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

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CHAPTER 11

SYNTHESIS OF EMPIRICAL FINDINGS

In the previous three chapters I presented briefly all of the 16 case studies of compliance with EU law in eight CEE member states in three policy sectors. In this chapter I will analyze the emergent patterns and compare systematically the cases in search of necessary and sufficient conditions for success/failure. Before comparing all the cases, it is useful to look into the more general cross-sector differences.

11.1 Comparing aggregate performance across sectors

Transposition and implementation in the field of information society (electronic communications regulation) appears most successful vis-à-vis the fields of nature protection and working conditions. The very strong and structured enforcement efforts by the Commission in this field certainly explain to a large extent this observation. Through the annual implementation reports, close co-operation with the national regulatory authorities, and reliance on interested parties to signal failures in compliance, the EU has been able to put well-targeted and effective pressure on the member states. Given the enormous problems created by the nature protection legislation to the old member states, the implementation of the Birds and Habitats directives in the CEE countries can be assessed as satisfactory, although many problems exist. The situation is much more difficult to assess in the field of working conditions, since the information from the different information sources about the state of compliance is often conflicting, and the assessments of compliance change over time.

11.2 Explaining within-country variation

This book started with the assumption that scholars of compliance should pay more attention to the varying compliance of member states in different policy (sub)sectors. The

research design deliberately included observations from both ends of the range of a member state's performance. What does the empirical research tell us about within-country variation?

The example of nature protection in the Czech Republic shows that when a dedicated ministry with adequate capacity and support from NGOs starts early with the preparation for legislative alignment, successful transposition and implementation is possible. The involvement of interest groups is not, however, a necessary condition since consultation with business association was present in the information society case as well, but it did not help much to avoid the delay. Hence, the main factor appears to be the support of the sectoral minister and the ability of the ministry (of environment) to use the pressure from society and the EU to push through the reforms. This strong sectoral support for the reforms was instrumental in overcoming the relatively weak co-ordination capacity in the Czech Republic, and the loss of political attention for legislative approximation due to government changes.

In Estonia the combination of high ambitions and low capacity led to the delay in the information society sector. All other factors appear neither necessary nor sufficient to halt transposition. Weak capacity separately also is not sufficient on its own to cause delays: only when coupled with a strong substantive interest and/or preference misfit in the policy reform it produces delay. On the other hand, ambitious plans in the nature protection field did not lead to delay in the absence of problems with administrative capacity, since a lot of support from NGOs, the EU, and international projects was available.

In Hungary, the constellation of political and administrative factors was in general favorable for timely compliance. The untypical problems in the nature protection field might be explained by inter-ministerial conflicts and the inability of the ministry of environment to secure a greater commitment to compliance with the EU legislation. In short, at the country level the shortcoming in compliance reflects a preference to restrict the impact of the nature protection directives.

Lithuania is the country creating most problems for analysis since it never shows significant problems with transposition. The strong co-ordination exercised by the government office in regard to all EU-related issues appears as a very important factor from both case studies, together with very early start of the alignment process. Also,

Lithuania often chooses to transpose minimally using the lowest possible transposition instrument (ordinances and regulations) and staying close to the text of the directives.

Latvia is similar as it has done a lot of the transposition work early in the enlargement process. In the field of nature protection, the early start together with wide-ranging involvement of stakeholders sealed success. In the social policy, the work in the beginning of the 2000s was not enough to convince the Commission that compliance is satisfactory.

Poland shows very good results in some sectors and limited compliance in others. In addition, the compliance patterns seem to change significantly over time. In the labour law field strong government support for the policy was enough to override the obstacles of government turmoil and weak policy-making capacity (due to changing cabinets and a two-chamber legislature). The impact of government preferences can also lead to a delay and non-implementation, however, as the case of information society policy demonstrated.

Slovakia is also switching between good and mediocre results across sectors. Interestingly, a very early start and a very open policy-making process did not lead to smooth implementation of the nature protection measures. Inter-ministerial conflict and the priority of the agricultural/economic sectors halted the efforts to incorporate fully the European directives. On the other hand, in the social policy field, the lack of strong and positive government preferences for the reforms did not prevent rather successful incorporation of the rules.

In Slovenia, strong co-ordination by the center, political support for EU integration, and a capable administration secured a high degree of compliance in most of the policy areas. The problems in the field of working conditions and health and safety are a result not of neglect but of efforts to interpret and fit the European requirement to the national legal order. The timely compliance in the information society field was secured by an early start dedicating enough administrative capacity to the process and using fast-track procedures in Parliament.

11.3 The effect of preferences, administrative and policy-making capacities

In this section I will review the findings from the different parts of the research about the effect of the variables highlighted by the theoretical chapter. Overall, the theoretical model seems capable of explaining significant parts of the variation in compliance patterns in CEE at the time of accession. Furthermore, the model is helpful in capturing the essence of conflicts over (the timing) of compliance, as uncovered by the case studies. Table 11.1 present an overview of the findings with respect to transposition timeliness from the various empirical chapters.

Table 11.1 Findings about the determinants of transposition timeliness

	1. Country-level statistical tests	2. Large-N analysis	3. Comparative case study
Policy distance	-	Yes	Yes
Administrative capacity	Yes	Yes	Mixed
Policy-making capacity	No	Mixed	Mixed
Salience of the substantive policy	Yes	Yes	Yes

The theory proposed that substantive government preferences are important for timely compliance. Both the quantitative and the qualitative analyses support this hypothesis. More rightist (in terms of general socio-economic left-right continuum) governments have transposed more directives on time (Chapter 6). The influence of political preferences is also visible in the field of working conditions where governments more positive towards the EU social policy in the area have complied better, and faster with the demands of European legislation (Chapter 9).

As predicted by the theory, substantive preferences are not the only ones that matter. Often, substantive concerns have been overridden by higher salience of the timing of compliance as such. In turn, the overall importance for timely implementation seems to be captured well by reference to societal and party EU support. Governments that have supported the process of European integration more have performed better (Chapter 6). Somewhat surprisingly, even the general social attitudes to the EU are related to the overall ranking of the CEE countries in terms of transposition deficit (Chapter 5). The case studies do not provide much support for this hypothesis but the influence would be hard to spot with the use of case studies in the first place. Nevertheless, we can note that the performance of Poland in the fields of information society and nature protection has been negatively affected by the coming into power of a more Eurosceptic government in 2005.

The enforcement efforts of the EU, both during the enlargement in the form of general (Chapter 2) and trade-specific conditionality (Chapter 6) and after the accession in the form of infringement procedures (Chapter 7) are very influential for the timing and extent of compliance. The overall success of the adoption of the *acquis* in the region, and the detailed information provided by the case studies (especially Chapters 8 and 9) support strongly this conclusion.

The last factor related to substantive and time preferences and their relative importance- the policy salience, proves to be important but in rather surprising ways. First of all, the quantitative analysis shows that the less important Commission directives have had actually worse chances of being incorporated on time during the enlargement (Chapter 6). On the other hand, the case studies show that the perceived national importance of certain sectors might in fact slow down the process as it affects the ambition of the governments to adapt and interpret the European legislation in the area (Chapter 8). Coupled with low capacity, high ambitions can lead to delays.

The impact of administrative capacity is demonstrated in the quantitative studies (Chapters 5 and 6), and highlighted as a reason for delay in some of the case studies. The influence of general and EU-specific bureaucratic capacity is not, however, absolute. First of all, improvements in capacity are not necessarily translated into improvements of speed of compliance. Second, the impact of administrative capacity might be more important for the scope of interpretation of EU directives than on the speed of transposition.

The findings about the effect of policy-making capacity are mixed. With the indicators that have been used to operationalize policy-making capacity, its impact has been hard to detect. Bi-cameralism and presidentialism are institutional features that do not vary much within the geographical region analyzed in this book. The existing variation is not related to transposition outcomes in any straight-forward way. Nevertheless, as shown by the information society examples, having lengthier procedures in the legislature (more readings, two chambers, lack of special procedures) adds up to the time and to the delay in transposition. Still, the case studies also showed that while the existence of a second chamber contributes to the delay in compliance sometimes, the contribution is usually minor (1-2 months) and cannot be highlighted as the crucial part in the explanation of the compliance failure. The chance remains that there are cases where conflicts in the second legislative chamber or the actions of the Presidents are the main reasons for delays and non-compliance. The effect of these constraints might work through anticipation: governments might spend longer negotiating acts before they send them to Parliament.

The type of government and the number and ideological range of government parties also cannot be declared univocally significant determinants to transposition performance. While the quantitative analysis found some evidence for the negative impact of the number of parties in governments on timely transposition (Chapter 6), the qualitative evidence provided does not highlight the impact of these variables too often. Minority governments have been able to adopt some reforms, but not others. In times of executive interregnum the transposition of many acts has been delayed, but some have managed to go through the policy-making system without much postponement.

Inter-ministerial conflicts do not need to be exacerbated by membership of the ministers to different parties in order to halt transposition. On the other hand, strong central co-ordination can steer through reforms even in diverse coalition governments.

The nature and extent of involvement of interest groups, as an explanation of compliance remains just an intriguing hypothesis, since no comparative data is available for CEE, and since the case studies showed significant cross-sector differences but little cross-national differences in the involvement of interest groups in the process of transposition and implementation of EU law.

Altogether, the empirical research finds ample evidence for the joint impact of preferences, administrative and policy-making capacities on compliance. The effects are, however, not deterministic. No single causal factor or a simple combination of variables can account fully for the patterns of compliance in CEE at the time of enlargement.