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

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CHAPTER 6
EXPLAINING VARIATION IN TRANSPOSITION PERFORMANCE: DIRECTIVE-LEVEL ANALYSIS

The previous chapter presented the fist series of quantitative analyses of country-level transposition performance. The chapter revealed important effects of societal EU support and experience with civil service legislation on the success of legal approximation. This chapter will go beyond the exploration of country-level variables by presenting a new dataset that allows directive-level variables to be employed as predictors of transposition performance. The new dataset presents richer and more detailed information on the adoption of EU law in CEE. The new dataset also permits an exploration of one the main hypothesis derived in the theoretical chapter: the influence of substantive government preferences on transposition. First, I will discuss the operationalization and measurement of the variables, the sources of the collected data, the structure of the dataset and other related issues. Then I will present the results from a multivariate logistic regression model. Next, I will provide some illustrations of the effects uncovered in the analysis. Finally, the chapter will conclude with a discussion of the findings from the large-N analysis.

6.1 Sample selection

A quantitative analysis of transposition performance requires more data than the readily available snapshots of transposition deficits published by the European Commission[30]. The CELEX (now incorporated by EURLEX) database (König et al., 2006) offers the opportunity to gather information on the individual directive level: it is possible to follow the transposition of each directive in all the member states. At the time of EU enlargement there were approximately 1700 directives in force eligible for transposition.

[30] Parts of this chapter are based on Toshkov (2008)

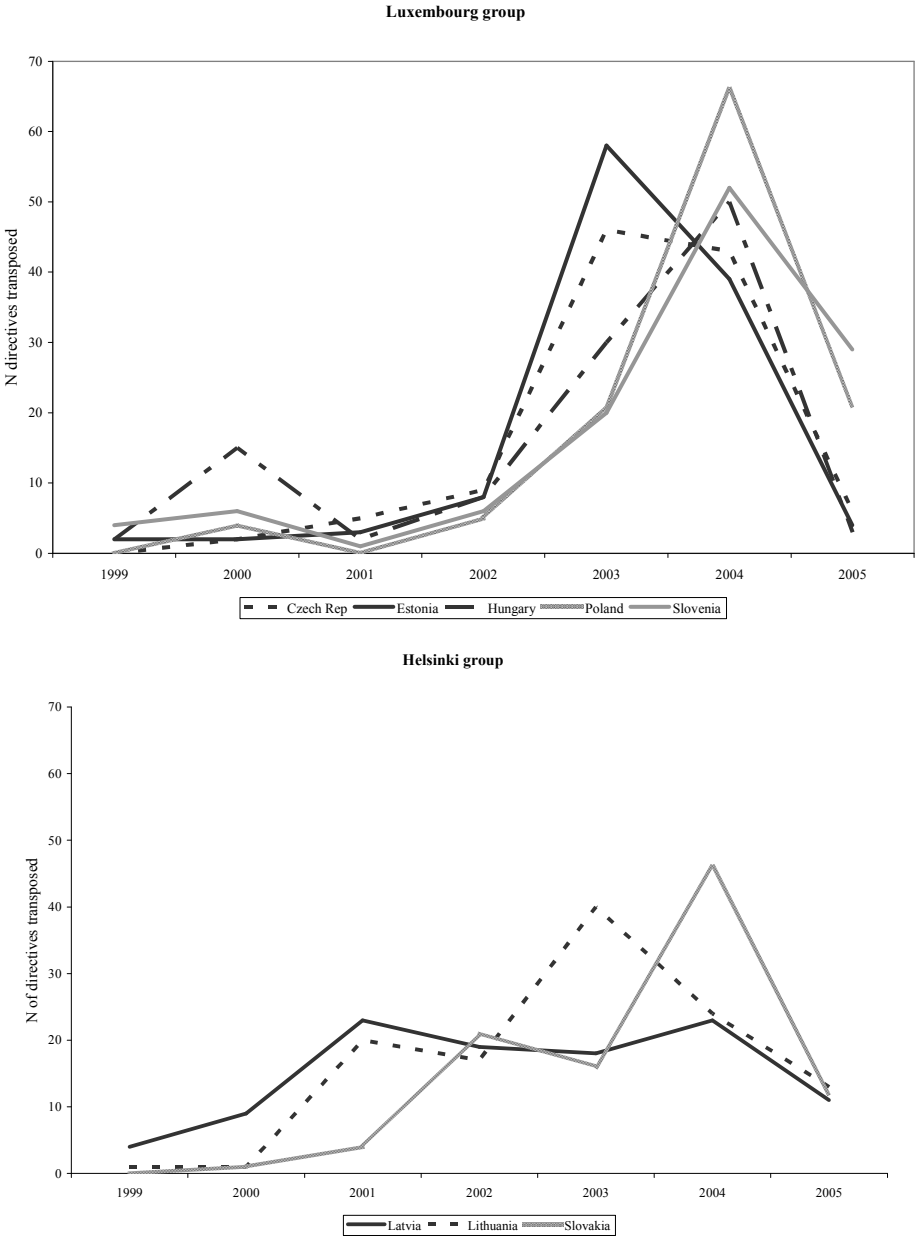

Figure 6.1 Transposition of a sample of 120 directives in CEE over time
Source: *Figure 2 in Toshkov (2008)*

A random sample of 120 directives was drawn from this population. The sample was checked to make sure that it is sufficiently representative of the entire population of directives in terms of important characteristics like the policy sectors covered, periods of adoption, etc. The randomness of the selection of the directives maximizes the chances that the particular pieces of legislation chosen for further study are representative of the entire body of EU directives and that the sample is not biased towards specific types of directives. The sample was deliberately *not* filtered to pick up e.g., only highly important laws because the focus of this study is transposition of EU legislation in general.

Figure 6.1 presents the temporal dynamics of the transposition of the selected sample of directives in the candidate countries (the 'Luxembourg' group started negotiations for membership in 1997 and with the 'Helsinki' group countries negotiations were opened in 1999). It is clear that the overwhelming majority of the legislation was transposed in 2004, although the peak for Lithuania, Estonia, and the Czech Republic is in 2003, while Latvia has a more even spread. The Polish efforts are the most highly concentrated (in 2004). The drop in 2005 does not necessarily imply a decline in transposition rates because there are very few observations that have deadlines for transposition after 2004. The sample does not allow us to draw any strong conclusions about the post-accession phase of compliance (but see chapters 8-10). There is no observable effect of the moment of signing the Accession Treaty in April 2003, which theoretically strips the conditionality power from the EU. Since legislative preparation takes time, most of the acts adopted in 2004 have already been in the legislative pipe-line by the time of concluding the treaty.

6.2 Dependent variable

The phenomenon of interest in the current study is transposition performance. Transposition performance can be measured in a variety of ways. First of all, a binary variable can be created detecting whether an individual transposition process has been completed on time or not. An alternative approach is to measure the duration of each transposition process, or the time between the transposition and the deadline of the directive. Aggregating the data over certain time and/or spatial units provides yet another opportunity. In this way we measure the number of completed transpositions within a temporal and/or spatial unit (or the backlog – the non-completed ones) and create a

count variable. Finally, the proportion of completed transposition from the total outstanding cases can be computed as a cross-sectional snap shot of transposition performance. Each measurement approach is related with specific statistical methods of analysis and the associated opportunities and constraints for the exploration of the data. This part of the analysis operationalized transposition performance as a binary variable taking the value of '1' if a transposition process has been completed within the deadline in a certain country, and the value of '0' if otherwise[31]. The reasons to prefer a dichotomous measure instead of a duration dependent variable are related to the problems of establishing a valid starting dates at which the directives become 'at risk' to be transposed for all cases, the level of measurement precision, and the related fact that a large percentage of the directives are transposed in a single period of observation, which creates problems for duration statistical models.

Table 6.1 Distribution of the dependent variable (timely transposition)

	Deadline May 2004		Deadline after May 2004	
	on time	delayed	on time	delayed
Czech Rep.	77	32	5	5
Estonia	101	8	7	3
Hungary	71	38	8	2
Latvia	95	14	6	4
Lithuania	88	21	5	5
Poland	70	39	7	3
Slovakia	74	35	6	4
Slovenia	60	49	5	5

For all directives with a transposition deadline before the 1st of May 2004, the effective deadline was taken to be the date of Accession (the 1st of May 2004). For the

[31] Nevertheless, a duration analysis of the data has been performed (using Cox proportional hazards), and the results are to a very large degree consistent with the results of the logistic regression analysis presented below. For details see Appendix III.

rest of the directives, the effective deadline was taken to be the normal transposition deadline as recorded in CELEX. CELEX reports data on the national implementing measures notified by each member state in regard to every directive[32]. A directive was considered to be non-transposed within the deadline if no national implementing measures were found in the database, or if the latest national implementing measure was adopted after the deadline had passed. As member states sometimes report national legislation as national implementing measures even when it only has cursory connection to the EU directive, I excluded such legislation whenever possible to detect. The procedure resulted in a total of 952 observations (119 directives in 8 member states – one directive was dropped from the analysis due to missing data). Table 6.1 presents the distribution of the dependent variable.

6.3 Independent variables

After discussing the dependent variable, I will give an overview of the operationalization of the independent variables used in this part of the study. The hypotheses presented in the theory feature both properties of the individual directives and preference-based and institutional attributes of the political and administrative systems of the member states.

The first variable tries to capture the influence of substantive preferences, as suggested by Hypothesis 1. Government positions on a general socio-economic left-right dimension were selected as the relevant preferences (see the discussion in the theory chapter). Data on socio-economic left/right positions are available from several sources. I use the expert scores made available by the 'Party Policy in Modern Democracies' project (Benoit and Laver, 2006) because the data source covered the most actors I needed to get positions on, and it was the most recent survey completed. Singly party governments got a score corresponding to the governing party position on the left/right scale. For coalition governments the positions were calculated by weighting the score for each party participating in the government by its share of votes in the Parliament relative to the remaining parties (e.g., for a two-party government with one partner holding 30% of the seats and the other 20%, the position of the first party will be weighted by a factor of 3/5

[32] The information from CELEX has been complemented by the TAIEX database which was used to track progress on legal alignment during the accession period (interview 3) and by national legal databases which often record the relation of domestic legal acts to EU legislation.

and of the second by 2/5 and the two scores will be added to form the total score for the government). Generally, the data available covered all relevant parties with two exceptions - for one of the missing parties a measure was imputed using the Chapel Hill expert survey on party positions (Gary Marks et al., 2006).

Hypothesis 2 proposed an influence of administrative capacity on transposition. Administrative capacity was operationalized using the World Bank Governance Indicators (Kaufman et al., 2005). More specifically, two indicators were used: 'government effectiveness' and 'regulatory quality'. 'Government effectiveness' measures the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies. 'Regulatory quality' measures the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. All the preference-based and country specific variables have been averaged for the three years prior to the transposition of each directive and are, thus, directive-specific. For directives not implemented within the deadline, an average score covering the entire span of the study (1999-2004/5) was computed.

Hypothesis 3 referred to the influence of policy-making capacity on the speed of transposition, and the likelihood of timely legal adaptation. Two measures of policy-making capacity are considered: the preference diversity between governing parties, and the number of parties in power. The party position data provides the basis for the computation of the preference distance measures as well. The preference distance was measured in regard to general left/right positions. The measure simply tracks the maximum possible distance between a pair of two coalition partners in government. The data on the composition of governments in the CEE countries needed for the construction of the government preferences and ideological distances data stemmed primarily from the European Journal of Political Research annual country reports (1999-2006) and Muller-Rommel (2006) and was checked and complemented by other sources. Once collected the data allows for a straightforward measure of the number of parties in government as well – another variable related to the policy-making capacity hypothesis.

Hypothesis 4 referred to the influence of the relative weight of the substantive policy vs. the time-related preferences of governments. As in the previous chapter, I rely on

positions towards the EU to provide a way of capturing the influence of the relative salience. Governing party support for EU accession and European integration more generally approximate the relative concern of governments with the timing of legal adaptation: the more supportive of the EU, the more concerned about timely transposition government are expected to be. An additional indicator for the relative weight of substantive vs. time preferences is policy salience. Policy salience was operationalized as the number of recitals (cf. Kaeding, 2006). The recitals precede the body of a directive and give the reasons for the contents of the enacting terms (i.e., the articles). A large number of recitals reflects an extensive scope of the directive, as well as a high number of important issues it addresses. The number of recitals is also positively related to the complexity of a directive. Next, another indicator of salience was produced using the distinction between regular and Commission directives. The measurement is straight-forward. Directives adopted by the Commission are delegated legislation and usually specify, adapt and update a legislative framework laid down by general directives adopted by the Council, or by the Council and the European Parliament. As such, Commission directives tend to be of less importance and scope (salience) than general directives.

Finally, some control variables which address the sectoral differences of EU legislation were included in the model. Trade-related legislation and environment directives were distinguished from the rest. The data related to the traits of the EU directives were again taken from the CELEX database. The relation of a law to EU trade was taken to be direct and significant if a directive's subject matter included 'technical barriers'. The information was coded from the CELEX subject matter descriptors field[33]. An alternative measure based on the CELEX directory classification was also constructed: legislation concerning the Internal Market, Competition and Free Movement of Goods, Services and Capital (categories 2,6,8,10,and 13) was grouped into one category, and all the rest into another. The results using this measure are largely the same as using the 'technical barriers', so results based on only one indicator (technical barriers) are reported. The coding of the remaining policy sectors was also based on the CELEX database and follows the 'classification heading' field. The environment sector (category

[33] An alphabetically structured list of over 200 keywords based on the subdivisions of the treaties and the areas of activity of the institutions providing a general overview of the content of the document.

15) is usually considered as the most costly legislation and it is therefore included in the model estimation.

6.4 Method of analysis

As the dependent variable is binary, a binomial logistic regression is employed as the method of analysis. The model estimates the probability of a successful (on-time) transposition given a combination of values of the independent variables. The probability of a success given a combination of explanatory variables is transformed into the odds of a success (how often a success happens relative to a failure) and then the log of the odds (logit) is taken so that the function has a range from - ∞ to + ∞. The model is estimated using the Design and GLM packages for fitting generalized linear models in R. An estimation using the MLlibrary package was also performed yielding practically the same results. The Huber-White method has been used to adjust the variance-covariance matrix to correct for heteroscedasticity and for correlated responses from cluster samples. A separate set of models analyzed using survival analysis are presented in Appendix III.

6.5 Results and interpretation

Statistical model estimates

Table 6.2 reports the result of the model estimation. Two models were used, with Model 2 incorporating two interaction effects in addition to the base Model 1. A positive sign of the coefficients indicates that higher values on the independent variable increase the probability of a timely transposition. Negative values show that the factors decrease the chances a directive will be transposed within the deadline.

The measures of government preferences have the expected signs and are statistically significant. Legislation is more likely to be transposed within the deadline if in the last three years governments with higher support for European integration have been in power. Similarly, governments leaning towards the right on a left/right socio-economic dimension are more likely to complete the transposition of EU legislation on time.

Table 6.2 Explaining on-time transposition: a logistic regression model

	Model 1 Estimate (st. error)	Model 2 (Interaction effects) Estimate (st. error)	Expected odds of timely transposition
(Intercept)	-10.26 (2.72) ***	-4.89 (3.77)	
Socio-economic left-right position	0.28 (0.06) ***	0.25 (0.06) ***	1.32 (1 point increase)
Regulatory quality	1.38 (0.59) **	1.46 (0.60) **	1.15 (0.1 point increase)
Number of parties in government	-0.52 (0.14) ***	-0.53 (0.14) ***	0.59 (1 party increase)
Government support for EU	0.51 (0.15) ***	0.20 (0.22)	1.66 (1 point increase)
Commission directives	-0.35 (0.18) **	-0.36 (0.17) **	0.70
Number of recitals	-0.02 (0.01)	-0.55 (0.26) **	0.81 (10 more recitals)
Environment	-0.57 (0.27) **	-0.53 (0.25) **	0.59
Trade relatedness (Internal Market)	0.45 (0.22) **	-1.30 (1.05)	1.63
Interaction between left/right position and Internal Market	/	0.17 (0.10) *	
Interaction pol. complexity and gov. EU support	/	0.03 (0.02) **	
	Log-Likelihood: -525 Chi-square: 81.62 Prob x>chisq: 0	Log-Likelihood: -520 Chi-square: 90.09 Prob x>chisq: 0	

Dependent variable: probability of on-time transposition. N=952. * significant at 10%, ** significant at 5%, *** significant at 1%, two-sided tests.

Surprisingly, Commission directives are less likely to be transposed on time than regular directives. Commission directives are usually considered to be of lesser importance, specifying or updating a regulatory framework already laid down elsewhere. The negative relationship can perhaps be explained by the candidate countries focusing on the more substantively important legislation and leaving the Commission directives to be dealt with later. Salience, as measured by the number of recitals, shows a slight negative effect but the coefficient is not significant indicating that there is no relationship.

Legislation is more likely to be transposed in countries with higher regulatory quality (measured through an average over the three years preceding the event). The measures for administrative effectiveness and regulatory quality are highly correlated and cannot be used in the same model. The reported results are based on the 'regulatory quality' measure (the results using 'administrative effectiveness' are essentially the same). The effect of this variable is positive and significant.

The impact of policy-making capacity depends on the precise conceptualization used. When using the preference distance measures (over the left/right and the EU dimensions) the effects are not significantly different from zero (not reported). On the other hand, a model including the number of parties in government returns a strong negative and statistically significant relationship between the number of parties in government and the probability that EU legislation will be transposed on time. The effect is, however, not robust in different specifications of the model.

Turning to the sectoral differences in transposition performance, Internal Market legislation is significantly more likely to be transposed within the deadlines. Measured by a binary variable marking the policy sector, and by the presence of 'technical barriers' in the directive's subject (the measure reported in the model) the effect is positive and substantial. On the other hand, in line with the hypothesis, environment legislation, being the most costly, is less likely to have been transposed on time.

Interaction effects

In Model 2 some of the more subtle implications of the theoretical arguments are explored. The multi-level structure of the data allows different interaction effects to be estimated. In this chapter I test for two interaction effects that are especially relevant for the major theoretical claims that I advance. Since socio-economic left/right positions are

expected to have an effect because governments positioned towards the right end of the spectrum should be more supportive of trade liberalization and the retreat of the state from the economy (relative to left parties), the effect of the variable should be greater for the subset of internal market legislation.

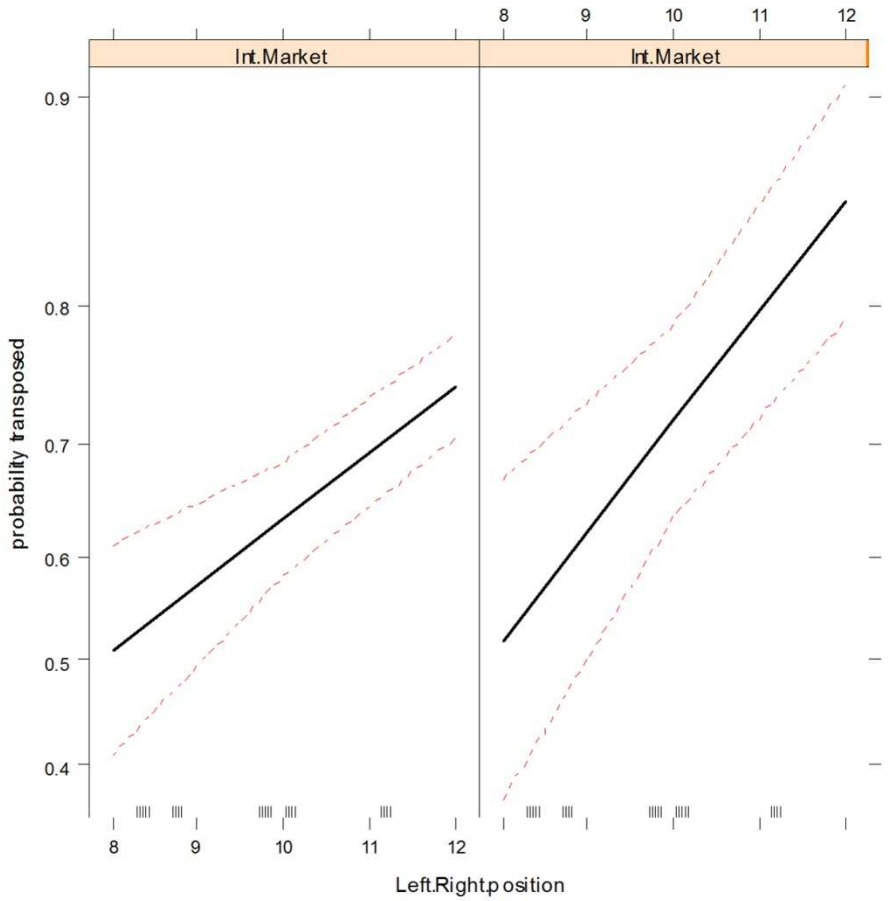

Figure 6.2 Effect of Left/Right positions for non-internal market and internal market legislation

The positive sign and statistical significance of the interaction term between the left/right positions and Internal Market legislation in Model 2 cannot be taken directly as

evidence that the theoretical conjecture is supported (Brambor et al., 2006; Fox and Andersen, 2006; Norton et al., 2004). We can however plot how the effect (Fox and Andersen, 2006) of left/right positions changes for internal market-related and the remaining legislation (Figure 6.2). We can see that the effect of government positions is stronger for the set of internal market legislation (the right portion of the plot). The effect is plotted together with 95% confidence bands.

Figure 6.3 shows how the Internal Market variable affects the probability of timely compliance across the observed range of socio-economic left/right ideological positions. The effect of trade-relatedness grows in size with governments being located towards the right, and is significantly greater than 0 for left-right values greater than 10. The figure and the interpretation is based on Brambor et al. (2006).

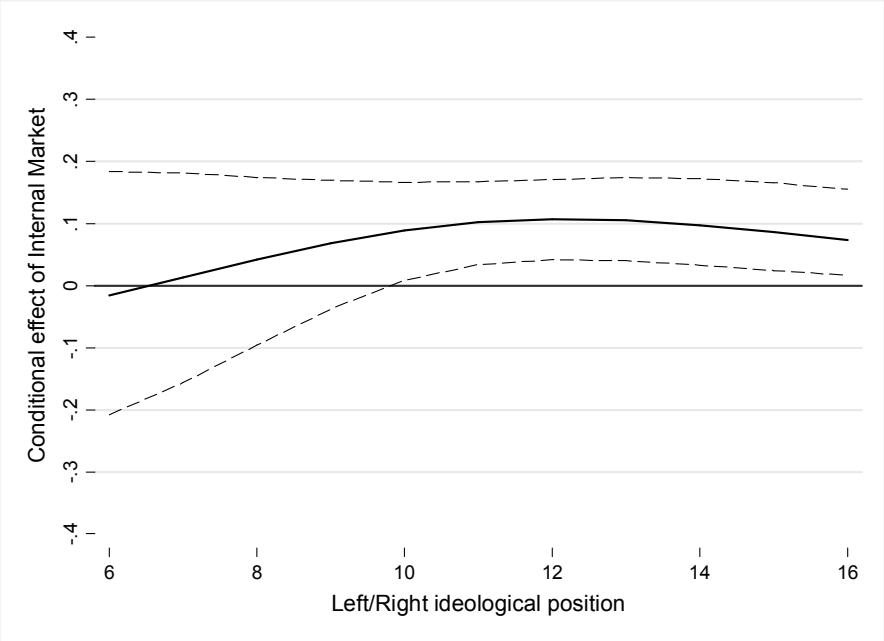

Figure 6.3 Marginal effect of internal market legislation

The next interaction effect I consider is based on the following reasoning: government support for EU accession should have strongest impact on legislation that is salient and politically complex. The transposition of non-controversial directives dealing with trivial matters should be less affected by the pro-European attitudes of governments than politically complex legislation with wide implications. Exactly in these cases the willingness of governments to forgo its own policy preferences due to its overall support for EU accession will result in decreasing the negative effect of the political complexity on the chance of a timely transposition. Again, I am going to interpret the results of the interaction effects using plots.

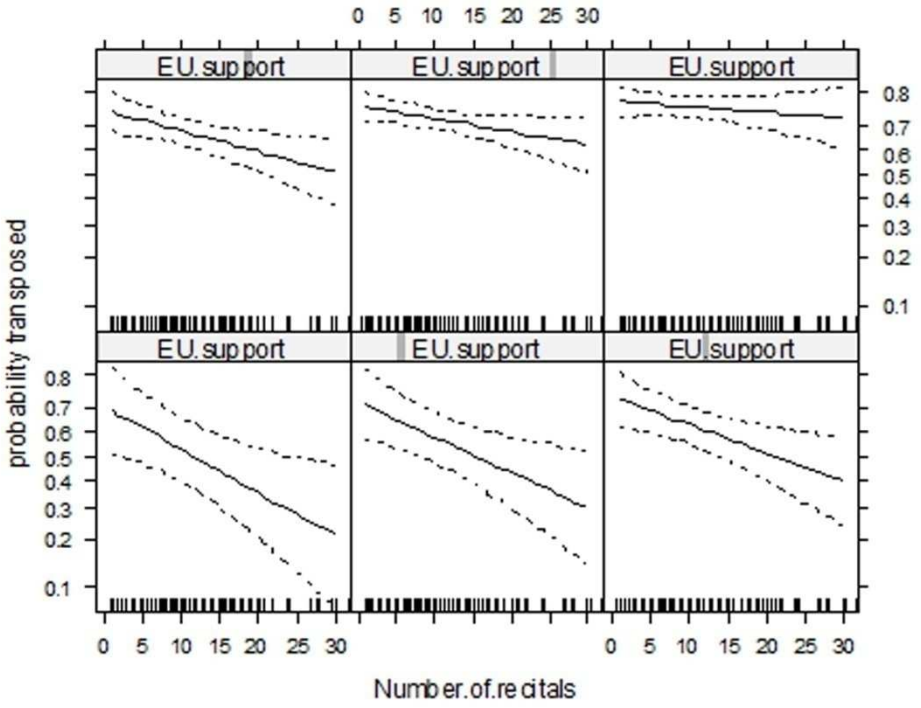

Figure 6.4 Effect of recitals for different values of EU support

Figure 6.4 illustrates the effect of recitals on the probability of timely compliance for different values of government EU support. The sloping lines in each part of the figure

show the effect of varying the number of recitals, while the different parts of the figure are based on different values of EU support. Hence, for small values of EU support the effect of recitals is negative, meaning the more salient legislation has lower chances to be implemented on time. With rising values of EU support the relationship disappears (we observe a straight line), while for values of EU support towards the observed maximum the relationship is reversed and more recitals imply higher probability of timely transposition.

Similarly, we can plot how varying the number of recitals changes the effect of EU support. Figure 6.5 illustrates the effect of different levels of governmental EU support conditional on the value of recitals. We can notice that the slope of the line increases for higher values of recitals, meaning the effect of EU support is stronger for more salient legislation. As in all figures in this section of the book, the dotted lines represent 95% confidence intervals.

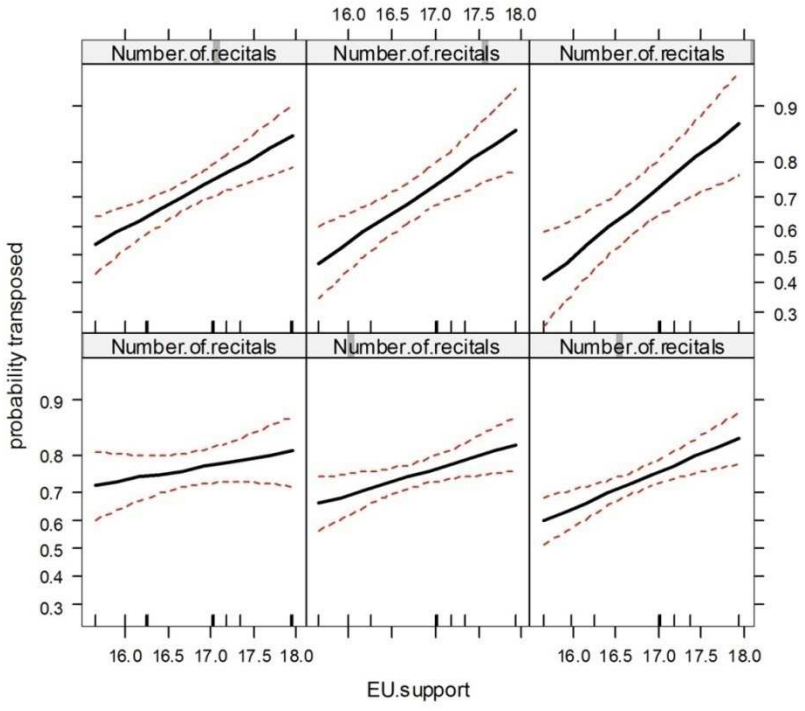

Figure 6.5 Effect of EU support for different number of recitals

Finally, Figure 6.6 shows how one unit increase in EU support from its mean affects the probability of timely compliance across the observed range of political complexity (the number of recitals). We can again see that EU support increases significantly the probability of transposition within the deadline for directives with more than 10 recitals[34].

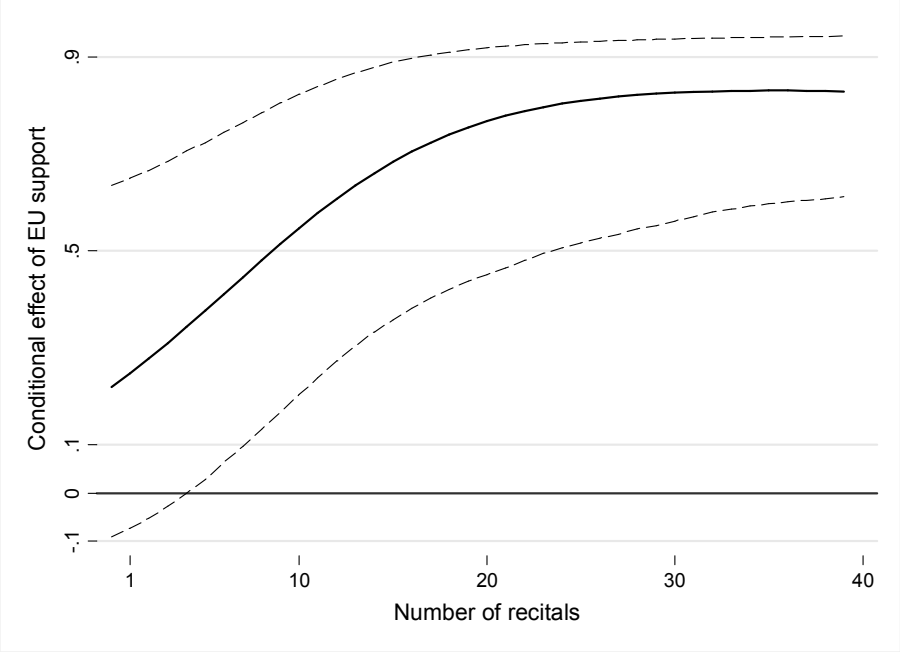

Figure 6.6 Marginal effect of EU support

Size of the effects and predicted probabilities

In this part I return to the interpretation of the main effects of Model 1. The direction and significance of most of the effects are in line with the hypotheses presented in the theory section. However, it is instructive to also look at the size of the effects and examine how much of a difference they make on the probability of timely transposition. First of all,

[34] Figures 6.3 and 6.6 are based on probit instead of logit specifications of the statistical model due to statistical code availability.

the range of the predicted probabilities on the basis of Model 1 ranges from .34 to .94, highlighting that even in the case of a combination of explanatory variables most unfavorable for timely transposition, a directive still has a substantial chance of being transposed within the deadline. A regular directive with an average value of recitals during a two-party government having mean scores on the EU and left/right dimension has a 86% probability to be transposed on time if it is related to trade. The probability drops to 68% if instead the directive is part of the environment field and remains 79% for the rest.

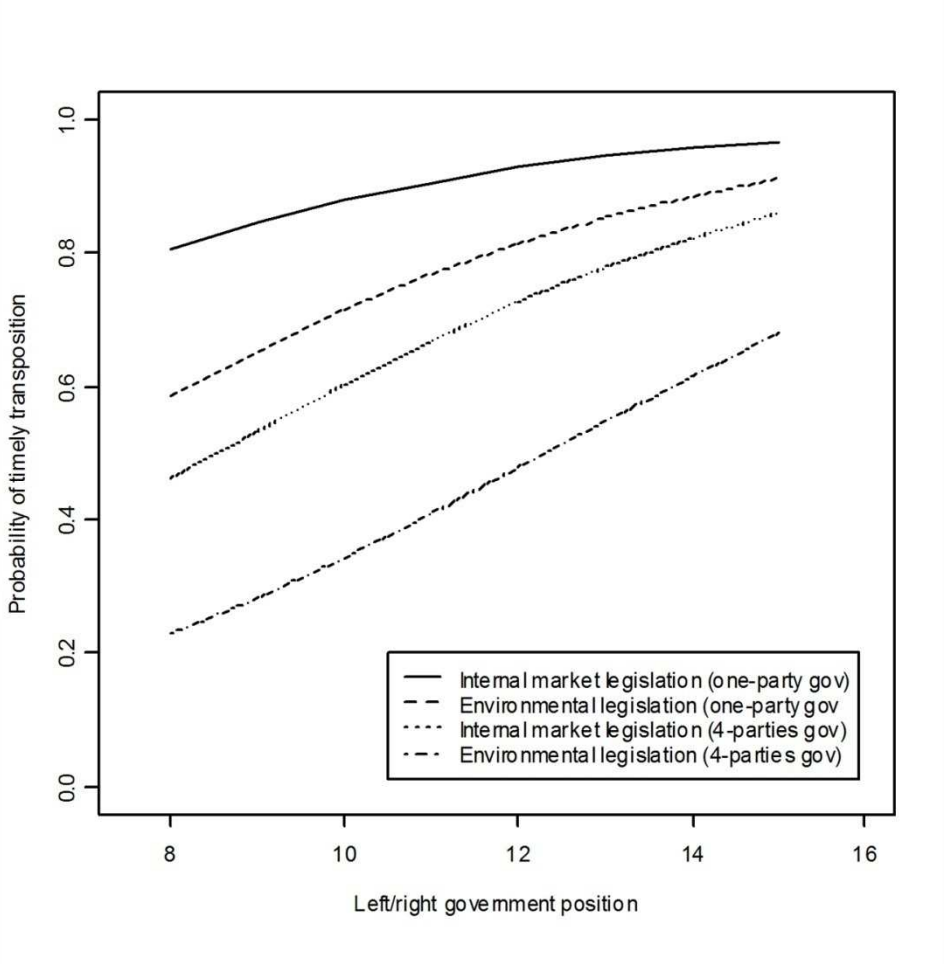

Figure 6.7 Socio-economic left/right government positions and the probability of timely transposition

Source: *Figure 3 in Toshkov (2008)*

Figure 6.7 plots the predicted probabilities for internal market and environment directives being transposed on time for a different combination of parties in government and values on the socio-economic left-right dimensions ranging from the observed minimum to the observed maximum. The figure illustrates the joint effects of government type and preferences, and policy sectors. For example, internal market legislation is in general more likely to be transposed on time than environmental legislation. However, under a four-party government internal market laws are *less* likely to be incorporated within the deadlines in comparison with environmental laws in a country governed by a one-party cabinet. Further, directives have better chances to be transposed on time by a coalition government which strongly supports EU integration than by a single party cabinet that only moderately espouses the EU. The plot provides a clear representation of the changing probabilities of timely transposition but should be handled with care, as some combinations of the variables might not have been observed in the actual data.

Another useful way to assess the magnitude of the effect of the explanatory variables is to calculate the odds ratios. The odds ratio can be interpreted as the change in the expected odds of a success (on-time transposition) as the value of one variable changes while holding the other factors constant[35]. The rightmost column of Table 6.3 presents the change in the expected odds of timely transposition for the variables of main interests (the calculation is based on Model 1). Values between 0 and 1 indicate a decrease in the expected odds and values above 1 show higher odds of a transposition within the deadline. For example, the odds of implementing legislation being transposed on time are 0.70 smaller than of regular directives. Ten more recitals provide odds that are 0.81 times smaller for successful transposition. The odds of directives related to technical barriers are 1.63 times larger while environmental directives have 0.59 smaller odds of being transposed on time. A change of one point on the EU accession support scale (the original scale ranges from 1 to 20) brings 1.66 greater odds while a 1 point change to the right on the socio-economic dimensions brings 1.32. Clearly, the relative effect of the European dimension is bigger. The impact of regulatory quality is small with 0.1 change in the value of this indicator (the observed range in the data is 0.6) bringing 1.15 greater

[35] For a change of δ in the values of the variable x, the odds are expected to change by a factor of $\exp(\beta_x \times \delta)$, holding all other variables constant. β_x is the estimated coefficient for the effect of x from the logistic regression model (Scott Long, 1997: 80).

odds of a success. Overall, the size of the effects is not exceptionally large but still a change in some of the explanatory variables brings substantial increases/decreases in the probability of timely transposition. As expected, some of these variables are directive-related, some of them capture policy-specific influence, and yet others depict features of the different candidate countries.

6.6 Conclusion

Looking back at the hypotheses presented in the theory chapter, we have evidence supporting the impact of preferences, administrative and policy-making capacities on timely transposition. The impact of substantive and EU-related preferences is small, but significant. The effect of the number of parties in government and their ideological distance is not straightforward. The hypothesized effect of policy-making capacity is, however, rather complex according to the theory as well. There is some tentative evidence, nonetheless, that governments with lower policy-making capacity, measured by the number of coalition partners, have been less likely to transpose EU legislation on time.

Both chapters analyzing transposition with quantitative methods have provided support for the theory developed in this book and have uncovered valuable insights about compliance in the CEE countries during the period of enlargement. Nevertheless, the statistical analysis can be fruitfully complemented by a comparative qualitative case study analysis. Case studies can provide a glimpse in more detail of the transposition of several well-defined cases, they can also shed some light of the practical implementation phase, and they can specify the causal mechanisms though which the factors I analyze exercise their impact. In the following 5 chapters I will discuss the design and the findings from the comparative case studies.