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EU Compliance in Times of
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Abstract:

(EN) Every national election, it seems, entails another populist success story. In recent years, political and societal discourse have shifted into a populist narrative where the ‘elite’ and the ‘people’ are portrayed as contrasting and mutually disrespecting mirror-images. Even in social democratic strongholds national(-ist) parties are on the rise. Yet, up until now, academia has ignored populism’s influence on compliance when it comes to cross-national empirical research.

This paper shows that populism is not only by nature both strategic and ideological; it also has direct implications on EU level compliance. The empirical results suggest a linear negative relationship between domestic populism and EU level noncompliance. The stronger the populist opposition in national legislatures, the higher the rate of the compliance on the European level. The quantitative analysis is based on a new time-series dataset combining recent data on populist parties in 12 European Countries from 2002-2013 with European Commission data on infringement procedures in the most prominent and substantial policy areas.

Key-words: EU, Populism; Compliance; European Politics; European Union.

Résumé :

(FR) Chaque élection nationale, semble-t-il, est marquée d’une montée en puissance du populisme. Ces dernières années, le discours politique et social s’est focalisé sur un récit populiste opposant « l’élite » au « peuple ». Même dans les bastions socio-démocrates, les partis nationalistes progressent. Cependant, jusqu’à aujourd’hui, les universitaires n’ont pas étudié l’impact du populisme sur le respect de la mise en œuvre de la législation européenne.

Ce papier montre que le populisme n’est pas seulement de nature stratégique et idéologique : il a également des conséquences sur la mise en œuvre des politiques européennes. Les résultats empiriques suggèrent une relation linéaire entre le niveau de populisme national et la mise en œuvre du droit européen. Plus le populisme est puissant dans un parlement national, et plus le droit européen est mis en œuvre. L’analyse quantitative s’appuie sur une nouvelle série temporelle portant sur les données électorales récentes de partis populistes dans 12 pays (2002-2013) et les données de la Commission européenne relatives aux procédures d’infraction.

Mots-clés : Populisme; Conformité; Politique Européenne; Union Européenne

Introduction

With every national election, it seems, there is another populist success story. It was not the Brexit vote or the election of Donald Trump which started populist sentiments; it was but the most tangible culmination of a decades-long undermining of representative democracy. For the first time in the post-war period, the White House is openly questioning NATO and, to make matters even more worrisome for Europe, calls the European Union (EU) one of its biggest foes (Politico 2018). On the other side of the Atlantic it has been shown that the EU, apparently, is not an ever-closer Union: there is an exit juncture and for the first time one member state will leave the Union. In recent years, political and societal discourse have shifted into a radical, populist narrative where the 'elite' and the 'people' are portrayed as contrasting and mutually disrespecting mirror-images. The next few years will show whether the two depicted events were wake-up calls for the politically moderate or a stepping stone for the radical.

By 2018, populist parties govern only in a few countries in Europe. Yet, in most countries there is a growing faction of nationalist, Eurosceptic, xenophobic, revisionist MPs in the opposition. On the other side, there are increasing pro-European voices who call for budgetary sanctions when a country is committing democratic norm violations (Reuters 2018). The gaping rift throughout Europe grows with every national election which fosters the need for academia to scrutinize populism both from the national and the supranational perspective. In order to do this, the present paper takes national parliamentary configurations and looks at the effects on the supranational EU-level in terms of compliance. Here, populist parties are in the center of attention.

Populist parties have a profound history in Europe. For decades, both left and right-wing populist parties have had a lasting impact on national policy-making; but what is their impact on the European level? How is EU-compliance affected if populists grow ever stronger in domestic legislatures? This paper follows these questions and sheds light upon the relationship of domestic populism and compliance in the European Union. In times of a looming "Populist Zeitgeist" (Mudde 2004), implications of this relationship are under-researched. Up until now, academia has turned a blind eye to populism's influence on compliance when it comes to cross-national empirical research. Instead of focusing on administrative capacities (Mendez and Bachtler 2017) or institutional frames (Haas 1998; Lampinen and Uusikylä 1998), this paper acknowledges the need to "bring domestic politics back into play" (Mastenbroek 2005: 1115). As I will show, populism not only is by nature strategic and ideological but also has direct implications on EU level compliance. National politics and supranational policy-making are densely intertwined in the European Union. This paper aims to contribute its bit to disentangle the oftentimes complex intricacies of this multi-layered system.

In a first theoretical part this paper distinguishes different shades of populism: style, strategy and ideology. This first section offers a theoretical basis for the ensuing empirical analysis. In a subsequent step, I approach compliance in the EU from a theoretical point of view as well. Here, infringement procedures are weighed against transposition data with respect to its validity. The following empirical analysis is based on a new time-series dataset combining recent data on populist parties from 2002-2013 in Europe with European Commission (EC) data on infringement procedures in the most prominent and substantial policy areas. Therefore, a quantitative approach was chosen since this way it is possible to create a cross-national, inter-temporal image of the data. The closing chapter is a round-up of the most important findings of the empirical study combined with a call for future investigation.

1. Populism: Genesis and Differentiation

A professor of philosophy, specializing in logics, once introduced his topic with the following lines: “Logic is surely the second most misused word that starts with an ‘L’.” I would add that populism is probably even further up the list for words starting with ‘P’. Asking five random people on the street about what they understand as populism will most likely return five distinct answers going into different directions. This problem, also understood as concept stretching, is why it is vital to delineate a clear-cut definition of the subject under discussion before diving into the depths of empirics. Especially with a topic as widely and broadly used as populism it is of the utmost importance to make sure what to include, and probably more important, what to exclude from the analysis.

After an era of relative silence, populism has developed into a well-researched area of Political Science. Starting in the second half of the 20th century, research really took off in its last decades. Both Green as well as Populist Radical Right Parties (PRRPs), which are seen as archetypical mirror images, have attracted most of the attention after they were able to gain considerable traction in most parliamentary systems throughout Western Europe in the 1980s. The emergence and subsequent vilification by vast parts of the establishment of Greens and PRRPs substantially contributed to the growing urge to scrutinize populism. Today, most scholars agree on a Manichean worldview as the core of populism (von Kessel 2015, Mudde 2004; Taggart 2000); in other words: populists see the world divided into two homogenous groups, the Good and the Bad. From that premise, it follows that everything a ‘good’ group does is good whereas everything a ‘bad’ group does is inherently bad. However, crucial dissent exists on how populism manifests itself, i.e. which form populism may take. All in all, there are three main lines of interpretation to that end: populism as strategy, style, or ideology (von Kessel 2015).

1.1. Populism as Strategy

Using Latin American case studies as points of departure, Kurt Weyland (2001) defines populism primarily as an opportunistic political strategy. According to him, a populist leader needs to be an (personalistic) individual, and not a group or collective (18). Mass support is key in populist governance, be it in the form of plebiscites, mass demonstration or polls. This support is usually not institutionalized and rather ad hoc and spontaneous. This way of aligning populism to the “voice of the people” has its roots in earlier works. Most famously, Carl Schmitt’s thorough critique of modern-day parliamentary systems has led him to conclude that “the will of the people can ... through *acclamatio* ... be better expressed in a democratic sense than through a statistic apparatus” (22).¹ Schmitt’s understanding of the public as constituting the centerpiece in a just political system refers back to Hegel. The value of public opinion and the public in general becomes clear in Hegel’s characteristic *Philosophy of the Right* in § 315:

If the Estates hold their assemblies in public, they afford a great spectacle of outstanding educational value to the citizens, and it is from this above all that the people can learn the true nature of their interests... Publicity is the most important means of education as far as the interests of the state in general are concerned. (352)

That way, all three Weyland, Schmitt, and Hegel leave room for a flexible interpretation of the concept and the opportunism of political leaders. They stress the importance of

¹ Translation conducted by author, original in German: “der Wille des Volkes kann ... durch *acclamatio* ... noch besser demokratisch geäußert werden als durch den statistischen Apparat” (Schmitt: 22).

non-institutionalized public support and public will-formation in the process of democratic policy-making.

Alan Ware (2002) analyzes US American politics through the lens of populism. He interprets populism as strategy, too, but mainly refers to its rhetoric value. According to him, the rise of candidate-centered politics in the US has amplified the magnitude of populism. The weakening of party control over the process of nomination has laid the groundwork for politicians to utilize populist rhetoric in order to win an election while running under the header of one of the two main parties. Seen from this perspective, Ware implicitly predicted the recent presidential election of Donald Trump. He was nominally running for the Republican Party and yet he is no substantial part of it; in part, he even despises it openly and, in that way, hollows it out. By using populist rhetoric, he was able to distance himself from the party while simultaneously cashing in from its label. Since it is a strategy so widely applied in American politics, Ware concludes: "Populism is everywhere in American politics, but nowhere in particular." (119)

The main difficulty with this approach lays in the point that it characterizes modes of strategy and/or organization within the political sphere as populist that would usually not fall under that label (Moffitt and Tormey 2013). Moffitt and Tormey (2013) criticize the assumption that populism only thrives in areas with low levels of institutionalization. Le Pen's *Front National* or Geert Wilders' *Partij voor de Vrijheid* are examples of parties that managed to grow and get established within a dense institutional setting (386). Hawkins (2010) adds that these kinds of characterizations focus too much on material aspects of politics leaving aside the ideational elements (39). Aslanidis (2013) backs up this line of critique as he laments the broadness and inconclusiveness of this definition: "After all, strategy is inherent in political activity." (96) For him, it remains unclear if a politician actually used this or that means strategically as it is impossible to get 'inside' the populist's head (97). Only then, he stresses, would we be able to seize and measure populism as a strategy. Aslanidis in turn prefers a discursive interpretation where populism is not merely a strategical means of demagoguery but a distinct "anti-elite discourse in the name of the sovereign People." (96)

1.2. Populism as Style

Another branch of literature classifies populism as political style and, thus, tries to avoid the aforementioned pitfalls of the strategy-approach. Because populists always talk about 'the People' they claim to know what the true will of voter/taxpayers/people/etc. is. They understand themselves as the mouthpiece of (ordinary) citizens, they present themselves as part of the people or at least as the only ones who really understand them. The language they use is simplistic, clear, anti-formal (Rooduijn 2014: 576). Other politicians and the elite are said to be alienated from the public and have completely lost touch from common ground. Because here populism is merely a style, it is bar of political color, it is "totally stripped from all pejorative and authoritarian connotations" (Jagers and Walgrave 2006: 323). The upside in this view is that both left and right-wing political groups can be analyzed. There is no *a priori* filter which focuses on anti-democratic, authoritarian, militant fragments of the political sphere.

Jagers and Walgrave (2006) point out that the centerpiece for all populist output is the sovereignty of the People. Simultaneously, two ideas are corroborated: first, that all problems would go away if only the political will was there, and second, that 'the people' are a homogenous mass with a common will. Put together, the sovereignty of the 'imagined community' (Anderson 1983) of the pure public can only be constrained by any state measures, be it rule of law, division of power or respect for minority rights. By attacking over and over again the elitist rule, the alienation of those in power, and undermining said elements of democracy, populist style may in the end reinforce public distrust in

representative democracy. Jagers and Walgrave caution in the end the mainstream parties about following suit populist style in the hopes of winning back parts of the electorate. Because populism as a communication style bears within it the inherent and oftentimes implicit undermining of representative democracy, trying to emulate it is a lost cause. Copying the original will only “worsen things instead of undercutting the extreme-rights’ success” (338).

For decades, traditional cleavages have been fading and new forms of politicization have been taking over. Populism as political style encompasses different kinds of performances “which [cut] across different political situations that are used to create political relations” (Moffit and Tormey 2014: 394). As politics is increasingly getting stylized, the proponents of this approach stress the relevance to disentangle the multifaceted relationship between content and style. It has been claimed that populists construct an outsider image (Rooduijn 2014: 577), polarize rhetorically to transmit a crisis message (Canovan 2004: 242), use aggressive language (Taggart 2000: 113), and prefer to bypass indirect forms of communication (parliament, press, party platforms, etc.) and rather speak to their voters directly (Mazzoleni 2003). Direct and unfiltered communication further corroborates their constructed image of an uninhibited, down-to-earth, ordinary character. New forms of social media channels, podcasts, and smartphone applications are utilized to streamline this sort of political communication style.

1.3. Populism as Ideology

Probably the most prominent interpretation of populism is ideational: populism as a distinct set of ideas (Akkerman et al. 2014; Abts and Rummens 2007; Hawkins et al. 2012; Mudde 2004; Rooduijn 2018; Rovira Kaltwasser 2014; Taggart 2000). While this branch of literature also recognizes the salience of direct communication style and charismatic leadership, they argue that “these features facilitate rather than define populism” (Mudde 2004: 545). Here again, populism is not exclusive to a specific party family but is characterized by its adaptive nature which allows it to “cohabit’ with more comprehensive ideologies” (von Kessel 2015: 7).

Taggart (2000) introduces the concept of the ‘heartland’ where the virtuous, unified, pure people reside. It is this heartland which replaces the term ‘the People’ since the latter is too broad (Mudde 2004: 545). In his seminal paper, Cas Mudde (2004) appreciates this concept:

The concept of the heartland helps to emphasize that the people in the populist propaganda are neither real nor all-inclusive, but are in fact a mythical and constructed sub-set of the whole population. In other words, the people of the populists are an ‘imagined community’, much like the nation for the nationalists (546)

He goes on to clarify the quintessential features of populism as ideology. First, society is split into two homogeneous and antagonist groups: the ‘pure people’ and the ‘corrupt elite.’ Second, politics, in this setting, should always be an expression of the *volonté général* of the people. Hawkins provides a similar definition of populism: “a Manichean discourse that identifies Good with a unified will of the people and Evil with a conspiring elite” (2009: 1042).

If treated as ideology, certain types of parties have populism at the core of their profile. Mudde (2007) has identified this pattern in the PRRP family. Other authors agree and add to the list neoliberal and social populists (Zaslave 2008; March 2011). Von Kessel, however, disagrees insofar as the concept of party family would imply similar or adjacent policy positions. Since this is clearly not the case for PRRPs and, for instance, social populists, he rejects the idea of populism being at the core of a party family. Yet, he ascertains, “populism can still be seen as an important core attribute of certain types of parties” (7). Although populist parties potentially differ largely in their policy position (e.g. compare SYRIZA in

Greece with *Vlaams Belang* in Belgium), the populist ideology does not become hollow. ‘Thin’ ideology, hence, is the corrected term with which this paper proceeds, standing in line with most of the literature. Michael Freeden (1998) classifies ‘thin’ ideology as one that “arbitrarily severs itself from wider ideational contexts, by the deliberate removal and replacement of concepts” (750). Due to this lack of concepts, populist parties suffer from structural inability to provide the electorate with complex arguments, simply because “many chains of ideas one would normally expect to find stretching from the general and abstract to the concrete and practical ... are simply absent” (750). Taggart (2002) characterizes this limitation as inherent to populism:

The fact that populism is a reaction against representative politics means that it has nothing substantial to offer in its place. The lack of core values means that there is nothing in which to anchor an alternative version of politics. For positive alternatives populism has to turn to the ideologies to which it attaches itself. Populism qua populism has little to offer representative politics other than as an indicator of the latter’s ill-health. (78-79)

Due to this limitation of ideational capacity, it comes as no surprise that populist parties usually lack the in-depth argumentation or evidence-based logic applied by mainstream parties in order to persuade voters. In return, they rely on aggressive, simplistic, easy-to-remember rhetoric as discussed earlier. Whether it is the *Alternative für Deutschland*, the *Rassemblement National*, *UKIP* or *Fidesz*, most populist parties lack a coherent and comprehensive plan for society; instead they fill a topical void on one or two focal issues and offer the electorate easy-to-grasp, simplistic solutions no matter how complex the issue at hand. Currently in Western Europe, the most common topic for PRRPs is the refugee and asylum policy area, leaving other issues completely untouched as concepts get “depoliticized.” As a result, the ideational capacity is severely limited.

Clearly, other ideologies have a more comprehensive view on social reality and provide more complex chains of argumentation. Populism, however, can still be seen as an ideology in the sense that it permeates discourse in an ideational manner with a certain, yet limited set of ideas. All three interpretations of populism outlined above are widely used in academia. Each offers different analytical values and opens up scientific discussion from a different angle. In that sense, they are not mutually exclusive. Since the last theoretical approach includes and adds to the former approaches it is the most encompassing. Hence, this paper proceeds in the analysis of compliance in the European Union with a view of populism as thin ideology, keeping in mind its strategic and stylistic traits.

2. Compliance in the European Union

2.1. Theoretical approximation

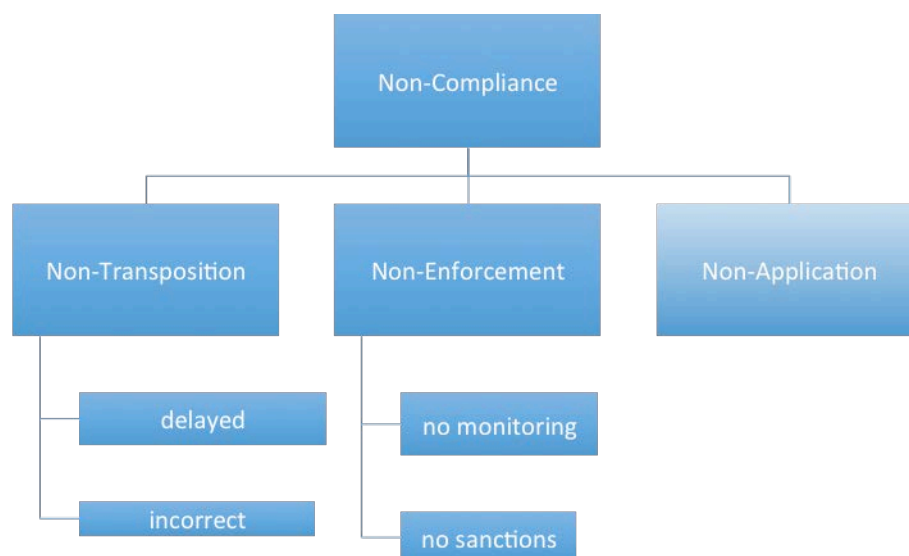
According to the Treaties, each member state is obliged to implement EU directives; but not all adhere to these rules. The supranational, multilevel system of the European Union relies heavily upon its members with respect to compliance and enforcement of European law. For decades, Political Scientists have put increasing emphasis on the question “why governments, seeking to promote their own interests, ever comply with the rules of international regimes when they view these rules as in conflict with ... their myopic self-interest” (Keohane 1984: 99). In the literature, there are both, those who explain compliance (Mbaye 2001; Mendez and Bachtler 2017; Falkner et al. 2005) and those who target non-compliance (Börzel 2000; 2010; Börzel et al. 2010; Mendrinou 1996; Lampinen and Uusikylä 1998). In fact, the former cannot be answered without also addressing the latter. According to Börzel et al. (2010) there are several key theoretical approaches that try to explain

compliance from different angles. From the realist perspective, states would simply stop complying as soon as the costs of a rule exceed its utility. Rational Institutionalists, on the other side, highlight the fact that non-compliance runs danger to stifle growth as the mechanisms for monitoring, sanctioning and adjudication by international organizations raise the cost for opt-outs. Another theoretical school that is presented by Börzel et al. is Social Constructivism. They put a focus on “legitimacy, socialization, and norm internalization through processes of social learning and persuasion as explanations for compliance” (2010: 1364). In other words, actors comply because it is the *right thing* to do. In general, the authors present three schools of thought: enforcement theories, management approach and legitimacy approach. According to the literature, however, none of the abovementioned theories succeed in explaining why some countries are leaders and other countries laggards; put differently, why some countries fail to implement the same rules that other countries apply.

Heaps of hypotheses were theoretically constructed and empirically debunked which constitutes a weakness in the empirical field of compliance research due to a lack of attention paid to domestic politics (Mastenbroek 2005). Where researchers did actually put domestic structures in focus, they often looked at institutions (Haas 1998; Lampinen and Uusikylä 1998). Other findings suggest that public approval, politico-administrative culture, bargaining power in the Council, and corruption play decisive parts for (non-)compliance (Siedentopf and Ziller 1988; Mbaye 2001). Standing in line with the goodness-of-fit hypothesis, Thomson et al. (2007) found support that both “states’ incentives to deviate and discretion affect the likelihood of infringements” (706). Recently, scholars (König and Mäder 2014; Fjестuhl and Carrubba 2018) particularly focused more on the strategic dimension of compliance. They identified a structural “compliance deficit” (König and Mäder 2014: 248) in the EU by conducting a strategic analysis of the compliance game. Only by taking political variables into the equation, can the “black hole” (Mastenbroek 2005: 1115) of compliance be illuminated. Interestingly, however, there is a striking lack of research regarding the effect that populism exerts upon levels of compliance even though populism bears within it a considerable strategic dimension (see above). Mastenbroek explicitly stresses the importance of strategic calculations in the form of opposition politics: “The current challenge is to theorize how and under which conditions domestic opposition plays a role” (1115). This paper seeks to fill this research gap by linking the national and supranational layers.

For the sake of thorough analysis, it is vital to differentiate between several forms of (non-)compliance. Focusing on compliance theoretically, there is a threefold distinction at hand (Falkner et al. 2005). Mainly, noncompliance may take the form of either non-transposition, non-enforcement, and/or non-application. Furthermore, there are two main explanatory strings which constitute possible motives for non-compliance: opposition which is a manifestation of intention and inability which, in turn, is unintentional (Falkner et al. 2005: 13). In the latter case, countries (for financial, political or social reasons) simply lack the capacity to comply. Noticeably, as Fjестuhl and Carrubba (2018) point out, “intentional noncompliance is more common in the EU” (429).

Figure 1: Three main forms of non-compliance according to Falkner et al. (2005:12), graphic by author

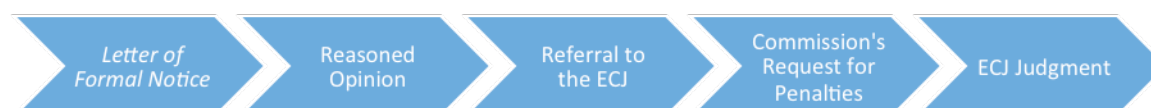


In Figure 1, it becomes clear that we speak of non-compliance if a law is either not applied, transposed or enforced properly. Another insight that Figure 1 generates is that, on other hand, even if a policy or law is applied, it may not be enforced. In this case, non-compliance can take the form of a non-existent monitoring mechanism or a lack of sanction methods. At the end, what good is a law if there is no monitoring or sanctioning possibility? Clearly, application and transposition alone hardly suffice in order to speak about compliance. For various practical reasons, the last form of non-compliance, non-application, is no part of the following analysis. Both, extensive expert interviews and micro-level surveys which would be necessary to grasp the level of non-application in the member states substantially exceeds the limited scope of this present paper. Instead, this paper focuses on a certain proxy that is easily quantifiable: infringement procedures.

2.2. Infringement Procedures in the European Union

Article 258 of the Treaty on the Functioning of the European Union (ex Art. 226 TEC) grants the EC the right to initiate infringement procedures against any member state that has failed to fulfil an obligation prescribed by the Treaties. There are different reasons to initiate such a proceeding (cp. Figure 1) and different subsequent steps that come into play once the process is initiated (Figure 2).

Figure 2: Formal Stages of Infringement Procedure in the EU, cp. EC 2018a, graphic by author



As you can see in Figure 2, the first step which falls under the proceedings of infringement in the EU is a Letter of Formal Notice. Here, the subject matter is delineated and the member state is encouraged to lay bare its viewpoint on the issue of interest. The usual time limit for

the member state to reply is two months. However, the Formal Letters do not fall under the official proceeding; they are seen as a preliminary stage of the entire process (Börzel 2010: 806). The first official step is then the Reasoned Opinion which signals the Commission's conclusion that the given member state is failing to fulfil its obligation. The Commission uses the Reasoned Opinion to explain its view and, moreover, it requests that the member state informs the Commission on the detailed measures taken. Again, the time limit is usually two months. If the member state still fails to reply, the Commission may call upon the European Court of Justice (Step 3). According to the Commission, most cases are settled before this step (EC 2018a). If this is not the case, meaning a country still does not reply and shows no signs of concession, the Commission may ask the European Court of Justice (ECJ) to impose penalties. At the last step, the ECJ has to decide whether or not the member state has breached EU law and, subsequently, is forced to obey the Court judgement (Step 5). As a last resort, if a country still does not comply and refuses any adherence to common jurisprudence, there is the possibility of imposing financial penalties either in the form of daily payments or a lump sum. The Commission publishes an annual report on EU-wide infringement proceedings on its website. For example, in 2017 the Commission has launched 716 infringement cases in total, most of which were stemming from the policy area of Environment (173) followed by Mobility and Transport (155) and Financial stability, financial services and Capital Market Union (84) (cp. EC 2018b).

3. Research Question and Hypotheses

The central question in compliance research is: Why do some states comply and others do not? Angelova et al. (2012) analyzed a large number of studies in order to gather and single-out the most important explanatory factors. They ended up codifying 12 theoretical arguments in 37 published compliance studies (many of which have been cited here). In spite of variation, they get two robust results: the goodness-of-fit and the institutional decision-making capacity arguments.

According to the goodness-of-fit hypothesis, non-compliance grows with the level of difference between the policy goals of a Directive and the domestic status quo (Angelova et al. 2012). Implementation problems are thus linked to a lacking capacity of the member state. The institutional decision-making thesis stresses the importance of veto players and their potential for blocking. However, as Falkner and Treib (2007) point out, both theses “had at best very weak explanatory power” (3). Therefore, this paper tries to go beyond both theses and establish a rather uncharted territory by examining the impact of populist parties upon the level of compliance. Hence, the guiding question for the empirical analysis is: What effect does domestic populism have on the level of supranational compliance?

Based on the assumption that populist parties at the extremes of the unidimensional left-right continuum will construct an outsider, anti-elitist image (cp. van der Brug and van Elsas 2015), it can be followed that they have an incentive to portray the European Union as a proponent of the mainstream elite. In fact, it is very common for both right and left-wing populists to use Brussels as the enemy against which only they will defend the national interest of the ‘sovereign people.’ Because populists are inherently anti-elitist, compliance with EU Directives would go against their very core values. Therefore, the first hypothesis addresses the issue of compliance from a governmental standpoint.

Hypothesis 1: Countries with a populist party as part of government have a lower rate of compliance than countries with no populist party in government.

Jensen et al. (2013) bring to the reader's attention the possibility of using a parliamentary question as an ex-post fire alarm mechanism (Lupia 2003) in a delegation chain. In this sense, the EU delegates the implementation of Directives to the member states who are supposed to act as agents. However, in some cases the EU as principal lacks monitoring devices and, hence, has to rely on fire alarm oversights by MPs. The authors show that MEPs from opposition parties in particular have a stronger incentive to alert the Commission: "a question from a single MEP could potentially lead to public embarrassment of his or her government [and] costly fines" (276). Hence, populist M(E)Ps can, in theory, have an impact both in government and in opposition with respect to the level of compliance. If a strong populist party with many MPs sits in opposition, it can be expected that they raise questions and target their home country's government by questioning publicly the state of compliance. It would be in the very interest of populist MPs to publicly expose the own government's laggard record which could be another incentive for the government to follow suit European guidelines. Also, in the national realm non-populist parties have an incentive to highlight themselves as pro-European since most populists construct an anti-EU narrative. If you do not want to be put into the mix with populists, you have to take a decisive stance against Euroscepticism. Meguid (2005) stresses the usefulness of this spatial analysis of mainstream party behavior with respect to populists. Populism is inherently polarizing. Thus, when the populist vote share grows, the political atmosphere is expected to be more polarized. The more polarized the political discourse, the higher is the pressure on parties to take clear positions. In other words, if you want to distance your party from populists, you navigate it closer to the EU. That mechanism leads to the following paradox: by voting populist, you are pushing pro-European compliance. Since this paper measures noncompliance, the phrase has to be reversed:

Hypothesis 2: Populist parties in national opposition have a negative effect on EU-level noncompliance.

4. Data and Variables

4.1. Operationalization

For the operationalization of populism within parties, this paper relies on the stellar work of von Kessel. Stijn von Kessel's book (2015) is one of the most comprehensive overviews dealing with populism in Europe. Compared to former analyses by Swank and Betz (2003), Mudde (2013), Oesch (2008) and Akkerman et al. (2016) von Kessel offers the most complete list of populist parties ranging from 2000-2013 in Europe, both left- and right-wing. Researchers of populism usually refrain from analyses that go beyond a case comparison which is why many recent papers are confined to qualitative studies. Von Kessel works with a definition of populism in the sense of 'thin' ideology. Hence, he treats populism as a set of ideas which means that populist parties do not necessarily adopt the same substantive policy position. As this paper proceeds with a quantitative, cross-national analysis von Kessel's data are fit to use for this purpose. In the annex, you can see all populist parties in Europe from 2000 through 2013 in EU-countries according to von Kessel. Parties qualify as populist if they fulfill all of the following conditions (von Kessel 2015: 13):

- 1. Parties portray 'the people' as virtuous and essentially homogeneous;**
- 2. parties advocate popular sovereignty, as opposed to elitist rule; and**
- 3. parties define themselves against the political establishment, which is alleged to act against the interest of 'the people.'**

Von Kessel treats this as a minimal definition meaning that all three properties need to be present in order to include a case into the populist party universe. He comprised only parties which were represented in parliament during a legislative period between 2000-2013. Because of that there is no *UKIP* or *Alternative für Deutschland*. That also means that out of the EU-15 only the UK, Portugal and Spain did not have a genuinely populist party with legislative representation by 2000. Because the Eastern European countries only joined the EU in 2004, 2007 and 2013 respectively, they fall out of the set time frame and are subsequently left out from the analysis. This methodology results in a list of 12 countries and 22 parties (see Table 1 in appendix).

4.2. Transposition vs. Infringement Data

When it comes to measuring non-compliance, this paper utilizes the number of infringement procedures launched against member states. As described in the section above, infringement procedures are a measurable independent variable as data is openly available through the Commission. Furthermore, in comparison with transposition data, infringements have the advantage of reflecting the interplay of national and supranational levels over a period of time and throughout several stages of the process (Hartlapp and Falkner 2009: 291). While transposition data is also openly available on the CELEX/EURLEX database where you can see for every country when exactly the single steps of transposing a European Directive have taken place, it also suffers from serious detriments as numerous authors have pointed out (Hartlapp and Falkner 2009; Toshkov 2010; König and Luetgert 2009). In the following section I will shortly discuss the validity of transposition data.

First, notification and transposition data are not necessarily one and the same. National bureaucracies have at times notified Brussels with the transposition of a given law when, in fact, it had not taken place yet (Hartlapp and Falkner 2009: 287-288).

Second, transposition of a Directive may take up more than one piece of national legislation. When working with transposition data it is often unclear whether the first piece of legislation is used as an official transposition date or the last piece of national legislation (Toshkov 2010: 14-16). The underlying assumption presented by Hartlapp and Falkner is that the first piece is usually the easiest to get through legislation since it is the most uncontroversial. That, however, may also mean that the first piece of legislation is the most insignificant one since it is not heavily debated and bargained. When you use the first piece of legislation as the date of transposition of European Law, it may result in misleading data since most of the steps of the national legislative process have yet to take place. At the end, it is up to the national government which one of the legislative steps it will notify to Brussels: the first or the last one. That kind of arbitrariness on the national level makes it strenuous for the researcher to standardize the data. It is important to know that the Commission does not control for a unified process but simply puts the date it is provided with by the national government into the database without further standardization.

Most importantly, Falkner et al. (2005) show in a comprehensive case study on transposition data that out of 90 transposition measures, almost half of it was flawed. Even years after publication, this number remains at 44% (Falkner et al. 2005: 269-270). The key issue with transposition data is that there is no information on completeness or content. In their methodological discussion paper, Hartlapp and Falkner (2009) conclude: "The completeness of transposition is largely unknown and the correctness of transposition is completely unknown" (288). Infringement procedures initiated due to non-notification or formal transposition make up only 57% of all infringement cases (Börzel and Knoll 2012). This

figure highlights that focusing exclusively on transposition data would equal a large missed opportunity as many cases of non-compliance would remain undiscovered. Due to inconsistencies and a flawed data structure, this paper will proceed using infringement data. Because the Commission's infringement publication website only begins in 2002, the time range is adjusted to 2002-2013, now adapting to von Kessel and the Commission's respective datasets.

4.3. Dataset

I have created a new timeseries dataset combining the number for all infringement procedures during the timeframe with a detailed list of populist parties both in government and in opposition. Here, all infringement steps are included. One single infringement case can therefore take up several entrances. What is important is that every time a new step is initiated by the Commission in the process of infringement, the respective country has failed to deliver prior action. Therefore, every single step in the process (Figure 2) manifests another act of non-compliance and has to be represented individually in the data. Therefore, the dataset has a time-series structure with every entry representing one country-year.² Furthermore, Angelova et al. (2012: 1280-1283) stress the necessity to scrutinize more thoroughly the areas of Agriculture and Internal Market which made up a combined 60% of all legal output of the EU between 1989 and 2005. Yet, these two areas are heavily underrepresented in most (quantitative) studies. This paper incorporates these areas and, on top of that, adds the most productive policy areas from the past. In the end, all infringement procedures from the following areas are covered: Agriculture, Internal Market, Transport, Environment, Service, and Taxation.³

The dataset measures the relative strength as seat share in the cabinet (populist government) and vote share in elections (populist opposition). For example, as the *FPÖ* in Austria was part of a coalition government in 2002-2005 with the conservative *ÖVP*, it gained 23% of all minister posts. Henceforth, its assigned value is .23. It is assumed that more seats in cabinet will give more leverage for (populist) parties to apply pressure in order to push their own agenda. This is taken into account by differentiating the relative strength of governing parties. Besides, since this paper aims to unmask the influence of opposition populist parties, there is a variable reflecting the strength of vote share for all non-government populist parties. For instance, *The True Finns* in 2013 won 19% of the popular vote resulting in a value of .19 in the dataset. It is assumed that opposition parties with more representatives in the legislature will have more capacity than parties with less MPs. Control variables are population size and GDP per capita in order to include both demographic and economic influence.

5. Analysis

5.1. Descriptive Statistics

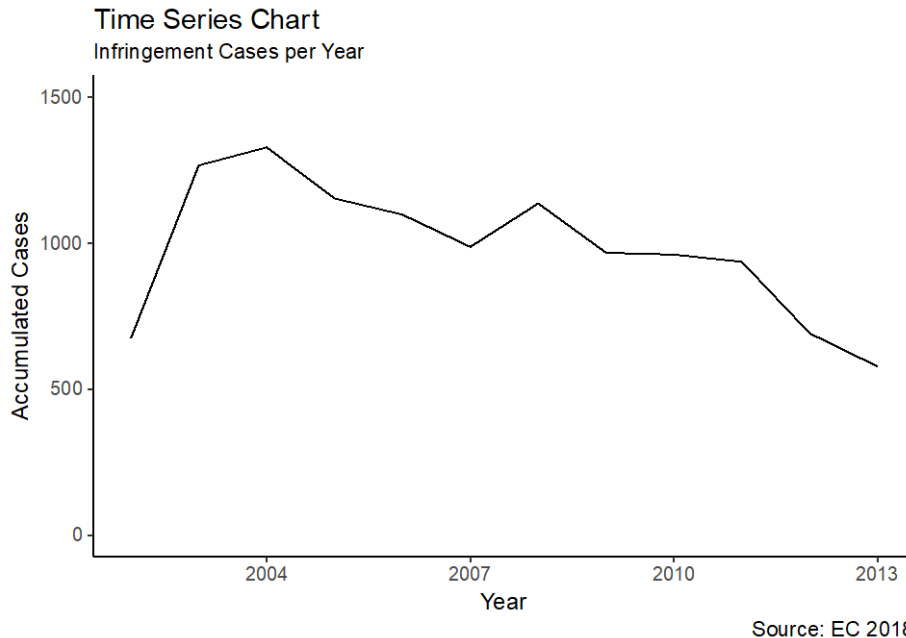
Figure 3 shows the trend of infringement procedures over time. Shortly before 2004, there was a sharp increase in total infringement procedures. With the 2004 Eastern European accession round, the number dropped again; however, not quite to the prior level. Another

² I ran adjusted Dickey-Fuller tests in order to control for trended nature of the data. I tested each individual country and the aggregated data separately. Results are shown in the Appendix (Figure 7). The Dickey-Fuller test fails to reject stationarity.

³ On the Commission's database (EC 2018c), these areas are grouped as follows: Agriculture and Rural Development; Employment, Social Affairs and Equal Opportunities; Energy and Transport; Environment; Internal Market and services; Internal Market, Industry, Entrepreneurship and SMEs; Mobility and Transport; Taxation and Customs Union.

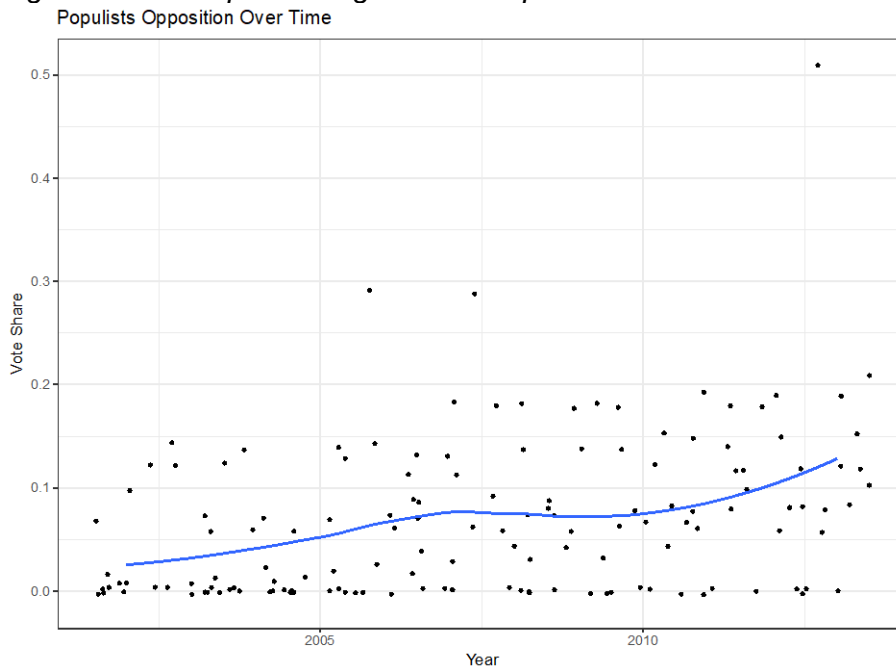
rise is noted in 2008 from where on the numbers decline again and reach a level of around 600 yearly infringement procedures in 2013. The peak of more than 1,200 cases had been reached in 2004. Again, it is key to note that these figures show only data from the EU-12 countries, not from the new members from 2004 and 2007 respectively. The figures depicting infringements in each individual country are appended (Figure 8).

Figure 3: Development of Infringement Procedures in Specified Areas in EU-12, Aggregated Data



During the same period of time, we see a steady rise of populists throughout these countries (see Figure 4 below). Every dot represents a value per country and year that accumulates the combined populist parties' vote share.

Figure 4: The 'Populist Zeitgeist' in Europe

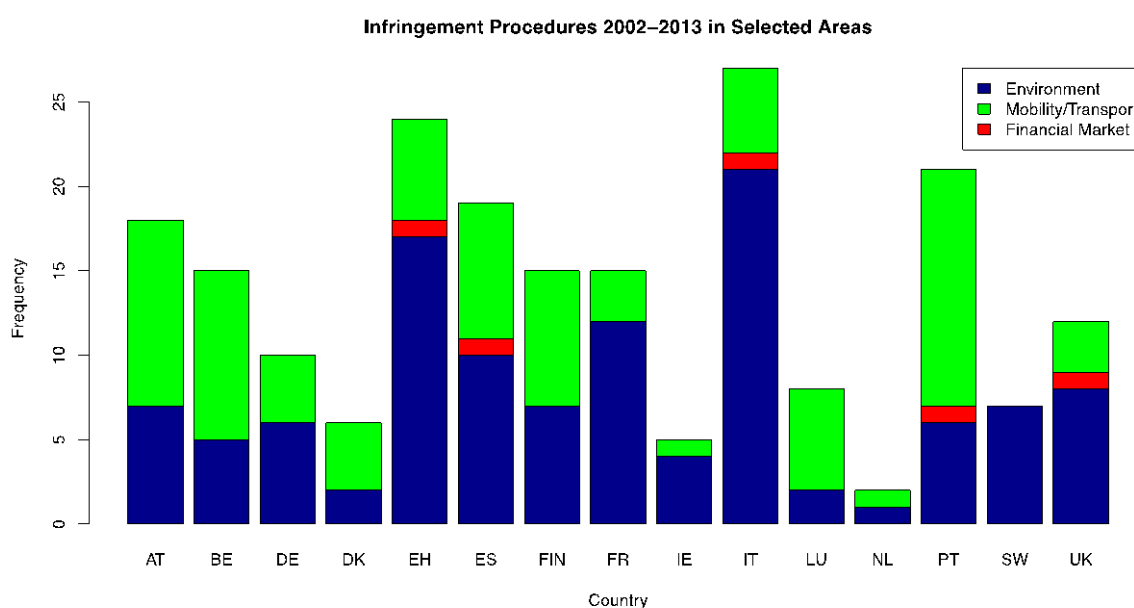


From an average of around 4 % at the beginning of the millennium the mean vote share of populist parties in opposition has reached slightly more than 10% in 2013. That is, within a

decade the vote share for populists has more than doubled. Stark outliers are the Italian oppositions in 2006 and 2007 (29%), and 2013 (51%). After 2010, the vote share increases more steeply than before which reflects the surge of populist movements all over Europe, entitled by Cas Mudde as “The Populist Zeitgeist” (2004). It is also vital to notice the diametric trends of Figures 3 and 4: in the same time period where populist vote shares have been growing, the number of infringement procedures have been declining.

Because aggregate data always runs danger of losing sight of detail, let me first take a closer look at the most laggard policy areas. As the Commission has pointed out in 2017, there seem to be most infringement procedures in three specific areas (2018b). In these areas – Environment, Mobility and Transport, and Financial/Capital Market – there is vast variation. Figure 5 illustrates the infringement numbers for 2002-2013. Notably, Italy struggled the most with implementing EU policies in these areas. Of all countries, Italy, Greece, and Portugal have had the most laggard record. The Netherlands, Ireland and Denmark, on the contrary, showed the best numbers as they only have little more than ten infringement procedures in the eleven years of interest. Of the three most prominent areas, Environment seems to be the dominant issue. Most countries have had difficulties implementing environmental policies in comparison to the other two policy areas chosen. Only Portugal, Luxemburg, Finland, Austria and Denmark have more problems with Mobility and Transport than with Environment. All other countries fail more to push environmental legislation. In contrast to the observation from 2017, Financial and Capital Market are of minor relevance in these countries in the selected timeframe. Only the southern countries of Greece, Spain, Italy, Portugal, plus the peculiar case of the UK show any sign of infringement issue regarding financial policy. Clearly, in the timeframe 2002-2013, Financial Market was no big arena for infringements. As the Commission has stated that Financial Market issues have become one of the top three areas of infringement it must, hence, be assumed that there has been a sharp rise in recent years. The numbers displayed in Figure 5 indicate the relevance of time variation when looking into these questions. Financial Market was no major infringement driver from 2002-2013, but according to the EC statement from 2017 it has since then risen into the top three of laggard areas.

Figure 5: Infringement Procedures 2002-2013



5.2. Inferential Analysis

The results of the time-series regression analysis are summarized below (Table 2).⁴ Strikingly, populist government participation is insignificant. While there is a positive correlation, it remains below the necessary level of significance for it to be more than coincidental. Therefore, for the analysis, populist government participation can be dismissed; hypothesis 1 has been falsified. A reason for this failure is lack of variation in populist governments. As you can see in the appendix (Figure 9), there are only a few outliers in the midst of a vast majority of zero or near-zero scores.

Another reason for the failure might be that populists are more successful in opposition than in government (Heinisch 2003). For statistical analyses aiming at a cross-national comparison, populist opposition might be the better proxy. As it turns out this assumption seems to prove right as in model 2 populist opposition turns significant with $p < .05$. The coefficient signals negative effects in that regard. The stronger the populist opposition in domestic parliaments, the less infringement cases at the EU level. Put differently, the more populists sit in the legislature at home, the more compliant the government is on supranational stage. That counterintuitive finding is crucial in this analysis. It seems as though the parties in power (i.e. non-populists) comply more, when they are sure to have a substantial faction of populists sitting in their parliament at home. In both models, population size is significant on the 1% level as is the time-lagged variable Y_{t-1} . The significant negative effect of population size is, however, evanescent. Also, GDP per capita seems to be positively correlated; however, not on a significant level in either model. The more parsimonious model 2 arrives at the same adjusted R^2 score of around .29, just leaving out the populist government variable. That is why model 2 exceeds by taking into consideration less variables.

Table 2: Regression Results

	Infringement Procedures	
	Model 1	Model 2
GDP per capita	0.0003 (0.0002)	0.0003 (0.0002)
Population Size	-0.00000*** (0.00000)	-0.00000*** (0.00000)
Populist Government	13.833 (70.322)	
Populist Opposition	-116.783* (60.338)	-122.136** (53.595)

⁴ I conducted a Durban-Watson test which showed substantial levels of serial auto-correlation. In order to cope with this statistical problem, I have included a time-lagged dependent variable (Y_{t-1}) as explanatory factor. That way, the change and not the level of the Dependent variable is measured, and serial-autocorrelation is absorbed. Also, adhering standards set by Beck and Katz (1995), I have included country fixed-effects to account for country-specific unobserved, time-invariant heterogeneity. Country fixed-effects are not shown in the results but can be retrieved upon request.

Infringement Procedures _{t-1}	0.380 ^{***}	0.376 ^{***}
	(0.062)	(0.058)
N	117	117
R-squared	0.383	0.383
Adj. R-squared	0.284	0.291
F Statistic	12.411 ^{***} (df = 5; 100)	15.653 ^{***} (df = 4; 101)

^{***}p < .01; ^{**}p < .05; ^{*}p < .1

Created using stargazer package (Hlavac 2015)

Jensen et al. (2013) seem to get confirmed by this assessment. They stress the salient role of opposition MPs; especially in their role as a sort of parliamentary fire alarm. One reason why populist opposition MPs would influence the level of non-compliance is that they are the ones who shift the focus onto issues that may embarrass their own government publicly. On the one side, PRRPs have an incentive to direct the spotlight upon the government's failures. On the other side, to avoid being publicly embarrassed, governments, have an incentive for anticipatory obedience with EU Directives.

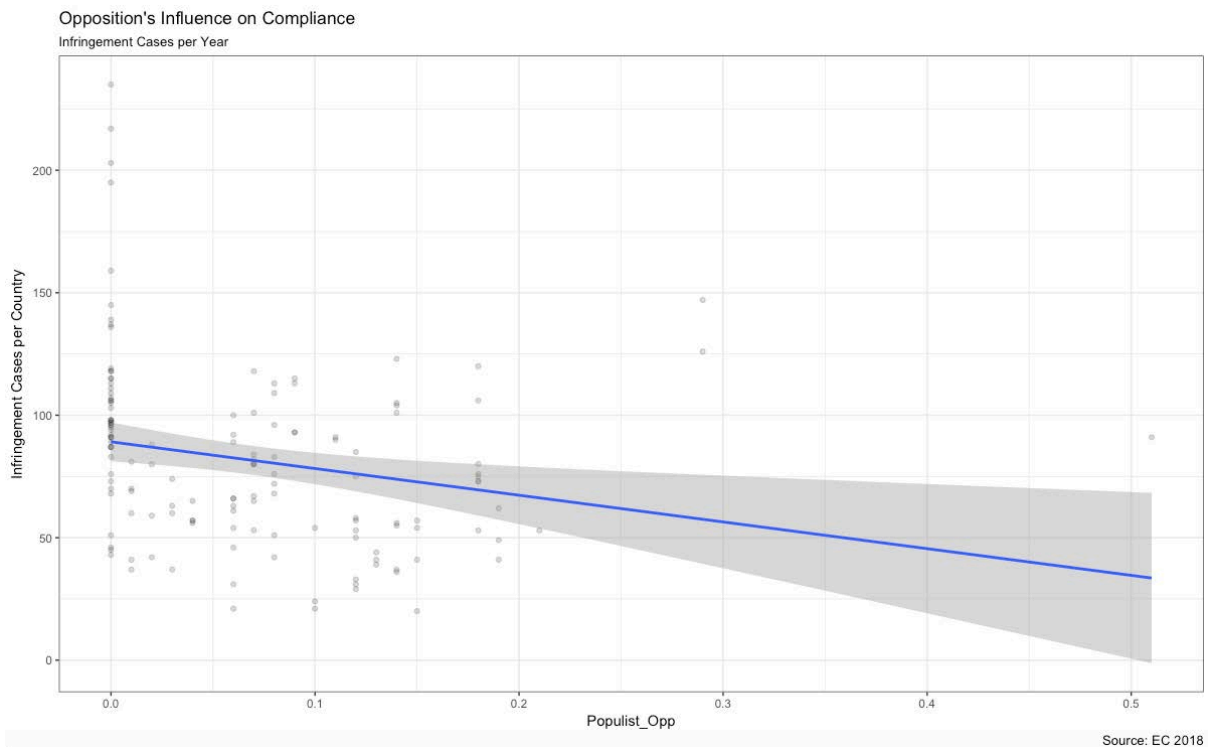
Another argument why populists make governments more compliant is that it is key to mainstream parties to distance themselves from PRRPs. As part of the establishment, mainstream parties will probably not get the majority of votes from this portion of the electorate even if they substantially converge. In addition, they run danger of losing the median voter as they depart from the ideological center (Downs 1957). Faced with a growing vote-share of an anti-EU electorate, mainstream parties will find themselves in a tough spot with the need to position themselves. As populism is genuinely polarizing, PRRPs and other populists assert pressure upon mainstream parties to make their position unequivocally clear. When ignorance is no longer possible, mainstream parties are left with two basic options: to either assimilate to the PRRPs (anti EU) position or fly the flag for more Europe. It has been shown elsewhere (Meguid 2005) that this spatial approach can best be used to explain the longevity of PRRPs and other populists over time. Seen from this angle it becomes clearer why, indirectly, bigger populist opposition has a positive effect on European compliance.

Two recent events serve as opposite examples which illustrate the effect of mainstream party behavior. The markedly, and in the end successful, pro-European election campaign of Macron in France is one example of the effect that a large anti-elite, populist electorate (in this case Front National) can have. More populists lead to more polarization which in turn will lead to a more markedly pro-European stance of the moderate median voter. It can be assumed that especially in majoritarian electoral systems, this effect will prevail. This holds only if the mainstream party chooses to fly the European flag; if it chooses to go down the assimilatory path, the story changes drastically as you can observe in the wake of the Brexit. Interestingly, the only country in this analysis with no populist party in the legislature (i.e. the UK) chose to leave the Union altogether. Also, the recent state-election in Bavaria 2018 provides ample evidence that going down the assimilatory path is a perilous endeavor for

mainstream parties.⁵ Populists are simply the more credible anti-elite party to vote for. Time and again you can see that voters who are genuinely Eurosceptic favor to vote the original rather than the copy.

Figure 6 shows the bivariate relationship between populist oppositions and number of infringement cases (i.e. non-compliance). Clearly, there is a linear negative effect. This holds true in areas with a narrow confidence interval, which means populist opposition between 0 and 20 % vote share. What becomes clear is that there have been few cases of populists in opposition with more than 20% seat share as the confidence interval spreads out. As for populist governments, at the moment data is still lacking for major opposition blocks. Therefore, the most substantial statements derived from the present analysis refrain from claiming generalizability and instead target seat shares from 0-20%.

Figure 6: Linear Term: Populist Opposition's Influence on Number of Infringement Procedures



In conclusion, both the organization and credibility are of vital importance for the electoral performance of populist parties (von Kessel 2011; von Kessel 2015; Agerberg 2017) and may help understand the linear negative relation of national populism and supranational noncompliance.

6. Conclusion

⁵ The CSU, the conservative mainstream party, decided to converge to the PRRPs rhetoric in its election campaign. Most pundits highlighted this as the key mistake as the party lost more than 10 percentage points compared to the last state-election.

Compliance research has been steadily growing for over a decade, but it has paid little attention to the populist impact. Both, populism and compliance are popular fields of studies; up until now, however, academia has turned a blind eye to the relationship of both. Without jumping to precipitous conclusions, this paper has undertaken a first data-based step to uncover connections that show a statistically significant interrelation. This finding is especially striking because the populist surge cannot be overlooked anymore. Even in social democratic strongholds like Sweden, national(ist) populist parties are on the rise. Moreover, there is no evidence that this trend is going to subside. Even the last sceptic has accepted the seriousness of the populist zeitgeist with the Brexit and the presidential election in the United States 2016.

I have scrutinized the influence of national politics upon supranational compliance. In detail, I have linked national populist parties in opposition to EU-level compliance in legislatures across Europe over a time-span from 2002-2013. This paper had two main hypotheses. Due to a lack of valid data, the first had to be dropped. Instead, the main finding concerns the second hypothesis. Drawing from a time-series analysis, I have identified a significant linear negative relation between populist opposition parties and the level of supranational noncompliance. The stronger the populist opposition in domestic parliaments, the more compliant is the national government on the European level. In other words, when the atmosphere at home gets heated, mainstream governments are more likely to comply in Brussels as they have an incentive to distance themselves from anti-EU populists. That prepares the ground for future research, which could target the question of why exactly this is the case. Discovering the detailed causal mechanism underlying my findings posits a futile opportunity for further investigation.

The key negative finding is that, from a data perspective, government data on populist parties is not ripe for large scale quantitative analyses as there simply have not been enough government participations of populist parties in Europe yet. Variation is too low to have a statistical weight. Between 2002-2013 there have not been a lot of populist governments in Europe. Therefore, no inferences can be drawn from the statistical finding which stayed insignificant. If the populist success story continues, though, this may very well change soon.

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8. Appendix

Table 1: Populist parties in Europe with parliamentary representation, 2000-2013, EU-12, data from von Kessel (2015), table by author; UK with no populist party in legislature

Country	Party	Elections
Austria	FPÖ	2002-2013
	BZÖ	2006-2008
	Team Stronach	2013
Belgium	Flemish Interest	2003-2010
	National Front	2003-2010
	List Dedecker	2007-2010
Denmark	Danish People's Party	2001-2011
Finland	True Finns	2003-2011
Germany	PDS/The Left	2002-2013
Greece	Popular Orthodox Rally	2004-2012
	Coalition of Radical Left (SYRIZA)	2004-2012
	Independent Greeks	2012
Ireland	Sinn Féin	2002-2011
Italy	Forza Italia/People for Freedom	2001-2013
	Northern League	2001-2013
	5 Star Movement	2013
Luxembourg	Alternative Democratic Reform Party	2004-2013
Netherlands	List Pim Fortuyn	2002-2006
	Liveable Netherlands	2002-2013
	Freedom Party	2006-2013
Sweden	Sweden Democrats	2002-2010

Figure 7: Individual Country Results for Adjusted Dickey-Fuller Tests for Stationarity

Country	p-value	Dickey Fuller score	alternative Hypothesis
AT	.5721	-2,00	stationary
BE	.5777	-1,9861	stationary
DE	.5727	-1,9997	stationary
DK	.5777	-1,9861	stationary
FIN	.5753	-1,9923	stationary
IE	.565	-2,0194	stationary
IT	.5642	-2,0215	stationary
LU	.5635	-2,0233	stationary
NL	.5665	-2,0156	stationary
PT	.5705	-2,005	stationary
SE	.5685	-2,0101	stationary
UK	.5643	-2,0211	stationary

Figure 8: Individual Country Infringement Cases over Time

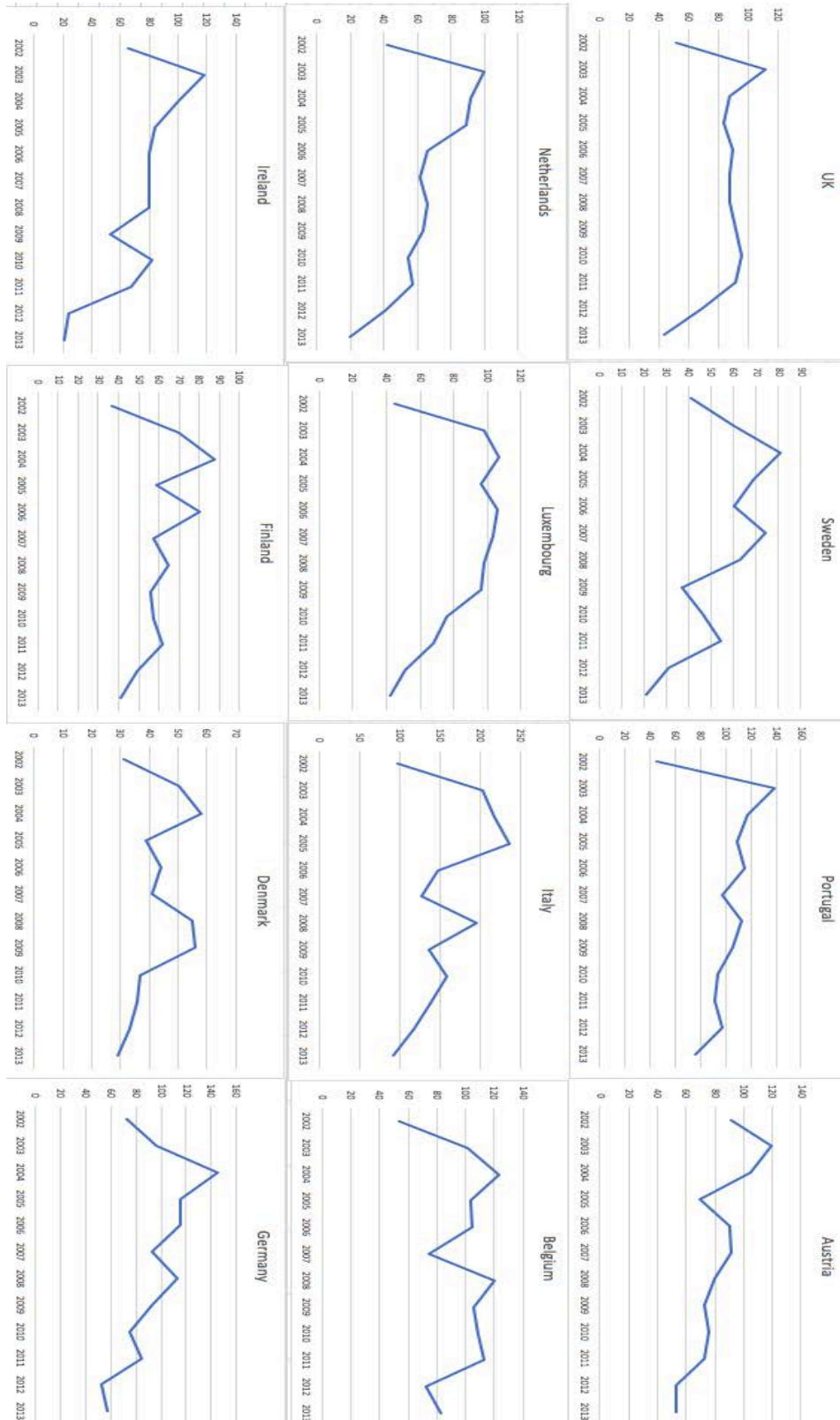


Figure 9: Lack of Variation in Data Structure: Populist Government Participation

