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# DIFFERING INSTITUTIONAL LOGICS OF THE EUROPEAN COMMISSION IN THE INFRINGEMENT PROCEDURE?

## A quantitative analysis comparing the European Commission's enforcement behaviour across stages of the infringement procedure

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# Abstract

The European Union’s infringement procedure is a multi-stage process through which the European Commission responds to member state violations of EU law. While existing research has identified a range of political and institutional factors that shape the Commission's enforcement decisions, it has primarily treated enforcement as a uniform process without systematically examining whether the same factors operate differently across the stages of the procedure. This thesis addresses this gap by comparing the determinants of the Commission's escalation decisions at two distinct decision points: the escalation from the Letter of Formal Notice to the Reasoned Opinion stage, and from the Reasoned Opinion stage to a referral to the Court of Justice of the European Union. To interpret the findings, the study applies March and Olsen's (1998) framework of the logic of expected consequences and the logic of appropriateness as a theoretical lens, deriving three pairs of competing hypotheses that generate directly contrasting predictions about how variable effects should change across stages. Drawing on a dataset of 15,209 infringement proceedings initiated between 2003 and 2016, two separate logistic regression models are estimated and compared directly. The findings show that EU public support strengthens at the referral stage, consistent with the logic of expected consequences. Commission workload operates as a stable constraint throughout the procedure, consistent with the logic of appropriateness. Member state influence is consistently strong across both stages. The results suggest that the Commission's enforcement behaviour combines strategic selectivity with institutional consistency, and that the relative weight of these two logics shifts depending on the stage of the procedure.



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This master's thesis has made limited use of generative artificial intelligence (GenAI) tools. The tool that was used was ChatGPT. The tool was used primarily for brainstorming ideas, clarifying concepts, and assisting with the overall structure and organization of the thesis. No generative AI tools were used to produce original arguments, conduct empirical analysis, or substantive academic content. To ensure academic integrity, no AI-generated text was incorporated into the thesis. All information used in the research process was verified against academic literature and primary sources. As no information specifically related to the content of this thesis have been generated with generative AI tools, there have been no need to check for errors, bias, plagiarism, altered content or misleading information. The author takes full responsibility for the content, analysis, and conclusions presented in this thesis.

# Contents

**1. Introduction** ..... **1**

*1.2. Aim* ..... *2*

*1.3 Disposition* ..... *3*

**2. Theory and previous research** ..... **4**

*2.1. Non-compliance and the infringement procedure* ..... *4*

*2.2. A strategic guardian of the treaties?* ..... *7*

*2.3. Logic of Appropriateness vs. Logic of Expected consequences* ..... *10*

*2.3. Theoretical expectations for the infringement procedure* ..... *12*

*2.4. Hypotheses* ..... *13*

**3. Method and material** ..... **16**

*3.1. Case selection and data* ..... *16*

*3.2. Operationalization of variables* ..... *17*

3.2.1 Dependent variables ..... 17

3.2.2. Independent variables ..... 17

3.2.3. Control variables ..... 18

*3.3. Descriptive statistics* ..... *19*

*3.4. Research design* ..... *19*

*3.5. Analytical method* ..... *20*

**4. Results** ..... **22**

*4.1. The escalation from LFN to RO* ..... *23*

*4.2. The escalation from RO to Referral to the CJEU* ..... *23*

*4.3. Robustness test* ..... *24*

**5. Discussion** ..... **25**

*5.1. EU public support and member state influence* ..... *25*

*5.2. Commission workload* ..... *26*

*5.3. Government effectiveness, expenditures and ideological distance* ..... *26*

*5.4. Overall assessment* ..... *27*

**6. Conclusions** ..... **28**

**References** ..... **30**

**Appendix** ..... **33**

*Appendix 1. Linktest on the respective baseline models of the logistic regression models* ..... *33*

# 1. Introduction

The European Commission (Commission) is by many regarded as the most powerful supranational institution in the world. It is the indispensable executive of the European Union (EU) and arguably holds two of its most important roles: firstly, as the driver of integration through its exclusive competence to propose new EU legislation. Secondly, as the only EU institution capable of launching infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union (TFEU), the Commission holds the sole responsibility of holding the member states accountable when they fail to comply with their legal obligations. This process can culminate in cases being referred to the Court of Justice of the European Union (CJEU), and result in economic sanctions under Article 260 TFEU (Kelemen & Pavone, 2023, p. 780).

However, contemporary research suggests that the Commission is not a neutral enforcer. Research suggests that due to limited resources, political constraints, and institutional considerations, it makes strategic choices about when to pursue enforcement and when to refrain (Börzel, 2022, p. 21). The literature has identified a range of factors that shape these choices, including the political costs of compliance for member states, the power and size of the member state in question, and the Commission's own resource constraints (Börzel, 2022; Cheruvu, 2022; Fjelstul & Carrubba, 2018; Zhelyazkova & Schrama, 2024). However, it has largely treated enforcement through the infringement procedure as a single, uniform process.

Less attention has been paid to whether the factors driving enforcement decisions change as cases progress through the different stages of the infringement procedure. This matters because the infringement procedure is not a single decision but a sequence of distinct ones. The Commission first decides whether to move a case from the Letter of Formal Notice (LFN) to the Reasoned Opinion (RO) stage, and subsequently whether to refer the case to the CJEU (Börzel, 2022, p. 19). These are fundamentally different decisions. As Fjelstul & Carrubba (2018, p. 435) shows, the strategic dynamics at the decision of moving a case from an LFN to the RO stage are so different from the decision to refer a case to the CJEU that it cannot be tested with the same model. Referring a case to the CJEU requires substantial legal preparation, commits the Commission to public judicial proceedings against a member state, and carries the risk of losing the case. Fjelstul and Carrubba (2018, p. 433) even describe referring a case to the CJEU as a lottery for the Commission. An unfavourable ruling can also have broader implications for future cases, since the CJEU seeks to maintain consistency in its case law (Cheruvu, 2022, p. 380). It is therefore of high relevance to compare the two stages and the changes in what drives escalation by the Commission, and if the Commission follows the same institutional logic in both stages.

This thesis addresses this gap and contributes to the broader European studies literature by comparing the determinants of the Commission’s enforcement behaviour across the two stages of the infringement procedure where escalation decisions are made, namely the decision to move an infringement case from the LFN to the RO stage, and from the RO stage to a referral to the CJEU. Drawing on a dataset developed by Cheruvu (2022), two separate logistic regressions are made which represent each decision to escalate an infringement case and the results are compared directly. To interpret the pattern of findings, the study applies the theoretical framework of March and Olsen's (1998) two institutional logics: the logic of expected consequences, under which actors make decisions

based on calculations of costs and benefits, and the logic of appropriateness, under which actors are guided by institutionalised norms and their understanding of what behaviour is appropriate given their institutional role. These two logics offer contrasting explanations of Commission enforcement behaviour, and by examining how the relative weight of key variables shifts across stages, the study can shed light on which logic better explains enforcement decisions at different points in the procedure.

The study makes two contributions to the literature. First, it provides an empirical basis for comparing the Commission's enforcement behaviour across different stages of the infringement procedure by performing two logistic regression models. By performing these logistic regressions, this study compares how important explanatory variables affects the likelihood of the Commission escalate infringement cases. The findings show that the variables affecting escalation decisions are not necessarily constant. EU public support strengthens at the referral stage while Commission workload operates as a stable constraint throughout the procedure, suggesting that strategic calculation and institutional consistency both shape enforcement behaviour but at different points in the procedure. Second, it connects this stage-based analysis to a precise theoretical distinction between two competing logics of institutional action, namely the logic of appropriateness and the logic of expected consequences. The study is directly relevant to the European Studies field because it speaks to core questions about the nature of supranational governance, specifically, whether the Commission acts as a genuine impartial enforcer of EU law or as a strategic actor that adjusts its behaviour to political conditions.

## 1.2. Aim

Despite the growing body of research on EU infringement proceedings, limited attention has been paid to whether the factors shaping the Commission's enforcement decisions change as cases progress through the infringement procedure. Existing studies have primarily focused on identifying what drives the Commission's decision to act at a specific stage, without systematically comparing whether the same variables operate differently across stages. This leaves an important gap in our understanding of Commission enforcement behaviour. As Fjelstul & Carrubba (2018, p. 435) show in their formal model, the strategic and informational dynamics between the stages of the infringement procedure are substantially different and cannot be understood under one unified model. Escalating a case to an RO stage is a resource-intensive process which requires negotiations with the member state to reach a solution. However, taking it a step further and referring a case to the CJEU both involves the time-consuming task of preparing legal argument in front of the CJEU and a risk of losing the case as referring it an infringement case is seen as a lottery for the Commission (Cheruvu, 2022, p. 379; Fjelstul & Carrubba, 2018, p. 433). The institutional costs of escalating a case should therefore be higher at a referral stage compared to an RO stage.

The aim of this study is to examine whether the determinants of the Commission's escalation decisions change between the two stages of the infringement procedure where such decisions are made. The first of these two decisions is when the Commission escalates a case from the LFN stage to the RO stage and the second decision is when a case is moved from the RO stage to a referral to the CJEU. More specifically, the study asks whether the relative importance of key explanatory variables shifts as cases progress through the procedure, and what such a shift reveals about the underlying logic guiding

Commission enforcement behaviour. This includes EU public support, member state influence, administrative capacity, and Commission workload.

To answer this question, the study applies March and Olsen's (1998) framework of the logic of expected consequences and the logic of appropriateness as a theoretical lens. Rather than assuming that the Commission follows a single, stable logic throughout the infringement procedure, the study investigates whether different logics are more prominent at different stages. The expectation is that decisions in the early stage of the infringement procedure, which are made when the nature of the violation is still being assessed and the costs of escalation is relatively low, may be more closely aligned with the logic of appropriateness. Decisions in the later stage, made after repeated enforcement interactions and at a point where the political and institutional costs of referral are highest, are expected to reflect more strategic and consequence-oriented considerations consistent with the logic of expected consequences. The findings also show that variables such as EU public support have a strengthened effect at the referral stage compared to moving a case to an RO stage, while Commission workload operates as a stable constraint throughout the procedure. Member state influence has a consistently strong effect, meaning that the Commission prioritises compliance from powerful member states.

By combining a stage-based empirical design with a theoretically grounded distinction between competing logics of action, this study aims to provide a more nuanced account of Commission enforcement behaviour than existing research has offered. Instead of asking whether the Commission acts strategically, it looks at how influential parameters change between the stages of the infringement procedure. This provides a deeper insight into the eventual changes in the institutional logic of the Commission’s enforcement behaviour within the infringement procedure.

## 1.3 Disposition

This thesis has the following disposition. Chapter 2 presents the theoretical framework and previous research. It first reviews the literature on non-compliance and the infringement procedure, before turning to the debate on whether the Commission acts as a strategic enforcer or follows institutional role obligations. It then introduces March & Olsen's (1998) framework of the logic of expected consequences and the logic of appropriateness, derives theoretical expectations for each stage of the infringement procedure, and presents the three pairs of competing hypotheses. Chapter 3 presents the method and material, covering the research design, case selection, operationalisation of variables, analytical method, and descriptive statistics. Chapter 4 presents the results from the logistic regression models. Chapter 5 discusses the results in relation to the theoretical framework and the hypotheses, assessing which logic better explains the Commission’s enforcement behaviour at each stage. Chapter six is the final chapter, and this concludes by summarising the main findings, acknowledges the limitations of the study, and gives suggestions for future research.

# 2. Theory and previous research

This chapter reviews the literature on non-compliance and EU enforcement and presents the theoretical framework applied in the empirical analysis. It first examines the infringement procedure and the debate on whether the Commission acts as a genuine impartial enforcer or as a strategic actor that selectively pursues non-compliance. It then introduces the theoretical framework and derives theoretical expectations for the study. The chapter concludes by presenting three pairs of competing hypotheses that will be tested in the empirical analysis.

## 2.1. Non-compliance and the infringement procedure

The Commission has two fundamental roles in the EU. The first being an effective policy entrepreneur, in which the Commission acts as a supranational policymaker through its exclusive authority to propose new EU legislation (Kelemen & Pavone, 2023, p. 779). Through the Ordinary Legislative Procedure, the Commission first proposes new EU legislation, which is to be adopted jointly by the Council of the European Union and the European Parliament (European Parliament, n.d.). The member states then have the responsibility of transposing EU law into national law and must ensure EU law's implementation (Cheruvu, 2022, p. 378).

The second role is to safeguard compliance by member states by serving as the central monitoring agency in the EU. Compliance is often defined in international studies as to "occur when the actual behaviour of a given subject conforms to prescribed behaviour, and non-compliance or violation occurs when actual behaviour departs significantly from prescribed behaviour" (Hartlapp & Falkner, 2009, p. 282). In the EU context, compliance with EU rules generally entails fulfilling obligations across multiple stages of the implementation process. This includes adopting new legislation or adapting existing laws at the domestic level, ensuring their proper application in practice, and enforcing them where they are not adequately observed (Hartlapp & Falkner, 2009, p. 282). For example, do national laws adequately protect employees against various forms of discrimination as required by EU provisions? And to what extent can consumers rely on remedies for defective goods following the transposition of EU consumer directives into national law? (Zhelyazkova, 2013, p. 702). The Commission's role of safeguarding compliance has given it the nickname 'The Guardian of the Treaties'. Its role as the Guardian of the Treaties has in recent years has gotten considerable attention from scholars, debating its response to non-compliance and how it might act strategically when pursuing enforcement (Börzel, 2022; Cheruvu, 2022; Fjelstul & Carrubba, 2018; König & Mäder, 2014).

The Commission has different ways of collecting information about member states' implementation of EU law. The first step concerns directives. Member states are obliged to inform when a directive has been transposed to national law. However, information about incorrect implementation is less systematic and demands significant legal expertise and administrative resources to detect (Zhelyazkova & Schrama, 2024, p. 2668). The Commission regularly requires governments to provide "congruence tables" specifying how individual directive provisions are implemented in national legislation, national governments are however quite reluctant to submit these. The Commission may also perform on-site checks, these are however resource-intensive and may also be politically contentious (Zhelyazkova &

Schrama, 2024, p. 2668). As the Commission has limited resources for monitoring compliance by member states, it relies on domestic individuals and organised interests, such as trade unions or non-governmental organisations, who function as 'fire alarms'. However, these domestic 'fire alarms' are heavily dependent on societal mobilisation which may vary across member states (Zhelyazkova, 2022, p. 407; Zhelyazkova & Schrama, 2024, p. 2668).

In order to ensure compliance, the Commission have two main procedural ways of dealing with non-compliant member states, Article 7 of the Treaty on the European Union (TEU) and the Infringement procedure under Article 258 of the Treaty on the functioning of the European Union (TFEU). Under Article 7, the EU can first give a member state an official warning and secondly suspend its voting rights in the European Council. Article 7 is however seldom used, as it requires unanimity in the European Council to exercise its sanctioning powers (Waters, 2024, p. 398).

The second and most central mechanism to ensure member state compliance is the infringement procedure, a multi-stage formal process in which the Commission asks the member state to comply with EU legislation (Waters, 2024, p. 398). Article 258 TFEU states that "If the Commission considers that a Member State has failed to fulfill an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union" (Consolidated version of the Treaty on the Functioning of the European Union, 2012). From the very start of European integration, infringement proceedings have been a measure to ensure compliance with EU legislation. Many other international organisations also have dispute settlement procedure; these often rely heavily on courts rather than negotiated solutions. However, the EU has the most elaborate compliance system at the international level. Infringement proceedings are an expression of the EU as a "community of law". They were designed as a key mechanism to uphold and reinforce the rule of law, a principle that has been central to the EU since its earliest days, well before Article 2 TEU formally defined it as one of the Union's foundational values. The core elements of these proceedings were already established in the 1951 Treaty creating the European Coal and Steel Community (Börzel, 2022, p. 19).

The Commission initiates infringement proceedings by sending an LFN to the member state and requesting a response. The LFN defines the scope of the case and invites the member state to submit its observations, typically within one to two months. Despite its name, the LFN is by the Commission regarded as a preliminary step, aimed at gathering information and facilitating dialogue, giving the member state an opportunity to address the issue rather than immediately holding it to account. As the Commission considers LFN's preliminary and consider them confidential, they are not accessible for the public unless it involves a case of delayed transposition (Börzel, 2022, p.19). If the reply from the member state after an LFN is deemed unsatisfactory, the Commission may proceed by issuing a RO, outlining in greater detail the nature of the non-compliance (Cheruvu, 2022, p. 378). The RO provides a detailed explanation to how the Commission thinks EU law has been infringed by a member state and states the deadline by which the issue must be resolved. The member states have one month to respond (Börzel, 2022, p. 19).

The last step of an infringement procedure is when a case is referred to the CJEU, which is quite rare. The Commission usually tries to find a solution with the member state before bringing a case before the court. There are different reasons for why infringement cases get solved before reaching the court.

Sometimes the governments convince the Commission that no wrongdoing has occurred, or the Commission might give up the case because there are little chance that the member state will comply anyway. Another reason is that the government might come into compliance, either because it agrees with the Commission and intends to follow EU rules, or because it chooses to comply despite not wanting to do so (Fjelstul & Carrubba, 2018, p. 430).

The CJEU serves as the ultimate adjudicator between the Commission and the member states. It first determines whether a member state has violated EU law as alleged by the Commission, and then assesses whether the legal act under consideration requires the measures demanded by the Commission. Finally, the court decides whether to uphold or dismiss the Commission's action (Börzel, 2022, p. 19). Between 2003 and 2013, the Commission initiated at least 13,616 infringement proceedings by issuing an LFN. In 4,065 of these cases, it considered the government's response insufficient and proceeded with a RO. Ultimately, 1,032 of those cases were referred to court. However, a ruling from the court does not automatically mean that a member state will comply (Fjelstul & Carrubba, 2018, p. 429).

There are two types of infringement proceedings in regard to directives: noncommunication and nonconformity. A noncommunication infringement is launched when a member state has not transposed a directive in time for the deadline. Initiating a non-communication proceeding is more or less automatic for the Commission, and most member states comply shortly after receiving an LFN. The Commission may also open such proceedings simultaneously against multiple member states that fail to transpose a directive on time (Cheruvu, 2022, p. 382). A nonconformity infringement is launched when a member state has transposed a directive incorrectly or refused to transpose it at all. In non-conformity proceedings, the Commission informs the member state why it has not correctly transposed a directive and then provide an opportunity for the member state to the allegation (Cheruvu, 2022, p. 378). Although most infringement proceedings concern directives, member states may fail to properly apply and enforce treaty provisions, regulations, and decisions, which are directly applicable and therefore do not require transposition into national law. This type of violation may also arise where member states adopt, or fail to repeal, national measures that conflict with EU law (Börzel, 2022, p. 15).

As a result of the Commission's limited resources, is has become more reliant on decentralised and private enforcement by national courts as an alternative for the infringement procedure. In the early 2000s, the Commission introduced platforms such as the EU Pilot and SOLVIT to resolve complaints and disputes in a more informal way to prevent accidental non-compliance. EU Pilot in particular has been central in relation to the infringement procedure as it was established as an online platform designed to facilitate communication between the Commission and member states during the implementation of EU law, particularly in cases concerning potential non-compliance (Cheruvu & Fjelstul, 2022, p. 1250). The program aimed to improve the efficiency of pre-litigation negotiations by reducing the length of the pre-trial phase of the infringement procedure and preventing unintentional non-compliance by member states. The introduction of EU Pilot has allowed the Commission to focus more on intentional law violations (Cheruvu & Fjelstul, 2022, p. 1250). The Commission have also come to rely more heavily on external actors, including consultancies, legal specialists, and academic institutions, to evaluate the implementation of EU policies in the member states (Smith, 2015, p. 97).

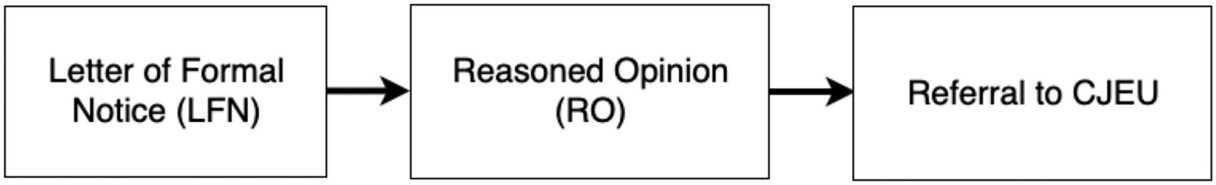


**Figure 1.** Stages of the infringement procedure.
Note: The figure illustrates the three stages of the infringement procedure. An infringement procedure starts with the Commission sending an LFN, and the case may end in a referral to the CJEU (Cheruvu, 2022, p. 379).

## 2.2. A strategic guardian of the treaties?

Contemporary research has shown that there is an issue of underenforcement of EU law and that the Commission strategically chooses when to pursue non-compliance (Börzel, 2022; Cheruvu, 2022; Kelemen & Pavone, 2023; Zhelyazkova & Schrama, 2024). Hartlapp & Falkner (2009, p. 265), for example, found that the Commission only started an infringement procedure in 51 percent of the cases where they identified non-compliance in the social policy area. Seemingly, the over 13 000 infringement proceedings that have been officially opened, only constitutes the tip of the iceberg of non-compliance in the EU as a whole (Börzel, 2022, p. 21). A problem in research on non-compliance is that it remains unclear how many instances of non-compliance go unaddressed by the Commission. Although this issue is frequently acknowledged, it is often downplayed on the grounds that infringement data constitute the only available statistical source (Hartlapp & Falkner, 2009, p. 292).

A prominent explanation for the underenforcement is the limited resources of the Commission to monitor and legally pursue all cases of noncompliance (Börzel, 2022, p. 20). Personnel resources, as well as the necessary expertise and knowledge, are limited. A former Commission official noted that only a small proportion of staff working in the area of social policy - covering nearly 90 directives - are dedicated to labour law regulation and are therefore likely to be involved in infringement procedures in these cases (Hartlapp & Falkner, 2009, p. 296). Hartlapp & Falkner (2009, p. 297) argue that because the decision to initiate an infringement procedure is largely taken by the responsible unit and depends on its workload, the complexity of the directive, and the overall importance attributed to the policy area, non-compliance is more likely to trigger an infringement procedure in cases where the relevant Commission unit has greater resources at its disposal and a stronger interest in the directive. Börzel (2022, p. 25) also argue that the growing non-compliance should be seen in the light of EU enlargement and an increase in legal acts. Between 1978 and 2012, the number of EU legal acts in force that member states were required to comply with increased almost fourfold, while the Union also expanded by eighteen new members.

Others argue that the Commission's lack of capacity does not fully explain underenforcement. Kelemen & Pavone (2023) argue that the underenforcement reflects a deliberate strategy of the Commission to prioritise political dialogue over enforcement, which they refer to as politics of forbearance. The argument builds on the Commission's two competing roles as both a guardian of the treaties but also an effective policy entrepreneur. The authors argue that rising levels of Euroscepticism among citizens and political elites have increased governments resistance to supranational policymaking and enforcement, and as the Commission need the support from governments to pursue its policy agenda, it may thus refrain from vigorous enforcement to keep good relations with the member state governments. Kelemen & Pavone (2023, p. 802) show that the Commission made a deliberate shift in enforcement starting with

José Manuel Barrosso's presidency in 2004 to rekindle intergovernmental support for the Commission's policy agenda. By conducting qualitative interviews, Kelemen & Pavone (2023, p. 803) find that infringement proceedings would lead to conflicts between the Commission and the member states, where political officials would directly confront the Commission for infringements they did not think were just. The authors conclude that the Commission therefore sacrifices its role as a guardian of the treaties to be an effective policy entrepreneur (Kelemen & Pavone, 2023, p. 781).

Interestingly enough, Pircher (2023) provides evidence for the complete opposite argument of Kelemen and Pavone (2023) by arguing that the Commission has increasingly adopted a more enforcement-oriented approach to ensuring compliance with EU law. Drawing on a longitudinal analysis of the Commission's annual reports, Pircher (2023) shows a clear shift from a cooperative, problem-solving approach toward a more regulative strategy centred on monitoring, infringement proceedings, and sanctions. This development is interpreted as a move from a logic of appropriateness, emphasizing dialogue and shared norms, toward a logic of expected consequences, in which compliance is secured through deterrence and enforcement. In this view, the Commission has evolved into a more assertive and rule-based enforcer of EU law, particularly in response to crises and declining political consensus among member states.

Börzel (2022, p. 102-103) offers another perspective by arguing that the drop in infringement proceedings is driven by less complexity in EU legislation. Specifically, Börzel (2022) argues that it is a legislative shift from directives to regulations which have made EU legislation less complex. This shift is linked with the completion of the Internal Market. Since regulations are directly applicable and do not require transposition, they generate fewer opportunities for the type of non-compliance that triggers infringement proceedings. As framework legislation, directives require transposition into national law. Incorporating a directive may involve between forty and three hundred legislative measures at the domestic level, ranging from statutory acts and government decrees to ministerial orders. Depending on the member state's legal system, this process may also require approval from the national parliament.

Others argue that the Commission strategically chooses to enforce EU law based on the costs of making a member state comply. This refers to the fact that the Commission has limited resources. If monitoring and pursuing cases involved no costs, or if resources were effectively unlimited, the Commission would always act to address any compliance deficit (König & Mäder, 2014, p. 249). Fjelstul & Carrubba (2018) note that every time the Commission takes an action within the infringement procedure, it incurs a cost. For example, if a government fails to comply with a LFN, the Commission incurs a cost when deciding whether to proceed by issuing an RO. Because of this, König & Mäder (2014, p. 247) argue that the decision to initiate infringement proceedings becomes strategic, with both sides weighing the likelihood of successful enforcement against the potential costs of noncompliance. Further König & Mäder (2014) argues that the Commission refrains for enforcing compliance when it's not probable that it will be successful and when the sanctioning costs of doing so are high.

Carrubba et al. (2008) also find that decisions by the CJEU gets influenced by the threat of legislative override by member states. Overrides are actions taken by politicians that alter the effect of court decisions, whether by undoing, limiting, or modifying them (Larsson, 2021, p. 1932-1933). Fjelstul & Carrubba (2018, p. 443) argue that if Carrubba et al., (2008) are right, legislative override could also affect enforcing decisions by the Commission. In other words, the Commission would be more careful in taking member states to court when the threat of legislative override is high. Also, if the Commission

loses a case at the CJEU, the ability to win a similar case in the future would be sacrificed as the court cares about maintaining a consistent case law (Cheruvu, 2022, p. 380).

However, costs of compliance for the member states governments also plays a role. Cost of compliance often refer to the political preferences of the member state government their willingness to implement reforms, either because they support the EU policies or because domestic pressures compel them to comply. For example, governments that are more supportive of the EU are likely to be more responsive to Commission enforcement than Eurosceptic ones, as they place greater value on maintaining a reputation for complying with EU law (Zhelyazkova & Schrama, 2024, p. 2671). Public opinion on the EU is also important for the costs of compliance for member states. As (Carrubba, 2001) demonstrates, public opinion on EU policy influences member states' positions toward European integration. Consequently, lower levels of public support for the EU are likely to increase the political costs associated with complying with EU law.

The concepts of cost of compliance and costs of enforcement should however not be treated as independent; they are directly connected. When compliance is politically costly for a member state government, it is less likely to back down under enforcement pressure, which reduces the probability that the Commission will succeed in securing compliance. This in turn raises the Commission's expected costs of enforcement, since investing resources in a case that is unlikely to produce compliance generates little return. Cheruvu (2022) for example argues that the Commission may delay enforcement when it anticipates that the political conditions for compliance will be more favourable in the future, for example before an election when it's likely that a new government will be elected. Similarly Closa, (2019), argues that the Commission takes into account the potential domestic political repercussions of ruling against a member state government. Imposing sanctions may backfire by triggering a 'rally-round-the-flag' effect that strengthens the targeted government at home (Closa, 2019, p. 697). The infringement procedure is therefore by much of the literature understood as a strategic interaction in which the Commission's willingness to escalate depends in part on its assessment of the member state's willingness to comply (Fjelstul & Carrubba, 2018, p. 430; König & Mäder, 2014, p. 249).

However, some also argue that the benefit of making member states comply is an important determinator in regard to the Commission's enforcement behaviour. Fjelstul & Carrubba (2018, p. 438) argue that the Commission prioritizes compliance from more powerful member states, as the Commission gains more from this. This is argued to be plausible because when more powerful states comply, politically significant countries, accounting for a larger share of the EU's economy, society, and population, are applying EU rules in line with the Commission's preferences.

What the literature this field has not systematically examined, however, is whether the variables driving these enforcement decisions operate in the same way across the different stages of the infringement procedure. Existing studies primarily focus on a single decision point, which most commonly is the escalation from the LFN to the RO, or treat enforcement as a uniform process without comparing behaviour across stages. This leaves open the question of whether the Commission's underlying logic of action changes as cases progress and the stakes of escalation rise. It is this gap that this master's thesis addresses.

## 2.3. Logic of Appropriateness vs. Logic of Expected consequences

To understand the institutional logic of the Commission strategic choices escalating infringement cases or not this study will apply the lens of March & Olsen's (1998) two institutional logics: the logic of appropriateness and the logic of expected consequences. These two logics represent alternative modes of action through which political actors interpret situations and choose how to respond. These two logics provide relevant lenses for viewing the Commission's enforcement behaviour through because their framework was developed precisely to explain action within institutionalized political orders.

Under the logic of expected consequences, actors are expected to make decisions based on calculating the anticipated costs and benefits. This perspective understands political order as the product of negotiation among rational actors who pursue their own preferences or interests in situations where coordinated action can generate mutual gains. Political integration, from this logic, is understood as a collection of 'contracts' which have been negotiated by political actors with different interests and power (March & Olsen, 1998, p. 949). Applying the logic of expected consequences to the role of the Commission as an enforcer of EU law, we would expect that escalation of infringement proceedings would be expected when the probability of securing compliance is high, the political costs of doing so are manageable and the benefits of making a member state comply is high. Conversely it would be expected that it backs off when the odds of success are low, the costs are too high and the relative benefit of making member states comply is low.

Connecting the logic of expected consequences to the literature on non-compliance, the political costs of the member state would be considered by the Commission. As Fjelstul & Carrubba (2018, p. 438) argue, public support for the EU is likely to affect the costs of complying with EU law because member state governments are responsive to public opinion. Under a logic of expected consequences, the Commission would therefore pursue cases in which the member state has high EU support among the public. Conversely, the Commission would, according to this logic, also anticipate domestic political backlash within the targeted member state if the EU support is low. Publicly sanctioning a government can provoke a "rally-round-the-flag" effect, strengthening domestic support for the accused government and potentially increasing Euroscepticism (Closa, 2019, p. 697).König & Mäder's (2014) findings that the Commission pre-selects cases that should be brought to the CJEU also support the argument that the Commission's enforcement behaviour reflects more of a logic of expected consequences, as it strategically selects cases where it is confident that it will win the case in court. The Commission should also prioritize bigger and more powerful member states under a logic of expected consequences. As Fjelstul & Carrubba (2018, p. 438) argue, member state influence map on to the benefit of the Commission to make member states comply.

Taken together, these studies demonstrate that while a part of the literature converges on the idea that the Commission behaves strategically, it is fragmented in how this strategy is conceptualized and measured. Strategic behaviour is alternatively understood as case selection, strategic interaction, temporal delay, information-based decision-making, or macro-level political trade-offs, each relying on different assumptions and operationalizations of expected success. This fragmentation suggests that the logic of expected consequences does not provide a single, coherent explanation of Commission behaviour, but rather encompasses a range of competing interpretations of what it means for the Commission to act strategically.

In contrast, the logic of appropriateness views actions by political actors as rule based. This perspective assumes that actors do not simply calculate costs and benefits. Instead, it interprets situations through institutionalized norms and ask what behaviour is suitable for someone in their position. Action is guided by rules, roles, and shared understandings of legitimate conduct. Under this logic, institutions do not merely constrain actors externally, they shape their identities, preferences, and perceptions of what constitutes appropriate behaviour. Political order emerges not only from strategic bargaining, but from the internalization of norms and the routinization of rule-following. Actors comply with rules because those rules are seen as binding and legitimate, not only because compliance produces advantageous outcomes (March & Olsen, 1998, p. 951).

Applied to the Commission's enforcement role, the logic of appropriateness implies that the initiation of infringement proceedings may reflect institutional role expectations rather than political calculation. As the "Guardian of the Treaties," the Commission is entrusted with ensuring the uniform application of EU law. When clear violations occur, enforcement may be perceived as the appropriate response, independent of short-term political costs. From this perspective, several factors may trigger enforcement. The Commission itself has officially announced that it focuses on "serious infringements" that refer to violations of EU law which "undermine the foundations of the rule of law", weaken the "smooth functioning of the Community legal system", or which "consist in the failure to transpose or the incorrect transposal of directives" (Börzel, 2022, p. 21). Börzel (2022) argues that there is no evidence for a systemic bias in the infringement data, which would support an argument that the organizational logic of the Commission follows a logic of appropriateness. As the Commission needs to keep its credibility as an impartial arbiter among competing interests to keep its authority, it has to avoid making the impression that it does not treat member states equally. Moreover, the Commission's identity as a genuinely supranational institution makes it inappropriate for commissioners or Commission officials to prevent legal action against their own member state when it is accused of breaching EU law (Börzel, 2022, p. 23). According to the logic of appropriateness, the Commission will also be shaped by legitimacy concerns. Davies (2025, p. 2-3) similarly argues that the Commission's behaviour is strongly shaped by legitimacy concerns, since it lacks direct democratic legitimacy and must demonstrate visible and impartial action to maintain its authority.

An important clarification is necessary before deriving hypotheses. Both logics can produce selective enforcement behaviour when the Commission faces resource constraints. The distinction lies not in whether the Commission selects cases, but in the basis on which it does so. Under the logic of expected consequences, selection is driven by strategic calculations about the likelihood of success and the political costs of enforcement. Under the logic of appropriateness, selection is driven by the gravity and nature of the violation and the Commission's understanding of where enforcement is most institutionally warranted. As Börzel (2022, p. 21) argues, the Commission's focus on serious and politically important cases does not necessarily reflect strategic opportunism. It may instead reflect a norm-based understanding of institutional responsibility. This distinction is central to the empirical strategy of this thesis. By using these two logics as competing ways of understanding the Commission's enforcement behaviour, the study examines what logic are more prominent at different stages of the infringement procedure, and uses the changing pattern of variable effects across stages as evidence for which logic better explains Commission behaviour at each decision point.

## 2.3. Theoretical expectations for the infringement procedure

The two logics outlined above generate contrasting expectations about what should happen empirically as infringement cases progress from the LFN stage to the RO stage and from the RO stage to the referral stage. Before deriving specific hypotheses, it is useful to set out the basic observable implications of each logic for the research design of this study. These implications follow directly from the nature of the two decision points. As argued earlier in this thesis, the earlier stage involves lower institutional costs and incomplete information about the member state's willingness to comply, while the later stage involves the highest enforcement costs available to the Commission and considerably more information about the member state's behaviour accumulated through prior enforcement interactions. Also as mentioned earlier, a referral to the CJEU involves the risk of losing the case against the member state as the outcome in court is a lottery for the Commission (Fjelstul & Carrubba, 2018, p. 433). The last stage therefore also includes political costs for the Commission because losing a case would weaken its chances of succeeding in similar cases in the future, particularly in situations where a member state might otherwise have been more willing to comply. Since the CJEU seeks to maintain consistency in its case law, an unfavourable ruling can have broader implications beyond the individual case itself (Cheruvu, 2022, p. 380). As Carrubba et al. (2008) also find that the decisions taken by the CJEU gets influenced by the risk of override from member states, the costs of referring a case would arguably get even higher in cases where the member state has low EU support, for example.

Under the logic of expected consequences, the Commission's enforcement decisions are driven by forward-looking calculations about the probability of making member states comply and the political costs and benefits of escalation. This logic generates a clear prediction about how variable effects should change across stages. As the costs of escalation rise at the referral stage, the Commission should become more selective and place a greater weight on the variables that capture the likelihood of a successful outcome along with variables capturing the benefit of compliance for the Commission. Thus, if this logic is correct, we should observe that variables reflecting the political environment of enforcement, particularly EU public support, and variables capturing the benefit for compliance, particularly member state influence become more important at the referral stage than at the earlier stage. In other words, the effect of these variables should strengthen as cases progress.

The Commission, facing the highest institutional and political costs of any enforcement decision at the referral stage, should be most attentive to whether the domestic conditions in the member state are favourable for compliance. The same logic applies to Commission workload. Under the logic of expected consequences, workload captures both resource costs and accumulated diplomatic tensions in the bilateral enforcement relationship with a given member state. As these costs are highest at the referral stage, the negative effect of workload should strengthen there. Under the logic of appropriateness, the Commission cannot allow workload to produce inconsistent enforcement standards across stages without undermining its credibility as an impartial enforcer. The effect should therefore remain stable. For workload, the key observable implication is not whether it matters, as both logics predict that it does, but whether its effect strengthens at the later stage, which only the logic of expected consequences predicts.

Under the logic of appropriateness, the Commission's enforcement decisions are driven by institutional role obligations and normative judgments about where enforcement is warranted. This logic generates the opposite prediction: variable effects should remain stable across stages rather than intensifying, since

the Commission's role as the Guardian of the Treaties applies equally at every point in the procedure regardless of the costs involved. If this logic is correct, we should observe that politically sensitive variables such as EU public support and member state influence do not become more important at the referral stage, and their effects should be consistent across both stages, since the political environment of the member state is not in itself relevant to whether enforcement is normatively warranted.

Taken together, the key observable implication of this theoretical framework is straightforward: if the logic of expected consequences is correct, the effects of politically sensitive variables as well as variables capturing the benefit of compliance for the Commission should strengthen as cases progress to the referral stage; if the logic of appropriateness is correct, they should not. The hypotheses derived in the following section operationalise this basic expectation for each of the key independent variables in the study.

## 2.4. Hypotheses

The existing literature on EU infringement proceedings has primarily focused on identifying the determinants of enforcement decisions. However, less attention has been paid to whether these determinants operate differently across stages of the infringement procedure. This study addresses this gap by examining whether the effects of key explanatory variables change between the escalation from the LFN to the RO, and from RO to referral to the CJEU. As established in the previous section, the logic of expected consequences and the logic of appropriateness generate contrasting predictions about how variable effects should change across stages. The hypotheses will therefore have an A/B structure which makes these contrasting predictions explicit.

A central argument in the literature is that the Commission acts strategically when enforcing EU law, prioritising cases where the likelihood of compliance is high (Fjelstul & Carrubba, 2018). Public support for the EU in a member state captures the domestic political costs of compliance. Where support is high, compliance is less politically costly for the government, making it more likely that enforcement pressure will produce results (Fjelstul & Carrubba, 2018). Fjelstul & Carrubba (2018) also shows that EU public support could capture the threat of override. And as Carrubba, Gabel & Hankla (2008) have found evidence consistent with the claim that the CJEU is influenced by threats of legislative override, later stages of the infringement procedure should involve higher political and institutional costs for the Commission. Under the logic of expected consequences, this consideration should thus become more decisive as cases progress to the referral stage, where the Commission faces the highest institutional and political costs of any enforcement decision and must be most attentive to the likelihood of a successful outcome. Under the logic of appropriateness, by contrast, the domestic political environment of the member state is not in itself relevant to whether enforcement is normatively warranted. The Commission's role obligations as Guardian of the Treaties apply equally regardless of how politically costly compliance may be for the member state government. The effect of public support should therefore remain stable across stages if the logic of appropriateness dominates.

The first pair of hypotheses is therefore:

H1a *(logic of expected consequences): The positive effect of EU public support on the likelihood of escalation increases at later stages of the infringement procedure.*

H1b *(logic of appropriateness): The effect of EU public support on the likelihood of escalation remains stable across stages of the infringement procedure.*

Fjelstul and Carrubba (2018) show that the Commission is more likely to advance cases against more powerful member states, because it maps on to the benefit of the Commission to bring member states into compliance. Compliance by politically and economically significant states generates greater benefits for the EU legal order. Under the logic of expected consequences, the Commission's prioritisation of powerful member states reflects a cost-benefit calculation about where the returns from enforcement are highest. As cases progress to the referral stage and the institutional costs of escalation rise, this calculation should become more demanding. The Commission must therefore be increasingly confident that the expected return justifies the investment. Since compliance by a powerful member state yields the greatest benefit to the EU legal order, the Commission should place even greater weight on member state influence when deciding whether to commit to the most resource-intensive and politically exposed enforcement decision available to it. Under this logic, the effect of influence is therefore expected to strengthen at the later stage. Under the logic of appropriateness, member state power should not systematically shape enforcement decisions. The institutional requirement that infringement decisions be taken collectively by the college of commissioners is designed precisely to prevent differential treatment based on member state size or political weight (Börzel, 2022, p. 23). If this logic dominates, the effect of influence should remain stable across stages rather than strengthening as the stakes rise.

The second pair of hypotheses is therefore:

H2a *(logic of expected consequences)*: *The positive effect of member state influence on the likelihood of escalation increases at later stages of the infringement procedure.*

H2b *(logic of appropriateness)*: *The effect of member state influence on the likelihood of escalation remains stable across stages of the infringement procedure.*

Commission workload refers to the number of open infringement proceedings the Commission has against the member state at the time it issues an LFN. As Cheruvu (2022, p. 386) argues, higher workload increases the opportunity cost of advancing individual cases, since a resource-constrained Commission faces rising costs for each additional case it pursues. Kelemen and Pavone (2023) argue that infringement proceedings generate diplomatic tensions between the Commission and member states, and that the Commission has become increasingly sensitive to these tensions as member state resistance to supranational enforcement has grown. When the Commission already has a high number of open proceedings against a given member state, advancing any one of those cases to the referral stage escalates what is already a tense enforcement relationship to its most confrontational point. Under the logic of expected consequences, a Commission facing high workload pressure should therefore be increasingly reluctant to bear both the resource costs and the political costs of referral, making the negative effect of workload stronger at the later stage than at the earlier one. Under the logic of appropriateness, by contrast, the Commission cannot allow either resource constraints or diplomatic tensions to produce inconsistent enforcement standards across stages without undermining its credibility as an impartial enforcer. As Börzel (2022, p. 23) argues, the Commission's authority as Guardian of the Treaties depends on applying the same criteria consistently regardless of its caseload or the political sensitivities involved. If this logic dominates, workload should therefore operate as a stable constraint throughout the procedure rather than intensifying at the stage where the political and resource costs are highest.

The third pair of hypotheses is therefore:

H3a (*logic of expected consequences*): *The negative effect of Commission workload on the likelihood of escalation strengthens at later stages of the infringement procedure.*

H3b (*logic of appropriateness*): *The negative effect of Commission workload on the likelihood of escalation remains stable across stages of the infringement procedure.*

# 3. Method and material

This chapter presents the research design and data used to test the hypotheses derived in the previous chapter. It first describes the research design and the case selection. It then operationalises the dependent and independent variables, discusses the control variables included in the models, and justifies the use of logistic regression as the analytical method. The chapter concludes with descriptive statistics for all variables included in the analysis.

## 3.1. Case selection and data

This study analyses infringement proceedings initiated by the Commission under Article 258 TFEU. This study uses a dataset developed by Cheruvu (2022). It includes 15,209 Commission infringement proceedings completed between 1 January 2003 and 31 December 2016, drawing on the earliest publicly available data from the Commission's website. These data include all proceedings for which both the LFN and closing dates can be observed. The unit of analysis is the individual infringement case. Within this dataset, 4,291 proceedings (28%) progressed to the RO stage, and 816 (6%) were referred to the court. This indicates a substantial drop-off as cases move through the procedure (Cheruvu, 2022, p. 384). Each case represents a situation in which the Commission has already detected a potential violation of EU law and decided to initiate formal proceedings. This is an important feature of the research design, as it means that the analysis does not explain the occurrence of non-compliance itself, but rather the Commission's decision to escalate enforcement once non-compliance has been identified. As Cheruvu (2022, p. 385) notes, some studies rely on data from before 2003. However, these do not capture the full progression of infringement proceedings from the LFN stage to the CJEU. For instance, Börzel (2021) analyses data from 1979 to 2019 covering 13,367 infringement proceedings but includes only cases that reached the RO stage, excluding LFN's. These differences in data selection reflect a fundamental divergence in how non-compliance is conceptualized. Whereas Börzel (2021) treats cases reaching the RO stage as instances of actual non-compliance, this study considers RO as cases in which non-compliance exists, but where the Commission has also made a strategic decision to pursue enforcement.

The sample is structured to reflect the sequential nature of the infringement procedure. In the first stage, all cases that reach the LFN stage are included, and the dependent variable captures whether the Commission escalates the case to a RO. In the second stage, the sample is restricted to cases that have already reached the RO stage, and the dependent variable captures whether the Commission refers the case to the CJEU. This conditional sample selection follows the logic of the infringement procedure and allows for a direct comparison of escalation decisions across stages.

## 3.2. Operationalization of variables

### 3.2.1 Dependent variables

This study uses two dependent variables, one for each stage of the infringement procedure where the Commission escalates a case. Both are binary variables and captures the Commission's decision to escalate an infringement case from one stage to the next.

The first dependent variable captures the Commission's decision to move an infringement case from the LFN to the RO stage. As Fjelstul & Carrubba (2018) notes, this is a critical step in the infringement procedure as it signals a formal determination by the Commission that a member state is in breach of EU law. The variable, labelled *opinion*, takes the value 1 if the Commission issues a RO in a given case, and 0 if the procedure does not progress beyond the LFN stage. The sample for this model includes all cases in which the Commission has issued an LFN, giving 15 333 observations in the baseline model.

The second dependent variable captures the Commission's decision to refer a case from the RO stage to the CJEU. This is the last resort of the infringement procedure and represent the most consequential enforcement decision available to the Commission. The variable is labelled *referral* and takes the value 1 if the Commission refers a case to the court, and 0 if the procedure stops at the RO stage. The sample for this model is restricted to cases that have already reached the RO stage, giving 3 870 observations in the baseline model. This conditional sample selection follows the sequential logic of the infringement procedure and ensures that the two models capture distinct decision points rather than overlapping ones.

### 3.2.2. Independent variables

The first independent variable is EU public support, operationalised as the annual aggregate level of public support for the EU in each member state based on Eurobarometer survey data. The Standard Eurobarometer, administered biannually, asks respondents: "In general, does the European Union conjure up for you a very positive, fairly positive, neutral, fairly negative or very negative image?". This question broadly captures the level of public support for the EU within a member state, and, by extension, the likely political costs associated with complying with EU law. In his dataset, Cheruvu (2022) combines the positive and negative response categories, subtract the share of negative responses from the share of positive responses, and then divide by the total proportion of respondents who expressed an opinion (excluding nonresponses from the denominator). EU support is standardized to have a mean of 0 and a standard deviation of 1.

The second independent variable is member state influence, operationalised through each member state's normalised qualified majority voting (QMV) weight in the Council of the EU. The QMV system is a weighted voting system in the Council of the EU where larger member states hold more votes. This captures the overall political and economic significance of a member state within the EU's decision-making process. Following Cheruvu (2022), *influence* is standardised to have a mean of 0 and a standard

deviation of 1. The third independent variable is ideological distance, which captures the left-right ideological distance of the member state government from the political centre of gravity in the EU. Following Cheruvu (2022), data from ParlGov are used to calculate the left-right position of the government at the time of the LFN. The government's position is calculated as the seat-share weighted mean of the positions of the parties in government, drawing on the average of left-right positions from Benoit and Laver (2007) and the Chapel Hill Expert Survey for the period 2003–2013. To calculate a government's ideological distance from the political centre of gravity, Cheruvu (2022) calculates the absolute difference between its position and the average position across all observations in the sample. Cheruvu (2022) standardises *distance* to have a mean of 0 and a standard deviation of 1.

The fourth independent variable is government effectiveness, operationalised using the government effectiveness index developed by the World Bank. Following Cheruvu (2022), this variable is used as a proxy for the probability of unintentional non-compliance. The government effectiveness index is a measure which varies over time and across countries, combining indicators of the quality and performance of national bureaucratic institutions from a broad range of sources (Cheruvu, 2022, p. 387). Government effectiveness is standardised to have a mean of 0 and a standard deviation of 1. Government expenditures per capita is also included as an independent variable. Government expenditures per capita is standardised to have a mean of 0 and a standard deviation of 1. The sixth and final independent variable is Commission workload, operationalised as the number of open infringement proceedings the Commission has against the member state at the time it issues an LFN for the given case. Workload is standardised to have a mean of 0 and a standard deviation of 1.

### 3.2.3. Control variables

This study includes several control variables. In multivariate analysis, control refers to the process of isolating the effect of each independent variable on the dependent variable. By holding one or more variables constant, it becomes possible to obtain a more precise estimate of the effect of a specific independent variable (Gerring & Christenson, 2017, p. 344). The first control variable is *pilot*, a dummy variable with a binary indicator for whether the member state has joined EU Pilot at the time the Commission launches the infringement procedure.

Following Cheruvu (2022), the study also controls for several characteristics of the directive involved in each case. Directive complexity is controlled for using the logarithm of its word count (*length*). To account for differences in legislative instruments, a dummy variable indicating whether the directive was enacted by the Commission rather than the Council (*Commission*) is included, and another dummy capturing whether the directive has specific addressees instead of applying to all member states (*addressee*). I also control for the scope of the directive's impact on existing EU law with a variable measuring the number of prior directives it amends (*scope*). Including these directive-level controls reduces the number of observations in the controlled specifications, since infringement proceeding does not only concern directives and the directive number is not available for all cases in the dataset (Cheruvu, 2022, p. 386).

## 3.3. Descriptive statistics

Table 2 presents descriptive statistics for the variables included in the analysis. The dependent variables show that 29.4 percent of cases in the full sample progress to the RO stage, and 7.1 percent result in a referral to the CJEU, reflecting the substantial attrition as cases move through the procedure. The key independent variables are standardised and therefore have means of 0 and standard deviations of 1. Approximately 27 percent of cases involve a member state that has joined EU Pilot, while around 36 percent of directives are adopted by the Commission rather than the Council. Only 1.8 percent of directives are addressed to specific member states rather than all member states. The number of observations varies across variables due to missing data, particularly for the directive-level controls, which are only available for cases where the directive number is known.

*Table 1. Descriptive statistics*

| | Min | Max | Mean | SD | N |
|---|---|---|---|---|---|
| RO | 0 | 1 | 0.294 | 0.456 | 15333 |
| Referral | 0 | 1 | 0.071 | 0.256 | 15333 |
| Support | -2.977606 | 2.191303 | 0 | 1 | 13655 |
| Distance | -1.737728 | 4.507828 | 0 | 1 | 13582 |
| Influence | -1.173138 | 2.346657 | 0 | 1 | 13655 |
| Effectiveness | -2.519135 | 1.913949 | 0 | 1 | 13655 |
| Expenditures | -2.274147 | 2.07645 | 0 | 1 | 13393 |
| Workload | -1.195644 | 5.321805 | 0 | 1 | 13655 |
| Pilot | 0 | 1 | 0.272 | 0.445 | 13655 |
| Length | 2.079442 | 11.88827 | 8.346 | 1.214 | 9422 |
| Commission | 0 | 1 | 0.360 | 0.480 | 9422 |
| Addressee | 0 | 1 | 0.018 | 0.134 | 9422 |
| Scope | 0 | 236 | 6.953 | 18.325 | 9422 |

*Note: The descriptives are based on the sample of 15333 observations. The number of observations differs across variables due to missing data, particularly for directive-level controls.*

## 3.4. Research design

This study employs a quantitative research design to compare how the Commission's decisions of moving an infringement case from the LFN stage to the RO stage with the decision to move an infringement case from the RO stage to a referral to the CJEU. By using a dataset developed by Cheruvu (2022), this thesis looks at what variables really affects decisions to escalate infringement proceeding and what differences or similarities there are in the two stages in which the Commission escalates an infringement case. The empirical strategy is based on estimating separate logistic regression models for each stage of the infringement procedure. This approach allows for a direct

comparison of how the effects of key explanatory variables differ between stages, rather than assuming that the determinants of enforcement are constant throughout the process. By modelling each transition separately, the analysis captures the conditional nature of enforcement decisions, where each stage represents a distinct decision point with potentially different political, administrative, and institutional constraints. By combining a stage-based empirical design with a theoretically grounded distinction between competing logics of action, the study provides a more nuanced understanding of Commission enforcement behaviour. It moves beyond existing accounts of strategic enforcement by showing not only whether the Commission acts strategically, but when and under what conditions such behaviour becomes more pronounced.

## 3.5. Analytical method

The hypotheses of this study will be tested with two baseline models with additional models with controls. The first model will analyse the conditional probability that the Commission will move an infringement case from an LFN to a RO stage. The second model will analyse the conditional probability of the Commission to move an infringement procedure from a RO stage to a referral to the CJEU. It is therefore logical to use a logistic regression model to test this. Logistic regression is a statistical method used to model the relationship between a set of independent variables and a categorical dependent variable, most commonly a binary outcome (e.g., yes/no, success/failure). Unlike linear regression, which predicts continuous values, logistic regression estimates the probability that a given observation falls into a particular category (Peng et al., 2002, p. 4). The key mathematical concept underlying logistic regression is the logit, defined as the natural logarithm of the odds ratio. Rather than predicting the dependent variable directly, the logistic model estimates the logit of Y based on X. The logit is the natural logarithm of the odds of an event occurring, where the odds represent the ratio between the probability that the event occurs and the probability that it does not (Peng et al., 2002, p. 4).

In logistic regression, the most essential thing is to interpret the sign of a logistic regression coefficient β, which represents the coefficient of the independent variable. It is the value of the coefficient β that determines the direction of the relationship between X and the logit of Y, which in this case is the relationship of for example EU public support on the likelihood of the Commission moving an infringement case from one stage of the infringement procedure to the next. When β is greater than zero, higher values of X are associated with higher logits of Y. Conversely, when β is less than zero, higher values of X are associated with lower logits of Y (Peng et al., 2002, p. 4). Drawing back to the hypotheses, it is according to a logic of expected consequences expected that the coefficients of EU public support, member state influence and workload to increase in value at the stage of referring a case to the CJEU compared to the stage of moving a case from the LFN to an RO. As for the logic of appropriateness, it would expect the coefficients all three mentioned variables to be stable across the procedure.

The reason for why an ordinary least squared (OLS) regression is not the best suited for this study is because it assumes that the outcome variable is unbounded and continuous, which leads to several problems when applied to dichotomous data. OLS can generate predicted values below 0 or above 1, which are not meaningful when interpreting outcomes as probabilities. Also, the relationship between the independent variables and a binary outcome is inherently non-linear, typically following an S-shaped pattern, whereas OLS imposes a linear relationship (Peng et al., 2002, p. 4). Logistic regression addresses these issues by applying a logit transformation, modelling the log-odds of the outcome as a

linear function of the predictors. This approach ensures that predicted probabilities remain bounded between zero and one, while also accommodating the non-linear relationship and avoiding violations of key statistical assumptions associated with OLS's estimation (Peng et al., 2002, p. 4). The logistic regression models in this study are conducted in Stata, which is a statistical programming software equipped to handle large sets of data.

# 4. Results

*Table 2. Logistic regression – Effect of independent variables on the Commission's decision to move an infringement case through the infringement procedure. Model 1 tests escalation from the LFN to the RO stage, Model 2 includes controls. Model 3 tests escalation from the RO stage to a Referral to the CJEU. Model 4 includes controls.*

| | (1) | (2) | (3) | (4) |
|---|---|---|---|---|
| Independent variables | | | | |
| Support | 0.267*** | 0.312*** | 0.587*** | 0.645*** |
| | (0.023) | (0.032) | (0.048) | (0.078) |
| Distance | -0.060*** | -0.023 | -0.040 | -0.022 |
| | (0.022) | (0.027) | (0.048) | (0.064) |
| Influence | 0.551*** | 0.798*** | 0.618*** | 0.793*** |
| | (0.023) | (0.035) | (0.043) | (0.069) |
| Effectiveness | -0.441*** | -0.400*** | 0.023 | 0.027 |
| | (0.034) | (0.045) | (0.065) | (0.097) |
| Expenditures | 0.623*** | 0.735*** | 0.509*** | 0.630*** |
| | (0.034) | (0.044) | (0.063) | (0.089) |
| Workload | -1.533*** | -1.499*** | -1.639*** | -1.346*** |
| | (0.037) | (0.049) | (0.095) | (0.120) |
| Pilot | | -0.379*** | | -1.011*** |
| | | (0.067) | | (0.181) |
| Length | | 0.244*** | | -0.026 |
| | | (0.029) | | (0.066) |
| Commission | | -0.214*** | | -0.498** |
| | | (0.074) | | (0.198) |
| Addressee | | 0.130*** | | 0.336 |
| | | (0.192) | | (0.391) |
| Scope | | 0.004*** | | 0.002 |
| | | (0.001) | | (0.003) |
| Constant | -1.137 | -2.843 | -2.414 | -1.800 |
| | (0.024) | (0.262) | (0.083) | (0.611) |
| Akaike Inf. Crit. | 13054.62 | 8213.92 | 3566.12 | 1819.59 |
| Observations | 13320 | 9245 | 3870 | 2331 |
| Log-Likelyhood | -6520.309 | -4094.962 | -1776.059 | -897.7947 |
| McFadden's Pseudo $R^2$ | 0.188 | 0.216 | 0.162 | 0.185 |

Note: Standard errors in parentheses
$^{*}p < 0.10$, $^{**}p < 0.05$, $^{***}p < 0.01$

## 4.1. The escalation from LFN to RO

Table 2 presents the results from four logistic regression models examining the likelihood of the Commission's escalation of infringement proceedings from the LFN to RO and from the RO stage to a referral to the CJEU. The values reported in parentheses are robust standard errors, which indicate the precision of the estimates while accounting for within-country variation. The main quantities of interest, however, are the coefficients themselves. These coefficients represent the log odds, which is the natural logarithm of the odds and indicate the estimated change in the log-odds of the dependent variable associated with a one-unit increase in the independent variable (Peng et al., 2002, p. 4). The coefficients represent the likelihood of an infringement case being moved from one stage to the next, with positive values representing a higher likelihood.

In Model 1, which includes only the main independent variables, several variables enter statistically significant and in the expected direction. EU public support is positively associated with the likelihood of escalation, with a coefficient of 0.267. It is also significant at the 0.01 level, which means that the probability of the relationship being random is less than 1%. This relationship strengthens when control variables are introduced in Model 2, where the coefficient increases to 0.312. Member state influence is positive and significant at the 0.01 level in Model 1, with a coefficient of 0.551, and increases substantially to 0.798 when control variables are included in Model 2. Government effectiveness is negative and significant at the 0.01 level in both Model 1 and Model 2, with coefficients of −0.441 and −0.400 respectively. Expenditures are positive and significant in both specifications, with coefficients of 0.623 in Model 1 and 0.735 in Model 2. Workload has a large and negative effect, significant at the 0.01 level in both models, with coefficients of −1.533 in Model 1 and −1.499 in Model 2. Ideological distance is negative and significant at the 0.01 level in the baseline model with a coefficient of −0.060, but loses significance once control variables are included. Among the additional controls, EU Pilot is negative and significant with a coefficient of −0.379, directive length is positive and significant with a coefficient of 0.244, and the Commission dummy is negative and significant with a coefficient of −0.214.

## 4.2. The escalation from RO to Referral to the CJEU

In Model 3, EU public support has a positive and significant effect at the 0.01 level with a coefficient of 0.587, which is larger in magnitude than in Model 1. When controls are included in Model 4, this coefficient increases further to 0.645. Member state influence is positive and significant at the 0.01 level in both Model 3 and Model 4, with coefficients of 0.618 and 0.793 respectively. In contrast to the first stage, government effectiveness is not significant in either Model 3 or Model 4, with coefficients of 0.023 and 0.027 respectively. Expenditures remain positive and significant in both Model 3 and Model 4, with coefficients of 0.509 and 0.630 respectively. Workload has a large and negative effect, significant at the 0.01 level in both models, with coefficients of −1.639 in Model 3 and −1.346 in Model 4. Ideological distance is not significant in either Model 3 or Model 4. Among the additional controls, EU Pilot is negative and significant with a coefficient of −1.011, directive length is not significant, and the Commission dummy is negative and significant with a coefficient of −0.498.

The model fit is assessed using McFadden's pseudo $R^2$, which ranges from 0 to 1 with values between 0.2 and 0.4 generally considered to indicate an excellent fit (Smith & McKenna, 2013, p. 18). At the

LFN to RO stage, the baseline model has a pseudo $R^2$ of 0.188, indicating a modest but acceptable fit. This improves to 0.216 in the controlled specification, suggesting that the directive-level controls add meaningful explanatory power. At the referral stage, the baseline model has a pseudo $R^2$ of 0.162, which similarly improves to 0.185 when controls are included. While the pseudo $R^2$ values are somewhat lower at the referral stage, this is consistent with the expectation that the referral decision is shaped by a more complex set of political and institutional considerations that are harder to capture with the available variables. The log-likelihood values also improve consistently across specifications, from -6520.309 to -4094.962 at the LFN to RO stage, and from -1776.059 to -897.795 at the referral stage, further supporting the addition of controls in both models. As a complementary measure, the Akaike Information Criterion (AIC) measures the overall fit of the model while penalizing the inclusion of additional predictors. Since there is no absolute AIC threshold indicating a good model fit, it is primarily used for comparing models, with lower values indicating a better fit (Hosmer et al., 2013, p. 136). The AIC values decrease substantially when control variables are included at both stages from 13054.62 to 8213.92 at the RO stage and from 3566.12 to 1819.59 at the referral stage, which suggests that the controlled models provide a considerably better fit despite the penalty for additional parameters.

## 4.3. Robustness test

The dataset used in this study was originally developed by Fjelstul & Carrubba (2018) and later expanded by Cheruvu (2022), both of whom conducted rigorous quantitative analyses of the infringement procedure using the same variables. Given that the dataset and its variables have been validated through repeated use in peer-reviewed research, there is little reason to suspect fundamental issues with model specification. Nevertheless, to further ensure the robustness of the models, a linktest was conducted on the baseline model for each stage of the infringement procedure (see Appendix 1). For the LFN to RO stage, the squared prediction term (hatsq) was insignificant ($p = 0.493$), indicating no evidence of misspecification. At the referral stage, however, hatsq was significant at the 5% level ($p = 0.048$), suggesting the possibility of some model misspecification. This is consistent with the limitations discussed above, as the referral stage involves a more complex set of political and institutional considerations that the available variables may not fully capture.

# 5. Discussion

This section discusses the results of the logistic regression models in relation to the theoretical framework and the hypotheses derived from it. The aim is to assess what the pattern of findings across the two stages reveals about the underlying logic guiding the Commission's enforcement behaviour, and whether the results are more consistent with the logic of expected consequences or the logic of appropriateness.

## 5.1. EU public support and member state influence

EU public support and member state influence are consistently positive and statistically significant across all four models, with EU public support also strengthens in magnitude from the first stage to the second. This provides support for H1a which predicted that the positive effects of this variable would strengthen at later stages of the infringement procedure under the logic of expected consequences. Member state influence strengthens somewhat in the baseline models but remains rather stable in the controlled models, which makes it hard to fully accept H2a.

The strengthening of EU public support across stages is most naturally interpreted through the logic of expected consequences. Much of the literature on non-compliance finds that EU public support captures the political costs of compliance (Cheruvu, 2022; Fjelstul & Carrubba, 2018; Zhelyazkova & Schrama, 2024). When support for the EU is high, compliance is less politically costly for the government, making it more likely that enforcement pressure will produce results for the Commission. When deciding whether to refer a case to the CJEU, which is the most resource-intensive and politically exposed enforcement decision available, the likelihood that judicial pressure will actually produce compliance becomes a more decisive factor. This is consistent with Fjelstul and Carrubba's (2018, p. 441) argument that EU public support may also capture the risk of legislative override, since lower EU support makes it more likely that a government will seek to override an adverse court decision. The strengthening of this effect at the later stage is difficult to account for under the logic of appropriateness, which would not predict that the domestic political environment of the member state becomes more relevant as cases progress. H1b, which predicted a stable effect under the logic of appropriateness, is therefore not supported.

The pattern for member state influence is somewhat different. While the baseline models show a modest increase from 0.551 to 0.618 across stages, the controlled models show near-identical coefficients of 0.798 and 0.793. This suggests that influence is a consistently strong and robust driver of escalation throughout the procedure rather than a variable that clearly intensifies at the later stage. This is consistent with the argument from Fjelstul and Carrubba (2018, p. 438) that the Commission prioritises cases involving more powerful member states because compliance by politically and economically significant states generates greater benefits for the EU legal order. However, the almost identical controlled coefficients mean that the evidence for H2a is weaker than for H1a. The results are more consistent with a stable positive effect, which could be interpreted as support for either H2a or H2b. The two logics cannot be cleanly distinguished on the basis of this variable alone. What can be concluded is that the Commission consistently pursues more powerful member states throughout the infringement procedure, and that this behaviour is more aligned with the logic of expected consequences than the logic of appropriateness, since the logic of appropriateness would predict no systematic differentiation based on member state power.

## 5.2. Commission workload

Workload is large, negative, and significant across all four models, confirming that resource constraints shape the Commission's escalation decisions throughout the infringement procedure. However, the effect does not clearly strengthen at the referral stage as predicted by H3a. The coefficients are broadly comparable across both stages, with a slight decrease from −1.639 in the baseline referral model to −1.346 in the controlled specification. This provides only partial support for H3a and is more consistent with H3b, which predicted a stable effect under the logic of appropriateness. It is important to note that workload is not a general measure of overall burden on the Commission. It captures the cumulative enforcement burden in the bilateral relationship between the Commission and a given member state at the time the LFN is issued.

The persistence of the workload effect across both stages is consistent with Börzel's (2022, p. 23) argument about institutional credibility. If the Commission were perceived to apply different enforcement standards at different stages based on its caseload against member states, this would risk undermining its legitimacy as a neutral enforcer. This pattern provides support for H3b rather than H3a and is consistent with the logic of appropriateness. Under the logic of appropriateness, the Commission cannot allow resource constraints to produce inconsistent enforcement standards across stages without compromising its authority as the Guardian of the Treaties. Neither can it allow the amount of infringement proceedings against specific member states affect the decisions to start new ones. If the Commission allowed workload to shape decisions more heavily at the referral stage than at earlier stages, this would produce inconsistent enforcement standards that could undermine its credibility as a neutral and impartial enforcer. The stability of the workload effect therefore reflects an institutional imperative to apply procedural standards consistently throughout the procedure, which is precisely what the logic of appropriateness predicts. The workload finding thus provides the clearest support for the logic of appropriateness among the three hypotheses, and stands in contrast to the logic of expected consequences, which would predict intensification of resource-driven selectivity at the stage where enforcement is most costly.

## 5.3. Government effectiveness, expenditures and ideological distance

Government effectiveness is negative and significant at the LFN to RO stage but loses significance entirely at the referral stage. Following Fjelstul and Carrubba (2018), this variable is interpreted as a proxy for the probability of unintentional non-compliance. At the earlier stage, administrative capacity provides information about whether non-compliance reflects genuine implementation difficulty or deliberate resistance from the member state. By the referral stage, this judgment has effectively already been made, as cases of unintentional non-compliance tend to resolve early in the procedure. Administrative capacity is therefore no longer a meaningful consideration at the later stage, which is consistent with the logic of appropriateness as the Commission resolves the case in the earlier stages and thereby acts as a successful enforcer. Government expenditures per capita remains positive and significant across all four models without weakening at the referral stage. This sits in tension with Cheruvu (2022) Fjelstul and Carrubba's (2018) original theoretical rationale that it would be a proxy for unintentional non-compliance.

Ideological distance loses significance in both stages once control variables are included, indicating that the political orientation of member state governments does not play a systematic role at either decision point. This is consistent with Börzel's (2022, p. 23) finding of no systematic bias in infringement data and with the institutional requirement of equal treatment across member states.

## 5.4. Overall assessment

Taken together, the cross-stage comparison suggests that the Commission's enforcement behaviour is not governed by a single, stable logic throughout the infringement procedure. The strengthening of EU public support at the referral stage provides the clearest support for the logic of expected consequences. As the stakes of escalation rise, the Commission becomes increasingly attentive to the political possibility of securing compliance. The consistent significance of member state influence throughout the procedure also points toward the logic of expected consequences, though its stability across the controlled models makes it hard to accept either H2a or H2b. The behaviour of government effectiveness, by contrast, is more consistent with the logic of appropriateness, reflecting a normative judgment about the nature of the violation that becomes less relevant as deliberate resistance becomes increasingly apparent. Workload operates as a persistent constraint throughout the procedure, sitting at the intersection of the two logics. The absence of any systematic effect of ideological distance is consistent with the logic of appropriateness and the institutional requirement of equal treatment.

Rather than reflecting a pure expression of either logic, the Commission's behaviour appears to combine strategic selectivity, which is consistent with the logic of expected consequences with a degree of institutional consistency in how enforcement standards are applied across stages, consistent with the logic of appropriateness. The relative dominance of the logic of expected consequences at the referral stage, where the political and resource costs of escalation are highest, suggests that strategic calculation becomes more prominent precisely when the stakes demand it most.

# 6. Conclusions

The aim of this master's thesis has been two-fold. First, it sought to give a better understanding of the institutional behaviour of the Commission as the Guardian of the Treaties by examining what variables shape its decisions to escalate infringement cases through the infringement procedure. Second, and more specifically, to compare the Commission's enforcement behaviour across two distinct decision points: the escalation from the LFN to the RO stage, and from the RO stage to a referral to the CJEU to assess what differences in variable effects across these stages reveal about the underlying institutional logic guiding enforcement decisions. To do so, the study has applied March and Olsen's (1998) framework of the logic of expected consequences and the logic of appropriateness as a theoretical lens, deriving three pairs of competing hypotheses that generate directly contrasting empirical predictions about how variable effects should change across stages.

The empirical analysis shows that the Commission's enforcement behaviour is not governed by a single, stable logic throughout the infringement procedure. EU public support strengthens at the referral stage, providing support for H1a and the logic of expected consequences. Commission workload operates as a stable constraint throughout the procedure, providing support for H3b and the logic of appropriateness. Member state influence is consistently strong across both stages, pointing toward the logic of expected consequences though without the clear strengthening predicted by H2a. Government effectiveness loses significance at the referral stage, consistent with the logic of appropriateness, while government expenditures per capita remains stable across both stages in a pattern more closely resembling member state influence than administrative capacity. Ideological distance is not significant at either stage once controls are included. Taken together, the findings suggest that strategic selectivity and institutional consistency both shape Commission enforcement behaviour, but operate on different variables and at different points in the procedure.

Several limitations of this study should be acknowledged. First, the analysis is based on observable infringement proceedings, meaning that it only captures cases that the Commission has already decided to act upon. As Fjelstul and Carrubba (2018) note, the Commission has full discretion over whether to initiate proceedings, which creates a well-known selection problem. Second, the time period covered in the dataset, which is 2003 to 2016, may limit the generalisability of the findings. As this time-period coincides with several institutional and political developments, such as the introduction of EU Pilot, the 2008 financial crisis and several different Commission leaderships with different political agendas and enforcement approaches, as documented by Kelemen & Pavone (2023), the patterns in this study might not be stable across time, and the relative weight of the two logics might therefore shift and continue to do so.

Future research should consider comparing different Commission leaderships and examine if different political agendas of the Commission has shaped its enforcement behaviour. The time period covered by this study, 2003 to 2016, has included The Prodi Commission, the Barroso Commission I and II, and the Juncker Commission (European Commission, n.d.). These Commission leaderships have all had different political agendas. In addition to that, significant institutional and political changes in the EU, including the introduction of EU Pilot, the 2008 financial crisis, and the rise of Euroscepticism, as documented by Kelemen and Pavone (2023). As Kelemen & Pavone (2023) argue that the Barroso Commission changed the Commission's enforcement approach to a strategy of forbearance, it could be interesting to give an insight into other Commissions enforcement strategies. Comparing Commission

leaderships could give a bigger insight in to how the institutional behaviour might change over time and depending on the leadership. Finally, the mechanisms proposed in this thesis, particularly the role of institutional credibility in producing consistent enforcement standards would benefit from qualitative investigation that can open more of the black box of the Commission's decision-making and provide a richer account of how officials weigh competing logics in practice.

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# Appendix

## Appendix 1. Linktest on the respective baseline models of the logistic regression models

RO

| Average | Coef. | Std. Err. | z | P>\|z\| | [95% conf. | interval] |
|---|---|---|---|---|---|---|
| hat | 0.984 | 0.033 | 30.06 | 0.000 | 0.919 | 1.048 |
| hatsq | -0.010 | -0.015 | 0.045 | 0.493 | -0.039 | 0.019 |
| Cons | 0.003 | 0.026 | 0.10 | 0.917 | -0.049 | 0.055 |

Ref.

| Average | Coef. | Std. Err. | z | P>\|z\| | [95% conf. | interval] |
|---|---|---|---|---|---|---|
| hat | 0.867 | 0.079 | 11.02 | 0.000 | 0.713 | 1.020 |
| hatsq | -0.069 | 0.035 | -1.98 | 0.048 | -0.137 | -0.001 |
| Cons | -0.004 | 0.058 | 0.07 | 0.943 | -0.119 | 0.110 |