



Universiteit  
Leiden  
The Netherlands

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

Toshkov, D.D.

### **Citation**

Toshkov, D. D. (2009, March 25). *Between politics and administration : compliance with EU Law in Central and Eastern Europe. Between politics and administration: Compliance with EU law in Central and Eastern Europe*. Retrieved from <https://hdl.handle.net/1887/13701>

Version: Not Applicable (or Unknown)

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/13701>

**Note:** To cite this publication please use the final published version (if applicable).

## CHAPTER 12

### CONCLUSION

The previous chapter discussed in detail the empirical findings of the research. In the conclusion, I will look into the broader empirical, theoretical, methodological and normative implications of the study.

#### 12.1 Empirical contributions

Compliance with EU law in CEE is embedded in the domestic political context. The influence of the political environment is often indirect, weak, and hard to detect. Still, the pace, rate, and timing of implementation is related to the characteristics and institutions of the political system. How surprising is this conclusion? For an outsider, it might seem even trivial. The fact that the process of policy transfer is channeled and conditioned by the political context is not puzzling at all. On the other hand, given the prior expectations and prejudices about the process of approximation of EU legislation in the post-communist countries, the conclusion comes as a surprise. Despite the short time and little administrative resources that the candidate countries had, political preferences and institutions have to some extent exerted impact on the compliance outcomes. Despite the overwhelming pressure of conditionality government preferences *have* been translated into the varying outcomes of transposition.

Both the quantitative and the qualitative studies found evidence for effect of substantive and EU-related preferences. The positive effect of pro-European government attitudes is quite interesting in light of the lack of relationship (or rather inverse relationship) between support for European integration and transposition performance in the 'old' member states (Mbaye, 2001). The effect could be confined for the enlargement period: pro-European stance is directly related to how susceptible governments are to the lure of accession and the pressure of conditionality. The less supportive of integration CEE governments have been, the less efforts and resources they seem to have put into meeting the transposition requirements. It is rather likely that the overall success in terms

of transposition is a result of the generally very high support for integration expressed by the governing parties in CEE during enlargement. Even the least EU-supportive governments ruling in Hungary (until 2002) and Poland (until 2001) have shown enough commitment to European integration in order to proceed with the incorporation of EU law, although at a slower pace than their more EU-supportive counterparts.

In line with the existing literature and theoretical expectations, this thesis argued for the importance of administrative capacity (Hille and Knill, 2006) and constraints for timely transposition and implementation of EU law. The way the incorporation of EU law is organized at the domestic level, and the resources dedicated to the issue have determined to a large extent the success or failure of adopting the national implementing measures. Politics has been important for a specific set of the legislation, while the quality and effectiveness of the public administration influences every law. Nevertheless, it is impossible on the basis of the research to identify one best way to organize and manage transposition and implementation in order to guarantee timely and proper approximation.

The theoretical and empirical discussions in this book argued that the influence of administrative capacity might be more subtle than previously assumed. Low administrative capacity need not lead to transposition and implementation delays: it might only lead to less ambition to interpret and change the European directive in order to comply on time. High-capacity administrations allow their governments the opportunity to analyze, modify and adapt the EU directives before transposing it. At the end of the day, this might take even longer but the delay will be more than compensated by the fact that the directives would be moved closer to the preferences and positions of the political actors.

A direct form of conditionality related to opening trade (working separately from the grand conditionality of access to full accession) might be responsible for the observed swifter transposition of trade-related measures. This finding reminds us of the force of trade integration working behind European integration: a force that tends to be forgotten in the literature on Europeanization East with its predominant focus on the political drives of enlargement. Interpretation of the effect of trade, however, should be treated with care, as it does not capture cross-country or temporal variation, but differentiates essentially between policy sectors and types of legislation. It concerns negative integration in the

sense of removing existing barriers rather than applying a new regulatory regime. In this regard it is interesting to note the growing acceptance of the EU rules and standards even beyond its borders and the candidate countries<sup>49</sup>.

The scale of the process of legal approximation during enlargement has been so immense that it has influenced politics and policy making in CEE in its own turn. The incorporation of EU law has brought many new policy ideas and solutions. Moreover, it has put new issues on the agenda, it has strengthened certain domestic political actors and weakened others, and it has changed the way policies are made. EU law has been the major drive for re-regulation reforms in the post-communist countries providing not only individual requirements and institutions but comprehensive regulatory approaches and organizational templates. Due to the confluence of legal approximation and designing regulatory institutions for the new markets in CEE, the EU has been able to leave a deep imprint on the nature and forms of regulation in the post-communist countries (see also Maniokas et al., 2005).

The case study of information society policy has shown that the EU has been instrumental not only in de-regulating telecommunications, but also in setting up policies to re-regulate the new markets. The impact of the EU in the case of CEE is even stronger than for the 'old' EU-15. In the East, there have been very little entrenched traditions of regulation for the EU rules to replace and complement. The need to come up with regulatory solutions to the problems created by the new markets explains why the governments in CEE have been so eager to adopt the EU legislation without much hesitation and delay. But, as again the case study of information society shows, political developments in the countries might lead to a desire to roll back certain parts of the reform, and in the absence of enforcement by the EU full compliance is unlikely to be achieved just by the appeal of EU regulations.

The process of transposition of EU law has also put firmly on the agenda in CEE issues and problems that have been sidelined during the post-communist reforms focused on liberalization. The EU, through its nature protection policy, has been essential for the emergence of nature protection issues on the highest political agenda in CEE. Moreover, it has provided crucial support for the relatively weak ministries of environment and

---

<sup>49</sup> See the speech by the EU Trade Commissioner Peter Mandelson 'Openness, trade and the European Union', Chambre de Commerce et de l'Industrie de Paris, Paris, 30 June 2007, as well as the article in the Economist 'Brussels rules OK', Sep 20<sup>th</sup>, 2007

NGOs in overcoming the resistance of economic and agricultural interests for comprehensive nature protection legislation. It is too early to assess whether the pressure from the EU will prove sufficient for comprehensive *implementation* of the laws<sup>50</sup> but at the very least it has focused attention to the need for care for the nature, and has strengthened the resource-base and legitimacy of pro-environment actors.

The impact of legal approximation on the policy-making process in CEE is more ambiguous. The need to adopt quickly in a restricted time-frame an enormous body of legislation has led to prioritizing making laws at the expense of making policies. The pressure to incorporate as many laws as possible in the course of a few years has re-enforced already existing tendencies in the CEE public administrations to focus on piecemeal individual legal changes rather than on strategic and integrated policy reforms (OECD, 1997). This conclusion is not absolute, and in some cases like information society in Lithuania and Estonia, or working conditions in Slovenia, the European directives have been placed in broader policy reform agendas. On the overall, the approximation to EU law has focused attention to formalistic changes of legal acts, and away from substantive changes of policies.

Transposition has also had a dubious impact on the relations between the government and interest groups and the inclusions of non-governmental actors in the policy-making process. In the case of nature protection, clearly the impact is positive and the process of legislative alignment has opened policy making to numerous NGOs, academic institutions, etc. to participate in the preparation of national protection plans and laws. In the case of information society, interested parties have not been too active in trying to influence the administration and the parliament. This conclusion is surprising given the clear and important consequences of the telecommunications package for a large number of business actors. It is dubious whether the lack (or rather, the small amount) of input is due to the lack of opportunities to participate in the policy making, or to a failure to recognize and organize for participation. But, as the case of Slovenia shows, despite the tight schedules some interest groups have managed to get their voices heard. Interestingly, in that case the input was channeled through the parliament rather than through the ministry. So, while in general the necessity for speedy reforms has cut the

---

<sup>50</sup> But the zeal shown by the Commission to prevent Poland from ignoring the legislation in the completion of several infrastructural projects shows that the EU is willing to guard the enforcement of the directives even in the face of strong national reluctance to implement.

amount of time available for consultation, in practice interested parties have often had an opportunity to influence the approximation process even if in many cases the opportunities have been missed.

The empirical research uncovers a very high effectiveness of the EU enforcement mechanism in the new member states. The start of an infringement procedure can still make headlines in the new members. As one interviewee put it - 'Nobody wants to be the first [ministry] sanctioned by the court' (interview 13). The political actors also seem to care more, and respond quicker to infringement procedures. The handling of infringement procedures has been organized quite well in some countries. For example, in Slovenia a special unit of the government office has been set up to provide legal and technical assistance to the line ministries. The existence of special administrative units further helps explain the effectiveness of the enforcement institutions. It is interesting to speculate whether this effect will wear off in the future, once the new members get accustomed to the 'informal' rules in the EU and to the threat of sanctions.

The thesis also shows that the concerns about the practical implementation of EU directives in CEE are real but exaggerated (Falkner and Treib, 2008; cf. Jacoby, 2004). While the phase of practical implementation suffers from numerous problems and shortcomings, no indications of complete neglect or inability to implement and enforce the rules are visible in none of the three policy sectors studied. Both the number of infringement procedures opened and the detailed information of the case studies show that the quality of implementation trails transposition, but the problems are not of a different type and on a different scale than the problems in the member states from Western Europe.

An interesting development seen in the CEE countries is a 'second wave' of re-transposition of legislation already adopted once during the enlargement period. Now that they have the time to explore the implications of the legislation and to adapt it to the domestic context, countries open up again issues they have hastily dealt with in the years of enlargement. The impulse to amend the legislation maybe stems from the problems encountered in the application and implementation of the legislation, or from new governments with different preferences being in power. Whatever the reason, the 'second' round of transposition is a somewhat surprising development (but one consistent with our theory presented in the book).

## 12.2 Theoretical and methodological contributions

General societal, and party support for the European Union matter for the timeliness for compliance during enlargement (cf. Treib, 2003). This result has important theoretical implications for research on implementation and transposition. Apart from, and in addition to, substantive policy preferences, the degree of affinity to the EU determines to some extent the efforts governments put into the process of legislative alignment during accession and shortly after. It is crucial to specify the scope conditions under which this theoretical proposition is expected to work in view of the lack of relationship between EU support and compliance in the member states from Western and Southern Europe. It is quite likely that the institutional context of enlargement accentuates the effect of EU preferences while once the countries become full members and get ‘socialized’ into the EU enforcement system the effect tends to disappear. The general ‘politization’ of transposition is very different in times of enlargement because of the novelty of the requirement, the scale of the efforts needed for timely compliance, and the more direct link between transposition and more salient issues like accession to the EU.

The impact of preferences, however, can not be neatly disentangled from the constraints posed by administrative and policy-making capacities. One of the major contributions of this book is to present a model integrating the expected effects of all these variables into a single explanatory framework. It proved more fruitful, indeed, to follow this meso-level theory rather than resort to the general new institutionalisms (like rational choice, sociological, historical institutionalism). Instead of pitting against each other, or attempting to reconcile at an epistemological level these three different research programs, I followed a more pragmatic approach. Zooming-in to the analysis of impact and interactions of specific institutions and actors provides clearer hypotheses, but it also has the advantage of remaining open to a wide variety of processes that work through their effects on preferences and capacities<sup>51</sup>.

The theoretical model I presented highlighted that the impact of changing policy-making capacities on the speed of transposition is not straightforward. The literature so far has assumed that increasing policy-making capacity necessarily will lead to faster

---

<sup>51</sup> Since the theoretical model has implications for the impact of interest groups and state-society relations, the book has exposed the lack of sufficient work on interest groups in CEE that allows for meaningful comparisons of the level of involvement of interest groups and other non-state actors in the different states in CEE, and across different policy areas. For recent efforts to address this gap see (Fink-Hafner, 1998)

transposition (Börzel et al., 2007). Once we embed the impact of policy-making constraints within the model, however, it is clear that sometimes increasing capacity for policy making can actually increase the time used for transposition, as more time is spent for fine-tuning the provisions of the directive to the national context. This empirical implication of the model is important and supported to a large extent by the data as well.

An area that seems promising for further theorizing is the relation of the legal to the practical phases of implementation. The only hypothesis in this regard that this book provided, and explored, is that more time used for policy making around the process transposition should be beneficial for the swiftness of implementation. The empirical evidence is, however, mixed and more efforts are needed to clarify what our theoretical expectations should be about the link between the speed and quality of legal and practical alignment to the policies of the EU.

The shadow of EU enforcement is intrinsically intertwined in the costs and benefits governments face when deciding when and how to comply (Schimmelfennig and Sedelmeier, 2005). The ability and commitment of the Commission to detect and pursue infringements are of important theoretical value for a comprehensive explanation of implementation. So far, however, studies have either focused on the domestic reasons for late or timely application of EU law with only a minor reference to enforcement (Steunenberg and Rhinard, 2006), or have focused exclusively on the enforcement with only a minor reference to the national politics and administration of law application (Jonsson and Tallberg, 1998). This book has tried to bring the two strands of theoretical reasoning closer by paying attention to the politics of law adaptation, and to the impact of the enforcement efforts of the Commission. Future research should link more explicitly these two phases in a single theoretical model, and address the strategic nature of the Commission's decisions when and which suspected infringements to pursue. There is a lack in the literature on compliance of a formal model of enforcement providing more insights about the incentive structures and strategic interactions between the enforcement authorities in the EU and the member states.

Another theoretical contribution of the current thesis, although one pursued less systematically in the empirical research, is the move away from the obsession with speed and timeliness that much of the existing literature shares. While the speed and timing of national transposition acts are important, especially from a policy-makers' point of view,

they are not the only aspects of the compliance process that deserve the attention of the social-scientific community. Timeliness is only a single parameter of implementation. Moreover, as the theoretical model did show, the same speed of transposition can be associated with quite different amounts of change in the content of the original directive. A focus on outcomes combining the timing and content of national implementing measures makes more sense from a theoretical point of view. There are also methodological challenges for the reliable and valid measurement of content changes, but automated content analysis software might provide opportunities to address the problem.

The book clearly lends no support, however, for over-generalizations of the patterns of transposition in CEE leading us to separate in new member states in a separate 'world of compliance' (Falkner et al., 2005). We have no theoretical, nor empirical reasons to detach the explanation of compliance in CEE (once the mechanism of accession conditionality is gone) from the explanation of compliance in the rest of the EU. While there are differences in the relative importance of certain factors in the old and the new member states, there is no evidence that compliance works fundamentally differently in the East. Such a classification will furthermore neglect important differences that exist within the group of newcomers. The records so far of Lithuania and Poland are no less diverging than those of Lithuania and Portugal.

The multi-level structure of the data is one of the major methodological challenges for the statistical analysis of transposition performance. In the current book, I have tackled the problem by including some statistical controls and interaction effects in the multivariate analysis, and by presenting the research in three blocks that address different levels of the variation (cross-country, directive level, sector/country). In future research, full-fledged multi-level statistical models can be devised and used provided that enough reliable data becomes available. Since nowadays the European Union consists of 27 states, there is more room for a statistical analysis of cross-country variation in compliance. Mixing methods addresses some of the issues but it is not a panacea for all research designs since the specific problems of each methodology are likely to remain.

### 12.3 Normative implications

The book has deliberately avoided normative questions until the very last pages. Naturally, normative considerations drive the choice of a research topic but they should be kept as far away from the analysis as possible. Resisting normative connotations has been hard to achieve in a book dealing essentially with comparisons of compliance performance. For many reasons, the focus of academic research on compliance is on the speed of the process<sup>22</sup>. Equating timeliness with success and casting speed in normative terms is now warranted. Fast transposition is not necessarily good transposition, although timeliness is a necessary condition for successful adaptation to EU legislation.

Furthermore, hasty transposition can lead to grave implementation problems later. Sometimes the countries need to have a second look at the legislation and revise their national implementing measures. Often, however, delays during transposition are related with delays in the implementation phase as well, as the example of information society shows quite clearly. At least theoretically, it seems quite likely that timely transposition achieved at the expense of cutting short the policy making and integration of the European directive should decrease the effectiveness of the new legislation. The empirical research conducted for this thesis, however, has not been designed to offer conclusions about the effectiveness of EU laws.

But the post-communist countries from CEE had to adopt the entire *acquis*, not just a few directives. Is it justified to force upon the candidate countries such a massive legal and institutional change? After all, the *acquis* has been devised to address different problems faced by different countries and societies. Given the long history of attempts at policy/rule transfer to Central and Eastern Europe, is the adoption of the *acquis* yet another round of an ill-conceived plan of imposing alien institutions to states and societies in CEE? The contribution the book makes to these questions are only partial since the in-depth studies consider only three areas of the *acquis*. The broader picture of fast transposition is consistent both with a pessimistic and with an optimistic view of policy transfer of CEE. It remains for the future to judge whether the formal success is to be sustained in the practical implementation of the rules or will become a window-dressing.

---

<sup>22</sup> In my opinion, the scientific agenda on EU compliance needs to get more autonomy from the political or societal interest in EU compliance. De-coupling seems quite unlikely, however, since the data provided for the scientists is in general compiled by policy actors, and given that a lot of the research on compliance is directly or indirectly commissioned by political and policy-making actors with interest in specific elements of compliance.

At least in the three specific areas I have studied, the formal rule transfer is on its way towards deep institutionalization.

The process of alignment for the *acquis* has definitely strengthened the executive vis-à-vis the legislature, and has centralized policy making within the executive. The need for speed in the implementation process has given more powers to the government to circumvent serious involvement of the parliaments in many cases, and has given new legitimacy of prime-ministerial attempts to centralize the co-ordination of sectoral policies. Both developments have important normative implications and can be judged either favorably or unfavorably according to one's point of view. Increasing power of the executive goes against the principles of representative democracy and undermines the ability of the legislature to check on the governments. On the other hand, in the specific cases of CEE the concentration of power in the executive might have given the ruling coalitions the means to steer through reforms which might have been otherwise halted in the parliaments. The centralization of power within the executive might be an unwelcome development for political systems with a tendency to concentrate power in one person. In the beginning of the 2000s in CEE, however, the centralization might also be viewed positively as it enables policy change halted by sectoral interests. The increase in power and centralization of the executive should not be exaggerated. The legislatures have not been completely sidelined; furthermore, the majority of the transposed directives concern issues that would not incite any parliamentary involvement in a purely national context.

The experience of legal approximation might have allowed the governments to steer through reforms, but have these reforms arrived at the right time for the CEE countries? The somewhat surprising conclusion of this book is that the EU accession process has brought to the domestic political agendas issues neglected for a long time during the liberalization reforms in the 1990s. In the case of information society policy, the directives of the EU have provided much-needed institutional templates for the regulation of the sector. The protection of consumers and safeguards on competition in the electronic communications markets provided by the EU legislation might be considered not going far enough, but in the context of the CEE they have definitely built up the market-correcting mechanisms rather than eroding existing standards. The EU directives have provided crucial and timely support for the institutionalization of independent national regulatory authorities and have guaranteed some level of universal service provision. In

the field of nature protection, as discussed above, the EU has focused attention and generated political discussion of a topic that has been long overdue. In the case of working conditions, again the EU has provided at least a minimum standard of protection in times when liberalization impulses have been strong throughout the CEE region. On the overall, all the reforms discussed in the book have been relevant for the societies in CEE and have led to positive regulatory developments. Ideally, the reforms should foster genuine political developments in the new member states and would not remain temporary actions associated with the external incentives offered by the EU. In this respect we can conclude that the legal approximation has not taken bureaucratic resources and capacity away from dealing with more pressing problems since the issues raised by adaptation to the EU address at least part of the real problems in the post-communist countries as well.

The next set of normative implications concern the comparison between the performance of the old, and the new member states. One can raise the question whether it has been fair to try to create 'model' member states (in terms of compliance) from the post-communist entrants in the face of continued problems with the transposition and implementation of EU law in existing member states like Greece, Portugal, Luxembourg, etc. Is the Commission more eager to target non-compliance in periods of enlargement, when its leverage is greater? Would the same attention to legal alignment help improve the record in the laggards from the old member states, as it seems to improve the performance of the new CEE states? Have the grace periods for compliance during the previous enlargement rounds been justified, given that acceding member states can manage to incorporate the body of EU laws if they really have to?

This book has by and large focused on the Central and East European Countries that joined the EU in 2004. The development of the theoretical argument and the empirical research have largely ignored the experience of Bulgaria and Romania which joined the EU on the 1<sup>st</sup> of January 2007. It is therefore a legitimate question to ask how the compliance performance of the two latest newcomers to the club fit with the arguments advanced in this book. The data available so far seems to match well with my conclusions and findings. Both countries appear to have a relative high degree of formal legal alignment although they are closer to the result of the Czech Republic rather than to the results of Lithuania and Hungary. The implementation problems are more than the

transposition problems, and also the implementation problems seem to be more and more severe in regard to these two countries in comparisons with the EU-10 as we would expect from their lower administrative capacities. Curiously, some of the experience of Bulgaria and Romania in the specific policy areas of information society and nature protection fit quite well the picture painted for the rest of the CEE countries, albeit with more implementation delays and more severe political problems surrounding practical application of the directives.

Not long ago the state of EU compliance was described as a 'black hole' (Mastenbroek, 2005). This thesis shed light on several parts of the puzzle of compliance presenting a new interpretation of the state-of-the-art of the literature, an original theoretical model, and historical, statistical, and comparative case studies empirical research. Most importantly, the book illuminated the combined effects of domestic politics, institutional capacities, and external incentives on compliance with EU rules.