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NGOs: Guardians of the law or symbolic assemblies?

A quantitative study comparing the presence of NGOs and environmental policy compliance in the EU

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Abstract

The climate debate is heating up and political leaders are meeting all over the world for discussions regarding the state of our planet. Consequently, numerous of resolutions and treaties have been created by the European Union containing impressive sets of policy promises for the safekeeping of our environment. Less impressive is the actual compliance with these treaties by the same states. This thesis will closer examine Non-governmental organisations (NGOs) and their contributions to change environmental policy compliance, but also attempt to analyze their availability to influence compliance depending on different types of laws. Utilizing a quantitative method, the analysis shows that NGOs have promising opportunities to hold EU member states accountable for violating against environmental policy by sending complaints to the European Commission. However, this is only true for NGOs in member states who have recently joined the Union. As this thesis demonstrates inner dynamics of NGOs availability to affect environmental policy compliance, it further opens up opportunities for fruitful discussions and future research paths.

Keywords: Non-Governmental Organisations (NGOs), compliance, non-compliance, infringement cases, complaints, implementation, environmental policy, EU member states.

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1. Introduction

In december of 2019 the European Commission presented the “European Green Deal”. This deal contains new and ambitious strategies in order to ensure Europe becoming the first ever climate neutral continent by 2050. The deal also provides an impressive set of policy promises, however it still relies heavily on the willingness of the member states. Creating the “European Green Deal” alone will not ensure Europe becoming climate neutral, it is rather the action of implementation and compliance to the deal that will secure a sustainable future. Previous research has diligently examined the phenomenon of non-compliance, where some suggest that NGOs have special ability to encourage states to comply to policy. Thus this thesis sets out to examine the contribution of NGOs to affect environmental policy compliance. The following chapter will present further background on the research field, the research gap and the aim of this study.

1.1 Research gap and aim

Previous research on environmental policy compliance, has mainly focused on the contributing factors from a supranational and/or member state level. However, some claim that domestic mobilization has the capacity to encourage compliance, such as NGOs who advocate environmental sustainability. It is stated that they can for one part contribute to norm diffusion and scientific knowledge regarding the environment (Burley & Mattli, 1993), as well as pressuring governments to implement and fulfil supranational laws by sending complaints¹ to the European Commission (Andonova & Tuta, 2014). The complaints sent by the NGOs may become infringement cases² and consequently pressure states to amend their violations and comply to European Union (EU) legislation (Börzel, Hoffman & Panke, 2011).

In 2000, Börzel showed that domestic pressure can encourage member states to comply to supranational law. In her article, the domestic pressure consisted mainly of NGOs who sent complaints to the European Commission regarding violations against environmental legislation, thereby initiating an infringement procedure. This was examined by analysing

¹ “Complaints” in this thesis refers to when NGOs or other private litigants report to the European Commission when an EU member state has violated against EU environmental legislation.

² “Infringement cases” refer to legal procedures that are initiated by the European Commission in the occurrence of a violation to EU law. Infringement cases will be explained more closely in the chapter 3.1.

five environmental directives and their implementation³ process in Spain and Germany, it was shown that the encouragement and pressure coming from NGOs helped states both to implement and comply faster (Börzel, 2000). However, to my knowledge no quantitative approaches have been made in order to measure NGOs influence within every EU member state. I argue that this not only leaves out gaps of information considering the structural⁴ variation of NGO encouragement for compliance in the EU, but that it also does not tell us which legislative measures⁵ NGOs might have more or less influence in. Questioning how different legislative measures affect compliance has also been done in previous research. Pollack and Shaffer (2009) examined the importance of soft versus hard law and how they encourage compliance to policy differently. In addition to this, they also suggested that some legal measures are more available for NGOs to influence and contribute to. According to them, NGOs have a higher chance of helping and/or influencing soft law as they are less precise and contain more voluntary standards (Pollack & Shaffer 2009). In an EU-context soft and hard law may be translated into directives and regulations, where directives tend to be less precise however not less binding (Langlet, 2016). I therefore take the opportunity to compare the potential effect by NGOs on infringement cases while controlling for directives and regulations.

In conclusion, the aim of this thesis is to examine if the number of NGOs have a correlation to the amount of infringement cases filed against EU member states which have violated EU environmental legislation, thus influencing policy compliance. Additionally I aim to investigate the potential difference for the effect of NGOs regarding regulations and directives. I restrict the chosen data within the time-scope of 2004-2018, as we find this time period to be the most favorable to measure. First, recent years will include a larger number of member states since the largest and latest enlargement of the EU occurred in 2004. Second, the number of member states during this time period is stable, as no states have exited the Union during this period. And thirdly, choosing a more recent time frame is relevant due to EU environmental policy constantly evolving and becoming more important in EU politics,

³ “Implementation” in this thesis refers to when an EU member state incorporates EU legislation into their legislative records.

⁴ “Structural” in this section refers to an arranged structure between the importance of NGOs between different EU member states that might be due to similar characteristics in regimes etc.

⁵ A legislative measure refers a legislative document issued by a legislative assembly.

thus I find it more interesting to conduct the research for the current situation. With the help of infringement cases issued by the European Commission (Larsson & Johansson, 2020) and the amount of NGOs present in each member state (NGO Branch, 2019), this thesis intends to map out the potential importance of NGOs. Therefore, the questions this study sets out to answer are;

- 1. Do NGOs have an effect on the amount of infringement cases filed against EU member states for violating EU environmental legislations?*
- 2. Is there a difference in NGOs influence on infringement cases between environmental regulations and directives?*

2. Previous literature and theory

The following chapter will proceed to map out previous research on compliance in the EU. After defining the term “compliance” the previous literature will be summarized through a historical timeline along with additional information on EU environmental legislation and NGOs. Towards more contemporary research I will highlight the research gap and the theoretical framework of this thesis.

2.1 Defining “compliance”

Compliance defines the action of obeying an order, rule or request (Cambridge Dictionary, 2020). In this thesis the term “compliance” refers to when member states implement EU legislation and follow the law in practice. For example, take the “Natural habitats directive”, a directive intending to preserve natural habitats and wild flora. This directive may be implemented into the nations legislative records, which is the first step to compliance. However, in order to ensure total compliance the natural habitats also need to be constantly protected by the national authorities according to the directives and/or regulations.

2.2 Compliance: A historical timeline

In the 1960's and in the early stages of the European Community (EC), integrational crisis riddled the decade. As the EC aimed to obtain more power over the member states budgets for financing the Common Agricultural Policy (CAP), France's president Charles De Gaulle issued the “Empty chair crisis”. This was a six month French boycott of the negotiations in Brussels, which left the Union weak and ambivalent. This piece of history alone tells us about the importance of compliance within the EU in order for the Union to survive (Moravcsik, 1998). This further raised questions about how the EC would survive when subjected to unwilling states. In 1965, the economist Andrew Shonfield emphasized the importance of the European Commission's capability to prevent non-compliance⁶, claiming that they have special expertise for monitoring member states (Shonfield, 1965). Moving forward, research on compliance was mainly made by legal experts, discussing administrative law procedures and the legal responsibilities of the EU member states to the European Court of Justice (ECJ). However, research still mainly discussed supranational institutions and their ability to monitor

⁶ “Non-compliance” refers to when member states do not implement or follow EU legislation.

non-compliance (Mendrinou, 1996). Moving towards the end of the 80s, researchers started showing an interest in actors outside of the supranational institutions and how they contributed to non-compliance. Such as how domestic forces may push governments to non-comply, for example political parties or organisations (Puchala, 1975). Also, the undeliberate violations were considered, where member states administrative capabilities were said to cause non-compliance due to the lack of ability to implement laws effectively (Mendrinou, 1996).

Entering the 90s, compliance literature took an enriching turn, where numerous of different actors started to be examined deeper, such as lobbyists. Showing that certain member states possessed more lobbygroups than others and that this caused a variation in compliance (Mazey & Richardson, 1993). Cichowski has also confirmed that in the implementation process of environmental policies, private litigants are important contributors as they are able to push governments into reforming domestic law into supranational laws (Cichowski, 1998). Contributing with political science perspectives, Mendrinou (1996) highlighted the importance of viewing non-compliance and the punishments as harmful for diplomacy. Also, additional theories surfaced considering non-compliance and its consequences for international relations, such as if member states actually *want* to comply, meaning that it is not certain member states want to give up too much sovereignty to the supranational institutions (Mendrinou, 1996).

Approaching the 21st century, the compliance literature had included further perspectives on the contributing factors for non-compliance. In 1998 Lampinen and Uusikylä measured several government characteristics and compared them to the then fifteen EU member states and their amount of infringement cases, in order to find indicators that cause more or less compliance. In their analysis, they inter alia measured corporatism where both NGOs and lobbyists were included in the same variable, showing no correlations. However, they did highlight the importance of further examining lobbyism and civil society organisations⁷ (Lampinen, Uusikylä, 1998).

⁷ Civil society organisations refers to non-state and non-profit organisations created by the people.

In 2000, Börzel examined the implementation of five environmental directives in Germany and Spain, showing that domestic mobilization was able to pressure governments into complying to policy. This was done by NGOs who sent complains to the Commission when the two countries violated against policy (Börzel, 2000). This further confirms Chikowskis findings in 1998, where private litigants proved to have importance for starting infringement procedures (Chikowski, 1998). In the following chapter I will closer examine different strategies used by domestic mobilization in order to encourage compliance.

2.3 Different approaches used to encourage compliance

Something that is less discussed in Börzel (2000) is the type of strategy NGOs use to pressure governments to comply to EU environmental policy. It is important to consider different approaches NGOs utilize to encourage compliance due to different approaches affecting the amount of infringement cases contrastively. For example, some approaches used by NGOs might result in increasing amounts of infringement cases while others might decline the amount. Thus this needs to be taken into consideration when conducting our analysis. Two rather dominant schools of approaches are the “Enforcement” and “Management” approaches, which both express two unique strategies actors utilize to influence governments (Tallberg, 2002).

2.3.1 The enforcement approach

The enforcement approach stems from the idea that states operate rationally according to potential benefits or costs, and that this influences every decision they make. The school of the enforcement approach would say that member states are expected to comply more by increasing the threat of sanctions and continuous monitoring (Tallberg, 2002). In the context of NGOs and EU environmental policy, the enforcement approach would result in a strategy where NGOs monitor their governments and hold them accountable. In the occurrence of a violation, the NGOs tell on their governments to the European Commission and thereby start an infringement process (Andonova & Tuta, 2014).

2.3.2 The management approach

According to the management school, states violate policies mainly for lacking certain capabilities and preconditions. The solution is therefore not to punish but to help the governments to comply (Tallberg, 2002). NGOs who use the management approach rather help their governments with capacity building. For example, in the implementation process of the Natura 2000 network⁸, Bulgarian NGOs organized fieldwork and species inventory projects in order to help the government fulfil the criterias of the directives. As NGOs help their governments to follow environmental legislation via the management approach, infringement cases rather decline as there is less violations occurring (Andonova & Tuta, 2014).

2.3.3 NGOs using the enforcement approach

NGOs most often utilize both approaches, however certain types of NGOs often tend to certain approaches. This has previously been examined by Andonova and Tuta (2014). They observed that when considering the two approaches, it is relevant to question the classification of the NGOs that are being studied, since different NGOs have different resources and preconditions. Activism networks, such as social movements and/or NGOs, rather prioritize politics of norm diffusion, leverage and accountability, where accountability is considered as an enforcement strategy. Additionally, larger international NGOs often possess abilities to hold states accountable for their actions as they reach wider audiences to support them (Andonova & Tuta, 2014). Since the two strategies counteract each others effects on infringement cases, we aim to measure the effect via an enforcement approach due to our selection of NGOs rather fits the description of an enforcement prone NGO⁹. The limitation of measuring NGOs using the enforcement approach will be attempted by selecting a set of independent variables which will help to identify the enforcement pressure, this will be further accounted for in chapter six which explains the research design of this thesis.

⁸ The Natura 2000 network is a set of legislations within the birds and habitats-directives, which registers and protects over 25 0000 different areas in nature.

⁹ See chapter 4 for further information on NGOs that use the enforcement approach to encourage compliance.

3. EU environmental policy

This chapter will provide information on the EU's environmental legislation. First, levels of different legal measures will be presented and finally non-compliance and the infringement procedures will be more closely explained.

In 2009, Mark Pollack and Gregory C. Shaffer claimed that hard law and soft law is not equally available for NGOs to influence. According to them, NGOs have more availability for soft law as it is less precise and contains more voluntary standards. For these voluntary standards, they have greater opportunity to involve themselves in order to establish and /or protect them (Shaffer & Pollack, 2009). The EU environmental policy structure of hard and soft law is defined by the treaty “The Functioning of the European Union” (TFEU), where it defines the legal bases of which member states and the Union are authorized to legislate policy. Meaning that the treaty delegates levels of competence between national and supranational levels based on articles that concern the environment, being article 191,192 and 193 (Langlet, 2016).

There are three different levels of competence, *exclusive*, *shared* and *supportive competences*. The *Exclusive competences* gives the Union full authority to implement legally binding regulations for member states, this applies to some policy areas such as trade with third world countries or common fisheries. *Shared competence* refers to both states and the Union having authority to adopt legal acts. Finally, the *supportive competence* refers to the EU only being able to support or coordinate the member states in legislation, these might consider policy sectors for human health or education (Langlet, 2016).

These levels of competence define how much sovereignty is left with the member states and how much authority is given to the Union. The competence levels are defined by article three which also decides what legal measures can be adopted and by who. This means that the levels decide how hard or soft legislation becomes in their final form. Legislations include inter alia *regulations and directives*. For example, a policy area given exclusive competence to the Union might result in more regulations as they instantly apply for all EU member

states. A policy area that is of shared competence, rather utilizes directives as they are less precise, leaving more freedom to the member states for choosing how they will comply to the law. However, this does not mean that certain environmental policy areas consist entirely of regulations or directives, but rather that parts of environmental policy might fall under exclusive competence and other under shared (Langlet, 2016).

| Exclusive competence | Shared competence | Supportive competence |
|---|---|---|
| <ul style="list-style-type: none"> - Customs union - Competition for internal market - Conservation of marine biological resources - Common commercial policy - International agreements - Monetary union | <ul style="list-style-type: none"> - Environment - Agriculture and fisheries - Internal market - Transportation - Energy - Public health - Trans-European networks - Research - Humanitarian aid | <ul style="list-style-type: none"> - Education - Tourism - Industry - Human health - Culture - Civil protection - Administrative cooperation |

The chart above shows what EU policies fall under which competence level. Environment is placed under shared competence, however the marine biological resources is placed under exclusive. Meaning, that certain environmental policies that concern marine resources will be decided on a supranational level and might consist of more hard law (Langlet, 2016). However, if most environmental laws are put under exclusive competence, this study may assume that they rather consists of directives. Thus I conclude that the EU environmental legislation mainly consists of directives, thus is more soft.

3.1 Non-compliance and infringement procedures

The European Commission is the main monitoring body for policy implementation and compliance, although their awareness of compliance is rather restricted to knowing whether the laws have been implemented into national legislation, however not how the laws are maintained in practice. In the occurrence of a law not being maintained, the Commission does somewhat depend on the complaints procedure to alert them. NGOs, businesses and the general public, can through the complaints procedure, let the Commission know in the occurrence of a violation, setting of an infringement process (Bache et al, 2015).

The infringements procedure goes as follows; Suppose that a member state is not maintaining an environmental law, if not noted by the Commission immediately, this might be reported by say a civil society organisation such as a NGO. The NGO sends a complaint to the Commission addressing that their government is not complying to the directive. As the Commission is notified, they send out a formal notice¹⁰ where they ask the violating state to explain the accusation, this formal notice must be answered within a two month period. If the Commission concludes that the violating state is not complying to the law, they send out a reasoned opinion¹¹. Here the Commission explains why the state is considered to violate the directive and receives demands of what measures needs to be taken in order to amend the violation. If the state still does not comply to the directive, the Commission can refer the case to the ECJ if deemed necessary. If the state still continues to violate against EU law, the ECJ may impose penalties until they amend the violation. If non-compliance is continued, the state may eventually be given financial penalties by the court (European Commission, 2020).

¹⁰ A “formal notice” more specifically is a letter where a member state is notified that it is suspected to violate environmental law.

¹¹ “Reasoned opinion” is the final opinion issued by the Commission deciding if the member state has violated or not.

4. NGOs

In this section, I will provide a short summary of information regarding NGOs. After defining “NGOs” I will explain their different organisational categories as well as the selection of NGOs used for analysis in this thesis.

A “NGO” is defined as a “Non-Governmental Organization”. They are typically non-profit organizations that operate independently from the influence of a government addressing social or political issues (Lewis, 2010). The NGOs that will be discussed in this thesis, are NGOs who do not solely address environmental issues, but which do have principles advocating sustainable development in their political agenda.

4.1 Different types of NGOs

Categorizing and measuring NGOs can be problematic as they are extremely varied in their structures and qualities. They can vary from being large million-dollar food aid managers to small labour unions for peasants. However, by following their historical development they may be divided into six general categories (Clark, 1991).

- Relief agencies, such as Christian relief agencies or missionary societies.
- Technical innovation groups, these organizations create independent projects innovating new and modern solutions for development technology.
- Public service contractors, these aim to help welfare programmes of weak governments.
- Popular development agencies, are northern NGOs who work with grassroot level development and infrastructure through self help and democracy building.
- Grassroot development organisations, are NGOs created on local levels by the poor and oppressed themselves, examples are the rural worker unions in Brazil and many more.
- Advocacy groups and networks, are organisations who do not have field projects of their own, but who rather work with education and lobbying. These focus on government and institutional pressure through campaigns and demonstrations.

What is important to know about these divisions of NGOs, is that they rarely operate according to one single school, but rather use multiple strategies to fulfil their purpose (Clark, 1991). The sixth school however, ties into the enforcement approach previously mentioned, thus this will be the type of NGOs that we intend to measure in our quantitative analysis. Advocacy strategies can be found in bigger international NGOs who advocate environmental development (Andonova & Tuta, 2014), which are available in the UN branch database on consultative status NGOs.

4.2 NGOs given a consultative status in the UN

When a NGO is given a consultative status with the UN (United Nations), it is considered by the United Nations Economic and Social Council (ECOSOC) to have special ability to consult the UN regarding matters within their knowledge. A consultative status may be established with Non-Governmental organisations, voluntary organisations or non-profit organisations and is given to national, regional and local organisations. In order for a NGO to be awarded consultative status it must have been officially recognized by a government since two years prior to applying. Additionally, the organisations must have official headquarters, democratic and transparent organisational structures (NGO Branch, 2020). This ensures the following when measuring our NGOs in the analysis; First, they are established and democratic. Second, they have privileges to attend UN summits thus reaching large audiences. Thirdly, they are all certified under the standards of ECOSOC, meaning that NGOs given consultative status follow the sustainable development goals defined by the UN for ensuring environmental sustainability¹².

¹² The goals for sustainable development defined by the UN stems from the 17 global goals, more specifically called the “2030 agenda”.

5. Theory

In this section the theoretical framework of this thesis will be presented, which is drawn from the research gap found in previous literature. First, two theoretical models will be presented along with our hypotheses. Lastly the causal chain will be illustrated and the hypotheses repeated for clarification.

5.1 Challenging the “Pull-and-push model”

The “Pull-and-Push model” by Börzel (2000) illustrates how supranational laws can either be pushed down onto member state levels by EU institutions, or pulled downwards by domestic actors. In her study, the domestic actors were mainly NGOs who encouraged policy compliance by pulling down supranational laws onto member state level by sending complaints to the European Commission. However, to my knowledge this model has only been examined through a qualitative method, examining two member states and the implementation of five environmental directives. I argue that the “Pull-and-Push model” needs to be further challenged by applying a quantitative analysis to the pull effect, by measuring the amount of NGOs pulling policy down to member state levels. By measuring the NGOs effect on infringement cases in all EU member states, this study sets out to examine the potential differences of the NGOs influence in different regions of the EU. This may also provide further information about the preconditions needed for NGOs to affect compliance and which EU countries are subjected to more pull from NGOs.

Moreover, the approach utilized by the NGOs to encourage compliance needs to be considered, since different strategies affect infringements in different ways.¹³ Andonova and Tuta (2014) explained in their article that approaches need to be considered in relation to the types of NGO that are being analysed. They claim that even though NGOs tend to combine different strategies in order to pressure states to comply, the enforcement approach is widely used by large and resourceful NGOs who possess capacity to hold governments accountable. The NGOs available for this analysis, all enjoy a consultative status with the UN and are therefore larger and more established. Therefore I have concluded to measure the effect by

¹³ The different effects by the enforcement and management approach on infringement cases is closer explained in chapter 2.3.

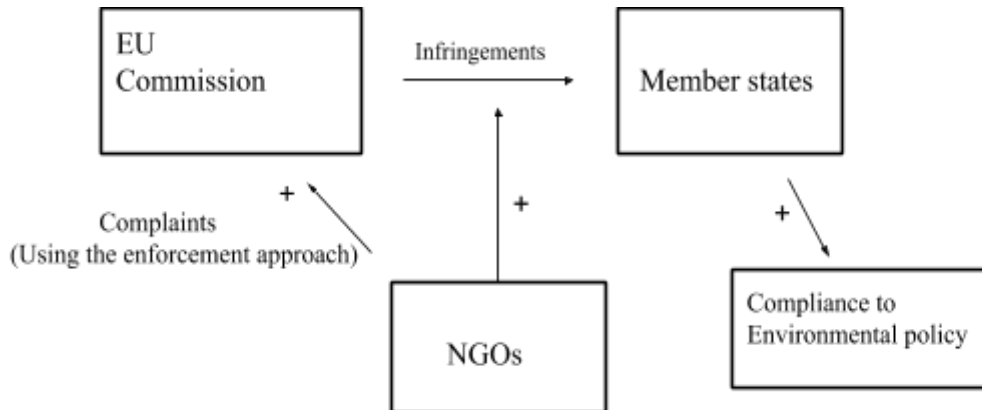
NGOs through the enforcement approach. Additionally, it is noted that the infringement data used for this analysis is not able to capture the effect of the management approach, as it only measures infringements that have been sent the ECJ and thus are violations of a more serious character. A management approach would have not been possible to measure utilizing this data as the violations would have never occurred if the management approach had been applied for those specific laws (Andonova & Tuta, 2014). Thus the first hypothesis of this thesis concludes, H1: *NGOs increase the amount of infringement cases per EU member state by sending complaints to the European Commission.*

5.2 NGOs availability to hard law and soft law

In 2009 Pollack and Schaffer mentioned the importance of soft law and hard law when considering availability for NGOs to influence compliance. According to them, soft law are usually more targeted by NGOs for influencing policy for a number of reasons; First, soft law tend to include more voluntary standards that NGOs may help states to fulfil such as certifications schemes, codes of conduct or general guidelines. Secondly, soft law is far less precise in their formulations and agendas, leaving more room for interpretation and potential errors to occur. This may results in more infringement cases for soft law thus becoming more relevant for NGOs to involve in (Pollack and shaffer 2009). EU environmental laws are not divided into strict soft or hard law categories, however it is distributed between exclusive, shared and supportive competences. Meaning that shared and supportive competencies qualify as soft law, thus is more relevant for NGOs. Within EU legislation soft and hard law may be translated into regulations and directives, where regulations are hard law and directives are soft (Langlet 2016). Since previous literature has stated that NGOs have greater opportunities to influence soft law measures, hence EU directives, I also aim to measure their unique effects on infringement cases on directives versus regulations.

Thus this study sets out to further examine if there is a difference regarding what type of legal measures NGOs have greater influence on. Hence the second hypothesis states; *There is a difference between the effects of NGOs on the amount of infringement cases for environmental directives and regulations.*

5.3 The causal chain and hypotheses



The model above explains the causal chain of our theoretical framework. It demonstrates how NGOs through an enforcement approach cause more infringement cases by sending complaints to the Commission. As the Commission receives information on the occurring violations, they issue more infringement cases towards the member states, which potentially encourages their compliance to environmental policy.

H1: *NGOs increase the amount of infringement cases per EU member state by sending complaints to the European Commission.*

H2: *There is a difference between the effects of NGOs on the amount of infringement cases for environmental directives and regulations.*

6. Research design

This chapter will describe the method and material used for this thesis. First, a summary of the chosen variables and their operationalisation will be presented. After, the time-scope, limitations and validity of the material will be discussed.

The purpose of this thesis is to examine if NGOs have an effect on the amount of infringements cases per EU member state by monitoring their violations and sending complaints to the European Commission. By examining this, the study aims to find out if NGOs influence environmental policy compliance in the EU. This study also questions if there is a variation of NGO influence on compliance depending on the types of legal measures. The environmental policy area is chosen due to its increasing urgency and attention for the past decades, both in national and international politics. But also, climate change and its consequences does affects all people, however less resilient societies may be affected more severely. Thus, few tools are therefore available for these people other than to organize themselves and hold governments accountable (Clark, 1991). Furthermore, EU environmental legislation is the second most infringed upon policy area after the enterprise sector, thus having noticeable problems with non-compliance making it more interesting for the aim of this thesis (Hoffman et al, 2011).

I will attempt to answer the questions of this thesis by utilizing a quantitative analysis method in order to measure correlations between the amount of NGOs and the amount of infringement cases per EU member state. When measuring this correlation its is anticipated to learn whether a higher amount of NGOs results in more infringements cases or less, additionally I set out to examine which legal measures they have greater influence on. Since each variable chosen contains large amounts of data, a quantitative analysis method is deemed most appropriate, where a multiple regression analysis is chosen due to having more than two variables.

6.1 Operationalization of the main dependent and independent variables

The main independent variable will be measuring the amount of NGOs per EU member state, this data is obtained from the UN NGO branch provided by ECOSOC (United Nations Economic and Social Council)¹⁴. The NGOs measured in this database all enjoy a consultative status with the UN, making them larger and more established than most NGOs. The dependent variable will consist of a set of infringement cases filed by the European Commission against EU member states for violating EU environmental law. Also, the infringement cases used in this analysis have been sent to the ECJ and does not include for example reasoned opinions¹⁵. The data is obtained from the research project “*Non-compliance in European integration*” presented at the centre for European studies at Gothenburg University (Johansson & Larsson, 2020). The data refers to all environmental laws, regulations and directives that are based on the treaties environment-chapter or laws that have “Environment” as subject matter on EUR-lex. The unit of analysis is state-law pairs, i.e. there is one row for each state per law. Additional data have been retrieved from the same source such as the “Years invalid” variable and the data on directives and regulations. The “Years invalid” variable simply tells us the amount of years that each environmental law has been invalid. Lastly, the variables “regulations” and “directives” denotes whether the law is of either type.

6.2 Operationalization of the control variables

Before the operationalization is explained for each independent variable, note that all of the variables below measure the average value of the time-scope. Thus, each member state has been given an average value of say their GDP between 2004-2018. This routine has been repeated for each variable presented below, to clarify; Each EU member state has been given an average value of the presented data for the time-scope of 2004-2018. The independent variables chosen for the analysis are partially gathered from the Quality Of government (QOG) database and the Varieties of democracy (V-Dem) institute at Gothenburg University. The first chosen independent variable is the “Press freedom index” retrieved from the

¹⁴ The NGO branch is a search engine which allows one to search for all NGOs that enjoy a consultative status with the UN. There is no dataset available, but rather the NGOs have been manually counted as the search engine provides lists of names for each NGO per policy sector and their respective country.

¹⁵ See chapter 3.1 for more information on infringement procedures.

QOQ-database, 2019. This variable more specifically measures freedom of the press regarding their variation in media, their independence of media and safe keeping of journalists. The variable “Press freedom index” ranks countries on a 0-100 scale, with 0 being the best score and 100 the least free. This variable has been chosen due to potentially indicating the NGOs effect on infringements through an enforcement approach by utilizing press and other media outlets, as freedom in the press is increased the opportunities for NGOs to hold governments accountable follow. This variable is inspired by Lampinen and Uusikyläs study on the implementations deficit in the EU (1998), as they included several indicators of member state qualities in order to explain the intermediate factors for increased or decreased amounts of infringement cases.

The second independent variable called “Share of Green MEPS” is a variable which I myself have collected by calculating the percentage of green party-members for each member state in the EP (2019) and comparing this to their total share of Members of the European Parliament (MEPs)¹⁶. This information is included in the analysis in order to indicate the political power of green political parties in each member state, as I anticipate that member states with a strong support for environmental politics experience more pressure from NGOs. Our “Democracy” variable is provided by the V-dem institute of Gothenburg University from their latest dataset called “Dataset 9”. This variable tells us about the freedom for associations in each EU country. The variable poses the question *“To what extent are parties, including oppositional parties, allowed to form and participate in elections, and to what extent are civil society organization able to form and operate and freely?”* The variable is an interval scale that reaches from low to high freedom, 0-1. This variable is chosen to complement our “Freedom in press” index, where I also have similar motivations for including this variable.

¹⁶ The information used in order to calculate the share of green MEPs in the EP per EU member state has been obtained from the official webpage of the European Parliament in 2019.

The “GDP in Billions” variable depicts the total share of the GDP value measured in billions per EU member state, this variable is based on OECD data for gross domestic product statistics (OECD, 2020). The GDP data is included in the analysis since previous literature has claimed that capacity¹⁷ may affect the amount of infringement cases. For example, states with low GDP may violate against legalisation more as they lack capacity to effectively implement and follow supranational laws (Perkins & Neumayer, 2007). If capacity would be a bearing reason for infringements increasing or decreasing, this variable is important to incorporate and examine. Finally the “Recent enlargement” variable measures the amount of years the member states have been in the EU. This data has been recoded into a dummy-variable, providing a 0 for old member states a 1 new member states. Further, “old member states” refer to countries who joined the EU prior to 2004, and “new member states” to those who joined in 2004 or later. This was done due to previous literature raising awareness on possible but not certain regional variations of compliance to policy (Börzel, 2000).

6.3 Limitations and scope

The first limitation of this study has been the accessibility of the NGO data. As explained earlier in this thesis¹⁸ NGOs are complicated to examine using a quantitative analysis. No large datasets were found on NGOs, instead advanced search engines provided lists of NGOs which are members of particular umbrella organisations, such as the UN. The NGO data utilized in this thesis is provided by the UN NGO branch of the ECOSOC, however it registers only NGOs who enjoy a consultative status with the UN. This is not an easy title to obtain, thus the NGOs which have been given consultative status are highly established and resourceful¹⁹. This means that many smaller NGOs on a grassroots level do not meet the criteria of this status and are therefore excluded from this study. New democracies such Eastern European states, most likely possess larger amounts of NGOs than what is portrayed in this paper. Additionally, there are most likely many NGOs who do not seek a consultative status with the UN, but rather aims to operate on a community level. This limits the study

¹⁷ “Capacity” refers to the member states resources to follow through certain tasks, such as complying to environmental policy.

¹⁸ See chapter 4 on NGOs and the preconditions of measuring them.

¹⁹ See chapter 4 which describes more specifically the definition of a consultative status.

quite extensively, as not all NGOs in each member state is measured this may affect the results. However, despite of the limitation of our NGO data we have proceeded with the analysis due to assuming that the consultative status NGOs reflect the member states general presence of NGOs and other civil society organisations. Additionally, by considering previous research (Andonova & Tuta, 2014), more establish and resourceful NGOs tend to utilize the enforcement approach to pressure governments, which is the aim of this thesis to examine.

Additional limitations regards the infringement data. The data available for infringement cases solely measures cases that have been sent to the ECJ. An infringement procedure (described in chapter 3) undertakes several steps before reaching the ECJ. Prior to this, the member states receive several opportunities to comply and amend their violations, thus the infringements measured in this thesis captures more extreme cases of non-compliance, leaving out smaller violations. This becomes a limitation due to restricting the selection of all violations that have occurred to only those that have been sent to the ECJ. Thus we may lose data on infringement cases that have been initiated by NGOs since they have become solved before reaching the ECJ. Additionally, limitations have been made considering the member states available for analysis. Romania, Malta, Cyprus, Croatia and Bulgaria all have been removed due to missing democracy data and/or joining the Union too far into our chosen time-scope, thus leaving us with 23 member states to include in the analysis. This restriction does affect the legitimacy of this paper, and need to be kept in mind when reading the results. Alternative data for the democracy-variable could have been chosen, although supply for the desired data was limited. While I have conducted several robustness checks for the main correlation between NGOs and infringements, due to time constraints no tests for heteroskedasticity are included in this thesis.

Conclusively, the limitations for this thesis have been numerous. First, the NGO data available is restricted to only measuring large and resourceful NGOs, however this does serve our research aim considering the enforcement approach. Second, the number of member states have been restricted to 23 countries, due to missing democracy values. Thirdly, the infringement data utilized for our analysis only measures violations that have been sent to the ECJ, thus only measuring rather serious cases.

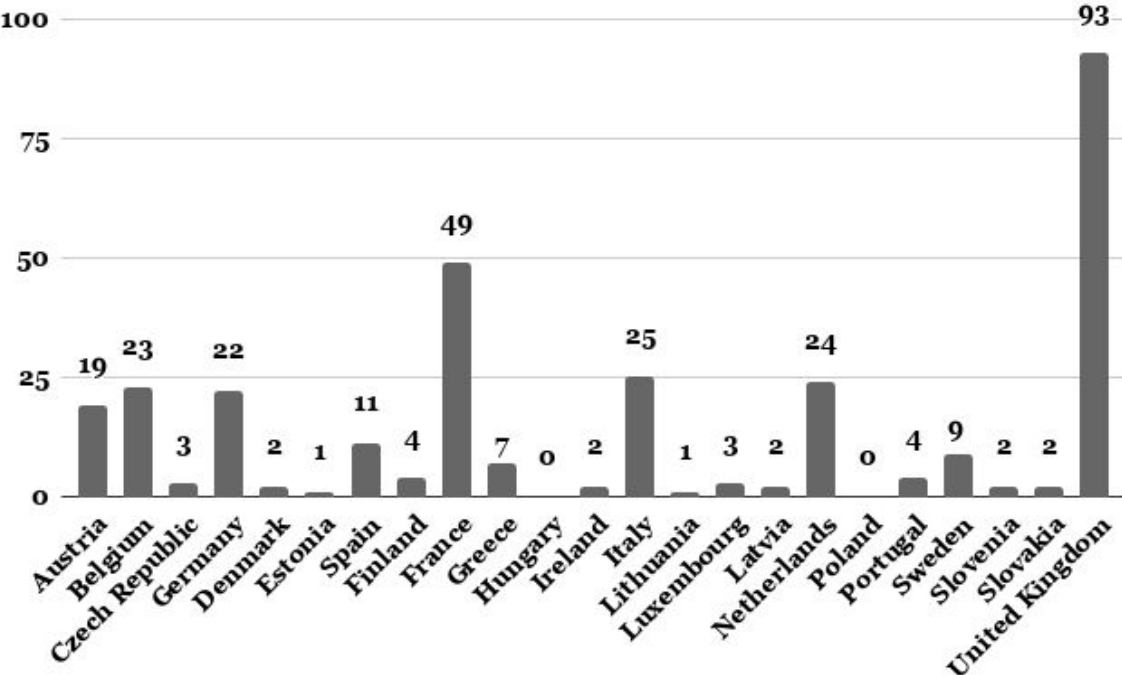
7. Results

Table 1: Summary statistics of variables

| Variables | Obs. | Min | Max | Mean | Std. deviation |
|---------------------|-------------|------------|------------|-------------|-----------------------|
| Directives | 1566 | 0 | 1 | .83 | .378 |
| Regulations | 1566 | 0 | 1 | 0.17 | .378 |
| Infringement cases | 1566 | 0 | 5 | 0.12 | .470 |
| Press freedom Index | 1566 | 9 | 46 | 23.44 | 10.177 |
| NGOs UN | 1566 | 0 | 93 | 11.52 | 19.603 |
| Share of green MEPs | 1556 | 0% | 26% | 7.63 | 7.620 |
| Years invalid | 1566 | 0 | 17 | 5.03 | 5.824 |
| Democracy | 1334 | 79.00 | 94.00 | 89.0379 | 3.20916 |
| GDP in Billions | 1566 | .01 | 24.48 | 1.4668 | 4.58894 |
| Recent enlargement | 1556 | 0 | 1 | .44 | .497 |
| Valid N | 1334 | | | | |

Table 1 is a summary of all variables utilized in the regression analysis. The final valid N is 1334 observations due to five member states being excluded from the analysis, Romania, Cyprus, Bulgaria and Malta were all missing data from the democracy variable. Additionally, Croatia was excluded due to joining the Union nine years into chosen our time-scope, this leaves us with 23 member states to analyse. Note that the N is 1334 since we have included 58 different laws into the analysis, the same 58 laws are repeated for each member state which gives us $23 \times 58 = 1334$ observations.

Table 2: Frequency analysis on amount of UN NGOs per EU member state in 2020



*Table 2 demonstrates the distribution of NGOs with a consultative status per EU member state.

Table 3: Regression of the “NGOs UN” and “infringements” variables, with the independent variables

| Variables | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|-------------------------------|-------------------|-------------------|-------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 1. NGOs UN | .002*** (.001) | .002*** (.001) | .002* (.070) | .002* (.001) | .002* (.001) | .002* (.001) | .001 (.001) | .000 (.001) | .000 (.002) |
| 2. Press in freedom | | .004** (.004) | .007*** (.002) | .007*** (.002) | .006** (.002) | .006** (.002) | .005 (.002) | .009*** (.002) | .006** (.002) |
| 3. Green MEPs | | | -.002 (.002) | -.002 (.002) | -.002 (.002) | -.002 (.002) | -.005* (.002) | -.005* (.002) | -.002 (.002) |
| 4. Years invalid | | | | -.010*** (.002) | -.010*** (.002) | -.010*** (.002) | -.010*** (.002) | -.010*** (.002) | -.012*** (.002) |
| 5. Democracy | | | | | -.007 (.005) | -.007 (.005) | -.008 (.005) | -.007 (.005) | -.007 (.005) |
| 6. GDP in Billions | | | | | | -.001 (.003) | -.004 (.003) | -.002 (.003) | -.001 (.003) |
| 7. Recent Enlargement | | | | | | | .004*** (.001) | -.311*** (.048) | |
| 8. Recent*NGOs UN | | | | | | | | .064** (.025) | |
| 9. Directives | | | | | | | | | .153*** (.043) |
| 10. Directives*NGOs UN | | | | | | | | | .002 (.002) |
| Constant | .092*** | .006 | -.015 | .033 | .664 | .643 | .671 | .704 | .528 |
| N | 1566 | 1556 | 1566 | 1566 | 1334 | 1334 | 1334 | 1334 | 1334 |
| Adjusted R | .010 | .016 | .024 | .035 | .036 | .036 | .051 | .071 | .054 |
| R square | .010 | .017 | .026 | .038 | .040 | .040 | .056 | .076 | .060 |

Standard error in parentheses
 *p<0.05, **p<0.01, ***<0.001

Table 3 demonstrates the final analysis where variables are gradually added in order to follow the change of the “NGOs UN” variable. A total of nine regressions have been conducted, using 10 different variables. The analysis has been conducted in this manner for the purpose of finding the potential confounders or intermediate correlations that are closely connected to the effect of NGOs on infringement cases. The value of the “NGOs UN”

variable remains stable and significant at 0.002 as independent variables are added. However, once the Democracy-variable is added in the fifth regression the N is lowered to 1334 due to some member states missing values. Additionally, we observe that as variables are included in the analysis, the adjusted R and R Square are raised gradually, telling us that the linearity of the model is increasing as independent variables are added.

In the seventh regression, once the “Recent Enlargement” variable is added the effect of the “NGOs UN” variables is lowered to 0.001 and becomes insignificant. This tells us that there is a correlation between NGOs and infringement cases however it depends on the Recent enlargement-variable, thus we decide to further examine how the NGOs effect depend on the Recent enlargement-variable. The eighth regression in table three has now been accompanied by an interaction variable²⁰ for the purpose of finding the interactive effect of “NGOs UN” and the Recent enlargement-variable. When including the interaction variable we receive the effects of the “NGOs UN” variable on infringements for both old and new member states. The effect of the “NGOs UN” variable for the old member states is presented in row 1 column 8 in the “NGOs UN” variable, here we observe that the value is 0.000, meaning that there is no effect by NGOs on infringements in the old member states. However, when observing variable 8 in regression 8, we are instead provided with the result of the combined interaction variable which is 0.064 and significant. What is important to remember when interpreting these results is that the effect of the “NGOs UN” variable portrayed in the regression is the effect from only one NGO, meaning that the effect needs to be multiplied with the number of NGOs in the member state measured. For example, Czech Republic who joined the Union in 2004 has three NGOs with a consultative status (see table 2). According to the analysis, the effect per NGO in Czech Republic is 0,064, as I multiply this with the number of NGOs they have, I learn that the total effect of all NGOs is 0.192.

Additionally I execute a regression analysis in the same manner with the directives- variable, in order to examine if there is a noticeable difference in the effects by NGOs considering directives and regulations. This is done by multiplying the directives-variable and the “NGOs UN” variable in order to find the interactive effect between the two. We observe the output of

²⁰ An interaction variable multiples two variables into one demonstrating the interaction effect between the two variables combined.

this analysis in regression 9. Similarly, the effect of NGOs on regulations in row 1 column 9, and state that the effect for regulations is 0.000 and insignificant. Observing the interactive variable in row 10 column 9 we find also a low correlation value of 0.002 which is also insignificant. Below is a simplified cross-tabulation chart of the results as explained.

Table 4: Effects of the “NGOs UN” variable under different conditions

| | <i>Model 8</i> | <i>Model 9</i> |
|--------------------------|----------------|----------------|
| <i>Old member states</i> | <i>0.000</i> | |
| <i>New member states</i> | <i>0.064**</i> | |
| <i>Regulations</i> | | <i>0.000</i> |
| <i>Directives</i> | | <i>0.002</i> |

Table 4 clarifies the two regression analysis of model 8 and 9 from table 3. In model 8 (being the regression analysis where we examined the Recent enlargement-variable by creating an interaction variable and running this with the original variables) we have found that the old member states have no effects by NGOs on infringements, although this result was insignificant and therefore we can not rule out that it is a result by chance. The new member states showed different results, where the effect of NGOs on infringements is 0.064, which is a positive and significant result. In model 9 we have examined the potential difference of the NGOs effects on infringement cases considering directives versus regulations. The same analysis has been carried out as in model 8 only the Recent enlargement-variables have been replaced with the directives-variable and an interactive variable. In table 4 we find the results presented in a simplified manner. Here, model 9 shows that NGOs have no effect on infringement cases unique for regulations, being 0.000 and insignificant. Similarly for directives, NGOs have a very low and insignificant effect on infringements, being 0.002. This means that we have to falsify our H2 hypothesis which assumes that there is a structural difference between the effects by NGOs on infringements for regulations and directives. However, since the results are insignificant we can not deny the assumption that the results are by coincidence.

8. Analysis and conclusion

In this chapter the final analysis and discussion will be presented. After a small summary of the purpose of this thesis and operationalization, an analysis of the results will be given. Lastly, discussions and recommendations for future research will be put forward.

The purpose of this paper has been to examine whether if NGOs have an effect on the amount of infringement cases in the EU using the complaints procedure. The selected data has measured nearly all EU member states²¹ and has been restricted to our chosen time-scope of 2004-2018. Additionally, the paper aims to investigate if there is a noticeable variation of NGOs influence between two different legal measures. To examine this, the paper has conducted a quantitative study measuring the amount of NGOs which advocate environmental sustainability and the amount of infringement cases per EU member state as well as additional independent variables. Two questions have been constructed along with our theoretical framework. The first research question has been; *Do NGOs have an effect on the amount of infringement cases filed against EU member states for violating EU environmental legislations?* And our second question; *Is there a difference in NGOs influence on infringement cases between environmental regulations and directives?* With these research questions two hypotheses have been established, hypothesis 1: *NGOs increase the amount of infringement cases per EU member state by sending complaints to the European Commission.* And our hypothesis 2: *There is a difference between the effects of NGOs on the amount of infringement cases for environmental directives and regulations.* Conclusively, our analysis has only provided support for our first hypothesis, saying that there is an effect by NGOs and the amount of infringement cases, however only for new EU member states.

New EU member states who joined the EU in 2004 or later are primarily located in the Eastern part of Europe, consisting of Post-Soviet states and are thus rather new democracies. One might ask why there is a higher effect by NGOs in these countries despite of them having far less NGOs to begin with and generally lower democracy scores²². Underlying explanations to why NGOs have substantial influence on the amount of infringements in the

²¹ Bulgaria, Romania, Cyprus, Malta and Croatia have been excluded due to missing democracy-data or joining the Union too late.

²² See appendix 1 of the democracy scores for all EU member states.

East provides several paths for future research. One might speculate that the amount of NGOs bears not the initial reason for creating an effect on infringements but rather *If* member states have any NGOs at all. As a country transitions into a democracy it might experience greater effects from new domestic mobilizations such as NGOs and other civil society groups, rather than old democracies with already rather competitive political cultures. Further theorizing could be made regarding the competitive climate that NGOs are subjected to in the old EU member states, for as more NGOs exist in one member state, there might be added pressure on each NGO in order to be heard by higher instances. Corporations and lobbyists have not been measured in this thesis, although it is possible that additional corporate and/or lobbyist actors in the old member states increase the hardship and struggle for NGOs to reach political decision makers, and that this struggle is potentially lower in the new member states.

For our second research question, we aimed to ask whether there is a difference between the effects of NGOs on infringement cases regarding hard and soft law. This more specifically was examined by measuring the unique effects of NGOs on infringement cases when directives and regulations were controlled. The results of this regression showed that there is no structural difference in the effect of NGOs on infringement cases depending on regulations or directives, thus we found no support for our second hypothesis; H2: *There is a structural difference between the effects of NGOs on the amount of infringement cases for environmental directives and regulations*. For this analysis, using these specific variables, there was no correlation found. However, I do urge future research to consider the question of hard and soft law for conducting alternative studies on this topic.

As we have collected and analysed the results of this thesis we retrieve back to the limitations of our data and analysis. As stated by previous literature (Clark, 1998), it is complicated to measure NGOs and/or other civil society groups due being problematic to categorize. Since no extensive dataset was found on NGOs, the analysis has been heavily restricted to measuring a selection of NGOs from the UN branch search engine, leaving out large numbers of small or local NGOs. This limitation is important to bear in mind when considering the results of this thesis. Additionally, the exclusion of the five Eastern European countries from the new member states need to be kept in mind. With limited democracy scores available in the V-dem dataset, these member states had to be excluded due to not having time and

resources to find alternative data, thus the exclusion of these five member states might have potentially affected the results of the regression. Lastly, regarding the insignificant results for directives and regulations, could be due to the simple reason that there is no effect by NGOs specific for certain legal measures, the research question is however encouraged to be examined. To summarize, we confirm that NGOs do have an effect on the amount of infringement cases in the new EU member states. Knowing this, we further find opportunities for discussion and debate concerning the preconditions for NGOs to access higher EU instances as well as recommendations for future research.

The aim of this study has been to utilize a quantitative method in order to examine whether NGOs have an effect on the amount of infringement cases filed against EU member states for violating EU environmental law. In addition to this, the study also sets out to examine if there is a difference regarding NGOs influence for hard and soft law compliance. These two research questions have been drawn from previous compliance literature and inspired by current research gaps, and has therefore tapped into a seemingly understudied research field. However, this paper has barely explored the full depth regarding the importance of NGOs, therefore recommendations for future research is fruitful. First, obvious limitations of data may be further complemented, such as the registration and documenting of NGOs. Studying people's movements and organisations may enrich current literature in understanding the potential of NGOs to affect governments and supranational Unions thus further exploring new contributions for successful compliance. This paper has also demonstrated how NGOs have greater opportunities to influence compliance in the new EU member states, this needs further investigation to what conditions might favor NGOs when attempting to influence environmental policy compliance.

The following recommendations for future research should be taken into consideration in order to investigate the importance of the democratic expression that NGOs and other civil society groups exercise. In order to counteract democratic deficits and non-inclusive top-down decision making in the EU, including the NGOs might further connect the supranational institutions and the citizens of the European Union. However, in order to include NGOs, they must first be recognized, listened to and appreciated.

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11. Appendix

Appendix 1: Democracy scores from the “democracy” variable used in regression.

| | EU member states | Democracy score |
|--|------------------|-----------------|
| | Austria | 88,60 |
| | Belgium | 88,60 |
| | Bulgaria | Missing |
| | Cyprus | Missing |
| | Czech Republic | 90.80 |
| | Germany | 88.00 |
| | Denmark | 92.00 |
| | Estonia | 90.00 |
| | Spain | 79.00 |
| | Finland | 89.00 |
| | France | 92.00 |
| | Greece | 91.50 |
| | Ireland | 89.00 |
| | Italy | 91.00 |
| | Lithuania | 87.00 |
| | Luxemburg | 89.00 |
| | Latvia | 89.00 |
| | Malta | Missing |
| | Netherlands | 89.00 |

| | | |
|-------------|---------------------|---------|
| | Poland | 88.00 |
| | Portugal | 84.00 |
| | Romania | missing |
| | Sweden | 94.00 |
| | Slovenia | 91.00 |
| | Slovakia | 89.00 |
| | United Kingdom | 93.00 |
| | Hungary | 84.00 |
| | Croatia | Missing |
| Total valid | 23 EU member states | |

** The table above demonstrates our democracy scores available for the EU member states included in this thesis. The democracy scores have been obtained from V-dem dataset 9 (2019). The democracy score more specifically is called “Freedom of associations index” and measures to what extent parities and other social groups are able to form and operate freely. The data is given on scale demonstrated in oretent where 0 is the lowest score of freedom for associations and 100 % is the best score.*

