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Reputation-seeking and Capacity-building?
Compliance with EU rules in Western and CEE member states across different
policy areas

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1. Project summary

The quality of a country's political institutions is reflected in their ability to adopt and implement laws and policies effectively. However, a problem occurs when employing such a general definition in cross-national comparative research because what is 'effective' depends on normative considerations that are not necessarily the same in different national and policy contexts. Thus, cross-national analysis is only possible when there are common benchmarks to which the performance of institutions can be compared. The European Union (EU) provides such benchmarks, as all European policy requirements have to be implemented by the same EU member states.

Research on member states' implementation of EU legislation into national settings is abundant, but has mostly focused on the old 15 member states. Recent studies of the implementation performance of the new EU entrants from Central and Eastern Europe (CEE) have uncovered a puzzling finding. In contrast to predictions of increased non-compliance by CEE countries after their accession to the EU, these member states appear to be the forerunners in the legal incorporation of EU directives into national law (Knill and Tosun, 2009; Sedelmeier, 2008). It is generally argued that recent entrants are more eager to demonstrate their status as legitimate members of the EU by notifying the EU Commission national measures on time (Bengtsson et al., 2004; Perkins and Neumayer, 2007; Sedelmeier, 2008).

However, there is little understanding whether national legislators and implementers in both Western and CEE countries actually meet the European standards in a correct and appropriate manner. Thus, the hypothesis that CEE countries excel in the legal incorporation (also known as transposition) is yet to undergo systematic empirical scrutiny. In addition, provided that we find evidence for the alleged discrepancy between timely notification and actual compliance with EU policies, there is little understanding of what factors explain variation in different forms of compliance. In particular, there is lack of theory regarding the mechanisms driving differences in the behavior of both CEE and Western member states during transposition and practical implementation. While it is assumed that CEE member states are likely to gain reputational benefits from fully transferring the EU legislative outputs into national law, it is not clear what factors affect the reputational incentives of the post-communist CEE countries in particular, but not their Western counterparts and why. Furthermore, it is still an unanswered question whether the presumed differences between CEE and Western countries are specific to timely notification and what patterns explain member states' correct transposition and practical implementation. Addressing these gaps in knowledge involves posing both descriptive and explanatory research questions.

Descriptive questions: Do we observe systematic variation in compliance (a) between different EU member states, (b) between different forms of compliance such as timely notification, correct transposition and practical implementation?

Explanatory questions: What factors account for variation in compliance across (a) EU member states and (b) different forms of compliance? For example, do the same mechanisms that explain variation in old member states also influence the new CEE members or patterns in the latter group are explained by a different set of factors? How can we explain why some member states may notify timely measures that do not correctly meet the EU standards?

To address such questions, the proposed project aims to analyse a comprehensive data set on both notification and actual implementation of EU rules by 25 member states (15 Western member states + 10 CEE countries) regarding directives from four policy areas: Internal Market and Services (1 PhD project), Environment (1 PhD project), Social Policy (employment and anti-discrimination) and Justice and Home Affairs. We will engage in coding expert evaluation reports and tables of correspondence (TOCs) regarding the transposition and practical implementation. Two separate PhD projects will study compliance with internal market and services directives and environment policy combining both quantitative and qualitative analyses.

2. Research plan

2.1 State of research in the field

The study of policy reforms in countries could be related to different strands of literature from the fields of, Europeanization, enlargement and compliance with EU law.

The topic of policy implementation across various national and policy contexts has been a major part of the research agenda of Europeanization scholars (Börzel and Risse, 2007; Cowles et al, 2001; Héritier, et al., 2001; Schimmelfennig and Sedelmeier, 2005; for overviews see Börzel and Risse, 2003; Sedelmeier, 2011). In the context of policy implementation, the Europeanization literature has focused on uncovering the main factors that explain variation in EU leverage on domestic policy outcomes. The main debate in this field is between rationalist and constructivist causal models, which assume different mechanisms driving compliance with EU rules. Thus, rationalist institutionalism suggests that policy implementation follows the ‘logic of consequences’, where domestic actors are assumed to be utility-maximizers, who weigh the benefits and costs of implementing a EU policy. Adaptation pressures from the EU change the opportunity structures for domestic actors by increasing the costs of non-compliance. In contrast, constructivist institutionalism stresses the importance of the ‘logic of appropriateness’, where domestic actors internalize EU norms that they regard as legitimate (March and Olsen, 1989). Based on this approach, the process of national implementation depends on the normative resonance between EU rules and domestic cultural institutions.

Within the broad Europeanization literature, there are two sub-fields that are relevant for the present research project: studies of EU enlargement and studies of member states’ compliance with EU laws. In particular, the influence of EU conditionality on CEE countries’ progress in implementing the *acquis* has dominated studies of enlargement (Hughes et al., 2004, Grabbe, 2006, Schimmelfennig and Sedelmeier, 2005; Sedelmeier, 2011). The debate between rationalist and constructivist approaches has also been addressed in the EU conditionality literature. Unlike the more general Europeanization literature, however, rationalist institutionalism seems to explain most of the variation in member states’ compliance with the *acquis* before accession (Schimmelfennig et al., 2003, Sedelmeier, 2011). A major finding is that conditionality upsets the domestic equilibrium by introducing additional incentives for compliance with EU rules. The finding that the external incentive of membership was the key mechanism that led to the adoption of EU rules by the candidates makes the question of post-accession compliance even more salient (Dimitrova, 2010; Schimmelfennig and Sedelmeier, 2004: 677–679; Sedelmeier, 2008). More precisely, after membership is granted, changes in the incentive structure are expected to affect member states’ behavior and lead to deterioration of the implementation performance of CEE countries. In contrast, we observe consistently high compliance records of CEE countries after accession. More surprisingly, based on data on timely notification and infringement cases, the CEE member states seem to be outperforming their Western counterparts (Sedelmeier, 2008). The literature on pre-accession conditionality does not account for these findings.

Finally, studies of member states’ compliance with EU rules can resolve this puzzle because analyses focus on member states’ performance in the absence of conditionality (for overviews of the literature, see Mastenbroek, 2005; Toshkov, 2010; Treib, 2008). A rich body of literature has been dedicated to the study of transposition of EU directives by the old 15 member states and infringement cases (e.g., Börzel, 2001; Jensen, 2007; Kaeding, 2008; König and Luetgert, 2009; Mastenbroek, 2003; Mbaye, 2001; Thomson et al., 2007; Zhelyazkova and Torenvlied, 2009). Unlike studies of conditionality, the EU compliance literature puts most emphasis on

domestic factors in explaining member states' behavior. Whereas this literature focuses on a multitude of factors (Toshkov (2010) uncovers no less than 263 relationships emphasized by scholars!), the most prominent explanatory factors that influence Western member states' compliance with EU rules are related to low administrative capacities and high adjustment costs. In contrast, comparative analyses of CEE countries' transposition of the *acquis* show that the preferences of governments and their general ideological orientations could explain variation in compliance before accession (Toshkov, 2008). Recent studies focusing on CEE countries' performance after accession stress the importance of the extent of EU trade and pre-alignment, bureaucratic capacity (Knill and Tosun, 2009) and administrative coordination (Dimitrova and Toshkov, 2009). There are two main challenges that EU compliance scholars currently face. The first challenge refers to the lack of clarity on the extent to which the proposed mechanisms that drive compliance of CEE countries are group-specific or such factors more generally explain compliance patterns in the enlarged Union (Sedelmeier, 2011). The second challenge lies in the debate between case study approaches that focus on the practical implementation of EU policies and large-N quantitative studies that rely on data on member states' notified measures to the Commission. Whereas detailed qualitative studies point out to the existence of a gap between formal notification and actual compliance with the EU rules (Falkner et al., 2008), their findings suggest the need for a more systematic comparison between EU member states across policy areas. In sum, a more systematic and theory-oriented empirical analysis is necessary to ascertain the mechanisms that drive differences between different member states and between different forms of compliance such as timely notification, correct transposition and practical implementation of EU rules.

2.2 Research experience

Frank Schimmelfennig has an established track record and extensive academic experience in Europeanization research in the context of enlargement. His research has resulted in a series of publications on the compliance of candidate countries for membership during the accession process (Schimmelfennig and Sedelmeier 2004; 2005; 2007). In particular, he has worked on the conditions of compliance with EU political norms related to democracy and human rights (Schimmelfennig, 2005; Schimmelfennig et al., 2006). More recently, he co-edited two special issues dealing with historical legacies in Europeanization and post-accession compliance (Cirtautas and Schimmelfennig, 2010; Schimmelfennig and Trauner, 2010). Together with Guido Schweltnus, he has co-directed a research project on the implementation of minority protection rules in the new member states of Central and Eastern Europe, which investigated the transposition of EU requirements related to non-discrimination, language use, citizenship, education, and integration of Roma (Schweltnus et al., 2009; forthcoming). Whereas their study addressed the question on the extent to which compliance is sustainable in the aftermath of accession in a single policy area, the present project will compare the level of compliant behavior of both CEE and Western member states across policy areas.

Asya Zhelyazkova's doctoral research has combined studies of both standard indicators of non-compliance (i.e. timely notification and infringement procedures) and new compliance indicators, such as member states' correct transposition of EU provisions. She has recently conducted a pilot study on the legal and practical implementation of Justice and Home Affairs directives by 25 member states. The preliminary findings were presented at the Sixth Pan-European Conference on EU Politics in Tampere in September 2012. Furthermore, together with Nikoleta Yordanova (University of Mannheim), they have collected data on the transposition measures of all member states with respect to all directives that have been adopted after the first wave of the

Eastern enlargement in 2004 and had transposition deadlines until recently (December, 2011). The database is constantly being updated with respect to new information about member states' notification of relevant transposition measures. Zhelyazkova has also published her work on compliance with EU rules in renowned journals such as *European Union Politics* and the *Journal of European Public Policy*.

Both Asya Zhelyazkova and Frank Schimmelfennig will participate in an FP7 project titled "Maximizing the integration capacity of the European Union: Lessons and prospects for enlargement and beyond". It brings together an excellent group of researchers from older and new member states with expertise in research on enlargement and new members. The project proposed here complements the FP7 project well and is likely to benefit from the collaboration.

2.3 Detailed research plan

2.3.1 Aims of this research

The present research project aims to reconcile the existing debate between carefully crafted qualitative studies of actual implementation of EU rules and the need for a systematic comparison between different countries across policy areas. Nine years after the first eight CEE countries joined the EU and five years after Bulgaria and Romania followed suit, there is little knowledge about the mechanisms that explain timely notification, correct transposition and practical implementation in CEE countries and whether the same mechanisms explain compliance in Western member states. In addition, the proposed relations could vary across different policy sectors. The present project focuses on EU rules from four policy areas: Internal Market and Services, Environment, Social Policy and Justice and Home Affairs.

2.3.2 Conceptualizing and operationalizing compliance

Compliance is a concept developed in international relations research that refers to "a state of conformity or identity between an actor's behavior and a specified rule" (Raustiala and Slaughter, 2002: 539). Thus, compliance focuses on the outcome of implementation and compares it to a particular norm. In the context of the proposed project, compliance is understood with respect to the goals of EU directives and their provisions (throughout the text, we often refer to these as 'EU rules').

In the context of this project, a distinction is made between three forms of compliance: timely notification to the Commission, correct legal (i.e. transposition) and practical implementation. Legal compliance is broadly defined as the extent to which a member states' recently adopted and pre-existing legal system is in conformity with a EU rule¹, whereas practical implementation refers to the actions taken by public authorities to ensure that the EU rules are applied in practice (Versluis, 2007). Important aspects of practical implementation include 1) providing both monetary and institutional resources for the application of a law and 2) enforcement measures such as effective and dissuasive sanctions against non-compliance and efficient court proceedings. As a result, practical implementation is defined and measured at the member state level. Such operationalization ensures that the concept of practical implementation is comparable across countries and policy areas and keeps the coding of compliance manageable within the scope of the project. However, the operationalization of practical implementation remains distinct from transposition. To provide an example, expert evaluation reports describe a

¹ Member states often adopt different laws regarding an EU rule. For matters of feasibility, the following project does not focus on the extent to which each particular national legal measure conforms to an EU rule, but relies on information about a member state's legal compliance with this rule as a whole.

practical problem in the Lithuanian implementation of the directive on reception conditions for asylum seekers. Even though national legislation regulates material reception conditions as required by the directive, material resources are in practice not sufficient to ensure an adequate standard of living of the applicants.

Finally, whenever possible, the present project will investigate the extent to which member states comply with different policy issues (known as provisions in the legal sense) within EU directives (Thomson, 2010; Zhelyazkova and Torenvlied, 2011). For example, the preliminary coding of compliance with 10 JHA directives by 25 member states results in 7353 observations at the level of EU provisions and 245 observations at the directive level that combine information about correct transposition and practical implementation.

2.3.3 Theory and hypotheses

The proposed project contributes to the Europeanization literature by integrating insights from research on EU enlargement and member states' compliance with EU rules into one coherent theoretical framework. Whereas EU compliance scholars look at differences across all member states and EU directives, studies by enlargement scholars will suggest that the CEE member states are different from Western member states. It has been suggested by enlargement scholars that reputation-seeking concerns drive CEE countries' better performance in compliance. The present study specifies the conditions under which reputational incentives matter and applies these to all EU member states and not only the CEE countries. Thus, the theoretical approach could help explain variation in more 'superficial' forms of compliance, such as timely notification to the EU Commission. Second, enlargement scholars also expect differences in formal compliance from practical implementation. In this project, we spell out the conditions under which we expect differences between well-established compliance indicators (e.g., timely notification) and new compliance indicators (correct transposition and practical implementation).

In terms of theory development, neo-institutional accounts of organizational performance are a useful starting point for integrating insights from enlargement and EU compliance literature in a coherent framework (DiMaggio and Powell, 1983; Meyer and Rowan, 1977). The general idea behind institutional theory is that external pressure prompts an organization to adopt formal structures in order to gain legitimacy, to protect the organization from being questioned, to strengthen its support, and to secure its survival. On the other hand, institutional theory stresses that existing inconsistencies between formal requirements and organizational practice lead to the 'decoupling' of formal structures from day-to-day work by avoiding integration or neglecting implementation. Thus, decoupling generally refers to creating and maintaining gaps between symbolically adopted formal policies and actual organizational practices (Meyer and Rowan, 1977). Applied to the context of EU compliance, the neo-institutional approach provides a general theoretical framework on the conditions under which member states will only superficially adopt rules without actually incorporating and implementing these rules correctly.

Neo-institutional theories of compliance and organizational change have been criticized on two major grounds. First, such accounts have tended to overlook the role of active agency and thus deemphasize the capacities and the preferences of specific actors to dominate, defy and pursue different implementation outcomes (Oliver, 1991). Recent works have, by contrast, stressed the importance of identifying the actors responsible for the implementation process, their preferences and opportunities to engage in superficial and actual compliance (Westphal and Zajac, 1994, 2001; Tilcsik, 2010). Second, the argument that decoupling is beneficial or at least benign to policy implementers rests on the assumption that the appearance rather than the fact of actual

conformity is sufficient for the attainment of legitimacy. However, the veracity of this assumption is questionable, as the visibility of actual compliance may vary across different policy contexts. The proposed project incorporates both of these critiques in the theory and analysis of member states' compliance with EU rules.

Reputational incentives and compliance

Neo-institutional theory has long recognized the importance of reputational incentives as factors driving compliance with external norms and rules. The rewards from rule conformity are broadly associated with increased prestige and externally validated legitimacy, social support and access to resources (DiMaggio and Powell, 1983; Meyer and Rowan, 1977; Meyer and Scott, 1983). In contrast, organizations that do not meet institutionalized expectations are viewed as illegitimate and such deviations can incur real costs to organizations. In the EU context, reputational incentives are often attributed to the new CEE member states that have been reported to be more efficient than their Western counterparts in transposing the EU directives and resolving infringement problems (Sedelmeier, 2008; 2011). The general claim is that CEE member states' compliance with EU rules is driven by their eagerness to portray themselves as legitimate members of the EU community (Sedelmeier, 2008; Yordanova and Zhelyazkova, 2011). It has also been suggested that CEE countries are more sensitive to the shaming strategy of the EU compliance system (Sedelmeier, 2008). Furthermore, reputational incentives could be reinforced as formal compliance comes at a low cost for domestic decision-makers due to the fast-track transposition procedures that were established in the pre-accession stage to improve CEE member states' efficiency in incorporating the *acquis* (Sedelmeier, 2011).

However, there is little understanding of the mechanisms that drive the effect of reputation seeking on compliance in different member states. Furthermore, it is not clear why reputational incentives should affect CEE countries more than Western member states. For example, the claim that reputation seeking drives CEE countries' better performance cannot explain differences in the compliance rates between CEE countries. Finally, based on neo-institutional theory, it is expected that factors related to reputation seeking have higher leverage on more visible forms of compliance. Thus, reputation seeking is expected to have highest explanatory power for timely notification and least explanatory power for practical implementation.

From an institutional theory perspective, acquiring legitimate status takes time and compliance is more likely for early adopters of a program than later adopters (Westphal and Zajac, 1994). At the country level, IR scholars have argued that reputational explanations for compliance are especially relevant for new and developing countries, which have an interest in gaining a reputation as 'rule of law' countries. This argument has been extended to new regimes within a country (Downs and Jones, 2002), which haven't developed positive reputations yet. Applying these arguments to domestic politics and EU rules, governments that have been recently elected or are composed of newly established parties are sensitive to reputational incentives. Furthermore, at the beginning of their tenure, newly formed governments are assumed to enjoy a political 'honeymoon' period during which they can implement unpopular policies as they are less likely to be punished by their electorate than if they implemented reforms at the end of their tenure and close to elections (Williamson, 1994). This logic suggests the following hypothesis:

H1: Newly formed governments are more likely to pursue compliance with EU rules.

In addition, institutional accounts of organizational performance have also uncovered the importance of prior performance by responsible actors on reputation seeking (see Westphal and Zajac, 1994, 2001). In particular, poor prior performance is expected to threaten the credibility of actors responsible for the implementation process. Studies of organizational performance have shown that companies will signal compliance to demonstrate that they are at least trying to improve current conditions (DiMaggio and Powell, 1983: 151).

Poor performance could be associated with particular political domestic actors. Thus, reputational incentives are likely to be relevant for domestic actors who need to prove their legitimacy as reliable partners because they have been discredited in the past. For example, Tavits and Letki (2009) argue that left-wing parties in post-communist countries have been driven to improve their tarnished reputation to prove that they can operate in a democratic regime and a free market economy. After having been ousted from power, former communist parties were publicly discredited and rendered into pariah status by other parties (Ishiyama, 1995). Vachudova (2005) also argues that an important condition for the implementation of liberal reforms after the collapse of communism was the existence of a reformed communist party.

H2: Reformed domestic policy-makers and implementers, who have been previously discredited by the EU, are more likely to pursue compliance with EU rules.

As already noted, one of the major propositions of neo-institutional theory is that compliance with external rules is useful to organizations in terms of enhancing their likelihood of survival (Meyer and Rowan, 1977). However, organizations within a particular institutional context are not equal in their dependence on compliance. In other words, the likelihood of compliance depends on actors' ability to control the allocation and availability of critical resources or to find alternative suppliers of such resources (Oliver, 1991).

Applied to the EU context, institutional theory will predict differences between domestic political actors who are more or less dependent on benefits provided by the EU. For example, some of the new CEE member states have become net beneficiaries of agricultural subsidies from the EU after their accession (Hughes et al., 2004). In addition, this dependence could vary both between different member states and policy domains.

H3: Domestic policy-makers and implementers, who are more dependent on resources from the EU, are more likely to pursue compliance with EU rules.

Institutional theory also recognizes that reputation seeking could be enhanced by organizational incentives to seek legitimacy not only externally but also internally (Meyer and Rowan, 1977). Thus, another source of legitimacy is the level of societal support regarding the implementation of a particular policy. In the context of EU compliance, national governments are likely to perceive increased chances of re-election if they implement policies that receive broad societal support or are at least considered favorable by their main electorate.

H4: Domestic policy-makers and implementers are more likely to pursue compliance with EU rules that will increase their support within national contexts.

Decoupling notified from actual compliance in the EU context

EU compliance research does not specify the conditions under which one could expect divergent policy outcomes across different forms of compliance. Some studies have addressed the possibility that governments could exploit rent-seeking opportunities by only partially implementing policy reforms (Hellman, 1998). Vachudova (2005) argues that in their first years of transition to democracy and market economy, 'illiberal' governments were more likely to engage in superficial economic and political reforms in order to demonstrate allegiance to the EU without endangering their domestic power base. Falkner (2010) attributes the poor enforcement structures in CEE countries to the legacy of communism and economic crisis, but this explanation does not help understand the efficiency in transposition by these countries and differences between compliance stages altogether. A model developed by Steunenberg (2006) makes a distinction between implementation by higher- and lower-level domestic policy-makers, but this model has been applied only with regards to transposition delays.

In contrast to EU compliance research, neo-institutional theory provides useful insights of why the level of compliance may vary across different forms of compliance. Based on the seminal work of Meyer and Rowan (1977), the struggle to link requirements of external legitimacy with technical measures of performance leads to organizational inconsistencies. In this case, organizations and their constituents are likely to engage in the decoupling of formal rules from practice. Thus, decoupling is a response to external adjustment pressures that are presumed to be incompatible with existing practices. As a result, it is functional to managers, principals, or policy makers to signal compliance with external rules only symbolically, while maintaining existing structures. In the context of EU compliance, the idea of incompatibility between EU policy requirements and existing national policy and practice (also dubbed as the 'misfit' or the 'goodness-of-fit' hypothesis) is one of the most widely proposed factors that could explain non-compliance with EU rules (e.g., Börzel, 2003; Falkner et al., 2005; Knill and Lenschow, 1998). Applied to the EU context, neo-institutional theory would lead us to expect the following:

H5a: The likelihood of decoupling between notified and actual compliance increases with higher levels of inconsistency between the EU requirements and national policy and practice.

Given the generality of this hypothesis, the neo-institutional literature leaves the causes for the inconsistency between formal rule and actual practice open to interpretation. Earlier applications of institutional theory base their predictions on the assumption that decoupling is functional for an organization and disregard the role of specific actors, their preferences and opportunities to influence organizational performance. Thus, whereas the model of Meyer and Rowan (1977) suggests that decoupling is the response to discrepancies between external institutional pressures and internal organizational considerations, the latter are largely treated as a 'black box'.

In contrast, more recent studies have incorporated the role of agency and the fact that organizational actors may have strategic incentives to engage in decoupling (Oliver, 1991; Westphal and Zajac, 1994). For example, studies applied to different organizational settings have shown that decoupling occurs not because it is functional for an organization but because it serves the interests and ideology of powerful organizational leaders (Coburn, 2004; Tilcsik, 2010; Westphal and Zajac, 2001). In the context of EU compliance, inconsistencies between the pressure to comply and the domestic context could be driven by the fact that the policy preferences of national

policy-makers and implementers substantively diverge from the EU requirements (Tallberg, 2003; Thomson et al., 2007; Thomson, 2010). National policy makers could have alternative priorities, given that compliance entails committing scarce resources that could be allocated to alternative uses (Downs et al., 1996; Fearon, 1998; Tallberg, 2003). Divergent policy preferences could be related to both reaping benefits from resisting changes to existing rules or ideological beliefs that such rules are inappropriate for a particular national context (Tilcsik, 2010). Whereas this discrepancy gives rise to incentives to deviate from the EU obligations, actors dependent on the EU for resources or legitimacy, will try to conceal non-compliance by engaging in decoupling formal transposition from practical implementation.

H5b: The higher the inconsistency between the EU requirements and the policy preferences of domestic policy makers, the more likely it is that reputation seeking will result in decoupling between notified and actual compliance.

Decoupling formal transposition from practical implementation does not only reflect the preferences of domestic policy-makers, but also their ability to meet the EU requirements. In particular, relatively powerful organizational constituents may also constrain compliance with institutional norms and rules if these infringe upon their own preferences. In other words, inconsistencies between formal requirements and existing practices could be driven by vested interests resisting change rather than the preferences of the actors controlling the implementation process. Applying the institutional perspective to the EU context, internal opposition to the implementation of EU rules could threaten the legitimacy of policy-makers vis-à-vis other societal or political actors. For example, governing parties depending on coalitional partners to stay in power will avoid implementing conflicting policies. Provided that governments are also driven by external reputation incentives, it is expected that they will only signal compliance by timely notification or superficial transposition.

H5c: The higher the inconsistency between the EU requirements and the vested interests of political or societal groups, the more likely it is that reputation seeking will result in decoupling between notified and actual compliance.

Finally, inconsistencies between formal rules and actual practice could be driven by capacity limitations of the actors responsible for the implementation process. For example, it has been argued that national administrative constraints prevent or slow down compliance with international rules (Chayes and Chayes, 1993; Tallberg, 2003) and EU directives in particular (Jensen, 2007; Thomson et al., 2007). Among such constraints, government and bureaucratic inefficiency, poverty and corruption are suggested to affect member states' capabilities to process, interpret and adapt EU rules into national settings (Mbaye, 2001; Jensen, 2007; Perkins and Neumayer, 2007). Neo-institutional accounts suggest that actors seeking external legitimacy will try to mask their poor performance by engaging in symbolic rather than substantive compliance (Westphal and Zajac, 1994). In line with institutional theory, reputation-seeking policy-makers are likely to signal their allegiance to the EU by speedy transposition of EU directives. In contrast, lack of economic or administrative capacity could constrain the proper implementation of EU rules.

H5d: The higher the inconsistency between the EU requirements and the capacity of domestic policy-makers to meet these requirements, the more likely it is that reputation seeking will result in decoupling between notified and actual compliance.

The likelihood of decoupling across different implementation stages depends not only on the preferences and opportunities of different actors, but also on the specific policy context. In particular, the assumption that symbolic implementation is sufficient for the attainment of legitimacy depends on the extent to which divergent implementation outcomes are easily noticeable and the probability that they will be sanctioned. For example, clearly outlined institutional guidelines could decrease the likelihood of decoupling in several ways. First, precise and clear rules could diminish inconsistencies between ‘external institutional pressures’ and ‘internal considerations’, when the latter is caused by a misfit between policy requirements and existing practice or capacity limitations. Applied to the EU context, precise EU rules could improve implementation performance by providing clear guidelines to national policy-makers and implementers. Second, rule precision is also likely to increase transparency and thus diminish the likelihood of gaining or maintaining legitimacy from superficial implementation only.

H6: High levels of precision of a EU rule decrease the likelihood of decoupling between notified and actual compliance.

2.3.4 Case selection

The proposed project employs different data sets to study compliance in CEE and Western EU member states across different policy areas. The unit of analysis is the member state*EU rule at a particular form of compliance (timely notification, correct transposition and practical implementation). We have already started coding information on the timely notification of EU directives and we specifically focus on member states’ compliance after the accession of the CEE countries (from May, 2004 for eight CEE countries and January, 2007 for Bulgaria and Romania). The analysis of compliance covers 25 member states: 15 old Western member states and 10 CEE countries.

The project plans to focus on directives related to seven general policy areas: Internal Market and Services, Environment, Social Policy (employment and anti-discrimination issues) and Justice and Home Affairs. Thus, we ensure that member states’ compliance is compared with respect to a wide variety of policy issues, while keeping the data collection process manageable. This selection of policy areas also aims to ensure high variation in the dependent variable: compliance with EU rules. First, based on the most recently published statistics by the EU Commission, the majority of infringement cases are opened against violations in Internal Market, whereas relatively few infringement cases are opened for directives related to Social Policy. Environment and Justice and Home Affairs directives lie in the middle with the respect to the amount of infringement cases. Second, Social and Environmental EU policy remain the focus of case studies on compliance, whereas there is little research on practical problems encountered in the implementation of Internal market and Justice and Home Affairs directives. Third, the selected policy areas include both technical rules (Internal Market) and more general rules that give discretion to national policy-makers (Justice and Home Affairs). Finally, the selected areas address different types of societal problems: economic, environmental, employment, immigration and anti-discrimination.

2.3.5 Operationalization

Dependent variable(s)

As already stated, compliance with EU rules has different forms: timely notification, correct transposition and practical implementation, which are measured separately. Table 1 presents the indicators and data sources for measuring compliance. To test the hypotheses on decoupling, the analysis takes into account differences between timely notification and correct transposition and between correct transposition and practical implementation.

Data on timely notification is based on the dates of transposition measures that member states report to the EU Commission and is extracted from the EurLex database. Timely notification records whether a member state reported a transposition measure taken after the adoption of a directive and the transposition deadline (coded as 1) or not (coded as 0). For robustness checks, we also measure the duration in weeks from a directive's adoption until notification of a transposition measure by a member state.

Table 1: Indicators of compliance and data sources

Main compliance variables	Data source(s)
Likelihood of timely notification	Eur-Lex database
Likelihood of correct transposition (provision) Ratio of correctly transposed provisions (directive)	TOCs, Commission communication reports, Expert evaluation reports
Level of practical implementation (provision and directive)	

Information about the correct transposition and practical implementation of directives is obtained from different sources: transposition checklists (also known as tables of correspondence: TOCs, or 'correlation tables' in some policy sectors), Commission communication and evaluation reports, and expert evaluation reports (see section on Data and data collection progress). The use of various sources of information aims to ensure the validity of our coding of substantive compliance problems. In addition, we will compare the findings on our dependent variable with standard quantitative measures such as infringement cases opened by the Commission for incorrect transposition and practical implementation. Regarding reliability issues, most of the TOCs already provide rather straightforward assessments about compliance with EU rules (see Table 4b as an example). For cases, in which assessments are not that clearly identified in a table but require detailed reading, the expert evaluation reports, we will rely on multiple coders and estimate inter-coder reliability.

Correct transposition is measured differently depending on the level of analysis. At the level of a directive's provision, we will distinguish between correct (coded as 1) and incorrect transposition (coded as 0). At the directive level, correct transposition will be measured as a weighted ratio of the number of correctly transposed provisions in a directive. The proposed project relies on various studies and policy reports coordinated and funded by the Commission, but executed by independent research institutions and networks of national experts in a particular field (see section on Data and data collection progress). As already discussed, it is important to keep the measurement of practical implementation at a general level in order to be able to compare countries and policy areas, but also keep the measure distinct from transposition. Whereas transposition refers to the content of national laws, practical implementation relates to the activities of governments after national laws have been adopted. Such activities include the amount of resources allocated for the implementation process, which could be monetary or structural (e.g. setting up agencies responsible for the implementation process), as well as

institutional procedures such as effective and dissuasive sanctions against non-compliance and efficient court procedures. The expert evaluation reports regarding directives from the selected policy areas generally discuss both aspects of practical implementation in a separate section. Table 2 illustrates the coding of practical implementation.

Table 2: Coding of practical implementation based on information from expert evaluation reports

Category (code)	Coding description
No implementation (1)	No/Insufficient resources allocated for practical implementation Institutional procedures: sanctions are not effective and dissuasive, long and inefficient court procedures
Poor implementation (2)	No/Insufficient resources allocated for practical implementation Institutional procedures: dissuasive sanctions, but long and inefficient court procedures
Partial implementation (3)	Resources allocated for practical implementation Institutional procedures: dissuasive sanctions, but long and inefficient court procedures
Full implementation (4)	Resources allocated for practical implementation Institutional procedures: dissuasive sanctions, court procedures considered efficient by national expert

Independent variables

The proposed project relies on different databases to measure characteristics of member states, governments and features of the EU rules. Information about government characteristics (type of cabinet parties and government duration) is coded using the database of Döring and Manow (2010). Data on the extent to which governments have been previously discredited is taken from World Bank Governance Indicators (level of corruption) and the annual European Anti-Fraud Office (OLAF) reports. The dependence on benefits from the EU is measured differently with regards to the particular policy sector. For example, for Internal Market, member states' economic benefits are accounted by the extent to which a country is dependent on the EU for its trade. The data on trade within the EU are extracted from the Direction of Trade Statistics of the International Monetary Fund (IMF) (International Monetary Fund 2011; Knill and Tosun, 2009). Another measure includes the extent to which the implementation of particular policies is aided by projects that are funded by the EU. Measuring societal support will be based on questions from the Euro-barometer surveys, which include both broad questions on support for the EU and more specific questions related to particular policy areas.

The proposed project employs two different types of misfit: procedural and substantive. To measure procedural misfit, we adapt the operationalization of Steunenberg and Toshkov (2009). The measure combines information on the number of national transposition measures required, the status of these measures in the national legal order (laws, regulations, ordinances and whether the measures are new or amending previous legislation. The variable for substantive misfit will be measured based on whether there were domestic rules closely related to a EU directive before transposition. For example, expert evaluation reports often include an introductory section

on the ‘state of rule’ in a country before the implementation process began (Zhelyazkova and Torenvlied, 2011; Zhelyazkova, 2012).

The level of discrepancy between EU requirements and the preferences of domestic actors is measured as the extent to which a government opposes a particular EU rule or the EU in general. Data on government position on EU integration are taken from the ‘Party Policy in Modern Democracies’ project (Benoit and Laver, 2006) and the Chapel Hill data set (Marks et al., 2006). To gain information about directive-specific preferences of member states, we will use data from the Council minutes. In particular, we will check whether the country delegates expressed reservations to contents of particular parts of the directives during the decision-making stage and to what extent they provided reasons for these reservations (Zhelyazkova, 2012).

Inconsistencies between the EU requirements and domestic context could also occur because of the existence of veto players opposing the implementation of a directive. To measure veto players, we rely on information regarding the number and the ideological conflict between parties in government or parliament or number of ministers (depending on the type of implementation measure).

To operationalize capacities, we employ both country aggregate measures and characteristics with regards to particular policy requirements. At the aggregate level, the level of bureaucratic efficiency in a country is used to account for the general ability of a member state to comply with EU legislation. We employ the World Bank measure, which contains a number of important government characteristics such as the quality of public and civil services, the degree of independence of civil servants from political pressure, etc. (Kaufmann et al, 2005). This research project is also going to employ sector-specific indicators for member states’ capacities and constraints. For example, Quality of Government Institute (QoG) databases combine different data sets various country characteristics such as the level of economic liberalization in a member state, financial stability, legal structure and security of property rights, regulation of credit, a country’s level of social protection and labor, national policies and institutions for environmental sustainability, etc.

Finally, the level of precision of EU rules will be coded based on the subject and content of EU directives and the extent to which these address technical issues (e.g., a specific type of chemicals allowed on the market) or broader societal goals (environmental protection).

2.3.6 Data and data-collection progress

As already noted, the aim of this project is to compare EU member states’ performance regarding different forms of compliance across four policy areas. Data on the correct transposition and practical implementation of EU rules will be coded on the basis of tables of correspondence (TOCs) and expert evaluation reports.

Pilot study on Justice and Home Affairs directives

We have already conducted a pilot study on the correct transposition and practical implementation of 340 policy issues from 10 Justice and Home Affairs directives by 25 member states. This resulted in a data set of 7353 observations for compliance with EU policy issues and 245 observations for compliance with EU directives (after excluding missing information and ambiguous cases to avoid reliability problems). Information on member states’ compliance with separate policy issues was obtained from a large-scale study on the “Conformity checking of the transposition by Member States of 10 EC directives in the sector of Asylum and Immigration” conducted by the *Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe*.

Compliance with Internal market and services directives (1st PhD project)

Coding of compliance with Internal market directives will follow similar logic to the coding of Justice and Home Affairs directives. The DG for Internal Market and Services has already finalized and made publicly available several comprehensive evaluation reports of the implementation of the Anti-Money Laundering Directive, the Professional Qualifications Directive, a number of services directives, and directives related to financial institutions and public procurement policy. Unavoidably, the content of the evaluation reports is different from immigration policy, as some of these directives deal with more technical issues related regulation of financial institutions. However, content analysis of evaluation reports enables us to integrate substantive information about non-compliance into a quantitative framework. This approach brings together insights from case study research on compliance and quantitative data. Furthermore, this research envisages one PhD project that will exclusively focus on member states' substantive compliance with Internal market and services directives. A PhD student (TBA) will both contribute to the coding of existing reports and verify the validity of the statistical analysis by conducting case studies of specific directives from this policy area.

Compliance with Environment directives (2nd PhD project)

Regarding Environment policy, we have started an inventory of TOCs evaluating the implementation of EU environmental policy. Currently, we have information about all member states' implementation of the provisions of 15 EU environmental directives. The inventory will be continuously updated with TOCs about new directives, which are regularly published by the DG Environment in the EU Commission. The TOCs provide detailed evaluation of the extent to which national laws are in conformity with each substantive provision of environmental policies. In terms of structure and extent of information, the TOCs closely resemble the ones used for the pilot study on Justice and Home Affairs directives. Information also exists on the practical implementation of EU environmental directives, as the Commission provides general guidelines and oversees the extent to which general enforcement strategies are upheld by national inspectorates. Additional information on the practical implementation of EU directives will be obtained from project reports published by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). Moreover, a second PhD project will be specifically allocated to the study of compliance with EU environment directives combining both quantitative and qualitative approaches.

Compliance with Social Policy

The DG on Employment and Social Affairs has access to numerous reports on the implementation performance by all member states. For example, the Commission has recently published its results from the project: "Studies on the implementation of Labor Law Directives in the enlarged European Union". These studies contain information on both the transposition and practical implementation of EU employment directives. Additional reports are provided by the Commission's network of legal experts in the fields of employment, social affairs and equality between men and women and by the European Network of Legal Experts in the Non-discrimination Field and European Trade Union Institute (ETUI). Asya Zhelyazkova has previous experience in coding reports provided by these networks and is familiar with their structure and contents. Also, as part of her previous research, she has already established contacts with legal experts in these networks, who have expressed willingness to provide assistance and advice on coding compliance issues.

2.3.7 Methods of data analysis

The proposed project will apply different statistical techniques. As the unit of analysis is the country*EU rule (a directive or a directive's provision), we apply a cross-classified design to take into account that member states' implementation performances are nested within member states and within EU directives and provisions. Cross-classified design is well suited for the analysis in the present research because (1) different member states implement the same EU directives and (2) different directives are implemented by the same member states. Moreover, the present research project does not only control for the multilevel structure of the data set. In particular, the multilevel models take into account that the effects of certain country characteristics on member states' implementation performance vary across different policy sectors (Hox, 2002).

We also apply different statistical techniques depending on the particular dependent variable. For example, to test the hypotheses on decoupling between different implementation stages, we will apply variants of the Heckman selection model: a two-stage procedure that corrects for sample selection bias in regression analysis (Heckman and Borjas, 1980). This model has been previously applied to the study of decoupling of organizational performance (Westphal and Zajac, 1994; 2001). At the transposition stage, the Heckman model includes two equations: the first (selection) equation estimates the likelihood of notification of a transposition measure to the Commission using an event history model, whereas the second equation refers to the likelihood of correct transposition. A similar model is applied on decoupling transposition and practical implementation.

2.4 Schedule and milestones

Table 3 presents the milestones in the form of a timetable. Because there is currently no data set that systematically compares the transposition and practical implementation of Western and CEE member states across different policy areas, a significant amount of time will be allocated to data collection and coding of the dependent variables.

Table 3: Milestones of the project

1 st year	<ul style="list-style-type: none"> • Further elaboration of research design: operationalization of the dependent variable • Data collection and coding of the dependent variable based on expert reports and (TOCs) • Theory development • Operationalization of the independent variables
2 nd year	<ul style="list-style-type: none"> • Completion of data coding and data collection • First empirical analyses • Conference participations • Publication of first papers
3 rd year	<ul style="list-style-type: none"> • Completion of empirical analysis • Conference participations • Writing and submitting journal articles • Summarizing findings in a book • Finalization of two PhD theses

2.4.1 Expected output

The goal of this research project is to produce a book that compares different forms of compliance by 25 member states in four EU policy sectors. The expected output also consists of articles in leading political science journals and two PhD theses

2.4.2 Organization and allocation of tasks

The project's core group will consist of four investigators: Frank Schimmelfennig, Asya Zhelyazkova, and two PhD students (TBA). Zhelyazkova and Schimmelfennig will be responsible for the coordination of the project. Given his strong background concerning the new member states, Schimmelfennig will predominantly contribute to the theory development of the research project. Zhelyazkova as the principal investigator will be broadly engaged in different parts of the project. She plays a leading role as to the conceptualization of the project. Zhelyazkova is also responsible for managing the data collection and coding.

The empirical part of the project will be divided between Zhelyazkova and the two PhD students. In particular, Zhelyazkova will conduct analyses on the timely notification of transposition measures by EU member states based on data from the Eur-Lex databases. In addition, she will conduct research on transposition and practical implementation of Justice and Home Affairs directives and Social policy. Jointly with Schimmelfennig, she will also supervise the two PhD projects on legal and practical implementation in two separate policy areas. As already noted, one PhD student will be involved in the study of member states' legal and practical compliance with internal market and services directives and another one will study compliance with environmental directives. Both PhD students will contribute to the coding of existing expert evaluation reports and TOCs in their respective study area and participate in inter-coder reliability tests. They will also supplement the statistical analyses of compliance with qualitative information about compliance. In addition, the team will employ four master students on 25% employment contract each. These students will provide additional assistance with respect to coding the independent variables used for the study of compliance: i.e. Council minutes, type of transposition instruments, responsible ministries, etc.

2.5 Importance and impact

More broadly, the proposed project contributes to our understanding of the influence of EU enlargement ('widening') on deepening the EU integration project. The policy-making process does not end with the adoption of a decision at the EU level, but the EU decisions need to be properly transposed, enforced and applied by the EU member states. Thus, this project provides a comprehensive picture of the success of the EU integration project in the enlarged Europe.

More in particular, this research project contributes to two distinct sub-fields of the Europeanization literature: studies of conditionality and compliance with EU rules. First, it contributes to studies of post-accession conditionality by providing new insights on the dynamics and the distinctiveness of conditionality-induced Europeanization in the CEE countries (Sedelmeier, 2011). Second, the proposed project contributes to studies of EU compliance by addressing the call for an increased focus on the practical implementation of EU rules across different policy areas and countries (Treib, 2008). Third, this research project will be of interest to political science scholars and practitioners interested in the general discussion about the effects and consequences of enforcing internationally agreed objectives within countries.

In terms of societal relevance, this project aims to provide insights about the extent to which policy objectives reach their target groups or they are constrained by the preferences and capacities of national authorities. It will also increase our understanding about the quality of political institutions in different countries as reflected in their ability to meet objectives from highly socially salient issues: environment, immigration, employment, anti-discrimination, etc.

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4. Appendix: preliminary coding of compliance with JHA directives

The output from the Commission study consists of national reports about the implementation of 10 directives in all member states. In addition, Tables of Correspondence (TOCs) were used to check the implementation of the directives by member states. The information from the TOCs and the country reports is summarized in a “Synthesis report” for each directive. It is important to note that the TOCs both identify the existence of practical problems and describe their nature, which facilitates the application of our coding scheme (see Table 2) in the next stages of coding practical implementation. Table 4 provides examples from the Synthesis reports, the set-up of the TOCs.

Table 4a: Excerpt from the Synthesis report on the Qualification Directive

Article 4(1), second clause, Q. 8 from the national report	
NO TRANSPOSITION AT ALL	Bulgaria, Lithuania
LEGAL PROBLEM	Czech Republic, France, Romania, Spain
PRACTICAL PROBLEM	Luxembourg, Slovakia

Table 4b: Example from the TOC on the Qualification Directive in the Czech Republic.

Provision of the directive	Reference to Number of Question or Sub-question	State of transposition	Evaluation	National provision of transposition
Article 2(e)	Q.6	Law	In order	Part I, Art I s 27...
Article 4(1) Second Clause	Q.8A & Q8.B	Pre-existing law	Problem(1)	Art 49a ASA
Article 7(1)	Q.14	Law	Problem(2)	Art 2.8 ASA
Article 20(3)	Q.30.C	Not	Not(3)	

(1): Transposition of this provision is incomplete

(2): Art. 7 (1) QD was transposed only with regards to the refugee status. Therefore, the ASA does not contain a concept of actors of protection from serious harm (interpreted textually)

(3) This provision is not transposed into national legislation and is not regulated by existing laws.