Public Support and the European Union Centralised Compliance Monitoring System

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Abstract

We investigate the effect of public opinion on the European Union centralised compliance monitoring system. We argue that because the authority and effectiveness of its enforcement actions are affected by public support, the European Commission has incentives to adjust its enforcement decisions to the public mood. Whereas high public support gives the Commission greater leverage to discipline Member States, low support acts a constraint on harsher forms of enforcement action. To address the endogenous character of enforcement and public support, we use unemployment rate and health care cuts interacted with Eurozone bailouts as instrumental variables to estimate the effect of public support on enforcement actions. Consistent with our theoretical predictions, we find the strongest evidence for the influence of public support on enforcement at the litigation stage when the Commission decides whether to take member states to court.

Keywords: Compliance; European Commission: European Union; Member States; Public Support

JEL codes: F51; F55; K42

1 Introduction

International regimes are technocratic in character. The secretariats and commissions tasked with monitoring compliance and flagging potential regime violations are typically appointed rather than elected. So too are the judges who staff the international courts in charge of adjudicating the resulting disputes. The technocratic nature of supranational governance is, of course, the source of its alleged democratic deficit (Abromeit, 1998; Horeth, 1999; Eriksen and Fossum, 2004; Holzhacker, 2007). Yet a large literature suggests that non-majoritarian institutions, such as courts and regulatory agencies, too, respond to public preferences (Hall, 2014; Casillas et al., 2011; Tyler and Huo, 2002; Tyler, 2006; Hough et al., 2013; Levine and Forrence, 1990). In democratic societies, no policy-making institution can entirely ignore the will of the majority (Dahl, 1957). The authority, influence and legitimacy an institution commands tend to be commensurate with the degree of public support it is able to muster. The argument extends to supranational bodies like the European Commission, which, in the European Union (EU), serves as centralised compliance monitoring agency as well as legislative agenda-setter. Empirical studies have found a correlation between the policy output of EU institutions and public support for integration. EU institutions respond to the public mood over integration (Toshkov, 2011; Crombez and Hix, 2015; Bølstad, 2015) but the public, too, is thought to be responsive to changes in EU policy output (Franklin and Wlezien, 1997).

A more recent line of inquiry investigates how public support specifically affects the behaviour of the European Commission. Williams and Bevan (2019) claim that public support is negatively associated with the size of the Commission's legislative output. Counter-intuitively, they find that when public support is high the Commission defers to other EU legislators and adopts few unilateral acts whereas the opposite happens when support is low. To rationalize these findings the

authors argue that, whereas low support causes the Council and the European Parliament – which are more responsive to the electoral cycle – to reduce their policy output, the Commission is more politically insulated, enabling it to take over policy making. Fjelstul and Carrubba (2018), on the other hand, find evidence that lower public support for EU membership makes the Commission more reluctant to prosecute national governments. True, the focus of this study is not the impact of public opinion on Commission decision making but the interplay between the Commission and national governments in compliance disputes. To the extent that it addresses public support, it is essentially as a proxy for the costs that national governments attach to complying with Commission decisions. Even so, the analysis does imply that public support constitutes a constraint, albeit an indirect one, on the Commission's behaviour.

While some authors recognise that public support may directly influence Commission decision making (e.g. Bølstad, 2015), the possibility that Commission actions, including enforcement decisions, may also impact public opinion is less widely acknowledged. Yet this seems very plausible. To the extent that European Commission decisions are discussed in national media (Boomgaarden et al., 2010; Trenz, 2004; Meyer, 2005; Peter et al., 2003), we would expect unpopular or controversial decisions to adversely impact support for EU institutions. In other words, as with EU policy output in general (Toshkov, 2011; Bølstad, 2015), we have reasons to believe that public support and Commission decision making are variables that are partly endogenous to each other. Commission decision making is influenced by public support for the EU and vice versa. The implications of this argument are not innocuous. If true, failure to account for endogeneity would cast doubt on the results of Fjelstul and Carrubba (2018) and Williams and Bevan (2019). A correlation, whether positive or negative, between public support and Commission policy output does not tell us about the direction of causality. Likewise, even if we accept that public support affects the compliance costs of national governments, the Commission might still want to consider how its own actions might affect public opinion, if only to avoid further pushing up national governments' compliance costs.

This paper examines the effect of public support on the enforcement decisions of the European Commission. We argue that, though unelected, a supranational compliance-monitoring agency like the European Commission has incentives to take the views of the public into account when making decisions over the enforcement of EU rules. As with other non-elected public decision-makers, the authority and effectiveness of the Commission's enforcement actions are affected by public support, So the European Commission has incentives to adjust to the public mood and to consider how its own decisions might affect public support. Similar to Fjelstul and Carrubba (2018), we consider the choice the Commission has to make at each of the three stages of infringement proceedings: (1) the letter of notice stage, (2) the reasoned opinion stage and (3) the referral stage. We posit that the decisions made at each stage differ with regard to their impact on public support. We contend that referrals have a stronger adverse effect on public support than reasoned opinions and reasoned opinions a stronger impact than notices. At each stage, the Commission must weigh the benefits of greater compliance against the potentially negative impact on public support. Yet the dilemma the Commission faces becomes more pronounced as cases progress through the stages of the infringement procedure. We formally model the Commission's choice to take a case to the next stage of proceedings as a cost function which we then estimate using a data set compiling all notices, reasoned opinions and referrals issued between 2002 and 2018. To address the endogenous character of enforcement and public support, we adopt an instrumental variable approach, interacting the unemployment rate and health care cuts with Eurozone bailouts. The Commission, we contend, cares about unenmployment and bailout-induced health care cuts but only to the degree that these impact public support. We estimate the effect of public support on the Commission's enforcement decisions in a two-stage regression setup. We find robust evidence that public support influences Commission decisions at the referral stage. The Commission takes more cases to the Court of Justice when public support is high but seems less concerned with public opinion when it comes to issuing reasoned opinions; and even less so when it comes to notices. These empirical results are consistent with our theoretical argument. The Commission's role is to oversee compliance with EU rules and to discipline violators. Yet imposing greater discipline can itself undermine the support the Commission needs in order to carry on its mission.

The primary contribution of our study is to the literature investigating the link between in-

ternational decision making and public opinion (Toshkov, 2011; Schlipphak, 2015; Voeten, 2013; Edwards, 2009; Caldeira and Gibson, 1995; Harteveld et al., 2013; Harsch and Maksimov, 2019). This strand of scholarship has paid more attention to the relationship between public support and legislative output (Toshkov, 2011; Williams and Bevan, 2019; Bølstad, 2015; Chalmers and Dellmuth, 2015; Williams, 2016) than to that between public opinion and compliance oversight. Our work also contributes to the broader literature on compliance with international and supranational regimes (Steunenberg, 2010; König and Mäder, 2014; Börzel et al., 2012; Börzel, 2001; Carrubba et al., 2008; Fjelstul and Carrubba, 2018; König and Luetgert, 2009; Mbaye, 2001; Börzel, 2006; Börzel and Knoll, 2012; Hofmann, 2018). This literature suggests that enforcement is selective and responds to the positions of national governments and the probability of enforcement success (König and Mäder, 2014; Steunenberg, 2010). The same has been found to apply for international adjudicators (Carrubba et al., 2008; Larsson and Naurin, 2016). Our study suggests that public support matters, too, at least for decisions that supranational decision makers have to make against national governments.

2 Theoretical Framework

2.1 Infringement Procedure and Public Opinion

International regulatory regimes like the European Union are not self-enforcing. Violations may occur either as a result of deliberate non compliance or, unintentionally, due to a deficient administrative apparatus. EU Treaties have entrusted the task of monitoring compliance with EU rules to a central agency, the European Commission. Article 258 of the Treaty on the Functioning of the European Union (TFEU) specifies the formal infringement procedure governing the prosecution of violations. The procedure consists of three stages: (1) the Commission delivers a letter of formal notice informing the member state of a suspected of violation and inviting its government to submit observations; (2) if the government fails to respond or to comply in time, the Commission may issue a reasoned opinion explaining why the member state has infringed EU rules; (3) if the member state fails to address the violation within the period laid down by the Commission, the Commission may refer the case to the Court of Justice of the European Union (CJEU).

Each of the three stages comes with different levels of severity. Notices are the starting stage, in which the Commission sends formal letters of notices to Member States notifying possible infringements. Scholars have argued that this stage is rather bureaucratic and helps screening unintentional from intentional violations (Fjelstul and Carrubba, 2018). Member States are usually given two months to respond. The second stage comes with a reasoned opinion after some investigations, detailing the reasons of the violations. Again, Member States are usually given two months to respond, although the second stage can extend over a longer timespan when multiple reasoned opinions are issued. If a Member State still fails to comply with EU law, the Commission may refer the matter to the Court of Justice. The Court of Justice reviews the case and, if the government is found to have infringed EU law, declares a violation. The Court's ruling may, in addition, impose a financial penalty on the member state.[1]

As Fjelstul and Carrubba (2018) suggest, the infringement procedure can be thought of as a bargaining procedure consisting of a sequence of discrete offers. If a member state rejects the Commission's offer, the Commission may make a second offer. If the second, too, gets rejected, then the Commission may make a third one. The three stages, though, are not merely the repetition of the same offer. Not only symbolically but also legally, a letter of notice, a reasoned opinion and a referral do not carry the same weight. A letter of notice only addresses the *possibility* of a violation, whereas a reasoned opinion constitutes a *formal indictment* of a member state's conduct. A referral goes one step further and potentially adds the weight of a *judicial conviction* to the pressure to comply. In other words, each stage constitutes a more severe form of punishment than the previous one. From the perspective of the infringing government, each stage comes with distinct financial as well as reputational costs at the international and EU level.

[1] See more details at: https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en

While citizens may disapprove of their government violating EU regulations, they may object and resent the Commission for going after their country. Following a line of argument similar to that of Franklin and Wlezien (1997) with regard to EU policy output in general, more aggressive enforcement on the part of the Commission may make citizens less supportive of the EU.[2] A letter of notice may not be enough to spark disapproval, but news reports of a reasoned opinion or of the country being pulled before supranational judges may. Though coverage of EU affairs in national media has long been limited, it has been increasing in recent years (Boomgaarden et al., 2010). Moreover, research indicates that the European Commission is the most salient EU institution in national media (Boomgaarden et al., 2010; Trenz, 2004; Meyer, 2005; Peter et al., 2003). While domestic media coverage of Commission enforcement decisions is not systematic, we posit that it is sufficient to make the public responsive to Commission actions.

2.2 Public Support as Constraint on Commission Decision Making

Contrary to studies arguing that the Commission does not need to cultivate public support because it is insulated from external political influences (Williams and Bevan, 2019), we contend that the Commission cares about public opinion for the same reasons that non-majoritarian institutions, like courts, do. Judicial institutions are thought to require public support because they do not hold the purse or the sword and must therefore rely on the executive and legislative branches to enforce their rulings. To compel the other branches to respect its judgments, a court must act strategically and adjust its behaviour to shifts in public support (Caldeira and Gibson, 1992, 1995; Casillas et al., 2011), Similarly, because public support affects the legitimacy and effectiveness of its decisions, we contend that the Commission strategically adjusts its decision making to the mood of the public. High public support gives the Commission leverage. Its enforcement decisions command greater authority, making compliance more likely. By contrast, when public support is low, the decisions of the Commission inspire less respect and are more likely to be defied.

Hence, while public support is responsive to Commission decision making, public support is itself a constraint on the Commission's oversight and enforcement decisions. This presents the Commission with a dilemma. Effectively punishing violators requires public support. Yet the punishment itself may undermine it.

2.3 Formalisation

We argue that the Commission responds to this dilemma by seeking the optimal level of enforcement given the current level of public support and the potential impact of enforcement decisions on compliance and public attitudes. To better illustrate the causality, we build the following simple analytical model. We acknowledge that our model is incomplete in a sense that a complete model should involve three stages of infringement proceedings in a unified decision system, which is however too complex to solve and deliver straightforward hypotheses for testing. We prefer considering an independent maximization choice of each stage separately.

Suppose the European Commission ordered a certain amount of directives. Each compliance by a Member State generates zero utility to the Commission but a violation of a directive causes a loss of utility to the Commission. Given violations v of a Member State, the Commission chooses to challenge a proportion θ of them. However, only a fraction δ of these challenges succeeds in correcting the Member State's implementation of EU laws and directives. On the other hand, a challenge damages the support of the citizens of the Member State towards the Commission. The damage may come from two sources. First, citizens may consider an infringement proceeding as a direct encroachment of the nation's institutional power and, therefore, the higher the θ the larger

[2] Harteveld et al. (2013) argue that support for the national government is the strongest predictor of support for the EU, which they interpret as evidence that trust in the EU is in fact unrelated to the EU. However, we disagree with their conclusion. First, as the authors themselves acknowledge, their study does not address the inherent endogeneity of the relationship. The correlation may be driven by confounding factors. For example, it may result from a favourable economic environment driving up support in both national government and the EU. Second, their analysis cannot disentangle the effect of EU policies on the political and economic conditions that may have helped the national governments gain public support. Third, we believe that recent national developments in Europe, notably the nationalist surge, should work to reduce any correlation between trust in national governments and trust in EU institutions.

the negative impact of the challenge on the public support. Second, citizens consider a "violation" as evidence of misalignment of the preferences of the Commission and the Member State and thus, the higher v the larger the damage. We allow the two sources have differential impacts on public support, which are captured by parameters α and β respectively. We emphasize that we only model the *observed* violations. Some violations may never be observed or may be resolved at the informal, pre-contentious stage (König and Mäder, 2014; Fjelstul and Carrubba, 2018; Craig and De Búrca, 2011).[3] Our choice to model the Commission's decision as an optimisation rather than as a strategic problem is motivated by the nature of the relationship between Commission decision making and public support. While enforcement and support are endogenous to each other, we assume that the public does not play chess with the Commission – citizens do not choose their expressed level of support strategically. We are aware that the existing literature on compliance oversight, most notably König and Mäder (2014) and Fjelstul and Carrubba (2018), treat the interplay between the Commission and national governments as strategic. However, the focus of our analysis is not the behaviour of national governments but the extent to which public support represents a constraint on Commission decision making.

The Commission maximizes the following utility function in each stage of the infringement proceedings:

$$U(\theta) = -v + (\theta v - \delta\theta v) + \sigma \tag{1}$$

where σ is the public support level:

$$\sigma = \sigma_0 - \frac{\theta^\alpha v^\beta}{\sigma_0^\gamma} \tag{2}$$

Past support, σ_0, is the leverage the Commission can use to enforce its decisions against recalcitrant national authorities. The higher past support is, the lower the cost of new enforcement actions. The strategic value of past support is captured by the parameter γ, which we allow to differ across stages. Similarly, we allow α and β to differ across different stages of proceedings.

The Commission maximizes the utility by choosing a level of challenge θ. The first-order condition is:

$$\frac{dU}{d\theta} = (1-\delta)v - \frac{\alpha\theta^{\alpha-1}v^\beta}{\sigma_0^\gamma} = 0. \tag{3}$$

The second-order condition is fulfilled if $\alpha > 1$. The equilibrium θ is:

$$\theta^e = \Big(\frac{1-\delta}{\alpha}\Big)^{\frac{1}{\alpha-1}} \sigma_0^{\frac{\gamma}{\alpha-1}} v^{\frac{1-\beta}{\alpha-1}} \tag{4}$$

As $\alpha > 1$ and γ is assumed to be positive, the equilibrium challenge level θ^e is increasing in public support. Public support serves as a leverage and thus the Commission relies on high public support to go against the national governments.

The next step of our analysis is to transform the equation of the equilibrium enforcement proportion into a form that can be brought to the data. To that end, we multiply equation (4) by v, which becomes the number of infringement proceedings brought forward to the next stage. We then log-transform the resulting equation, which we call N:

$$ln(N) = ln(\theta^e \times v) = \frac{1}{\alpha-1} ln\Big(\frac{1-\delta}{\alpha}\Big) + \frac{\gamma}{\alpha-1} ln\sigma_0 + \frac{\alpha-\beta}{\alpha-1} lnv \tag{5}$$

The sign of the correlation between N and v is dictated by the value of the difference between α and β. Recall that α must be greater than one. If β is smaller than α, the correlation is positive. This implies that the damaging effect of extra violations, which directly result from the behaviour of national authorities, is relatively mild compared to a rise in the proportion of cases brought to the next stage of the infringement procedure. This is the more plausible scenario. A rise in θ (intensive margin) can be more easily framed as the Commission getting more severe towards a member

[3] Attempts to map the true scale of non-compliance have been limited in scope (see König and Mäder, 2014) and data, therefore, is scarce (Fjelstul and Carrubba, 2018).

state than a rise in v (extensive margin). Thus extra severity is likely to arouse more hostile sentiments among the public than a constant level of enforcement responding to a rise in violations. If β is greater than α, the correlation is negative. This implies that the number of infringements in the previous period has a very damaging effect on the current level of support enjoyed by the Commission. If $\beta = 1$ (and so $^{\alpha-\beta}/_{\alpha-1} = 1$), the enforcement proportion is a constant and a one percent increase in violations in the previous stage leads to a one percent increase in the proceedings of the subsequent stage. If $\beta > 1$ (and so $^{\alpha-\beta}/_{\alpha-1} < 1$), a one percent increase in violations in the previous stage causes a less than one percent increase in proceedings in the subsequent stage.

On the other hand, public support has a positive impact on the number of challenges as γ is positive. This leverage effect reflects the "cushion" that public support provides to the Commission. This effect is however small if the challenge is less serious. Denote the leverage effects of notice, opinion and referral stages γ_1, γ_2 and γ_3. We hypothesize that this positive impact is strongest at the referral stage, weaker at the reasoned opinion stage and weakest at the letter of formal notice stage, i.e. $\gamma_3 > \gamma_2 > \gamma_1$. In section 4, we test this theory against our empirical data. The numbers of infringement proceedings, i.e. N, are the dependent variable to be explained by number of violation of the previous stage and year and public support.

3 Data

3.1 Infringement Actions

We compiled a data set consisting of all infringement proceedings initiated from 2002 up to 2018. Our raw data, extracted from the European Commission website[4], comprises 48,597 entries covering five procedural steps: letter of formal notice, reasoned opinion, referral, closing of the case, and withdrawal from the Court. Entries are sorted into 29 policy areas, with "Environment" the most frequent policy domain followed by "Internal Market" and "Services". Although we could not validate our data against an alternative measure of the Commission's enforcement activity, we are confident that our data is complete,[5]

After excluding closed cases and cases withdrawn from the Court, our final data set consists of 20,244 unique infringement cases. Of these 6,694 received at least one reasoned opinion and 1,063 were referred to the Court. Because public support is measured at member state level, we aggregate cases at the country-level irrespective of their policy domain. Figure 1 illustrates the trends for the distinct stages of the infringement procedure. One can readily see that all three follow the same downward trend. As the total number of cases is affected by the overall number of member states (the EU underwent three waves of enlargement over the period), it can be instructive to look at the average annual time per country, as depicted in Figure 2. If anything, the downward trend looks even more pronounced. As the number of referrals is comparatively small, we plot them on a distinct y-axis in Figure 3. The two trends are remarkably similar.

The substantial decline in enforcement actions which the data reveals is not necessarily the consequence of greater reluctance to challenge member states on the part of the Commission. Several measures have been launched to facilitate the pre-contentious resolution of non-compliance disputes (see the discussion in Koops (2011)). In 2002, the SOLVIT programme was put in place to offer Member States a low-cost dispute settlement mechanism to help the private sector to correct misapplication of Internal Market rules without direct involvement of the Commission. In 2007, an EU Pilot method was established to improve information exchange and problem-solving. These channels are quicker and less formal than the infringement procedure enshrined in the TFEU.

While the Commission's efforts to move the resolution of compliance disputes to other contexts may induce temporal variations in infringement actions, it is reasonable to assume that country-specific factors, too, play a role in the data-generating process. The data, it turns out, shows

[4] http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions (Last accessed 1 June 2019)

[5] Scholars have speculated that the Commission may strategically omit to report some reasoned opinions. See the discussion in Steunenberg (2010) and Fjelstul and Carrubba (2018).

Figure 1: Number of new infringement proceedings per year

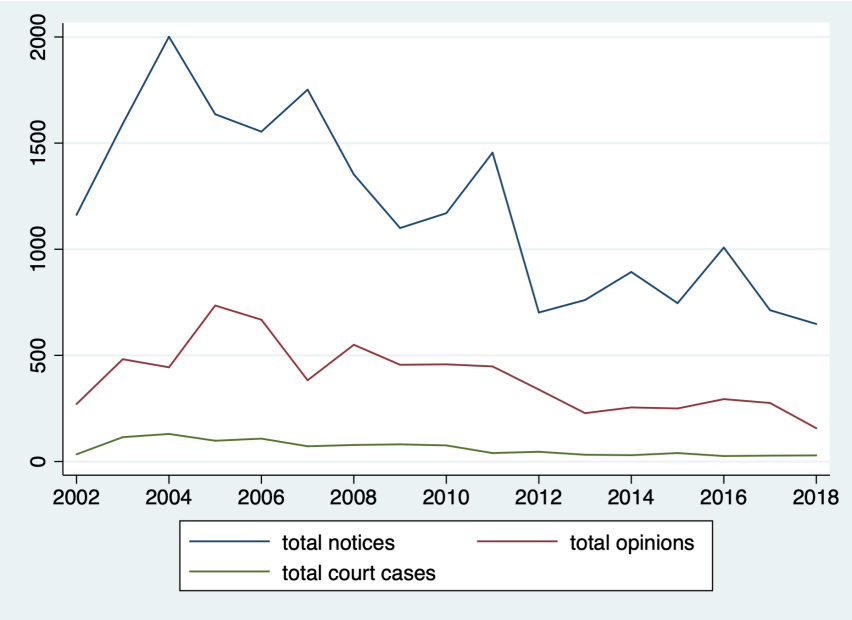


Figure 2: Average number of new infringement proceedings

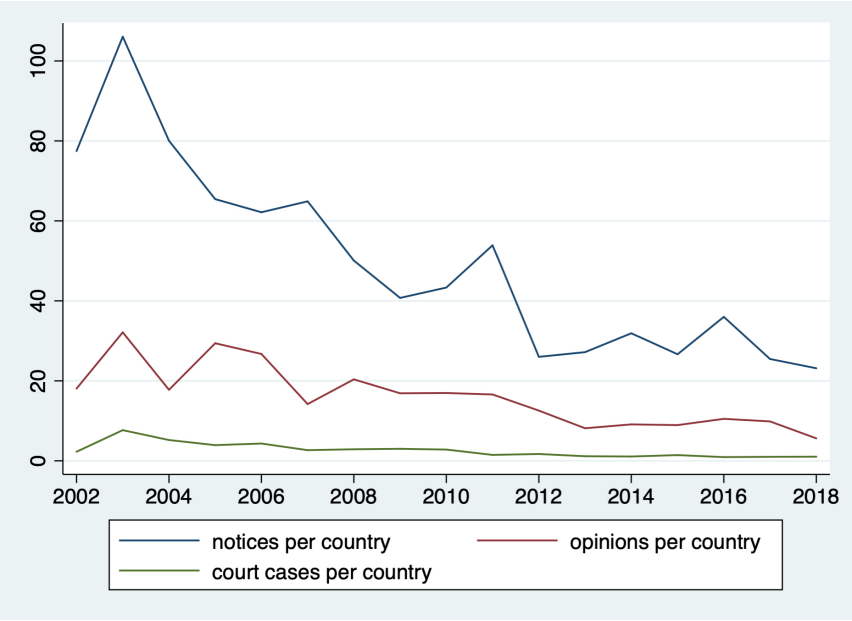
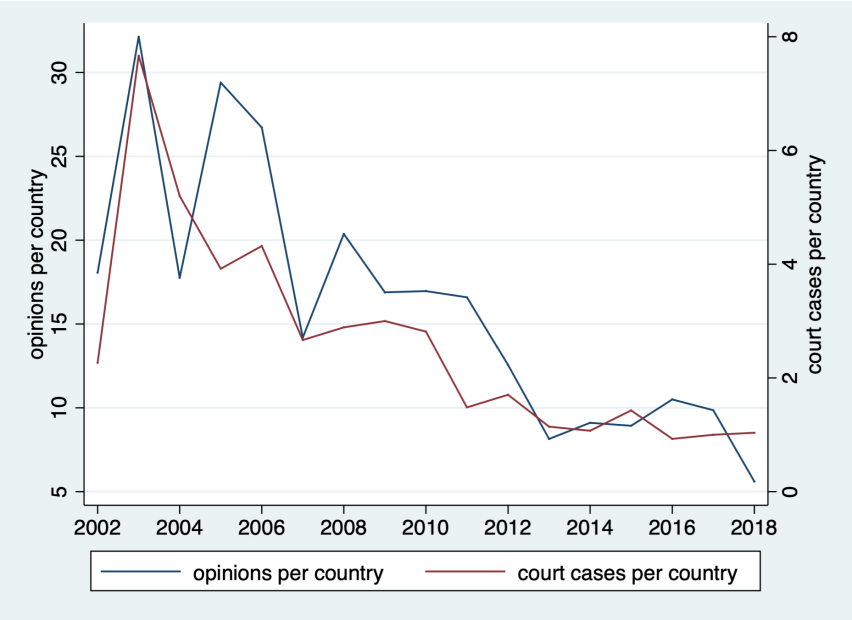


Figure 3: Average number of reasoned opinions and referrals



noticeable cross-country variations. With more than hundred new proceedings per year on average, Italy and Greece top the list of most frequent infringers. Denmark, Lithuania and Croatia, by contrast, are less likely to be the target of infringement proceedings (see Figure 4. This said, cross-national variations appear less pronounced than suggested in earlier compliance studies Börzel (2001). Although southern member states – Italy, Greece, Portugal and Spain – are the most frequent violators, some member states in Central and Northern Europe – Belgium, Austria, France, Germany and Luxembourg are not far behind. Romania, Bulgaria and Croatia, meanwhile, may seem to be doing relatively well, although this may merely be a consequence of their late accession, which coincided with a general reduction in the number of enforcement actions brought by the Commission. Not surprisingly, size matters and countries with larger populations exhibit higher violation rates, Yet smaller member states like Greece, Portugal, Belgium and Luxembourg are also among the frequent infringers.

For the purpose of our empirical analysis, we aggregate proceedings according to the calendar year. After year-level aggregation, our operational data set consists of 439 country-year observations. While reducing the number of observations, this step allows us to match our data with the covariates described next.

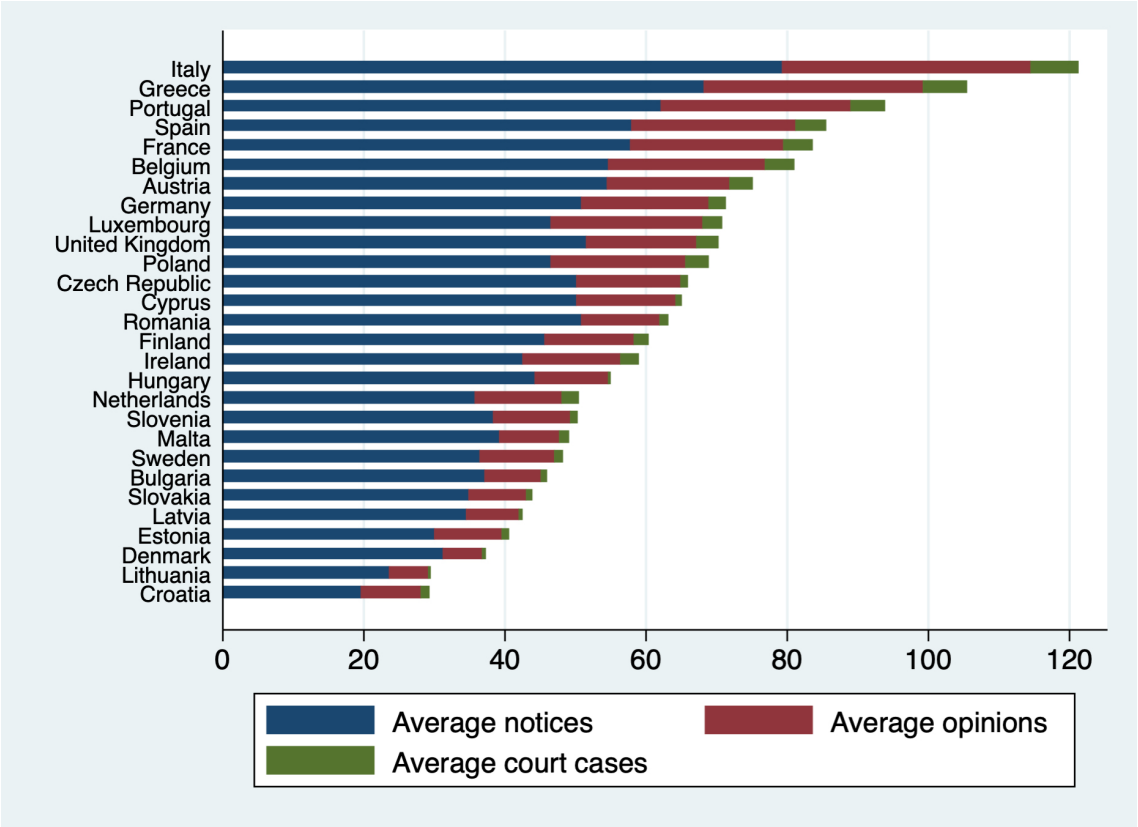
3.2 Public Support and Other Covariates

We operationalise our main explanatory variable, public support, using the Eurobarometer measure of trust in the European Commission. As Eurobarometer surveys are conducted on a bi-annual basis, we take the second semester values of "trust" and "not trust" and compute the difference to obtain the net level of public support for the year.

Some of our model specifications feature additional covariates. We use World Bank data to control for GDP per capita at 2010 constant price, trade openness (sum of export and import as a percentage of GDP).[6] Since the removal of trade barriers and the establishment of a single market constitute a central goal of EU rules and regulations, we expect trade openness to be positively correlated with greater embrace of European integration and thus negatively correlated with enforcement actions. We also use population to control for the size of a country's economy (also from World Bank Open Data).

[6]Retrieved at https://data.worldbank.org/ on 15 July 2019.

Figure 4: Average annual number of proceedings per member state



Besides economic factors, we consider two governance indicators: government efficiency and regulatory quality, both measure by World Bank Worldwide Governance Indicators.[7] Government efficiency may affect the timing of the transposition of EU directives as well as the actual implementation of the transposing measures. Regulatory quality, on the other hand, reflects the willingness and capacity of a government to follow and observe the imposed directives and regulations.[8]

Our instrumental variable (IV) identification relies on three variables. The first is a bail-out dummy, coded one if the member state received a bailout package and zero otherwise. The second is cuts in health care expenses per inhabitant. This variable is coded one when the country experienced a drop in health care expenses and zero otherwise. The third is unemployment, as measured by Eurostat.

Basic summary statistics are provided in Table 1. Note that, consistent with equation 5, we take the log of formal notices, reasoned opinions, and court cases.

4 Empirical Analysis

4.1 Baseline Analysis

The actual number of EU law violations is not perfectly documented. For strategic reasons, the Commission may refrain from prosecuting a member state despite knowing that it committed a clear violation. The number of notices, in particular, surely underestimates the total number of actual violations (Steunenberg, 2010; Fjelstul and Carrubba, 2018). Nevertheless, it is reasonable to assume that the number of enforcement actions from the previous stage of proceedings – notices in the case of orders and orders in the case of referrals – constitutes a good proxy for the violations

[7] Retrieved at https://info.worldbank.org/governance/wgi on 15 July 2019.

[8] While the inclusion of further governance indicators might be envisaged, those that may come into consideration seem less apt to account for variations in the number of proceedings. Moreover, governance indicators are highly correlated, which suggests that including more would add little to our analysis.

Table 1: Basic Summary Statistics

	Mean	SD	Min	Max	Obs
ln Notices	3.703	0.559	1.609	5.278	439
ln Opinions	2.499	0.826	0	4.654	439
ln Court Cases	0.9233	0.760	0	3.258	439
Support	0.154	0.229	-0.594	0.569	435
Unemployment	8.540	4.261	2.397	24.466	435
ln GDP/capita	10.260	0.623	8.776	11.626	435
ln Population	15.919	1.415	12.902	18.233	435
Governance Efficiency	1.221	0.585	-0.360	2.354	379
Regulatory Quality	1.260	0.411	0.148	2.047	379
Openness	5.902	25.089	0.456	158.727	435
Health Care Cut	0.241	0.428	0	1	439
Bailout	0.159	0.367	0	1	439

which the Commission really care about. It is also important to note that the violations prosecuted in the previous stage form the pool of cases which the Commission is allowed to challenge in the next – a case cannot move directly from the formal notice to the referral stage. Accordingly, we use the number of proceedings from the previous stage as the input of the function determining the number of proceedings in the next stage. Although the set of previous-stage proceedings is a stock concept that does not exactly coincide with the calendar year, it is reasonable approximation.

We first estimate a simple OLS model to serve as baseline:

$$ln(v_{s,t}) = \lambda_0 + \lambda_1 ln(v_{s-1,t-1}) + \lambda_2 Support_{t-1} + \boldsymbol{x'\phi} + \epsilon \tag{6}$$

where $v_{s,t}$ refers to the number of proceedings in stage s and time t. $v_{s-1,t-1}$ denotes the number of proceedings at the stage prior to stage s and time $t-1$. As there are three observable stages, s is one of the three, i.e. $s \in \{1,2,3\}$. In principle, there is stage 0, but, as explained above, the number of violations at stage 0 is unknown. Comparing equations 5 and 6, one can easily see that $\lambda_1 = {}^{\alpha-\beta}/_{\alpha-1}$ and $\lambda_2 = {}^{\gamma}/_{\alpha-1}$. As explained in the theoretical section, we expect the coefficient of $Support_{t-1}$, λ_2, to vary across stages. Specifically, we expect λ_2 to be largest at the referral stage and to be smallest at the notice stage.

We estimate separate equations for each type of enforcement action. Owing to the absence of information on violations prior to the notice stage, we ignore $v_{0,t-1}$. Our main variable of interest is public support for the Commission. We hypothesise that when the Commission has less support and wants to avoid further antagonizing citizens, it will adjust its behaviour and initiate fewer proceedings against the member state. If this hypothesis is true, we should expect a positive correlation between public support and enforcement actions. Vector $\boldsymbol{x}$ includes other control variables while vector $\boldsymbol{\phi}$ contains the corresponding coefficients. The error term ϵ is a random variable with mean zero.

While, for the purpose of robustness, results of random effects models are also reported at the end of the present section, our empirical strategy relies mainly on fixed-effects estimation to control for unobserved year and country fixed effects. The advantage of the fixed-effects estimator is that it captures the influence of time-invariant but omitted confounding factors. The price paid for this advantage is a large number of fixed effects indicators, which add up to 44. Whereas subsequent model specifications include additional covariates, we only add the lagged number of prior-stage proceedings to our baseline setup.

Note that our empirical approach – just as our theoretical framework – intentionally ignores strategic behaviour on the part of national governments. A government may, for example, deliberately delay compliance in the hope that the Commission will drop the case or may comply selectively depending on the compliance costs associated with each particular case (Fjelstul and Carrubba, 2018; König and Mäder, 2014). The raw data arguably result from strategic behaviour on the side of both national governments and the Commission. However, our data does not permit

us to identify the exact reason why a case is not followed up. In other words, we cannot tell who first gave in. Still, our partial equilibrium analysis operates on the assumption that public support for the Commission does not enter into the objective function of national governments. This allows us to elucidate the strategic behaviour of the Commission that hinges on public support. In turn, empirically, the country-specific strategic behaviour of national governments is partialled out by means of our country fixed effects. If, for instance, a particular member state attempts to test the Commission's resolve by delaying compliance until presented with a reasoned opinion, the drop in proceedings at the referral stage should be captured by our country fixed effect indicator, thereby ensuring that the regression coefficient of our variable of interest solely reflects the interaction between public support and the strategic behaviour of the Commission.

Table 2 reports the results of our baseline OLS estimations. Column (1), (2) and (3) report the regressions in which the dependent variable is, respectively, the log of the number of notices, the log of the number of opinions and the log of the number of court cases. As we do not observe the number of actual infringements before the notice stage, we cannot control for v_0. We refrain from including $v_{1,t-1}$, which might be a good proxy for $v_{0,t-1}$ because it induces an endogeneity bias resulting from the inclusion of the lagged dependent variable in a panel estimation.[9] Year and country fixed effects are controlled for in all three models. Note that together year and country fixed effects add up to 44 covariates which, arguably, is excessively large for a dataset comprising only 407 observations. This militates against including other co-variates in our baseline model specifications, although we make an exception for the lagged number of prior proceedings. As it turns out, all three coefficients for public support are positive, yet only the correlation between support and the number of filed court cases is significant. A look at R^2 values suggests that, despite their simplicity, these model specifications account for a substantive share of the variation in the dependent variable.

Table 2: Support and Infringement Proceedings: OLS

	(1) Notices	(2) Opinions	(3) Court
Lag Support	0.0146	0.2254	0.5570***
	(0.1379)	(0.2106)	(0.1824)
Lag ln Notices		0.6557***	0.1753*
		(0.1163)	(0.1009)
Lag ln Opinions			0.3681***
			(0.0529)
Year FE	Yes	Yes	Yes
Country FE	Yes	Yes	Yes
N	407	407	407
Within R-sq	0.7903	0.5961	0.4951
Between R-sq	0.2784	0.7983	0.6423
Overall R-sq	0.6228	0.5958	0.5529

Standard errors clustered in countries in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

Figure 5 compares the three estimated coefficients for public support together with their 90 per cent confidence margin. Clearly, the coefficients get larger and and more significant at later stages of the infringement procedure. In terms of magnitude, a one standard deviation change in past support level (0.229) translates into a 12.8 per cent increase in the number of court cases. Recall that γ in our analytical framework captures the strategic value of the past support level. When the Commission's actions – for example the issuance of formal notices – are, by their very nature, unlikely to affect public attitudes, the strategic value of support is low. In such circumstances, γ is small – the Commission does not regard public support as an important factor. A court case, on

[9] Scholars have suggested to solve the endogeneity bias by Arellano and Bond (1991). However, we believe that the approach is too flexible of which the results could vary a lot depending on the specification.

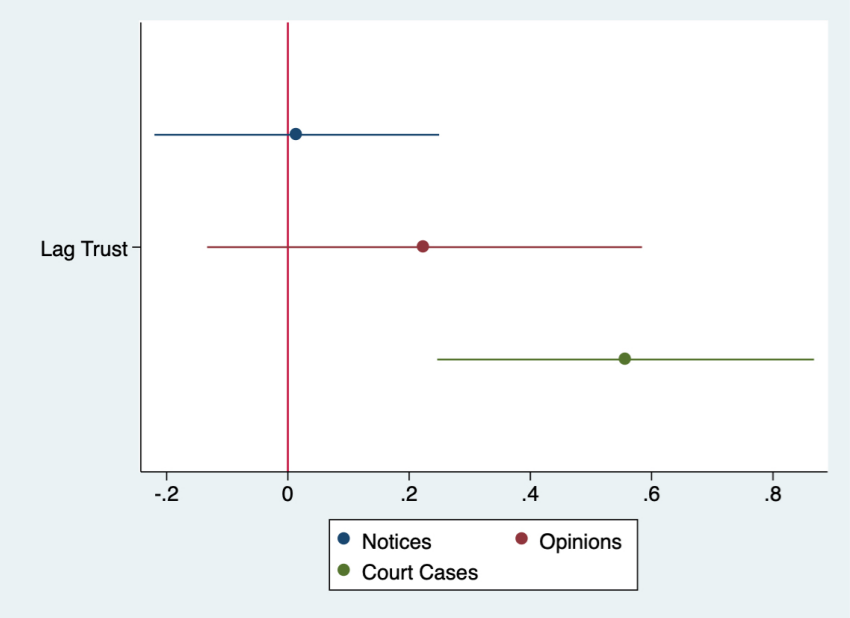


Figure 5: Comparison of Coefficients of Support

Note: Comparing the three coefficients, we find that the potential impact of support on the number of proceedings increases in the advancement of the stage.

the other hand, is more easily perceived or framed as an attack on the country, which politicians or pressure groups may agitate to stir up anti-EU sentiments. In such a situation, γ is large, reflecting the high strategic value of public support for the Commission. These preliminary results are thus consistent with our hypothesis that the formal notice stage is the least strategic while the referral stage is the most delicate.

Interestingly, the number of prior-stage proceedings displays a positive and significant coefficient both in model (2) and (3). A positive and significant λ_1 entails, in our theoretical framework, that α is greater than β. The joint-hypothesis test by F-statistic that the sum of coefficients of lagged notices and lagged opinions equates one of the regression in Column (3) is 142.84. Substantively, what this says is that an increase in the number of violations prosecuted by the Commission in the prior stages causes a reduction in the proportion of enforcement actions in the current stage, i.e. a reduction in the intensive margin. β is smaller than α but it is greater than one.

4.2 Robustness Checks with Additional Covariates

The strong and positive correlation between support and number of court cases may result from the omission of important covariates. Table 3 reports some robustness checks which include one additional covariate at a time. None of them helps explain the number of court cases. Both macroeconomic variables and governance indicators do not explain the number of court cases. We do not find evidence that, having country and year fixed effects controlled, the Commission reacts to these variables. However, one should not be surprised as the original baseline regression has already included country fixed effects which may substantially capture most of the effects of those co-variates as they do vary significantly within a country. The coefficient of support remains significant and positive, ranging from 0.41 to 0.58.

4.3 Endogeneity and Instrumental Variable Estimation

Although in the theoretical model the past support level is exogenously given, we would expect both support and number of proceedings are driven by some common confounding but omitted factors. Besides, the reverse causality issue is not solved completely even support level is lagged by

Table 3: Support and Infringement Proceedings: OLS Checks

	(1)	(2)	(3)	(4)	(5)
	Dependent Variable: Number of Court Cases				
Lag Support	0.4999**	0.4939**	0.5578***	0.5806***	0.4075**
	(0.2083)	(0.2205)	(0.1830)	(0.1730)	(0.1941)
Lag ln Opinions	0.3578***	0.3654***	0.3680***	0.4160***	0.4163***
	(0.0522)	(0.0534)	(0.0533)	(0.0641)	(0.0653)
Lag ln Notices	0.1796*	0.1755*	0.1757*	0.1410	0.1475
	(0.1009)	(0.1033)	(0.1027)	(0.1375)	(0.1305)
L.ln GDP pc	0.3054				
	(0.3792)				
Lag Unemployment		-0.0058			
		(0.0069)			
Lag Openness			0.0003		
			(0.0023)		
Lag Governance				0.0670	
				(0.1893)	
Lag Regulatory					0.3308
					(0.2750)
Year FE	Yes	Yes	Yes	Yes	Yes
Country FE	Yes	Yes	Yes	Yes	Yes
N	407	407	407	379	379
Within R-sq	0.4959	0.4956	0.4951	0.4934	0.4962
Between R-sq	0.5068	0.6228	0.6381	0.6628	0.4594
Overall R-squared	0.5089	0.5490	0.5516	0.5509	0.5138

Standard errors clustered in countries in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

one period in the regression model because the public may form their expectation of proceedings coming in the near future and adjust their support of the Commission. It is thus necessary to solve the endogeneity bias so that we could infer causality from the coefficient. To identify the impact of support on number of infringement proceedings, we appeal to the instrumental variable approach (hereafter IV estimation).

During the European sovereignty debt crisis, which began in the end of 2009 and ended arguably in 2014, some member states were bailed out by different programs by external lenders with promises to adopt austerity measures. Those programs were widely unpopular among citizens as many social benefits were cut. Trust in the European Commission had been falling, in general, in years before 2010 but sustained at a low level during and even after the sovereignty debt crisis, as shown in Figure 6.

Figure 6: Net trust of the European Union by 28 Member States

Note: Net trust level began falling, roughly speaking, in years before bailouts and stayed low afterwards. The vertical lines indicate the year bailout programs came into effect.

Bailout programs alone may not be sufficient in explaining the fluctuations in support. We thus interact the bailout binary indicator with health care expenses per habitant, which is coded as 1 when it experiences a drop and 0 otherwise.

Firstly, we do not believe that the Commission decided to or not to move a case to another stage depending on whether the member states received a bailout program or endured a period of public spending cut, but only through our hypothesized link: the Commission is concerned by the reaction of the citizens of its actions against their governments. Secondly, a drop in health care spending would only induce distrust in the Commission when the cut could be easily related to the Commission so that politicians might take the chance to blame the Commission for poor decision-making. It could be easily done during a period of external bailout.

To enhance the credibility of the causal impact of support on number of proceedings, we try also an alternative instrumental variable, which is the one-year lagged unemployment rate. As we will show, unemployment does not correlate with number of proceedings but significantly explains the variation in the support of the Commission. A depressing general economic condition often jeopardizes support in the national government, and would easily be escalated to the European-level by national politicians. The unemployment rate will also interact with the binary bailout indicator

to create another layer of variation. Unemployment rate is collected from World Bank Open Data.[10]

Our identification strategy relies on a crucial assumption. Any reactions of the Commission to short-run economic fluctuations are caused by the impact on the support of the Commission. In other words, given support level the same, the instrumental variables should not impact on number of proceedings. What concerns the Commission is the support and thus legitimacy. Meanwhile, though not explicitly modelled, any lenient reactions by the Commission during economic downturns are due to its belief that they help maintain or improve the support by EU citizens and there is no reverse causal impact of infringement proceedings on economic performance. It is safe to assume that infringement proceedings have no effects on the macroeconomic environment, though may impact on particularly concerned industries.

Table 4 reports the results of the IV estimation that uses per citizen health care expenditure reduction, post-bailout period and their interaction as instrumental variables. Year and country fixed effects are included in both stages, though not stated in the table. Again, we do not find significant results on the correlation between support and number of notices and opinions, but a significant effect of support on number of court cases, though less significant than the baseline OLS result. The F-test statistics of excluded instruments are all above 10, showing that the instrumental variables are sufficiently strong and their signs are as what we expected.

Refer to Column (2) of Table 3, we do not find unemployment able to explain number of court cases and thus unemployment is a promising candidate of a valid instrumental variable. Table 5 reports the results of the IV estimation that employs unemployment rate and post-bailout period as instrumental variables. Similarly, we find evidence supporting a positive impact of support of the Commission on the number of court cases, but no such an effect on numbers of notices and opinions. Note that all results point to the same ranking of the magnitude of the coefficient γ; the more advanced is the stage the larger (more positive) is the γ. In terms of the F-test statistics of excluded instruments, unemployment is a stronger instrumental variable.

Figure 7 compares the coefficients of support of the three stages estimated by two IV estimations. Support has a significant impact on the number of referrals but not on the numbers of the two preceding stages.

4.4 Additional Robustness Checks

All the regressions shown above rely on fixed-effect estimation, which has arguably stretch the sample extensively since the number of fixed effects amounts to 44. In this sub-section, we try using random-effect model while including some more co-variates. As we discussed in section 4.1, co-variates may capture the behaviours of both the Commission and Member States. For example, the positive relationship between GDP per capita and number of opinions may imply either the Commission prefers challenging high income countries or high income countries tend to (continue) violate more, or both. Nevertheless, as long as support of the Commission is not one of the determinants in the objective function of the governments, the coefficients of support reflects purely the behaviours of the Commission. Table 6 shows the IV estimation that relies on random-effect model.[11] Dropping the country fixed effects, national income level and population size become significant variables, indicating that richer and bigger countries tend to receive more notices and opinions. More open countries in terms of trade tend to face fewer opinions and court cases, hinting a possible link between willingness to comply and reliance on trade partners. Better governance efficiency is correlated with fewer notices and opinions, as expected. But it does not explain the number of court cases. Again, we only find significant effect of support on number of court cases, but not on numbers of notices and opinions.

5 Discussion

The robust and significant positive relationship between support and number of court cases shows that the Commission takes the general sentiment towards the Commission and the European Union

[10] Retrieved at https://data.worldbank.org/ on 15 July 2019.
[11] The first-stage results are dropped to save space.

Table 4: Support and Infringement Proceedings: IV-Estimation

	(1)	(2)	(3)
Panel A: 2nd Stage	Notices	Opinions	Court
L.Support	-0.2117	0.1620	0.6635*
	(0.2766)	(0.3552)	(0.3625)
L.ln Notices		0.6322***	0.1889*
		(0.1191)	(0.1089)
L.ln Opinions			0.3711***
			(0.0568)
Within R-sq	0.7811	0.5616	0.4941
Between R-sq	0.3965	0.8123	0.6289
Overall R-squared	0.6364	0.5852	0.5537
Panel B: 1st Stage	Dependent Variable: Lagged Support		
L.Health Cut	-0.0120	-0.0112	-0.0135
	(0.0220)	(0.0217)	(0.0220)
L.Bailout	-0.2046**	-0.2028**	-0.2054**
	(0.0852)	(0.0849)	(0.0837)
L.Cut×L.Bailout	-0.1213***	-0.1233***	-0.1156***
	(0.0352)	(0.0359)	(0.0366)
L.ln Notices		-0.0274	-0.0442
		(0.0349)	(0.0304)
L.ln Opinions			0.0257
			(0.0159)
Within R-sq	0.6584	0.6598	0.6645
Between R-sq	0.0027	0.0082	0.0025
Overall R-squared	0.3518	0.3648	0.3503
F-test	18.17	18.95	18.17
N	387	387	387

Standard errors clustered at country-level in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

Table 5: Support and Infringement Proceedings: IV Estimation

	(1)	(2)	(3)
Panel A: 2nd Stage	Notices	Opinions	Court
L.Support	-0.0028	0.3665	0.6869***
	(0.1954)	(0.3192)	(0.2301)
L.ln Notices		0.6601***	0.1816*
		(0.1163)	(0.1030)
L.ln Opinions			0.3647***
			(0.0543)
Within R-sq	0.7903	0.5952	0.4944
Between R-sq	0.2889	0.7663	0.6080
Overall R-squared	0.6252	0.5831	0.5401
Panel B: 1st Stage	Dependent Variable: Lagged Support		
L.Unemployment	-0.0107**	-0.0107**	-0.0105*
	(0.0050)	(0.0050)	(0.0052)
L.Bailout	0.0431	0.0452	0.0408
	(0.0577)	(0.0582)	(0.0579)
L.Unemployment×L.Bailout	-0.0167***	-0.0168***	-0.0165***
	(0.0049)	(0.0049)	(0.0049)
L.ln Notices		-0.0245	-0.0308
		(0.0292)	(0.0267)
L.ln Opinions			0.0094
			(0.0124)
Within R-sq	0.6994	0.7004	0.7011
Between R-sq	0.0921	0.1101	0.1010
Overall R-squared	0.4352	0.4464	0.4420
F-test	60.92	55.87	49.75
N	407	407	407

Standard errors clustered at country-level in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

Table 6: Support and Infringement Proceedings: Robustness Checks

	(1)	(2)	(3)	(4)	(5)	(6)
	Notices	Notices	Opinions	Opinions	Court	Court
IV	Cut	Unemploy	Cut	Unemploy	Cut	Unemploy
L.Support	-0.2548	-0.0789	0.2029	0.1752	0.6572*	0.3987**
	(0.2452)	(0.1783)	(0.2669)	(0.2891)	(0.3453)	(0.1648)
L.ln GDP pc	0.2821**	0.2903***	0.3343***	0.3244***	0.1651	0.1510*
	(0.1117)	(0.0819)	(0.0876)	(0.0869)	(0.1114)	(0.0868)
L.ln Pop	0.0535**	0.0614**	0.0827***	0.0782***	0.0796***	0.0713***
	(0.0253)	(0.0242)	(0.0305)	(0.0301)	(0.0295)	(0.0243)
L.Openness	0.0001	0.0004	-0.0011***	-0.0011***	-0.0008*	-0.0017***
	(0.0005)	(0.0004)	(0.0003)	(0.0004)	(0.0005)	(0.0004)
L.Governance	-0.2881***	-0.3249***	-0.2450**	-0.2618***	-0.1281	-0.1525
	(0.1026)	(0.0815)	(0.1057)	(0.1006)	(0.1342)	(0.0995)
L.ln Notices			0.6414***	0.6995***	0.1570	0.1505
			(0.1078)	(0.1083)	(0.1485)	(0.1251)
L.ln Opinions					0.4506***	0.4989***
					(0.0727)	(0.0748)
Constant	1.4086	1.1854	-3.9443***	-3.9836***	-3.0230***	-2.7069***
	(1.0601)	(0.8729)	(0.7810)	(0.8103)	(0.9307)	(0.8355)
Year FE	Yes	Yes	Yes	Yes	Yes	Yes
Country FE	No	No	No	No	No	No
N	361	379	361	379	361	379
Within R-sq	0.7869	0.7969	0.6041	0.6308	0.4950	0.4887
Between R-sq	0.6145	0.5965	0.7864	0.7929	0.7162	0.7854
Overall R-squared	0.7204	0.7287	0.6828	0.6928	0.6087	0.6132
F-test	62.77	214.08	68.37	187.06	62.96	172.64

Standard errors clustered at country-level in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

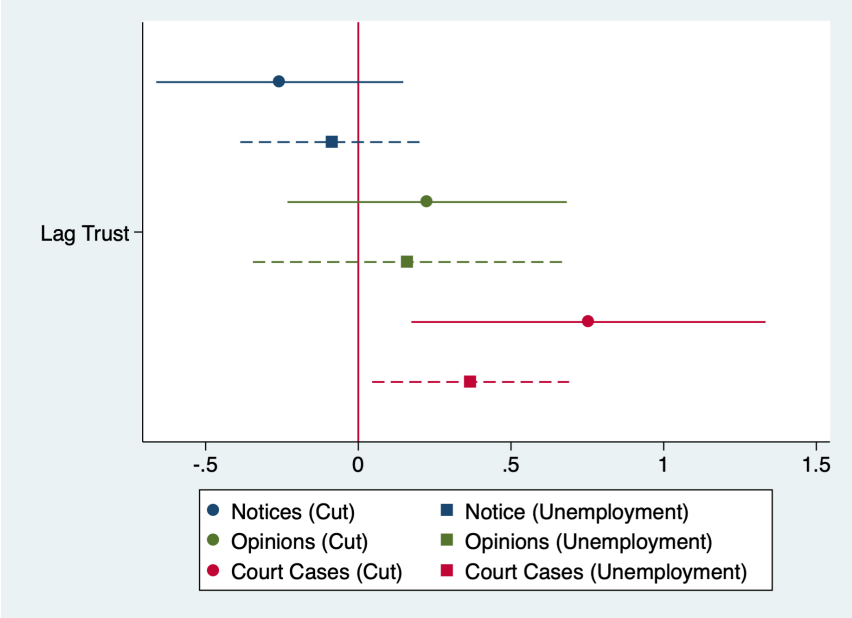


Figure 7: Comparison of Coefficients of Support

Note: Comparing the six coefficients, we find that the impact of support on the number of proceedings increases in the advancement of the stage.

into account before deciding referring a case to the Court. Meanwhile, it seems not a significant factor in sending notices and opinions to Member States. The difference reflects the actual damages of different types of proceedings to the relationship between the Commission and Member States, and thus the weights of support in the calculations. The higher is the damage, the more careful is the Commission. For some reasons that are out of the scope of our paper, support has been built up between the Commission and Member States, which is then consumed by the Commission to leverage disciplining actions. It, however, shows the difficulty of the Commission in obtaining sufficient political legitimacy to maintain impartiality and justice. The recent ideological rebellion against the Union of Hungary under Viktor Orbán has revealed the fact the Union in fact is unable to contain national politicians from playing the card of anti-Europeanization that severely damages the support and also the legitimacy of the Commission. This fundamental weakness of the EU institutions will continue to jeopardize the grand project of European integration, and place trust and support by the general public in a delicate position.

A complete model should include the strategic play by Member States on top of that of the Commission. Imagine an objective function facing a government who enjoys positive utility from violating EU-level directives and regulations. We may be able to solve for the Nash equilibrium together with equation 1. Although it is conceivable, the model complicates our discussion on the relationship between public support and the strategic motive and action of the Commission. As we are not sure how public support of the Commission enters into the objective function of the government, we are unable to explicitly formulate the complete model. One may expects a government may refrain from violating a directive because the public widely supports the Commission, but why is in the first place the support of the Commission a determinant of the government's utility? A government may survive on EU adherence or EU alienation, depending very much on the atmosphere of the country at that particular moment. To avoid speculation, we assume that public support of the Commission is not a determinant of a government's utility, and thus our partial equilibrium approach gives the same result on the equilibrium level of challenge proportion as a general equilibrium model would do.

It seems that Williams and Bevan (2019) presents a counter-evidence against our hypotheses. They find that the Commission's actions were more frequent in unilateral legal act adoption when support level is low, suggesting that the Commission was not shy from promoting integration even when support is low. To arrive to a more concrete conclusion, we may have to understand the

nature of those legal acts. For example, the legislative package for eliminating roaming charges at the retail level adopted by the Commission in 2013, and then voted in the Parliament in April 2014 and in effect since June 2017, has been widely welcomed by the public. Without investigating into the details, we are unable to discern if the legal act would be hurting or benefiting support of the Commission. Moreover, their model relies on an argument that the EU institutions could share and allocate duties over time among themselves. In contrast, the Commission is solely in charge of the infringement proceedings and, thus, it may allocate challenges temporally but cannot share its duties with other EU institutions.

6 Conclusion

This article constructs a formal model to relate support by the public of the European Commission and number of infringement proceedings. We hypothesize that support of the Commission provides a leverage for the Commission to challenge the violations of EU directives and regulations, and thus higher support level may lead to a higher number of proceedings. By arguing that the strategic values at different stages of the infringement cases are different, we expect the impact of support is stronger in the court stage than in the opinion and notice stages. The regression result of instrumental-variable estimation agrees with out hypothesis that the positive relationship is only significant at the referral stage, where the leverage effect of support is the most pronounced.

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