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Post-Accession Transposition and Implementation between Administrative Coordination and Political Bargaining.

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Post-accession compliance between administrative co-ordination and political bargaining*

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Abstract: This paper explores the relationship between administrative co-ordination of EU affairs at the national level and compliance with EU law. First, we develop two hypotheses about the impact of co-ordination. We expect that the strength of the co-ordination structure (level of centralisation and political support) will improve levels of transposition of EU law. Administrative co-ordination becomes irrelevant, however, for the transposition of EU laws that attain political salience and trigger political opposition. We test these conjectures by an aggregate country-level analysis of transposition rates and a qualitative comparative analysis of eight cases covering two directives. Both analyses support our expectations that strong administrative co-ordination of EU affairs leads to smaller transposition deficits in the aggregate. However, for highly salient directives that touch upon constitutional issues and trigger opposition from political actors outside the executive, administrative co-ordination cannot help.

Keywords: policy co-ordination; implementation; comparative public policy; administrative adaptation; Central and Eastern Europe; political science

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1. Introduction

The remarkable transformation of the post communist states which entered the European Union (EU) in 2004 and 2007 involved, among others, achieving a surprising, for many observers, level of compliance with and transposition of the Union's *acquis communautaire*(1). In its Internal Market report of July 2005, the European Commission commented that "the new Member States thus perform better in transposing Internal Market directives on time than the EU-15 Member States, despite having

had to absorb the whole *acquis* in a short time frame". The Commission praised the record of the new member states even further by pointing out that "the champions of reducing transposition deficit are almost all new member states" (Commission 2005). Among the newcomers, Lithuania came ahead as the best performer in transposition in the Commission Internal Market scoreboard report in February 2006, while latecomer Bulgaria achieved a formal transposition deficit of zero in 2008. At the same time, corruption and lack of progress in reform of the judiciary in Bulgaria were criticized in the European Commission's post accession monitoring reports, which led to a freeze in funding for transport projects and other key areas(2). Other Central and Eastern European member states, such as Poland and Slovakia, have been known to reverse some of the legislation they had adopted during the pre-accession period on civil service independence (The Economist 2006; Dimitrova 2007). Such developments indicate the need to research in some depth the post accession record of the 'new' EU member states from Central and Eastern Europe (CEE).

A great deal of the progress made by the CEE candidate states during pre-accession can be attributed to the creation of institutional structures that ensured that they could support the negotiations by providing adequate information and at the same time disseminate policy decisions on transposition and harmonize their legislation with the *acquis*. The initial administrative condition of the EU, formulated in the Madrid European Council conclusions (1995) stated that the candidates needed to develop sufficient administrative capacity to implement the *acquis communautaire*. However, administrative capacity turned out to be a difficult concept to define, as the European Commission itself found when it struggled to outline the model and parameters of administrative reform expected from candidate members in the 1990s. The lack of a common European administrative model made it more difficult, but did not prevent administrative conditionality from being a major issue in the Commission's regular reports. A first set of requirements requiring the adoption of broad civil service and administrative reforms was defined with the help of the baseline criteria developed by the OECD's SIGMA group (Dimitrova 2002). At the end of the 1990s, however, the focus of Commission advice and candidates' attention shifted to the administrative and political co-ordination of EU adaptation and to sectoral capacity. This led to the development, over several years, of sophisticated EU co-ordination mechanisms which often included levels of co-ordination and political attention unseen in the 'older' member states (Dimitrova and Maniokas 2004; Dimitrova and Toshkov 2007). EU related units in ministries and departments across the candidate states became "islands of excellence" (Verheijen 2000; World Bank 2006) in the post communist administrations, employing highly trained, highly motivated staff in order to perform the multiple tasks related to the negotiation and adaptation process.

Despite these developments, administrative capacity was, for the early years of the last enlargement, more a practical concern for experts and advisors than a topic for academic research. As the candidates completed their preparation and acceded to the Union, research started catching up with the increased focus on administrative capacity. While political veto players were shown to be of very limited significance in the pre-accession period (Dimitrova 2002; Hille and Knill 2006), administrative adjustment and especially new co-ordination mechanisms have been shown to have made a big difference to the ability of the new member states to take on board the *acquis* before accession (Zubek 2001, 2005, 2008; Dimitrova and Toshkov 2007; Hille and Knill 2006). Zubek (2005, 2008), in particular, has shown that decisions to change Poland's EU co-ordination structures and to make them more centralized and more political (upgrading the European core executive), has made a substantial difference for Poland's transposition record. The question we ask in this paper is whether the institutional investment in co-ordination systems can explain the excellent record of the new member states in transposition of directives in the first few years post accession? At the same time, as conditionality is no longer a factor in compliance and as political actors in CEE states reassert their influence, it is also important to ask if the established co-ordination systems are sufficient for good transposition. This paper deals with both questions by first exploring whether co-ordination levels just after accession are correlated with good transposition performance in the aggregate. Next, we explore in more depth eight case studies of transposition of two directives that have generated differing levels of domestic political debate to see if administrative capacity in the narrow sense (co-ordination) is sufficient to explain divergent transposition outcomes.

2. The importance of co-ordination systems for compliance with EU rules

Even though much of the huge body of Europeanization literature has been preoccupied with the question of the impact of domestic institutional structures on implementation (see the recent overview in Steunenberg and Toshkov 2009), attention for the specific impact of EU co-ordination structures has been scant. The relative lack of theoretical and empirical research on the impact of co-ordination

structures is puzzling given the obvious causal mechanisms linking EU co-ordination within the executive and compliance with EU law. Co-ordination systems can:

1. provide technical assistance and expertise in EC law to the line ministries;
2. affect the information flows between governmental units;
3. provide monitoring and early warning systems for the overall level of implementation within the country;
4. enhance the communication between the government and the EU;
5. focus attention and assign priority;
6. facilitate settling conflicts between different parts of the executive.

A notable exception from the general tendency to neglect EU coordination systems is the work of Giuliani (2004) on transposition that tests the impact of 'centrality of the Foreign Affairs ministry in the EU co-ordination structure' expecting a negative impact on compliance. The empirical evidence Giuliani finds is inconclusive. In the same study, based on data on the EU member states before 2004, he also finds that stronger national co-ordination capacity has a negative influence on the standardized index of national adaptation used as an indicator of compliance. Giuliani's measures of co-ordination type and capacity are based on the comparative case studies of coordination collected in the volumes edited by Kassim et al. (2000, 2001).

In terms of the last wave of countries which have joined the EU, however, there has been some more interest in coordination issues, which has been led by the EU's increased emphasis on upgrading the coordination capacities of candidate states. Despite the growing interest in administrative capacity, it has remained difficult to define in both practical and theoretical terms and consequently, its effects on performance have been found to vary depending on the measure taken. As Nicolaidis has noted, it has not been easy to specify in detail a universally applicable measure of effective capacity to implement for practical policy purposes (2000: 79). Research done by the European Institute of Public Administration (EIPA) suggests that legal instruments, institutional or organizational arrangements and co-ordination and consultation mechanisms all support the capacity to implement in a certain area (Nicolaidis 2000: 79).

The quantitative analysis by Hille and Knill (2006) defines administrative capacity in a broader sense, as bureaucratic quality and uses the World Bank's Governance Matters (1996-2004) Index as a measure of administrative capacity. This indicator measures the independence of the bureaucracy, political stability, accountability and rule of law (Hille and Knill 2006: 544; see also Toshkov 2008). Since the analysis of Hille and Knill finds that bureaucratic quality defined in this way has a significant aspect on transposition, it is a good start in grounding our assumptions that administrative capacity matters. The indicator used to measure the independent variable, however, is comprised of so many variables that can be significant on their own that we find it tells us less than we would like to know about the key factors influencing transposition. Other studies, especially Zubek's work on Poland, Hungary and the Czech Republic (2005, 2008) specifically highlight the role of administrative co-ordination for good transposition before accession.

Building on this work, here we focus specifically on the effects of EU co-ordination systems. Apart from the few studies which have called attention to the importance of this issue, there are important arguments why coordination structures would matter for transposition also post accession. As we know, in a number of the new member states the European departments have been separated from the rest of the administrations. What is important is not only their status of 'islands of excellence' (Verheijen 2000), but also the institutional advantages which EU related policies have had through the special access and political priority of EU coordination.

Empirical research has shown that co-ordination institutions have been capable of affecting the relative importance of the substantive policy concerns of the national government vis-à-vis the concerns about the timeliness and appropriateness of compliance (Toshkov 2009). Strong EU co-ordination bodies were able to put pressure on line ministries to sacrifice some policy adaptation in order to speed up the transposition. In addition, powerful co-ordination actors have been able to 'persuade' the line ministry to stick close to the literal interpretation of the EU law in transposition in order to avoid risks of challenges by the European Commission and delays in implementation. Essentially, when they are well developed, co-ordination structures within the national executives are separate actors with a focus on and vested interest in the smooth compliance with EU law. As opposed to line ministries and agencies which care primarily about the substance of the policy within their realms, the co-ordination bodies' overarching interests are to ensure timely and proper adaptation to the EU.

Based on the above, in this paper, we investigate whether co-ordination of EU affairs can explain variation in transposition performance. We expect that the domestic EU co-ordination systems – their level of centralization, position in the administration, staffing and links with the core executive – would significantly affect the transposition and implementation of EU law.

The above discussion leads us to adopt the following hypothesis:

H1: On the aggregate level, stronger domestic EU co-ordination structures are related to fewer delays and problems with compliance with EU law.

The hypothesis implies cross-sectional differences between countries, but also diachronic differences within the same country responding to changes in the level of co-ordination. Since we do not conceive of co-ordination as both a necessary and sufficient condition for timely compliance but as a contributing factor – one amongst many causes determining the level of compliance – the effect of co-ordination strength may be modest in size and possibly difficult to uncover in aggregated data on transposition and implementation.

In order to gain more analytical leverage over the link between co-ordination structures and compliance we need to consider more carefully the causal mechanisms linking these two variables. The discussion above portrays the process of transposition of EU law as a primarily bureaucratic exercise confined within the executive. It is a game played between various actors within the government and the Commission, but still a game that does not leave the terrain of the executive. Some EU laws, however, do reach a high level of political importance or salience by touching upon constitutionally enshrined rights or key domestic norms and triggering political reactions. Saliency(3) is, therefore, defined here as a quality of the EU norm which makes it important for domestic political actors, either because it affects norms and rules at the core of a country's political order or because it affects highly important policy issues which are at the centre of political debate. Saliency can vary not only between policy measures, but also between countries – some measures may be controversial in a certain political context and easily accepted in another.

When saliency is coupled with domestic political opposition to the European policy, we expect delayed and incorrect transposition and implementation to occur. Salient issues are more likely to have to go through lengthy legislative procedures involving more veto players. The transposition of such measures might require super-majorities within the legislatures. Depending on the domestic system of political institutions it might involve legislative chambers with powers of veto or delay, or strong presidents whose agreement is necessary for the completion of the policy process. Furthermore, salient political issues might become entrapped in judicial oversight procedures or be subject to interventions by constitutional courts. All these 'paths to trouble' lead to a rather different causal process determining compliance outcomes. A different causal structure is switched on once the genie of EU law is out of the bottle of bureaucratic policy making. Post accession, we expect that co-ordination structures can do very little to solve compliance problems raised by political opposition. There are several reasons why we think good administrative co-ordination cannot solve transposition delays when a politically sensitive topic is involved.

First of all, political parties in the legislatures (especially if they are not represented in the government) and presidents are hardly susceptible to the influence of bureaucratic co-ordinating bodies. While co-ordination structures can sometimes arbitrate sectoral interests within the government, they have no power and influence to help settle genuine political conflicts. These different types of conflicts would not be a result of miscommunication or information flow failures, but a product of the clash between opposing preferences and interests.

Second, co-ordination structures lack the institutional means to intervene once the compliance process has escaped the executive realm. They can at best advise legislatures to speed-up discussions, but they cannot speed up institutional procedures or pressure presidents or courts to deliver their opinions faster. While close involvement of the parliament in the co-ordination of EU policy during the 'uploading' phase (as in Denmark) should certainly help in avoiding conflicts with (or within) the legislature during the 'downloading' phase, in the new member states such patterns of decision making have yet to become part of policy practice even where they formally exist.

Thirdly and finally, for highly politically salient issues the capacity of co-ordination units to ensure smooth compliance is severely limited even within the government itself. Salient issues are monitored by the media and the public, and governing parties are less sensitive to considerations like honoring

their EU commitments in a timely and proper fashion and more sensitive to the attitudes in the domestic public sphere. When sectoral conflicts are reinforced by coalition politics within government, the interventions of co-ordination bodies are less likely to succeed.

These considerations lead us to formulate the second hypothesis:

H2: The positive influence of domestic EU co-ordination structures on compliance is absent in cases of high political salience and political opposition.

The next sections of this paper test empirically these two hypotheses and explore the influence of co-ordination structures on compliance with EU law in the post-communist states from CEE.

3. Research design and operationalization

The empirical analysis presented in the following pages is divided in two parts. The first part of the analysis focuses on the first hypothesis and looks for a relationship between co-ordination and compliance at the aggregate level by comparing the performance of countries synchronically and over time. As it is impossible to measure political salience for aggregated data, the second hypothesis is explored in the next part of this paper through a comparative case study designed to test specifically this conjecture. Details about the research design of the comparative case study, the operationalization and the measurement of the variables we use are provided in the introduction of the second part of the analysis.

The main distinction which practitioners and experts have made in the context of EU politics is one focusing on the organizational location of the main co-ordinating unit. Simplifying substantially, we can distinguish between systems attached to the foreign affairs ministry (FAM), the government (council of ministers) office, or the office of the prime minister. Furthermore, EU co-ordination might be housed in a separate institution. In practice, real co-ordination systems involve elements located in various organizations, so it is a matter of subjective judgment which element is the leading one. Classifying co-ordination structures in this manner simplifies a lot the complex reality of EU co-ordination, but it taps the main differences between types of EU co-ordination.

Table 1 presents the co-ordination types in the eight countries from CEE which joined the EU in 2004. These structures have changed frequently so we have presented the organizational location of the main coordinating unit for three points in time: 2004(4), 2006, and late 2008. The most notable changes post 2006 include a change of the location of the central coordinating unit in Hungary from the Foreign Ministry to the Prime Minister's office and back to the Foreign Ministry in January 2008.

Table 1 about here

In this paper, however, we go further than classifying structures by type and make an important distinction between co-ordination type and co-ordination strength. This makes for difficult operationalization as different organizational forms may be equally effective depending on the administrative system they are embedded in. Examples from 'older' member states include very effective, but weakly centralized co-ordination systems such as the one of Denmark or a more politically centralized system used by Spain (Steunenberg and Voermans 2005).

Existing classifications referring to strength include the work by Scharpf (1993) and Metcalfe (1994). Scharpf has developed an abstract classification which provides insight into the effects and mechanisms of co-ordination, but the typology is difficult to operationalize with the available data on real co-ordination structures. Furthermore, the typology is based on a distinction between systems of positive and systems of negative co-ordination that might not capture the variation in the existing systems of domestic EU co-ordination(5). Metcalfe (1994), on the other hand, has developed a scale for measuring the level of co-ordination which has been used as a starting point by recent work on co-ordination in the broader EU context (World Bank 2006; Jordan and Schout 2008). The lowest levels of his scale describe loose forms of co-ordination, while higher levels describe more tightly integrated systems that can manage more complex co-ordination challenges.

The only available source which assigns scores to the countries we investigate bases them on the Metcalfe scale. The World Bank (2006) report 'EU-8: Administrative Capacity in the New Member States: The Limits of Innovation' assigns individual scores for the countries studied on overall co-

ordination and separately, for EU co-ordination. The Report distinguishes between a country's overall co-ordination capacity and co-ordination of European Integration/EU related issues. For the purposes of identifying, a priori, which new member states have the best developed co-ordination systems, we use the scores developed in the report, adjusted, if necessary, in view of recent changes.

The co-ordination scores are based on the co-ordination levels identified by Metcalfe which range between one and eight. The data in the World Bank report is derived from in-depth case studies and secondary sources. [Table 2](#) presents co-ordination scores for the year 2006. According to the table, the Czech Republic has the lowest score, while Lithuania has the highest. Using additional information from government documents and secondary sources, we have updated the scores for the year 2008. The updated scores are presented in the last column on the right. The Czech Republic has an improved score because it has strengthened co-ordination units and has created a ministerial post to oversee politically the co-ordination of EU affairs. Hungary's lower score is based on moving structures back and forth which must have affected organizational continuity. Reports of changes under way in Latvia and Lithuania are not reflected here as these are very recent developments from 2009.

[Table 2 about here](#)

Even though the table above provides scores adjusted till 2008, we use the 2006 scores for our analysis, as the changes post 2006 are not so extensive and the period is small for any effect to be measured on the aggregate transposition levels.

Regarding the dependent variable, levels of transposition compliance, we operationalize and measure compliance using the data provided by the Internal Market Scoreboards. The Scoreboards are compiled by DG Internal Market of the European Commission and track the number of non-transposed directives in each of the member states of the EU. The Scoreboards are updated twice a year and provide relatively reliable and comparable information. Arguably, they present the best aggregate-level data on the transposition of EU law in the 27 member states available to date. Other existing databases suffer from inconsistencies between the reports (the data provided by the General Secretariat of the Commission), cover only selected policy sectors (Falkner et al. 2005; Haverland et al. forthcoming), and/or provide only snapshots at one particular point of time (König and Luetgert 2009). Since the number of country-cases is rather small (eight) we analyze the relationships between co-ordination type, strength and transposition with the help of graphical methods (scatterplots).

4. Empirical analysis

4.1. Country - level transposition of EU law

[Figure 1](#) presents the relationship between co-ordination levels (strength) represented on the x-axis and compliance (the y-axis). As mentioned, the scores for co-ordination levels are based on research by the World Bank and the scale developed by Metcalfe (1994). Compliance is measured by the number of non-transposed directives at the end of 2006/beginning of 2007. Each country is represented by a symbol on the graph, and the different symbols stand for different types of co-ordination structures.

[Figure 1 about here](#)

The figure reveals a very strong link between co-ordination strength and the number of non-transposed directives at this particular point of time. The bivariate correlation coefficient is -0.80 which indicates a very strong negative relationship. In fact only Slovakia does not quite fit the pattern, having a better transposition performance than we would expect from its EU co-ordination level(6). On the other hand, as expected, there is no direct link between the type of co-ordination structures and the compliance level(7). The two co-ordination systems located in foreign affairs ministries exhibit good performance, while the mixed system in the Czech Republic has the worst score. Cabinet or prime minister office-based systems of domestic EU co-ordination have excellent (Lithuania) next to mediocre (Hungary) next to rather poor(8) scores(9).

How robust is the relationship between co-ordination levels and transposition? Is the strong link revealed in [Figure 1](#) sensitive to changes of the particular year in which the measures are taken? In order to answer these concerns we averaged the

number of non-transposition acts over the period from the beginning of 2005 until the end of 2007 (six measures for each country). The relationship between co-ordination levels and transposition performance remains strong even though the size of the correlation coefficient has dropped to -0.71. It should be noted, however, that our measure of co-ordination levels is fixed and available at only one time point, so that might explain the reduced strength of the relationship with compliance.

So far we have established that the aggregate country-level transposition performance of the eight post-communist countries which joined the EU in 2004 is strongly related to the domestic EU co-ordination strength (levels) as measured by the World Bank (2006), but not to the type of co-ordination structure. The relationship is robust to the specific points of time at which transposition is measured. Before we offer a causal interpretation of the link, however, several caveats are due.

First of all, it could be that the scores of co-ordination levels are not entirely exogenous to the transposition performance. While the World Bank experts which have compiled the measurement of co-ordination levels have relied on a wide range of information, it is conceivable that explicitly or not they have taken account the transposition performance of the countries in their assessment of co-ordination strength. If this would be the case, then we over-estimate the relationship between the two variables.

In addition, the link between compliance and co-ordination might be due to the two variables being simultaneously determined, or strongly influenced, by a third factor excluded from the analysis. It could be, for example, that general government capacity affects both co-ordination levels and transposition performance, but there is no direct link between the latter two. Using measures of government effectiveness from the World Bank Governance Indicators (Kaufman et al. 2005), we test for this possibility, but we find that the relationship between co-ordination and transposition remains strong (10). Hence, we can rule out the possibility that the link between co-ordination and transposition can be explained away when government effectiveness is taken into account. Similarly, we might hypothesize that the overall level of EU support and ambition in a country determines both the level of co-ordination of EU affairs and transposition success. Again, testing for the possibility (using the support for the EU at the accession referenda as an indicator of popular EU support – see Toshkov 2009) we find that the relationship between co-ordination and compliance remains strong (11) and is, therefore, robust to the inclusion of this possibly confounding variable.

Although these robustness checks lend support to the conclusion that the link between co-ordination and transposition is strong, we should still be careful in endorsing a causal interpretation of the relationship. Time series data would provide crucial evidence to complement the cross-sectional analysis that we presented. Unfortunately, we only have only one set of measures of co-ordination levels which does not allow us to perform a time series analysis. Nevertheless, informal observation suggests that decreases in the co-ordination levels can be related to transposition performance – for example, the below par performance of Lithuania in terms of transposition from July 2007 until the end of 2008 seems to follow decrease in the strength of the central EU co-ordination body in the country. Similarly, improvements in the Czech transposition record coincide with upgrades of the co-ordination system. A systematic time series analysis, however, has to wait until more data becomes available.

Another way in which we can gain more confidence in the effect of co-ordination levels on compliance is to focus on the causal mechanisms and scope conditions. If our theoretical reasoning is correct, we should observe an effect of co-ordination levels at the aggregate level, and for technical, low salience legislation, but the effect should disappear when the EU law to be downloaded gains political salience and triggers political opposition. The second part of the empirical analysis focuses on that conjecture (formulated as hypothesis 2 in the theoretical section of the paper).

4.2. Comparative case studies

As we have discussed in the first part of this paper, while in general we expect that stronger domestic EU co-ordination leads to greater compliance and less transposition delays, we are also aware that there are policy measures which are seen as so significant or so controversial that their transposition plays out in the political arena and does not remain confined to the administrative machinery. We posit that the effect of co-ordination is conditioned on the political salience and political opposition towards the EU policy. Once the EU directives trigger political opposition by actors within the government or in the broader political system (presidents, second chambers, constitutional courts)

then EU co-ordination structures can do very little to settle the conflicts and speed up compliance.

We have no way of operationalizing and measuring political salience for the aggregate-level analysis. Hence, we introduce a second analysis which is based on a comparative case study approach. We select a number of cases which cover different combinations of the causal factors (conditions) identified in the theoretical section above. We choose two directives with contrasting potential levels of political salience.

As our potentially highly salient measure we have chosen to investigate ‘Council Directive 2000/43/EC of 29 June 2000, ‘Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin’ - the so called ‘Racial Equality Directive’. The Racial Equality Directive is an important piece of EU anti discrimination legislation which has emerged as part of the development of a social policy that fits into a market access approach, but also goes further than social policy. The directive follows developments that can be traced back to debates in the European Parliament since the 1980s and the inclusion of Article 13 in the EC treaty in Amsterdam(12), which explicitly forbids all grounds of discrimination. Article 13 and the Racial Equality Directive introduce for the first time the issue of racial discrimination in EC law and thus, together with several other pieces of legislation such as the so called Framework Directive (2000/78/EC)(13), mark a new departure in EU policies (Bell 2002). The Racial equality directive and the Framework directive are innovative, as they address the issue of enforcement by requiring the establishment of anti discrimination bodies nationally (Bell 2002: 179). It is also worth noting that the European Commission has required new member states to adopt a general law covering all kinds of discriminatory grounds mentioned in the Racial Equality Directive, the Framework Directive and other related legislation (Dimitrova and Rhinard 2005). The Commission has defined the adoption of one comprehensive law as full and complete transposition and has resisted arguments by several member states, such as Germany and Estonia, claiming that constitutional prohibition of discrimination is sufficient to transpose the directives(14). The Commission has also set up a network of experts monitoring yearly anti discrimination compliance across all the member states(15). Because of the fact that the Racial Equality directive introduces for the first time prohibition of discrimination on ethnic or racial grounds and together with the Framework directive covers quite broad grounds for possible discrimination, it has been highly politicized and salient in a number of old and new member states.

The second directive we examine is Directive 2002/44/EC on protection of workers from vibration. It sets minimum requirements for the protection of workers from vibration at the workplace. While the adoption of the directive proved to be controversial, the final text of the directive has narrow scope (dealing only with vibration and not with other threats to the health of workers, like noise, optical radiation, electro-magnetic fields, etc.) and, although it regulates an important part of the social policy field, it only sets minimum exposure values. It also provides for a number of derogations (e.g. in the areas of sea and air transport). The vibration directive has limited potential to be highly politicized and therefore salient.

The selection of the country-cases for further study has been guided by two main concerns. First, in addition to variation in the potential salience discussed above, we need to have variation in the EU co-ordination strength. Second, we need to keep all other potential confounders constant. According to the most-similar system design, we should keep the cases as similar as possible with regards to their other characteristics in order to lessen the chance of alternative explanations of the differences in compliance we find. Hence, we focus on directives from the same policy field (social policy), transposed roughly at the same time. While the Racial Equality directive touches upon constitutional issues for all member states and has spurred political debate in three of the countries we selected – the Czech Republic, Hungary, and Latvia(16), the transposition of the vibration directive went virtually unnoticed by political actors in the Czech Republic, Estonia, Hungary, and Lithuania (the cases we focus on).

We opt to dichotomize our measures of co-ordination strength, salience and opposition. Using the median category ‘4’ from our measure of EU co-ordination strength, we classify all countries having score equal to or lower than ‘4’ as weak co-ordination systems and all countries with a score greater than ‘4’ as ‘strong’ co-ordination systems. Political salience is classified as present if the discussion of the transposition and application of the directive leaves the bureaucratic realm and attracts attention from political actors outside the executive. For example, extensive and substantive discussions in parliaments, media interest, statements by political parties, statements and actions of Presidents, and referrals to the Constitutional Courts all signify the presence of political salience. Political opposition is detected if any one of these key actors expressed a negative opinion on the directive and has taken

actions to re-interpret, change, delay or stop the process of transposition. We operationalize compliance, our outcome variable, as a dichotomous measure of essentially correct (see Falkner et al. 2005) transposition before the deadline.

Below we present the broad outline of the cases we analyze. Instead of describing comprehensively the transposition process in each country, we focus on the variables identified in our hypotheses and illustrate the causal mechanisms through which political salience and opposition affect compliance.

4.2.1. The Racial equality directive

An example of a highly salient measure to which political opposition emerged in the process of transposition can be found in the debate on the Racial Equality directive in Latvia. Initially, a single draft law was prepared to transpose the Racial Equality Directive and the Framework Directive. Good administrative coordination between the two responsible ministries was ensured by a special Working group which also included representatives from the Ministries of Welfare, Foreign Affairs, Health, the National Human Rights Office, the Human Rights Institute of the Faculty of Law of the University of Latvia and others. The initial draft was submitted to the Latvian Parliament in March 2004 and approved at first reading without much debate, but was withdrawn from the agenda of the relevant parliamentary committee without explanation in May 2004. A decision was then made to replace the one comprehensive law that had been prepared with amendments in eight existing laws. Parliamentary debates on amendments to these laws, especially the Labour Code, were very vigorous. Considerable political opposition emerged to the provision that specifies no discrimination on the grounds of sexual orientation. This opposition was led by Latvian Christian conservative parties. The Labour law amendment, discussed in third reading in 2006, was ultimately voted without reference to non-discrimination on the ground of sexual orientation, but was later returned by the President for reconsideration. The salience of the whole anti discrimination issue for all politicians was made even higher by the fact that 2006 was an election year.

The case of the transposition of the Directive on Racial Equality in Hungary provides an interesting contrast to the Latvian case, as it presents a situation in which political salience was attained, but there was no opposition to the directive. After a debate that included representatives of various non-governmental organizations as well as Hungarian political parties, churches and so on, the Hungarian parliament passed a comprehensive and well designed law already in 2003 and created an Equal Treatment Authority. The Equal Treatment Act addresses a broad range of societal actors such as NGOs as well as the Hungarian state. It covers a broad range of prohibitions, including all the prohibitions mentioned in seven different EU directives which are explicitly referred to at the end. The law also explicitly mentions that it has been adopted in compliance with Hungary's EU related obligations. The Hungarian case is useful in evaluating the expectation that salience as such is not sufficient for transposition problems, but only leads to delays when it is combined with opposition.

The case of Estonia also provides interesting contrast as there was delay in transposition, but it is unclear if the issue ever achieved political salience. The delay can be mostly ascribed to lack of coordination between the two responsible ministries and a general perception among political parties that such legislation was not needed in Estonia. The Estonian government suggested there was no need for special legislation transposing the directive, as the Estonian Constitution contained a general ban on discrimination. The Commission did not accept this argument, as it had not accepted similar arguments in other member states and Estonia received a formal letter of notification for non compliance with the Racial Equality Directive in 2006. New legislation transposing the directive was eventually adopted as late as December 2008.

In the Czech Republic, there were also a number of politicians that considered an anti discrimination law not necessary, but this created much political debate and opposition in the Czech Parliament. The Czech Republic produced two draft anti discrimination laws, one from 2005-2006 and another from 2007-2008. Neither has been successfully adopted at the time of writing. Both drafts transposed several anti discrimination directives together in one comprehensive law. The Czech government started working on anti discrimination legislation as early as 2002 when the first draft was produced. In December 2005, already late for the 2004 deadline, the government approved it and in 2005 it was presented in the Czech Senate. It passed the required three readings in the Chamber of Deputies by December 2005, but in January in 2006 it was rejected by the Senate. After the Chamber of Deputies rejected the 2005/6 draft with the amendments by the Senate in May 2006, in September 2007 a new government presented to Parliament a new, shorter, minimal draft of anti discrimination legislation.

Various arguments were presented against the 2007 law during parliamentary debates. Opponents claimed, for example, that there was no need for a single piece of legislation and that existing Czech legislation already provided sufficient anti-discrimination protection. Others proposed to update existing laws in order to include anti discrimination legislation. The 2006/7 draft was also criticized as it did not include essential provisions for example for setting up an anti discrimination agency. Debates were mostly slowed down by the issue linkage with the Framework Directive and the claim that there was no need for gender anti discrimination provisions. Transposition in the Czech Republic thus provides a perfect illustration of the thesis that high political salience and high opposition lead to considerable delays.

4.2.2. The Vibration directive

In contrast to the Racial Equality Directive, the second measure we examine, the vibration directive (2002/44/EC) is a typical 'technical' directive and its transposition remained firmly within the realm of administrative actors.

Lithuania transposed the Vibration Directive with an order of the Ministry of Social security and Labour, many months before the deadline. There were two ministries that were dealing with the transposition of the directive. These were the Ministry of Social Security and Labour and the Ministry of Health Care. Co-ordination between the two ministries did not present a problem given that Lithuania's excellent co-ordination system was in place.

Hungary similarly used an administrative measure, a ministerial decree to transpose the vibration directive: "Ministerial Decree number 22/2005 (24 June) of the Minister of Health on the minimum health and safety requirements for workers exposed to vibration at work". The decree entered into force on 1 July, 2005, five days before the deadline. The leading Ministry responsible for its transposition was the Ministry of Health.

The Czech Republic and Estonia were both late in transposing the vibration directive. The problem in the Czech Republic appears to have been that the country already had existing legislation on vibration values⁽¹⁷⁾. This existing legislation, however, used different calculations for vibration than the vibration directive prescribes and they covered horizontal and vertical vibrations instead of hand-arm and whole-body vibrations. In order to incorporate the 2002/44/EC vibration directive into national legislation, the Czech Republic used two amending acts. The main transposition instrument was the Government Order no. 148/2006 of the 15th of March 2006 on the protection of health against undesirable effects of noise and vibration amending the 65/1965 Labour Code and its 115/2000 amendment. The responsible Ministry was the Ministry of Health. The second transposition act was Law 309/2006 amending additional requirements concerning health and safety in professional relations and providing health and safety in non-standard contracts (law on providing other conditions for health and safety). This Law was drafted by the Ministry of Trade and Industry and the Ministry of Health and came into force on the first of January 2007. The transposition of the vibration directive in the Czech Republic took longer and was more complicated than in other new member states.

Estonia, similarly, was 21 months late with its Regulation "Health and safety requirements for the working environments affected by vibration, maximum vibration limits for the working environments and the vibration measurement procedure".⁽¹⁸⁾ The leading ministry was the ministry of social affairs. Thus, the Estonian transposition was late as the Czech one, although there was no politicization around the measure.

4.2.3. Qualitative comparative analysis

To evaluate what these outcomes mean for our hypotheses, we use Qualitative Comparative Analysis (QCA). QCA is a methodology that is especially useful when we have a moderate number of cases, and we expect that our explanatory variables have complementary, multiplicative effects (Ragin 2000). Hence, QCA fits well our research objectives in this paper and can effectively complement the aggregate-level analysis that we offered in part one.

QCA allows us to represent the variables either as binary (yes/no, 0/1) or to assign them fuzzy score which can capture in more detail whether an observation is 'in' or 'out' a certain set (Ragin 2000). For reasons of simplicity we opt to work with crisp sets and, therefore, conduct the analysis using simple yes/no measures of the variables. As explained above, 'co-ordination strength' is deemed as 'present' if the value of the co-ordination level is equal or greater than five and as 'absent' otherwise. Therefore

the Czech Republic and Estonia are assigned '0' and Hungary, Latvia and Lithuania are assigned '1'(19). The outcome 'transposition delay' is coded as '1' (present) if the directive was not transposed within the set deadline in the country and '0' otherwise. [Table 3](#) summarizes the scores on the explanatory variables and the outcome together with the theoretical expectations about transposition delay.

[Table 3 about here](#)

From this raw table we can construct a table of configuration (a truth table). [Table 4](#) lists all the observed configurations (rows in the table). The first column shows which cases fit the specific combination of conditions. The column 'DELAY' points to the membership of the configuration in the outcome. Note, that there are no contradictory configurations (configurations that lead sometimes to delay and sometimes to timely compliance). Three theoretically possible configurations have not been observed in the data: weak co-ordination coupled with high salience but no political opposition, weak co-ordination with high opposition, but no salience, and strong co-ordination, high opposition and no salience. Two of these cases concern the presence of opposition in the absence of political salience, which is an impossible combination according to our theoretical framework. The analysis of the truth table uses only the observed cases.

[Table 4 about here](#)

The result from the Boolean minimization process produces the following expression:

$$(\text{SAL AND OPPOS}) \text{ OR } \sim\text{COORD} \rightarrow \text{DELAY}$$

The '~' before a variable indicates the absence of a condition, AND and OR are Boolean operators. The statements can be translated as follows: Delay is a result of the simultaneous presence of political salience and opposition, or weak co-ordination. So, we can identify two paths to transposition delay – political opposition for salient legislation, or weak co-ordination (in the absence of salience and opposition). Because of the causal asymmetry possibility inherited in QCA, it is worth analyzing the absence of delay separately. In this case we arrive at the following expression:

$$\sim\text{OPPOS AND COORD} \rightarrow \sim\text{DELAY}$$

We can translate that as follows: timely transposition (the absence of delay) is a result of the absence of opposition and strong co-ordination capacity (which are individually necessary and jointly sufficient) for the absence of delay.

The conclusion about co-ordination strength is straightforward: weak co-ordination is a sufficient condition for delays, but is not necessary for cases that reach salience and trigger opposition. The result also shows that political salience and opposition are jointly sufficient to cause compliance troubles. In the absence of opposition, however, salience is not enough to bring delays(20). In short, all eight cases conform to our theoretical expectations. Therefore, we find no evidence against our two hypotheses. The strength of EU co-ordination institutions is important for compliance, but only when the process does not trigger political attention and opposition(21).

The combination of comparative case studies with the aggregate-level analysis presented in this section shows that the theoretically plausible impact of EU co-ordination strength on compliance receives substantial empirical support. Ideally, when tested on a large number of individual cases, the necessary and sufficiency of the causal configurations will remain visible, although we cannot expect a perfect correspondence between causal paths and outcomes. Future analyses can also improve on the discrete measurements employed here and utilize fuzzy set analytical techniques. In general, the analysis in this paper brings ample evidence that better co-ordination is translated into better overall levels of compliance although for highly salient legislation the link may be absent.

5. Conclusion

This paper explored the importance of administrative capacity, defined narrowly as co-ordination capacity for EU affairs, for transposition of EU directives in the new member states just around and

after accession. Using a mixed method approach we investigated first the connection between co-ordination levels and transposition success in the aggregate and found it to be strong and robust.

We did not expect, however, that the general success of transposition through the administrative level would help with the transposition of measures touching upon key constitutional issues, political party preferences or existing lines of polarization – in other words measures which had the potential to become highly salient for political actors. Therefore, in the second part of the paper, we used a comparative case study design to see if the salience of a directive can be related to problems with transposition. In this part, we found that the more politically controversial measures could not be transposed through the administrative level and they could be seriously delayed if the preferences of key political actors diverged. Therefore, we conclude that good administrative capacity, in the sense of good co-ordination of EU policy making is a necessary, but not sufficient condition for transposition.

Tracing the process of transposition in more detail and using case studies summarized in a QCA analysis illustrates well the findings of the second part of the analysis. The highly salient Racial Equality Directive and related antidiscrimination legislation have stumbled in Parliaments and encountered the opposition of conservative parties, which sometimes have been acting as veto players in government. The transposition and implementation of these directives is clearly a question of politics, a result that can be explained with the high salience of this legislation and with high levels of politicization. The less salient vibration directive was successfully transposed with administrative measures, although it was delayed in Estonia and the Czech Republic, where co-ordination capacity is lower.

The results of the analysis in this paper fit well with the conclusion of those who found that administrative capacity was important during the pre-accession stage such as Hille and Knill (2006) and the work by Zubek (2001, 2005, 2008).

Can our results be generalized beyond the CEE countries? Does the relevance of co-ordination vary in different worlds of compliance (Falkner et al. 2005; Treib 2008)? We can identify complementary causal mechanisms that link co-ordination and implementation performance in all of the clusters of ‘compliance cultures’ identified. Even if we assume that compliance with EU policies works according to different logics of compliance in different parts of the EU (Falkner et al. 2005), co-ordination structures retain their importance. Even if we are willing to accept that the post-communist countries from CEE are to be separated in a separate world of compliance – the world of dead letters – co-ordination structures remain important actors because they concentrate and distribute technical knowledge and expertise about EC law.

A more important challenge to our findings comes from empirical developments. We know, both from our own empirical results and World Bank data (World Bank 2006), that a number of the new member states have downgraded their European co-ordination systems. The accession to the EU was the political priority project for post communist states, but this project has now given way to day-to-day politics and implementation challenges. Among the implementation challenges we can clearly identify the fact that even in countries which have been good performers so far, co-ordination and implementation centres in the government differ – the latter being often located in the Ministry of Justice. This arguably creates ‘Chinese walls’ between policy making and implementation and prevents civil servants from being involved in the monitoring of the legislation they may have participated in negotiating.

Ultimately, administrative capacity remains an important foundation for good transposition, but, as these case studies have shown, the explanation for serious transposition problems should be sought in the world of politics.

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Endnotes

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(1) The *acquis communautaire* or *acquis* of the Union comprises existing policies, legislation and ECJ case law or more broadly, the common rights and obligations which bind all the member states together within the European Union, Europa Glossary, http://europa.eu/scadplus/glossary/community_acquis_en.htm (accessed on 1 September 2009).

(2) 'Bulgaria's mea culpa as the EU moves to suspend funding', Euractiv.com, 24 July 2008 (accessed on 20 January 2009).

(3) According to the definition of Dearing and Rogers (1996) salience is the degree to which an issue on the agenda is perceived as relatively important.

(4) For details about the situation in 2004, the reader is referred to Dimitrova and Toshkov (2007).

(5) Systems of positive co-ordination allow for exploring different solutions and proactively searching for a Pareto-optimal solution. Negative co-ordination systems only avoid negative externalities during the process of co-ordination.

(6) We thank Radoslaw Zubek for reminding us that Slovakia's good performance in this period may have been influenced by special political attention for compliance with EU rules in preparation for adoption of the euro.

(7) There is also no direct link between co-ordination type and strength which confirms that these are two separate characteristics of co-ordination structures.

(8) We would like to emphasize that we do not imply any normative judgments about the quality of the adaption of the new member states to the EU although we sometimes use adjectives like 'excellent' or 'poor'. We only refer to the relative country performance in terms of transposition timeliness as reflected in the Commission's databases.

(9) The ranking is only relative to the sample of eight post-communist member states – in fact all the countries with the exception of the Czech Republic do rather well in comparison with the rest of the EU member states.

(10) We construct a Poisson regression model, which is suitable for count data, with government effectiveness and co-ordination levels as explanatory variables and the mean level of non-transposed acts 2005-2007 as a dependent variable. The coefficient of co-ordination levels is negative and statistically significant.

(11) Again, employing a Poisson regression model with the share of 'Yes' votes at the accession referenda and co-ordination levels as explanatory variables we find that coefficient of co-ordination levels is negative and statistically significant (as is the coefficient of the EU support variable).

(12) The 1997 amendment to the EC treaty, introducing prohibition of discrimination on racial and other grounds in article 13 EC (Bell 2002).

(13) Directive 2000/78, often referred to as the Framework Directive and transposed with the same domestic legal measures (as evidence of issue linkage), defines a number of prohibitions of grounds for discrimination at work, among which sexual orientation.

(14) Evidence that the Commission has preferred one law as a way to transpose anti discrimination legislation is largely indirect. See for example this Open Society Monitoring report: "With EU encouragement, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia and Slovakia are all engaged in reviewing their legislation with a view towards ensuring full compliance with the EU's Race Equality Directive. Romania has already adopted comprehensive anti-discrimination legislation and has taken steps towards establishing an institutional framework to guarantee implementation. Slovenia also has fairly comprehensive legislation in place." (Open Society Institute 2002).

(15) See the Anti Discrimination Law Review at <http://www.non-discrimination.net/en/publications> (accessed on 13 December 2009).

(16) And also in other CEE member states such as Poland and Slovakia.

(17) Government Order of 502/2000 about protection of health against vibration and noise. This act was amended in 2004 by the Government Order 88/2004.

(18) Regulation no.109 of 12 April 2007.

(19) The scores on political opposition and salience are derived from the case studies discussed above.

(20) In addition, if we bring the type of co-ordination in the truth table, the results do not change: in cases of political salience and opposition, the co-ordination type apparently does not matter since the three cases fitting the description have rather different co-ordination types (mixed, prime minister's office, and foreign affairs based). The second causal combination also features two countries having different types of co-ordination which shows that type is irrelevant.

(21) Note that the conclusions of the aggregate level analysis are supported by the comparative case-study: lower co-ordination capacity increases the likelihood of compliance problems, since the cases scoring 'low' on co-ordination have registered four problems (out of four observations), while the cases scoring 'high' on capacity have registered only one problem (one of four observations).

List of Tables and Figures

Table 1: Location of the main coordinating body for EU affairs

	2004	2006	2008
Czech Republic	Foreign affairs ministry / cabinet office	Foreign affairs ministry / cabinet office	Foreign affairs ministry / cabinet office
Estonia	Prime minister's office	Prime minister's office	Prime minister's office
Hungary	Foreign affairs ministry	Cabinet office	Foreign affairs ministry
Latvia	Prime minister's office	Foreign affairs ministry	Foreign affairs ministry
Lithuania	Prime minister's office	Cabinet office	Cabinet office
Poland	Cabinet office	Cabinet office	Cabinet office
Slovakia	Foreign affairs ministry	Foreign affairs ministry	Foreign affairs ministry
Slovenia	Cabinet office	Cabinet office	Cabinet office

Table 2: EU co-ordination levels in CEE

	2006	2008
Czech Republic	2	3
Estonia	3	3
Hungary	5	4
Latvia	7	7
Lithuania	8	8
Poland	4	4
Slovakia	3	3
Slovenia	5	5

Table 3: Result of the qualitative comparative analysis

Country	Directive	Co-ordination strength (COORD)	Political salience (SAL)	Political opposition (OPPOS)	DELAY (expected)	DELAY (finding)
Czech Republic	Racial equality	0	1	1	1	1
Estonia	Racial equality	0	0	0	1	1
Hungary	Racial equality	1	1	0	0	0
Latvia	Racial equality	1	1	1	1	1
Czech Republic	Vibration	0	0	0	1	1
Estonia	Vibration	0	0	0	1	1
Hungary	Vibration	1	0	0	0	0
Lithuania	Vibration	1	0	0	0	0

Table 4: Truth table of the Boolean configurations

Country	Co-ordination strength (COORD)	Political Saliency (SAL)	Political Opposition (OPPOS)	DELAY	N cases
Racial eq. (EST) Vibration (EST, CZ)	0	0	0	1	3
Vibration (HU, LI)	1	0	0	0	2
Racial eq. (HU)	1	1	0	0	1
Racial eq. (CZ)	0	1	1	1	1
Racial eq. (Latvia)	1	1	1	1	1

Figure 1: 2006 coordination types & levels and transposition deficit

