

Compliance with EU law in Central and Eastern Europe: The Disaster that Didn't Happen (Yet)

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Abstract

This article reviews the patterns of compliance with EU law in Central and Eastern Europe. Looking at the formal-legal part of the process of compliance, I find that the post-communist member states have been largely successful in transposing the body of EU legislation properly and on-time, and that the success has persisted after the moment of accession to the EU. Focusing on the practical implementation stage, the article concludes that in three different policy sectors (electronic communications, consumer protection, and animal welfare), the implementation performance of the post-communist member states exhibits shortcomings, which are however not of a different nature and not on a different scale than the implementation problems in Western and Southern Europe.

Keywords

Central and Eastern Europe, compliance, enforcement, EU enlargement, EU law, policy implementation, regulation, transposition

Introduction

The European Union (EU) is a community of states based on a dense and complex set of rules and regulations. In a certain sense, the EU *is* this collection of rules and regulations, since it lacks genuine democratic political legitimacy. The moment its rules and regulations cease to be implemented, the EU ceases to exist. It is, therefore, understandable that the topic of compliance with EU law increasingly preoccupies the academic literature on the European Integration¹. The experience of the EU member states from Central and Eastern Europe (CEE) in incorporating the body of EU rules and regulations has been, and remains, an important milieu for the study of compliance with EU law².

It is the purpose of this article to present an overview of what we have learned about compliance with EU law in CEE. I will provide an assessment, based on analysis of reports produced by various European and national institutions and a summary of the existing academic literature, of the extent to which the body of EU legislation has been incorporated and applied by the CEE countries.

First, I discuss the context of EU law adoption in CEE and outline the challenges for successful incorporation of European legislation in the post-communist countries. Second, I review the major theoretical explanations put forward to explain the patterns of compliance with EU law in CEE. Third, I discuss in detail the transposition performance of the 'new' member states before and after Accession, and I note that the results have been surprisingly positive. Next, the empirical analyses focus on the process of practical implementation in three policy areas – electronic communications, consumer protection, and animal welfare, and the conclusion reached is that while practical implementation in CEE is prone to more shortcomings than formal transposition, the problems are not of a different nature and on a different scale than the ones encountered in Western and Southern Europe. Finally, the

¹ For recent reviews see Dimiter Toshkov, 'Taking Stock: A Review of Quantitative Studies of Transposition and Implementation of EU Law.', *Institute for European Integration Research Working Papers* 2/2010 (2010); Dimiter Toshkov, Moritz Knoll, and Lisa Wewerka, 'Connecting the Dots: Case Studies and EU Implementation Research', *Institute for European Integration Research Working Papers* 10/2010 (2010); Ellen Mastebroek, 'EU Compliance: Still a 'Black Hole'?', *Journal of European Public Policy* 12 (2005): 1103-20.

² See amongst others Frank Schimmelfennig and Ulrich Sedelmeier, eds., *Europeanization of Central and Eastern Europe* (Cornell University Press, 2005); Dimiter Toshkov, *Between Politics and Administration. Compliance with EU Law in Central and Eastern Europe* PhD Dissertation. Leiden University, 2009); Radoslaw Zubek, *Core Executive and Europeanization in Central Europe* (London: Palgrave Macmillan 2008); Antoaneta Dimitrova, ed., *Driven to Change. The European Union's Enlargement Viewed from the East* (Manchester and New York: Manchester University Press, 2004).

concluding section draws the implications of these results for understanding governance in CEE.

The context of EU law adoption in CEE

During the 1990s, the initial reactions of social scientists and policy makers to the prospects for the incorporation of EU law in the then candidate countries from CEE were cautious at best³. At that time, the existing member states themselves were having serious trouble fulfilling their own commitments to transpose and implement EU directives properly and on time and several member states (Greece, Italy, Portugal, to some extent France) seemed to be structurally unable (or unwilling) to cope with their obligations with regard to the timely and proper application of EU rules. If the 'old' member states, with their decades of EU experience and relatively efficient bureaucracies couldn't manage, how could the CEE countries be expected to fare any better?

At the time of the enlargement negotiations, all of the CEE states were still in the midst of profound social, political and economic transformations. Whatever state apparatus existed during the communist regimes imploded in the early 1990s, and the new, Europeanized, state capacity was just being built⁴. With the possible exception of Hungary even civil services as such was non-existent⁵. While the regulatory canvas in CEE was certainly not empty, many of the rules were obsolete for a market economy and a democratic society. Worse, during the communist regimes many formal rules existed without every being applied in practice, which created two parallel but disjointed worlds of formal institutions which were written down but seldom enforced, and informal institutions which were not codified but *de facto* determined the rules of the political and economic games. As a result, the EU rules had to compete with a layer of old regulations inherited from the communist regimes but also with demands from a number of other international organizations, like the

³ Phedon Nicolaides, Arjan Geveke, and Anne-Mieke den Teuling, *Improving Policy Implementation in an Enlarged European Union* (Maastricht: EIPA, 2003), 4; D.M. Curtin and R.H. van Ooik, "Revamping the European Union's Enforcement Systems with a View to Eastern Enlargement," in *WRP Working Documents* (2000).

⁴ Milada Anna Vachudova, *Europe Undivided. Democracy, Leverage, and Integration after Communism* (Oxford: Oxford University Press, 2005).

⁵ Antoaneta Dimitrova, 'Europeanization and Civil Service Reform in Central and Eastern Europe', in Frank Schimmelfennig and Ulrich Sedelmeier, eds, *Europeanization of Central and Eastern Europe* (Ithaca: Cornell University Press, 2005), 71-90; Jan-Hinrik Meyer-Sahling, 'Getting on Track: Civil Service Reform in Post-Communist Hungary', *Journal of European Public Policy* 8 (2001): 960-79.

World Bank, the Council of Europe, and OECD, and foreign country's agencies, like USAID, which 'exported' rules and institutional templates.

The EU rules, which had to be downloaded, were designed to address regulatory and redistribute problems arising in the fundamentally different social, economic and political settings of Western Europe. There were fears that adopting the EU rules at their current stage of economic development would actually destroy the emerging CEE market economies⁶.

Moreover, the candidate countries had to adopt and apply an enormous body of legislation in the preparation and enactment of which they hadn't participated. The potential of the accession negotiations to provide for derogations and transitional periods was limited. In principle, the entire body of EU rules entered into force and had to be applied in the new member states from the moment of accession. The room for discretion was minimal.

Almost ten years after the end of the accession negotiations, we can look back and conclude that many of these problems have been overestimated and many fears have proven unfounded. The anticipated disaster didn't happen. As it will be discussed later in the article, transposition of EU law in CEE has been largely a success, the level of practical implementation seems limited but comparable to that in the 'old' member states, and enforcement (the infringement procedures) is actually more effective in CEE. At the same time, the broader picture of governance of CEE doesn't seem to have improved much – in some of the countries corruption is still widespread, in others civil service reforms were reversed, and yet in others the independence of autonomous government agencies is often under threat.

Although the reality of EU law adoption in CEE contradicted many of the baseline theoretical expectations people had about how the process would unfold, a number of theories have emerged which provide mechanisms that can account for the empirically-observed developments. The next section of the article will discuss some of these studies in order to identify potential *explanations*.

Incorporating EU law in CEE during Enlargement: Theories and interpretations

One of the early systematic studies of how the applicant countries from CEE dealt with the demands to harmonize their legal systems with EU rules suggested both a

⁶ Fritz W. Scharpf, 'European Governance: Common Concerns Vs. The Challenge of Diversity', *MPIfG Working Paper* 01 (2001), , 2-3.

more nuanced picture than the prevalent pessimistic accounts and a plausible mechanism for explaining the adaptation patterns. In her 2004 book, Liliana Andonova studied the chemical safety and air pollution policies in three CEE countries, and concluded that the level of adaptation varies not only between countries but also between the different (sub)sectors that she analyzed⁷. The competitiveness of the industry, the structure of the constellation of affected economic actors, and domestic institutions all had a role to play in accounting for the differences, but what the book showed is that even in the unlikely case of costly environmental legislation, compliance was possible if the adaptation to the EU standards provides access to European markets for a competitive domestic industry.

Much of the scholarship that followed, however, focused on the interactions between the EU and the member states in order to explain compliance. Conditionality – the ability of the EU to demand reforms in exchange for accession to the club – was singled out as the most important mechanism for ensuring that EU rules are transposed and implemented, and the residual variation was related to the costs and benefits of the legislation which had to be ‘downloaded’⁸. The conditionality framework can account for the broad contours of the process of legal harmonization in CEE but it also suffers from a number of shortcomings. First, by placing the emphasis too strongly on the stick and carrot of accession, expectations were created that once conditionality is removed, compliance will surely drop. Second, with the benefit of hindsight we can say that conditionality itself is effective only under a specific set of circumstances⁹, as the example of the negotiations with Turkey demonstrate – once the perspective of membership is too certain or too unlikely, the force of conditionality evaporates.

⁷ Liliana Andonova, *Transnational Politics of the Environment. The European Union in Central and Eastern Europe* (Cambridge and London: MIT Press, 2004).

⁸ Dimitrova, 'Europeanization and Civil Service Reform in Central and Eastern Europe', in ; Rachel A. Epstein and Ulrich Sedelmeier, 'Beyond Conditionality: International Institutions in Postcommunist Europe after Enlargement', *Journal of European Public Policy* 15 (2008): 795 - 805; Heather Grabbe, 'How Does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity', *Journal of European Public Policy* 8 (2001): 1013-31; Frank Schimmelfennig, 'EU Political Accession Conditionality after the 2004 Enlargement: Consistency and Effectiveness', *Journal of European Public Policy* 15 (2008): 918 - 37; Frank Schimmelfennig, Stefan Engert, and Heiko Knobel, 'Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey', *Journal of Common Market Studies* 41 (2003): 495-518; Ulrich Sedelmeier, 'After Conditionality: Post-Accession Compliance with EU Law in East Central Europe', *Journal of European Public Policy* 15 (2008): 806 - 25.

⁹ Bernard Steunenberg and Antoaneta Dimitrova, "Compliance in the EU Enlargement Process: Institutional Reform and the Limits of Conditionality" (paper presented at the 6th Corsican Law and Economics Workshop, Reims, 26-28 May 2005).

Another set of studies put the capacity of the CEE countries' bureaucracies center stage. Hille and Knill argued that the government effectiveness is significantly associated with progress in adapting to the EU¹⁰. Furthermore, Zubek showed that the power of the core executive, and its interactions with the legislatures, are important in accounting for the varying success in transposition of EU law during enlargement¹¹. The empirical analyses of Toshko also demonstrate that government capacity leads to fewer transposition delays¹².

The latter analyses, however, look for and find evidence for an effect of politics as well. In general, and in the specific case of social more EU supportive governments have been more successful in adopting EU law policy¹³. Socio-economic left-right positions also seem to matter with more right-wing governments doing slightly better, perhaps because of their affinity to the market-making measures that EU law often introduces. The effect of societal and government ideological preferences is surprising because it is generally lacking in studies of the implementation performance of the 'old' member states¹⁴. It also contradicts the picture of law harmonization during accessions as a completely bureaucratic exercise, insulated from politics and allowing only for a formal role of representative political institutions (parliaments were supposed to have rubber-stamped transposition legislation under the pressures of time).

Although the experiences of the ten candidate countries with adapting to the *acquis* proved to be quite divergent already during the accession negotiations – for example, the Commissions *aivs* (in Agenda 2000) already contains quite different evaluations of the different candidate countries with respect to their preparedness to implement the European legislation – in an influential article Falkner and Treib argue that the CEE countries form a separate 'world of compliance'¹⁵ characterized by

¹⁰ Peter Hille and Christoph Knill, 'It's the Bureaucracy, Stupid': The Implementation of the *Acquis Communautaire* in EU Candidate Countries, 1999-2003', *European Union Politics* 7 (2006): 531-52.

¹¹ Radoslaw Zubek, 'Complying with Transposition Commitments in Poland: Collective Dilemmas, Core Executive and Legislative Outcomes', *West European Politics* 28 (2005): 592-619; Zubek, *Core Executive and Europeanization in Central Europe*

¹² Dimiter Toshkov, 'Embracing European Law: Transposition of EU Directives in Central and Eastern Europe', *European Union Politics* 9 (2008): 379-42; Dimiter Toshkov, 'Transposition of EU Social Policy in the New Member-States', *Journal of European Social Policy* 17 (2007): 335-48.

¹³ Toshkov, 'Embracing European Law: Transposition of EU Directives in Central and Eastern Europe'; Toshkov, 'Transposition of EU Social Policy in the New Member-States'.

¹⁴ See the review of the evidence in Toshkov, 'Taking Stock: A Review of Quantitative Studies of Transposition and Implementation of EU Law.'

¹⁵ Gerda Falkner and Oliver Treib, 'Three Worlds of Compliance or Four? The EU-15 Compared to New Member States', *JCMS: Journal of Common Market Studies* 46 (2008): 293-313.

neglect of practical applications of the rules and formalistic approach to compliance. While the emphasize on the real vs. the formal stage of implementation is certainly justified, isolating CEE into a ‘world of dead letters’ doesn’t do justice to the important differences that exist *within* this groups of countries (e.g. Lithuania vs. the Czech Republic, or Slovenia vs. Bulgaria) and it obscures the great within-country variation over time (e.g. Hungary in the late 1990s and Hungary around 2010) and between policy sectors (as noted already by Andonova and numerous transposition studies). The idea that CEE forms a separate cluster is also methodologically suspect because it is derived, like much of the literature on compliance in CEE, from comparisons between CEE countries only, while the reference group of the old member states is left out.

In summary, a number of theoretical approaches have been proposed in order to account for the patterns of compliance in CEE. Most of these theories have been formulated during the time of enlargement, in with the specific institutions of accession negotiations in mind. Ten years after the end of these accession negotiations, it is time to look back and evaluate how the process of EU law implementation has unfolded in CEE. In the next section of this article, I will turn towards such an evaluation by looking in turn at the transposition and implementation stages of compliance.

Compliance with EU law in CEE: The state of the play

A. Transposition

Scholars generally agree that the transposition (formal implementation) of the corpus of EU law in the member states from CEE has largely been a success, although they might disagree about the meaning and the implications of this success¹⁶. When the first statistics on the so-called ‘transposition deficit’ (the number of non-transposed directives) after the 2004 Accession were published, they left many incredulous¹⁷. Almost immediately after joining the EU, most of the new member states (with the notable exception of the Czech Republic) reported lower transposition deficit than most of the ‘old’ member states (see Table 1). Not only that, but countries like

¹⁶ Sedelmeier, 'After Conditionality: Post-Accession Compliance with EU Law in East Central Europe'; Toshkov, *Between Politics and Administration. Compliance with EU Law in Central and Eastern Europe*

¹⁷ The Internal Market Scoreboard reports which collect statistics on transposition are produced by the European Commission and are available at: http://ec.europa.eu/internal_market/score/index_en.htm

Lithuania actually topped the table. In 2007, upon Accession, Bulgaria reported zero non-transposed directives, and its performance in this regard has been among the best in league since. Although the statistics reported in the Internal Market Scoreboard are rather general, more in-depth analyses of transposition in specific policy areas have confirmed the picture of largely correct and timely transposition.

[Table 1 here]

As mentioned above, it is unclear what we should make of this success. What is certain is that timely transposition doesn't equate with successful implementation and even less so with real policy and societal change. Transposition is a necessary but not a sufficient condition for compliance. At the same time, transposition *is* a necessary condition for compliance. The fact that it is not sufficient should not be used to undermine the achievement of the CEE countries to formally incorporate the body of EU legislation in a relatively short period of time. Even as a purely technical, bureaucratic exercise of translating the EU rules and drafting national transposition measures, the task of incorporating all EU directives and regulations is gigantic. The failures of some of the Western and Southern member states to fulfill it during a period spanning several decades is telling (even now, countries like Italy and Belgium do not meet the transposition deficit threshold set by the Commission). To a large extent, the institutional structures created during the years of Enlargement are responsible for the successful performance of the CEE countries. The CEE national bureaucracies established complex coordination mechanisms for EU affairs¹⁸ within their governments, installed data management systems that help monitor transposition performance (even in the Czech Republic) and established channels for communication with the Commission that ensured timely reporting of the national transposition activities. It took many of the 'old' member states more than ten years to catch up in this exercise (for example, organizational reforms to improve transposition were only recently implemented in Greece).

¹⁸ Antoaneta Dimitrova and Dimiter Toshkov, 'The Dynamics of Domestic Coordination of EU Policy in the New Member States: Impossible to Lock In?', *West European Politics* 30 (2007): 961 - 86; Radoslaw Zubek, 'Core Executives and Cordination of EU Law Transposition: Evidence from the New Member States', *Public Administration* 89 (2011): 433-50; Radoslaw Zubek and Katarina Staronova, 'Ministerial Transposition of EU Directives: Can Oversight Improve Performance?', *EIF Working Papers* (2010): 1-32.

In fact, the strength (although not the type) of the EU co-ordination bodies have been revealed to be strongly associated with transposition performance in the CEE¹⁹. Furthermore, there is a relationship between the overall level of government effectiveness (bureaucratic quality) and the extent to which the CEE countries have managed to incorporate the body of EU legislation on time²⁰. It is telling that the transposition laggard within the CEE group of member states – the Czech Republic – is also the country which has been most reluctant to establish a strong co-ordination center at the core of the executive, and to pursue civil service reforms more generally.

It is important to emphasize that the normative implications of the transposition success in CEE are not at all obvious. While timely and proper transposition is certainly necessary for the functioning of the internal market, the positive effects of rushed transposition of the EU rules at the domestic level cannot be taken for granted. The establishment of the strong co-ordination bodies at the center of government in most of the CEE states, and prioritizing timely transposition, implies weaker sectoral ministries and sidelining the domestic substantive policy interests during the process of ‘downloading’ the EU legislation. EU directives in particular allow for a limited but often important discretion. If during a hurried transposition process these opportunities to adapt the European law to the national circumstances are not pursued, the long-term damage to domestic interests might be greater than the benefits of fast legal implementation. In fact, the actual implementation and enforcement of the EU can be undermined by a hasty literal transposition as well. So perhaps the solution of the first paradox of compliance in CEE has its solution in the second one? Perhaps the successful transposition has only been achieved at the price of deficient practical implementation leading to little or no impact of the EU rules on actual governance in the CEE region? While this hypothesis seems plausible, it is necessary first to explore more systematically whether and to what extent EU legislation *is* applied in practice or not in the new member states.

¹⁹ Antoaneta Dimitrova and Dimiter Toshkov, 'Post-Accession Compliance between Administrative Co-Ordination and Political Bargaining', *European Integration Online Papers (EIoP)* 13 (2009); Toshkov, *Between Politics and Administration. Compliance with EU Law in Central and Eastern Europe*; Zubek and Staronova, 'Ministerial Transposition of EU Directives: Can Oversight Improve Performance?'

²⁰ Hille and Knill, 'It's the Bureaucracy, Stupid': The Implementation of the Acquis Communautaire in EU Candidate Countries, 1999-2003'; Toshkov, 'Embracing European Law: Transposition of EU Directives in Central and Eastern Europe'

B. Practical implementation

The study of practical implementation (or law application) is notoriously difficult. It is close to impossible to generalize on the basis of case studies since much of the explanatory factors are idiosyncratic, while at the same time case studies appear to be the only viable research method to produce sufficiently valid and reliable information for the state of practical implementation. But in the case of the literature on EU law implementation in CEE, another methodological shortcoming is evident: much of the literature studies and compares only CEE cases while proposing generalizations about the differences between the 'old' and the 'new' member states. In addition, most of the existing studies focus on the environmental and social policy fields, which although substantively important, account for only a small proportion of the EU legislation in force. And academic research has been attracted by the more salient pieces of EU regulations, which are also some of the most 'difficult' cases for 'full' implementation. As a result, the inferences proposed by these studies might not be generalizable at all to the broader population of EU rules. In addition, the experiences of the CEE countries with the practical application of EU law is implicitly compared to some ideal standard of full compliance which is never observed in practice even in the unitary nation-states or federations like Germany and the US. Especially when research on compliance is conducted by scholars of political science or international relations, the messy reality of law implementation is compared to some 'ideal' interpretation of the law in the books with the inevitable conclusion that compliance doesn't live up to these artificial normative standards. Students of public administration know better since they have been long alerted to the long and winding road before a piece of legislation has any effect at the street-level, but still the larger point that the experience of the CEE countries should be compared to their peers in Western and Southern Europe rather than some artificial standard remains.

In this part of the article, I will review what is known about the state of practical implementation of EU law in CEE on the basis of original research, primary documents (implementation and enforcement reports) produced by the EU and national institutions and published secondary sources (academic studies of implementation). In doing so, the article commits a different methodological error by focusing on the policy areas for which there *is* available information. Of course, the availability of information on a particular policy field is likely to be correlated with the overall implementation and enforcement level in the policy field. Still, we have no

reasons to believe that the old and the new member states should be affected in a different way by increased scrutiny by the Commission, for example, so the selection bias should be non-systematic.

Electronic communications

The first policy field I discuss is electronic communications. The regulation of electronic communications in the EU is primarily based on a package of directives adopted in 2002 and revised in 2009 which cover access, authorization, users' rights, privacy and general aspects. The Commission actively monitors the implementation of the regulatory framework and published annual progress reports on the state of implementation²¹. These reports offer us a useful opportunity to look beyond transposition since they cover in detail many of the practical activities that need to be conducted in order to comply with the eCommunications directives – for example, the functionality of the common European emergency number 112, the possibility to change operators while keeping your number (number portability), the existence of a directory of subscribers, etc.

As of 2009, none of the CEE countries (excluding Bulgaria and Romania) are criticized for delays and failure to deliver the so-called national market reviews – a major regulatory tool within the framework which is in the responsibility of the national telecom regulators (but two 'old' member states are still criticized). With respect to broadband regulation, four new member states and four old member states are singled out as having problems. The report notes that the Universal Service compensation through a Universal Service fund 'is only in place in France, the Czech Republic and Romania' (three of the old member states and none of the new member states have infringement procedures started for incorrect implementation of this part of the regulatory framework). The Commission notes that in 2009 mobile and fixed number portability is available in all countries and in some of the new member states (Latvia, Poland, Slovenia and others) it works faster than the EU average. With respect to the 112 emergency number only Italy is mentioned as having problems in 2009²². In 2007 the Commission undertook measures against Italy, Netherlands,

²¹ The reports are available at:

http://ec.europa.eu/information_society/policy/ecomms/library/communications_reports/index_en.htm

²² European Commission, 15th Progress Report on the Single European Electronic Communications Market. Final report 2009 (COM(2010)253 final/3 - 25 August 2010).

Lithuania, Slovakia, Latvia, Poland and Romania with respect to caller identification, but only Bulgaria had the system not in place yet²³.

The issue which the new member states seem to violate most often is the powers and independence of the national regulatory authorities. 'The dismissal of NRA chairpersons led the Commission to take action against Member States (Romania, Slovakia) and to launch an investigation into the criteria for dismissal in Slovenia.'²⁴ Previously, Bulgaria, Estonia, Latvia, Hungary and Poland had failed to persuade the Commission in the independence of the telecom regulators and were exposed to the threat of financial sanctions²⁵. The initial transposition of the law in Slovenia was also challenged with respect to the independence of the national regulator. This exception from the general picture of relatively satisfactory compliance is noteworthy as it concerns the difficulties the CEE countries have in sustaining autonomous regulatory bodies insulated from political influence.

Overall, the application of the regulatory framework in the field of electronic communications definitely lags behind the formal transposition at the national level. The performance of the new member states, however, does not appear fundamentally different that the corresponding patterns in the 'old' member states (with the exception of Bulgaria and Romania which seem to struggle with most aspects of the legislation). The problem with the practical implementation of the rules in the East and the West are of similar scale and intensity, and there is much more variation between countries than between regions (blocks of states). Importantly, the issue with respect to which the new member states stand out is the reluctance to grant the necessary powers and autonomy to the national telecom regulator unless taken to court by the Commission. I should emphasize that the fact that the CEE countries have been relative successful in applying eCommunications directives doesn't mean that the new member states have converged to West European standards in terms of internet and mobile penetration, online commerce, or electronic government. Despite the reasonably functioning regulatory framework, the reality of electronic

²³ European Commission, 13th Report on the Implementation of the Telecommunications Regulatory Package. Final report 2007 (COM(2008)153) - 19 March 2008.

²⁴ European Commission, 15th Progress Report on the Single European Electronic Communications Market. Final report 2009 (COM(2010)253 final/3 - 25 August 2010.

²⁵ European Commission, 13th Report on the Implementation of the Telecommunications Regulatory Package. Final report 2007 (COM(2008)153) - 19 March 2008.

communications is still rather different in CEE as the Digital Agenda Scoreboard²⁶ reveals (there are positive exceptions – for example Estonia in the field of e-government and the Czech Republic with respect to online commerce).

Is the relatively decent implementation of the electronic communications laws likely to be generalizable? In fact, the telecom sectors at the national level are usually dominated by a small-number of large multinational companies functioning in a liberalized market. As noted by the literature, in such circumstances compliance with EU rules might be easier to achieve. So we should be careful when generalizing the observations from the telecom sector and we are well-advised to look into other policy areas as well.

Consumer protection

Consumer protection legislation is an appropriate setting to continue the investigations because it requires a different type of law application framework and as such provides a contrast to the field of electronic communications. The investigation is made possible by the existence of the EC Consumer Law Compendium²⁷ – a comprehensive database of the national transposition legislation in all member states with regard to eight consumer law directives (about 6000 individual references to national laws), produced by an international research group on behalf of the Commission in 2007. Before I proceed with the overview, it should be noted that the nature of the provisions of the eight consumer protection directives is such that instead of the establishment of certain organizations or the provision of certain services, the law application in this area consists primarily in the conferral of certain rights to consumers by the transposing measures and the enforcement of these rights by the courts. But the member states have considerable discretion, for example in the definition of the notion of ‘consumer’, the scope of the contracts to which the legislation applies, etc. So implementation of these directives is pretty much conducted with the design of the legislative measures and the mechanisms for their enforcement.

²⁶ The Digital Agenda Scoreboards are available at: http://ec.europa.eu/information_society/digital-agenda/scoreboard/index_en.htm

²⁷ The EC Consumer Law Compendium is available at: <http://www.eu-consumer-law.org>. The main text summarizing the findings is entitled *Consumer Law Compendium. Comparative Analysis* and is available at: http://www.eu-consumer-law.org/consumerstudy_full_en.pdf. Hans Schulte-Nölke from the University of Bielefeld is the main co-ordinator of the project.

The report paints a rather bleak picture of the transposition and applications of EU consumer law both with regard to the timing and the correctness (scope of application) of transposition. For example, in the case of Belgium, for two of the directives the transposition delay has been 19 months (Directive 98/27) and 50 (!) months (Directive 85/577) respectively, and the application has led to several infringement procedures. [Additionally, there have been more than two years delays in the case of Directive 90/314 in Finland and Directive 94/47 in Italy]. With respect to Greece, the report notes that ‘the European guidelines went unheeded for many years’. Ireland only transposed one directive within the deadline. The *average* delay in the case of Luxembourg was between 2 and 3 years and almost two years in Portugal. In contrast, it appears that most of the CEE member states have completed the transposition of the eight directives at the time of accession (2007 for Bulgaria and Romania, and 2004 for the rest). Moreover, the detailed legal analysis contained in the compendium shows that in many of these countries the legislators took advantage of the numerous exemptions and options to modify the directives. Copy and pasting the EU legislation hasn’t been the default mode of transposition in CEE (although it has been in some of the old MS, e.g. Italy). While transposition deficiencies which might compromise the application of the directives are noted in all countries, there is no evidence that the scale and nature of the problems in CEE are different than those in the old member states. In summary, to the extent that in the field of consumer protection proper transposition *is* essential for effect and the proper enforcement of the legislation, we can conclude that the new member states have avoided the huge delays characteristic of the many of the old member states, and have modified the directives to their political objectives. Since the directives had to be transposed before accession, maybe the result is due to the power of conditionality, but the fact that the legislation had not been copied and pasted contradicts a picture of hasty adoption of the laws for the sake of formally fulfilling the requirements of the accession process.

It is difficult to reach any conclusion about whether the regulatory framework makes any difference in the daily life of citizens and companies, since the effect of the policy depends a lot on the proactive behavior of consumers to stand up for their rights. For example, looking in consumer complaints lodged in different states might be misleading since more complaints can result from deficient enforcement of the legislation *or* from active consumers who are aware of and try to enforce their rights. At the same time, lack of complaints cannot be assumed to imply lack of problems.

For example, if we look at the number of complaints submitted to the RAPEX system²⁸ (EU platform for notification of dangerous products), we can see that in 2008 Slovakia, Hungary, Poland and Bulgaria are amongst the countries with the highest number of notifications. This can be interpreted as evidence for problems, but also as evidence for awareness of the mechanisms for protecting consumer rights. With regard to general consumer complaints, a look at the Consumer Market Scoreboard²⁹ reveals a more varied picture with the size of the country being the major determinant of the number of consumer complaints received and the new member states registering a number of complaints relatively proportional to their size. Overall, as with electronic communications, we don't find the CEE countries in a separate world with respect to the application of consumer protection legislation. But this could be because of in the application of consumer laws is heavily based on legal measures, relies on the consumers themselves to enforce the legislation, and doesn't require significant domestic investments in organizations and routines to ensure implementation.

Animal welfare

The next policy sector I am going to focus on is food control and animal welfare standards. In contrast to consumer protection, this sector requires substantial domestic investments in monitoring and enforcement capacity. In contrast to electronic communications, food and animal welfare concern a multitude of relatively small and diverse enterprises rather than the few, large multinationals that dominate the information society sector. In order to review the application of EU food control law, I will rely on the inspection reports by the European Commission which in turn are based on fact-finding missions in the different states³⁰. These inspection reports provide 'horizontal' overviews of the state of implementation in a particular sub-area (e.g. border inspection posts, food hygiene, etc.). Although the final reports rarely contain references to individual countries, details can be gathered from the individual country reports which are also generally available.

²⁸ The RAPEX reports are available at:
http://ec.europa.eu/consumers/dyna/rapex/rapex_archives_en.cfm

²⁹ The Consumer Market Scoreboard is available at:
http://ec.europa.eu/consumers/consumer_research/cms_en.htm

³⁰ Most reports are available from the website of the Food and Veterinary Office of the EU:
http://ec.europa.eu/food/fvo/index_en.cfm

For example with respect to the enforcement of animal welfare standards for laying hens, the reports note that sanctions were imposed by the national authorities in the Czech Republic, Poland and Bulgaria but that the sanctions have not been dissuasive enough to stop the infringing practices. For Lithuania the report notes that ‘[The] enforcement strategy (including imposition of fines and revocation of approvals for a laying hen premises) progressively implemented since Accession in 2004 has resulted in a reduction in the number of holdings using unenriched cages with insufficient internal height and slope’³¹.

[Table 2 here]

A more systematic way to compare the performance of the new and the old member states is made possible by the overviews of national inspection reports (conducted by the Food and Veterinary Office (FVO) of the EU) collected by Brendan Carroll (Leiden University, unpublished). Table 2 summarizes the results. The entries in the second column of the table are the number of implementation deficiencies noted by the FVO during their inspection visits (2003-2010) with respect to all articles of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004³² on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. For each article of the regulation the deficiencies are coded as [*0 = no deficiency, 1 = minor deficiencies, 2 = severe deficiencies*] and then summed over all articles. The third column of the table lists the deficiencies only with respect to the requirements for keeping laying hens in battery cages – one of the most salient articles in the sector. The fourth (right-most) column records the number of recommendations made during all visits of the FVO vis-à-vis this requirement. It is clear from the comparison that the CEE countries which joined the EU in 2004 have on average fewer and less severe problems with the implementation of the regulation. The differences are small, but mostly in favor of the CEE-8 countries. At the same time, the number of recommendations made to Bulgaria

³¹ European Commission. Food and Veterinary Office ‘General Report of Findings from Missions 2008-2010 on Enforcement of Animal Welfare Standards for Laying Hens Kept in Unenriched Cages.’, 2011, (DG)SANCO/2010-8814/GR, available at: http://ec.europa.eu/food/fvo/specialreports/2011_8814_en.pdf

³² Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:165:0001:0141:EN:PDF>

and Romania (and to the two Mediterranean newcomers), and the average number of implementation deficiencies is higher.

These conclusions drawn from the animal welfare policy fields are important due to several reasons. First, they are based on facts collected directly by the EU so are subject to a lower bias than compliance comparisons based on self-reporting by the member states. Second, the sector is commercially important and it is unlikely that the FVO shows any leniency: so it presents a rather hard test for the state of compliance. The fact that the CEE countries (with the exception of Bulgaria and Romania) outperform on average the old member states in compliance with animal welfare rules is, thus, quite noteworthy. The finding is also surprising given the structure of this economic sector which is characterized by a multitude of relatively small enterprises many of which work only for the domestic market.

To summarize, in all three policy fields that we have looked at so far – electronic communications, consumer policy, and animal welfare – there is evidence for implementation shortcomings. These deficiencies however reflect genuine problems with the application of the laws rather than neglect or dead letter regulations. In all three cases, the performance of the new member states has been no worse than the one in Western or Southern Europe; if anything, the evidence points to the new member states doing slightly better. Two important caveats are in order, however – Bulgaria and Romania underperform in terms of implementation vis-à-vis both the EU-15 and the CEE-8 groups, and the all CEE countries seem to have problems with guaranteeing the independence of regulatory agencies.

Conclusion

The relatively decent implementation in the three policy areas in CEE discussed above contrasts with much of the existing literature on the implementation of EU rules in CEE. The reasons for the discrepancy have to do case selection. First, the bulk of the existing case studies of practical implementation in CEE concern only two policy sectors – social³³ and environmental³⁴ policy - which are substantively important but

³³ Emmanuelle Causse, 'Hungary', in Gerda Falkner, Oliver Treib, and Elisabeth Holzleithner, eds, *Compliance in the Enlarged European Union. Living Rights or Dead Letters?* (Aldershot: Ashgate, 2008), 61-92; Falkner and Treib, 'Three Worlds of Compliance or Four? The EU-15 Compared to New Member States'; Petra Furtlehner, 'Slovenia', in Gerda Falkner, Oliver Treib, and Elisabeth Holzleithner, eds, *Compliance in the Enlarged European Union. Living Rights or Dead Letters?* (Aldershot: Ashgate, 2008), 125-56; Marianne Schulze, 'Slovakia', in Gerda Falkner, Oliver Treib, and Elisabeth Holzleithner, eds, *Compliance in the Enlarged European Union. Living Rights or Dead*

not representative of the body of EU legislation as a whole. Second, these existing studies analyze only the performance of the ‘new’ member states; thus, they fail to compare the nature and scale of implementation deficiencies in CEE to those existing in the ‘old’ member states, but apply some theoretical yardstick of full compliance that is never realized in practice.

Despite claims to the contrary, practical implementation and EU law application in CEE are not disastrous. Detailed analyses of three very different policy fields – electronic communications, consumer protection and animal welfare - reveal that while implementation shortcomings exist, there is no evidence that they are of a greater scale and different nature in CEE, and there is no evidence that the EU rules have been mindlessly copied and forgotten. A look into the infringement procedures – the major enforcement instrument available to the EU institutions – confirms this picture. The new member states get fewer infringement procedures started against them, solve more cases before the ECJ gets involved and do that faster than the old member states, as the Internal Market Scoreboards and the Annual reports of the ECJ show.

The relative success with compliance has not translated into a general improvement of the quality of governance in the region. There has been backsliding on civil service reforms³⁵, little progress on corruption and repeated attempts at interference with the work of independent regulatory agencies and boards. It seems that for all its purported benefits, the transposition and implementation of EU rules has failed to fundamentally transform governance in CEE.

Letters? (Aldershot: Ashgate, 2008), 93-123; Clemens Wiedermann, 'Czech Republic', in Gerda Falkner, Oliver Treib, and Elisabeth Holzleithner, eds, *Compliance in the Enlarged European Union. Living Rights or Dead Letters?* (Aldershot: Ashgate, 2008), 27-59; Simone Leiber, 'Transposition of EU Social Policy in Poland: Are There Different 'Worlds of Compliance' in East and West?', *Journal of European Social Policy* 17 (2007): 349-60

³⁴ Tanja A. Börzel and A. Buzogany, 'Governing EU Accession in Transition Countries: The Role of Non-State Actors', *Acta Politica* 45 (2010): 158-82.

³⁵ Jan-Hinrik Meyer-Sahling, *Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years after EU Accession* (Sigma Papers No. 44 OECD Publishing, 2009).

Table 1. Transposition deficit in the EU (number of non-transposed directives).*Source: Internal Market Scoreboard (various years).*

Country	2004	2005	2006	2007	2008	2009	2010	2011	Average (05-11)
Austria	26	24	18	14	14	16	17	21	18
Belgium	32	29	26	20	22	13	12	30	22
Denmark	10	11	5	10	5	4	6	7	7
Finland	20	13	11	19	10	8	12	18	13
France	62	28	22	18	14	10	12	14	17
Germany	53	22	17	14	10	9	15	15	15
Greece	59	60	45	27	28	23	15	17	31
Ireland	19	30	18	19	15	15	10	4	16
Italy	47	50	36	22	21	22	31	29	30
Luxembourg	49	72	42	45	36	22	15	20	36
Netherlands	42	19	17	11	7	7	11	18	13
Portugal	29	50	49	37	30	16	13	23	31
Spain	12	25	23	17	16	8	14	14	17
Sweden	28	14	21	17	15	6	13	8	13
United Kingdom	18	23	12	17	18	11	13	18	16
<i>Average EU-15</i>	<i>34</i>	<i>31</i>	<i>24</i>	<i>20</i>	<i>17</i>	<i>13</i>	<i>14</i>	<i>17</i>	<i>20</i>
Czech Republic	360	41	26	55	22	19	18	26	30
Estonia	127	22	18	17	18	11	19	13	17
Hungary	168	12	15	19	9	6	20	20	14
Latvia	290	18	5	10	8	6	6	5	8
Lithuania	12	6	5	10	10	3	7	13	8
Poland	60	14	14	27	33	21	25	29	23
Slovakia	193	23	10	9	7	6	7	8	10
Slovenia	87	19	17	12	6	7	13	19	13
<i>Average CEE-8</i>	<i>162</i>	<i>19</i>	<i>14</i>	<i>20</i>	<i>14</i>	<i>10</i>	<i>14</i>	<i>17</i>	<i>15</i>
Cyprus	276	18	13	20	27	12	20	28	20
Malta	617	19	16	15	5	3	2	2	9
<i>Average SE-2</i>	<i>447</i>	<i>19</i>	<i>15</i>	<i>18</i>	<i>16</i>	<i>8</i>	<i>11</i>	<i>15</i>	<i>14</i>
Bulgaria	NA	NA	NA	13	7	4	6	13	9
Romania	NA	NA	NA	13	7	4	8	17	10
<i>Average CEE-2</i>	<i>NA</i>	<i>NA</i>	<i>NA</i>	<i>13</i>	<i>7</i>	<i>4</i>	<i>7</i>	<i>15</i>	<i>9</i>

Table 2. Implementation of EU animal welfare policy in the member states.
 Animal welfare – sum of implementation deficiencies [coded 0 = no deficiency, 1 = minor deficiencies, 2 = severe deficiencies] noted by the FVO with respect to all articles of Regulation No 882/2004;
 Laying hens (1) – implementation deficiencies with respect to the specific article on the requirements for keeping laying hens in battery cages. Laying hens (2) – number of FVO recommendation made with respect to this article. *Source: Data compiled by Brendan Carroll (Leiden University) on the basis of the country reports of the FVO of the EU. Unpublished.*

Country	Animal welfare	Laying hens (1)	Laying hens (2)
Austria	8	0	0
Belgium	8	2	2
Denmark	14	0	0
Finland	8	1	5
France	18	2	2
Germany	6	1	2
Greece	17	2	3
Ireland	9	1	2
Italy	12	2	5
Luxembourg	5	0	0
Netherlands	8	2	1
Portugal	12	2	6
Spain	16	2	5
Sweden	14	0	0
United Kingdom	7	2	4
<i>Average EU-15</i>	<i>11</i>	<i>1.3</i>	<i>2.5</i>
Czech Republic	10	1	1
Estonia	9	1	2
Hungary	14	2	2
Latvia	3	1	1
Lithuania	9	2	4
Poland	13	2	4
Slovakia	7	1	1
Slovenia	6	2	1
<i>Average CEE-8</i>	<i>9</i>	<i>1.5</i>	<i>2</i>
Cyprus	16	1	4
Malta	12	2	5
<i>Average SE-2</i>	<i>14</i>	<i>1.5</i>	<i>4.5</i>
Bulgaria	17	2	7
Romania	14	2	11
<i>Average CEE-2</i>	<i>16</i>	<i>2</i>	<i>9</i>