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In Search of the Worlds of Compliance: Promises and Pitfalls of Quantitative Testing

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Founded in 1963 by two prominent Austrians living in exile – the sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern – with the financial support from the Ford Foundation, the Austrian Federal Ministry of Education, and the City of Vienna, the Institute for Advanced Studies (IHS) is the first institution for postgraduate education and research in economics and the social sciences in Austria. The **Political Science Series** presents research done at the Department of Political Science and aims to share “work in progress” before formal publication. It includes papers by the Department’s teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

Das Institut für Höhere Studien (IHS) wurde im Jahr 1963 von zwei prominenten Exilösterreichern – dem Soziologen Paul F. Lazarsfeld und dem Ökonomen Oskar Morgenstern – mit Hilfe der Ford-Stiftung, des Österreichischen Bundesministeriums für Unterricht und der Stadt Wien gegründet und ist somit die erste nachuniversitäre Lehr- und Forschungsstätte für die Sozial- und Wirtschaftswissenschaften in Österreich. Die **Reihe Politikwissenschaft** bietet Einblick in die Forschungsarbeit der Abteilung für Politikwissenschaft und verfolgt das Ziel, abteilungsinterne Diskussionsbeiträge einer breiteren fachinternen Öffentlichkeit zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den Autoren und Autorinnen. Gastbeiträge werden als solche gekennzeichnet.

Abstract

The “worlds of compliance” typology as developed by Falkner/Treib/Hartlapp/Leiber (2005) builds on ideal-typical procedural modes of domestic adaptation to EU directives. Recently, the Journal of European Public Policy (JEPP) has published an interesting article discussing this concept. At closer inspection, the analysis presented by Dimiter Toshkov results in some support for, but also some criticism of, the worlds of compliance. His statistics-based approach gives us the opportunity to raise several issues of crucial importance for the entire scholarly community in the field of EU implementation research. Among these are the problem of choosing adequate indicators, of using reliable quantitative data, and of appropriately applying domestic politics approaches and veto player theory. These discussions are of general interest also for a very practical reason: similar methodological choices are rather common in current European integration research.

Zusammenfassung

Ein vor kurzem im Journal of European Public Policy (JEPP) veröffentlichter Beitrag von Dimiter Toshkov setzt sich mit der von Falkner/Treib/Hartlapp/Leiber (2005) entwickelten Typologie verschiedener “Welten der Rechtsbefolgung” auseinander. Diese Typologie beruht auf der Erkenntnis, dass es innerhalb Europas verschiedene Ländergruppen gibt, die jeweils durch eine typische Verlaufslogik bei der Übernahme von EU-Richtlinien gekennzeichnet sind. Bei näherer Betrachtung liefert Toshkovs Untersuchung sowohl bestätigende als auch kritische Befunde. Seine statistische Analyse bietet uns einen willkommenen Anlass, um eine Reihe von grundlegenden Problemen quantitativer Forschung aufzuwerfen, die von zentraler Bedeutung für die gesamte Forschung zur Implementation von EU-Regelungen sind. Dazu zählen die Wahl angemessener Indikatoren, die Verwendung verlässlicher Daten und der korrekte Umgang mit Domestic-Politics- und Vetospieler-Ansätzen. Da sich ähnliche methodische Ansätze nicht nur in der aktuellen EU-Forschung großer Beliebtheit erfreuen, ist die kritische Auseinandersetzung mit Toshkovs Vorgehensweise auch von allgemeinerem politikwissenschaftlichem Interesse.

Keywords

EU, implementation, worlds of compliance, methodology, quantitative research

Schlagwörter

EU, Implementation, Welten der Rechtsbefolgung, Methodologie, quantitative Forschung

General note on content

The opinions expressed in this paper are those of the authors and not necessarily those of the IHS
Department of Political Science

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1. Conceptual background and introduction: why this reply to Dimiter Toshkov?

Toshkov's analysis is a welcome contribution to the discussion of compliance with EU law and we are happy that our book "Complying with Europe" (Falkner/Treib/Hartlapp/Leiber 2005) is said to make "significant advances" (Toshkov 2007: 2) with regard to what Toshkov sees as the two major issues in the field: analysing how much non-compliance there is, and explaining performance diversity.

Originally, our worlds of compliance were developed with 90 case studies from the EU15 at hand. Recently, it was extended on the basis of a further research project covering 12 qualitative case studies on the implementation of three directives in four countries from Central and Eastern Europe (CEE).

Our earlier study analysed the national transposition, enforcement, and application of six EU labour law directives in the fifteen 'old' member states. The results indicated that there is no single overriding factor which determines the compliance performance and could thus serve as a safe anchor for predicting the success or failure of future implementation cases in all of our fifteen countries (Falkner/Treib/Hartlapp/Leiber 2005: 317). Even the two theoretically best-established hypotheses (on misfit and veto players)¹ had at best very weak explanatory power. A closer look at our qualitative case studies revealed that even their basic rationale did not hold in some clusters of countries (Falkner/Hartlapp/Treib 2007). Therefore, we offered a typology of three worlds of compliance within the EU15, each of which is characterised by an ideal-typical implementation style. The "worlds of compliance" scheme specifies the causal factors that typically determine implementation performance in each cluster.

In the *world of law observance*, the compliance goal typically overrides domestic concerns. Even if there are conflicting national policy styles, interests or ideologies, transposition of EU directives is usually both in time and correct. This is supported by a 'compliance culture' in the sense of an issue-specific 'shared interpretive scheme' (Douglas 2001: 3149), a 'set of cognitive rules and recipes' (Berger and Luckmann 1967, quoted in Swidler 2001: 3064). Application and enforcement of the national implementation laws is also characteristically successful, as the transposition laws tend to be well considered and well adapted to the specific circumstances and enforcement agencies as well as court systems are generally well-organised and equipped with sufficient resources to fulfil their tasks. Non-compliance, by contrast, typically occurs only rarely and not without fundamental domestic traditions or basic

¹ For details and references see Falkner/Hartlapp/Treib (2007).

regulatory philosophies being at stake. In addition, instances of non-compliance tend to be remedied rather quickly. The three Nordic member states (Denmark, Finland and Sweden) belong to this country cluster.

Obedying EU rules is at best one goal among many in the *world of domestic politics*. Domestic concerns frequently prevail if there is a conflict of interests, and each single act of transposing an EU directive tends to happen on the basis of a fresh cost–benefit analysis. Transposition is likely to be timely and correct where no domestic concerns dominate over the fragile aspiration to comply. In cases of a manifest clash between EU requirements and domestic interest politics, non-compliance is the likely outcome. While in the countries belonging to the world of law observance breaking EU law would not be a socially acceptable state of affairs, it is much less of a problem in one of the countries in this second category. At times, their politicians or major interest groups even openly call for disobedience with European duties – an appeal that is not met with much serious condemnation in these countries. Since administrations and judiciaries generally work effectively, application and enforcement of transposition laws are not a major problem in this world – the main obstacle to compliance is political resistance at the transposition stage. Austria, Belgium, Germany, the Netherlands, Spain and the UK belong to this type.

In the countries forming the *world of transposition neglect*,² compliance with EU law is not a goal in itself. Those domestic actors who call for more obedience thus have even less of a sound cultural basis for doing so than in the world of domestic politics. At least as long as there is no powerful action by supranational actors, transposition obligations are often not recognised at all in these ‘neglecting’ countries. A posture of ‘national arrogance’ (in the sense that indigenous standards are typically expected to be superior) may support this, as may administrative inefficiency. In these cases, the typical reaction to an EU-related implementation duty is inactivity. After an intervention by the European Commission, the transposition process may finally be initiated and may even proceed rather swiftly. The result, however, is often correct only at the surface. Where literal translation of EU Directives takes place at the expense of careful adaptation to domestic conditions, for example, shortcomings in enforcement and application are a frequent phenomenon. Potential deficiencies of this type, however, do not belong to the defining characteristics of the world of transposition neglect. Instead, negligence at the transposition stage is the crucial factor in this cluster of countries, which includes France, Greece, Luxembourg and Portugal.³

² Building on the results of our new study on compliance in Central and Eastern Europe (Falkner/Treib 2007), we improved the labelling of this world (previously: ‘world of neglect’).

³ The attentive reader will have noticed that two of the ‘old’ member states, Ireland and Italy, have not been assigned to any of the above country clusters. In our original work (to which Toshkov refers), we subsumed these two countries under the overall heading of what we then called the ‘world of neglect’ (Falkner/Treib/Hartlapp/Leiber 2005: 339-340). However, against the background of our new research on Central and Eastern Europe, we decided to revise this assignment and include both countries into a fourth cluster (see below for more details).

That the EU has recently grown to include twelve more member states, most importantly ten countries from Central and Eastern Europe, made it crucial to study the relationship between typical implementation patterns in the EU15, on the one hand, and those of the new members, on the other. To capture the combination of politicised transposition and systematic shortcomings in enforcement and application which we found in the CEE countries, Gerda Falkner and Oliver Treib suggested a fourth category: the *world of dead letters* (Falkner/Treib 2007). Countries belonging to this cluster of our typology may transpose EU Directives in a compliant manner, depending on the prevalent political constellation among domestic actors, but then there is non-compliance at the later stage of monitoring and enforcement. In this group of countries, what is written on the statute books simply does not become effective in practice. Significant societal obstacles to individual litigation, weak backing by civil society actors or appropriate supporting agencies, overburdened courts and ineffective labour inspectorates are among the detrimental factors accounting for this (for details see Falkner/Holzleithner/Treib forthcoming).

The typical process patterns of our extended typology of four worlds of compliance, and the countries belonging to each cluster, are summarised in Table 1.

Table 1: Four Worlds of Compliance (source: Falkner/Treib 2007)

	World of Law Observance	World of Domestic Politics	World of Trans- position Neglect	World of Dead Letters
Process pattern at stage of trans- position	+	o	–	o
Process pattern at stage of practical implementation	+	+	+/-	–
Countries	Denmark, Fin- land, Sweden	Austria, Belgium Germany, Nether- lands, Spain, UK	France, Greece, Luxembourg, Portugal	Ireland, Italy, Czech Republic, Hungary, Slovakia, Slovenia

+ = respect of rule of law; o = political pick-and-choose; – = neglect

It deserves special highlighting that our typology refers to typical process patterns, not to implementation outcomes. It is thus not tantamount to groups of good, mediocre or bad performers. Therefore, the typology can fruitfully serve as a filter that decides which explanatory factors are relevant for different country clusters and what the direction of their influence is.⁴ In this sense, crucial theoretical propositions in EU implementation research

⁴ If the typology were geared towards different implementation outcomes itself, this would be tautological.

are only 'sometimes-true theories' (Falkner/Hartlapp/Treib 2007). The point is that implementation processes tend to depend on different factors within each of the various worlds. The compliance culture in the field can explain many cases in the world of law observance. In the world of domestic politics, transposition is decisively influenced by the extent to which the EU's rules match the political preferences of political parties and major interest groups, while application and enforcement are generally effective. In the world of transposition neglect, the decisive factor is administrative inertia at the transposition stage, caused by countervailing bureaucratic interests or malfunctioning routines. Given the huge problems in transposition, practical implementation is of secondary importance. The world of dead letters, finally, is very similar to the world of domestic politics when it comes to typical transposition processes. Enforcement and application of the domestic transposition laws, however, are typically obstructed by systematic shortcomings in the court systems, the labour inspectorates or the civil society systems of the countries belonging to this cluster.

Turning to Toshkov's contribution in JEPP,⁵ his statistical analysis gives at least "weak support" (Toshkov 2007: 2) to the argument that clustering countries is a useful step of analysis. This already seems a certain success to us, for large parts of EU implementation research have hitherto ignored the possibility that there might be systematic differences between groups of countries which, in turn, makes the search for one-size-fits-all explanations a futile exercise.

Discussing where Toshkov's data do not fit with his interpretation of the worlds of compliance typology hence should not conceal the fact that he also finds some support for our work. Most importantly, however, Toshkov's analysis gives us the opportunity to raise several issues of general importance for the entire scholarly community in the field of EU implementation research. Among them are the problem of choosing adequate indicators, of using reliable quantitative data, and of appropriately applying domestic politics approaches and veto player theory. These discussions are of general interest also for a very practical reason: Toshkov's methodological approach is indeed not uncommon in current European integration research. Yet, where indicators, data, and assumptions are not fully convincing, problem-oriented researchers will not be willing to acknowledge the validity of findings from quantitative projects, particularly in case they contradict qualitative work (see also Falkner 2007).

⁵ His analysis is based on the three worlds of compliance concept as originally presented in our 2005 book. However, this does not impinge on the arguments to be discussed here.

2. Toshkov's quantitative tests

2.1. *Compliance culture data lend support to the world of law observance*

Contrary to Toshkov's interpretation, the section on "tracking the culture of good compliance" (p. 9 ff.) supports a substantial part of our typology. In our work, compliance culture is a decisive feature to distinguish the world of law observance from all the other countries, and to explain the exceptionally good overall compliance record of the countries that belong to this group. The relative weight of culture versus other explanatory factors in the implementation process is more important in the world of law observance than in the other two worlds, where political (world of domestic politics) or administrative (world of neglect) aspects predominate. "The specific results of particular examples of compliance tend to *depend on different factors* within each of the various worlds: the compliance culture in the field can explain most cases in the *world of law observance*, while in the *world of domestic politics* the specific fit with political preferences in each case plays a much larger role, and in the *world of neglect* this is true for administrative non-action." (Falkner/Treib/Hartlapp/Leiber 2005: 321).

Therefore, indicators for the rule of law should above all separate Finland, Denmark and Sweden from the other member states. We do not expect steadily declining degrees of overall law observance when we move from the world of law observance to the worlds of neglect and domestic politics, but only comparatively better scores for the world of law observance. What distinguishes the world of domestic politics and the world of neglect from each other, by contrast, are specific procedural patterns. There is typically political contestation about transposition in the world of domestic politics, while there is administrative non-action in the world of neglect. The frequent inertia in the world of neglect may be due to adverse administrative interests (e.g. choosing to make scarce resources available to other ends) or to non-awareness of the duty to implement on the part of the administration.

Indeed, Toshkov's empirical data lend support to the fact that the Nordic countries belong to a special world, where respecting the rule of law is of particular importance. First, he argues that "(g)eneral trust discriminates well between the three worlds of compliance. The three Nordic countries have the highest values" (p. 11). As regards the variable on trust in the legal system, "the three Nordic countries tend to have higher values on this dimension as well" (ibid.). "Overall, social and institutional trust exhibit some potential to pick the special position of the 'world of law observance'" (ibid.).

This means that the existence of a specific compliance culture, which we use in our typology as a crucial explanatory factor for the world of law observance, seems to be supported by

the data, while this is less so when it comes to differentiating between the worlds of neglect and domestic politics. This, however, is fully in line with our typology.

Despite this partial support for our typology, the following sections will outline why we believe that qualitative enquiry would test the worlds of compliance in a much more trustworthy manner than the available quantitative data in this field of research can.

2.2. Discussing indicators for various forms of “compliance culture”

The notion of “compliance culture” deserves much more attention than we have, for reasons of time and resources, been able to pay in the book. As outlined in depth elsewhere, we did not start our research project “Complying with Europe” (Falkner/Treib/Hartlapp/Leiber 2005, see chapter 15 for details) searching for explanations that might be located at the level of culture. We are no “culturalists” by training, and the relevant literature had overlooked the possibility that shared beliefs and values could help explain (non-)compliance with EU rules. Therefore, our multi-theoretical approach with a large set of hypotheses from extant political science approaches related to compliance with EU law did not include aspects of culture, from the outset. On our way, however, we came across empirical cases that suggested additional useful hypotheses. Therefore, we added elements to our approach inductively – one of them being the factor of compliance culture relevant in some countries.⁶

In the end, our analysis could demonstrate quite plausibly, we hope, that including compliance culture as a causal factor is crucial in one of our three country clusters. Yet, time and resource constraints did not allow further detailed exploration of this compliance culture. This is, however, a necessary task to be accomplished before it makes sense to test the existence of such a culture in further studies, be it on the basis of quantitative or qualitative data.

It is crucial to mention that a culture of good compliance with rules can exist on at least three different levels: on the level of public opinion at large (i.e., the micro level of citizens); on the level of political elites at large (that is actors from the political system that have substantial influence in shaping policies, including, e.g., relevant interest groups); and on the level of only those who are directly concerned with the implementation of EU law (i.e., the relevant

⁶ In actual fact, our work started on the theoretical level, proceeded to the empirical level, returned to theorising and adding abstract assumptions to our original catalogue of hypotheses, only to go back to field work, and so forth – just like the “grounded theory” school suggests (Glaser/Strauss 1967; Strauss/Corbin 1990, 1997).

expert level). Establishing the relevant level for the culture of good compliance is an empirical question, for sure, since particular cultural characteristics are by no means necessary characteristics of entire populations or political systems. In addition, how actors and institutions on the respective levels are linked to the legal cultures prevailing at these levels may differ, too. One can certainly not assume without empirical enquiry which of the potential levels outlined above is applicable, nor that the realm should be similar everywhere. Since in our project we derived the information about this culture from our expert interviews, we know that it is present at least on the third level mentioned above, which does not imply at all that it prevails among the whole political elite, or even the entire citizenry, of a particular country.

In our book we focused mainly on the elite level, alluding to the culture of good compliance as “the dominant action orientation of political elites” (Falkner/Treib/Hartlapp/Leiber 2005: 329). Where we discussed how one could imagine a socio-political mechanism reinforcing good compliance, we did also mention the micro level: “society expects compliance, elites feel pressure to comply” (ibid.).

With the benefit of hindsight, one thing seems to be clear: the level at which good compliance cultures are located within our world of law observance needs further investigation. In principle, an analysis like Toshkov’s could be a fruitful starting point in this respect. The problem is, however, that some of the indicators he uses are highly problematic, which results in a distorted picture of compliance culture in overall terms. Therefore, we now turn to a critique of Toshkov’s indicators for compliance culture.

First, using data on trust in the institutions producing the rules at the EU level, as Toshkov does, is highly problematic for testing our typology. Our interviews revealed that although the Danes are very sceptical concerning European integration, their political system is good in compliance with EU law. Toshkov himself outlines on p. 12 that the failure of this test is “not very surprising as empirically the lack of correlation between trust in the European institutions ... and the performance of the country in compliance with EU policies is well known”. To us it seems quite understandable that citizens of countries with bad implementation performance should still trust, for example, the European Parliament. Why not? Whether or not they want better compliance is an entirely different issue. Things are even quite logical when we look at the European Commission, which may actually pursue infringements and hence may enjoy a rather good reputation in badly performing countries. Good performers with high trust in their domestic institutions may mistrust the EU level, because they have “most to lose”. They nevertheless comply, because they also want the other countries to obey the rules, as our interviews with Danish officials showed. Moreover trust in an institution is often difficult to relate causally to one of multiple functions – in the case of the European Commission one might wonder whether potential trust is built on its performance as legislative or executive body or simply as a donor. Hence again we cannot easily establish the link between the trust in a particular institution and compliance, as

supposed by Toshkov. Finally, even if we could accept Toshkov's assumption that citizen trust in the institutions producing the legislation is indicative of a compliance culture, we would still be puzzled by the choice of the European Parliament, for this institution had only limited influence on the adoption of our directives.

Second, let us discuss the indicators on public attitudes towards compliance. To expect law abidance by one's government does not in itself mean that the same individuals will themselves want to obey the rules, and the other way around. That citizens expect dutiful implementation does not in itself mean that the administrators and politicians will conform. Contrary to Toshkov's operationalisation, therefore, the question "To be a good citizen, how important would you say it is for a person to always obey laws and regulations?" of the European Social Survey (see p. 12 of Toshkov's article) is not a fully appropriate yardstick for testing our typology.

In addition, we see the problem that what people give as answers in surveys often relates more closely to what they would like to see than to what they actually witness. It seems highly plausible to us that people in a system where rules are frequently disregarded should demand to an over-proportionate extent that laws should be obeyed (such as in Italy and Greece, see the data presented by Toshkov on p. 12). Seen from this angle, these statements might reflect a normative desire to change the bitter reality rather than an indication for the actual conditions in the respective countries. This highlights that the opinion-poll data discussed by Toshkov are rather problematic when it comes to testing a typology like ours (on pitfalls and shortcomings of using mass survey data in implementation studies, see Falkner/Hartlapp 2007).

But even if we forget about these problems for a moment, we would like to challenge Toshkov's conclusion that the link between the data and the three worlds of compliance is "hardly existent" (p. 13). As we can see from his analysis, the countries in the world of law observance show rather high values when it comes to such indicators as trust in the legal system (p. 11) or public attitudes towards law observance (p. 12). This is, however, also the case in some countries of the other worlds, especially of the world of neglect (in particular figure 3). These aspects of a compliance culture, thus, may be a necessary, but they are clearly not a sufficient condition to discriminate between the three worlds. For us this gives good reason not to blindly accept the rather mechanistic assumption that "law abidingness of the administrative and political systems is conditioned on the law abidingness of the citizens" (Toshkov 2007: 5). The clear separation between the levels of individuals, on the one hand, and of political institutions, on the other hand, is even more important when it comes to implementing EU law, as opposed to domestically decided norms. And: this is even more important when it comes to the transposition of directives, which are typically not well known in the individual countries, neither concerning their contents nor their implementation deadlines. Both issues suggest that the relationship between citizen opinions and political decisions should be even more indirect than when purely national issues are at stake. We

admit that general cultural factors could be visible and impact on political systems and outcomes. That is why for the world of law observance, where culture typically overrides impeding factors from the political or administrative sphere, we provide in our book a causal mechanism of how both are related (Falkner/Treib/Hartlapp/Leiber 2005: 329). This is far from a mechanistic assumption, however. We do not expect that the sum of expectations of society is the sole factor to determine implementation performance, although cultural factors impact upon institutions and institutions matter for the outcome of politics.

In addition, we would assume that there is a rather higher probability for cultural features that discriminate between the three worlds to be located on the more specific level of experts concerned with the implementation of EU law, as our interviews suggested, or on the level of political elites at large. These levels are not touched by Toshkov's analysis, but we think looking at them in more detail could be a useful approach for future research (see also section 3).

2.3. Transposition delays as a measure

Toshkov goes on to test our typology against our own data on transposition delay, using survival analysis (pp. 15-18.). This is legitimate, as he argues correctly, for two reasons. First, the typology was not only based on the transposition patterns in the six individual cases of transposition in each country but also on broader knowledge we gained from the expert interviews. Our typology therefore denotes "ideal types" as much as "real types". Moreover, the basis of the typology was not implementation outcomes but the typical processes to be found in each country.

Toshkov takes our data on transposition delays and finds that the three worlds do differ, although "only marginally" (p. 14). For us, the first part of this statement provides at least some support for the existence of different country clusters. What is even more important than the difference in transposition outcomes in terms of months of delay, however, is that the survival analysis also reveals different procedural patterns. In Toshkov's own words: "It is interesting to note that after this initial period, both the world of neglect and the world of law observance reach a plateau while in the world of domestic politics the fraction of non-transposed directives continues to decline ..." (p. 15).

This fits our expectations very well. In the world of domestic politics, changes in government and infringement proceedings as a reaction to complaints by active domestic interest groups are among the main reasons for compliance with long overdue transposition obligations. Since both of these factors become more and more probable as time goes by, the pattern

observed by Toshkov does not take us by surprise at all. In the world of neglect, Commission intervention is often necessary to trigger transposition. Given a separation of the political and administrative sphere, administrative inertia should remain largely untouched by a change in government. Since there are often no strong interest groups that would have the resources and knowledge to uncover transposition failures and file complaints with the Commission, supranational enforcement is often late or even lacking altogether (see below for a quantification of this). Therefore, the relatively high plateau of non-transposed legal acts accurately reflects the procedural pattern identified in our work.

In the world of law observance, finally, we have argued that cases of non-compliance are significantly less frequent than in the other two worlds, which is reflected by the fact that these countries are systematically better at transposing on time or with relatively little delay than the other two worlds. That there is a plateau of transposition problems which tends to remain unresolved over long periods of time is discussed extensively in our book (e.g. pp. 331 ff.). We argue that the directives in our sample involved a number of rather exceptional problems for these countries (for example, legal uncertainty with provisions of our directives in Denmark or controversial social partner involvement patterns in Denmark and in Sweden). Toshkov himself acknowledges these arguments and correctly points out that “these countries still transpose more directives on time, and reduce their transposition deficit fast in the short term” (p. 17), which actually sets them apart quite markedly from the other country clusters.

Thus, at this point, again, we see more support for our typology in Toshkov’s analysis than the author acknowledges.

Despite these supportive empirical findings, Toshkov concludes that “the analysis ... reveals interesting patterns although it does not seem to support the hypothesis that performance in terms of transposition delay of the three clusters of countries is truly different” (p. 17). First of all, we consider that the survival analysis does actually reveal procedural patterns that are in line with our argument. With regard to overall delays in our sample of cases, however, we should again stress that our typology is not about outcomes, but about procedural patterns. We have never claimed that the overall performance of our three country clusters was the crucial feature differentiating our country clusters, and we have never claimed that their overall performance should be significantly different with regard to the sample of directives studied. If overall transposition performance in our cases were the decisive criterion, the groups would look quite different. As Table 13.6 on p. 271 of our book reveals, some of our sample’s best performers do not belong to the world of law observance and some of the worst transposers do not belong to the world of neglect. Again, the difference is a procedural one, and the worlds were not only constructed on the basis of our concrete cases.

Over a large sample of cases, we ourselves hypothesized that the different procedural patterns summarised in our typology might in fact translate into discernible differences in

terms of average outcomes. This can actually be analysed with cross-sectoral data on average annual transposition rates, and on infringement proceedings (Falkner/Hartlapp/Treib 2007), although we would prefer if better data were generated in qualitative case studies (see below). The outcome we hypothesized is also to be found in Toshkov's data, which include seven selected sectors of EU activity: The world of law observance has the lowest mean rate of non-transposition, and the world of neglect the highest (p. 20).

However, Toshkov stresses this less than the finding that in his data set, two individual countries are somewhat closer to the world of neglect than to the world of domestic politics to which they belong according to our typology as far as the legal transposition is concerned. In our own dataset on infringement procedures, which covers all policy areas but a shorter time period, only one country is closer to the mean of another world (Falkner/Hartlapp/Treib 2007: Figure 2): Italy. This may be explained by one of the factors that we deem crucial for the worlds of domestic politics and dead letters. Italy has by far the highest number of veto players among all EU member states, with government coalitions often comprising seven, eight or more parties with highly diverging ideological profiles. The political conditions under which transposition needs to be conducted in Italy are thus most unfavourable, which for us is a perfectly plausible explanation why Italy is such an unusually bad transposer compared to other member states with politicised transposition patterns. In general, moreover, we see no problem if one or two countries out of fifteen do not show the expected result in terms of outcomes for a medium-N of cases, for those outcomes are only a very indirect test for the typology on procedural patterns anyway.

2.4. Variability as an indicator

A further test of our typology relates to the degree to which transposition outcomes vary in the different worlds. This follows the argument that, at least across a large number of cases, countries in the world of law observance should generally perform rather well in terms of compliance, while countries in the world of neglect should consistently perform rather badly. Countries in the world of domestic politics, by contrast, should show the largest variability in outcomes, due to the varying fit between European policies and domestic political constellations. Toshkov again tests this against data from official statistics; that is, data reported by the member states on their transposition rates in various years and sectors. In the end, he concludes that "the proposition about the variability ... is not supported by the data" (p. 20). Unluckily, he is less than clear about how he comes to his results and what his levels of aggregation in the calculation of "variability" are. Does he measure variability between different countries within each group, or between different levels of transposition

performance for each country at different points in time, or maybe both? Does he control for the number of countries in a cluster?

In our view, between-country variability within groups is not so much the problem, as we argue that despite belonging to the same world, different countries may have more or less favourable institutional conditions that let them perform relatively better or worse within their group. Variability of each country, measured in terms of transposition performance in individual cases, would be decisive. There, countries in the world of domestic politics should indeed show systematically more variability than countries in the other two worlds. However, we doubt that this is what Toshkov actually measures. We suspect that a lot of his measurement is at the level of between-country variability. After all, Toshkov does not have data on individual cases, but only on annual transposition rates, which is already a rather highly-aggregated type of data. Annual aggregates might thus look much more (or much less) homogenous than individual cases.

In sum, there is hence no reason to take Toshkov's analysis on variability as disconfirmation of our argument about the three worlds. In any case, we need to highlight that we actually found more procedural variability within the countries in the world of domestic politics than in the other two worlds. Note that our qualitative data represent real implementation processes, not only the misleading official statistics on transposition supplied by the member states and published by the Commission (on the latter, see below).

2.5. *The influence of domestic politics*

Toshkov finds no evidence that “domestic politics influences compliance in a different way and on a different scale ... in the three country types” (p. 3). In our view, this is most probably due to the type of data he uses. He has no qualitative information on the implementation processes in the member states. All he has is data on the party political composition of governments and on the number of veto players, which he plots against his data set of annual transposition rates in seven policy areas.

Given the wide variety of sectors included in his dataset, Toshkov rightly argues that we should not expect the effects of party politics to take a particular direction. If our typology is correct, there should nevertheless be some kind of effect of party politics in the world of domestic politics, but not in the other two worlds. Despite this plausible reasoning, he does not find evidence “about a specific influence of the ideology of the major party in office and non-transposition” in the world of domestic politics (p. 22). Does this mean that there is no effect of party politics in these countries? Not necessarily, we would argue.

The most crucial argument here concerns the aggregation level in Toshkov's regression of non-transposition rates (see his Table 5). His data seems to be aggregated across all his sectors, years and even country clusters. Why should the mean rate of non-transposition then vary between governments? One would assume that social democratic governments would have a stronger preference for transposing *some* standards within specific directives or even *some* directives than conservative governments in the same country may have. In other words, they will probably prefer *different* standards or directives than their competitors. There is no reason, however, to expect that conservatives would in general tend to transpose either less or more EU directives than other parties in government. Even if there were any effects visible in individual sectors, they would be erased by this aggregation. We therefore miss an explanation of how the highly aggregated data presented by Toshkov could possibly reveal any effect of political parties at all. It seems to us that in the absence of more fine-grained data, ideally derived from qualitative case studies, one simply cannot reveal the effect Toshkov claims to measure.

In this light, what follows are only further, secondary arguments why his approach is questionable.

First, Toshkov only differentiates between governments led by social democratic parties and governments led by other parties. This completely ignores coalition dynamics, which could well give rise to transposition problems. And it disregards bargaining between governments and opposition parties whose agreement may be required to enact transposition legislation in the case of minority governments or if there is a strong second chamber such as the German Bundesrat with a different party political majority. For example, a government headed by a social democratic party may fail to transpose a social policy directive on time as a smaller liberal coalition partner may be dragging its heels on the incorporation of the European directive. We found quite a number of examples in our qualitative case studies where such inter-party bargaining had a decisive impact on the timing and substantive outcomes of transposition (Falkner/Treib/Hartlapp/Leiber 2005: 309-313). Other scholars seem to have come across similar patterns in countries belonging to the world of domestic politics (see, e.g., the political controversies over transposing the laying hens directive in the Netherlands described in Steunenberg 2006).

Moreover, we are not sure how Toshkov dealt with the problem of changing governments. How do we determine which government was actually responsible for delays in transposition if governments change several times in the course of the transposition process? Who is responsible for the transposition rates of a given year? Is it the government that was in power in the same year? Is it the one that was in power one, two, three or more years before? A certain time lag should definitely be included, since most directives provide for a transposition period of two or three years. But Toshkov is silent on this issue, to which there certainly is no easy solution. Our qualitative studies have shown that many cases of non-transposition drag on for several years, and there might be multiple changes of government

within this period. Therefore, it is easy to establish party political effects in a qualitative study, but much harder in a quantitative analysis which, moreover, operates with transposition data of rather dubious quality (see below for a discussion).

As to veto players, Toshkov's expectation that they affect transposition outcomes in the world of domestic politics, but not in the world of law observance and neglect is in line with an argument published by us elsewhere (Falkner/Hartlapp/Treib 2007). There we propose a more selective application of theoretical propositions such as the veto player argument to explain transposition performance.

Unlike Toshkov, who does not provide a causal explanation why this should be the case, we took a close look at the causal mechanisms. In the world of neglect the number of veto players is of little importance because the typical pattern in this country cluster is the long delay of any political process due to long phases of administrative inertia. Veto players involved in the political process only come into play in those exceptional cases where administrative inertia is avoided, e.g. by high degrees of misfit or by linkages to other domestic reform processes, or after inertia has been overcome by external interventions from the Commission. It is only under these conditions that countries with a low number of veto players can reasonably be expected to perform relatively better than those with more unfavourable political structures in the world of neglect.⁷ In the world of law observance, the number of veto players will not tell us much about transposition outcomes either. Here, cultural dispositions typically ensure that irrespective of the significance of the required reforms, all veto players, even those that are negatively affected, take the duty to comply with EU law more seriously than the pursuit of their own interests. In the world of domestic politics, finally, political contestation about the costs and benefits of required adaptations is the typical pattern. Veto players in domestic polities therefore play an important role in determining whether opposing interests will be able to prevail. The more actors need to agree to a piece of transposition legislation, the higher the likelihood that one of the veto players will have reservations against transposition, either for ideological reasons or because of concerns voiced by important groups of voters. Among the countries in the world of domestic politics, therefore, those with low numbers of veto players by and large performed better than those with many veto players (Falkner/Hartlapp/Treib 2007).

Why, then, does Toshkov not find an effect of the number of veto players in his empirical test? In our view, one important reason for this lies in the fact that he does not take into account the preferences of the veto players in explaining the outcomes. Toshkov thus should

⁷ Note that in practical life, however, evasive strategies may circumvent veto players regardless of their number. Our case studies actually showed that interventions by the European Commission often resulted in bypassing potential veto players by using as transposition instrument administrative decrees instead of legislation. Once inertia was overcome by external pressure, transposition in the world of neglect therefore was then rather smooth. I.e. governments could use the European deadlines to get through "fast track transposition" by decree more easily.

have tested at least whether there is an interaction effect between the party political composition of governments and the number of veto players. Even better would have been information about the preferences of individual veto players on the transposition of the specific directives at hand. That such information is usually not available in quantitative studies is one more indication of the limited use of statistical approaches to the implementation of EU legislation.

More generally, we need to highlight that even in the world of domestic politics, not each and every directive is prone to politicisation in the first place. Therefore, neither party politics nor veto players will play a crucial role if we are talking about directives tackled at the purely administrative level, e.g. because they are highly technical, or about measures whose policy implications are simply too modest to stir up interest among political actors. This is a point we have not highlighted in our book (but see Treib 2003: 525) because the vast majority of our sample directives actually stirred politicised debates in the world of domestic politics and this is the typical pattern in these countries. In any case, our argument about the importance of the number of veto players and the preferences of political parties and other powerful players such as interest groups in the world of domestic politics in principle only applies to cases that receive at least some sort of attention by actors outside of the realm of the specialised bureaucracy.

According to our typology, we expect the handling of such “unpolitical” issues to be relatively unproblematic in the world of domestic politics. As administrations in this country cluster usually work rather dutifully, there should be no huge delays or substantive shortcomings in transposition as long as the issue does not activate political opposition. As a consequence, a further important reason why Toshkov does not find a significant effect of either party politics or veto players in his data is that the dataset might include many technical issues where politicisation is not to be expected even in the world of domestic politics.

As outlined above, however, all of these arguments are only of secondary importance. Severe doubt is cast on the regressions from the outset, for it is not clear if the aggregation level of the data used could even possibly have revealed effects of party politics.

3. The kind of data needed to actually test our typology

Our final critique of Toshkov’s approach relates to the quality of the data he uses to test the explanatory potential of our typology, especially with regard to measuring the dependent variable, transposition outcomes. Toshkov acknowledges that “[h]aving acquired (mainly through interviews and document analysis) intimate knowledge of the fate of six EU social

policy directives in the 15 member-states, Falkner *et al.* (2005) investigate the explanatory potential of a multitude of theories and arguments suggested by the existing literature” (p. 3). Unfortunately, his own data does not match the quality of ours. Admittedly, this is hardly possible for a large number of cases and without intense co-operation by a larger group of researchers. However, scholars need to acknowledge that many research questions simply cannot be answered adequately with easily available statistics at hand (see Falkner/Hartlapp 2007 for a detailed elaboration of this argument).

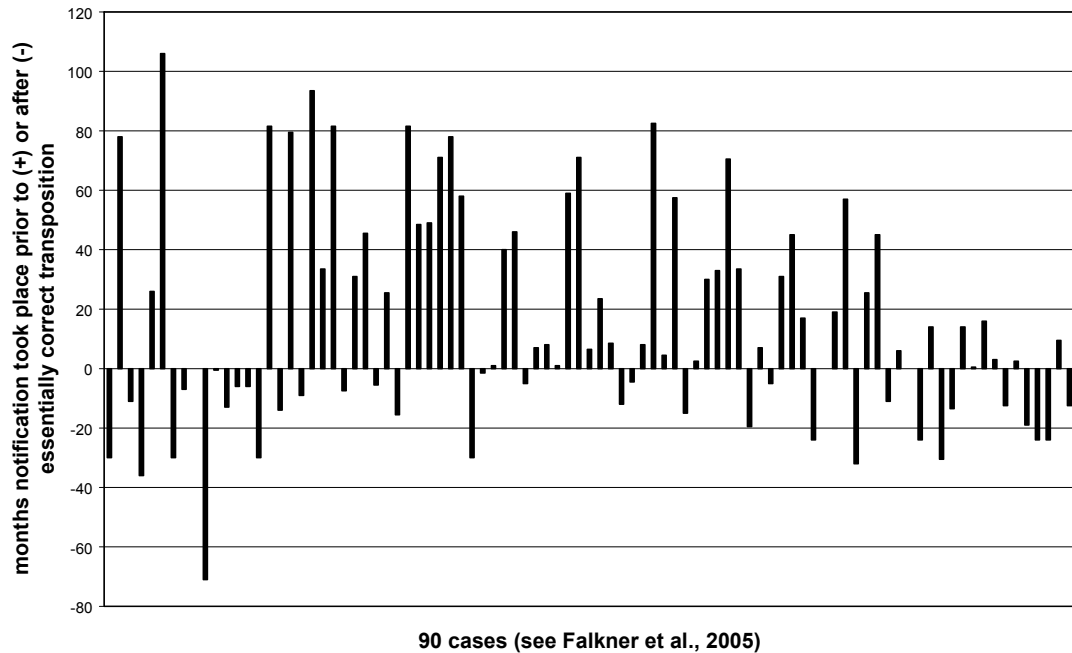
This is particularly true for data on the transposition of EU directives published by the European Commission on the basis of information supplied by the member states themselves, as extensively used by Toshkov and many other scholars (for example, Colchester/Buchan 1990; Pridham/Cini 1994; Lampinen/Uusikylä 1998; Ciavarini Azzi 2000; Bursens 2002; Giuliani 2003; Borghetto/Franchino/Giannetti 2005; Berglund/Gange/van Waarden 2006; Linos 2007). The recent scandal about falsified budgetary data relating to the EMU convergence criteria should have corrected any remaining illusions about the reliability of such data.

In any case, basing one’s analysis on notification data as supplied by the member state governments means the following: the scope of study is not implementation but, at best, transposition; correctness of transposition is unknown; and completeness of transposition is largely unknown so that it is actually the first part of a complex and incremental domestic transposition process that is frequently coded as transposition: “(n)on-transposition is detected when no national implementing measures are reported for directives with expired transposition deadlines” (Toshkov 2007:18).

Figure 1 (below) gives an overview of the differences between the transposition delays as measured on the basis of the information contained in the Commission’s annual reports, on the one hand, and our qualitative data (based on national expert interviews) on the delays until countries had reached essentially correct transposition, on the other hand (see Falkner/Treib/Hartlapp/Leiber 2005: 267-269 for an operationalisation).⁸ It is clearly visible that there are huge differences between both measurement techniques. The average difference between both indicators per case is more than 28 months. Given that the average delay is 18.5 months for the Commission data and 34.8 months for our qualitative data, this is a significant measurement error.

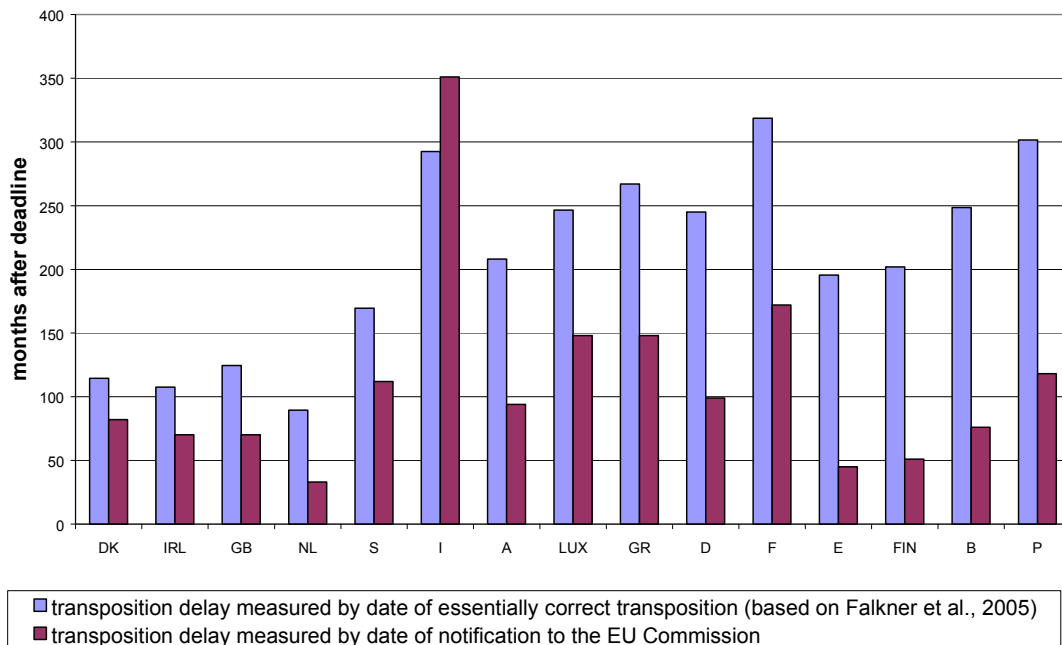
⁸ Many thanks to Thomas Groß for his excellent research assistance.

Figure 1: Discrepancy between quantitative and qualitative data



What is more important, however, our analysis clearly shows that this measurement technique produces strong country biases if compared to the data collected in our qualitative in-depth study. As Figure 2 (below) demonstrates, the measurement “drift” is distributed quite unevenly between countries. On the basis of the official Commission data, the delays of most countries appear considerably less grave than suggested by our qualitative results. This is worst for Germany and Belgium with gaps of more than 200 months between both measurement techniques for our six directives. What is more, the mapping of our qualitative data on essentially correct transposition against the quantitative Commission data on notifications revealed that some countries notified before an essentially correct transposition more often than others. In Finland and Portugal, notification took place at a later point in time than we had assessed compliance for one directive only, while the Netherlands or Denmark as well as Ireland, Sweden and Italy were rather reluctant to notify even after essentially correct transposition (4 and 3 cases).

Figure 2: Delay per member state based on quantitative and qualitative data*



* sorted by amount of discrepancy between the two measurement techniques, DK presenting the smallest difference

There are at least two general empirical phenomena that may lead to this bias. First, as the Commission's official notification data do not include any information about substantive correctness, the data conceal many instances of incorrect or insufficient transposition. In our data, transposition is considered essentially correct only after the respective member states have actually managed to fulfil all major provisions of a given directive. This may be years after the original transposition (and, supposedly, the Commission notification thereof) was completed. Second, the Commission demands to be notified of transposition no matter how small the remaining gap between the European demands and the domestic status quo may be. Therefore, there are cases where we, on the basis of a detailed qualitative assessment, consider the level of transposition essentially correct, whereas the Commission may still be waiting for a tiny little provision to be fulfilled.

Moreover, member states may differ in the way they handle their notification duties. Some countries may be more self-critical than others and therefore admit their own transposition gaps more openly, which could result in a negative distortion of their transposition performance in Commission statistics. On the other side of the continuum, certain countries seem prone to "tick-the-boxes implementation" (Richardson 1996: 282), which might make them look over-proportionally good at the level of notification statistics. Different countries may also pay more or less attention to assuring that all parts of multipart transposition measures are actually notified correctly. Or they may differ with regard to the extent in which

more detailed but still essential standards (e.g. technical annexes) are included in a first transposition or supplied later (e.g. by decrees), thus assuring transposition success only at the latter point, while notification might have taken place long before.

These effects (and potential further ones to be explored in detailed empirical studies) could possibly explain why differences in transposition notification statistics, as discussed by Toshkov and many others, do not reflect more clearly the unequal implementation process patterns we identified for the different worlds of compliance.

We have already shown elsewhere that the other type of data frequently used in quantitative analyses of compliance with EU law (see, for example, Börzel 2001, 2003; Börzel/Hofmann/Sprungk 2004; Mbaye 2001; Tallberg 2002; Beach 2005; Mendrinou 1996), that is statistics on official infringement procedures initiated against member states by the EU Commission, is highly problematic and biased as well (Falkner/Treib/Hartlapp/Leiber 2005: Chapter 11; Hartlapp 2005; Hartlapp/Falkner 2004). Suffice it to say here that Commission action often does not take place at all (20 per cent of all cases in which Commission intervention would have been required in our case studies) or only takes place in an inconsistent manner compared to the Commission's internal rules (59 per cent of all cases in which action would have been required). The Commission's statistics distort (at least) with regard to which form of non-compliance is at stake and which administrative unit of the European Commission is in charge (Falkner/Treib/Hartlapp/Leiber 2005: 343). We have shown that there are disproportionately many infringement proceedings for non-notification while incorrectness is only rarely pursued. Only slightly more than half of the incorrect notification measures in our sample led to an infringement procedure for incorrect transposition, and even then it often took years before the Commission became active. Moreover, cases of non-application were not followed up at all. In the Commission's statistics on infringement procedures, this will increase the visible amount of non-compliance in member states that are simply late with transposition, while it should increase presumed compliance in countries where a "tick the boxes" implementation style prevails.

Given the poor quality of the available quantitative data, we are thus not too worried if statistical analyses that use this kind of data find no sweeping support for our theoretical arguments.

Ideally, testing the empirical relevance of our typology beyond our own cases should be done on the basis of a large number of new qualitative case studies, which should compare as many countries and as many policy areas as possible. Such research could directly scrutinize whether the process features we claim to be typical for countries in the four worlds may actually be found beyond our 90 cases and in other policy areas. If qualitative studies revealed different procedural patterns than those suggested by our typology, our categorisation and/or our theory could be falsified. Variables that should make for useful yardsticks to explain transposition in the world of domestic politics as well as in the world of

dead letters are veto players, party political preferences, changes of government and interest group pressure. In the world of neglect, administrative factors (inefficiency and coordination problems, overload and the general unwillingness of administrative actors to acknowledge reform requirements imposed by EU law) play a crucial role in explaining the way directives are incorporated into national law. In the world of law observance, finally, the presence of a shared culture of good compliance, in particular among political and administrative elites, is the most important determinant of transposition performance.

It is true that analyses on the basis of readily available statistics are easier to accomplish, but they cannot answer the most crucial questions at stake in the field of compliance with EU law. As long as this is so, scholars are well advised to rely on comparative case studies, at least in addition to statistical analyses.

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