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Between politics and administration : compliance with EU Law in Central and Eastern Europe

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CHAPTER 5

EXPLAINING VARIATION IN TRANSPOSITION PERFORMANCE: COUNTRY-LEVEL ANALYSIS

The previous two chapters dealing with the literature review and the theoretical framework set the stage for the empirical investigations that follow. In this chapter I will explore the differences in transposition performance at the country level. The country-level variation is important but it leaves much to be explained – that is why in the next chapter I conduct an analysis taking the directive as the unit of analysis. In the pages that follow, I will offer a first look at the empirical fit of the hypotheses introduced in the previous chapter focusing on the differences in transposition performance of the 8 member states from CEE that joined the EU in 2004. I will focus on the hypotheses targeting the influence of administrative capacity, policy-making constraints and the relative importance of substantive policy dimension.

5.1 Differences in transposition performance

The historical analysis in Chapter 2 made two points apparent. First, both the EU and the candidate countries recognized the adoption of the *acquis* as a serious challenge for the reforming public administrations in the region. Second, the political commitment for transposition of EU rules have been made early in the 1990s and has been integrated in the conditionality of the accession process. Nevertheless, it came as a huge surprise when the first quantitative results of the outcomes of transposition in the CEE countries came public. According to the 13th edition of the Internal Market scoreboard: the ‘name and shame’ list used by the Commission to track compliance with the internal market legislation²⁶ Lithuania emerged near the very top of the ranking, while most of the

²⁶ In fact, the definition of internal market legislation employed for the Scoreboard is quite broad and covers almost all areas of EU activity. For the complete list of directives included in the assessment see http://ec.europa.eu/internal_market/score/relateddocs/index_en.htm

newcomers showed rather good results by the standards of the EU in 2004. The next editions of the scoreboard revealed even better non-transposition rates reported by the CEE member states. As early as 2005, the average transposition delay in the new member states was better than the in the EU-15. Even the worst CEE state according to the ranking – the Czech Republic – still did better than few of the ‘old’ member states. Table 5.1 shows the number of non-transposed directive from 2004 until 2007.

Table 5.1 Non-transposition rate in CEE (number of non-transposed directives)

	2004	2005	2006	2007
Czech Republic	360	57	48	38
Estonia	127	39	23	29
Hungary	168	12	18	19
Lithuania	12	11	19	8
Latvia	290	40	25	11
Poland	60	27	23	17
Slovakia	193	22	23	14
Slovenia	87	12	20	17

Source: *Internal Market Scoreboards 13-17*.

These figures point out to an important empirical puzzle: the relatively timely adoption of the acquis in the CEE and reveal part of the variation that exists between the states. For example, the Czech Republic had a rather substantial deficit in 2004. To a large extent, however, the deficit appears to be a result of non-notification rather than genuine failure to transpose since only 12 months later the non-transposed directives were reduced from 360 to 57. Slovakia also reduced its deficit from 193 to 22 directives between the two editions of the Scoreboard. These big ‘improvements’ indicates that the figures from 2005 are much more reliable indicators of the state of compliance shortly after accession. The difference between the two yearly estimates is also due to a lot of national implementing acts entering into force near the actual time of accession, after they

have been processed by the legislative systems shortly before that. Finally, the improvements seen in the numbers reflect in part genuine increase in the speed of transposition (see for details the subsequent chapter).

According to the data for 2005 three countries have less than 20 directives non-transposed: Lithuania, Slovenia, and Hungary. Most of the countries have between 20 and 40 directives left to deal with, and only the Czech Republic has more than 40. The Czech Republic remains last in the league (of the newcomers) in 2007 as well, while the rest of the countries tend to converge. The numbers for Hungary indicate a slightly deteriorating performance after 2005.

Latvia gets second best in 2007 after being the second worst in 2004. It should be noted that after 2004 the difference in the absolute numbers of non-transposed directives are rather small relative to the overall number of legislation to be implemented.

The theoretical framework outlined in the previous chapter suggested that preferences, administrative and policy-making capacities influence the transposition patterns observed. Can we find support for these hypotheses looking at the snapshots of country-level performance provided by the Internal Market Scoreboards? The aggregate nature of the data poses significant limitations to the type of analyses possible. Nevertheless, we can explore in some ways the influence of preferences and institutional constraints.

5.2 The influence of preference salience

I will first focus on the conjecture that the relative importance (salience) of the substantive policy dimension vis-à-vis the time-related dimension affects the speed of transposition. The theoretical discussion already suggested that EU-related preferences of the ruling governments in CEE might influence how strongly governments care about the substance of policies they have to implement, and as a result, how much time they will spend in order to comply with the EU requirements. I propose that the more EU-supportive are the governments, the faster they will transpose EU law. Comparing party preferences at the time of accession, however, has a potential limitation since in many cases the parties that governed at the actual time of accession were not the same parties that concluded the negotiations or the same parties that ruled while the bulk of the legal approximation work

had to be done. One way around this complication is to develop directive-specific measures of party preferences, and this is the approach followed in the next chapter. Another way to estimate the effect of preferences is to look into the societal attitudes towards EU integration. Societal attitudes, as expressed in the votes in the EU accession referenda, are on the one hand closely related to the major party positions on EU integration, but they also reflect more stable predisposition towards the EU.

The theoretical model suggested that rising levels for support of the European Union by the government will tend to increase the speed of transposition as the government will be more responsive to the threats of conditionality and less likely to try and change the policy content of EU legislation. Here, I test this argument rather indirectly. For now, I focus on the broader notion of public support because it is more likely to be representative of more lasting and general attitudes in a country than a measure of the preferences of one party can provide. The intention is to check whether the overall support for accession to the EU is linked to some extent with the achievements in the approximation of legislation. As a benchmark for compliance, the 14th edition of the Internal Market Scoreboard (2005) is used since the figures from 2004 might reflect a lapse in the communication of the adopted measures to the Commission and the setup of the databases. As a measure of public support for the EU I take the percentage of positive votes in the referenda for accession to the EU. All 8 countries from CEE held EU accession referenda which makes possible a comparative analysis of the outcome and the compliance patterns outlined above. The percentage of the 'Yes' vote fluctuated between 66.83% in the case of Estonia and 93.70% in the case of Slovakia (for details of the referenda see Waele, 2005). The turnout ranged from 45.60% in Hungary to 72.75% in Latvia.

Figure 5.1 plots the share of 'Yes' votes against the number of non-transposed directives in 2005. According to the figure, there is some evidence for support of the hypothesis. The R^2 is 0.49 indicating a significant percentage of the variation in transposition deficit being explained by the level of EU support. The regression line on the graph shows that there is a negative relationship between how people have voted in the referendum for joining the EU and how successful the country is in transposing European law. The relationship is far from perfect, but there is a trend. The Czech Republic is furthest away from the regression line having a far worse record than we

would have expected from its support for the EU. On the other hand Hungary does actually better than we would have expected from its level of support. Lithuania and Slovenia on the one side (with high support and low transposition deficit), and Latvia and Estonia on the other side are essential in anchoring the regression line.

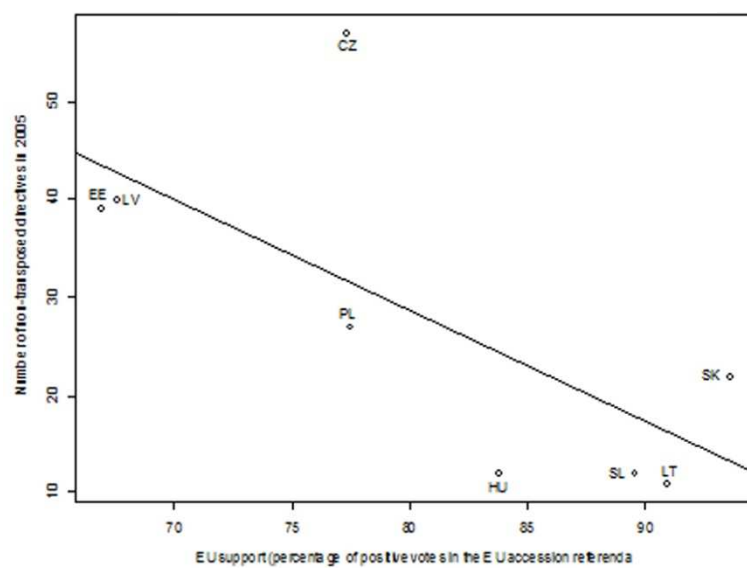


Figure 5.1 Transposition and support for the EU

The relationship between EU support and transposition is in line with our theory, but it is rather surprising given the negative relationship between these two factors reported by the literature on compliance in the EU-15 (see Chapter 3). The special institutions and context of law approximation during accession negotiations is probably responsible for the discrepancy. It is interesting whether the relationship in the case of the CEEC will be sustained or will evaporate once the states settle in as full members of the club. While an effect of EU support seems plausible according to the data at hand, it leaves a lot to be explained. Next, I will look whether the administrative capacity: a second major variable highlighted by the theory, accounts better for the variation.

5.3 Administrative capacity

The influence of administrative capacity is the focus of the next hypothesis suggested by the theory. Preferences are important but the administrative constraint limits what is possible to achieve in terms of transposition speed no matter how hard the applicant countries might want to adopt the *acquis*.

I am going to use two indicators of administrative capacity: both capture general capacity of the government and not specific EU-related capacity. The first one is an expert-based assessment conducted by the World Bank for the purposes of measuring governance quality across nations. The evaluation brings together the opinions of numerous country experts. The measures are for the year 2004.

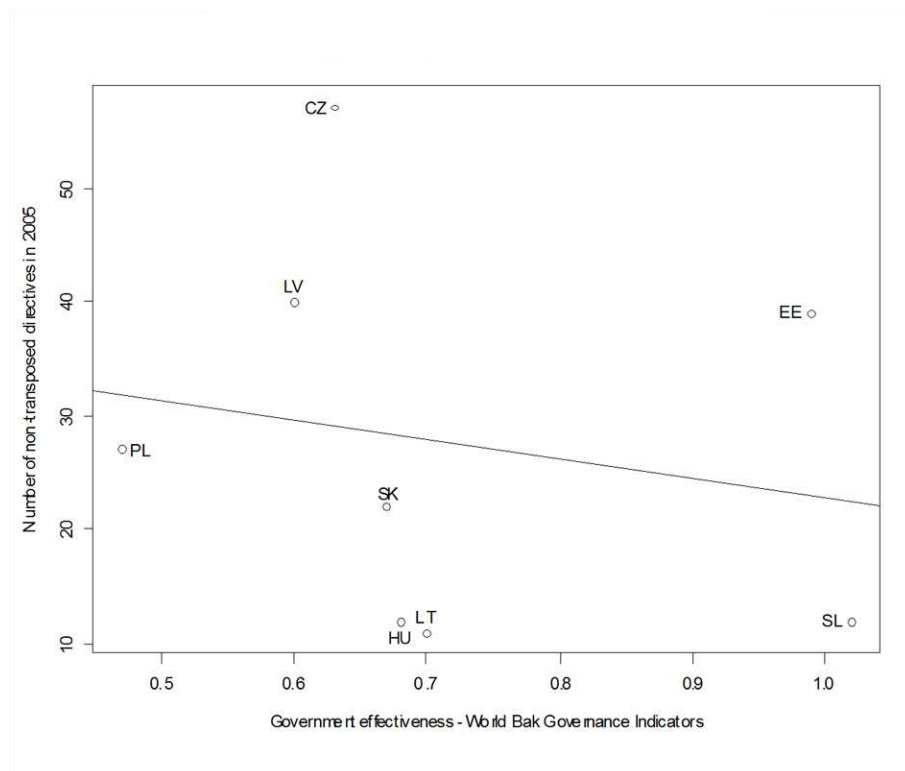


Figure 5.2 Transposition and government effectiveness

Figure 5.2 plots the score of government efficiency versus the number of non-transposed directives. There is not much of a relationship visible in the plot, although the regression line is in the expected direction. The R^2 is extremely small – 0.03. Amongst the countries with the best score of government efficiency – Estonia and Slovenia – there is one with a mediocre and one with an excellent transposition record. Moreover, Estonia and Latvia while having very similar transposition deficits are countries with quite different government efficiency. On the basis of this measure we can conclude that there is no relationship between administrative capacity and transposition performance. The lack of effect, however, might be related to measurement problems (for example, there is only limited variation in the scores).

The second measurement of administrative capacity I use is based on the existence and quality of civil service. Under the communist regimes there was no civil service at all. The countries from CEE started to (re)introduce civil service legislation after the fall of communism. First in Hungary, than in the rest of the region, civil service reforms spread, albeit at an uneven pace. Some countries showed quite some reluctance to adopt laws guaranteeing the impartiality and stability of the public service. Others altogether avoided the establishment of a civil service corps insulated from direct political interference. The quality of the public administration is crucially dependent on the existence and stability of the civil service. A legally-defined and protected civil service contributes to professionalism, continuity, and expertise. Hence, it is closely related to the concept of administrative capacity the influence of which we explore. Figure 5.3 plots the year of entry into force of civil service legislation plotted against the number of non-transposed acts. The data is taken from Meyer-Sahling (2004) for all countries with the exception of Slovenia which is not part of his study. The case of Slovenia is actually quite difficult to classify. The country formally adopted specific regulation for the public service in 2002 (entering into force in 2003). However, since the early 1990s it had rather strong protection for the civil servants contained in the general Labour Code (OECD Country Profiles: Slovenia). Although in the graph Slovenia is positioned at 1992 we should bear in mind its dubious position when interpreting the results.

Countries that have had professional civil service for longer do better in transposing EU legislation, as evident in the plot (the R^2 is 0.42). Even if we classify Slovenia as an early adopter, the relationship stays strong (the R^2 drops to 0.13). At the two ends of the

scale we have Hungary and Slovenia which were the first CEEC to establish civil service, and the Czech Republic which postponed the decision until 2004 and only gave in strong and direct EU pressures and sustained critiques. Poland' legislation entered into force in 1999 and the country also has a middle position in the compliance ranking. The Baltic countries do not quite fit into the general trend. Estonia should have performed better given its early introduction of civil service laws, while Lithuania has a better position than expected. To sum up, while there is a link between the establishment of a professional civil service and the speed of adoption of EU law, the relationship is weak and sensitive to the weight of two crucial observations (Hungary and the Czech Republic).

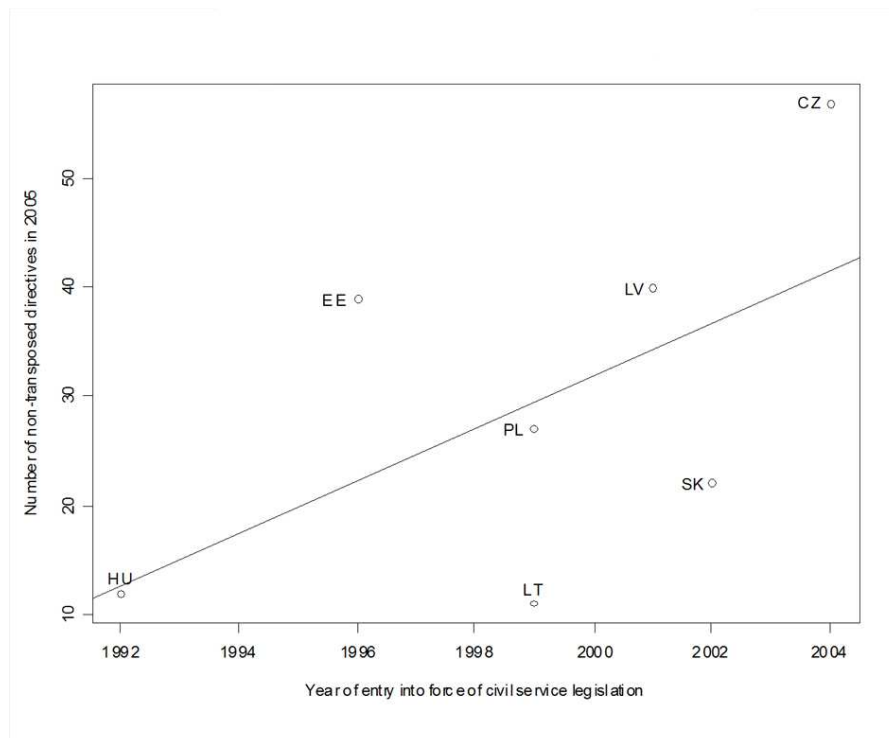


Figure 5.3 Transposition and the civil service

So far, I have established tentative links between EU support and administrative capacity on the one hand, and transposition performance on the other hand. These

factors do not work in isolation, however. How much of the variation in transposition performance can we explain taking into account these two variables. Interestingly, administrative quality is related to the deviation of some of the countries from the regression line in Figure 5.1: civil service quality accounts for the fact that Hungary seems to over-perform while the Czech Republic (as well as Slovakia) under-performs given their levels of EU support.

A multiple linear regression of the transposition deficit in 2005 on the year of the experience with civil service legislation and the levels of EU support has an R^2 of 0.81 meaning that 81% of the variation is explained by the combination of these two variables.

Table 5.2 Multivariate regressions of transposition deficit

	Model 1	Model 2
	(ordinary OLS)	(Poisson)
Variable	Estimate (standard error)	Estimate (standard error)
(Intercept)	-4108.47 (1487.85) *	-178 (37.69) ***
EU support (percentage of 'Yes' votes)	-1.00 (0.32) *	-0.04 (0.007) ***
Administrative capacity (year of entry into force of civil service legislation)	2.11 (0.74) *	0.09 (0.02) ***
R^2	0.81	-
Akaike information criterion	61.494	55.287

Notes: dependent variable - number of non-transposed directives in 2005. N=8.

An ordinary OLS regression is not entirely appropriate for this type of data, however, since the dependent variable - the number of non-transposed directives in 2005 is essentially a count variable. Poisson models are more appropriate for handling count data (Scott Long, 1997). Table 5.2 compares the estimates of the effect of the two explanatory

variables of interest and measures of the fit of the model. It is not possible to retrieve an R^2 for the Poisson model but the other measures like the Akaike information criterion provide some information about the relative fit of the model. The lower Akaike information criterion of the second model (with the Poisson specification) indicates a better fit. Hence, we can conclude that a model of aggregate transposition performance featuring administrative capacity and EU support as independent variables explains a large degree of the cross-country variation. As a result we have some evidence in support of Hypotheses 2a and 4a. Next, I will turn into an exploration of the impact of policy-making capacity.

5.4 Policy-making capacity

Policy-making capacity is hypothesized to exert a complex effect on the speed of transposition: the relationship is not straightforward since increasing policy-making capacity might be translated into more time spent on bringing closer the text of the EU directive to the governments' preferences if the marginal payoff is worth the increase in time spent. As the discussion that follows will show, there is indeed no clear-cut link between policy-making constraints and the aggregate country-level transposition figures. The analysis is, however, severely limited by the broad institutional similarities between the eight CEE countries.

Let us first look into the feature of the general policy system: federalism, bicameralism, presidentialism. These three components are usually included into one veto points or veto players index. The variation in the CEE countries in regard to these institutions is too fine-grained however to be captured for several dichotomous variables. Consequently, I will discuss each of them separately. The influence of federalism is impossible to test since none of the CEE countries analyzed here has a federal system of government (after the dissolution of Czechoslovakia and Yugoslavia). While the states differ in their degree of regionalism, decentralization is only very remotely relevant for the purposes of our discussion since even strong regional government do not participate in the policy making at the national level²⁷. Nevertheless, I tested for an impact of regionalism using the recently developed index by Gary Marks, Liesbet Hooghe and

²⁷ For the practical implementation stage, however, the degree of decentralization might prove important.

Arjan Schakel (2008). The result reveals no relationship between the regional authority index and transposition performance (plot not shown).

The influence of bi-cameral legislature is similarly difficult to establish. From the 8 CEE countries that joined the EU in 2004 only the Czech Republic and Poland have two-chamber parliaments²⁸. None of them is in the lead of the transposition table. Any specific contribution of the existence of a second legislative chamber, however, is more easily established on a case-by-case basis (Chapter 7 includes a discussion).

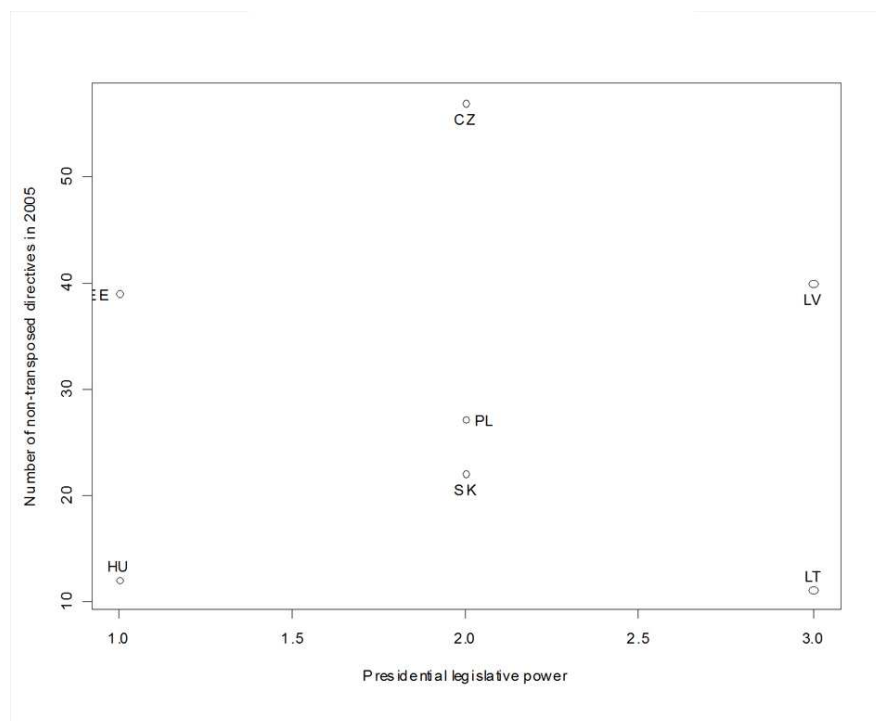


Figure 5.4 Transposition and Presidentialism in CEE

Presidents can be important actors in the legislative and policy-making process as well. Although none of the countries we analyze is a real Presidential republic, there is variation in the degree to which Presidents have influence over the making of new

²⁸ The National Council (Državni svet) in Slovenia is a consultative body and does not qualify as a second legislative chamber.

legislation. Tsebelis and Rizova (2007) develop a novel classification of the legislative powers of Presidents in CEE that improves on previous ranking based on formal criteria that do not take into account the concrete prerogatives of the presidential office in proposing amendments, delaying and halting new legislation.

The next set of indicators of policy-making capacity I use addresses the government types in terms of number of parties in the cabinet and the ideological distance between the parties. Plotting the number of parties in government at the time of accession against the number of non-transposed acts reveals no relationship whatsoever (plot not shown). The number of parties is, however, an imperfect indicator of policy-making capacity. How different the parties in the government coalitions are, and the power differentials between the governing parties are questions that have to be addressed. Furthermore, the one-party government in Poland is actually a minority government, so it can not be expected to command exceptional policy-making leverage.

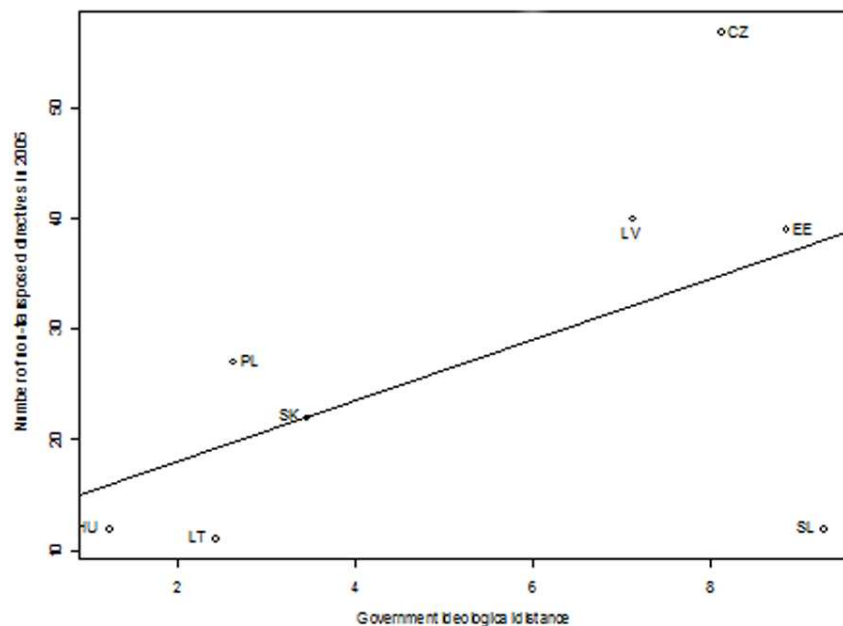


Figure 5.5 Transposition and government ideological distance in CEE

The concept of ideological diversity can help address these concerns. Ideological diversity refers to the maximum distance between any two parties part of a governing coalition. The ideological range has been measured with regard to the socio-economic placement of parties in government based on an expert survey (Benoit and Laver, 2006).

Looking into the range of ideological diversity within a government and non-transposition actually reveals a link (the R^2 is 0.29).²⁹ (see Figure 5.5) The more cohesive governments in Hungary, Lithuania, Poland and Slovakia, have managed to process more EU legislation on time than their more ideologically diverse counterparts in Estonia, Latvia, and the Czech Republic. Slovenia is clearly out of the trend but in the government there one of the partners has been dominating the coalition. If we exclude Slovenia, the relationship between ideological diversity and compliance gets even stronger.

Finally, the theoretical discussion suggested that policy-making capacity increases with the strength of the EU co-ordination body and its proximity to the prime-ministerial office. Chapter 2 classified the institutional arrangements designed in the CEEC in two types: government or prime-minister based, of foreign affairs ministry based. The closer the coordination hub is to the center of government, the more leverage it is expected to possess over speeding up compliance. The proposition is not supported by the data, however. In fact, the 5 countries that rely on prime-ministerial or cabinet based EU co-ordination have slightly bigger transposition deficit. Among the countries with a predominantly foreign affairs based co-ordination the Czech Republic and to a lesser extent Slovakia, perform worse than average, while Hungary is at the top of the ranking.

5.5 Conclusion

So far in this chapter I explored the impact of several factors suggested by the theoretical model. Support for the EU, experience with civil service legislation, and government ideological diversity are all related to the number of non-transposed directives in CEE in 2005. In terms of the hypotheses, we can conclude that administrative capacity and substantive policy salience are somewhat linked with the outcomes of the approximation process. The evidence for an impact of policy-making capacity is mixed. On the one

²⁹ The number for Poland has been calculated as the difference between the ruling party and the opposition party with the closest position.

hand, the degree of Presidential legislative power, the number of parties in government, and the type of co-ordination have no impact, according to the data. On the other hand, greater ideological diversity within governments seems to have slowed down transposition.

While these are significant findings, the analysis presented above focuses only on cross-country variation and the data used is aggregated over several time-periods and all directives. Since the former communist countries that joined the EU in 2004 are only eight, we have very few degrees of freedom for a statistical analysis. That is the reason why this chapter reported mostly bi-variate relationships and tested only one simple multivariate model featuring two explanatory variables. In reality, causal factors work together and their effects can not be isolated. In the next chapter I will build a more complex statistical model in order to address this concern. Furthermore, the data from the Internal Market Scoreboards (used to measure transposition performance in this chapter) provide snapshots of a country's performance: no differences over time, differences within countries or the impact of directive-level variables can be explored. The next chapter takes a finer-grain look into compliance using a new dataset tracking the transposition of 120 directives in each of the eight CEE member states.