no. 1–2 (1 February 2003): 97–124, <https://doi.org/10.1177/0010414002239373>; Michael Kaeding and Torsten J. Selck, 'Mapping Out Political Europe: Coalition Patterns in EU Decision-Making', *International Political Science Review* 26, no. 3 (1 July 2005): 271–90, <https://doi.org/10.1177/0192512105053785>.

intentionally, while the difficulties of the process of compliance for others are determined by the objective reasons of structural-economic nature. In the academic literature, this dichotomy of the EU member states strategies towards the compliance agenda is called *voluntary* and *involuntary* non-compliance, respectively.<sup>17</sup>

One can observe three dimensions of differentiation in the compliance rates:

(1) by the total number of violations of the EU directives, (2) by violations of the EU directives by type and (3) by annual dynamics of violations. The **research problem** is that the reasons for this multifaceted differentiation via time and space in the pool of the EU member states do not lend themselves to the full explanation neither through the principal-agent model of the structural approach nor through the consociational models. In this research, I strive to combine structural and consociational approaches to the study of the phenomenon of (non-)compliance. The major reason for the symbiosis is that I explore different contexts of (non-) compliance. I study both purely hierarchical relations and consociational models of communication. These two can be observed in three planes: supranational, national and subnational. At the same time, I consider cases of non-compliance, which can be attributed to both voluntary and non-voluntary. Thus, it seems that the most effective strategy for a better understanding of the reasons for differentiation of the EU countries in terms of compliance is to periodically replace the research lenses.

**The thesis is devoted to answer the following question:** “How did state autonomy and state capacity of the EU member countries affect their non-compliance with the European Union directives in 1993-2018?”.

The **empirical scope** of the research is the process of (non-)compliance of the EU member countries with the directives of the European Union from 1993 to 2018.

The **theoretical focus** of the research is the factors of state capacity and state

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<sup>17</sup> Tanja A. Börzel, Tobias Hofmann, and Carina Sprungk, ‘Why Do States Not Obey the Law? Non-Compliance in the European Union’, *Paper Prepared for Presentation at Leiden Conference* 49, no. 0 (2004); Klaudijus Maniokas, ‘Conditionality and Compliance in Lithuania: The Case of the Best Performer’, *EIOP European Integration Online Papers* 13, no. 1 (2009): 1–16, <https://doi.org/10.1695/2009020>.

autonomy of the EU member countries, which influenced the degree of their compliance with the directives of the European Union from 1993 to 2018.

The **goal** of the research is to determine the influence of factors of state autonomy and state capacity of the EU member countries on their compliance with the European Union directives in the period from 1993 to 2018.

In order to achieve the goal of the research, the following **objectives** are defined:

1. Conceptualize and operationalize the key concept of the research: (non-) compliance with the European Union directives and highlight the major stages of this process;
2. Identify the key national and supranational actors and institutions of the (non-)compliance process and observe the main resources and motives of these stakeholders in the field of compliance with the EU directives;
3. Build the theoretical framework explaining different trajectories of the EU member countries in the (non-)compliance process with the help of characteristics of their state autonomy and state capacity;
4. Cluster the EU member countries based on a similarity of their inherent characteristics of state autonomy and state capacity;
5. Conduct statistical analysis in order to identify factors of state autonomy and state capacity that have the most significant impact on (non-) compliance behavior of the EU member countries;
6. Interpret the results obtained with the help of statistical analysis and indicate the factors of state autonomy and state capacity that contribute to the EU member states falling into various compliance categories (from full to low).

## Literature review

In order to define and operationalize the concept of compliance, I turned to the definition given by H. Jacobson and E. Weiss<sup>18</sup>: “Compliance refers to whether countries in fact adhere to the provision of the accord and to the implementing measures that they have instituted.” I concluded that in order to adequately study compliance of the EU member countries and understand the reasons for the differentiation in the pool of states on this indicator, it is necessary to simultaneously consider four stages of compliance: (1) notification of the beginning of norms’ transposition, (2) transposition of norms, (3) implementation of norms and (4) enforcement (application) of norms.

European Commission and the European Court of Justice are the most important supranational institutions that determine the strength of the European Union’s sanctioning power against the violators of the *acquis communautaire*.<sup>19</sup> Students of the compliance process agree that the most effective sanctioning tool in the hands of the European Union is the infringement procedure that threatens financial costs for non-compliance with the EU law.<sup>20</sup> The pool of significant national actors and institutions is more differentiated. It includes political parties<sup>21</sup>, bureaucracy<sup>22</sup>, interest groups and

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<sup>18</sup> Harold K. Jacobson and Edith Brown Weiss, ‘IO22 Strengthening Compliance with International Environmental Accords: Preliminary Observations from a Collaborative Project’, *Global Governance* 1, no. 2 (1995): 123.

<sup>19</sup> Agnes Batory, ‘Defying the Commission: Creative Compliance and Respect for the Rule of Law in the Eu’, *Public Administration* 94, no. 3 (2016): 685–99, <https://doi.org/10.1111/padm.12254>; Julia Schmälder, ‘A European Response to Non-Compliance: The Commission’s Enforcement Efforts and the Common European Asylum System’, *West European Politics* 41, no. 6 (2 November 2018): 1330–53, <https://doi.org/10.1080/01402382.2018.1427947>; Carlos Closa, ‘The Politics of Guarding the Treaties: Commission Scrutiny of Rule of Law Compliance’, *Journal of European Public Policy* 26, no. 5 (4 May 2019): 696–716, <https://doi.org/10.1080/13501763.2018.1477822>.

<sup>20</sup> Jonas Tallberg, ‘Paths to Compliance: Enforcement, Management, and the European Union’, *International Organization* 56, no. 3 (2002), <https://doi.org/10.1162/002081802760199908>; Börzel, Hofmann, and Sprungk, ‘Why Do States Not Obey the Law? Non-Compliance in the European Union’; Miriam Hartlapp, ‘On Enforcement, Management and Persuasion: Different Logics of Implementation Policy in the EU and the ILO’, *Journal of Common Market Studies* 45, no. 3 (2007): 653–74, <https://doi.org/10.1111/j.1468-5965.2007.00721.x>; Ellen Mastenbroek and Dorte Sindbjerg Martinsen, ‘Filling the Gap in the European Administrative Space: The Role of Administrative Networks in EU Implementation and Enforcement’, *Journal of European Public Policy* 25, no. 3 (4 March 2018): 422–35, <https://doi.org/10.1080/13501763.2017.1298147>.

<sup>21</sup> Paul Taggart and Aleks Szczerbiak, ‘Contemporary Euroscepticism in the Party Systems of the European Union Candidate States of Central and Eastern Europe’, *European Journal of Political Research* 43, no. 1 (2004): 1–27, <https://doi.org/10.1111/j.1475-6765.2004.00143.x>; Daniel Finke and Tanja Dannwolf, ‘Who Let the Dogs out? The Effect of Parliamentary Scrutiny on Compliance with EU Law’, *Journal of European Public Policy* 22, no. 8 (14 September 2015): 1127–47, <https://doi.org/10.1080/13501763.2014.1000364>.

<sup>22</sup> Peter Hille and Christoph Knill, ‘“It’s the Bureaucracy, Stupid”: The Implementation of the Acquis Communautaire in EU Candidate Countries, 1999–2003’, *European Union Politics* 7, no. 4 (2006): 531–52, <https://doi.org/10.1177/1465116506069442>; Dimiter Toshkov, ‘Transposition of EU Social Policy in the New Member States’, *Journal of European Social Policy* 17, no. 4 (2007): 335–48, <https://doi.org/10.1177/0958928707081065>.

NGOs<sup>23</sup> and regional political elites.<sup>24</sup> The strategies of national states that are faced with the need for compliance seem to be most clearly described by G. Falkner *et al.*<sup>25</sup> The authors identify three “worlds of compliance”: “world of law observance”, “world of domestic politics” and “world of transposition neglect.” In the “world of law observance”, one can find states, for which rarely show non-compliance and quickly correct violations of the EU law. “World of domestic politics” includes countries for which home policy has an extremely important value, they risk failing transposition, implementation, and application of the required part of the *acquis* if it directly contradicts national interests. States from the “world of transposition neglect” show small interest in compliance and begin to act only under a strong sanctioning pressure of the supranational regulators.

The choice of the strategy of compliance or non-compliance by the EU members is seen to be determined by the following characteristics of the state: (1) its economic power, (2) strength of the state’s administrative apparatus, (3) quality of governance and (4) legal misfit (the type of the state’s legal regime) and (5) influence and authority of the country in the EU institutions.<sup>26</sup>

Theories that seek to explain the reasons of (non-)compliance with the EU law are based on the premise that some countries do not comply with the EU law

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<sup>23</sup> Gerald Schneider, Daniel Finke, and Konstantin Baltz, ‘With a Little Help from the State : Interest Intermediation in the Domestic Pre-Negotiations of EU Legislation’ 14, no. 3 (2007): 444–59, <https://doi.org/10.1080/13501760701243814>; Heike Klüver, ‘Measuring Interest Group Influence Using Quantitative Text Analysis’, *European Union Politics* 10, no. 4 (2009): 535–49, <https://doi.org/10.1177/1465116509346782>; Cansarp Kaya, ‘Providing Information and Building Capacity: Interest Group Involvement in the Application of EU Law’, *West European Politics* 42, no. 1 (2 January 2019): 25–44, <https://doi.org/10.1080/01402382.2018.1463723>.

<sup>24</sup> Tanja A. Börzel, and Andreas F. Llesdal, *States and Regions in the European Union: Institutional Adaptation in Germany and Spain* (Cambridge University Press, 2002).

<sup>25</sup> Gerda Falkner, Miriam Hartlapp, and Oliver Treib, ‘Worlds of Compliance: Why Leading Approaches to European Union Implementation Are Only “Sometimes-True Theories”’, *European Journal of Political Research* 46, no. 3 (2007): 395–416, <https://doi.org/10.1111/j.1475-6765.2007.00703.x>.

<sup>26</sup> James Hughes, Gwendolyn Sasse, and Claire Gordon, ‘Conditionality and Compliance in the EU’s Eastward Enlargement: Regional Policy and the Reform of Sub-National Government’, *Journal of Common Market Studies* 42, no. 3 (2004): 523–51, <https://doi.org/10.1111/j.0021-9886.2004.00517.x>; Schimmelfennig, *Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe*; Thomas König and Brooke Luetgert, ‘Troubles with Transposition? Explaining Trends in Member-State Notification and the Delayed Transposition of EU Directives’, *British Journal of Political Science* 39, no. 1 (2009): 163–94, <https://doi.org/10.1017/S0007123408000380>; Börzel et al., ‘Obstinate and Inefficient: Why Member States Do Not Comply with European Law’; Sedelmeier, ‘Is Europeanisation through Conditionality Sustainable? Lock-in of Institutional Change after EU Accession’; Tobias Hofmann, ‘How Long to Compliance? Escalating Infringement Proceedings and the Diminishing Power of Special Interests’, *Journal of European Integration* 40, no. 6 (2018): 785–801, <https://doi.org/10.1080/07036337.2018.1500564>.



intentionally, and some show signs of non-compliance due to objective reasons of structural-economic nature. In the academic literature, the first variant of behavior is called voluntary non-compliance, and the second – involuntary non-compliance.<sup>27</sup>

Studies on state capacity in the context of (non-)compliance with the EU law can be divided into those that focus on the “lower” level and those that review the “upper” level. Upper-level state capacity determines the country's ability to create coalitions at the supranational level to promote or block compliance-related agendas. According to G. Peterson’s<sup>28</sup> perspective, the largest countries of the European Union, having preferential positions in the institutional system of the EU, are able to create coalitions to promote their national interests at the supranational level and resist other ‘big powers’ in relation to the texts of the adopted directives. At the same time, smaller states are forced to either join hubs of power coalitions as junior partners or seek technical assistance with compliance from the supranational regulators. This follows the division into *hubs of power* (i.e. coalition leaders with high upper-level state capacity) and *coalition partners* (countries with low upper-level state capacity).<sup>29</sup> Frequently low upper-level state capacity forces the EU states to accept the rules of the game related to compliance post-factum, as these states do not have a sufficient resource base and influence at the supranational level to conduct an independent policy-setting. In turn, lower-level state capacity is in most cases associated with the strength of the administrative apparatus of the state and the professionalism of its bureaucracy. The lack of lower-level state capacity often serves as the main cause of involuntary non-compliance.<sup>30</sup> Finally, state autonomy is directly related to the activities of veto-

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<sup>27</sup> Börzel, Hofmann, and Sprungk, ‘Why Do States Not Obey the Law? Non-Compliance in the European Union’; G. Falkner et al., ‘Why Do Member States Fail to Comply? Testing the Hypotheses Suggested in the Literature’, *Complying with Europe? The Impact of EU Minimum Harmonisation and Soft Law in the Member States*, no. June (2004): 272–308; Maniokas, ‘Conditionality and Compliance in Lithuania: The Case of the Best Performer’; Eva Thomann and Fritz Sager, ‘Moving beyond Legal Compliance: Innovative Approaches to EU Multilevel Implementation’, *Journal of European Public Policy* 24, no. 9 (24 September 2017): 1253–68, <https://doi.org/10.1080/13501763.2017.1314541>.

<sup>28</sup> John Peterson, ‘Decision-making in the European Union: Towards a Framework for Analysis’, *Journal of European Public Policy* 2, no. 1 (1995): 69–93, <https://doi.org/10.1080/13501769508406975>.

<sup>29</sup> Frank M. Häge, ‘Coalition Building and Consensus in the Council of the European Union’, *British Journal of Political Science* 43, no. 3 (July 2013): 481–504, <https://doi.org/10.1017/S0007123412000439>.

<sup>30</sup> Schimmelfennig, *Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe*; Thomson, ‘Time to Comply: National Responses to Six EU Labour Market Directives Revisited’; Ulrich Sedelmeier, ‘Post-Accession Compliance with Eu Gender Equality Legislation in Post-Communist New Member States’, *EIOP European Integration Online Papers* 13, no. 1 (2009), <https://doi.org/10.1695/2009023>; Thomas König and Lars Mäder, ‘The Strategic Nature of Compliance: An Empirical

actors during the process of transposition, implementation and application of the EU directives. The lack of state autonomy is the basis for voluntary non-compliance.<sup>31</sup>

The analysis of the theoretical literature makes it possible to identify several empirical and theoretical gaps that I seek to fill with this research. These lacunae relate both to the substantive characteristics of the existing research, and to their methodological grounds.

1. The first drawback of most of the existing studies is the narrow research focus. Usually the (non-)compliance research focuses on 1 or 2 specific factors that explain different (non-)compliance behavior of the EU member states. These factors include the efficiency level of the national bureaucratic system, conflicts between the political parties, center-regions relationships, influence of civil initiative groups, NGOs and business associations, state's bargaining power and many others. In turn, multi-variable research on (non-) compliance seems to be rare.<sup>32</sup>
2. The second drawback of the existing research based on both structural-actor and consociational approaches is the low level of their extrapolation power. The authors that work in the (non-)compliance field mainly do case studies or comparative studies with small N.<sup>33</sup>

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Evaluation of Law Implementation in the Central Monitoring System of the European Union', *American Journal of Political Science* 58, no. 1 (January 2014): 246–63, <https://doi.org/10.1111/ajps.12038>.

<sup>31</sup> Börzel, Hofmann, and Sprungk, 'Why Do States Not Obey the Law? Non-Compliance in the European Union'; Falkner, Hartlapp, and Treib, 'Worlds of Compliance: Why Leading Approaches to European Union Implementation Are Only "Sometimes-True Theories"'; Ulrich Sedelmeier, 'After Conditionality: Post-Accession Compliance with EU Law in East Central Europe', *Journal of European Public Policy* 15, no. 6 (2008): 806–25, <https://doi.org/10.1080/13501760802196549>.

<sup>32</sup> See for exceptions König and Luetgert, 'Troubles with Transposition? Explaining Trends in Member-State Notification and the Delayed Transposition of EU Directives'; Bernard Steunenberg and Dimiter Toshkov, 'Comparing Transposition in the 27 Member States of the EU: The Impact of Discretion and Legal Fit', 2015, 1–29.

<sup>33</sup> The illustrative examples are Toshkov, 'Transposition of EU Social Policy in the New Member States'; Maniokas, 'Conditionality and Compliance in Lithuania: The Case of the Best Performer'; Gergana Noutcheva, 'European Foreign Policy and the Challenges of Balkan Accession: Conditionality, Legitimacy and Compliance', *European Foreign Policy and the Challenges of Balkan Accession: Conditionality, Legitimacy and Compliance* 5, no. 1 (2012): 1–248, <https://doi.org/10.4324/9780203117859>.

## Hypotheses of the research

### *Upper-level state capacity*

The upper-level state capacity focuses on the state's ability to participate in the bargaining process at the level of supranational institutions and build coalitions to push for the preferable versions of the EU directives.<sup>34</sup> The focus of research on the upper-level state capacity is the Council of Ministers, which unlike the European Commission and the European Parliament represents the interests of national states. Some authors argue that the economic and political powerhouses of the EU, i.e. Germany, France and the United Kingdom create the “hubs of power” within the Council of Ministers and attract smaller states to strengthen their bargaining position.<sup>35</sup> In most cases in the struggle for a preferential version of the relevant directives, hubs of power are forced to agree to options that are unfavorable for themselves. This leads to a dilemma: to comply with the adopted unfavorable *acquis* part or to choose the path of non-compliance under the threat of sanctions from supranational institutions. In many cases, according to researchers analyzing individual areas of law enforcement in the European Union<sup>36</sup>, hubs of power choose the first option. The reason is a developed administrative apparatus and a strong economy, which allows to neutralize the negative effects of the EU sanctioning procedure. A different logic is followed by coalition partners of hubs of power, which often have neither the administrative nor the economic ability to ignore the requirements of the supranational regulator for a long time.

The alternative is a perspective that indicates that bargaining coalitions in the Council of Ministers are not ad hoc in nature, but are subject to the logic of

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<sup>34</sup> Winkler, ‘Coalition-Sensitive Voting Power in the Council of Ministers’; Lewis, ‘Institutional Environments And Everyday EU Decision Making’.

<sup>35</sup> Peterson, ‘Decision-making in the European Union: Towards a Framework for Analysis’; Tallberg, ‘Paths to Compliance: Enforcement, Management, and the European Union’.

<sup>36</sup> See for example, Tanja A. Börzel and Aron Buzogány, ‘Compliance with EU Environmental Law. The Iceberg Is Melting’, *Environmental Politics* 28, no. 2 (2019): 315–41, <https://doi.org/10.1080/09644016.2019.1549772>; Asya Zhelyazkova, Cansarp Kaya, and Reini Schrama, ‘Notified and Substantive Compliance with EU Law in Enlarged Europe: Evidence from Four Policy Areas’, *Journal of European Public Policy* 24, no. 2 (4 February 2017): 216–38, <https://doi.org/10.1080/13501763.2016.1264084>.

periodicity.<sup>37</sup> One indicates ‘stable’<sup>38</sup> coalitions between various EU member states, which are united not around hubs of power, but on the basis of economic, political, historical, ideological and geographical principles. The major feature of this kind of ‘stable’ coalitions is that they manifest themselves not only when discussing specific niche legislation, but on a fairly wide range of *acquis* matters: iterations of discussions in the Council of Ministers show that such coalitions tend to be reproduced with relative regularity. At the same time, the vast majority of the members of stable coalitions are not included in the pool of hubs of power. It can be assumed that if the directive adopted is treated as preferable by the participants of such a coalition, these EU members will demonstrate high compliance rates. At the same time, if the directive adopted does not meet the interests of the coalition members, the participating countries will not be able to resist the enforcement practices of supranational institutions due to a lack of resources of power and authority, as well as administrative and economic power. From this one formulates the following hypotheses:

**H1.1a.** “Hubs of power” tend to have bigger non-compliance rate than other states.

**H1.1b.** States with stable coalition partners tend to have smaller non-compliance rate.

### *Lower-level state capacity and state autonomy*

The pool of individual state covariates chosen for analysis is divided into two groups, correlated with the two concepts to be explored in this paper: lower-level state capacity and state autonomy.

Consider the factors of lower-level state capacity. The level of economic power is one of the most important factors determining the state's ability to provide a sufficient basis for a correct and rapid transposition and implementation of the *acquis*.<sup>39</sup>

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<sup>37</sup> Tanja A. Börzel, Tobias Hofmann, and Diana Panke, ‘Caving in or Sitting It out? Longitudinal Patterns of Non-Compliance in the European Union’, *Journal of European Public Policy* 19, no. 4 (2012): 454–71, <https://doi.org/10.1080/13501763.2011.607338>; Thomann and Sager, ‘Moving beyond Legal Compliance’.

<sup>38</sup> ‘Stable’ coalitions here indicate bargaining coalitions which appear in the vein of the Council decision-making on a statistically higher frequencies comparing to other coalitions (see for details Mikko Mattila, ‘Roll Call Analysis of Voting in the European Union Council of Ministers after the 2004 Enlargement’, *European Journal of Political Research* 48, no. 6 (2009): 840–57, <https://doi.org/10.1111/j.1475-6765.2009.01850.x>).

<sup>39</sup> Börzel, ‘The Transformative Power of Europe Reloaded: The Limits of External Europeanization’.

Harmonization of the national legislation with the EU law often requires large expenditures of the national budget. According to T. Börzel et al.<sup>40</sup>, the best compilers tend to be not just the richest countries, that is, the countries with the highest GDP levels, but the states with the highest living standards. In order to measure the indicator of living standards, I refer to the indicator of GDP per capita (PPP), which seems to be more appropriate compared with the indicator of the nominal GDP. It can be assumed that compliance process for member countries with higher living standards is less burdensome than for ones with lower standards, so they comply faster and with fewer violations. The factor of quality of governance is treated as the quality of public institutions. E. Bondarouk and E. Mastenbroek<sup>41</sup> and E. Thomann and F. Sager<sup>42</sup> use the example of the EU-15 and CEE EU member states, respectively to demonstrate the dependence of the compliance rates in different policy fields on the efficiency level of the states' administrative apparatus. Deriving from their results, I assume that countries where bureaucratic institutions are better developed have less problems with the implementation of the parts of *acquis* and spend less time and resources on the compliance program. The two factors described above are the basis of the following hypotheses:

**H1.2.** The higher the country's GDP per capita (PPP), the more the country complies with the EU directives.

**H1.3.** The higher the country's quality of governance, the more the country complies with the EU directives.

The second group of factors is devoted to state autonomy: (1) ideological polarization of the parliament, (2) fragmentation of the party system, (3) strategy of regional authorities.

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<sup>40</sup> Börzel, Hofmann, and Panke, 'Caving in or Sitting It out? Longitudinal Patterns of Non-Compliance in the European Union'.

<sup>41</sup> Elena Bondarouk and Ellen Mastenbroek, 'Reconsidering EU Compliance: Implementation Performance in the Field of Environmental Policy', *Environmental Policy and Governance* 28, no. 1 (2018): 15–27, <https://doi.org/10.1002/eet.1761>.

<sup>42</sup> Thomann and Sager, 'Moving beyond Legal Compliance'.

P. Statham and H. Trezn<sup>43</sup> argue that the boundaries of ideological polarization often coincide with the dividing lines in the national parliaments on (non-)compliance with the EU directives. I assume that the conflicts associated with the implementation of the parts of European Union legislation are integral parts of the full-scale debate between the parties in the parliaments of EU Member States. The theory by G. Tsebelis<sup>44</sup> allows to assume that a large number of veto-actors within the national parliament can lead to an increase in the probability of a stalemate in the matters of transposition and implementation of the parts of *acquis communautaire*. The factor of the strategy of regional authorities is devoted to the state-level decision-making based on the theories by T. Börzel and A. Llesdal<sup>45</sup> and J. Hughes *et al.*<sup>46</sup> It can be assumed that the absence of a conflict between the central government and regional authorities leads to faster and less costly implementation and adaptation of parts of the EU law at the national level. The above-mentioned theories support the following hypotheses:

**H2.1.** The higher the ideological polarization of the parliament, the less the country complies with the EU directives.

**H2.2.** The higher the fragmentation of the party system in the country, the less the country complies with the EU directives.

**H2.3.** The conflict environment between the regional authorities and the center leads to the higher state's non-compliance rate.

Each EU country goes through several stages in the compliance process: (1) notification of the beginning of the transposition procedure, (2) transposition of the *acquis* into national legislation, (3) implementation of the directive at the national level and (4) its application. At each of these stages, fatal violations can be made that do not

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<sup>43</sup> Paul Statham and Hans Jörg Trezn, 'Understanding the Mechanisms of EU Politicization: Lessons from the Eurozone Crisis', *Comparative European Politics* 13, no. 3 (2015): 287–306, <https://doi.org/10.1057/cep.2013.30>.

<sup>44</sup> George Tsebelis, 'Decision Making in Political Systems : Veto Players in Presidentialism , Parliamentarism , Multicameralism and Multipartyism Author ( s ): George Tsebelis Stable URL : [Http://Www.Jstor.Org/Stable/194257](http://www.jstor.org/stable/194257) Decision Making in Political Systems : Veto Multicam', *British Journal of Political Science* 25, no. 3 (2016): 289–325, <https://doi.org/10.1017/S0007123400007225>.

<sup>45</sup> Börzel, and Llesdal, *States and Regions in the European Union*.

<sup>46</sup> Hughes, Sasse, and Gordon, 'Conditionality and Compliance in the EU's Eastward Enlargement: Regional Policy and the Reform of Sub-National Government'.

allow the state to fully comply with the relevant directive: (1) notification failure, (2) incomplete transposition, (3) incorrect implementation and (4) improper application. Research on compliance in the EU shows that key agents at the national, supranational and regional levels come to the fore at each of the respective stages of compliance. The stage of notification is dominated by the national legislatures and the states' representatives in the supranational arena – primarily, countries' ministers in the Council of Ministers. National parliaments are responsible for transposition, while national bureaucratic systems and, in certain cases, regional elites occupy the first positions at the stages of implementation and application. Thus, both statistical studies<sup>47</sup> and small-N research<sup>48</sup> show that the greatest problems with the transposition of parts of the *acquis* are experienced by states with high fragmentation of party systems and high conflict potential of intra-parliamentary interaction. E. Borghetto and F. Franchino, using the examples five Western EU member states, demonstrate the importance of cooperation between central authorities and regions for the successful application of the EU directives at the national level.<sup>49</sup> T. König and B. Luetgert, in their longitudinal study, identify a key determinant of success in meeting the notification deadlines: a streamlined system of information exchange between the country's representative in the Council of Ministers and the national legislature.<sup>50</sup>

From this follows a block of hypotheses that connects the factors of state capacity and state autonomy of the EU member states with the level of their compliance with

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<sup>47</sup> König and Luetgert, 'Troubles with Transposition? Explaining Trends in Member-State Notification and the Delayed Transposition of EU Directives'; Nora Dörrenbächer, Ellen Mastenbroek, and Dimiter D. Toshkov, 'National Parliaments and Transposition of EU Law: A Matter of Coalition Conflict?', *JCMS: Journal of Common Market Studies* 53, no. 5 (2015): 1010–26, <https://doi.org/10.1111/jcms.12242>; Carina Sprungk, 'Legislative Transposition of Directives: Exploring the Other Role of National Parliaments in the European Union', *JCMS: Journal of Common Market Studies* 51, no. 2 (2013): 298–315, <https://doi.org/10.1111/jcms.12002>.

<sup>48</sup> Mastenbroek, Ellen, Aneta Spendzharova, and Esther Versluis. 'Clawing back lost powers? Parliamentary scrutiny of the transposition of EU Social Policy directives in the Netherlands.', *West European Politics* 37.4 (2014): 750-768., <https://www.tandfonline.com/doi/abs/10.1080/01402382.2014.919774>; Wim Voermans, 'Chapter 11: Transposition of EU Legislation into Domestic Law: Challenges Faced by National Parliaments', in *Lawmaking in Multi-Level Settings* (Nomos Verlagsgesellschaft mbH & Co. KG, 2019), 241–60, <https://doi.org/10.5771/9783748900863-241>; Jana Paasch and Christian Stecker, 'When Europe Hits the Subnational Authorities: The Transposition of EU Directives in Germany between 1990 and 2018', *Journal of Public Policy* 41, no. 4 (December 2021): 798–817, <https://doi.org/10.1017/S0143814X20000276>.

<sup>49</sup> Enrico Borghetto and Fabio Franchino, 'The Role of Subnational Authorities in the Implementation of EU Directives', *Journal of European Public Policy* 17, no. 6 (1 September 2010): 759–80, <https://doi.org/10.1080/13501763.2010.486972>.

<sup>50</sup> König and Luetgert, 'Troubles with Transposition? Explaining Trends in Member-State Notification and the Delayed Transposition of EU Directives'.

the EU directives at each of the stages highlighted above. In other words, I check the potential influence of factors of member states' state capacity and state autonomy on the share of their EU directives' violations by type.

**H3.1a.** The higher the country's quality of governance, the smaller share of incorrect implementations it has.

**H3.1b.** The higher the country's quality of governance, the smaller share of improper applications it has.

**H3.2.** The higher the ideological polarization of the parliament, the bigger the share of the country's incomplete transpositions.

**H3.3.** The higher the fragmentation of the party system in the country, the bigger the share of the country's incomplete transpositions.

**H3.4.** The conflict environment between the regional authorities and the center leads to the higher share of state's improper applications.

Another important factor affecting the compliance rates in the EU is the complication of the pool of EU norms, which is known as the *acquis communautaire*. Between 1993 and 2018, the number of directives that govern the policies of the European Union increased by 8.7 times, with the largest growth in the policies such as Agriculture and fisheries and Energy and environment.<sup>51</sup> A big catalogue of research<sup>52</sup> shows a positive relationship between an the number of directives and the number of violations: with an increase in the number of EU directives, the number of their violations also increases, which is observed in all four categories – notification failures, incomplete transpositions, incorrect implementations and improper applications. The results of the D. Toshkov's<sup>53</sup> research are noteworthy: they show that the main reason

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<sup>51</sup> Calculated with the help of: 'Chapters of the Acquis', accessed 3 December 2021, [https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/conditions-membership/chapters-acquis\\_en](https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/conditions-membership/chapters-acquis_en).

<sup>52</sup> Tanja A. Börzel, 'Non-Compliance in the European Union: Pathology or Statistical Artefact?': *Journal of European Public Policy*: Vol 8, No 5', <https://www.tandfonline.com/doi/abs/10.1080/13501760110083527>; Robert Thomson, René Torenvlied, and Javier Arregui, 'The Paradox of Compliance: Infringements and Delays in Transposing European Union Directives', *British Journal of Political Science* 37, no. 4 (October 2007): 685–709, <https://doi.org/10.1017/S0007123407000373>; Mariyana Angelova, Tanja Dannwolf, and Thomas König, 'How Robust Are Compliance Findings? A Research Synthesis', *Journal of European Public Policy* 19, no. 8 (1 October 2012): 1269–91, <https://doi.org/10.1080/13501763.2012.705051>.

<sup>53</sup> Dimitar Toshkov, 'Embracing European Law: Compliance with EU Directives in Central and Eastern Europe',



for the increase in violations is not so much an increase in the number of directives, but their “niche nature” and ambiguity of wording, which does not allow member countries to develop an adequate strategy for the transposition and implementation of these *acquis* parts. R. Thomson<sup>54</sup> expands on Toshkov’s idea, noting that the decline in the “intelligibility” of directives for the bureaucracy and legislatures of member countries has become a hallmark of the period after the EU enlargement to the East in 2004-2007. Thus, the last three hypotheses of this block are as follows:

**H3.5a.** Countries that joined the EU before 2004 tend to have smaller share of incorrect implementations compared to countries that joined the EU after 2004.

**H3.5b.** Countries that joined the EU before 2004 tend to have smaller share of incomplete transpositions compared to countries that joined the EU after 2004.

**H3.5c.** Countries that joined the EU before 2004 tend to have smaller share of improper applications compared to countries that joined the EU after 2004.

**The contribution of the dissertation to the discussion of the problem in existing literature** lies in:

1. the simultaneous use of structural and consociational approaches to explain the reasons for the differentiation of the EU countries in terms of their compliance with the EU directives.
2. the separation of the concepts of upper- and lower-level state capacity. Thus, it is possible to trace and analyze the resources and strategies of the member countries used to advance their position on the compliance agenda within the framework of the “two-level game”, both at the national and supranational levels.
3. the special attention to the level of regions and their participation in the

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*European Union Politics* 9, no. 3 (1 September 2008): 379–402, <https://doi.org/10.1177/1465116508093490>.

<sup>54</sup> Robert Thomson, ‘Same Effects in Different Worlds: The Transposition of EU Directives’, *Journal of European Public Policy* 16, no. 1 (1 January 2009): 1–18, <https://doi.org/10.1080/13501760802453098>.

compliance process. I demonstrate that cooperation or confrontation of the street-level bureaucracy with the central authorities can seriously affect the pace and success of the EU countries' compliance with certain parts of the *acquis*.

4. the fact that all EU member countries are set in a single pool of quantitative research. Thus, this research not only helps to better understand the reasons for the failures of some states and the success of others in the field of compliance, but also allows to single out the general trends explaining the (non-)compliance behavior in the EU.
5. development of a multilevel model predicting the likelihood of the EU members' non-compliance with the European Union directives by referring to the combinations of factors of their upper- and lower-level state capacity and state autonomy.

### **Scope and limitations of research**

In order to analyze the influence of factors of state autonomy and state capacity on (non-)compliance of the EU member countries with the EU law, I take the time period from 1993 to 2018. The choice of this period is due to historical reasons. In 1992 the Maastricht Treaty was signed and in 1993 it entered into force. This treaty endowed the EU institutions (primarily, the European Commission and the European Court of Justice) with great powers in imposing sanctions and punishments against countries that do not comply with the EU law.<sup>55</sup> In turn, 2018 is chosen as the end point, since the countries of the European Union continue to violate the EU law, and for some countries the number of violations increases from year to year<sup>56</sup> therefore it is important to trace the dynamics of these violations. At the same time, I strive not to reduce the sample, and therefore do not consider the period, when the UK's

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<sup>55</sup> Risto Lampinen and Petri Uusikyla, 'Implementation Deficit - Why Member States Do Not Comply with EU Directives?' 21, no. 3 (1998).

<sup>56</sup> Börzel, Hofmann, and Panke, 'Caving in or Sitting It out? Longitudinal Patterns of Non-Compliance in the European Union'.

compliance with the EU law has not been monitored (2019-2021).

## Methodology and methods

In order to analyze the influence of factors of state autonomy and state capacity on (non-)compliance of the EU member countries with the EU directives, I take the time period from 1993 to 2018. The total number of EU directives violations analyzed is 25,583, but there is a differentiation at the level of individual states, which is due to the different period of their EU membership. The total number of observations is 554.<sup>57</sup>

The key method of data analysis in this research is multilevel ordered logistic regression using the restricted maximum likelihood (REML) estimation. The choice of this method is majorly determined by the cross-classified structure of the multilevel data used in this research. This data involves both spatial (supranational, national and regional levels) and temporal (26 time periods) variation. The main feature of the cross-classified structure of multilevel data is that they require the evaluation fixed effects, random effects and variance components. REML allows to avoid two issues implied by multilevel data structures, which are quite problematic for other types of estimation: least squares and full information maximum likelihood (FIML). Those are underestimation of (co)variance components under the condition of small number of clusters (characteristic for FIML estimation)<sup>58</sup> and underestimation of random effects and variance components (characteristic for least squares).<sup>59</sup> Avoidance of the first issue is specifically important for the models used in this research, as they do construct only 4 clusters.

The kernel of the REML log-likelihood function for the (co)variance components can be written as follows:

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<sup>57</sup> Note that for some countries and time slots there were missing values, which were removed from the final dataset.

<sup>58</sup> Marco Steenbergen, 'Multilevel Analysis', in *The SAGE Handbook of Research Methods in Political Science and International Relations* (55 City Road: SAGE Publications Ltd, 2020), 689, <https://doi.org/10.4135/9781526486387>.

<sup>59</sup> Hovard D. Patterson and Ronald Thompson, 'Recovery of Inter-Block Information When Block Sizes Are Unequal', *Biometrika* 58, no. 3 (1 December 1971): 545–54, <https://doi.org/10.1093/biomet/58.3.545>; David A. Harville, 'Bayesian Inference for Variance Components Using Only Error Contrasts', *Biometrika* 61, no. 2 (1 August 1974): 383–85, <https://doi.org/10.1093/biomet/61.2.383>.

$$l_{REML} = \frac{-0.5 \ln \det(\Sigma)}{-0.5 \ln \det(M^T \Sigma^{-1} M) - 0.5 (y - M_{\hat{\gamma}})^T \Sigma^{-1} (y - M_{\hat{\gamma}})} \quad (1)$$

where  $y - M_{\hat{\gamma}}$  are the first-order conditions and the matrix  $T$  is ensured to be free from  $\gamma$  with the help of the error contrast  $A_y^T$ . That is the bias from the (co)variance component estimates is removed.<sup>60</sup>

The main model (*Model 1*) is built for an outcome *share of violated directives of the European Union*. This is the proportional odds model, which uses  $K$ -level ordinal outcome; the cumulative probability of success (the ascending option for the levels of compliance, from Low to Full) across the  $K-1$  cumulative splits is based on a model using the cumulative logit link for the response ( $R_{ij}$ ), for the  $i^{th}$  EU state in the  $j^{th}$  coalition in the Council, which reflects the group factors of upper-level state capacity of the respective countries. In general terms, the model's levels are as follows:<sup>61</sup>

*Level 1*

$$n_{kij} = \ln(Y'_{kij}) = \ln\left(\frac{P(R_{ij} \leq k)}{P(R_{ij} > k)}\right) = \beta_{0j} + \sum_{q=1}^Q \beta_{qj} X_{qij} + \sum_{k=2}^{K-1} D_{kij} \delta_k \quad (2.1)$$

*Level 2*

$$\beta_{qi} = \gamma_{q0} + \sum_{s=1}^{S_q} \gamma_{qs} W_{sj} + u_{qj} \quad (2.2)$$

In this model,  $n_{kij}$  is the logit prediction for the  $k^{th}$  cumulative (two-level) comparison for the  $i^{th}$  EU state in the  $j^{th}$  coalition in the Council, which reflects the group factors: coalition role of the state and coalition's stability.  $\delta_k$  stands for approximation of the standard errors of transformations of the  $K$ -level ordinal outcome. To get from logits to predicted probability of success, I use the following relationship, where  $x$  includes Level 1 and Level 2 predictors:

<sup>60</sup> See the calculations in: Nicholas T. Longford, 'A Fast Scoring Algorithm for Maximum Likelihood Estimation in Unbalanced Mixed Models with Nested Random Effects', *Biometrika* 74, no. 4 (1 December 1987): 817–27, <https://doi.org/10.1093/biomet/74.4.817>.

<sup>61</sup> For this case, I have adopted the approach proposed by O'Connell for the hierarchical two-level modelling. (O'Connell 'An illustration of multilevel models for ordinal response data').

$$\pi_{kij}(\underline{x}) = \frac{\exp(n_{kij})}{1 + \exp(n_{kij})} \quad (2.3)$$

For each member state, I determine a series of K-1 probabilities, each representing the probability of the response (category of compliance) being at or below a given category, depending on the set of predictors used. For each member state (Level 2), the regression equation provides a unique set of intercept and regression coefficients given the Q country-level predictors. At the coalition level (Level 1), the intercepts' and slopes' variability across groups is captured by the Level 1 residuals ( $u_{qj}$ ). Variation in the random regression parameter estimates is modeled using  $W_{sj}$ , the Level 2 predictors. The  $\gamma$ 's at Level 2 are taken as the fixed regression coefficients.

One should note that logistic regression models (including those of the multilevel type) have a certain amount of pitfalls associated with the accuracy of estimation, in particular, dedicated to the assumption regarding the uniform relationship between input and output variables.<sup>62</sup> This assumption may not be true for some associations and sets of observations. To check the validity of the uniformity assumption, logistic regression models are normally checked for robustness using a spectrum of tools: different estimators, weight functions, standard errors, inclusion or exclusion of the constant term, and omission of some covariates.<sup>63</sup> To check the uniformity assumption implied by the main model of this research, I build the multilevel ordered logistic regression for the 'common' EU policies (*Model 1b*): (1) Agriculture, forestry and fisheries, (2) Environment and energy, (3) Industry, trade and services, (4) Population and social conditions, (5) Economy and finance. It uses the same outcome as the main model, i.e. *share of violated directives of the European Union* applied to all countries of the set and all time periods but the set of directives is limited to the above listed policies. One more approach is to use the linear terms to check the validity of the

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<sup>62</sup> Steenbergen, 'Multilevel Analysis'; Ana M. Bianco and Elena Martínez, 'Robust Testing in the Logistic Regression Model', *Computational Statistics & Data Analysis* 53, no. 12 (1 October 2009): 4095–4105, <https://doi.org/10.1016/j.csda.2009.04.015>.

<sup>63</sup> Bianco and Martínez, 'Robust Testing in the Logistic Regression Model'; Priya Ranganathan, C S Pramesh, and Rakesh Aggarwal, 'Common Pitfalls in Statistical Analysis: Logistic Regression', *Perspectives in Clinical Research* 8, no. 3 (1 July 2017): 148–51, [https://doi.org/10.4103/picr.picr\\_87\\_17](https://doi.org/10.4103/picr.picr_87_17).

limited (non-constant) regressors.<sup>64</sup> To proceed with this robustness check I construct the model of linear regression which does not use thresholds to distinguish between the categories of the outcome and the covariates (*Model 1a*).

### **Encoding and selection of empirical data**

The outcome variable share of violated directives of the European Union is ordinal and contains the following categories:

1. **Full compliance:** 0.1%-2.0% of total number of the EU directives
2. **Good compliance:** 2.0%-4.0% of total number of the EU directives
3. **Limited compliance:** 4.0%-7.0% of total number of the EU directives
4. **Low compliance:** >7.0% of total number of the EU directives

The thresholds for categories are set in accordance with the thresholds used in the annual reports of the European Commission on monitoring of the application of EU law, which track the yearly progress of member countries in the area of compliance. Overall, the four categories presented include an almost equal number of states. To encode this variable, I use the data of the Annual Reports on Monitoring the Application of Community Law by each country for the period from 1993 to 2018, as well as the Berlin Infringement Database.<sup>65</sup> The percentage of violated directives was calculated for each member state individually from the date of the state's accession to the European Union.<sup>66</sup>

### ***Stage 1: Upper-level state capacity (group level)***

In order to measure the upper-level state capacity, I turned to two indicators,

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<sup>64</sup> Ranganathan, Pramesh, and Aggarwal, 'Common Pitfalls in Statistical Analysis'.

<sup>65</sup> Börzel, and Knoll, 'Quantifying Non-Compliance in the EU: A Database on EU-Infringement Proceedings.'

<sup>66</sup> Asya Zhelyazkova and Eva Thomann, 'Policy Implementation', in *Environmental Policy in the EU*, 4th ed. (Routledge, 2021).

proposed by M. Mattila<sup>67</sup> to catch the member states' power and authority at the supranational level: (1) coalition role and (2) stability of coalitions.

Coalition stability is an index ranging from 0 (no coalition) to 1 (very stable coalition). The index calculation is based on a series of experiments by F. Häge<sup>68</sup>, who made a research on the supranational coalition-building using the data on roll call voting in the Council for the period from September 1991 to September 2012. The index was adopted for this research and extended to cover the period from May 1993 to May 2018.<sup>69</sup> Coalition building rates are estimated based on 893 rounds of roll-call voting in the Council by the formula of the following form:

$$\bar{Y}_i = \sum_{i=1}^m \left| \sum_{j=1}^n \frac{(Y_i - Y_j)^2 - Y_j^2}{(n_m * Y_j) + (Y_i - Y_j)^2} \right|, \quad (3)$$

where  $Y_j$  is number of cases of non-contested voting,  $Y_i$  is the number of cases of voting within a particular coalition,  $n_m$  is the number of roll-call voting rounds in the Council of Ministers per month. Thus,  $\bar{Y}_i = 1$  means that the MS always votes within the framework of a particular coalition, while  $\bar{Y}_i = 0$  means that the MS never uses this coalition to vote. The index was calculated for each country on a monthly basis in accordance with its participation/non-participation in the corresponding coalition in the period under review. Then the median value was calculated from the monthly values of the index. Thus, the given median values calculated for each country in each year slot were applied as observations of the variable reflecting the coalition stability.

The indicator of the coalition role is binary, “1” denotes leadership in the coalition, “0” – coalition partnership. To determine the coalition roles, I use the threshold proposed by F. Häge<sup>70</sup>: countries representing more than 20% of the population in the contesting coalitions saying ‘yes’, ‘no’ or abstaining from voting for the EU directives are treated as leaders, while countries representing less than 20% of the population in

<sup>67</sup> Mattila, ‘Roll Call Analysis of Voting in the European Union Council of Ministers after the 2004 Enlargement’.

<sup>68</sup> Häge, ‘Coalition Building and Consensus in the Council of the European Union’.

<sup>69</sup> The required data on roll call voting till May 2018 was taken from ‘Council of Ministers’, accessed 4 December 2021, <https://www.consilium.europa.eu/en/>.

<sup>70</sup> Häge, ‘Coalition Building and Consensus in the Council of the European Union’.

these coalitions are treated as partners. The distribution of the roles of leaders and partners reflects the differentiation in the amount of power and authority of the EU member states in the Council of Ministers, which directly depends on the share of the population of each country in the European Union population.<sup>71</sup>

The encoding of the listed upper-level state capacity factors is based on the information released by the Council Secretariat, which is available on the portal of the Council of Ministers.<sup>72</sup> To compile the encoding, I used the documents located in the “Monthly Summary of Council Acts” section. They include a description of voting procedures for all legislative and non-legislative acts, including the information on the voting choices of the Member States’ representatives: “for”, “against” or abstention.

### ***Stage 2: Lower-level state capacity and state autonomy (individual country level)***

The pool of individual state covariates chosen for analysis is divided into two groups, correlated with the two concepts to be explored in this paper: lower-level state capacity and state autonomy.

Consider the factors of lower-level state capacity. The variable GDP per capita (PPP) is encoded using World Bank Open Data.<sup>73</sup> It is an index that includes three categories: high GDP per capita (value “1”), medium GDP per capita (value “2”), and low GDP per capita (value “3”). The covariate quality of governance is encoded using the Worldwide Governance Indicators data.<sup>74</sup> It is the logarithmized index that includes three categories: high quality of governance (value “1”), medium quality of governance (value “2”) and low quality of governance (value “3”).

The second group of factors is devoted to state autonomy: (1) ideological polarization of the parliament, (2) fragmentation of the party system, (3) strategy of regional authorities.

The ideological polarization factor is encoded using data from the Manifesto Project.<sup>75</sup> This index has three categories: high polarization (value “1”), medium

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<sup>71</sup> Mattila, ‘Roll Call Analysis of Voting in the European Union Council of Ministers after the 2004 Enlargement’: 842.

<sup>72</sup> The Council of Ministers portal is available at this link: <https://www.consilium.europa.eu/en/>

<sup>73</sup> ‘World Bank Open Data | Data’, accessed 9 December 2021, <https://data.worldbank.org/>.

<sup>74</sup> ‘WGI 2021 Interactive’.

<sup>75</sup> Andrea Volkens et al., ‘Manifesto Project Dataset’ (Manifesto Project, 2017),



polarization (value “2”) and low polarization (value “3”). The thresholds are determined based on the categorization provided by the Manifesto Project: 1, 0.5 and 0, respectively. To encode the fragmentation of the party system parameter, I calculate the effective number of parties (ENP) for each country on a yearly basis, starting from the moment the country joined the European Union. The fragmentation factor has three categories: high fragmentation (value “1”), medium fragmentation (value “2”) and low fragmentation (value “3”). The thresholds are defined as follows: value “1” – ENP of 5.5, value “2” – ENP of 3.5, value “3” – ENP of 2.5 and correspond to the thresholds, widely recognized in the literature on the party systems fragmentation.<sup>76</sup>

The factor of the strategy of regional authorities is devoted to the state-level decision-making based on the theories by T. Börzel A. Llesdal<sup>77</sup> and J. Hughes *et al.*<sup>78</sup> This parameter takes the data from transcripts of the Committee of the Regions plenary sessions and Monthly Summary of Council Acts, released by the Secretariat of the EU Council of Ministers. As part of the encoding, a country received a value of “1” if at least once during the year under review, the vote of the majority of the deputies of its national delegation in the Committee of the Regions on a given directive differed from the vote of the representative (national minister) of this state in the Council of Ministers on the same directive. Thus, this is a binary variable with the following categories: “1” – presence of a conflict between the center and the regions on a specific compliance agenda (confrontation strategy), “0” – absence of a conflict between the center and the regions on a specific compliance agenda (cooperation strategy).

## **Analysis of data and findings**

I examined various compliance strategies of member countries through the prism

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<https://doi.org/10.25522/MANIFESTO.MPDS.2017A>.

<sup>76</sup> Markku Laakso and Rein Taagepera, “Effective” Number of Parties: A Measure with Application to West Europe’, *Comparative Political Studies* 12, no. 1 (1 April 1979): 3–27, <https://doi.org/10.1177/001041407901200101>; Grigorii V. Golosov, ‘The Effective Number of Parties: A New Approach’, *Party Politics* 16, no. 2 (1 March 2010): 171–92, <https://doi.org/10.1177/1354068809339538>.

<sup>77</sup> Börzel and Llesdal, *States and Regions in the European Union*.

<sup>78</sup> Hughes, Sasse, and Gordon, ‘Conditionality and Compliance in the EU’s Eastward Enlargement: Regional Policy and the Reform of Sub-National Government’.

of the G. Falkner's *et al.*<sup>79</sup> and G. Peterson's<sup>80</sup> theories. The theoretical perspectives of “worlds of compliance” and supranational compliance strategies (hubs of power and junior coalition partners) construct five clusters of compliance, each of which reflects the possible explanations of voluntary and involuntary non-compliance among the EU member states.

The First cluster of compliance unites the “best compilers”: Cyprus, Estonia, Latvia, Lithuania, and Slovenia. They are distinguished by high lower-level state capacity, that is, the well-functioning bureaucracy and developed administrative apparatus and high state autonomy, which, first of all, is expressed in the Euro-optimistic position of the major veto players and low say autonomy of the regional elites. These two conditions can be used to explain the minimum number of violations of the EU law by these five states for the entire time of observation. One more important factor is low upper-level state capacity in all the states under consideration. The countries of the First cluster do not have sufficient institutional and political weight at the level of the EU institutions and, therefore, are forced to accept the established status quo in the field of compliance, formulate their own coalitions or (in rare cases) join of the hubs of power, since they cannot pursue an independent supranational policy adjusting the EU directives. The countries of this bloc act strategically and consider sanctions for non-compliance with the EU directives as costlier than adopting the required rules of the game.

The Second cluster of compliance unites Bulgaria, Croatia, Czech Republic, Poland, Romania and Slovakia, i.e. states that are forced to play the role of junior coalition partners of Italy, France and the UK due to the relatively low weight at the level of supranational institutions. Described cases of non-compliance in the pool of these states illustrate negative effects of weak bureaucracy and relatively low level of economic development (Bulgaria and Romania), high polarization and fragmentation of national legislatures along the ideological and compliance lines (Czech Republic, Croatia and Slovakia), as well as high autonomy of subnational elites and conflicts

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<sup>79</sup> Falkner, Hartlapp, and Treib, ‘Worlds of Compliance: Why Leading Approaches to European Union Implementation Are Only “Sometimes-True Theories”’.

<sup>80</sup> Peterson, ‘Decision-making in the European Union: Towards a Framework for Analysis’.

between the center and regions on the distribution of *say* and *pay* rights in the context of compliance (Poland).

The Third cluster of compliance is the largest one: it unites Denmark, Finland, Hungary, Luxembourg, Malta, the Netherlands and Sweden. These are countries that generally prefer a uniform hub of power – Great Britain. All countries of the Third cluster are distinguished by a fairly well-developed bureaucratic and administrative systems and, in most cases, non-compliance at the national level is explained by low state autonomy: the Euro-skeptic position of the major parties, intra-party conflicts on the compliance agenda and conflicts between the center and the regions.

The Fourth cluster of compliance unites the victims of externalities in the face of the banking and economic crisis: Austria, Greece, Ireland and Portugal. The economic agenda is the most crucial for the countries of the Fourth cluster, which is why these states seek to soften the EU decisions aimed at greater regulation of the economic sphere of the member countries. They tend to join one of the EU powerhouses, which also oppose the change in the economic status quo (primarily, Italy, Spain and the UK). The explanations of non-compliance at the national level can be divided into low state capacity (Greece and Portugal) and low state autonomy (Austria and Ireland). Illustrative cases show that economic problems and subsequent anti-crisis measures taken by the EU and pro-EU national elites led to the popular rise of Euro-skeptic and nationalist parties, which made the decision-making process on the compliance agenda extremely complicated and lengthy.

Finally, the Fifth cluster of compliance includes the main violators of the EU directives: Belgium, Germany, France, Italy, Spain and the UK. These are the largest EU countries politically and economically, which rarely unite in a single coalition at the level of supranational institutions and most often compete for promoting their own agenda and expanding their coalition potential. One of the potential reasons of high non-compliance rate in the Fifth cluster pool is calculative rationality. The countries of the Fifth cluster by analogy with the countries of the First cluster, assess the gains and losses from compliance and non-compliance with the EU directives in each particular case, and often consider the potential sanctions for violating the EU

directives as less costly than adopting the *acquis*. In other words, the high lower-level state capacity in the form of a functional bureaucracy and a large economy allows these states to relatively smoothly mitigate the consequences of the infringement procedures. For Belgium, which does not have as much resources as other states of the Fifth cluster, the main strategy in the supranational political arena is to follow in the wake of one of the hubs of power, a coalition which meets the national interests of Belgium at a given point in time. The state autonomy environment in the group of the Fifth cluster is also noteworthy. It includes the conflict nature of relations between the regions and the center (Spain, Germany and Belgium) and the general lack of political will, reinforced by party cleavages on the compliance agenda (France, Italy and the UK).

At the next stage I turned to the statistical validation of the assumptions concerning the importance of factors of state capacity and state autonomy for the voluntary and involuntary (non-)compliance of the EU member states with *acquis communautaire*.

At the first stage of the analysis, a main model of multilevel ordered logistic regression (*Model 1*) was built, where the *share of violations of the EU directives* was used as an outcome. The categories of the outcome were set as full compliance, good compliance, limited compliance and low compliance.<sup>81</sup> The results of the model confirmed the assumption of **H1.3** about the positive effect of good quality of governance on the degree of compliance with the EU directives and **H2.3** about the importance of cooperation between regions and the center to increase the likelihood of good compliance rate. In addition, the hypothesis related to upper-level state capacity received partial confirmation. The analysis confirmed that states with less stable coalitions (normally hubs of power), tend to have bigger non-compliance rates than states participating in more stable bargaining associations within the Council. It is worth noting that the main model identified an important phenomenon associated with the upper- and lower-level state capacity, which concern **H1.2**. Higher levels of

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<sup>81</sup> Zhelyazkova and Thomann, 'Policy Implementation'.

economic welfare, as measured by GDP per capita (PPP), did appear to be a positive determinant of compliance when taking the whole set of the EU member states. However, when reducing the set to hubs of power only, a higher GDP per capita (PPP) tends to increase the likelihood of their transition from a limited compliance group to a low compliance group.

Within the framework of *Model 1*, three important interaction effects were found that link the upper- and lower-level state capacity of the EU member states. The first interaction can be traced between GDP per capita (PPP) and coalition role. The increase in GDP per capita (PPP) increases the negative effect of the position of the coalition leader on the country's compliance rate. The second interaction was found between the parameters of GDP per capita (PPP) and the coalition stability. In this case, a lower level of GDP per capita (PPP) acts as a multiplier of the positive impact of the coalition's stability on the likelihood of a country falling into the better categories of compliance. Finally, the third interaction concerns the relationship between GDP per capita (PPP) and the polarization of the national legislature. A decrease in GDP per capita (PPP) increases the marginal effect of polarization on the degree of compliance with the EU law, determining the behavior of non-compliance on the part of states with a high level of polarization. Thus, **H1.1a** about a lower level of compliance on the part of "hubs of power" and **H2.1** about the importance of polarization of the national legislature for assessing the country's chances in the area of compliance were confirmed.

To test the above described patterns for robustness, I constructed a hierarchical linear regression model (*Model 1a*). In this model, I used interval variables, that is, the original data collected with the help of the respective databases to encode the factors of state capacity and state autonomy of the EU member states. The outcome in the model was also not categorized: I used the raw percentages (divided by hundred, rounded to two decimal places) reflecting the share of the European Union directives violated by the respective EU member states. The results of the linear model generally support the findings of *Model 1*. All the covariates reflecting the individual characteristics of countries associated with their lower-level state capacity and state

autonomy turned out to be statistically significant, with GDP per capita (PPP) and quality of governance factors making the greatest contribution to explaining the reasons for countries' differentiation in terms of compliance with the EU directives. The factor of coalition role does not demonstrate significance when examined individually, but turns out to be significant in hierarchical analysis, which confirms the conclusions about the reinforcement of individual country predictors effects by the factor of coalition stability. The second robustness check was made with the help of model reflecting the *share of violations of the directives by the specific EU policies* as an outcome (*Model 1b*). The following EU policies were taken: (1) Agriculture, forestry and fisheries, (2) Environment and energy, (3) Industry, trade and services, (4) Population and social conditions, (5) Economy and finance. This model demonstrated the negative impact of the combination of low GDP per capita (PPP) and high polarization on the degree of compliance.

The supplementary model (*Model 2*) took *share of violations of the directives by type* as an outcome. In this model, I tested a specific set of hypotheses that suggest a causal relationship between the relevant factors of state capacity and state autonomy of the EU member countries and the degree of their compliance with the EU directives at four stages of compliance (notification, transposition, implementation and application). The factor of GDP per capita (PPP) has shown its significant association with two types of violations: incomplete transpositions and improper applications. In both cases an increase in GDP per capita (PPP) decreases the likelihood of worsening the compliance rate on the part of member countries. The model empirically confirmed the validity of hypotheses **H3.1a** and **H3.1b**, which declare the positive impact of high efficiency of the national bureaucracy on the number of incorrect implementations and improper applications. Also, the model confirms **H3.4** about the importance of positive interaction between the center and the regions on the compliance agenda at the application stage. Finally, in contrast to the findings of the previous studies, the factor of the period of the country's accession to the European Union (before or after 2004) shows its insignificance in explanation of all types of the compliance violations.

## **Statements to be defended:**

1. From an empirical point of view, the simultaneous use of consociational and structural approaches seems to be an adequate strategy to analyze the interaction of actors occupying different niches in the EU governance architecture and makes it possible to give a more accurate explanation of the (non-)compliance phenomenon in the European Union.
2. States participating in less stable coalitions, tend to have bigger non-compliance rates than states participating in more stable bargaining associations within the Council.
3. In general, higher GDP per capita (PPP) decreases the likelihood of a country's transition from higher to lower compliance groups. However, when reducing the set to hubs of power only, a higher GDP per capita (PPP) tends to increase the likelihood of their transition from a limited compliance group to a low compliance group. What is more, in the case of this limited set, an increase in GDP per capita (PPP) increases the negative effect of the position of the coalition leader on these states' compliance rate.
4. Lower level of GDP per capita (PPP) acts as a multiplier of the positive impact of the coalition stability on the likelihood of a country falling into the categories of higher compliance.
5. Lower GDP per capita (PPP) increases the marginal effect of polarization of national parliaments on the degree of compliance with the EU directives, determining the behavior of non-compliance on the part of states with a high level of polarization.
6. The reasons for non-compliance are not uniform when it comes to different types of violations. While the number of incomplete transpositions primarily depends on the ability of national political parties to come to a consensus on the compliance agenda, in the case of the incorrect implementations, the determinant of failures is the low efficiency of bureaucracy. Thus, different types of the EU law violations de facto reflect different reasons for non-compliance – voluntary and involuntary.

7. The factor of the period of the country's accession to the European Union (before or after 2004) has no effect on the states' compliance rate observed through all types of violations.

### **Research approbation**

The reports on the results of this thesis that reflect the development of the research on different stages are presented at the following international conferences and seminars:

- Fourth Annual Tartu Conference on Russian and East European Studies (June 9-11, 2019) – Tartu, Estonia, report “State autonomy and state capacity of the EU member and candidate states as factors of their (non-) compliance with the European Union law”;
- Jean Monnet Center for Europe in the World (King's College London) (July 1, 2019) – London, UK, report “State autonomy and state capacity of the EU member states as factors of their (non-)compliance with the European Union law”;
- St. Petersburg Conference on Inequality and Diversity 2019 (October 21-22, 2019) - St. Petersburg, Russia, report “Cleavages and rationality: patterns of coalition-building in the Council of Ministers of the European Union”;
- XXI April International Academic Conference on Economic and Social Development (April 9-12, 2020) – Moscow, Russia, report “Cleavages and rationality: patterns of coalition-building in the Council of Ministers of the European Union”<sup>82</sup>;
- St. Petersburg Conference on Inequality and Diversity 2020 (November 5-7, 2020) – St. Petersburg, Russia, report “The Tops Are (Un-)Able and the Bottoms Are (Un-)willing: Determinants of the EU Members' Non - Compliance with the European Union Law”;
- XXII April International Academic Conference on Economic and Social

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<sup>82</sup> Online format.



Development (April 15, 2021) – Moscow, Russia, report “Unable or Reluctant? Multilevel Determinants of the EU Members’ (Non-) Compliance with the European Union Law”.<sup>83</sup>

**Articles which are being prepared for publication in journals recommended by HSE (including the journals included in the international citation databases WoS, Scopus):**

- Sorbale A. B. Power and Authority in the European Union: “Kings of the Hill” and “grand coalitions” // Political science. 2019. No. 3. P. 200-221.
- Sorbale A. B. A two-level game of the process of ensuring responsibility for violating the law of the European Union // World Politics and International Relations. 2020. V. 64. No. 5. P. 52-61.
- Sorbale A. B. When the EU hits Home: National Determinants of Non-Compliance with the European Union Law // Bulletin of the Perm University. Political science. 2021. № 2. P. 37-48.

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<sup>83</sup> Online format.