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# Working with the EU: How Discourses Shape the Application of EU State Aid Rules

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## Abstract

State aid rules are an important part of the European Union's (EU) competition policy that aims to ensure a fair competition in the common market. These rules directly affect national and sub-national governments of member states, which are sometimes confronted with different and opposing claims about what to do. The question is how implementing civil servants interpret and resolve these claims in practice. In this article, discourse analysis is applied to identify how civil servants apply and interpret state aid rules based on empirical research in the Netherlands. The main finding is that, even within the existing regulatory framework of one member state, the application of state aid rules is understood differently based on the discourses we identified. We describe the content, dissemination amongst civil servants and the relationship of these discourses with compliance. The article shows that discourses matter and help to understand how state aid rules are applied.

**Keywords:** compliance; discourse; European Union; Q methodology; state aid

## Introduction

The control of state aid is considered a vital policy instrument to regulate the European Union's (EU) common market. By specifying the conditions under which state aid can be allowed, EU legislation limits the subsidies, investments and provisions of favourable financial conditions that member states may use to intervene in the 'common' market. Despite the far-reaching consequences of this policy, the literature on the politics of state aid is still 'at a relatively early stage of development' (Doleys, 2013, p. 24; cf. Kassim and Lyons, 2013; Schito, 2021). So far, it has focused largely on the development of the policy regime (e.g., Akman and Kassim, 2010; Cini, 2001), its impact on the targeting of national state aid policies (Blauberger, 2009b; Botta and Schweltnuss, 2015; Franchino and Mainenti, 2016; Hölscher et al., 2017; Schito, 2021; Zahariadis, 2013) or the role of the Commission (and its interaction with member states) in enforcing the rules (e.g., Alves et al., 2021; Finke, 2020; Smith, 1998; van Druenen and Zwaan, 2022; van Druenen et al., 2022). Less work is done on the practical application of state aid rules in member states (Franchino and Mainenti, 2016; Lindstrom, 2021).

The application and enforcement of EU state aid rules are structured by the so-called state aid notification procedure. The EU prohibits state aid under Article 107 of the Treaty on the Functioning of the European Union. The Treaty, however, allows for several exemptions. How and when these exemptions apply is not always clear. Member states must therefore, in principle, notify the Commission of aid plans and await approval. Over the last decade, the need to do so has become more limited, by providing more clarity

about certain exemptions. In these cases, notification is no longer needed. The importance of this field is illustrated by its size: in 2018, member states spent 120.9 billion EUR on state aid (European Commission, 2019). Despite the notification procedure and the strong enforcement powers of the Commission, the application of EU state aid rules remains uncertain. Ambiguity of the rules and its different exemptions, amongst others, seem to lead to difficulties and different practices of applying the rules amongst implementing civil servants. The Dutch knowledge-hub 'Europa Decentraal' reported that out of a total of 589 questions about implementing EU rules from decentralized governments, 31% (181 questions) were related to state aid rules (Europa Decentraal, 2019).

In this article, we therefore explore the practice of working with EU state aid rules by analysing how EU state aid rules and the broader setting affecting this practice are interpreted by implementing civil servants. In doing so, we focus more specifically on the role of discourses, which we understand as '... a shared means of making sense of the world embedded in language' (Dryzek, 2000, p. 18). For the purpose of this study, we treat a discourse as 'a system of statements' that enables but also limits certain ways of talking and thinking about a topic (Parker, 1992, in Phillips et al., 2004). These statements may define or evaluative certain topics and/or prescribe certain courses of action. As such, discourses outline appropriate and sensible ways to act (Phillips et al., 2004). Whilst discourse 'helps to shape social practice', it also reflects these practices (Mulderrig et al., 2019, p. 11).

In this study, we study discourses to analyse how civil servants understand policy, including its problems and solutions (e.g., Dryzek and Berejikian, 1993; Hajer, 2002). We do not aim to uncover and analyse how these discourses are (re)produced or received or how they are affected by the socio-political context. Although we do not deny that discourses may reflect power structures, which can be critically assessed (e.g., Fairclough, 1992; Mulderrig et al., 2019), our focus lies on uncovering different discourses, their dissemination amongst civil servants and their relationship to compliance.<sup>1</sup>

We focus on differences in discourses amongst provincial and municipal policy officials in the Netherlands involved in the application of state aid rules, because we would like to know whether differences in implementation are related to different discourses. Although there are very different ways of analysing (differences in) discourses (Phillips et al., 2004), including uncovering storylines (e.g., Hajer, 2002) or identifying policy frames (e.g., Rein and Schön, 1996), we selected Q methodology (Brown, 1993) as a helpful tool for comparative research, especially when extensive data about statements are used.<sup>2</sup> This reconstructive methodology (Dryzek and Berejikian, 1993, p. 50) allows us to identify clusters of statements shared by Dutch civil servants, which can be interpreted as discourses. Based on our empirical analysis, we find the existence of three discourses about the implementation of state aid rules.<sup>3</sup> Furthermore, we show how discourses are disseminated and whether actors' identification with specific discourses

<sup>1</sup>In this way, and by connecting discourses to social practice, we differ from a more linguistic tradition of discourse analysis.

<sup>2</sup>For our analysis, we use 48 carefully selected, different original statements from the discourse on state aid application. These statements are subsequently scored so that we can determine whether and how these statements are related and can be interpreted as a discourse (see the next section).

<sup>3</sup>The results presented here are a reanalysis of data collected by Soetekouw (2018), for which we found a different solution. In addition to the Q study presented in this article, we also reanalysed data collected by Vogel (2019), who uses statements from only open interviews as input for the scoring by participants in the second round. The solution based on that dataset broadly follows the solution we discuss in this article.

affects the application of EU state aid rules. We do so by linking the identified discourses to the results of an existing survey on the application of EU state aid rules (Zwaan, 2018).

The article is organized as follows. In the next section, we discuss current insights about the application of state aid rules and how an analysis of discourses may help. In Section II, we discuss our methodology for identifying discourses empirically. In Section III, we first discuss the general understanding of all participants in the Netherlands on state aid, before turning to the different discourses we found. In Section IV, we introduce a survey of Dutch state aid officials. Based on this study, we explore the dissemination of the discourses we found and link these discourses to compliance.<sup>4</sup> In the conclusion, we reflect on our findings.

## I. Implementing EU State Aid Policy: Coping with Uncertainty

State aid policy has a special position compared with most other EU policies when it comes to its monitoring and enforcement. As indicated, the Commission fulfils a central position through the notification procedure and its investigation of possible rule violations. To clarify the rules and to reduce the administrative burden on national governments, the Commission has introduced and clarified exemptions to the state aid notification requirements over the past two decades. Under the so-called *de minimis* regulation, member states are excused from notifying aid measures if the aid falls below 200,000 euro over a 3-year period. The General Block Exemption Regulation (GBER), in addition, specifies the conditions under which aid can be granted *without* ex ante approval. The number of policy objectives that fall under the GBER exemptions has been extended in recent years.

Being a ‘horizontal’ policy, state aid rules cut across policy areas for which other demands and regulations apply. Supporting, for example, the construction of a fibre optic network in a sparsely populated area requires civil servants to consider both the conditions for support under EU digital policy and state aid rules. Furthermore, as not all state aid is improper, this requires careful assessment and interpretation of the conditions for aid and any exemptions. Applying state aid rules is thus a complex task.

This complexity and uncertainty may lead to difficulties to comply. It also has prompted several other responses, as is shown in several case studies on the application of state aid rules. A frequent first response is to provide state aid only reluctantly or to limit aid to ‘good subsidies’ (i.e., horizontal aid for environmental measures or R&D, which fall under the GBER), for which no ex ante approval is needed. Töller has called this *evasion* (Schmidt, 2008; Töller, 2004, 2013). Another recurring response is *buffering*. In the case of state aid, governments notify the Commission of broader aid *schemes*, which then serve as a framework for awarding individual aid measures. After initial Commission approval, there will be no further scrutiny (Blauberger, 2009a; Zwaan and Goverde, 2010). A last, more active recurring response is to *negotiate* the way in which state aid rules are applied in a specific case. The notification procedure often allows for discussions about how to interpret and apply the rules (Akman and Kassim, 2010; Smith, 1996, 1998).

<sup>4</sup>The data we used, both for the Q analysis and for the survey, are available at <https://doi.org/10.7910/DVN/ZYZUON>.

There may be several reasons why civil servants turn to these responses in dealing with EU rules. The existing EU implementation literature does not provide a clear answer yet on what explains compliance. A variety of factors, such as the capacity or interests of implementing actors and their power, influence the application of EU rules (Treib, 2014). There is also an (more limited) interest in this literature about how EU rules are interpreted. Some of these studies turn to the *individual* motivations of civil servants who need to decide about policy. A recent example is Dörrenbächer (2017) who shows that street-level implementers apply their motivations in making decisions about residence applications under the EU migration policy for third-country nationals and only resort to EU rules the moment a conflict arises. Martinsen et al. (2019) show the importance of domestic political signals when conflict arises, which may shape the motivations of street-level bureaucrats.

Other studies turn to *shared* interpretations. An example of such an approach is found in the classical study of Falkner et al. (2005) on the implementation of EU social policy. Based on their research, they developed a typology of existing ‘compliance cultures’ to explain how EU member states transpose and implement EU policy. These ‘cultures’ are understood by them as ‘... issue-specific “shared interpretive schemes”’ (Douglas, 2001, p. 3149 in Falkner and Treib, 2008, p. 296). Several studies (e.g., Haverland et al., 2011; Thomson, 2007), however, have refuted the existence of overarching ‘cultures’: compliance differences within countries and between policy areas make it difficult to speak of a single compliance culture. In this article, we differ from this approach by analysing discourses that are more directly linked to the social practice of applying EU state aid rules at the local level, allowing for different discourses to exist within one country.

Another perspective about the importance of discourses is found in the Europeanization literature, which, amongst other, focuses on the adoption of EU policies in member states. Discourses may affect actors’ perceptions of EU rules and how these ‘fit’ with existing national policies (e.g., Barbehön, 2016; Schmidt and Radaelli, 2004). In her work, Schmidt (2010) makes a step further and argues that discourses function as a strategic device accompanying EU policy to support compliance. She argues that, through ‘communicative’ discourses, national political elites aim to persuade domestic groups, including civil servants, to support policy adopted at the EU level (also Schmidt, 2004). Although this possibility is conceivable (Herranz-Surrallés, 2012), it cannot be ruled out that, within a member state, different policy-specific discourses may exist (Kortenska et al., 2020), also regarding implementation. In our study, we therefore use a different, bottom-up perspective to discourses and focus on the discourses of civil servants who need to implement policy.

## II. Measuring Discourses: Q Methodology

To empirically determine discourses that are used in implementing EU state aid policy, we make use of Q methodology (Brown, 1993). This method, which aims to measure intersubjectivity, seeks clusters of categories, judgements, concepts and ideas, which indicate what civil servants think about, in this case, the rules on state aid. The method uses two rounds to ensure intersubjectivity: first, by collecting and selecting original statements about policy from social practice and, then, by submitting a smaller number of statements

to civil servants with the request to score them based on their agreement. The method helps to make our choices as explicit as possible in order to increase the replicability of our qualitative research.

In our analysis, we draw on written text about state aid found on the websites of governments and legal consultancy firms, policy (advice) documents and grey literature, as well as three recent interview transcripts of previous research about this topic. Because we aim for statements from civil servants, we excluded academic texts. The texts were collected in April 2018 using Google.com.<sup>5</sup> Atlas.ti was used to select specific statements from these texts. From 14 different written texts (see Appendix S3) and 3 interviews, 212 statements about state aid were collected. We analysed the statements in their original (Dutch) language but translated them into English for presentation here (see Appendix S1). From an initial set of 212 statements, we selected 48 statements for the respondents to score in the next stage (the so-called Q sorts). Of these, 15 statements were drawn from interview transcripts, 12 from consultancy websites, 11 from the grey literature and 10 from policy (advice) documents.

To maintain as much variation as possible in our selection of statements, we build on an idea proposed by Dryzek and Berejikian (1993), who suggest sorting all statements according to two dimensions that characterize political discourses: the *elements* of a discourse and the *kind of claims* it makes. Because we focus on compliance, we use six different *elements* drawn from existing EU compliance literature. These composed of statements about (a) the applicability of the rules; (b) the source and (c) legitimacy of the rules; (d) the meaning of the rules; (e) the (potential) costs, benefits or (in)appropriateness of particular responses to the rules; and (f) statements about the capacity needed to apply or respond to the rules. In addition, we distinguished between factual, normative and prescriptive statements. Together with two research assistants, one of the authors selected two to three statements for each combination of both dimensions. In this process, we tried as much as possible to avoid selecting 'similar' statements, so that our sample would be as diverse as possible.

To score the 48 statements, we selected 14 participants working with state aid rules within and for different decentralized governments (the so-called P-set). To increase diversity in our sample, we selected participants from decentralized governments of different sizes (five small, three large and two medium-size municipalities); in addition, we selected two consultants and two legal advisors working for municipalities. Our respondents had different backgrounds and education and their experience with state aid rules also varied.

In the second round, the respondents had to score all 48 statements. The scores that could be attached to statements varied from  $-4$  (*strongly disagree*) to  $4$  (*strongly agree*). These Q sorts, which are the rankings of statements based on these scores by respondents, are analysed using PQ-method package.<sup>6</sup> We used principal component analysis with varimax rotation, which maximizes the amount of variance absorbed by the extracted factors. Next, we determine the 'factor exemplars' (Watts and Stenner, 2005, p. 81) that exemplify the shared pattern typical for a specific factor (flagging). We used, in the end, a

<sup>5</sup>We searched for Dutch equivalents for (combinations of) '(EU) state aid (rules)'.

<sup>6</sup>The software can be freely downloaded at <http://schmolck.org/qmethod/>.



0.45 level for flagging to find a good fit between factors and Q sorts that can be related to specific factors.<sup>7</sup>

To arrive at the three-factor solution that we present in this article, we have reduced the number of factors step by step. In the case of four factors, we note that one has very few statements, whereas most of these statements are indistinguishable from other factors. Reducing the number of factors to three leads to a more meaningful interpretation. For our solution, all factors have an eigenvalue higher than one, whereas each discourse has at least two supporting respondents.<sup>8</sup>

### III. General Outlook on State Aid in the Netherlands

In the next section, we will further explore how local Dutch civil servants (and their advisors) perceive the European rules on state aid. We will present the factors that we interpret as discourses. In this section, we focus on the statements that do not differ between any pair of factors. These statements indicate how, in the Netherlands, state aid is being considered. It provides the 'general context' within which the more specific policy discourses are found.

The non-significant and non-distinguishing statements are presented in Table 1.<sup>9</sup> The table contains the statements with a tentative indication of whether a statement is mostly scored positively or negatively by respondents, as this is important for interpretation.<sup>10</sup> Furthermore, the table only includes statements that are insignificant at a 5% level. In discussing the general outlook in the Netherlands, we will refer to a relevant statement in the table by mentioning the statement number in square brackets.

Based on this analysis, local Dutch civil servants agree that state aid can be important to support or stimulate the (sustainable, smart and inclusive) development of the (local) economy [2], to take socially oriented measures or to provide public services [32]. Participants recognize that local and regional governments often have limited expertise in this area and need additional support to cope with the existing rules [10, 15]. It is considered important to include an early check on whether state aid issues play a role in their internal decision-making procedures [45]. Also, once support has been granted, attention must continue for the consequences of any changes to the aid measure and continued compliance with Commission rules [23]. Oversight from Brussels is considered important to maintain this policy, which does not mean that governments need to fear Commission officials in case of questions about the use of state aid [25, 27]. It is not believed that these rules are very strict [8] or have increased in importance [19]. To be successful in applying

<sup>7</sup>We started with 0.37 as a critical value for significant factor loadings based on the explanation of Watts and Stenner (2005, pp. 87–88; notes 8 and 9). It indicates a significance level of 1%. To increase the number of participants, we increased this value to 0.45, which corresponds to a significance level smaller than 0.1%. The impact on the solution of using a 0.37 or 0.45 level is limited and mostly affects mid-range statements (with a quasi-Q sort between 1 and -1) of factor 1 on which participants slightly agree or disagree.

<sup>8</sup>Factor 1 is supported by 5 participants; factor 2 by 2 participants; and factor 3 by 3 regular participants. An additional participant scores negatively on this factor. We did not exclude this participant as inclusion structures the three factors better. This 'opposing' view to factor 3 can be regarded as an additional discourse supported by one.

<sup>9</sup>In the tables included in the main text, we present, for the sake of brevity, only clearly insignificant results (at the 5% level) in case of the non-distinguishing statements or clearly significant results (at the 1% level) for distinguishing statements of discourses. See Appendix S1 for these tables with all relevant statements. The number between brackets refers to a statement.

<sup>10</sup>Here, we based our score on the sign of the coefficient. Note that although the signs of these coefficients can be different, the differences between these statements are not significant, so we need to be careful about their interpretation.

Table 1: Non-distinguishing Statements About State Aid.

	<i>No.</i>	<i>Statement</i>	<i>Sign</i>
1	2	State aid policy can play an important role in strengthening the economy.	+
2	10	Not all municipalities have sufficient in-house knowledge to handle support in accordance with the rules.	+
3	15	Local authorities have a great need for support in the field of state aid.	+
4	23	Once state aid has been granted, there must be continued attention for the consequences of any changes to the aid measure and compliance with Commission rules.	+
7	32	It may be necessary [with state aid] from the government to stimulate sustainable, smart and inclusive growth of the economy or to take socially oriented measures.	+
8	45	It is advisable to lay down internal procedural rules to ensure that timely attention is paid to the state aid aspects of intended policies.	+
9	46	The likelihood of success increases if the guidelines of the European Commission are considered when drawing up an aid measure.	+
12	21	It is a good thing that European state aid rules encourage governments to handle community funds with care and not to unnecessarily fund companies.	0
15	5	It is ingrained in the Treaty itself that state aid is not allowed but must be possible in many instances.	-
16	8	Strict rules and procedures for granting state aid apply in the European Union.	-
17	19	The importance of state aid law has increased enormously in recent years.	-
18	25	Brussels officials from Brussels sometimes scare municipalities unnecessarily.	-
19	27	It goes very far what they all want to know from us.	-

the rules, it is essential to follow the guidelines of the Commission [46] and file a request for approval. In most cases, the Commission will approve, and governments will be able to support groups or organizations as part of their policy [14].

Clearly, the overall impression from these statements is that Dutch officials aim for compliance in applying the state aid rules. Furthermore, because the state aid policy has been in place for many years, having to comply with these rules is familiar. Still, there is a need to deal with these rules in the context of specific projects or new policy, which could lead to ambiguities.<sup>11</sup>

#### IV. Policy Discourses

Although the first general impression is that Dutch public officials aim to comply with EU state aid rules, there are also differences. In our analysis, we found three distinct discourses in the Netherlands.

<sup>11</sup>For the second dataset, a similar impression arises, although less pronounced. Based on these statements, state aid rules contain 'a risk to governments', whereas 'among Dutch governments and administrators, the view prevails that notifying state aid is undesirable and should therefore be avoided'. There are some complaints about uncertainty, because there is still too little consideration whether some measure is indeed unlawful state aid, but officials do not think that more guidance by central government is helpful. Finally, all agree that the 'debate on state aid must lead to action' complying more to existing rules.



### *Discourse 1: Cautious Use of Possibilities*

The interpretation of factors as discourses is based on statements that score significantly different from other factors based on a Z-test. These scores and their significance are presented in Table 2. The table also presents the value of a statement in a quasi-Q sort: this would be the ranking of this statement in a Q sort based on the discourse at hand. Furthermore, the selection of factors that can be interpreted as discourses is a mixture of interpretation, having enough meaningful statements to allow this, and at least one or two respondents that can be associated with a discourse. As indicated, all discourses presented here satisfy these criteria. Also, note that ‘negative’ statements, that is, statements with a negative value on the quasi-Q sort, are statements to which the participants in this discourse disagree. This makes interpreting these statements slightly tricky as they do not fully indicate what participants do like. Therefore, these statements need to be understood in view of the interpretation of the ‘positive’ ones.

The first factor we found is interpreted as the *cautious use of possibilities* discourse. Actors belonging to this discourse recognize that they could make more use of existing possibilities, for example, those provided by the de minimis rule or block exemptions [47], but still find interpreting these rules difficult or ‘complex’ [6]. Because the common view in the Netherlands is that governments need to comply with EU state aid rules (see Section III), as advocated by the Association of Netherlands Municipalities and the Ministry of the Interior, participants indicate that they themselves must assess whether intended aid is compatible with these rules [20]. This brings them sometimes into situations in which they cannot easily determine with certainty whether financial support is state aid [9]. Therefore, the use of external expertise is recommended [44] and may help in making more use of existing possibilities that are provided by the EU state aid regime. Furthermore, this view also leads to the wish for a simple indication from the European Commission about whether they are on the right track [35].

The participants in this discourse further indicate that there is insufficient awareness that notifying the Commission offers opportunities to get certain categories of state aid approved [48]. Participants therefore strongly disagree that the existing exemptions offer too limited options [7] and disagree that the notification procedure is cumbersome [26]. They also do not believe that more room should be provided for specific local activities or services, because the magnitude of support is limited [13, 16].

This discourse tends to stress the possibilities that state aid rules provide, whereas it also points out that one cannot determine with certainty whether some support involves state aid or whether a notification will be approved by the Commission. This tension between trying to use the existing options and following the rules whilst not knowing what is allowed seems to characterize this discourse, in which civil servants are unsure and do not want to make mistakes. Furthermore, this discourse wants to make more use of existing options, but there is hesitation as certainty about whether these options are allowed cannot be provided. Therefore, external help is sometimes advised as well as a need for a quick test that may provide more certainty.

### *Discourse 2: Complex and Ambiguous, Politized Rules*

The second factor we found is interpreted as the *complex and ambiguous, politized rules* discourse. Differences in opinion about how to apply state aid rules is a dominant theme

Table 2: Cautious Use of Possibilities.

No.	Statement	Discourse 1		Discourse 2		Discourse 3	
		Quasi-Q sort	Z-score	Quasi-Q sort	Z-score	Quasi-Q sort	Z-score
47	Dutch governments make too little use of the possibilities for state aid.	4	1.93*	2	0.80	-1	-0.29
48	There is insufficient awareness that registering with the Commission offers many opportunities to get certain categories of state aid approved.	4	1.73*	-3	-1.45	2	0.78
20	Supporting authorities must now also themselves more often assess whether intended aid is compatible with the state aid rules or is 'state aid proof'.	2	1.20*	-1	-0.36	1	0.28
44	In many cases, it may be wise to engage a lawyer in the event of (alleged) state aid issues.	2	0.83*	-1	-0.73	4	2.66
36	Reputation damage has a negative effect on the municipality but is also reputational damage for the State of the Netherlands.	0	0.18*	-2	-0.97	3	1.20
11	Formally, almost all municipalities are in violation by not reporting, but because nobody realizes that and there is no rooster crowing about it, there are no consequences.	0	-0.01*	-3	-1.29	-2	-1.17
38	The Commission increasingly assesses decentralized support measures based on its own policy objectives.	-1	-0.80*	1	0.53	-4	-1.65
26	Notifying to the European Commission is cumbersome and takes a lot of time and money.	-3	-1.36*	0	0.40	2	0.57
13	The new rules must be tailored to the size and nature of the services to be provided because the impact on the internal market of, for example, sports and leisure activities in small municipalities, is negligible.	-3	-1.61*	0	0.40	1	0.35
7	The exemptions are unclear or offer too limited options.	-4	-1.72*	-1	-0.40	-1	-0.37

\*All scores for the statements sorted under Discourse 1 significantly differ from the other discourses at a 1% confidence interval. See Appendix S1 for statements that are significantly different at a 5% confidence interval. The quasi-Q score represents the ranking of a statement in a Q sort for the discourse involved.

in this discourse, which affects the debate about how to apply these rules. An important distinguishing statement formulates this problem as a divide between municipal policy-makers on the one hand and European lawyers and economists on the other who have rather different understandings of the world [37]. Despite attempts to make these rules simpler [6], a huge number of additional rules emerged in recent years [4]. Participants in this discourse strongly agree that state aid rules must play a role in the decision-making process of governments, next to political and economic considerations [29]. Still, this requires ‘clear’ or unambiguous rules.

This second discourse differs from the first by adding the element of different ‘perspectives’ or ‘understandings’ to the debate. Whereas participants in Discourse 1 seem to be uncertain about how to apply state aid rules, participants in this discourse realize that different perspectives exist. Also, the Commission is, in this discourse, not regarded as a ‘neutral arbiter’ but a political actor with its own policy objectives [38]. In this respect, this second discourse differs from both other discourses, in which participants disagree on this statement. In this rather ‘subjective’ environment, implementation of these rules is tricky and warrants further simplification. The participants in this discourse disagree that decentralized governments are tempted to use legal ‘constructions’ to make support possible [42]. They also disagree that the notification procedure is not known as a way of receiving approval on specific kinds of support. The main concern seems to be uncertainty based on the interpretation of these rules in a *more politicized world*.

In essence, this second discourse is also about rule-following, like the first discourse, but is more aware of the opportunities that state aid rules provide. This discourse does not doubt existing capacity to apply state aid rules but realizes that the interpretations of the rules are based on not only legal but also political or value-based reasoning. The full set of statements for this discourse with their scores is presented in Table 3.

### *Discourse 3: Rule-following and Trust*

The third factor we found can be characterized as a discourse on *rule-following and trust*. The full set of statements for this discourse with their scores is presented in Table 4. Within this discourse, participants indicate that it is important to comply with the EU regulations [43]. It is therefore important to call for external expert advice when dealing with possible state aid issues [44]. Mistakes may lead to reputational damage for the decentralized government involved and the Dutch national government [36]. The participants weakly disagree that the Dutch government make insufficient use of the possibilities for support [47]. They disagree that providing support should not be considered as it may turn out to be state aid [12].

Actors belonging to this discourse seem to mainly focus on what happens in the Dutch administrative system. In case the Commission extends the exemptions or is satisfied with mere notification, it should no longer intervene [34]. They do not believe that the Commission is pursuing its own policy objectives in enforcing state aid rules [38], nor are they fully aware that notification can help in approving specific cases of support [48]. Instead, they point to the fact that there are already several (national) controls for good governance in place, in which the Commission should trust [33].

To summarize, this third discourse emphasizes that the Commission should trust Dutch authorities to avoid unlawful state aid. Compliance with the rules seems to be a

Table 3: Complex and Ambiguous, Politized Rules.

No.	Statement	Discourse 1		Discourse 2		Discourse 3	
		Quasi-Q sort	Z-score	Quasi-Q sort	Z-score	Quasi-Q sort	Z-score
37	A major problem is that municipal policy-makers on the one hand and European lawyers and economists on the other have completely different understandings of the world.	-1	-0.70	4	1.89*	-2	-0.73
6	Despite the simplifications made, the rules are still complex and require interpretation.	1	0.53	3	1.65*	-1	-0.24
22	Even though there is no immediate state aid, it still makes sense to be concerned about the [state aid] requirements that are mentioned.	0	0.19	3	1.25*	-1	-0.47
4	A forest of state aid rules and procedures has emerged in recent years.	-2	-0.95	2	0.89*	-1	-0.72
47	Dutch governments make too little use of the possibilities for state aid.	4	1.93	2	0.80*	-1	-0.29
38	The Committee increasingly assesses decentralized support measures based on its own policy objectives.	-1	-0.80	1	0.53*	-4	-1.65
44	In many cases, it may be wise to engage a lawyer in the event of (alleged) state aid issues.	2	0.83	-1	-0.73*	4	2.66
9	It is not always easy to conclude with certainty that a certain transaction does or does not involve state aid.	3	1.27	-1	-0.73*	1	0.52
17	Europe has become inland for decentralized authorities; the Hague arena has been expanded with the Brussels arena.	1	0.64	-2	-0.93*	0	0.16
36	Reputation damage has an effect on the municipality but is also reputational damage for the State of the Netherlands.	0	0.18	-2	-0.97*	3	1.20
48	There is insufficient awareness that registering with the Commission offers many opportunities to get certain categories of state aid approved.	4	1.73	-3	-1.45*	2	0.78
42	Municipalities and provinces often get involved in legal constructions that prevent their subsidy or investment from being classified as state aid.	-1	-0.71	-4	-2.26*	-2	-0.86

\*See Table 2 but now focusing statements of Discourse 2.

Table 4: Rule-following and Trust.

No.	Statement	Discourse 1		Discourse 2		Discourse 3	
		Quasi-Q sort	Z-score	Quasi-Q sort	Z-score	Quasi-Q sort	Z-score
43	In general, it is important to comply with the regulations.	3	1.34	2	0.93	4	2.79*
44	In many cases, it may be wise to engage a lawyer in the event of (alleged) state aid issues.	2	0.83	-1	-0.73	4	2.66*
36	Reputation damage has an effect on the municipality but is also reputational damage for the State of the Netherlands.	0	0.18	-2	-0.97	3	1.20*
33	All sorts of control and assurance systems for good governance are already being applied at the national level for Dutch decentralized authorities. Europe should rely more on these mechanisms.	-2	-0.96	-2	-0.97	3	1.01*
34	If the Commission extends the exemption regulations or is more often satisfied with mere notification, then it should no longer interfere with it.	-3	-1.57	-3	-1.29	3	0.86*
48	There is insufficient awareness that registering with the Commission offers many opportunities to get certain categories of state aid approved.	4	1.73	-3	-1.45	2	0.78*
41	The modernization process of state aid law does not yet offer governments the desired scope to grant state aid.	-2	-1.10	-2	-1.17	0	-0.02*
47	Dutch governments make too little use of the possibilities for state aid.	4	1.93	2	0.80	-1	-0.29*
12	Amongst Dutch governments and administrators, the view prevails that notifying state aid is not desirable and must therefore be prevented.	0	0.31	1	0.73	-3	-1.22*
38	The Committee increasingly assesses decentralized support measures based on its own policy objectives.	-1	-0.80	1	0.53	-4	-1.65*

\*See Table 2 but now focusing statements of Discourse 3.

predominant theme, which should be based on mutual trust. It resembles the first discourse in stressing the need to comply with the rules and the need to call in expertise (the set of positive statements is similar), but, in contrast, this discourse indicates that civil servants think they are doing their best to make use of existing possibilities to provide aid. Contrary to the first discourse, this discourse is more confident about applying state aid rules and feels that the Commission should therefore trust civil servants more (see [33] and [34]). We are doing it right, aren't we?

## V. Dissemination of the Discourses and Compliance

Having identified the discourses on state aid policy, we will now examine the questions of how these policy discourses have been disseminated amongst civil servants and how these discourses affect compliance. For this, we use a survey of Dutch local government officials working with state aid, conducted in approximately the same period as the discourse analysis (September 2017). The timing is important because we want to connect our analysis, revealing different discourses with information about the broader group of civil servants working on state aid. This group is relatively small in the Netherlands and consists of about a hundred civil servants working for 388 municipalities. Civil servants of 37 municipalities completed the survey, the majority of whom work in larger municipalities (100,000 inhabitants or more), are legal advisors and deal with state aid issues once per half year.<sup>12</sup>

To link the three discourses to the participants of the survey, we constructed an index to determine the extent to which survey participants could also be participants in one of the discourses based on their answers. For this purpose, we selected questions or items from the survey that can be related to the discourse statements. Because we use an existing study, we strive for the best possible connection in which most relevant statements are included. Furthermore, we focus only on positive distinguishing statements with quasi-Q scores of 2 or higher, which can be clearly interpreted and significantly differ amongst the three discourses at hand. We were able to link 18 different items to 10 out of 12 positive distinguishing statements. In Appendix S2, we detail how we treated these statements and the corresponding items from the survey. The basic idea underlying our construction of this index is to make use of the maximum possible contrasts amongst the respondents in answering the relevant survey questions.

The index we use is based on whether an item is relevant to a discourse and how a respondent answered a question (item) that is in line with a statement. By multiplying these values, we calculate our index that varies between zero and one: a value of 'zero' reflects no correspondence between a respondent's answers and a discourse, whereas a value of 'one' stands for full correspondence. Comparing the correspondence scores of participants for discourses, we note that Discourse 1 on the 'cautious use of possibilities' is positively related to Discourse 3 on 'rule-following and trust'. This dependency confirms our earlier discussion. Different discourses may sometimes share certain features, which becomes clear by comparing the distinguishing statements with quasi-Q scores of 2 or higher of Discourse 1 (Table 2) with those of Discourse 3 (Table 4): both discourses share

<sup>12</sup>The survey was distributed via the state aid network of the Ministry of Internal Affairs and the weekly newsletter of Europa Decentraal.



statements [44] and [48] about the limited knowledge participants have concerning the application of state aid rules. The correlation coefficient between both discourses is positive (0.6) and significant.<sup>13</sup>

Based on this index, we explored whether the discourses we identified are related to specific characteristics of municipalities or individuals in our sample. Interestingly, for municipal size, we found no significant differences. When comparing means, we find that Discourse 3 on ‘rule-following and trust’ includes relatively more legal advisors compared with officials in other positions. Furthermore, in Discourse 2 on ‘complex and ambiguous, politicized rules’, we find that participants are more experienced by handling relatively more often state aid dossiers than in the other discourses.

The next step we undertake is determining how the correspondence between local officials’ answers to the items and the three discourses affects the compliance with state aid rules. For this, we focus on various questions describing how municipalities deal with state aid rules. Using expert opinions in a survey to explore differences in the application of policy is a rather common tool, which is often used in progress report or assessments of EU policy commissioned by the Commission. Our performance index is based on six items in the survey, which characterize how local officials and the local government they work for deal with the state aid rules. These items measure the extent to which respondents agree to the following propositions:

1. His/her municipality tries to avoid providing *aid* when dealing with subsidies, guarantees, sales or other public services.
2. His/her municipality tries to avoid providing *state aid* when dealing with subsidies, guarantees, sales or other public services.
3. When a measure entails state aid, and the municipality cannot make use of exemptions, it notifies state aid plans to the Commission.
4. When the *de minimis* regulation is used, the municipality checks a so-called *de minimis* declaration from the aid recipient.
5. When exemptions are used, the municipality informs the Commission.
6. When aid has been granted, the municipality reports this to the national state aid coordinator.

Agreement to these propositions describes a situation in which a municipality aims to rightfully avoid providing state aid and, when used, follow these rules in a strict manner. We scored the answers such that when a respondent agrees, individual items will have a score of 1; otherwise, 0. We standardize the sum of these as a measure of performance that ranges from 0 to 1, with 1 indicating that a respondent aims for correctly using the rules in dealing with several state aid provisions.

Analysing the correlations between these statements and the different discourses, we note that especially Items 5 (on informing the Commission on the use of exemptions) and 6 (on sharing information nationally) differentiate between discourses.<sup>14</sup> Respondents associated with the ‘complex and ambiguous, politicized rules’ discourse agree to these

<sup>13</sup>We refer to Appendix S2 for a more detailed explanation of how we constructed our indices and the empirical results.

<sup>14</sup>The table with bivariate correlation coefficients is included in Appendix S2.

Table 5: Pearson Bivariate Correlations Between Performance and Correspondence Indices.

	<i>Discourse 1</i>	<i>Discourse 2</i>	<i>Discourse 3</i>
Performance index	-0.11	0.49*	0.09
<i>N</i>	37	37	37

\*Significant at the 0.01 level (two-tailed).

statements, whereas the participants of the other discourses have less supportive and divergent views.

Participants in the discourse on ‘cautious use of possibilities’ seem to disagree with Item 3 (on the notification procedure). This means that officials from municipalities belonging to this discourse may decide, when exemptions cannot be used, not to grant state aid (strategy of evasion) or to grant aid without notifying the Commission (negative coefficient at the 0.12 significance level). In contrast, we find a positive coefficient (at the 0.08 significance level) for this item for participants in Discourse 2. Actors belonging to this discourse *do* notify the Commission, when they cannot make use of an exemption. This difference is understandable given the difference between both discourses on the distinguishing statement that ‘there is insufficient awareness that registering with the Commission offers many opportunities to get certain categories of state aid approved’ [48]. Participants in Discourse 1 strongly agree with this statement, whereas those participating in Discourse 2 strongly disagree.

For the resulting performance index, which combines the six questions, we found a strong and positive correlation for the discourse on ‘complex and ambiguous, politicized rules’ (see Table 5). This discourse coincides with municipalities that make better use of procedural requirements when using exceptions and notify aid and inform others when exceptions cannot be used. This somewhat more formal but transparent approach of municipalities in this discourse means that the use of rules does not immediately encounter legal objections, which is important for the implementation of the state aid rules. The two other discourses, which reflect uncertainty and less awareness of opportunities, do not have a systematic impact on our index. The discourse on ‘cautious use of possibilities’ seems to downplay the importance of notification, whereas the discourse on ‘rule-following and trust’ seems to include more varied reactions based on a belief that the Commission should have trust in their performance.

## Conclusions

With this study, we aim to uncover different policy discourses on state aid at the local level in the Netherlands and to find out whether these discourses matter for how state aid rules are applied. Based on our Q study, it becomes clear that there is a general outlook on applying state aid rules in the Netherlands. Dutch officials can be seen as serious, compliance-seeking rule-followers, based on the statements that are *shared* by all participants. Our finding fits previous research in which the Netherlands is regarded as a serious implementer of European policy (Falkner et al., 2005).

Still, even at this high level of support for complying with EU state aid policy, differences exist. We find three distinct discourses on how to deal with EU state aid rules at the

decentralized level. We interpret these discourses as (1) *cautious use of possibilities*, (2) *complex and ambiguous, politicized rules* and (3) *rule-following and trust*. The first discourse emphasizes the *uncertainty* of participants in trying to use more existing options to provide aid whilst following the rules, but not knowing well what is allowed. The second discourse is *more aware* of these opportunities and appears more comfortable in dealing with the rules; at the same time, it is also aware that political considerations can play a role in interpreting the rules. The least certain is perhaps the third discourse, in which civil servants feel that the Commission should *trust* Dutch (local) authorities to avoid unlawful state aid. The first and last discourses are somewhat related in terms of uncertainty and the need for more expertise but focus on different ways of coping. The first discourse seems to look for more support from the Commission in clarifying current rules, whereas the third discourse emphasizes trust in their own actions. The second discourse is the most distinct and reflects a shared belief that the application of state aid rules remains tricky because of the often-felt political nature of interpreting state aid rules: it is difficult to predict whether state aid will be allowed.

By connecting the results of our Q study with survey findings on the application of state aid rules, we are able to show how these discourses are disseminated amongst civil servants and how these discourses relate to compliance with these rules in practice. On how discourses are disseminated, we found no significant differences with government size, which contrasts the broader EU implementation literature in which size is seen as a positive indicator of government capacity supporting compliance (Bondarouk and Liefferink, 2017; Treib, 2014). When comparing means, we find that Discourse 3 on ‘rule-following and trust’ is relatively more present amongst legal advisors, whereas Discourse 2 on ‘complex and ambiguous, politicized rules’ is found in more experienced participants handling state aid dossiers more often. Given the smaller number of participants in discourses, we need to be careful in interpreting this finding.

The analysis shows that participants in the ‘complex and ambiguous, politicized rules’ discourse score significantly higher on our compliance index than participants in the other discourses. They apply the procedural rules when they make use of exemptions and notify aid when an exemption cannot be used. In this respect, they are confident in following the state aid rules and in making full use of the different possibilities to grant state aid legally.

Participants in the other two discourses do less well on our index. As indicated, these two discourses reflect more the uncertainty about EU state aid policy. Although these participants seem to struggle more with the application of these rules, less clear is how this affects the way in which rules are handled. Whereas the ‘cautious use of possibilities’ discourse seems to downplay the importance of notification to the Commission, the discourse on ‘rule-following and trust’ may reflect overconfidence in one’s own actions. Against the general background of high willingness to comply in the Netherlands, we do not expect systematic problems. Mistakes and miscalculations, however, are lurking. In addition, there remains a risk for participants in these discourses of not making use of existing possibilities. Uncertainty on the one hand (Discourse 1) and lack of trust on the other (Discourse 3) make civil servants hesitant to apply state aid rules. The discourses found in this study further clarify *why* the application of state aid rules often takes the form of evasion, as noted in the current literature (Schmidt, 2008; Töller, 2004, 2013). Our analysis also indicates that tackling evasion requires rather *different* solutions: either by further clarifying the policy or by building trust between the Commission and the

authorities in the Netherlands. Buffering and negotiation (Blauberger, 2009a; Zwaan and Goverde, 2010) as specific responses are less common and can be linked to Discourse 2. This discourse recognizes the ‘political’ behind the application of this policy. Still, this discourse also indicates that it remains uncertain whether such responses will help.

Our study shows that policy discourses are helpful to understand how policy-makers interpret and apply EU legislation and demonstrates how separate factors such as capacity, beliefs, interests and power, explored in the EU implementation literature, operate together (e.g., Dimitrova and Steunenberg, 2017; Thomann and Zhelyazkova, 2017; Treib, 2014). Several scholars (Falkner et al., 2005, p. 17; Sverdrup, 2005, pp. 23–24) have pointed out the importance of investigating the mutual dependency of these factors. Our study suggests that discourses may help to clarify this. Depending on a discourse, specific factors (such as the role of the Commission in overseeing the application of state aid rules) are interpreted and appreciated differently (e.g., as ‘helpful’ or ‘distrusting’) and sometimes linked to other factors such as ‘awareness’ or ‘reputation’.

In this article, we applied this approach in one country, showing that different policy discourses matter for implementing specific policies but also that these may differ within a country. Clearly, an interesting question is whether and to what extent such variation can also be found in other member states and to what extent these discourses are similar in content across member states. We hope our study shows the importance of doing so. Our approach, furthermore, invites us to investigate how implementation itself may affect civil servants’ understanding of rules.

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### Supporting Information

Additional supporting information may be found online in the Supporting Information section at the end of the article.

**Appendix S1:** Discourse analysis and statements.

**Appendix S2:** Correspondence index and the measurement of performance.

**Appendix S3:** Original sources of written texts.