

# Worlds of Compliance: Why Leading Approaches to EU Implementation Are Only “Sometimes-True Theories”

Gerda Falkner  
Department of Political Science  
Institute for Advanced Studies  
Stumpergasse 56, A-1060 Wien  
Austria  
falkner@ihs.ac.at

Miriam Hartlapp  
Research Unit Labour Market  
Policy and Employment  
Social Science Research Center Berlin  
Reichpietschufer 50, 10785 Berlin  
Germany  
hartlapp@wz-berlin.de

Oliver Treib  
Department of Political Science  
Institute for Advanced Studies  
Stumpergasse 56, A-1060 Wien  
Austria  
treib@ihs.ac.at

## **Abstract:**

This paper summarises the main theoretical findings of a large-scale qualitative project on the implementation of six EU labour law Directives in fifteen member states. Our argument starts from a theoretical puzzle: When confronting the empirical results from our 91 cases with the diverse hypotheses that we derived from the literature, it turns out that many of the causal conditions suggested by existing theories have some explanatory power, but none of them is able to explain the range of observed implementation patterns to a satisfactory extent. We discuss in detail that even the two theoretically best-established hypotheses (on misfit and veto players) fall short of solving the puzzle. As a solution, we offer a typology of three worlds of compliance within the fifteen EU member states covered by our study, each of which is characterised by an ideal-typical implementation style: a “world of law observance”, a “world of domestic politics”, and a “world of neglect”. Our typology can explain patterns of implementation processes better than earlier approaches and provides the key to understanding when and where individual theoretical propositions (such as the veto player approach) are more or less powerful.

## 1 Background and Empirical Research<sup>1</sup>

The growing literature on the impact of EU directives on member states provides for a range of explanatory factors positively or negatively influencing timeliness and correctness of implementation. While the relevance of many of these factors seems to be highly plausible, EU scholarship is still missing a study that uses an encompassing theoretical approach which also takes into account the findings of earlier implementation studies and helps to understand when and where individual theoretical propositions are at all relevant in a world of diverse institutional patterns.

To this aim we will present results from a collaborative research project which analysed the national transposition, enforcement, and application of six EU labour law Directives in the fifteen ‘old’ member states. With regard to implementation, Directives are of particular interest. They are not directly applicable at the national level (as Regulations are), but have to be incorporated into national law first. We chose the six most important labour law Directives from the 1990s regulating national issues, hence EU labour law that actually alters pre-existing national rules.<sup>2</sup> They concern written information on contractual employment conditions (91/533/EEC); parental leave (96/34/EC); working time (93/104/EC); and the protection of pregnant (92/85/EEC), young (94/33/EC) and part-time workers (97/81/EC).

More than 180 expert interviews were conducted with experts from the ministries, interest groups and labour inspections in the fifteen member states. We collected material on the pre-existing national standards (in order to assess the potential impact of the new European Directives), on the adaptation process (to learn which actors prevailed and why non-compliance took place), and on the national experts’ views as to the usefulness of the changes induced by the EU. In addition to assessing implementation success or failure on a case-by-case basis, we tried to trace the origin of implementation problems. Which factors lead to better or worse compliance with EU law? Do these factors hold across countries and Directives? In this paper, we will, for reasons of time and space, focus on the theoretically dominant hypotheses in explaining implementation processes and outcomes – and why the

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<sup>1</sup> Earlier versions of this paper were presented at the ECPR’s 2nd Pan-European Conference on EU Politics in Bologna, the EUSA’s 9th Biennial International Conference in Austin, Texas and the ECPR Joint Sessions of Workshops in Granada. We thank all participants of these conferences for helpful comments.

<sup>2</sup> Genuinely supranational topics such as the Directives on European Works Councils and on worker involvement in the European Company Statute were discarded from our sample because we wanted to study areas where EU regulation (at least partly) supersedes national regulation. Only such examples allow earlier domestic standards to be compared with new EU standards. We also discarded Directives that only update or reform older ones, and Directives that are too closely related to some other EU laws to be studied individually.

causal conditions they suggest (mostly) fail. We will then present our own concept of how to explain the observed implementation patterns.

## 2 Prior Approaches and their Limited Explanatory Capacity

In the late 1990s, analysing the *effects of Europeanisation* on domestic systems of governance became a new core issue in political science. Focusing mainly on environmental policy, many scholars have pointed to the degree of *fit* or *misfit* between European rules and existing institutional and regulatory traditions as one of the central factors determining implementation performance (see e.g. Duina 1997, 1999; Duina/Blithe 1999; Knill/Lenschow 1998, 2000; Börzel 2000).<sup>3</sup> Seen from this angle, European policies face deeply rooted institutional and regulatory structures. If both fit together, that is if adaptational pressure is low, implementation should be a smooth and unproblematic process easily accomplished within the given time limits. If European policies do not match existing traditions, however, implementation should be highly contested, leading to considerable delays, and involving a high risk of total failure (see in particular Duina 1997, 1999; Duina/Blithe 1999; Knill/Lenschow 1998, 2000; Börzel 2000).

Building on this misfit-centred approach, but considerably expanding the perspective, Thomas Risse, Maria Green Cowles and James Caporaso (2001) have suggested a number of “mediating factors” which may lead to adaptation even in the face of high levels of incompatibility. Among these factors a decision-making structure with a small number of veto points figures prominently or, alternatively, a consensus-oriented decision-making culture which may be able to avoid stalemate even in systems with multiple veto actors. Similarly, Adrienne Héritier and her collaborators developed a catalogue of factors impacting on domestic adaptation to EU policies, including the national “reform capacity” which is shaped by supportive actor coalitions and veto positions (Héritier et al. 2001). In any case, recent scholarship has attributed a significant role to the number of veto points in any domestic political system when studying implementation performance (for a particularly straightforward version of this argument, see the study in the field of EU waste policy by Haverland 2000; for a further analysis that highlights a broader range of macro-institutional factors, see e.g. Giuliani 2003).

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<sup>3</sup> The approach ultimately rests on historical and/or sociological institutionalist assumptions about the “stickiness” of deeply entrenched national policy traditions and administrative routines, which poses great obstacles to reforms aiming to alter these arrangements (see e.g. March/Olsen 1989; DiMaggio/Powell 1991; Thelen/Steinmo 1992; Immergut 1998; Thelen 1999; Pierson 2000).

## 2.1 The Failure of the Misfit Hypothesis

One of our main results is that the misfit hypothesis, which has characterised much of the recent literature on the implementation of EU policies, cannot adequately explain our 91 cases<sup>4</sup> of labour law (non-)transposition. Francesco Duina and Frank Blithe (1999) offer probably the clearest formulation of the misfit hypothesis (see also Duina 1997; 1999):<sup>5</sup>

“[W]e hypothesize that implementation of common market rules depends primarily on the fit between rules and the policy legacy and the organization of interest groups in member states. Rules that challenge national policy legacies and the organization of interest groups are not implemented fully and on time; they are normally rejected, typically reaching domestic systems only partially and long after the official deadlines. [...] When, on the other hand, rules propose principles consistent with those found in national institutions, implementation is a smooth affair and the common market reaches smoothly and deeply into the nation-state.”

In other words, if the degree of misfit is high, transposition should be seriously hampered, whereas we should expect smooth adaptation if the amount of changes required by a Directive is small.

As a starting point for testing this hypothesis we assessed the misfit for our 91 cases of EU-induced (non-)adaptation. Policy misfit can be of either a quantitative or qualitative nature. In other words, it can relate to a gradual difference (e.g. two months of parental leave instead of three as a minimum) or to a matter of principle (e.g. there is no individual right to parental leave but the entitlement is restricted to mothers only). Having assessed the *legal misfit*, we calculated a kind of discount in case the *practical significance* of a legal innovation was comparatively lower. For example, a new right may not have been enshrined in domestic law, but it may have related to a large part of the workforce through collective agreements. Furthermore, we include in the concept of legal misfit an evaluation of the *scope of application*. In other words, we looked at the coverage of any newly attributed right. The importance of such a right may, in some cases, seem very important, but may then be seriously limited by a narrow scope of application (e.g. when all atypical workers or important sectors of the economy are excluded).

We assigned a *high* degree of legal misfit if there are completely new legal rules, far-reaching gradual changes and/or important qualitative innovations. Each of them will lead to a high degree of policy misfit in our system under the condition that all or a significant number of workers are affected and that there is no essential limitation on the level of practical significance. Otherwise, only a medium (or even low) degree of policy misfit will result in our

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<sup>4</sup> In one of our cases we have two separate transposition processes due to an exemption granted for a specific time span, hence the six directives in 15 Member States result in 91 implementation processes.

<sup>5</sup> Similar arguments have been presented by Knill and Lenschow (1998; 1999; 2000) and, in a slightly less deterministic way, by Börzel (2000). For a critical view of the misfit hypothesis, see Héritier and Knill (2001).

classification. A similar logic is applied to medium and low degrees of legal misfit (for details on the operationalisation see Falkner/Treib/Hartlapp/Leiber 2005: 27-32).<sup>6</sup>

**Table 1: Degrees of Misfit and Transposition Performance**

	Degree of Misfit		
Timing (Months after Deadline)	low	medium	high
(almost) on time (0-6)	11	9	2
significantly delayed (> 6)	33	24	8

Benchmark: essentially correct transposition

Dark shaded cells represent cases which are inconsistent with the misfit hypothesis.

White cells refer to cases for which no clear expectations may be derived from the hypothesis.

Light shaded cells denote cases which are in principle consistent with the misfit hypothesis.

4 cases have been omitted since essential correctness existed from the outset.

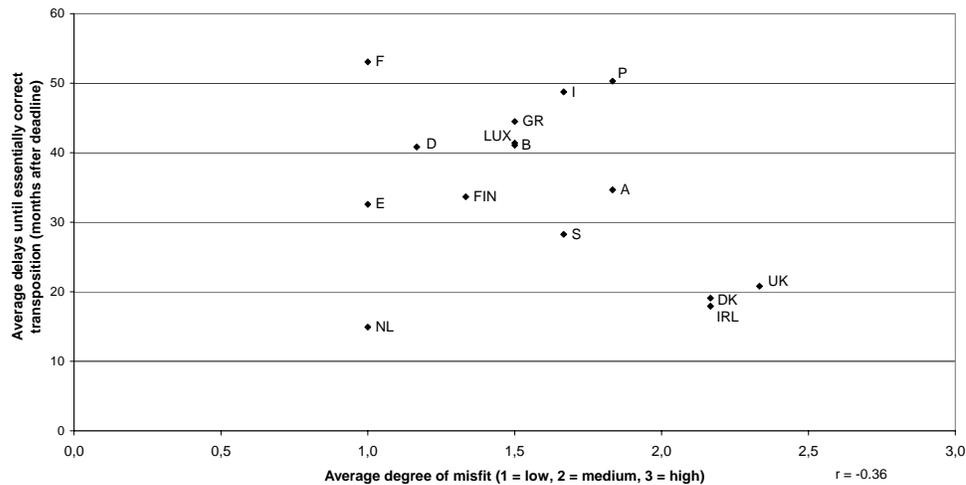
Source: Falkner/Treib/Hartlapp/Leiber (2005: 290)

As the above Table shows, only 22 per cent of all cases are completely in line with the expectations of the hypothesis (light shaded cells), either because small adaptation requirements were indeed followed by smooth transposition or because large-scale misfit accompanied significantly delayed adaptation. However, 40 per cent of all cases are at odds with the misfit hypothesis (dark shaded cells). A further 38 per cent of our cases are located in the area of medium adaptational pressure, for which no clear expectations may be derived from the hypothesis. In order to explain these cases, Knill and Lenschow (2001: 124-126) point to the presence or absence of a “supportive actor constellation” without, however, specifying what such a constellation should look like. The theoretical models of scholars like Börzel (2000) or Duina (1997; 1999) do not cover these cases at all, although they are far from being negligible empirically.

In order to avoid the “black box” of medium-scale adaptational pressure, we could treat “misfit” also as a continuous variable. The misfit hypothesis would then postulate that implementation problems should increase with rising degrees of misfit. Even under these modified assumptions, however, our data far from corroborates the argument.

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<sup>6</sup> Note that the basis of evaluation in terms of high/medium/low is the significance of the required changes in the context of the *national* labour law standards, while the comparison with other member states and other cases took place on the basis of the degree of misfit established for each of the countries.

**Figure 1: Average Degrees of Misfit and Transposition Performance**

Source: Falkner/Treib/Hartlapp/Leiber (2005: 291)

The figure shows the relationship between the average degree of misfit with which the fifteen member states had to cope when transposing our six Directives and their actual performance measured in terms of average transposition delays. Clearly, the data does not square with the expectations of the hypothesis.<sup>7</sup> We can thus conclude that if there is any direct causal impact of the degree of misfit on member state compliance, on a general level, the effect is undoubtedly much weaker than many scholars would expect. These findings also tie in with the theoretical arguments against an exclusive focus on the “goodness of fit” suggested by Mastenbroek and Kaeding (2004).

## 2.2 The Failure of the Veto Player Argument

Another popular argument in the literature starts from the assumption that the political systems of the member states differ in their capacity to enact reforms that would change the status quo. According to the famous veto-player theory developed by George Tsebelis (1995), the reform capacity of a political system decreases as the number of distinct actors whose agreement is required to pass such a reform increases. Hence, countries with higher numbers of veto players should be plagued much more frequently by reform impasses than systems with low numbers of veto players.

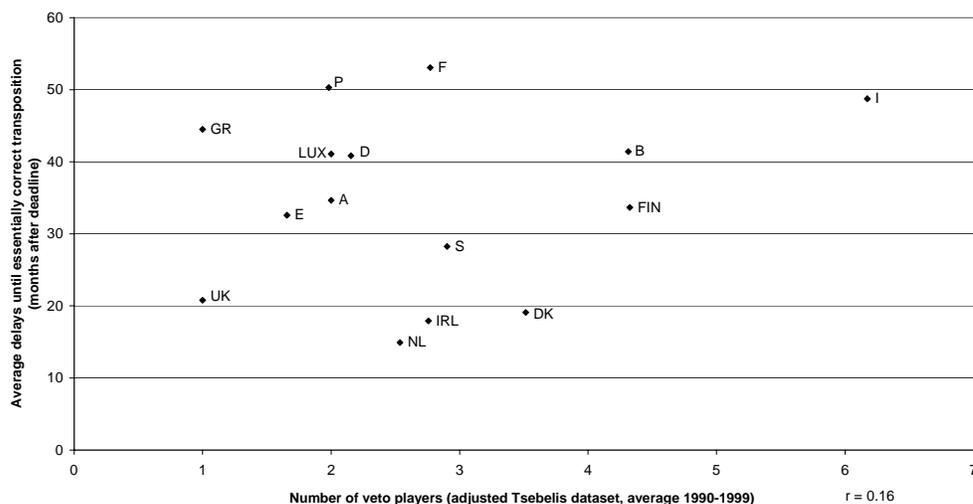
<sup>7</sup> Rather than the expected correlation, the figure, surprisingly, reveals even an inverse relationship: The higher the degree of misfit, our data suggest, the better the member states’ transposition performance (for a discussion see Falkner/Treib/Hartlapp/Leiber 2005: 291-294).

Since the transposition of EU Directives also requires the enactment of legislative reforms at the domestic level, this argument, which was originally developed in the general context of comparative politics, could also be applied to the more specific area of EU implementation research. In fact, this was done by Markus Haverland, who criticised the misfit approach by arguing that, in his case studies on the implementation of the Packaging Waste Directive in three countries, “veto points tend to shape the timing and quality of implementation regardless of differential gaps in the goodness of fit between European requirements and national traditions” (Haverland 2000: 100).

As it turns out, however, Haverland’s argument, which certainly tied in with his three cases, does not fare better than the misfit hypothesis if applied to our 91 cases (see Figure 2).<sup>8</sup>

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<sup>8</sup> It should be noted that we use the original version of the veto player theory here (Tsebelis 1995) since this is also the version that was introduced to EU implementation research by Markus Haverland. Therefore, our analysis does not cover the recent modification by George Tsebelis (2002) which argues that policy outcomes do not only depend on the number of veto players, but also on the ideological distances between these veto players.

**Figure 2: Veto Players and Transposition Performance<sup>9</sup>**

Source: Falkner/Treib/Hartlapp/Leiber (2005: 297)

The figure suggests that the number of veto players does not have a decisive impact on member state implementation performance. To be sure, some countries apparently do seem to correspond to the expectations of the veto player theory, like the UK and Italy. But many of the other countries do not fit in nicely. Hence, Greece has as few veto players as the UK, but nevertheless emerges much worse than the latter. Luxembourg, Portugal or France are also examples of countries whose performance is far poorer than one would have expected on the basis of their moderate numbers of veto players. Denmark, on the other hand, is clearly better than its institutional reform capacity would suggest. Altogether, therefore, the world seems to be more complicated than implied by such parsimonious hypotheses. Section 3.2 below will, by contrast, discuss a more selective application of the veto-player approach to only a specific group of countries, on the basis of our own approach to explaining implementation performance outlined in section 3.1.

<sup>9</sup> This figure is based on an adjusted version of the veto player data set provided by George Tsebelis (<http://www.sscnet.ucla.edu/polisci/faculty/tsebelis>). First, missing data for Italy (1996-1999) and Greece (whole period of analysis) were added using information reported in Ismayr (2002). Second, we did not count the German Bundesrat as a veto player even for periods where the government parties did not hold a majority in the second chamber of the German legislature since the transposition of the largest part of our six sample Directives did not require the approval of the Bundesrat. Third, following the argument by Steffen Ganghof (2003), we adjusted the data in order to account for the specific situation of minority governments, which is not properly reflected in the Tsebelis data set. Since a minority government needs the support of the parliamentary opposition to get legislation enacted, we calculated one more veto player for periods of minority government.

### 3 Three Worlds of Compliance: Typical Modes of Reacting to Adaptation Requirements

Discussing these two and other hypotheses derived from the different literatures across our 91 cases of (non-)adaptation to EU policies, no causal arrow pre-supposed by existing theories seems either necessary or sufficient in practice. But, through a systematic comparison of what the researchers responsible for each member state in our project had concluded after all the lengthy interviews, we discovered that some EU member states displayed quite a regular pattern of compliance or non-compliance, regardless of how the specific provisions actually fitted with the relevant national policy legacy or of the number of veto points in the political system. Our broad knowledge about the countries and a re-interpretation of the outcomes on this basis finally revealed three clusters of countries, each showing a specific typical pattern of reacting to EU-induced reform requirements. Since the constitutive factor that separates these three clusters of countries (i.e., different modes of adaptation) had not been recognised in the literature before, the specific pattern did not come to the fore when we simply tested the prevailing hypotheses against our cases.

According to our findings, the relatively best point of reference for predicting the fate of any forthcoming case of policy implementation is in fact the specific *national culture of digesting adaptation requirements*.<sup>10</sup> “Culture” has been defined as a “general set of cognitive rules and recipes in terms of which agents, institutions, and structures are constituted” (Berger/Luckmann 1967 quoted in Swidler 2001: 3064) or as a “shared interpretive scheme” (Douglas 2001: 3149). Since cultural norms typically change slowly and reflect enduring patterns of political action, political culture is a critical element in understanding politics across countries (Almond/Powell/Strøm/Dalton 2000: 49f.).

Since we discerned three different ideal-typical patterns of how member states handle the duty of complying with EU law (with differing weights of cultural, political and administrative factors in the implementation process) a typology seemed the natural solution to going beyond

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<sup>10</sup> While our study indicates that attitudinal factors should play a central role in the study of EU-triggered implementation processes, only few studies have already taken this into consideration. Outside the area of EU implementation research, a similar approach was followed by Jeremy Richardson and his collaborators (1982; also Dimitrakopoulos 2001: 453ff.), who argue that Western European countries are characterised by certain “policy styles”. On a much more general level Klaus Goetz (2002) identifies “Four Worlds of Europeanization”. Starting from Commission data on infringement proceedings Ulf Sverdrup (2002) identifies a “Nordic Model” of good compliance. He argues that a culture of compliance and of compromise, together with transparency and organisation of the administration, is a crucial factor for a country’s implementation performance.

casual empiricism (Castles 2001: 141). Our intellectual map now builds on three different *worlds of compliance* within the fifteen EU member states covered by our study: a *world of law observance*, a *world of domestic politics*, and a *world of neglect*.

The three worlds do not indicate outcomes<sup>11</sup>, but typical modes of treating implementation duties. The specific results of particular examples of compliance tend to *depend on different factors* within each of the various worlds: the compliance culture in the field can explain most cases in the *world of law observance*, while in the *world of domestic politics* the specific fit with political preferences in each case plays a much larger role, and in the *world of neglect* this is true for administrative non-action. These patterns seem to be *rather stable over time* and to outlive governments of opposing ideological orientation.

### 3.1 The Worlds of Law Observance, Domestic Politics and Neglect

In the *world of law observance*, the compliance goal typically overrides domestic concerns because it ranks so high (see Table 2). Even if there are conflicting national policy styles, interests or ideologies, transposition of EU Directives is usually both in time and correct. Application of the national implementation laws is characteristically successful, too, for the transposition laws tend to be well considered and well adapted to the specific circumstances. Additionally, citizens are used to complying. This (at least from the EU's top-down perspective, clearly most successful) pattern is supported by a national "compliance culture". Non-compliance, by contrast, typically occurs only rarely and (at least willingly) not without fundamental domestic traditions or basic regulatory philosophies being at stake. In addition, the tendency is for instances of non-compliance to be ended quickly.

By contrast, obeying EU rules is at best one goal among many, in the *world of domestic politics*. Domestic concerns frequently prevail if there is a conflict of interests, and each single act of transposing an EU Directive tends to happen on the basis of a fresh cost-benefit analysis. Transposition is likely to be timely and correct where no domestic concerns dominate over the fragile aspiration to comply. In cases of a manifest clash between EU requirements and domestic interest politics, non-compliance is the likely outcome (at least for a rather long time). While in the countries belonging to the world of law observance, breaking EU law would not be a socially acceptable state of affairs, it is much less of a problem in one of the countries in this second category. At times, their politicians or major interest groups even openly call for disobedience with European duties – an appeal which is not met with much serious condemnation in these countries.

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<sup>11</sup> The implementation performance in a particular sample of cases may be as mediocre (or bad) in a country belonging to the world of domestic politics as in a country in the world of neglect, or it may turn out to be as good (or mediocre) as in a country from the world of law observance. What is important is that these outcomes are reached through very different processes.

In the countries forming the *world of neglect*, compliance with EU law is no goal in itself. Those domestic actors that are calling for more obedience thus have even less of a sound cultural basis for doing so than in the world of domestic politics. At least as long as there is no powerful action by supranational actors (like an infringement procedure triggered by the European Commission), compliance obligations are often not recognised at all in these “neglecting” countries. A posture of “national arrogance” (in the sense that indigenous standards are typically expected to be superior) may support this, as may administrative overload or inefficiency. In these cases we found inertia to be the most frequent “road to transposition failure”. Thus, the typical initial reaction to an EU-related implementation duty is inactivity. This pattern of initial inertia was usually caused by governments and administrations remaining passive while, at the same time, there were no interested societal groups acting as successful “policy entrepreneurs”.

After an intervention by the European Commission, the transposition process may be initiated and may even proceed rather swiftly. The result, however, is not infrequently correct only at the surface. This tends to be the case where ministerial decrees are used (instead of laws) and where literal translation of EU Directives takes place (instead of a proper detailed translation that fits not only the words, but also the spirit of the EU rule, which typically needs specification and embedding in the specific context of the existing domestic rules). However, if inertia is eventually overcome and if a political process of transposition is initiated, over-implementation does also occur in this group. Under these special conditions, much the same logic prevails as in the world of domestic politics.

**Table 2: Three Worlds of Compliance**

	<b>World of LAW OBSERVANCE</b>	<b>World of DOMESTIC POLITICS</b>	<b>World of NEGLECT</b>
<b>Political importance of compliance with EU law</b>	Highly valued, typically overrides domestic concerns.	One ambition among many, domestic concerns frequently prevail.	Not an aspiration per se.
<b>Transposition is typically...</b>	... on time and correct (even where conflicting domestic interests exist).	... on time and correct only if there is no conflict with domestic concerns.	... late and/or "pro forma".
<b>Factors facilitating compliance</b>	Culture of good compliance as a self-reinforcing social mechanism.	Fit with preferences of government and major interest groups.	Accelerating issue linkage with domestic reforms, high profile of particular cases.
<b>Conditions of non-compliance</b>	Unawareness; otherwise non-compliance occurs rarely and briefly.	Political failure (lack of compromise among conflicting interests or compromise against the terms of EU law). If non-compliance occurs, it tends to be rather long-term.	Bureaucratic failure (inefficiency, overload, non-attention). Non-compliance is the rule rather than the exception.
<b>Predominant logic</b>	Cultural.	Pursuit of political interests.	Pursuit of interests within the administration.
<b>Typical process</b>	Dutiful adaptation.	Conflict / compromise.	Inertia.

Source: Falkner/Treib/Hartlapp/Leiber (2005: 322)

Approaching an explanation of these patterns, it seems useful to distinguish between the *administrative* and the *political phases of the transposition process*.<sup>12</sup> It is the task of the administrative systems in the member states – usually the ministries in charge of the specific dossiers – to identify reform requirements implied by EU law and to initiate a process leading towards adaptation. The second phase then typically involves more than administrators only. In a political process, politicians, interest groups and potential further actors in a country's political system interact in order to reach decisions on domestic transposition and implementation. We found that in each world, a characteristic constellation of (more or less) dutiful action dominates in each phase. In the world of law observance, abiding by EU rules is usually the dominant goal in both the administrative and the political systems. The same is only true for the administrative system when it comes to the world of domestic politics. There, the process can easily be blocked or diverted (towards incomplete or even flawed adaptation)

<sup>12</sup> We are aware that it is difficult in practice to draw a sharp line between the political and the administrative systems. However, we would still maintain that trying to do so is worthwhile in order to find out more about the way different member states typically react to reform requirements arising from EU law.

during the phase of political contestation. In the world of neglect, by contrast, not even the administration acts in a dutiful way when it comes to the implementation of EU Directives. Therefore, the political process is typically not even started when it should be. It needs to be mentioned, however, that politicians in the world of neglect also do not tend to take compliance with EU law very seriously, otherwise the bureaucrats could not get away with such behaviour, at least in the longer run. Table 3 below outlines these patterns for all three worlds (for an in-depth discussion, see Falkner/Treib/Hartlapp/Leiber 2005: 324-325).

**Table 3: Law-abidingness of Administrative and Political Systems in the Three Worlds of Compliance**

EU law-abidingness dominant in ...	World of LAW OBSERVANCE	World of DOMESTIC POLITICS	World of NEGLECT
... administrative system	+	+	-
... political system	+	-	-

Source: Falkner/Treib/Hartlapp/Leiber (2005: 325)

Going beyond analytical description, political science theory suggests looking at the relative weight of *culture versus interests* in the implementation process. In fact, the attitudinal factor dominates quite regularly in the world of law observance, which typically leads to dutiful adaptation. Culture, however, impacts much less strongly on compliance issues in the two other worlds. By contrast, interests predominate. These are typically political interests in the world of domestic politics, and interests within the administrative system (or rather: non-interest by the administration) in the world of neglect.<sup>13</sup> While the balance between culture and self-interest obviously diverges between our worlds, it is still crucial to note that we do not see any worlds of “consequentiality” or worlds of “appropriateness” (March/Olsen 1989). Considerations of appropriateness and of consequentiality are typically present at the same

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<sup>13</sup> As an example, consider an administrative unit that is confronted with the transposition of six Directives to be processed within the following year but could cope with only five of them on the basis of its standard operating procedures. This unit has two options. First, it could try to fulfil its duties, even if this would involve “costs” in terms of either doing overtime, lobbying for more resources within the wider organisation, or carrying out organisational reforms that would raise its productivity. Second, it could try to avoid these extra costs by sticking to its standard operating procedures, which means that some task would have to be prioritised over others, and some of the duties under EU law would have to be ignored, at least temporarily. The second option represents one version of what we call the pursuit of interests within the administrative system, notably the interest in avoiding inconveniences that would arise from acting dutifully.

time, everywhere. They just often relate to different levels (for example, bureaucrats disregarding EU laws can at the same time be quite dedicated rule-followers with respect to a given domestic administrative culture), and they may receive different weight in the overall process. In addition, it seems that actors in the world of law observance adhere to a conception of self-interest that is more oriented towards a long-term and communitarian rationale while in the other two worlds, administrators and politicians rather strive for a shorter-term specific interest that can easily impede dutiful compliance.<sup>14</sup>

There is no space here to elaborate on the scope of our typology in great depth (but see Falkner/Treib/Hartlapp/Leiber 2005: Chapter 15). We developed the typology with the implementation of EU labour law in mind, more specifically the implementation of EU labour law Directives. We expect, however, that the scope of our findings will be broader. Compliance with other forms of EU law could follow similar patterns (for example, the application of Regulations). With regard to policies, we expect that the leeway of any administration to disregard EU implementation duties will not fundamentally differ between issue areas. Additionally, the specific cultures can reasonably be expected to cover not only labour law and even the social policy arena, but also all or many EU-related policies. Finally, the compliance culture relating to EU law will often, but not always, go hand in hand with the compliance culture relating to domestic law.<sup>15</sup> Since further research is needed on all these issues, however, we do not, at this point, stretch the lines of our typology beyond the field we studied, i.e. the implementation of the EU labour law Directives.

While it is beyond our reach here to speculate about the historical development of the different worlds, we can, at least, explain in abstract terms both transitions between worlds, on the one hand (b below), and the non-transition of countries in the most dutiful of our worlds (a below, for a detailed discussion see Falkner/Treib/Hartlapp/Leiber 2005: 328-330).

a) *How can a world of law observance persist* next to other worlds that do not take their EU-related duties as seriously? Our research revealed a number of elements that can be combined

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<sup>14</sup> The following quotation from one of our Danish interviews corroborates this argument: “If you have agreed to something, you stick to that agreement. And if the Danish government says yes [to a Directive], they are bound by that promise. But besides that it is also in the Danish interest. Because [...] Denmark wants other member states also to respect Community legislation. And if we don’t do it ourselves, we can’t point fingers at other member states (Interview DK3: 950-971).

<sup>15</sup> Empirically, this is clearly shown in the *Danish* case, for this country is the most Euro-sceptic member but nevertheless its good compliance culture applies to EU law as well as national law. This differs from other cases such as *France*, where neglect predominantly applies to rules stemming from the EU, while domestic law is generally respected. There are, however, good reasons why any other law originating from outside the country should be treated in a similar way to EU law in France. The individual countries within our worlds of compliance are discussed in Falkner/Treib/Hartlapp/Leiber (2005: 330-340).

to form a larger picture suggesting a *socio-political mechanism* that reinforces tendencies to take compliance seriously (see Figure 3).

**Figure 3: A Socio-political Mechanism Reinforcing Good Compliance**

<b>t 1: good compliance culture</b>	⇒	Society expects compliance, elites feel pressure to comply (and typically do so, as well as providing for the necessary administration).	⇒	Government can impose compliant behaviour on adversely affected interests who are generally used to complying, too.	↓
<b>t 2: good compliance culture reinforced</b>	⇐	Expectations raised that next time, good compliance will prevail again (and other actors may profit in turn).	⇐	Public discourse stresses long-term gain for all of respected rule of law (rather than advantages of free riding).	⇐

Source: Falkner/Treib/Hartlapp/Leiber (2005: 329)

This mechanism interrelates cultural and actor-related aspects in stressing that institutionalised patterns create expectations and cost–benefit calculations that induce actors (here governments) to behave in a certain way. Although this is a probabilistic mechanism rather than an automatism – governments may at times act against a national culture of good compliance – our cases indicate every bit as much as aggregate statistics (see, for example, Sverdrup 2003:20f) that this “good compliance mechanism” produces rather regular effects in some member states. This mechanism meets two of the main criteria for any cultural explanation as suggested by Mark Lichbach (2003: 94-95). First, it illustrates how “norms become internalized in individuals”, thereby explaining how a culture of good compliance may become the dominant action orientation of political elites. Second, the probabilistic nature of the mechanism underlines that the impact of the cultural factor in our explanation is not a deterministic one, but that other courses of action, which go against the cultural logic, are possible in individual cases.

b) *Stability over time* is a second crucial issue in this context. In our study, all 15 countries exhibited a rather stable pattern so that we could unequivocally categorise them. In principle, however, it should be possible that countries move from one world to another. More research is needed here, but only longitudinal studies with a quite specific research design should be able to track such shifts should they happen.

Table 3 above suggests a number of hypotheses regarding potential changes from one world to another. The change from the world of neglect to the world of domestic politics seems to be the comparatively easiest. If a government decides to make compliance a priority, and effectively imposes this on its administrative system, the administrative kick-off phases should be allowed to function much more regularly soon thereafter. However, this will not always be easy to put into practice, as it will require an increase in administrative resources, a

more effective organisation of the administrative system or even efforts to raise awareness of compliance issues among bureaucrats.

In contrast, it will be much harder for a government to move its country into the world of law observance, at least in the short run. A culture of good compliance needs time to mature, and many small-scale struggles will have to be won against those who advocate departures from the path of virtue in individual cases. Over a longer period, however, incremental but constant trials and a slowly increasing number of victories in individual cases of implementation may reinforce each other and may finally add up to a slow process towards increasingly better compliance.

### **3.2 Sometimes-True Theories and the Worlds of Compliance**

The above suggests that crucial hypotheses in the EU implementation literature may only be “sometimes-true theories” (Coleman 1964: 517) in the sense that they only have significant predictive capacity in some of our worlds. From our theoretical argument about the three worlds we expect different factors to matter in different worlds. Let us exemplify this by means of the veto player argument as presented earlier in this paper. Veto players are decisive actors within the political system. Hence we should expect these to be most relevant in the world of domestic politics. In the world of neglect, the number of veto players is more or less irrelevant for transposition performance as the typical pattern is the absence of any political process due to long phases of administrative inertia. In the world of law observance, the number of veto players will not tell us much about the fate of Directives to be incorporated into domestic legislation. Here, cultural dispositions typically ensure that irrespective of the significance of the required reforms, all veto players, even those that are negatively affected, take the duty to comply with EU law (and the long-term benefits arising from this) more seriously than the pursuit of their own (short-term) interests. In the world of domestic politics, however, political contestation about the costs and benefits of required adaptations is the typical pattern. The number of veto players in domestic politics should play an important role in determining whether opposing interests will be able to prevail.

This argument also finds support in our data. Figure 4 once again presents the relationship between veto players and transposition performance for our fifteen countries. The country clusters resulting from our typology of three worlds of compliance are denoted by three ellipses. This illustrates that the performance of the countries that belong to the world of neglect if we focus on the transposition stage (Greece, Luxembourg, Portugal and France) is far poorer than one would have expected on the basis of their moderate numbers of veto players. By contrast, the countries in the world of law observance (especially Denmark) are better than their institutional reform capacities would suggest. It is only in the countries that belong to the world of domestic politics at the transposition state (Austria, Belgium,

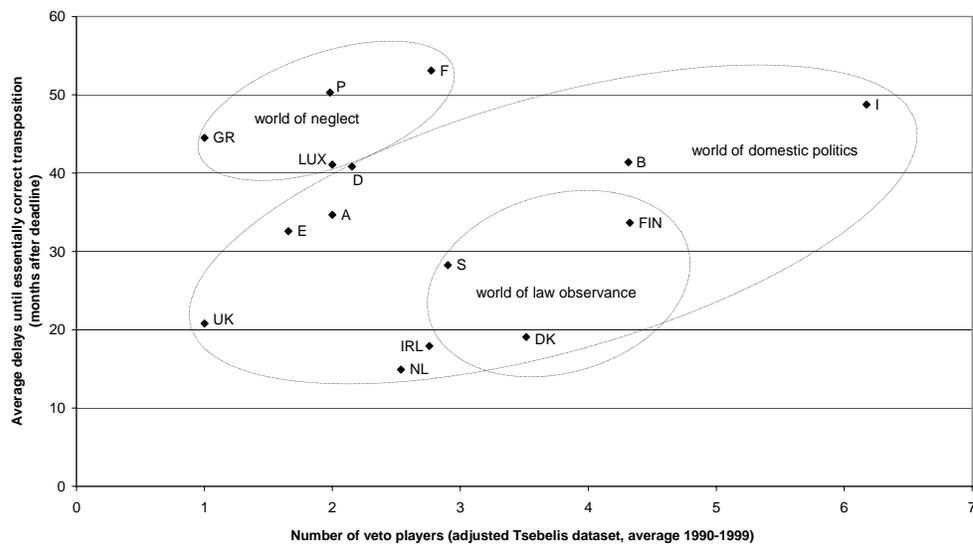
Germany, Ireland, Italy, the Netherlands, Spain and the UK)<sup>16</sup> that the veto player argument actually seems to make sense. In our view, this conclusion holds even though the figure apparently indicates that *relatively* more veto players imply *comparatively* more transposition problems in each of the three worlds. Since the qualitative findings from our many expert interviews strongly suggest that there are fundamentally different transposition logics in the three worlds (see above), we cannot but conclude that the ostensible relationships are spurious for the worlds of law observance and neglect. This should remind us not to over-interpret statistical correlations. After all, they only indicate co-variance between the factors analysed, but they do not imply causal relationships. What is more, the veto player argument alone cannot explain the widely differing *levels* of transposition problems between the three worlds. This becomes particularly clear if we focus only on the countries belonging to the worlds of law observance and neglect. The member states in the latter world have far less veto players but still perform much worse than the countries in the former world.<sup>17</sup> In other words, there must be important other mechanisms at work that explain the widely differing performance of the countries in these two worlds.

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<sup>16</sup> Our typology differentiates between stages of the implementation process. Since neglectful enforcement of a Directive's standards, giving rise to application problems, may counterbalance dutiful performance during the transposition stage, we suggest looking at both the stage of transposition and the subsequent stage of enforcement and application when assigning countries to the different worlds of compliance. In fact, there are two countries (Ireland and Italy) that follow a logic of domestic politics when it comes to transposition but neglect their duties to ensure proper enforcement. As the focus in this paper is on transposition only, we treat these countries as members of the world of domestic politics, although they belong to the world of neglect if we look at the implementation process as a whole.

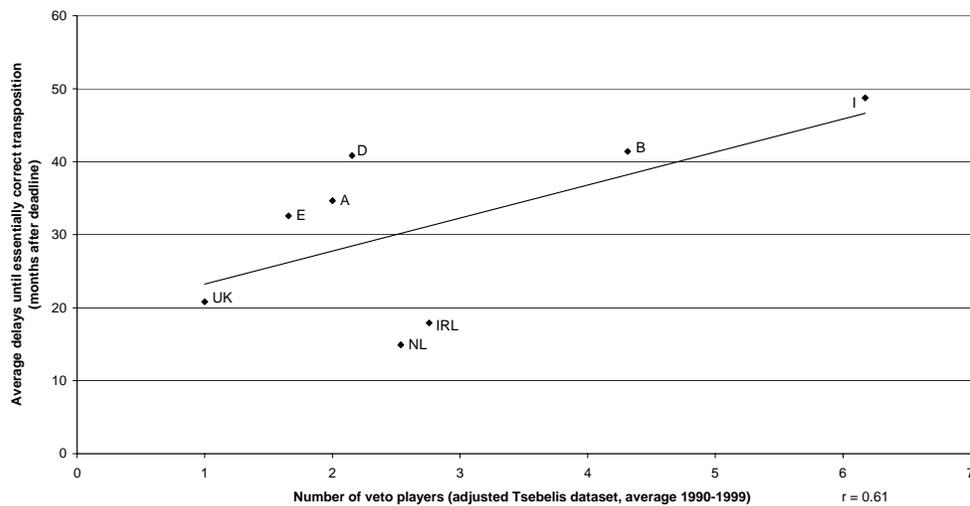
<sup>17</sup> For the countries belonging to the worlds of law observance and neglect, there is even a negative statistical relationship between the number of veto players and transposition performance ( $r = -0.56$ ). This type of correlation is clearly contrary to the underlying logic of the veto player argument, which would predict exactly the opposite.

**Figure 4: Veto Players and Transposition Performance in the Three Worlds of Compliance**



Finally, the data also confirm that the veto player argument does make sense in the world of domestic politics, as expected by our typology. If we restrict our analysis to this country cluster, the countries that belong to the world of domestic politics at the transposition stage, the result is a rather strong correlation ( $r = 0.61$ ) between the number of veto players and the transposition performance of these countries (see Figure 5). The correlation for this group of member states is thus much stronger than for all fifteen countries included in our study.

**Figure 5: Veto Players and Transposition Performance in the World of Domestic Politics<sup>18</sup>**



In sum, these data lend empirical support to our typology. In line with what we expected, they show that the veto player argument is much more relevant for the world of domestic politics than for the countries belonging to the other two worlds. This demonstrates that our typology of three worlds of compliance is instructive in telling us when (that is, in which country settings) the existing “sometimes-true theories” on compliance with EU legislation are actually applicable. In the world of domestic politics, we should focus on veto players, party political preferences, changes of government and interest group pressure. Determining how governments and major interest groups assess the required reforms on the basis of their own political preferences will be of great importance for explaining implementation success or failure here (Treib 2003; see also Falkner/Treib/Hartlapp/Leiber 2005: 309-313). In the world of neglect, administrative factors play a crucial role in explaining the way Directives are incorporated into national law. However, these administrative shortcomings come in different forms, including administrative inefficiency and coordination problems, administrative overload and the general unwillingness of administrative actors to acknowledge reform requirements imposed by EU law. Focusing merely on the amount of administrative resources would therefore miss the point, as the administrations in some countries seem to have enough resources, but are either organised too ineffectively to ensure proper performance or are characterised by a lack of willingness on the part of administrative actors to accept EU

<sup>18</sup> Note that Ireland and Italy only belong to the world of domestic politics if we focus on the transposition stage. Due to their ineffective enforcement systems, these countries will have to be subsumed under the world of neglect if we look at the implementation process as a whole (see also note 16 above).

demands and to initiate processes of adaptation. Irrespective of these differences, the major problems in these countries lie in the administrative rather than the political sphere. In the world of law observance, finally, the presence of a shared culture of good compliance among both political and administrative actors is the most important determinant of transposition performance. This cultural factor ensures that the administrations in these countries are generally organised effectively and that political conflicts over how to incorporate EU Directives into domestic legislation usually are solved without significant transposition delays and without compromises that run counter to EU law.

As a final remark, it should be noted here that even within the worlds for which they are of relevance, theoretical arguments about the implementation of EU policies are also sometimes-true theories in a second sense, meaning that they are probabilistically formulated hypotheses rather than deterministic laws. In this understanding, the “sometimes-true” characteristic is crucial even within the cases covered by a *ceteris paribus* clause (Mayntz 2003: note 1, with further references), and not only for comparing cases across different worlds of compliance. The large multitude of potential causal factors impacting on the implementation performance of individual countries accounts for exceptions to any (probabilistic) rule. This certainly also applies to our expectations related to the three worlds of compliance which refer to *typical* modes of treating implementation duties. Even in the world of law observance, special conditions may trigger non-compliance. However, at least across many cases we expect that the world of law observance should fare significantly better than the world of neglect. Predictions with a view to outcomes are even less possible when it comes to the world of domestic politics, where the specific political preferences of government parties and interest groups in any individual case are crucial for implementation performance.

While stressing again that our typology relates to typical process patterns, not to outcomes, it is still of interest to mention here that the three clusters perform as expected when we look at the implementation performance of the six Directives we studied empirically.<sup>19</sup> In this context, it makes sense to analyse the aggregate performance of the country clusters in order to eliminate as much as possible “exceptional” effects. More specifically, the aggregate level enables us to control for the fact that the performance of individual countries in the world of domestic politics may be systematically better or worse in our cases because the constellation of domestic politics was permanently favourable (or unfavourable) over the period we studied. Across the whole range of countries in this world and/or over a longer period of time or a wider range of cases, these differences should wash out and result in an overall performance that is worse than in the world of law observance, but better than in the world of

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<sup>19</sup> Here, we refer to the transposition stage. Including application and enforcement shortcomings, the country distribution across our three worlds is slightly different, but the cluster averages still perform according to our probabilistic hypotheses.

neglect. In fact, this is the pattern we find: The average total delays until countries had reached the status of essentially correct transposition (Falkner/Treib/Hartlapp/Leiber 2005: Table 13.6) are shortest in the world of law observance (27 months after the deadline) and longest in the world of neglect (47 months), with the world of domestic politics in the middle range (31 months).

#### **4 Conclusions and Outlook**

The typology of three worlds of compliance presented in this paper (see in more detail Falkner/Treib/Hartlapp/Leiber 2005) can be seen as a filter that decides which theoretical arguments are relevant for different countries and which are not. In this sense, crucial EU implementation theories, including most importantly also the misfit and the veto player approaches, are only “sometimes-true theories” (Coleman 1964). While our own approach is certainly less parsimonious than any mono-causal theorem, it draws a much more realistic picture of member state performance in fulfilling the prescriptions of EU law. The typology of three worlds gives a more valid impression of compliance patterns in the fifteen countries covered by our study than the analysis of any of the causal factors presented in earlier research on compliance with EU law across all EU member states.

Our typology will, of course, be further tested and refined in future research beyond that which was possible within the practical confines of our project. The extensive and intensive case studies on our 91 cases were in any case indispensable for laying the foundations of our fresh approach to EU implementation theory. Without field work on many individual cases of (non-)compliance, one cannot know whether a case is typical of others and which cases may be subsumed under the heading of a relatively homogenous group. At least, this is true if we are looking for the *causal mechanisms* that are at work in the different member states producing compliance or non-compliance with EU law. While countries could also be classified on the basis of statistical methods, there would still be uncertainty as to whether the resulting groups of cases are actually kept together by the same causal mechanisms rather than by similar (but potentially spurious) statistical correlations.

As an inductively generated insight from the study of our 91 cases, our typology offers a key to understanding when and where individual theoretical propositions from earlier studies in the field of EU policy implementation in the member states are more or less viable. Therefore, it may serve as a theoretical starting point for, and could be tested by, further empirical research in the field.

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