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A Moral Bureaucracy: Enforcement of EU Fundamental Values in Central and Eastern Europe

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ABSTRACT

There is growing sentiment that the rise of illiberal democracy in Central and Eastern Europe poses a serious threat to fundamental European values. Within the framework of the European Union (EU) legal system, how do post-socialist member states actually comply with fundamental European values? While there are multiple contradictory theories about the success or failure of assimilation in the region, there is surprisingly little data-driven literature which directly compares post-socialist member state compliance to the rest of the European member states. This paper fills the gap by comparing post-socialist compliance patterns with the rest of the EU, using data on infringement cases opened by the Commission. It finds that post-socialist member states are generally assimilating into pre-existing patterns of European compliance. However, they are demonstrably worse in fundamental European values compliance—and though a legal basis for enforcing these values exists, the EU currently lacks the practical ability to do so.

KEYWORDS

democratization, Eastern Europe, compliance, rule of law, Hungary, Poland

1. INTRODUCTION

“Courts have been crippled, public and private press has been muzzled, refugees have been refused solidarity, NGOs have been discredited and branded as foreign agents, universities have been silenced and Brussels has been demonized. The seemingly endless stream of reports from Poland and Hungary leaves no room for illusion: our fundamental values are under attack. Nothing less than our common future is at stake.” –Viviane Reding, Luxembourg Member of European Parliament (MEP)

When historian Timothy Garton Ash spoke with Czechoslovak president-to-be Vaclav Havel, he famously quipped that “in Poland it took ten years, in Hungary ten months, in East Germany ten weeks: perhaps in Czechoslovakia it will take ten days!” (Garton, 1990) He wasn’t far off the mark. The momentum with which the Iron Curtain fell gave way to various new democratic states and brought with it hope and optimism to onlookers and participants alike. The European Union did its part by investing billions upon billions of euros into the region, earmarked for efforts which promoted democratization and liberal values with the ultimate goal of encouraging their accession to the European Union. The three most recent eastern expansions of the EU—Hungary, Slovakia, Poland, the Czech Republic, Slovenia, Estonia, Latvia, and Lithuania (in addition to Cyprus and Malta) in 2004; Romania and Bulgaria in 2007; and Croatia in 2013—almost doubled the number of member states in the EU, from 15 to 28. The Central and Eastern European (CEE) region’s successes with these transitions to the European Union were thought to be proof that liberal democracy could be exported to countries with non-democratic legacies.

However, many scholars are beginning to fear that rather than being unique cases, the rise of self-described ‘illiberal’ politicians, such as Hungary’s Viktor Orbán and Poland’s Kaczyński, exemplify a rejection of liberal democracy in the region more broadly. This has brought forth an uncomfortable question about the role of the European Union: is the EU now at a point where it prescribes and enforces certain principles, institutions, and fundamental values? And how well, or how poorly, are post-socialist member states actually complying? This paper attempts to answer that question by looking at the European Union’s legal system, specifically through infringement case data. The Commission is the primary enforcer of EU law—so by comparing infringement data of post-socialist member states with Western European member states, we can observe any relative differences in compliance trends, both in general as well as in the most fundamental aspects of European law.

If the EU now prescribes a specific set of liberal democratic institutions and values, it certainly did not always do so. The European Coal and Steel Community of 1951 was the basis of a purely economic union with the goal of ensuring peace on a war-torn and industrially destroyed continent. As Tim Marshall aptly puts it, “what is now the EU was set up so that France and Germany could hug each other so tightly... that neither would be able to get an arm free with which to punch the other” (Marshall, 2016, p. 5). Yet through its many iterations—from the initial treaty of Rome, to the Treaty of Maastricht and the creation of the Eurozone, to the most recent Treaty of Lisbon—the EU has become an unprecedented supranational governing body, in which member states maintain sovereignty in certain areas, and in others, have given it up. This has been met with resistance from member states, which claim that the newer treaties, which further encroach on areas under member state

sovereignty, are not what they signed up for. Orbán’s Hungary is a prime example of this—in 2017, Fidesz sent out surveys entitled, “Állítsuk meg Brüsszelt!” (Let’s Stop Brussels!), in which citizens were asked to give recommendations on how Hungary should deal with (and often simply ignore) EU policies, such as migrant quotas (Cerulus, 2017). This is not to say that euro-skeptic and anti-immigrant sentiments are exclusive to Central and Eastern Europe. However, what is troubling from a more foundational perspective is the increasingly tenuous respect for the rule of law in these post-socialist member states, which seem to demonstrate a disrespect for liberal values more generally.

The purpose of this paper is to contribute a broader approach to understanding fundamental values compliance in the post-socialist member states, while dispelling certain false conceptions about the region. While it would be logical to presume that high overall compliance with EU law would translate into compliance with European values, especially regarding the rule of law, this paper finds that not to be the case. The pattern of post-socialist member state compliance with EU law, which demonstrate high overall compliance but low fundamental values compliance, permits the rise of more autocratic and less liberal politics without being checked by external mechanisms. In the cases where fundamental values are not being complied with, the EU institutions have virtually no enforcement power over nations which are not themselves committed to liberal democratic systems of government. Just as the old adage goes, ‘you can lead a horse to water, but you can’t make it drink,’ EU bureaucrats can set standards and institutional requirements, but cannot force civil society to expect and demand liberal democratic norms from their government.

This paper is divided into four sections. The first section surveys the existing literature on Eastern European democratization, EU legal compliance, and the enforcement of fundamental European values. The next section explains the research methodology used in the paper. The third section examines the data on general patterns of compliance, as well as the two subsets of EU law that are most intertwined with fundamental European values: ‘Justice, Fundamental Rights, and Citizenship’ and ‘Home Affairs.’ The fourth and final section will look at ongoing efforts on behalf of the EU to enforce fundamental rights in two countries which are failing to comply: Hungary and Poland.

2. LITERATURE REVIEW

The immediate post-Cold War era was filled with excitement for scholars who studied economic and political transitions. It quickly became clear that the next question was if and when these post-socialist states would join the EU, and if they had the institutional and societal capacities to make the necessary changes. Scholars have generally come to a consensus that potential and realized EU membership encourages a ‘convergence’ of values between potential and new member states with Western Europe. Some, like Olsen, ascribe this to the process of ‘Europeanization:’ whereas ‘Europe’ used to signify a geographic location, it now connotes a very specific set of political values, social norms, and institutions (Olsen, 2002).

The notion that post-socialist member states’ democratization processes pose a challenge to the EU, however, is not unfounded. More and more commonly in studies of the region, scholars have observed a disconnect between institution building required in the accession process, which has been relatively successful during pre-accession years, and political values, which have not formulated nearly as quickly (Krastev, 2018). This left institutions hollow, without the backbone of a civil society ready to protect democratic institutions

from the type of strong-man demagogic leaders currently in power in many post-socialist European member states. As James Dawson and Sean Hanley succinctly note, “accounts... of democratic consolidation and progress as a function of elite calculation rather than identification has always been in conflict with the equally taken-for-granted notion that ‘democracy needs democrats’ and the only slightly more contested idea that ‘democracy needs democratic citizens’” (Dawson & Hanley, 2016, p. 22).

A decent amount of scholarly work has been completed on the efficacy of EU legal enforcement and patterns of compliance. For example, Gerda Falkner and Oliver Treib find that Central and Eastern European member states fall into a pattern of compliance they categorize as ‘dead letters,’ where initial implementation of EU law is quick, but meaningful and continued implementation is lacking (Falkner & Treib, 2008). Another important aspect of compliance are the different areas of EU law with which states more or less comply. One theory is that states comply with EU laws which align with government interests at that time, and do not comply when government interests and EU law are at odds (König & Mäder, 2008). More recent literature even shows that the newest additions to the EU are often the most compliant, though this is mostly attributed to the theory that as the ‘conditionality’ of EU accession wears off, member states are less incentivized to comply and their compliance worsens (Fjelstul & Carrubba, 2018).

However, while there are numerous works devoted to the analysis of the post-socialist member states’ compliance, and even more work devoted to strategic theories of compliance, there is surprisingly little literature that directly compares regional compliance, such as the post-socialist member states with their EU-15 counterparts over time. As Dimitri Toshkov aptly notes, “The idea that CEE forms a separate cluster is also methodologically suspect because it is derived, like much of the literature on compliance in CEE, from comparisons between CEE countries only, while the reference group of the old member states is left out... In addition, most of the existing studies focus on the environmental and social policy fields, which although substantively important, account for only a small proportion of the EU legislation in force” (Toshkov, 2012, p. 20). Toshkov himself attempts a more comparative analysis, but only looks at three very specific areas of EU law: electronic communications, consumer protection, and animal welfare—none of which exemplify or serve as a proxy for fundamental EU values.

The lack of compliance literature on specific areas of EU law becomes even more interesting when compared to the ‘rule of law’ literature, in which there is a growing academic consensus that post-socialist member states are exhibiting what Dimitry Kochenov terms ‘systemic defiance,’ described as “a type of violation of EU law which is especially grave, so that it affects the fundamental requirements of the EU” (Kochenov, 2017, p. 49). He argues that simply complying with EU law is not enough to prevent the violation of certain fundamental rights, as the ‘pluralism’ inherent in the European Union legally permits departures from certain assumed EU principles. This paper aims to expound on and rationalize the seemingly-contradictory claims regarding CEE in the Europeanization, legal compliance, and fundamental values schools of literature, to form a more complete picture as to how the region currently functions within the European Union.

3. RESEARCH METHODOLOGY

Despite common presumptions about the region, how is post-socialist Europe assimilating into the European Union and complying with its laws and fundamental values?

In this section, I will explain the research methodologies used to answer this question. First, the concepts of legal compliance and fundamental European rights are both explained and operationalized. While imperfect, infringement case data is the best data to assess compliance with European law. Next, I will explain the hypotheses tested in the body of the paper. These hypotheses come directly from the three schools of literature reviewed in the previous section and are outlined at the end of this section.

3.1. OPERATIONALIZING VARIABLES

In order to begin to answer this research question, some concepts have to be defined and operationalized. First, what is ‘compliance’ and how is it measured? For the purposes of this paper, compliance is measured by infringement cases opened against a member state by the Commission. The first line of defense when member states violate European law is the Commission. The Commission has the power to open infringement proceedings against these states, and if a state continues to violate the law, the case is eventually referred to the European Court of Justice. These infringement cases can be opened for any violation of binding EU law, which is comprised of primary and secondary law. The former includes treaty law, which becomes national law upon the accession of the member state to the EU. The latter includes regulations (which apply directly), directives (which require the transposition of the EU law into national law through the national legislative process), and decisions (which apply directly to specific parties in a legal dispute). Opinions and recommendations also fall under the category of secondary law, but because they are not binding, they do not result in infringement proceedings and thus do not fall under the scope of this paper. The infringement case datasets used in this paper were generously provided by Joshua C. Fjelstul, a doctoral candidate in Political Science at Emory University (Fjelstul, 2016). The datasets contain over 16,000 infringement cases opened by the Commission from 2003–2016 and include all cases active at any point during this period.

Data on the actual compliance of member states with regards to European law is notoriously difficult to attain. As Miriam Hartlaap and Gerda Falkner note, there are three major types of data to draw on surrounding the theme of compliance: transposition notifications from states, infringement cases by the Commission, and mass surveys (Hartlaap & Falkner, 2008, p. 6). Transposition notifications from states are helpful in that they are usually very timely—however, they cannot speak to the effectiveness of the law’s implementation, since they are self-reported by states. Infringement cases by the Commission address the question of efficacy but are problematic in that the Commission may not act every time a member state violates EU law. There is a lively and ongoing debate as to whether the Commission and Court of Justice are biased toward states they believe will comply with their decisions—when enforcement costs are perceived as low—and, conversely, if they decide not to act against states they believe may not—when enforcement costs are perceived as high (König & Mäder, 2013). Mass surveys are reflective of public opinion and thus useful in catching instances of perceived non-compliance, but similar to transposition notifications, cannot speak to actual effectiveness. Though infringement data certainly has its problems, Falkner and Hartlaap’s (2008) analysis justifies the use of this type of data if the research question centers around the effectiveness of legal implementation.

Having established how overall compliance can be operationalized, what are fundamental European values and how can adherence to them specifically be measured? As mentioned previously, these fundamental values can be found in Article 2 of the Treaty

of the European Union (TEU), which states that the Union is meant to protect the values which “are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” and include “values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.” The European Parliament and Commission have different methods by which they can intervene to protect these values, but the first and most often used is the Commission’s initiation of infringement proceedings against the member state in question.

The two departments selected for the purposes of evaluating fundamental values compliance are ‘Home Affairs,’ which involves immigration, asylum, and border security policy, and ‘Justice, Fundamental Rights, and Citizenship,’ which protects the values found in Article 2 of the TEU. These two departments or sectors of EU law deal most directly with the fundamental sovereignties of a nation-state—deciding who can stay, live, and become a citizen of a nation, and who cannot. As Florian Trauner further explains, “co-operation in the justice and home affairs (JHA) domain has been a sensitive issue, bearing in mind that the control of state borders, civil liberties, residence and citizenship, and law and order are closely interlinked with the sovereignty of a nation state” (Trauner, 2011, p. 145). These two sectors are key to research because they deal most directly with principles that are central to liberal democracies: the rule of law, the separation of state powers, pluralism, and the protection of civil, political, and human rights. They are also sectors in which there is limited comparative strategic benefit to complying—whereas there are quantifiable economic benefits to member states in having a single market and customs union, which arguably outweigh the advantages of maintaining total sovereignty over those sectors, there are no such incentives for compliance within JHA. Finally, as mentioned previously, these areas are of particular interest to study because they have received a large amount of media attention, and are areas in which post-socialist member states are presumed to be leading the charge against the liberal values of the European Union.

Arguably the most direct link between EU law and fundamental values specifically is the procedure outlined in Article 7 of the TEU, which has two parts: 7(1) a preventative mechanism which can be activated in the case of a “clear risk of a serious breach,” and 7(2) a sanctioning mechanism in the case of a “serious and persistent breach by a Member State” of the values within Article 2 of the TEU. The sanctioning mechanism can suspend certain rights of the member state in question, including their voting rights within the Council. As noted on the Union’s website, respect for the rule of law is a prerequisite for the protection of European fundamental values and all other rights and obligations derived from the European treaties. Article 7 procedures were created as a fail-safe, in the event that the rule of law was not being respected by a member state. However, this is effectively a last resort and has never been fully implemented to date, though there are ongoing Article 7(1) procedures against both Hungary and Poland.

4. HYPOTHESES AND TESTS

As reviewed in the previous section, there are three distinct schools of thought about post-socialist member state compliance, which each lead to multiple hypotheses about post-socialist member state compliance. This paper will test all three of these schools of thought. The first two hypotheses come from the literature on Europeanization, which predicts that post-socialist member state compliance should, firstly, become more and more

similar to the compliance patterns of the EU-15, and secondly, comply just as well with fundamental European values specifically as the older member states as assimilation occurs. To test these hypotheses, I first examine patterns of general compliance by comparing the average number of infringement cases open against post-socialist member states within three different time periods, with the average number of infringement cases open during the same time period against the EU-15 countries. Averages are taken from three separate time periods, 2004–2007, 2008–2012, and 2013–2016, for two reasons: a) to correctly account for the additions of Bulgaria and Romania in 2007, and Croatia in 2013; and b) to see if and how comparative compliance has changed over time. As mentioned previously, to observe comparative compliance with fundamental European values, this paper looks at two subsets of EU law—‘Justice, Fundamental Rights and Citizenship’ and ‘Home Affairs’—and compares average compliance over time with the EU-15.

The third and fourth hypotheses come from the compliance literature, which predicts that as time goes on and as the conditionality of EU membership becomes obsolete, post-socialist member states’ compliance will worsen. This will be tested in the same manner as stated above, looking comparatively over three time periods at averages of general compliance data. However, this school of literature does not provide theories of compliance that are specific to fundamental values, either explicitly or implicitly. This is where the rule of law literature comes in, which strongly asserts that fundamental values are under attack in post-socialist member states. Thus, the fifth hypothesis is that post-socialist member states are complying poorly with fundamental European values, as compared with the EU-15. The sixth hypothesis is that compliance in this area is getting worse over time. These will be tested through the same method as mentioned before, looking comparatively and over time at compliance within the Justice, Fundamental Rights, and Citizenship sector, as well as within the Home Affairs sector (known together as JHA).

5. CONFIRMING AND CHALLENGING THE NARRATIVES

This section examines the infringement case data and analyzes the patterns of compliance shown for post-socialist member states. First, I look at trends in overall compliance, comparing post-socialist compliance with that of the EU-15. The most prominent pattern of compliance is in fact not an East–West divide, but rather a North–South divide. Next, two specific sectors of EU law are examined to analyze fundamental values compliance: ‘Justice, Fundamental Rights, and Citizenship’ and ‘Home Affairs.’ While post-socialist member states are clearly backsliding in ‘Justice, Fundamental Rights and Citizenship’ compliance, they perform equally as well, or poorly, as the EU-15 with respect to Home Affairs. Overall, the data paints a very different picture from the popular conception of post-socialist member states as the problem-states for the European Union. Because the PIGS nations (Portugal, Italy, Greece and Spain) are consistently the worse compliers in every respect, it is important to keep in mind that post-socialist member states may be a new problem for the Commission, but are not the largest problem in terms of absolute infringement procedures.

5.1. GENERAL COMPLIANCE PATTERNS

How do post-socialist member states comply with EU law compared to the EU-15? Table 1 below summarizes the overall patterns of compliance in three time periods: 2004–2007, 2008–2012, and 2013–2016. In all three time periods, post-socialist member state compliance is varied, meaning that the group of countries do not all comply well, nor

do they all comply poorly. However, one thing that is clear from this data is that in each time interval, there are more post-socialist member states in the top half of compliers than in the bottom half. Moreover, there are as many (from 2013–2016) or more (from 2008–2012) post-socialist member states whose compliance improves than there are post-socialist member states whose compliance worsens.

Table 1. General Compliance Data (Fjelstul, 2016)

2004–2007	Total No. of Infringements	2008–2012	Total No. of Infringements	2013–2016	Total No. of Infringements
<u>Lithuania</u>	116	<u>Lithuania</u>	116	<u>Estonia</u>	65
Denmark	163	Estonia	122	Netherlands	69
Netherlands	200	<u>Latvia</u>	126	<u>Croatia</u>	71
<u>Hungary</u>	206	<i>Denmark</i>	131	Malta	74
<u>Slovenia</u>	221	Sweden	135	<u>Latvia</u>	76
Sweden	222	<i>Netherlands</i>	138	<i>Sweden</i>	80
Ireland	224	Slovakia	149	Slovakia	87
Austria	233	Malta	162	Ireland	91
<u>Estonia</u>	237	<i>Ireland</i>	162	<u>Lithuania</u>	91
Germany	241	<u>Slovenia</u>	171	<i>Denmark</i>	93
<u>Slovakia</u>	249	<i>Germany</i>	177	Finland	104
Spain	256	<u>Bulgaria</u>	179	UK	107
Finland	257	Luxembourg	199	<u>Czech R.</u>	112
Luxembourg	263	<i>Austria</i>	208	Luxembourg	122
Cyprus	267	<u>Romania</u>	214	<u>Bulgaria</u>	126
Belgium	268	<i>Finland</i>	227	Poland	129
<u>Poland</u>	269	Czech R.	229	<i>Austria</i>	132
UK	274	France	229	<u>Slovenia</u>	133
<u>Latvia</u>	276	<i>Belgium</i>	242	Hungary	136
Malta	314	<i>Cyprus</i>	243	<i>Germany</i>	140
France	315	<u>Poland</u>	244	<u>Romania</u>	141
Portugal	335	<i>UK</i>	250	<i>France</i>	142
<u>Czech R.</u>	352	<i>Spain</i>	260	Italy	143
Greece	385	Portugal	269	Portugal	158
Italy	464	<u>Hungary</u>	275	<i>Spain</i>	159
		Greece	317	<i>Cyprus</i>	165
		Italy	364	Greece	166
				<i>Belgium</i>	173

Table created by author. States are listed in columns divided by years from least number of infringement cases during that time period to greatest. Post-socialist member states are underlined; states whose compliance improves relative to the rest of the EU are in bold; states whose compliance worsens relative to the rest of the EU are in italics; states whose compliance either stayed the same, or who acceded to the EU during that time period, are left unmarked. Dataset created by Joshua C. Fjelstul.

An initial survey of the data requires a few notes and explanations. Firstly, this paper is less interested in the absolute compliance of post-socialist member states than it is interested in the relative compliance and comparisons. This is why for the rest of this section, the

data selected are averages of compliance. However, it is interesting to note that overall, the number of infringement cases seems to be decreasing, especially over the time period from 2013–2016. This could mean one of two things: either compliance is actually improving in the European Union as a whole, or the Commission is doing a worse job at monitoring and enforcing compliance through the initiation of infringement cases. The latter is the subject of a lively and ongoing debate within the field. While Clifford Carrubba and Joshua Fjelstul notably find the Commission to be an effective if imperfect monitor and enforcer of law, they acknowledge the Commission and the Court do strategically drop cases they feel they are unlikely to win (Fjelstul & Carrubba 2018). Thomas König and Lars Mäder further identify a compliance deficit which results from this selective enforcement, when the EU monitoring branches refrain from enforcing compliance when the probability of success is low and the sanctioning costs are high (König & Mäder 2013). The strategic nature of the Commission and the Court will be revisited in the final section of this paper as it may relate to the ongoing Article 7 procedures in Hungary and Poland.

Having better understood the context in which this paper uses infringement data, we can observe from the averages in Table 2 (see below) how post-socialist member states are complying in comparison to the EU-15. Since 2004, and throughout all three selected time periods, post-socialist member states infringe less upon EU law than the EU-15, where the Baltic states and Scandinavia are among the best compliers, the PIGS nations (Portugal, Italy, Greece, and Spain) are among the worst, and Central European states remain mixed in the middle. Contrary to what the compliance literature on the effects of conditionality would predict, compliance has not worsened since the accession of these member states to the EU. In fact, the data shows the opposite: the disparity between the EU-15 and CEE member states is increasing as time goes on, meaning that the CEE member states are complying *better and better* than the EU-15. The data does not support Hypothesis 3, that compliance worsens as conditionality effects wear off, suggesting that the literature on conditionality as it relates to overall legal compliance in the EU is outdated and inaccurate.

Table 2. General Compliance Averages

	2004–2007	2008–2012	2013–2016
Total Average	264.3	205.1	117.3
EU-15 Average	251	220.5	125.3
CEE Average	240.8	182.5	106.1

Averages are calculated by taking the total number of infringement cases open against the particular group of countries during the specified time period and dividing it by the number of countries in the group. Table created by author. Dataset created by Joshua C. Fjelstul.

This is not to say that the multiple works by Gerda Falkner in the CEE region, which highlight a pattern of quick transposition of EU directives into national law followed by a lack of meaningful implementation (the so-called “dead letters” pattern), are incorrect (Falkner and Treib 2008). However, this data does show that there is either a significant lack of monitoring and fixing the “dead letters” pattern, or this pattern is non-unique to post-socialist Europe.

In fact, there is more evidence to suggest the latter. The data averages show very little evidence of an East–West divide within overall EU legal compliance. However, the

data do show a more surprising pattern. Compliance correlates very strongly with what can be loosely termed the North-South divide, where the financially-solvent states, such as the Netherlands and Germany, have higher compliance than debtor nations like Greece, Spain, and Portugal. There are numerous arguments about why this North-South divide persists, and if and how it is deepening. Michael Landesmann’s explanation focuses on economic factors, including rising debt in the private sector and a lack of diversification in commodity exports (Landesmann, 2015). Garret Martin notes that many believe the divide is also, or even predominantly, a cultural one, though he also adds that many of these perceptions are factually dubious. For example, according to OECD data on labor markets from 2012, Southern Europeans tended to work more hours than their Northern counterparts —2032 hours on average per year for Greece, 1774 for Italy, and only 1413 for Germany. Retirement ages between North and South were also comparable, and most surprisingly, Northern Europeans received more government assistance per capita than Southern Europeans (Martin, 2012). The reasons behind this divide are hotly contested and are not perfectly understood. What is important for the purposes of this paper, however, is twofold: that popular conceptions surrounding cultural and economic divides in Europe should not be taken at face value, and that post-socialist member states are clearly assimilating into the North-South pattern of compliance, as seen below in Figure 1.

Figure 1: The North-South Divide



Image taken from The Economist video: “Is it time to scrap ‘Eastern Europe?’”
 Financially solvent states are marked in light grey. Debtor nations are marked in dark grey.
 (retrieved from <https://www.youtube.com/watch?v=ya55Q-WdIrQ>)

Table 3. General Compliance Rankings 2013-2016

1. <u>Estonia</u>	7. <u>Lithuania</u>	13. <u>Poland</u>	19. Italy
2. <u>Netherlands</u>	8. <u>Denmark</u>	14. <u>Austria</u>	20. Portugal
3. <u>Latvia</u>	9. <u>Finland</u>	15. <u>Slovenia</u>	21. Spain
4. <u>Sweden</u>	10. <u>United Kingdom</u>	16. <u>Hungary</u>	22. Greece
5. <u>Slovakia</u>	11. <u>Czech Republic</u>	17. <u>Germany</u>	23. Belgium
6. <u>Ireland</u>	12. <u>Bulgaria</u>	18. France	

Table created by author. Post-socialist states are underlined. Financially-solvent states are in bold, and debtor states are in italics. Member states which are not listed in the corresponding image above are omitted. Rankings are calculated by taking the total number of infringement cases open from 2013-2016. Dataset created by Joshua C. Fjellstul.

What non-economic or cultural factors could explain this correlation? One possible explanation is that financial solvency and effective administrative capacity could be intertwined, which, as Thomas König and Brooke Luetgert find, leads to higher compliance. They explain that administrative capacity is of central importance in legal compliance, and governments with higher administrative capacities tend to have higher compliance (König & Luetgert, 2008).

The response to this, however, is that “effective administrative capacity” in the context of implementing EU laws can also include corrupt regimes, many of which are not financially solvent. The most prominent examples of this are Romania and Bulgaria, who almost certainly did not meet the requirements for accession when they joined the EU in 2007 because of the prevalence of corruption. As Venelin Ganey convincingly argues, not only were Bulgaria and Romania clearly too corrupt for European Union standards before acceding to the European Union, but their successful accession actually *increased* corruption in those nations, by releasing them from the oversight placed on candidate member states, and then delivering structural funds directly to the hands of the powerful and corrupt networks of politicians (Ganey, 2012). The same could be said of Hungary currently, where Fidesz holds a supermajority in the Hungarian Parliament, while corruption flourishes.

Regarding EU legal compliance, it follows from this line of reasoning that corrupt politicians can get EU bureaucrats off their back by virtue of being able to easily pass laws. This is yet another interpretation of the ‘dead letters’ pattern observed by Falkner and Treib and would indicate that the experience of post-socialist member states since the time of their accession to the EU has centered around creating the appearance of a certain institutional and political structures, simply going through the motions of transposing EU directives into law without meaningful implementation of the laws themselves. This gives a sufficient illusion of commitment to the European values to placate European bureaucrats, while still allowing illiberal and corrupt politicians to further their own agendas as their networks and system of support are consolidated.

Yet neither the ‘dead letters’ perspective from Falkner and Treib nor Ganey’s description of corruption through EU structural fund transfers can explain the exception of the Baltic states (for the purposes of this paper, Estonia, Latvia, and Lithuania). Despite their short-lived EU membership and their soviet legacy, the Baltic states are star compliers and fall into neither the ‘dead letters’ nor high corruption categories (Wadsworth, Swartz, & Wheat, 2010). In fact, not only do these three countries actively try to distance themselves from the rest of post-socialist Europe, but politicians from these countries have echoed their citizens’ anger and dismay at being called such. Recently, when the British daily newspaper *The Guardian* launched its “New East Network” to cover news in the “15 countries that rose from the ashes of the USSR (Union of Soviet Socialist Republics),” representatives from all three nations responded with similar indignation (Pyzik, 2014, p. 1). The Lithuanian ambassador, Asta Skaisgirytė Liauškienė, said that nowadays Lithuania has shed any traces of Soviet history and is a “vibrant civic society” committed to “western values,” while Latvian ambassador Andris Teikmanis called the project “switching [the] time machine back to USSR.” Toomas Hendrik Ilves, the president of Estonia, declared: “[w]e are no more

‘new’ than Finland, Austria, et al, all post WWI (World War I) states,” and labeled the newspaper’s concept as “intellectually bankrupt” (Pyzik, 2014, p.1). Thus, we can neither support the administrative capacity argument, nor that of a widespread pattern of ‘dead letters’ and/or corruption within the region as a whole.

While it is not clear exactly why this correlation between financial solvency and European legal compliance persists, what this data does establish is that post-socialist member states are assimilating into compliance patterns that already exist within Europe along a North-South divide. In fact, this is perhaps better explained in terms of regional divides, as seen below in Table 4, where compliance averages are divided into regional groups. This supports Hypothesis 1, that post-socialist member state compliance overall would become more and more similar to that of Western Europe. The Baltic states have extremely high compliance, as does Scandinavia, while states such as Romania or Hungary have lower compliance and perform more similarly to southern European countries like France. However, the findings on general compliance patterns do not support Hypothesis 3, that compliance will decrease in CEE countries as conditionality wears off. In fact, the opposite trend is observed here—CEE countries are complying, overall, better and better with EU law.

Table 4. Regional Averages for General Compliance

Region	Average No. of Infringement Cases 2004–2007	Average No. of Infringement Cases 2008–2012	Average No. of Infringement Cases 2013–2016
Baltics (Estonia, Latvia, Lithuania)	209.67	121.33	77.33
Scandinavia (Finland, Sweden, Denmark)	214	164.33	92.33
PIGS (Portugal, Italy, Greece, Spain)	360	302.5	156.5
Balkans (Slovenia, Romania, Bulgaria)	N/A	188	133.33
Central West (Netherlands, Belgium, Germany, France)	256	196.5	131
Visegrád Four (Hungary, Slovakia, Czech Republic, Poland)	269	224.25	116

Table created by author. Post-socialist member states are in bold. Data from the Balkans in 2004–2007 are not used since Romania and Bulgaria acceded to the EU in 2007. The total number of infringement cases are taken from all countries in the specified category during the specified time period and are then divided by the number of countries in that group. Dataset compiled by Joshua C. Fjølstul.

5.2. FUNDAMENTAL VALUES COMPLIANCE

Do post-socialist member states comply less with fundamental European values? The infringement data on the sectors of “Justice, Fundamental Rights, and Citizenship” and “Home Affairs,” taken from a complete data set of infringement cases from 2004–2016, seem to cautiously support this conception. Looking at these two departments sheds light on the popular narratives. To begin, we first examine the data on Justice, Fundamental Rights, and Citizenship infringements. From 2004–2007, the CEE countries comply better than the EU-15. This is similar in 2008–2012, though their compliance is decreasing, but from 2013–2016, the CEE countries are worse compliers than their EU-15 counterparts. This shows that post-socialist member states are, in fact, now complying less with fundamental EU val-

ues than their EU-15 counterparts. More importantly, as the EU-15 compliance within this sector is *improving*, post-socialist member state compliance is *worsening*. This data would seem to support both Hypothesis 5 and Hypothesis 6 from the rule of law literature: that post-socialist member state compliance with fundamental values is at the moment significantly worse than that of Western Europe, and that their compliance in this sector is deteriorating over time.

Table 5. Compliance Data on Justice, Fundamental Rights, and Citizenship

	2004–2007	2008–2012	2013–2016
Total Average	7.44	5.77	5.75
EU-15 Average	8.3	5.73	5
CEE Average	6.1	5.6	6.54

Averages are calculated by taking the total number of infringement cases in the department of Justice, Fundamental Rights, and Citizenship’ open against the particular group of countries during the specified time period and dividing it by the number of countries in the group. Table created by author. Dataset created by Joshua C. Fjeltul

This is an important finding because it also demonstrates the limited effects of conditional requirements. If the values-based requirements for accession to the EU did indeed incentivize initial compliance in post-socialist member states, that effect has now worn off, supporting Hypothesis 4, that as conditionality wears off, fundamental rights compliance decreases. Eli Gateva explains this in the context of Romania and Bulgaria, the most recent accessions except for Croatia in 2013. The Commission created a specific Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania during their accession process, meant to deal with the two most pressing issues precluding their accession: corruption in both states, and organized crime in Bulgaria (Gateva, 2013). The monitoring mechanism lasted even after the accession of these states. Gateva argues that even this mechanism is ineffective given the “limited penalizing power of the remedial and preventative sanctions established in the framework of the CVM,” and, as a result, there is a “very weak negative incentive structure” (Gateva, 2013, p. 7). The data here leads to a similar conclusion: there is little incentive for CEE countries to continue complying with the aspects of EU law that they do not wish to comply with (such as Justice, Fundamental Rights, and Citizenship or JFRC) when there is a lack of effective enforcement mechanisms after accession.

Examining the data on a regional level gives even more insight into compliance patterns. Table 6 shows that compliance with Justice, Fundamental Rights and Citizenship do not fall as strongly into a regional pattern of compliance, meaning that geography does not explain JFRC compliance as strongly as it did with overall compliance in the previous section. Instead, we see CEE countries complying worse as conditionality wears off. There is, however, one key exception: the Baltic States remain star compliers and do not seem to fall into this pattern, giving credence to the ‘Baltic exception’ discussed in the previous section.

Table 6. Regional Averages for JFRC Compliance

Region	Average No. of Infringement Cases 2004-2007	Average No. of Infringement Cases 2008-2012	Average No. of Infringement Cases 2013-2016
Baltics (Estonia, Latvia, Lithuania)	5.67	4.33	3.67
Scandinavia (Finland, Sweden, Denmark)	8.33	3.33	5
PIGS (Portugal, Italy, Greece, Spain)	7.25	5.75	6.25
Balkans (Slovenia, Romania, Bulgaria)	N/A	4.33	8.33
Central West (Netherlands, Belgium, Germany, France)	7.5	5.75	4.5
Visegrád Four (Hungary, Slovakia, Czech Republic, Poland)	7	7.5	7.75

Table created by author. Post-socialist member states are in bold. Data from the Balkans in 2004-2007 are not used since Romania and Bulgaria acceded to the EU in 2007. The total number of infringement cases in the department of 'Justice, Fundamental Rights and Citizenship' are taken from all countries in the specified category during the specified time period and are then divided by the number of countries in that group. Dataset compiled by Joshua C. Fjelstul.

Home Affairs, however, which encompasses immigration and asylum policy at the European level, is an altogether different story. From 2004-2007, CEE countries performed slightly worse than, but still very similar to, the EU-15 in this department. From 2008-2012, the CEE region's compliance is slightly better than the EU-15; and in 2013-2016, their average is again slightly worse, but almost equal with that of the EU-15 (and still lower than the overall EU average). While there is a popular conception that the East is more xenophobic and less compliant with asylum quotas and immigration requirements, this data paints a different picture, one in which European bureaucrats have turned the East into a scapegoat for a much more widespread problem. It seems hypocritical for EU bureaucrats to condemn the region as threatening the unity of the Union, as they have done on many occasions, while the EU-15 states themselves perform virtually no better in the Home Affairs department.

Table 7. Compliance Data on Home Affairs

	2004-2007	2008-2012	2013-2016
Total Average	9.4	4.26	6.96
EU-15 Average	8.93	4.13	6.53
CEE Average	9	4	6.73

Averages are calculated by taking the total number of infringement cases in the department of 'Justice, Fundamental Rights, and Citizenship' open against the particular group of countries during the specified time period and dividing it by the number of countries in the group. Table created by author. Dataset created by Joshua C. Fjelstul

This is a key example of what Galland and Lemel found previously—that conflating Europeanization with 'modernization' or 'liberalization' is a misleading practice (Galland & Lemel, 2008). While we would expect from media headlines such as "EU Takes Action

Against Eastern States for Refusing to Take Refugees” to see the region as a whole complying much worse in the Home Affairs sector, this turns out not to be the case. This is seen even more clearly when the data is separated regionally, as seen below in Table 8. The unfortunate truth is that anti-immigration and anti-asylum sentiments are widespread, and evidently evenly spread, throughout Europe.

Table 8. Regional Averages for Home Affairs Compliance

Region	Average No. of Infringement Cases 2004–2007	Average No. of Infringement Cases 2008–2012	Average No. of Infringement Cases 2013–2016
Baltics (Estonia, Latvia, Lithuania)	10	3.33	6.33
Scandinavia (Finland, Sweden, Denmark)	5.67	3.67	2.67
PIGS (Portugal, Italy, Greece, Spain)	11.25	5.25	9.75
Balkans (Slovenia, Romania, Bulgaria)	N/A	3.67	8.33
Central West (Netherlands, Belgium, Germany, France)	12	4.5	7.75
Visegrád Four (Hungary, Slovakia, Czech Republic, Poland)	8.75	4.75	6.25

Table created by author. Post-socialist member states are in bold. Data from the Balkans in 2004–2007 are not used since Romania and Bulgaria acceded to the EU in 2007. The total number of infringement cases in the department of ‘Justice, Fundamental Rights and Citizenship’ are taken from all countries in the specified category during the specified time period and are then divided by the number of countries in that group. Dataset compiled by Joshua C. Fjelstul.

6. SUMMARY

To summarize, the data on the general compliance patterns of post-socialist member states supports Hypothesis 1 and finds that post-socialist European member states are assimilating into the pre-existing western European patterns of compliance. However, they are doing this in two unexpected ways. Firstly, the conditional requirement for accession do not seem to have influenced the general compliance of post-socialist states, since they are complying better and better as time goes on, the opposite of what the literature on conditionality would expect. Secondly, compliance patterns seem to correlate with financial solvency, where economically-solvent member states have higher compliance than member states with large amounts of debt. Overall compliance patterns are also seen on a regional level, where Scandinavia and the Baltic states comply similarly, as do the Central European states, post-socialist and non-post-socialist alike.

With regards to fundamental values compliance, the data shows that post-socialist member states are complying comparatively, and increasingly, worse with Justice, Fundamental Rights, and Citizenship. This supports both Hypothesis 5 and Hypothesis 6 from the rule of law literature. However, when examining the data on ‘Home Affairs,’ it becomes clear that CEE member states are complying equally as well (or poorly) as Western Europe. This challenges the popular sentiment that the threats to ‘liberal European values,’ which include the free movement of people, come predominantly from the East. If European Union officials want to enforce refugee quotas and immigration policies in post-socialist

Europe without coming off as hypocritical, they will need to enforce those values in their own nations as well.

Overall, all three theories have some important explanatory power, but lack the nuance to fully explain post-socialist member state compliance in the EU. The Europeanization school of thought explains very well the patterns of overall post-socialist member state compliance, as well as their compliance within the department of Home Affairs, but cannot account for the worsening ‘Justice, Fundamental Rights and Citizenship’ compliance in the region. The rule of law literature accurately notes an apparent backslide in post-socialist member state compliance with laws pertaining to the ‘Justice, Fundamental Rights and Citizenship’ department, but cannot explain the notable exception of the Baltic States. The compliance literature accurately warned that as conditionality wore off, the aforementioned backslide might take place—yet conditionality has not taken effect in overall compliance.

It is important to take these findings in context with one another. Looking only at overall compliance data hides the fact that post-socialist states are less compliant with fundamental European values, something that the EU may decide to more rigorously and proactively enforce. However, in the area of immigration and asylum policy, it seems that the East has become a scapegoat to help western European policymakers ignore the uncomfortable reality that anti-immigration sentiments are a European problem, not just an Eastern European problem. Above all, this data showcases that simply enforcing EU law through the Commission, and resulting high overall compliance, is insufficient to ensure that fundamental values are protected. It follows from this that European leaders must soon decide both if they will continue to enforce these values, and how they will do so.

Table 9. Hypotheses and Resulting Data Summarized

School of literature	Hypotheses	Data
Europeanization	<ol style="list-style-type: none"> 1. General compliance will be increasingly similar to EU-15 patterns. 2. JHA compliance will be increasingly similar to EU-15 patterns. 	<ol style="list-style-type: none"> 1. Supported; North-South Divide 2. Not supported for Fundamental Rights, supported for Home Affairs
Compliance	<ol style="list-style-type: none"> 3. Overall compliance will be worse over time as conditionality wears off. 4. JHA compliance will be worse as conditionality wears off. 	<ol style="list-style-type: none"> 3. Not supported 4. Supported in Fundamental Rights, not in Home Affairs
Rule of Law	<ol style="list-style-type: none"> 5. JHA compliance is comparatively worse than the EU-15. 6. JHA compliance is also getting worse over time. 	<ol style="list-style-type: none"> 5. Supported in Fundamental Rights, not in Home Affairs 6. Supported in Fundamental Rights, not in Home Affairs

Table created by author. Dataset created by Joshua C. Ejelstul.

7. ARTICLE 7: HUNGARY AND POLAND

7.1. BACKGROUND

When the Commission’s infringement procedures are not enough to ensure compliance, what other avenues are available to the EU to enforce fundamental liberal, democratic values? A paper concerning fundamental European values would be incomplete without an analysis of Article 7. While part of the Lisbon treaty, the basis for Article 7 was

created in the late nineties to prevent consistent treaty violations after post-socialist member states had successfully acceded to the Union and the incentives of conditionality wore off. Though the Commission is the most common enforcer of EU law, Article 7 allows the EU to potentially strip a member state of its voting rights within the Union's various institutions if it is determined to have a "significant and persistent breach of the European values referred to in Article 2."

There is virtually no precedent for the use of Article 7. One of the key events which led to its development in the Nice and Lisbon treaties took place in Austria. In 1999, after decades of rule by a coalition of social and Christian democrats, Austrian voters chose the far-right Freedom Party (FPÖ). The Freedom Party in many ways resembled the far-right parties seen in Europe today; it is compared to Jobbik, Hungary's far-right party, and the leader of the Freedom Party, Jörg Haider, has praised the Waffen SS on record. The EU's response to the election was a 'diplomatic isolation' of Austria, which had neither teeth nor tactical effect. The weak display of 'diplomacy' was a bust, in which politicians did nothing except to refuse to take pictures or shake hands with Austrian officials. This backfired and served instead to fuel Euroscepticism in Austria, as citizens felt they were being treated unfairly, given that Haider's party was elected freely and fairly (Leconte, 2005). Nevertheless, the so-called 'Haider affair' informed the creation of Article 7 in the Nice and Lisbon treaties and ultimately provided the EU with a legal option that hadn't existed previously to deal with the rise of illiberal parties within the European Union.

Cécile Leconte believes that the Haider affair set a dangerous precedent for future far-right parties: "EU leaders...were unwilling to uphold the principles initially evoked against the FPÖ. As a consequence of this dilemma, the threshold of political acceptability inside the EU has been lowered; every coalition partner now seems acceptable as long as it does not commit concrete violations of human rights. The EU is now less likely to take steps against national governments or leaders that might openly contest its fundamental values" (Leconte, 2005, p. 7). Leconte was probably right. While countries like the Czech Republic and Hungary were the poster-children for democratic erosion and the rise of illiberalism in the EU, there is much literature to suggest that democratic consolidation was more of a façade in the region than a meaningful change. Dawson and Hanley observe that the 'liberalism' of the transitions in the region was "an elite project driven by small groups at the apex of politics, business, academia, and officialdom," arguing that this "narrow economic, technocratic variant of liberalism merged with existing illiberal narratives and interests which pro-European elites generally opted to accommodate rather than oppose" (Dawson & Hanley, 2016, p. 21). They further find that sham institutions in the region were masking "an absence of genuinely liberal political platforms—by which we mean a range of mainstream ideologies of both the left and right based on shared commitments to the norms of political equality, individual liberty, civic tolerance, and the rule of law." Unfortunately, Article 7 procedures may indeed be too little, too late in the face of systemically underdeveloped democracies throughout the region with a precedent of tolerance at the European level for democratic façades.

7.2. CASE COMPARISON: HUNGARY AND POLAND

There are ongoing Article 7 proceedings against two countries at the moment: Hungary and Poland. It is impossible to fully understand the current case of Poland without first going through the story of Hungary. These are generally similar cases—both coun-

tries have political parties in power who openly support ‘democratic illiberalism,’ and both countries are examples of democratic erosion in the face of relatively successful economic stories (Dawson & Hanley, 2016). However, while these two country cases are consistently lumped together, their differences are key in understanding the predicament the EU is currently in. Moreover, their stories together have culminated in one of the greatest challenges to the EU’s enforcement of fundamental values within the Union.

Fidesz’s history is an interesting one. Starting as a radical liberal democratic party in Hungary in the early nineties, it was a partner in the governing center-right coalition from 1998–2002, and then remaining in the opposition until its outright victory in the landslide elections in 2010. By 2010, it had established itself under Viktor Orbán as a right-wing political party and has continually drifted further right whilst continuing to secure a parliamentary super-majority of at least two-thirds at every election since. This has allowed Fidesz to make cardinal laws, or constitutional amendments, which favor Fidesz with electoral redistricting, help Fidesz pack the courts with sympathetic judges, and make it much easier for the government to censor free press (Kornai, 2015). The story in Poland is shorter and more straightforward. In 2015, the far-right Law and Justice Party (PiS) won a landslide electoral victory—though critically, *not* a super-majority (as in the case of Hungary). PiS is led by Jarosław Kaczyński, who, while being just a member of parliament, clearly holds the strings behind the scenes (Dawson & Hanley, 2016).

The most obvious question, then, is why the EU didn’t use more of its regulatory powers to reign in Hungarian illiberalism before now, if there were clear violations of the fundamental principles enshrined in Article 2, especially given that the EU has taken a much stronger approach against Poland (and much more quickly). Daniel Keleman offers another explanation based on partisan politics at the EU level. Because Fidesz is part of the European People’s Party (EPP), which is still the largest party in the European Parliament, the parliament was reluctant to invoke systematic procedures such as the Venice Commission or Rule of Law Framework, not to mention Article 7 procedures, against a fellow member of their party (Keleman, 2017). However, as PiS is a member of the much smaller, eurosceptic European Conservatives and Reformists (ECR), the EPP would have no party line to adhere to—they therefore had no problems overruling the ECR and invoking the Rule of Law Framework in Poland. Secondly, while Kaczyński has stated his desire to emulate what Fidesz has done in Hungary, there are a couple of distinct differences. PiS, a rather ideological party, does not hold a super-majority; as such, it has not been able to maneuver around EU law as adeptly as the more pragmatic Fidesz has. When PiS passed a law which effectively ousted judges with the intention of filling their places with PiS sympathizers, they did not have the two-thirds majority that their constitution requires for this kind of law. As a result, the EU has stepped in quickly and powerfully, initiating the Venice Commission to investigate the state of the independent judiciary. The unfortunate truth is that Fidesz’s actions in Hungary have, in a strictly legal sense, been formally allowed within the EU legal framework (Kornai, 2015).

This gets at the heart of the problem—the EU is based on the assumptions of common legal principles between all member states, as listed in Article 2 of the TEU, but lacks the practical ability to enforce these expectations. As stated previously, Kochenov notes that Article 2 of the TEU describes a set of fundamental principles, or ‘rules of the game,’ that all EU member states supposedly share (Kochenov, 2017, p. 51). Thus, the EU legal framework is predicated on member states already having institutions that uphold these

fundamental principles. However, as has become clear in the Hungarian case, these values that are supposedly “common to the Member States” are a) clearly not, and b) not truly protected by any procedure other than the so-called ‘nuclear option’ of Article 7. Zoltán Sente observes that “the very abstract nature of these [fundamental] values have repeatedly created difficulties for the EU institutions as to how to prove that particular national policy measures violate them” even though “in the Hungarian cases in question ... the measures and policies as a whole are contrary to the basic values of the founding treaties” (Sente, 2017, p. 352). Fidesz lawyers have argued that the EU principles of the preservation of “pluralism” and respect for different national legal systems protect Fidesz’s actions, especially regarding constitutional changes via cardinal law. Zoltán Sente responds that while “the TEU acknowledges the Member States’ right to establish and determine their own constitutional structures, (...) the fundamental principle of the EU to respect national identities and the different legal systems (...) does not justify the violation of principles of the Rule of Law and democratic values by the Member States” (Sente, 2017, p. 354). Yet unfortunately, this academic theorizing has not permeated the practical application of EU law, and Article 7 remains a divisive and, at this point, futile option. Because Fidesz and PiS have agreed to protect one another from EU punishments, and because a full triggering of the sanctioning process requires unanimity among the European Council, neither Poland nor Hungary will have their voting rights revoked as laid out in Article 7(2).

8. CONCLUSION

The purpose of this paper was to contribute to a more comparative and broader understanding of how post-socialist European member states are, or are not, assimilating into the EU, while dispelling false conceptions about the region. In part due to the fact that the question of how post-socialist member states are complying with EU law is a timely one, very little data-driven literature exists which explicitly compares the region’s compliance patterns with other European member states. Moreover, the existing theoretical literature on the region and its assimilation to the EU seems to draw contradictory conclusions. This paper builds upon this gap in the literature and uses infringement case data to compare post-socialist member state compliance to the rest of the EU, looking at overall compliance, as well as Justice and Home Affairs (JHA). The findings confirm important hypotheses from all three schools of literature. Firstly, general compliance seems to be increasingly similar to EU-15 patterns when looking through the lens of a North-South, rather than East-West, divide (Hypothesis 1). Secondly, compliance with ‘Justice, Fundamental Rights, and Citizenship’ is significantly worse in post-socialist member states than in the EU-15 and is currently deteriorating further (Hypotheses 6 and 7).

However, and perhaps more importantly, some findings directly contradict both existing literature on the subject as well as popular opinion. For example, while Justice, Fundamental Rights, and Citizenship compliance shows a significant backslide as noted in the rule of law literature, in Home Affairs, post-socialist member states comply just as well, or poorly, as Western Europe. This would seem to support the Europeanizationist perspective (Hypothesis 2), but contradict the rule of law literature. Moreover, while conditionality has not affected overall post-socialist compliance, which is still better than that of the EU-15 (Hypothesis 4), conditionality seems to have played an extremely important role in ensuring fundamental rights compliance, because as time has passed, post-socialist compliance with fundamental rights has been worsening (Hypothesis 5). One of the largest takeaways from

this section is that simply complying with European law, even complying with it relatively well, is not enough to ensure that member states will adhere to the European fundamental values enshrined in Article 2 of the TEU. This begs the question of, and necessitates further research into, how biased and ineffective the Commission and the European Court of Justice are at correctly identifying and punishing violations of the values within Article 2.

Finally, this paper examined more closely how the current mechanisms of fundamental values enforcement have failed in the cases of Poland and Hungary. The EU has no historical precedent for ensuring that member states adhere to fundamental values, such as the rule of law or pluralist democracies, upon which the European Union was founded, and which all candidate countries are supposed to have already internalized. The current legal framework, which places most of the burden on the Commission and the Court to enforce these laws, is not enough to ensure that autocratic and illiberal leaders stay out of power. Moreover, the last resort of Article 7 is rendered useless in the cases of Hungary and Poland in its current state. Significant reforms will be needed if the EU is adamant about maintaining its role as a supranational government which enforces a specific set of political and legal values—because currently, there seems to be little way to enforce them.

The addition of so many transitioning democracies to the European Union has proved to be one of its most critical tests. There is a clear recent and regional pushback against fundamental EU values in Central and Eastern Europe. Hungary and Poland are popular examples of what appears to be an underlying trend in the region, where democratic consolidation was much less successful than scholars previously believed, and where the rule of law is further deteriorating. However, it would be inaccurate to omit the pushback and tensions within the EU framework as a whole—for example, with asylum and immigration quotas. The EU's political project, starting as a purely economic organization and progressing to the hyper-bureaucratic, less-than-democratic supranational organization that it is today, is not just threatened by the newest additions, but also by some of the oldest. Unfortunately for the EU, it currently lacks the capacity to truly enforce the values it was supposedly founded upon. How the EU institutions and leaders decide to deal with the ongoing Article 7 procedures in Hungary and Poland will set an important precedent for how misbehaving member states will be treated in the future. Finding a balance between enforcing the rule of law, while still preserving the values of democracy and pluralism within the Union, will be vital for any legitimate and unified solution.

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