

The quest for relevance:
Research on compliance with EU law

Dimiter Toshkov, Leiden University

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Abstract

This article introduces two bibliographical databases that provide systematic overviews of the existing statistical (<http://www.eif.oeaw.ac.at/implementation/>) and qualitative (<http://www.eif.oeaw.ac.at/compliance/>) academic research on (non)compliance with EU law and takes stock of the state of the art of the literature. Reviewing more than 35 statistical analyses and 80 small-N works, I find that a small but coherent set of inferences emerges from the scholarship: transposition and practical application of EU law is limited by administrative capacity and prone to domestic conflicts spurred by the adaptation to the European rules. Political institutions influence the potential for such conflict while co-ordination and oversight mechanisms can enhance compliance. Beyond this core account, scholars disagree about the influence of policy misfit, individual preferences of domestic actors and a myriad of other variables being analyzed. I discuss matching, multi-level modeling and better case selection for qualitative studies as ways to move beyond these controversies and deliver more policy-relevant knowledge about the causes of (non)compliance with EU rules.

Introduction

It was not long ago when Ellen Mastebroek (2005) asked whether the state of research on European Union (EU) compliance¹ is still a ‘black hole’². In fact, the publication of her review came in the midst of a true explosion in the number of articles and books devoted to the study of transposition, implementation, and compliance in the EU. Much light has been directed towards the ‘black hole’, but to what effect? It is the purpose of this article to review the empirical scholarship on EU compliance that has been published over the last ten years, and to introduce two new research tools that allow systematic comparisons of existing studies – the Implementation and Compliance online databases.

The rapid surge in academic interest in compliance with EU law and policies since the late 1990s has had the unfortunate side-effect of raising the entry costs to this academic sub-field. Addressing the problem, first, the Implementation database (<http://www.eif.oeaw.ac.at/implementation/>) was created with the aim to provide a free and easy-to-use overview of all statistical studies published in the fields of transposition, implementation and compliance. The database gives access to detailed information about each published study, including the methods used, the precise operationalization and scope of the dependent variable, the data sources for the measures used, the sign and significance of each relationship tested, and many others. In addition, all explanatory variables of all analyses are grouped into several broad categories which enables swift and revealing comparisons across studies³. The project is complemented by a second database that covers the qualitative part of the literature as well.

The Compliance database⁴ (<http://www.eif.oeaw.ac.at/compliance/>) collects information on all case study research on EU transposition, implementation and compliance and tries to present the rich data contained in each study in a form that still allows comparisons across the various cases. Along with detailed information about each study (book, article, etc) and each individual case (legal act being

¹ In this review, compliance is used as an umbrella concept that covers transposition (the formal legal phase), administrative implementation and practical application. I reserve ‘enforcement’ for the process of imposing compliance by external actors (e.g. the Commission). Since there are a multitude of definitions in the literature (Falkner et al., 2005; König and Luetgert, 2009; Toshkov, 2010) I can only hope to clarify my own usage rather than try to impose order on the field.

² Mastebroek was echoing Weiler’s concern expressed back in 1991(Weiler, 1991).

³ A more comprehensive presentation of the database is available in Toshkov (2010).

⁴ Both databases have been developed with the help of the Institute for European Integration Research of the Austrian Academy of Sciences.

researched, policy sector, etc.), the database records information on each causal relationship suggested (proposed explanatory factor and its values, direction of the link, etc.)⁵. Given the obvious difficulties in folding qualitative work to fit a data matrix, the project tries to strike the right balance between the idiosyncrasies of each case and the need for comparability across studies.

The two databases aim to help scholars track new publications in the field of EU compliance, contribute to cumulative knowledge-building in the field, facilitate the exchange of best practices, and encourage methodological transparency and reflection. But they also make a systematic review of the literature possible. In this article I will point out some of the conclusions that one can draw from working with the databases.

My first conclusion is substantive. Beyond the cacophony of approaches, methods and findings, a limited but coherent picture of EU (non)compliance emerges: At a very general level national administrative capacity and effective administrative co-ordination enhance formal and practical implementation, but EU rules can ignite opposition from various actors and give rise to conflict which often leads to delayed, poor, and incorrect application. Domestic institutions define the consent of which actors is necessary for compliance and in that sense they are important as well. On the other hand, the opposition of no single domestic actor (nor policy misfit) can be linked in a systematic way to noncompliance. My second conclusion is methodological. The research design of quantitative and qualitative studies has not been optimized towards the discovery of the causal factors explaining compliance. I suggest multilevel modeling, matching techniques, and more careful case selection for case studies as potential ways to advance the literature, and, ultimately, make it more relevant for policy makers and the wider academic community. In the remainder of this article, I will discuss in more detail the literature field of compliance studies, its major conclusions, and its methodological choices.

Mapping the literature field

The growth of studies of EU compliance has been impressive but the attention has not been equally distributed. While most of the legislation produced by the EU falls into the categories of Agriculture and Internal Market, the literatures on EU

⁵ More details can be found in Toshkov et al. (2010)

implementation and compliance have been predominantly focused on environmental and social policies. More than 50% of all case studies deal with social policy legislation (that is at the level of cases being analyzed, not studies published). Furthermore, 8 out of 35 statistical analyses deal with social policy. Many of these studies (Thomson, 2007, 2009, 2010; Toshkov, 2007a) are based on the rich comparative data gathered by Gerda Falkner, Miriam Hartlapp, Oliver Treib and Simone Leiber (Falkner et al., 2005) but additional data in the social policy field has been gathered and investigated by Haverland and Romeijn (2007), Linos (2007), Jensen (2007), Toshkov (2007b) and others.

The environmental sector is also over-represented in the publications with more than 30% of all cases reported in the qualitative literature (e.g. Börzel, 2000; Börzel and Buzogany, 2010; Bugdahn, 2005; Demmke, 1994; Di Lucia and Kronsell, 2010; Jordan, 1999; Knill and Lenschow, 1998a, b). From the remaining sectors, transport and telecommunications account for a substantial number of case studies (Berglund, 2009; Héritier et al., 2001; Kaeding, 2007; Kerwer and Teutsch, 2001; Knill and Lehmkuhl, 2002; Mastenbroek, 2007; Toshkov, 2009) and are part of the samples analyzed by several quantitative analyses as well (Haverland et al., 2010; Kaeding, 2006; Steunenberg and Kaeding, 2009). Internal Market legislation proper and Agriculture attract a considerably smaller number of studies based on either qualitative or quantitative methods. The uneven distribution of compliance studies is problematic for two reasons. First, as Haverland et al. (2010) and others have argued, policy implementation follows a sector-specific logic. Hence, conclusions based on the study of social and environmental policy might not be valid outside these two domains. Second, even the descriptive inferences offered by these studies will not be representative for the population of EU legislation as a whole given that they constitute only a small share of the legislative output of the EU.

The policy sector bias is compounded by a predominant focus of the literature on directives passed in the late 1990s. While understandable from a practical point of view, this fact again limits the generalizability of the findings. Compliance in the EU is altogether a different ball game since the Commission stepped up its effort to monitor the application of EU law in the late 1990s.

In terms of countries studied, the big member states receive the greatest share of scholarly attention with the Netherlands also accounting for many of the studies. While few countries like Greece rarely feature in the case selection, there are no

significant biases for the EU as a whole. Interestingly, the new member states from Central and Eastern Europe have attracted a considerable number of studies (approximately 20% of the case studies and a number of statistical analyses as well).

The state of transposition, implementation and law application

The surge of academic interest in EU compliance was partly fueled by concerns about the poor state of implementation of EU rules, but its peak coincided with official reports that the ‘transposition deficit’ had all but disappeared. According to the 2010 Internal Market Scoreboard published by the European Commission, less than 1% of all EU directives are not yet transposed in the member states (European Commission, 2010). This estimate takes into account only the transposition phase (thus, only the formal legal stage of compliance) and is based on self-reporting from the member states but, to the extent that it can be trusted, it can render the remaining differences between the member states trivial.

The academic literature, however, uncovers a bigger compliance problem than the Commission data (Borghetto et al., 2006; Haverland et al., 2010; König and Luetgert, 2009; Mastebroek, 2003). More importantly, it shows that the transposition deficit is only the tip of the iceberg of compliance problems. The vast majority of the studies that look beyond the phase of formal legal transposition into the administrative and practical implementation and enforcement of EU rules⁶ find significant deficiencies (the list includes Andreou, 2004; Börzel, 2000; Börzel and Buzogany, 2010; Bugdahn, 2005; Caddy, 2000; Causse, 2008; Claes, 2002; Demmke, 1994; Falkner et al., 2005; Furtlehner, 2008; Gelderman et al., 2010; Karaczun, 2005; Krizsan, 2009; Laffan and O'Mahony, 2004b; Niskanen et al., 2010; Schulze, 2008; Versluis, 2007; Wiedermann, 2008). In fact, the discrepancy between the very low estimates of transposition problems and the dismal state of practical application purported by the academic literature constitutes something of a paradox. The paradox can only partly be accounted for by selection bias – difficult cases are more likely to be studied and findings of poor implementation are more likely to be reported. What we know about the workings of the infringement procedures, the EU’s major enforcement mechanism, reinforces the feeling of a puzzle – most potential

⁶ Despite repeated calls to study the *real application* of rules rather than formal transposition and administrative implementation, analyzing *real application* remains the holy grail of compliance studies - very few studies can claim to investigate actual compliance with EU rules at the street level.

infringement cases that the Commission detects are *solved* (or dropped) before they even reach the European Court of Justice, and from those close to 90% get decided against the member states according to the annual reports on the application of EU law published by the Institutions (see also Jonsson and Tallberg, 1998). It is fair to say that while the academic literature on compliance has been successful in outlining the contours of the paradox, its solution is still wanting.

Correlates of (non)compliance

Many theories, rooted in International Relations, Political Science and Public Administration, have been proposed to explain variation in transposition and implementation. Altogether more than 70 variables, more or less directly related to these theories, have been tested. While there is almost unanimous agreement in the literature about the impact of some of these variables⁷, the effects of many are still uncertain.

Administrative capacity and co-ordination

Perhaps not surprisingly, we can be pretty confident that administrative efficiency and the strength of domestic cabinet and EU co-ordination affect compliance positively (or at least not negatively). The positive effect of the extent of parliamentary scrutiny and involvement in EU affairs is also strong and consistent. Times and again, variables pertaining to administrative efficiency are shown to reduce non-transposition (Lampinen and Uusikyla, 1998; Linos, 2007; Toshkov, 2007b, 2008), shorten transposition delay (Berglund et al., 2006; Haverland and Romeijn, 2007), improve implementation performance (Hille and Knill, 2006) and decrease infringement numbers and rates (Börzel et al., 2007; Börzel et al., 2010; Knill and Tosun, 2009b; Mbaye, 2001; Perkins and Neumayer, 2007; Siegel, 2006). Low administrative capacity is bad for practical application as well (Börzel and Buzogany, 2010; Bugdahn, 2005; Caddy, 2000). Case studies often find that practical implementation and application problems can be traced to lack of sufficient staff and administrative resources (Demmke, 1994; Hartlapp, 2009; Krizsan, 2009; Mocsari, 2004).

⁷ While for the moment I follow the causal interpretation of statistical association as embraced by the original articles reviewed here, later in this review I will question whether a causal interpretation is, in fact, warranted.

General and EU-related government co-ordination and oversight also have positive effect on transposition and implementation performance (Dimitrova and Toshkov, 2009; Giuliani, 2004; McNally, 2009; Steunenberg, 2006; Zubek, 2011; Zubek and Staronova, 2010), while co-ordination problems hamper compliance (Andreou, 2004; Börzel and Buzogany, 2010; Demmke, 1994; Haverland and Romeijn, 2007; Haverland et al., 2010; Héritier et al., 2001; Mastenbroek, 2003; Mocsari, 2004).

Higher parliamentary involvement and scrutiny of EU affairs is beneficial for transposition timeliness (König and Luetgert, 2009; Linos, 2007) and implementation performance (Bergman, 2000; Giuliani, 2004). Lack of supervision is responsible for implementation shortcoming according to Wiedermann (2008). Jensen studies and finds evidence for the impact of different inspection mechanisms on infringements (Jensen, 2007).

Federalism and veto players

A second set of variables are consistently found to have *negative* effects on compliance. In line with the findings on administrative efficiency, higher corruption levels in government are bad for transposition timeliness (Kaeding, 2006) and increase transposition delay (Linus, 2007). Moving from indicators of bureaucratic quality and capacity to institutional features, federal countries, and countries with a higher degree of regionalism are found to have shorter transposition delays (Haverland, 2000; Haverland and Romeijn, 2007; Thomson, 2007), less cases of laws not transposed on time (König and Luetgert, 2009; Linos, 2007; Thomson, 2010) and worse practical application of the laws as well (Slepcevic, 2009). Regional involvement is also found to increase transposition time by Borghetto and Franchino (2010). While some studies fail to find an effect of federalism/regionalism (Giuliani, 2003; Jensen, 2007; Mbaye, 2001; Steunenberg and Toshkov, 2009), none argues for a positive effect on compliance.

The logic behind the influence of federalism is generalized by the veto players argument – the more actors you have that can veto the adoption of national transposition measures, the more lengthy and problematic the process will be. The veto players idea has two different interpretations – one that focuses on the political system level, and another which takes into account only the actors which have veto power for the specific piece of legislation being discussed. The general veto players

hypothesis receives some support. A higher number of veto players is associated with lower implementation performance according to Bailey (2002), Di Lucia and Kronsell (2010), Giuliani (2003), Hartlapp (2009), Haverland (2000), H eritier et al. (2001), and Versluis (2004), and is associated with longer delays and more cases of late transposition (Linos, 2007). A number of studies however find no significant associations (Jensen, 2007; Kaeding, 2006; Mbaye, 2001; Toshkov, 2007a). Employing the policy-specific veto player index leads to a more consistent pattern of findings – a number of studies (Kaeding, 2008; Steunenberg and Kaeding, 2009; Steunenberg and Rhinard, 2010) find a negative impact on transposition time and timeliness. A similar logic to the veto players idea underlies the hypothesis that a higher number of parties in government is associated with noncompliance – a hypothesis that receives support according to Toshkov (2007b, 2008). The index of political constraints – another related concept – is found to have a significantly negative impact on infringement rates by Perkins and Neumayer (2007), but Boerzel et al. (B orzel et al., 2007; 2010) find no effect, while Hille and Knill (2006) report a positive effect on the implementation performance of the CEE countries.

While federalism, regionalism, veto players and political constraints focus on the institutional side of the political system, they indirectly relate to the potential of these institutions to create conflict over compliance at the domestic level. K onig and Luetgert (2009) and Luetgert and Dannwolf (2009) have looked into a different measure of domestic conflict – the size of the national core and report a negative effect on transposition time and timeliness (see also Treib, 2003). Case study research that finds evidence for the influence of domestic conflict includes (B ahr, 2006; Berglund, 2009; Kinunnen, 2004; Laffan and O'Mahony, 2004a; Mastenbroek, 2007; Treib, 2003).

The bigger picture that emerges so far from the discussion of individual variables has a degree of coherence to it. The overall quality and effectiveness of the public administration are major factors limiting successful transposition and implementation. When the consent of more actors and institutions is needed to achieve compliance, performance suffers. But scrutiny, coordination and oversight mechanisms can help alleviate the problems.

Misfit

Many ideas that extend and complement this picture have been explored but receive mixed support and do not generate a consistent set of findings. The hypothesis that the *misfit* between existing national rules and the EU laws to be implemented can account for noncompliance is a case in point. In the case of social policy Linos (2007) reports a positive effect on transposition timeliness, but Thomson (2007) finds a negative and significant effect. Kaeding (2006) reports a positive although not significant effect for transport policy, while Mastebroek (2003) finds a negative effect in the case of the Netherlands. Thomson et al. (2007) generalize this conclusion to all policy sectors and the occurrence of infringements as well. Focusing on *legal misfit*, Steunenberg and Toshkov (Steunenberg and Toshkov, 2009) discover a negative relationship with transposition time in the sample of directives that they study. The qualitative literature is similarly undecided. Many studies that find evidence for mostly negative impact of misfit (either in its policy, institutional, or normative interpretation) (Börzel, 2000; Börzel and Buzogany, 2010; Dimitrova and Rhinard, 2005; Duina, 1997; Karaczun, 2005; Knill and Lenschow, 1998b; Martinsen, 2007; Zalar, 2008). But Claes (2002), Krizsan (2009) and Versuis (2004) see mixed evidence in the cases they study. Bailey (2002) claims that although policy fit was not important during the transposition phase it ultimately led to more difficult practical implementation. A number of important contributions to the literature find very limited or no effect of misfit at all (Falkner et al., 2005; Hartlapp, 2009; Haverland, 2000; Leiber, 2007; Mastebroek, 2007). The conclusion from the literature overview that we need to draw is that the effect of misfit is at best contingent on the specific policy sector and/or country context. Even if high misfit is likely to contribute to problems with implementation of EU rules, it is neither a necessary nor a sufficient condition for noncompliance

Preferences and opposition-through-the-back-door

Another cluster of ideas that receives mixed support and generates contradictory findings centers around the potential influence of domestic preferences. The logic is simple and compelling - the less member states like European legislation, the more likely they are to protract and misapply it. Policy implementation is just another arena at which to achieve what you lost at the negotiation table and noncompliance is 'opposition-through-the-backdoor'. Despite its intuitive plausibility, neither general

nor more direct and issue-specific measures of preference-based opposition are consistently associated with noncompliance.

Starting with the most indirect country-level proxies, societal EU attitudes appear not related to compliance according to Boerzel et al. (2007; 2010), Keating (2006), Lampinen and Uusikylaa (1998), Siegel (2006) and Steunenberg and Rhinard (2010) despite the initial reports for the rather counterintuitive negative effects (Bergman, 2000; Mbaye, 2001). Government EU positions are also not significantly associated with compliance (Hille and Knill, 2006; Jensen, 2007; Linos, 2007; Toshkov, 2007b) with the possible exception of the CEE countries during and immediately after Enlargement (Toshkov, 2008; Zubek and Staronova, 2010) when more EU-friendly governments are associated with faster transposition.

Left/right ideological positions of governments also show no effects (Jensen, 2007; Linos, 2007; Siegel, 2006; Toshkov, 2007a) except during the last enlargement (Toshkov, 2007b, 2008).

Attempts to proxy country preferences using economic indicators have led to more statistically significant findings but ones that point in different directions. Trade with EU has no effect according to Knill and Tosun (2009a) and Siegel (2006) but positive effects on infringement rates according to Knill and Tosun ((2009b) and Perkins and Neumayer (2007). Net transfers from the EU are found to have a significantly negative impact by König and Luetgert (2009) and Perkins and Neumayer (2007) on transposition and infringements respectively.

Directive-level measures fair no better. A vote against the directive (Linus, 2007) and disagreement with its provisions (Thomson, 2007) does not make a country significantly more likely to experience transposition delays. Country's incentives to deviate are found to have no effect according to Zhelyazkova and Torenvlied (2009), have negative and significant effect on transposition (Thomson, 2010; Thomson et al., 2007), or have significantly positive effect on compliance when infringements are studied (Thomson et al., 2007).

The qualitative literature finds little evidence for the importance of 'opposition through the back door' (Falkner et al., 2004; Steunenberg, 2006). Some effect is claimed by to Börzel and Buzogany (2010), Clift (2009), Di Lucia and Kronsell (2010), Treib (2003) and Wiedermann (2008, only on implementation and not transposition). Political opposition for salient legislation hampers implementation

according to Dimitrova and Toshkov (2009) (for the impact of salience for practical implementation see also Versluis (2004, 2007)).

In sum, the jury is still out whether specific disagreement with the policy content of EU legislation affects domestic noncompliance. Government ideological positions and EU attitudes, societal EU support, and economic proxies for preferences are most likely not systematically related to compliance, except in special circumstances like periods of accession negotiations. How can we reconcile the empirical findings about oversight and coordination, federalism, veto players, misfit, government preferences and domestic opposition? First, countries and national governments cannot be treated as unitary actors. Transposition and implementation of EU law affects, empowers and mobilizes various actors and whether and how often these actors will be able to delay or derail compliance depends on the institutional setup. Domestic conflict over compliance is important but the preferences of no single actor can be directly and systematically linked with transposition and implementation failures. Compliance is no simple game between the EU and a national government, but is embodied much deeper in domestic politics.

The quantitative and qualitative literatures on compliance have looked into a myriad of other variables. For example, many features of the EU legislation like the discretion it allows, the conflict it generated at the EU level, the length, complexity, salience, type and novelty have been investigated. Culture, state power, and the degree of corporatism are some of the other factors that have been, at one time or another, put to the test. The Implementation and Compliance databases allow for the systematic evaluation of the impact of these variables possible, but reviewing all relationships ever tested is not necessary for this essay which aims only to demonstrate the type of literature review that can be performed using the databases and to sketch the big picture of compliance with EU law that such a literature review suggests. The last section of the text will look beyond the intricacies and contributions of individual studies. I will focus on some methodological issues which might be held responsible for the many contradictory findings in the field and, finally, I will outline some directions for future research.

The quest for relevance - the future of EU compliance research

Despite the surge in empirical research on EU compliance, the contribution of the resulting scholarship to policy making and its influence to the broader social-scientific

community has been limited. One important reason for this is the lack of a clear message emerging from the literature. As outlined above, the academic research *has* identified a small but rather consistent set of factors related to compliance success, but these inferences get lost in a sea of results that cannot be replicated across studies and methods. So to some extent the problem is one of communication. The second reason for the lack of real impact of academic scholarship on policy debates has to do with methodology. The quantitative methods used to study EU transposition and implementation are better suited for describing and summarizing patterns rather than isolating causal factors. Due largely to inefficient research design, and case selection in particular, the case studies of EU compliance have also failed to produce reliable inferences about causal effects. The third reason for the lack of impact of the literature on policy is that very few of the factors on which the quantitative and qualitative literatures focus can be thought of as ‘interventions’ – variables that can be manipulated in the course of designing compliance mechanisms. Let me elaborate on the latter two reasons in more detail.

Research on EU compliance has relied entirely on observational designs. While in principle it is possible to conceive of policy experiments that would try to estimate the effect of a certain variables on noncompliance, such experiments have not been conducted, so researchers are stuck with observational data. The problems with deriving causal inferences from observational data are well-known (see for example King et al., 1994) but have not been properly addressed by the body of quantitative literature on EU compliance⁸. The direct regression approaches used to analyze the data are better suited for summarizing the observed patterns rather than supporting causal interpretations.

Let me give one example that would clarify the point. The conclusion that lower levels of federalism are associated with lower levels of compliance seems rather well-established (see above). Can we interpret this association causally however? First, the variation in this institutional feature is rather limited in the European states

⁸ The statistical literature on EU compliance has undeniably progressed over the last decade – multivariate models have replaced bivariate correlations, count models have replaced linear regression, survival models have been used to accommodate problems of censored data, semi-parametric survival models have replaced Weibull survival models to allow more flexible assumptions about baseline hazard of compliance, etc. The problems discussed in this article, however, relate to a more fundamental problem of deriving causal inference from observational data that cannot be addressed by adjusting the distributional form of the error terms or allowing for time-varying coefficients of the independent variables.

being studied. Second, and more importantly, there is almost no variation over time in this variable, since these institutional features of the state are exceptionally stable. So the conclusion that federalism (or corporatism, national political culture, etc.) is associated with lower compliance is entirely based on the cross-sectional comparison between the average compliance in a couple of countries (Germany, Austria, etc.) and the average compliance in the remaining ones. It is obvious that Germany might have a different compliance record than the rest of the EU states for a myriad of reasons which might or might not have to do with federalism. The response of quantitative research to this ‘omitted variable’ problem is to include other covariates that adjust for the ‘other’ factors that influence Germany’s compliance performance⁹ but the success of this strategy crucially depends on the ability of the researcher to fully ‘control’ for all these potential confounding variables. In research designs that span long time periods and different policy sectors, we should be skeptical that this assumption is satisfied. So it would seem a good idea to focus on a very small set of very similar directives implemented in a very small set of very similar countries which only differ with respect to the (institutional) feature we are interested in. The problem of this strategy, however, is that we can not be sure whether the estimated causal effects that we find can be generalized beyond the specific circumstances of the test (the assumption of unit homogeneity). If compliance works according to a different logic in social policy than in transport policy (or in the 2000s vs. the late 1980s), we would be wrong to transfer causal inferences from one policy field (or time period) to another. Quantitative researchers should be torn between the requirement for ‘isolating’ the causal effect on the one hand and the need for generalizable inferences on the other. The exclusive dominance of direct regression serves neither side of this double constraint well. Using a heterogeneous sample (Commission and ordinary directives, different time periods and policy sectors, etc) makes the estimated effect uncertain and potentially biased, while there is no indication how the estimated effect *varies* across these sub-samples.

There are several research strategies that can address the problem. The first is the use of matching (pre-processing that ensures that the ‘treatment’ and ‘control’ groups are truly comparable) (Ho et al., 2007) but this would come at the price of

⁹ Including country dummies in the regression equation only makes the problem worse since it takes away the existing variation between, say, Germany and the remaining states, so the estimated effect is based on the extremely limited over-time variation.

abandoning regressions that claim to test a bunch of causal hypotheses at once. The second is the use of multi-level models (Gelman and Hill, 2007) which explicitly model how the estimated effect changes within different samples (countries, etc.). None of these techniques can solve the problem of limited variation provided by the world with regard to some institutions. We might never know whether federalism has anything to do with the different transposition record of Germany, but matching and multi-level modeling can provide some leverage towards estimating the causal effects of the variables which allow for that.

It is worth discussing how case studies can contribute to the goal of identifying causal factors accounting for variation in compliance performance. In principle case studies can be highly valuable for explanatory research in shedding light on *causal mechanisms*, serving as *plausibility probes* for new theories or *critical tests* of well-established ones, and in providing more *valid measures* for a moderate number of cases vs. the often indirect proxies used by large-N studies (Adcock and Collier, 2001; Brady and Collier, 2004; Collier, 1995; Gerring, 2004, 2007a, b; Mahoney and Goertz, 2004). Overall, however, the case studies of compliance have not been very helpful to advance explanations of compliance. There are several good examples of case studies as plausibility probes used to illustrate the working of formal models (Steunenberg, 2006, 2007). These plausibility probes, however, have not been followed by more systematic empirical research that directly tests the theoretical models¹⁰. Very few comparative case studies are designed based on a logic of case selection that allows to isolate causal effects. Parallel to the case of quantitative research, qualitative analysis should strive to approximate as close as possible the counterfactual situation (same context, different value of the main explanatory variable), which requires selection on the independent variable. Instead, cases are often selected on the basis of selection on the dependent variable (only compliance failures - e.g. Siegel (2011)) which might be useful to generate new hypotheses but these studies are sold as theory-testing analyses which they cannot be. Also, comparative case studies often strive to cover different institutional contexts (e.g. federal and unitary countries) which is beside the point when one wants to *isolate* a causal effect. Furthermore, many comparative case studies fail to consider strong

¹⁰ Many variables *indirectly* suggested by the models, like the policy specific veto players index, have been tested, but this is not a sufficient test for a model that put the *preference configurations* center-stage in explaining noncompliance.

clues suggesting the importance of a certain variable if the direction of the effect is different than the one expected by the researcher (e.g. ‘misfit was high in all cases but compliance was timely, so misfit has no effect’ – any systematic analysis would need to conclude that misfit is positively associated with compliance but case studies seem to be able to get away with a conclusions of ‘no impact’). It is interesting that none of the single case studies in the literature explicitly positions itself as a critical theory test (either most-likely or least-likely). Most combine an intention to *test* a battery of existing hypotheses while simultaneously identifying *ad hoc* additional factors that influenced implementation and enforcement. While such approaches can be valuable in the early stages of a research program, they certainly cannot *test* existing arguments and consolidate the findings in a mature literature. Lastly, the recently conducted detailed review of case studies of EU compliance revealed that the purported benefits of case studies for illuminating causal mechanisms and improving on measures are seldom realized, mostly due to little explicit consideration of variables and hypotheses (an important exception in this regard is Falkner et al. 2005). In sum, the potential of case studies to contribute to the explanatory research on EU compliance (hence, research that is useful for policy makers) has not been fully realized so far, despite the multitude of case studies published. In my opinion, the main reason for this is the inattention to how the case studies fit into the existing body of knowledge already accumulated for the workings of EU implementation and compliance¹¹.

My last point is that even if scholars can increase the reliability and validity of their causal inferences about the determinants of compliance, the research will still remain of limited practical significance if the variables we study cannot be subject to intervention. Even if research convincingly shows that federalism *leads* to higher transposition delays, for example, there is little policy makers can do about it. Still that might be useful at least to zoom-in on the problematic part of the process. Many of the variables that we currently study, however, cannot be interpreted as intervention even in this very indirect way. For example, scholars can probably agree that Commission directives are transposed faster. But do we imply that if a directive adopted under co-decision were to be adopted by the Commission, its transposition would have been faster? I do not think so. It is rather the underlying properties of the issue that determine whether a directive is adopted by the Commission or under co-

¹¹ Several contributions to the literature are based on mixed designs (Berglund, 2009; Kaeding, 2007; Luetgert and Dannwolf, 2009; Mastenbroek, 2007).

decision *and* whether it is transposed on time or not. So the inference that Commission directives are associated with shorter transposition, even if valid, is less useful than we would like to imagine. The same reasoning goes for variables like the number of national implementing measures, or the directive's length, etc. While it might be important for control for these variables, we should be careful in interpreting causally their associations with compliance.

Research on EU compliance better disentangle its two ambitions – to illuminate in a comprehensive way the state of transposition and implementation and to identify important causal factors of compliance failures. The first ambition might be served well by broad but heterogeneous samples and case selection by practical relevance and convenience. The second one is better addressed by more focused comparisons, closely matched samples and multi-level analyses which would provide less sweeping but ultimately more policy-relevant generalizations.

References

- Adcock R and Collier D (2001) 'Measurement Validity: A Shared Standard for Qualitative and Quantitative Research', *American Political Science Review* 95(3): 529-46.
- Andreou G (2004) 'Implementing the Habitats Directive in Greece', *OEUE Phase II. Occasional Paper*.
- Bähr H (2006) 'Implementationsprobleme Trotz Übereinstimmender Politik: Die Rolle Von Ideen Und Institutionen Bei Der Umsetzung Europäischer Umweltpolitik', *Österreichische Zeitschrift für Politikwissenschaft* 35(4): 407-24.
- Bailey I (2002) 'National Adaptation to European Integration: Institutional Vetoes and Goodness-of-Fit', *Journal of European Public Policy* 9(5): 791-811.
- Berglund S (2009) *Putting Politics into Perspective. A Study of the Implementation of EU Public Utilities Directives*. Delft: Eburon.
- Berglund S, Gange I and Waarden F v (2006) 'Mass Production of Law. Routinization in Transposition of European Directives. A Sociological-Institutionalist Account.', *Journal of European Public Policy* 13(5): 692-716.
- Bergman T (2000) 'The European Union as the Next Step of Delegation and Accountability', *European Journal of Political Research* 37(2): 415-29.
- Borghetto E and Franchino F (2010) 'The Role of Subnational Authorities in the Implementation of EU Directives', *Journal of European Public Policy* 17(6): 759-80.
- Borghetto E, Franchino F and Giannetti D (2006) 'Complying with Transposition Deadlines of EU Directives: Evidence from Italy', *Rivista italiana di Politiche Pubbliche* 1(1): 7-38.
- Börzel T A (2000) 'Why There Is No 'Southern Problem'. On Environmental Leaders and Laggards in the European Union ', *Journal of European Public Policy* 7(1): 141-62.
- Börzel T A and Buzogany A (2010) 'Governing EU Accession in Transition Countries: The Role of Non-State Actors', *Acta Politica* 45(1/2): 158-82.
- Börzel T A, Dudziak M, Hofmann T, Panke D and Sprungk C (2007) 'Recalcitrance, Inefficiency and Support for European Integration. Why Member States Do (Not) Comply with European Law', *CES Working Paper, Harvard University* (151).
- Börzel T A, Hofmann T, Panke D and Sprungk C (2010) 'Obstinate and Inefficient: Why Member States Do Not Comply with European Law', *Comparative Political Studies* 43(11): 1363-90.
- Brady H E and Collier D (eds) (2004) *Rethinking Social Inquiry. Diverse Tools, Shared Standards*. Oxford: Rowman and Littlefield.
- Bugdahn S (2005) 'Of Europeanization and Domestication: The Implementation of the Environmental Information Directive in Ireland, Great Britain and Germany', *Journal Of European Public Policy* 12(1): 177-99.
- Caddy J (2000) 'Implementation of EU Environmental Policy in Central European Application States: The Case of EIA', in C Knill and A Lenschow (eds) *Implementing EU Environmental Policy – New Directions and Old Problems*. Manchester: Manchester University Press.
- Causse E (2008) 'Hungary', in G Falkner, O Treib and E Holzleithner (eds) *Compliance in the Enlarged European Union. Living Rights or Dead Letters?*, pp. 61-92. Aldershot: Ashgate.

- Claes D H (2002) 'The Process of Europeanization: Norway and the Internal Energy Market', *Journal of Public Policy* 22(3): 299-323.
- Clift B (2009) 'The Second Time as Farce? The EU Takeover Directive, the Clash of Capitalisms and the Hamstrung Harmonization of European (and French) Corporate Governance', *Journal of Common Market Studies* 47(1): 55-79.
- Collier D (1995) 'Translating Quantitative Methods for Qualitative Researchers: The Case of Selection Bias', *American Political Science Review* 89(2): 461-6.
- Demmke C (1994) *Die Implementation Von Eg-Umweltpolitik in Den Mitgliedstaaten*. Baden-Baden: Nomos Verlagsgesellschaft.
- Di Lucia L and Kronsell A (2010) 'The Willing, the Unwilling and the Unable – Explaining Implementation of the EU Biofuels Directive', *Journal of European Public Policy* 17(4): 545-63.
- Dimitrova A and Rhinard M (2005) 'The Power of Norms in the Transposition of EU Directives', *European Integration Online Papers (EIoP)* 16(9).
- Dimitrova A and Toshkov D (2009) 'Post-Accession Compliance between Administrative Co-Ordination and Political Bargaining', *European Integration Online Papers (EIoP)* 13.
- Duina F (1997) 'Explaining Legal Implementation in the European Union', *International Journal of the Sociology of Law* 25(1): 155-79.
- European Commission. (2010). *Internal Market Scoreboard, No.22*.
- Falkner G, Hartlapp M, Leiber S and Treib O (2004) 'Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor?', *West European Politics* 27(3): 452-73.
- Falkner G, Treib O, Hartlapp M and Leiber S (2005) *Complying with Europe? The Impact of EU Minimum Harmonisation and Soft Law in the Member States*. Cambridge: Cambridge University Press.
- Furtlehner P (2008) 'Slovenia', in G Falkner, O Treib and E Holzleithner (eds) *Compliance in the Enlarged European Union. Living Rights or Dead Letters?*, pp. 125-56. Aldershot: Ashgate.
- Gelderman K, Ghijssen P and Schoonen J (2010) 'Explaining Non-Compliance with European Union Procurement Directives: A Multidisciplinary Perspective', *Journal of Common Market Studies* 48(2): 243-64.
- Gelman A and Hill J (2007) *Data Analysis Using Regression and Multilevel/Hierarchical Models*. Cambridge: Cambridge University Press.
- Gerring J (2004) 'What Is a Case and What Is It Good For?', *American Political Science Review* 98(2): 341-54.
- Gerring J (2007a) *Case Study Research. Principles and Practices*. Cambridge: Cambridge University Press.
- Gerring J (2007b) 'Is There a (Viable) Crucial-Case Method?', *Comparative Political Studies* 40(3): 231-53.
- Giuliani M (2003) 'Europeanization in Comparative Perspective: Institutional Fit and National Adaptation', in K Featherstone and C M Radaelli (eds) *The Politics of Europeanization*. Oxford: Oxford University Press.
- Giuliani M (2004) 'Ue Compliance: Macro, Meso or No Institutions at All?', *URGE Working Paper*(6).
- Hartlapp M (2009) 'Implementation of EU Social Policy Directives in Belgium: What Matters in Domestic Politics?', *Journal of European Integration* 31(4): 467 - 88.
- Haverland M (2000) 'National Adaptation to European Integration: The Importance of Institutional Veto Points', *Journal of Public Policy* 20(1): 83-103.

- Haverland M and Romeijn M (2007) 'Do Member States Make European Policies Work? Analysing the EU Transposition Deficit', *Public Administration* 85(3): 757-78.
- Haverland M, Steunenbergh B and Van Waarden F (2010) 'Sectors at Different Speeds: Analysing Transposition Deficits in the European Union', *JCMS: Journal of Common Market Studies* 48(1): 1-27.
- Héritier A, Kerwel D, Knill C, Lehmkuhl D, Teutsch M and Douillet A-C (2001) *Differential Europe: New Opportunities and Restrictions for Policymaking in the Member States*. Lanham: Rowman and Littlefield.
- Hille P and Knill C (2006) 'It's the Bureaucracy, Stupid': The Implementation of the Acquis Communautaire in EU Candidate Countries, 1999-2003', *European Union Politics* 7(4): 531-52.
- Ho D E, Imai K, King G and Stuart E A (2007) 'Matching as Nonparametric Preprocessing for Reducing Model Dependence in Parametric Causal Inference', *Political Analysis* 15(3): 199-236.
- Jensen C B (2007) 'Implementing Europe: A Question of Oversight', *European Union Politics* 8(4): 451-77.
- Jonsson C and Tallberg J (1998) 'Compliance and Post-Agreement Bargaining', *European Journal of International Relations* 4(4): 371-408.
- Jordan A (1999) 'European Community Water Policy Standards: Locked in or Watered Down?', *Journal of Common Market Studies* 37(1): 13-37.
- Kaeding M (2006) 'Determinants of Transposition Delay in the European Union', *Journal of Public Policy* 26(2): 229-53.
- Kaeding M (2007) *Better Regulation in the European Union. Lost in Translation or Full Steam Ahead? The Transportation of EU Transport Directives across Member States*. Leiden: Leiden University Press.
- Kaeding M (2008) 'Lost in Translation or Full Steam Ahead: The Transposition of EU Transport Directives across Member States', *European Union Politics* 9(1): 115-43.
- Karaczun Z (2005) 'Preparing for EU Environmental Policy in Poland: The Case of the Nitrates Directive', *Land Use Policy* 22(3): 245-53
- Kerwer D and Teutsch M (2001) 'Elusive Europeanization: Liberalizing Road Haulage in the European Union', *Journal of European Public Policy* 8(1): 124 - 43.
- King G, Keohane R O and Verba S (1994) *Designing Social Inquiry. Scientific Inference in Qualitative Research*. Princeton: Princeton University Press.
- Kinunen J (2004) 'Complaints, Farmers on Hunger Strike, Flying Squirrels. The Implementation of the Habitats Directive in Finland', *OEUE Phase II. Occasional Paper*.
- Knill C and Lehmkuhl D (2002) 'The National Impact of European Union Regulatory Policy: Three Europeanization Mechanisms', *European Journal of Political Research* 41: 255-80.
- Knill C and Lenschow A (1998a) 'Change as "Appropriate Adaptation": Administrative Adjustment to European Environmental Policy in Britain and Germany', *European Integration Online Papers (EIoP)* 2(1): 1-25.
- Knill C and Lenschow A (1998b) 'Coping with Europe: The Impact of British and German Administrations on the Implementation of EU Environmental Policy', *Journal of European Public Policy* 5(4): 595-614.

- Knill C and Tosun J (2009a) 'Hierarchy, Networks, or Markets: How Does the EU Shape Environmental Policy Adoptions within and Beyond Its Borders?', *Journal of European Public Policy* 16(6): 873-94.
- Knill C and Tosun J (2009b) 'Post-Accession Transposition of EU Law in the New Member States: A Cross-Country Comparison', *European Integration Online Papers (EIoP)* 13(2): art.18.
- König T and Luetgert B (2009) 'Troubles with Transposition? Explaining Trends in Member-State Notification and the Delayed Transposition of EU Directives', *British Journal of Political Science* 39(1): 163-94
- Krizsan A (2009) 'From Formal Adoption to Enforcement. Post-Accession Shifts in EU Impact on Hungary in the Equality Policy Field', *European Integration Online Papers (EIoP)* 13(2): Article Number 22.
- Laffan B and O'Mahony J (2004a) 'The Implementation of EU Waste Legislation in Ireland', *OEUE Phase II. Occasional Paper*.
- Laffan B and O'Mahony J (2004b) 'Mis-Fit, Politicisation and Europeanisation. The Implementation of the Habitats Directive', *OEUE Phase II. Occasional Paper*.
- Lampinen R and Uusikyla P (1998) 'Implementation Deficit - Why Member States Do Not Comply with EU Directives?', *Scandinavian Political Studies* 21(3): 231-51.
- Leiber S (2007) 'Transposition of EU Social Policy in Poland: Are There Different 'Worlds of Compliance' in East and West?', *Journal of European Social Policy* 17(4): 349-60
- Linós K (2007) 'How Can International Organizations Shape National Welfare States? Evidence from Compliance with European Union Directives ', *Comparative Political Studies* 40(5): 547-70.
- Luetgert B and Dannwolf T (2009) 'Mixing Methods: A Nested Analysis of EU Member State Transposition Patterns', *European Union Politics* 10(3): 307-34.
- Mahoney J and Goertz G (2004) 'The Possibility Principle: Choosing Negative Cases in Comparative Research', *American Political Science Review* 98(04): 653-69.
- Martinsen D S (2007) 'The Europeanization of Gender Equality - Who Controls the Scope of Non-Discrimination?', *Journal of European Public Policy* 14(4): 544-62.
- Mastenbroek E (2003) 'Surviving the Deadline. The Transposition of EU Directives in the Netherlands.', *European Union Politics* 4(4): 371-95.
- Mastenbroek E (2005) 'EU Compliance: Still a 'Black Hole'?', *Journal of European Public Policy* 12(6): 1103-20.
- Mastenbroek E (2007) *The Politics of Compliance. Explaining Transposition of EC Directives in the Netherlands*. Wageningen: Ponsen & Looijen.
- Mbaye H (2001) 'Why National States Comply with Supranational Law? Explaining Implementation. Infringements in the European Union, 1972–1993.', *European Union Politics* 2(3): 259-81.
- McNally T (2009) 'Overview of the EU Water Framework Directive and Its Implementation in Ireland. Biology and Environment', *Proceedings of the Royal Irish Academy* 109B: 131–8.
- Mocsari J (2004) 'The Implementation of the Habitats Directive in Hungary. Missing Details Behind the Big Picture', *OEUE Phase II. Occasional Paper*.
- Niskanen T, Lehtelä J, Ketola R and Nykyri E (2010) 'Results of Finnish National Survey on EU Legislation Concerning Computer Work', *Applied Ergonomics* 41(4): 542-8.

- Perkins R and Neumayer E (2007) 'Do Membership Benefits Buy Regulatory Compliance?: An Empirical Analysis of EU Directives 1978—99 ', *European Union Politics* 8(2): 180-206.
- Schulze M (2008) 'Slovakia', in G Falkner, O Treib and E Holzleithner (eds) *Compliance in the Enlarged European Union. Living Rights or Dead Letters?*, pp. 93-123. Aldershot: Ashgate.
- Siegel S (2006) 'Law and Order in the European Union: Explaining Variations in Compliance with European Union Law', *WZB Discussion Paper IV*: 1-30.
- Siegel S (2011) *The Political Economy of Noncompliance. Adjusting to the Single European Market*. Abingdon: Routledge.
- Slepcevic R (2009) 'The Judicial Enforcement of EU Law through National Courts: Possibilities and Limits', *Journal of European Public Policy* 16(3): 378-94.
- Steunenberg B (2006) 'Turning Swift Policy-Making into Deadlock and Delay: National Policy Coordination and the Transposition of EU Directives ', *European Union Politics* 7(3): 293-319.
- Steunenberg B (2007) 'A Policy Solution to the European Union's Transposition Puzzle: Interaction of Interests in Different Domestic Arenas', *West European Politics* 30(1): 23-49.
- Steunenberg B and Kaeding M (2009) 'As Time Goes By': Explaining the Transposition of Maritime Directives', *European Journal of Political Research* 48(3): 432-54.
- Steunenberg B and Rhinard M (2010) 'The Transposition of European Law in EU Member States: Between Process and Politics', *European Political Science Review* 2(03): 495-520.
- Steunenberg B and Toshkov D (2009) 'Comparing Transposition in the 27 Member States of the EU: The Impact of Discretion and Legal Fit', *Journal of European Public Policy* 16(7): 951 - 70.
- Thomson R (2007) 'Time to Comply: National Responses to Six EU Labour Market Directives Revisited', *West European Politics* 30(5): 987 - 1008.
- Thomson R (2009) 'Same Effects in Different Worlds: The Transposition of EU Directives', *Journal of European Public Policy* 16: 1-18.
- Thomson R (2010) 'Opposition through the Back Door in the Transposition of EU Directives', *European Union Politics* 11(4): 577-96.
- Thomson R, Torenviold R and Arregui J (2007) 'The Paradox of Compliance: Infringements and Delays in Transposing European Union Directives', *British Journal of Political Science* 37(4): 685-709.
- Toshkov D (2007a) 'In Search of the Worlds of Compliance: Culture and Transposition Performance in the European Union', *Journal of European Public Policy* 14: 933-54.
- Toshkov D (2007b) 'Transposition of EU Social Policy in the New Member-States', *Journal of European Social Policy* 17(3): 335-48.
- Toshkov D (2008) 'Embracing European Law: Transposition of EU Directives in Central and Eastern Europe', *European Union Politics* 9(3): 379-42.
- Toshkov D (2009) *Between Politics and Administration. Compliance with EU Law in Central and Eastern Europe*: PhD Dissertation. Leiden University.
- Toshkov D (2010) 'Taking Stock: A Review of Quantitative Studies of Transposition and Implementation of EU Law.', *Institute for European Integration Research Working Papers* 2/2010.

- Toshkov D, Knoll M and Wewerka L (2010) 'Connecting the Dots: Case Studies and EU Implementation Research', *Institute for European Integration Research Working Papers* 10/2010.
- Treib O (2003) 'The Impact of Domestic Party Politics on the Transposition of EU Directives: An Actor-Centered Reply to the Misfit Hypothesis', *Politische Vierteljahresschrift* 44(4): 506.
- Versluis E (2004) 'Explaining Variations in Implementation of EU Directives', *European Integration Online Papers (EIoP)* 8(19).
- Versluis E (2007) 'Even Rules, Uneven Practices: Opening the 'Black Box' of EU Law in Action', *West European Politics* 30: 50.
- Weiler J H H (1991) 'The Transformation of Europe', *Yale Law Journal*(100): 2403–83.
- Wiedermann C (2008) 'Czech Republic', in G Falkner, O Treib and E Holzleithner (eds) *Compliance in the Enlarged European Union. Living Rights or Dead Letters?*, pp. 27-59. Aldershot: Ashgate.
- Zalar B (2008) 'Constitutionalisation of the Implementing Act of the Procedures Directive: The Slovenian Perspective', *European Journal of Migration and Law* 10(2): 187-217.
- Zhelyazkova A and Torenvlied R (2009) 'The Time-Dependent Effect of Conflict in the Council on Delays in the Transposition of EU Directives', *European Union Politics* 10(1): 35-62.
- Zubek R (2011) 'Core Executives and Coordination of EU Law Transposition: Evidence from the New Member States', *Public Administration* 89(2): 433-50.
- Zubek R and Staronova K (2010) 'Ministerial Transposition of EU Directives: Can Oversight Improve Performance?', *EIF Working Papers*(9): 1-32.