View metadata, citation and similar papers at core.ac.uk

brought to you by CORE

provided by Archive of European Integration

117

Reihe Politikwissenschaft

Political Science Series

Cutting through the “misfit” jungle

Can a re-consideration of the goodness-of-fit hypothesis help us understand the transposition of EU anti-discrimination directives in Austria?

Juan Casado Asensio

117

Reihe Politikwissenschaft

Political Science Series

Cutting through the "misfit" jungle

Can a re-consideration of the goodness-of-fit hypothesis help us understand the transposition of EU anti-discrimination directives in Austria?

Juan Casado Asensio

October 2008

Institut für Höhere Studien (IHS), Wien
Institute for Advanced Studies, Vienna

Contact:

Juan Casado Asensio
Department of Methods in the Social Sciences
University of Vienna
Rooseveltplatz 2, 4th floor
1090 Vienna, Austria
☎: +43/1/4277-49903
email: juan.casado@univie.ac.at

Founded in 1963 by two prominent Austrians living in exile – the sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern – with the financial support from the Ford Foundation, the Austrian Federal Ministry of Education, and the City of Vienna, the Institute for Advanced Studies (IHS) is the first institution for postgraduate education and research in economics and the social sciences in Austria. The **Political Science Series** presents research done at the Department of Political Science and aims to share "work in progress" before formal publication. It includes papers by the Department's teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

Das Institut für Höhere Studien (IHS) wurde im Jahr 1963 von zwei prominenten Exilösterreichern – dem Soziologen Paul F. Lazarsfeld und dem Ökonomen Oskar Morgenstern – mit Hilfe der Ford-Stiftung, des Österreichischen Bundesministeriums für Unterricht und der Stadt Wien gegründet und ist somit die erste nachuniversitäre Lehr- und Forschungsstätte für die Sozial- und Wirtschaftswissenschaften in Österreich. Die **Reihe Politikwissenschaft** bietet Einblick in die Forschungsarbeit der Abteilung für Politikwissenschaft und verfolgt das Ziel, abteilungsinterne Diskussionsbeiträge einer breiteren fachinternen Öffentlichkeit zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den Autoren und Autorinnen. Gastbeiträge werden als solche gekennzeichnet.

Abstract

Research in the field of EU transposition studies has often been divided about the nature and number of independent variables that would be needed to understand actual patterns of "differential" transposition across Europe. In turn, extant approaches can only partially explain the observed transposition and implementation gap in the European Union. One of the most common, yet most contentious independent variables used in the discipline is the so-called "misfit hypothesis". The misfit looks at how much EU requirements match the domestic *status quo* and, in turn, how this match impacts upon transposition processes and outcomes. Empirically, however, the argument has proven inconclusive. A vibrant debate has recently been launched among proponents and detractors of the argument. This paper seeks to contribute to this debate by proposing a comprehensive theoretical re-evaluation of the hypothesis, both from a conceptual and operational perspective. Only by "cutting through the jungle" of existing misfit definitions and operationalisations can a path be cleared for a future, more successful use of the hypothesis. The paper presents a novel conceptualisation of the hypothesis, relevant for the study of transposition processes and outcomes. The conceptualisation is illustrated through the Austrian transposition experience of two EU Anti-discrimination directives.

Zusammenfassung

In der Forschung zur Umsetzung von EU-Richtlinien herrscht oft Uneinigkeit darüber, welche Faktoren zur Erklärung der divergierenden Umsetzungsergebnisse in den Mitgliedstaaten herangezogen werden müssen und wie das tatsächliche Ausmaß des Implementationsdefizits in der EU festgestellt werden kann. Einer der am häufigsten verwendeten, aber zugleich unklarsten und verwirrendsten Faktoren, die in diesem Zusammenhang ins Feld geführt werden, ist der Grad der Übereinstimmung zwischen EU-Anforderungen und nationalem Status Quo. Gemäß der so genannten Misfit-Hypothese hat dieser „Goodness-of-fit"-Faktor entscheidenden Einfluss auf Erfolg oder Scheitern der Umsetzung von EU-Richtlinien. Diese Hypothese ist jedoch aufgrund verschiedenster empirischer Resultate äußerst umstritten, was zu einer lebhaften Debatte zwischen Befürwortern und Kritikern dieser Sichtweise geführt hat. Der vorliegende Beitrag greift diese Debatte auf und schlägt eine neue Konzeptionalisierung und Operationalisierung des Misfit-Begriffs vor. Die Nützlichkeit der dabei neu entwickelten Messinstrumente für die verschiedenen Misfit-Ebenen wird am Beispiel der Umsetzung von zwei Anti-Diskriminierungsrichtlinien in Österreich dargestellt.

Keywords

Misfit, Norms, Transposition, Anti-Discrimination, Austria

Schlagwörter

Misfit, Normen, Umsetzung, Antidiskriminierung, Österreich

General note on content
The opinions expressed in this paper are those of the author and not necessarily those of the IHS Department of Political Science

Contents

Introduction 1

The Misfit Hypothesis: Definition and Operationalisation 4

Definition 4

Empirical Testing 6

A Theoretical Re-consideration of the Misfit Hypothesis 8

Re-Definition 8

Re-Operationalisation: The Material-Organisational Dimension 9

Re-Operationalisation: The Normative Dimension 10

Re-Operationalisation: The “Pressure Context” 13

Illustration: Austria’s Transposition of Two EU Anti-Discrimination Directives 16

Case Selection Rationale 16

Austrian Policy Legacy 17

Austrian Pressure Context 19

Transposition Process and Outcome 20

Discussion 22

Conclusions 24

References 27

Introduction

Research on the transposition and general implementation of European legislation in the member states is a recent endeavour. Its emergence can be traced to the early 1990s, with the Single European Act and Single Market Project, which triggered an unprecedented legislative effort in Brussels and the member states. During this period, over 250 legislative proposals were pushed down the legislative pipeline. Since then, several rounds of Treaty reforms have ensured that the Union is able to produce more legislation in an ever-increasing number of policy areas. Not surprisingly, this rush in legislative activity coincided with a surge in academic interest on the fate of these laws after EU-level decision-making.

This interest stretched beyond formal implementation and indeed contributed to a deeper understanding of the Europeanisation phenomenon. Europeanisation is generally understood as the "top-down" impact of European integration on the member states (Ladrech 1994: 69; Radaelli 2003: 30). It also refers to the analysis over time of whether and how changes in domestic institutions take place as a consequence of the development of EU-level institutions – if at all. Institutions are broadly conceived as social phenomena that create stable, predictable and reliable patterns of collective and individual behavior (Peters 1999; Premfors 2001). This includes formal and informal rules, procedures, routines, norms, conventions, structures, policies, policy instruments, standards and problem-solving approaches.

Typically, Europeanisation has a direct impact upon a member state through the use of EU directives – the most common form of European legislation. Directives provide a direct, visible and "hard" link between the European Union and its member states. Indeed, directives carry EU level institutions (e.g., laws, policies and/or organisations) that inevitably impact on the domestic institutional context during and after implementation. EU directives go through a three-stage procedure covering the successive phases of transposition, enforcement and application, which altogether constitute the implementation process. This, in turn, is vital to determine the strength and future path of the European impact at home. *First*, directives have to be transposed into the national law of a member state by the administration, the political system and societal actors (transposition). *Second*, new legislation has to be domestically enforced by the administration and the courts (enforcement). *Third*, norm addressees need to conform to the legal rules enacted as a reaction to a directive (application). The strength of the European impact can therefore be picked up by studying each of these processes, their outcomes, as well as the "softer", long term analysis of how European institutions were able (or not) to shape domestic institutions. Scholars rightly argue whether the implementation process can be divided into three separate stages, yet splitting them in such a manner provides important analytical gains. In particular, by doing so, researchers are able to identify the specific factors and variables at

work during each of the stages, which may not always be the same or may work in dissimilar ways across phases.

Hitherto, most implementation studies have been transposition studies. In particular, scholars focused upon the formal process of transposition and its consequences in terms of timing.[1] This paper contributes to this body of literature by investigating member state transposition processes and their broader consequences upon transposition outcomes. The outcome of transposition has often been unclearly conceptualised as a dependent variable in the literature (Hartlapp and Falkner 2007); even though a comprehensive operationalisation for this variable already exists (Falkner *et al.* 2005; Steunenberg 2007). Scholars have looked at both timing[2] and correctness of transposition.[3] Whereas the timing of transposition can be traced back to how the transposition process was actually conducted, correctness is a more complex indicator that can only be indirectly linked to the process itself, thus requiring a deeper analysis of domestic-level factors of transposition. These factors, however, have also been a matter of controversy and debate.

A common feature in the study of transposition has been the almost ritual reference, testing and rejection of the so-called “misfit hypothesis”. In its original form, the misfit hypothesis posits that the higher the institutional match between the EU’s requirements and the domestic *status quo*, the smoother the implementation and transposition process (Duina 1997). Yet, while a smooth transposition process translates into outcome timeliness, it can only yield a partial prediction on how correct the outcome of transposition will actually be. Not surprisingly, scholars have shown in myriad empirical studies that transposition is a more complex and dynamic process than what the misfit approach hypothesises (e.g., Haverland 2000; Héritier *et al.* 2001; Falkner *et al.* 2005: 289-291; Mastenbroek 2005: 1111 or

---

[1] The enforcement and application stages have not been as popular among EU researchers primarily because data is not always available (Pülzl and Treib 2006). The enforcement stage, in addition, involves a more legalistic approach.

[2] Directives may be transposed *on time*, denoting that the process is finalised before the official deadline but after the directive had been passed in Brussels (i.e., no anticipatory adaptation). In contrast to timely transposition, delays may be minor or major. Transposition is *almost on time* when the delay does not exceed six months after the official deadline. Transposition is *significantly delayed* when transposition is delayed over six months after the deadline (Falkner *et al.* 2005).

[3] Directives can be transposed *completely correctly*, which “denotes full compliance with all adaptation requirements in the transposition stage and notification of the relevant laws to the European Commission” (Falkner *et al.* 2005: 268-9.). They may also be transposed *essentially correctly*, when the state reached “an essentially successful fulfillment of most requirements (…) and, simultaneously, of the most central requirements of a directive” (*Ibid.*). Finally, transposition is *incorrect* when a law has a different spirit and underlying goals than those pursued by Brussels. Incorrect transposition may happen because of under-implementation, omissions or modifications to the letter and/or effects of a directive. Member states may also transpose non-binding recommendations or provisions, or transpose other provisions not included in the body of a directive, what is known as *over-implementation* or “gold-plating”. Over- and under-implementation may coexist in the transposition of a directive when domestic actors go beyond the letter of a directive for some provisions but fall short for others. They constitute examples of non-lineal transposition (Steunenberg 2007).

Mastenbroek and Kaeding 2006; Steunenberg 2007: 26). Yet, despite overwhelming empirical dismissal, the argument still constitutes a "master variable" (Falkner 2007: 1012) in many transposition and implementation studies (Thomson 2007; Toshkov 2007). A debate has recently been launched on whether the hypothesis should actually be left out of future research projects or not (Duina 2007; Mastenbroek and Kaeding 2006, 2007). The present paper feeds into this particular debate.

Looking at the state-of-the-art, there are as many definitions and operationalisations of the hypothesis as works that used the level of misfit as an explanatory variable. This theoretical and empirical diversity requires major re-consideration, especially because the discipline displays contradictory dead-ends and inconclusive results on this particular issue. Taking stock of existing works and cumulating various successful theoretical and empirical approaches may improve the use of the hypothesis. In particular, the present paper combines the typical focus on material-organisational costs in the study of misfit levels with the more recent analysis of normative elements. By doing so, this paper also cumulates various promising theoretical improvements in the field that look at both timing and correctness of transposition and aim at providing a clearer delimitation of the argument. The main thrust of the paper will be to show how the combination of both approaches can shed light upon transposition processes and outcomes, beyond the expectations of each individual dimension of the goodness-of-fit, particularly those derived from the common study of material-organisational costs. The re-conceptualised hypothesis will shed light upon the Austrian transposition experience of EU disability and race/ethnicity anti-discrimination provisions.

This paper is divided into three sections. *First*, the paper defines the concept of misfit and looks at the use of this popular independent variable in the transposition, implementation and Europeanisation state-of-the-art literature. A cursory summary of the main empirical works that tested the hypothesis and their conclusions is also presented here. *Second*, the paper refines the argument, and consequently proposes a novel re-operationalisation of the hypothesis. *Third*, the new misfit conception is discussed in the light of the Austrian transposition experience with two EU Anti-discrimination directives. *Finally*, the paper sums up the main potential advantages and limitations of using this approach in the future.

The Misfit Hypothesis: Definition and Operationalisation

Definition

In its original form, the misfit hypothesis posits that the better the institutional match between EU requirements and pre-existing domestic structures, the smoother the implementation process and the better the domestic outcome. Based on a broad understanding of what institutions are, Duina and Blithe (1999: 498) offered one of the first (and clearest) formulations of the argument:

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

Intuitively, the misfit hypothesis is persuasive because it assumes that departures from domestic institutional arrangements shape negatively domestic actor behaviour. This, in turn, is expected to impact upon timing of transposition. Having an institutional setting similar to the one imposed by a directive may facilitate the task of reaching domestic agreement because domestic actors see no difficulties in transposing European law. As a result, transposition is expected to be swift, and the final outcome correct. Conversely, a domestic institutional setting that radically departs from EU demands complicates the task of transposition, leading to delays in process and an incorrect outcome.

Theoretically, most misfit-centred studies have taken a neo-institutionalist approach to examining how the domestic arena reacts, if at all, to EU policy-making (Duina 1997, 1999; Duina and Blithe 1999; Knill and Lenschow 1998; Cowles *et al.* 2001; Knill 2001; Börzel 1999, 2003, 2005; Börzel and Risse 2000, 2003; Radaelli 2000, 2003).[4] Neo-institutionalism provides a set of tools "to elucidate the role that institutions play in the determination of social and political outcomes" (Hall and Taylor 1996: 936). This is particularly useful in the study of transposition, which could also be understood as the political process whereby domestic political actors modify and create new domestic institutions as a result of EU impulses, usually in the form of a directive.

---

[4] New institutionalism has three variants, namely historical institutionalism, rational choice institutionalism and sociological institutionalism. A full definitional effort of the three variants cannot be provided here (but see Hall and Taylor 1996: 941-2; Pierson 1996 for historical institutionalism; Risse 2004 or Checkel 1999 for an overview of current sociological approaches).

According to historical institutionalism, an institution develops, over time, robustness towards changes in its functional and normative environment. This explains why most misfit-centred research projects assumed that actor reluctance to changing the domestic *status quo* stems from an institutionally "thick" and "sticky" environment. *First*, the environment where transposition takes place is "thick" because there are myriad institutions involved in transposition, each contributing to processes and their outcomes in different ways. *Second*, the environment is "sticky" because, over time, institutions develop robustness. This renders change slow and difficult. Given such an environment, only those directives fitting with the domestic *status quo* are expected to be smoothly transposed and on time. The hypothesis thus focused upon the costs of institutional transformation as a major driver of (or obstacle to) the transposition of EU directives. These costs have usually been determined by how much a particular EU law or policy departs from the domestic policy legacy and its organisational arrangements – the material-organisational dimension. In other words, costs reflected how incoming EU legislation fits with the existing *status quo* (Duina and Blithe 1999). As noted earlier, most studies expected domestic actor reluctance to change whenever the misfit level was large. This assumed rational and cost-aware actors.

Even though a common definition settled around these lines, scholars have not always been talking about the same issues. This is first and foremost evidenced by the various *ad hoc* operationalisations extracted from this definition. Cumulative work has not characterised the field and, in contrast to the classical definition of Duina and Blithe (1999), Knill and Lenschow referred to a broadly defined "institutional misfit" (1999: 26, 2000, 2001; Knill 2001); and, relatedly, Knill (1998) differentiated between change "within" and change "of" core national administrative institutions. In another study, Börzel and Risse distinguished between "policy misfit" and "institutional misfit" (2003: 606; Börzel 2000, 2003, 2005). For them, the concept of institutional misfit was used to compare European policies and national administrative structures and traditions, including established interaction patterns between state actors and interest groups. The concept of policy misfit referred to the match between EU measures and domestic political instruments, standards and problem-solving approaches. Moreover, while some authors merged both dimensions (e.g. Héritier *et al.* 2001; Duina 1997, 1999; Risse *et al.* 2001), others differentiated among several types of misfit. For instance, Hansen and Scholl distinguished between "constitutional misfit", "cultural misfit" and "functional misfit" (2002: 1). Caporaso noted that "the fit/misfit can be over policies, economic conditions (gender inequality), ideational systems (conceptions of citizenship), institutions and even constitutional orders (basic rights granted under national constitutions and rights granted or denied at the European level)" (2006: 13). In addition, other scholars looked at domestic institutions and cultural changes *over time*, merging in the concept of misfit the number and nature of veto players in a system, the capacity for systemic political leadership, the degree of support for European integration and a conceptualisation of national identities (Dyson and Goetz 2003: 17). In a similar vein, some works also built upon social constructivism and sociological institutionalism, as pointed out by the concepts of "normative misfit", "normative incompatibility", "cognitive misfit" or

"normative resonance" (see Checkel 2001 or Risse 2001 on the fit of Europe and domestic ideas and identities; but also Börzel and Risse 2003; Cowles *et al.* 2001; Knill and Lehmkuhl 2002 or Dimitrova and Rhinard 2005). Finally, Börzel and Risse also looked at "mediating variables" (2000, 2003; Börzel 2003, 2005; Cowles *et al.* 2001) such as the domestic empowerment of reform-minded actors, which enabled them to explain special outlier cases whenever the misfit hypothesis failed. This approach, however, perpetuated the use of the hypothesis as a "necessary" condition (Mastenbroek and Kaeding 2006).

Empirical Testing

Not surprisingly, researchers using the misfit hypothesis obtained inconclusive results, spreading theoretical and empirical confusion. There is neither agreement from a theoretical point of view on what the goodness-of-fit exactly refers to, nor a common understanding on how to approach the empirical world from this perspective. Cumulative work based on a comprehensive, unique operationalisation, be it for quantitative or qualitative analyses, is still lacking. Given the urgency for truly cumulative work in political science (see the June 2007 issue of *European Political Science* on "Symposium: why political science is not scientific enough"), the present use of the misfit hypothesis seems deceiving. Recapitulating, most authors privileged material-organisational costs, which are easier to measure. Ideational elements, such as norms, meanwhile, have generally been treated as a general, contextual factor or simply *en passant* (but see Dimitrova and Rhinard 2005).

The use of several operationalisations for the concept led to different empirical results, which seem detrimental to the hypothesis. Empirically, most studies show that reality is more complex and dynamic than what the misfit hypothesis originally predicts, even though all works operationalised the argument differently. Accordingly, it is often said that the hypothesis failed whenever actors wanted to change the domestic *status quo* despite having high misfit levels, thus concluding that domestic actor reluctance cannot be related to the misfit level (Haverland 2000; Héritier *et al.* 2001; Falkner *et al.* 2005: 289-291; Mastenbroek 2005: 1111 or Mastenbroek and Kaeding 2006; Steunenberg 2007: 26). A recent large-scale test for the hypothesis was performed by Falkner *et al.* (2005: 289-291). In their study, the logic underlying the misfit hypothesis only showed up in a few instances of their "worlds of compliance", mostly associated with "challenges to deeply entrenched, institutional or policy traditions" in the "world of domestic politics", where domestic political mechanisms are crucial (Falkner 2007: 1012). Surprisingly, they also found that the "goodness-of-fit" might have an inverse effect in the other country clusters. In the "world of transposition neglect", high misfit levels may facilitate transposition, while in the "world of law observance", misfit levels do not impact upon transposition (*Ibid.*).

Given these empirical findings, scholars have repeatedly criticized the very foundations of the misfit hypothesis (e.g., Knill and Lehmkuhl 1999; Knill and Lenschow 2000: 256; Falkner

et al. 2005; Goetz 2005: 276). Criticisms concerned the presumed link between the goodness-of-fit, the ease of adaptation and final outcomes in terms of both timing and correctness. As Mastenbroek and Kaeding (2006: 332) argued, the hypothesis is "logically flawed" because the link between these variables is "spurious" (see also Steunenberg 2007). Moreover, these studies suggest that even small levels of misfit can lead to long and complicated transposition processes and, *vice-versa*, swift transposition processes can happen despite high misfit levels. Hence, high misfit levels do not always seem to equal compliance problems, as suggested by, e.g., Börzel (2005: 50). Consequently, some scholars argue that the misfit hypothesis is, at best, a "very rarely true theory" (Falkner *et al.* 2007a) and that misfit-centred approaches should be abandoned altogether (Mastenbroek and Kaeding 2006), in favour of actor-centred and preference-based arguments.

It is true that the misfit argument may have been too static and deterministic in the past, especially if assumed to hold for every instance of transposition or implementation, without taking stock of past research and empirical findings. In its traditional form, it assumes that policy-makers always want to maintain the *status quo* and resist changes that depart from domestic arrangements without consideration of their ideological preferences. So, the theoretical and empirical criticisms may be well-founded given *current* definitions and their accompanying operationalisations. Yet, conceptual over-stretching and lack of empirical certainty cannot imply that the underlying logic is automatically flawed. Indeed, the hypothesis' field of action may simply not have been properly delineated. Looking at the existing body of literature, the hypothesis seems to work in some cases. It is often the case that actors defend the integrity, stability and cohesiveness of domestic institutional environments against mismatching EU reforms. However, this still happens *via* the preferences of domestic actors, as suggested by the classical hypothesis, and may be more important in some member states and policy areas than in others, due to differential institutional structures. Thus, a re-consideration of the argument is necessary in the light of these circumstances. This is even more important given that the misfit approach represents a "building block in the consolidation of Europeanisation studies as an academic field of inquiry" (Toshkov 2005: 5) and because "virtually all decisions that have to be downloaded from the EU level imply some kind and degree of misfit" (*Ibid.* p. 11).

A Theoretical Re-consideration of the Misfit Hypothesis

Re-Definition

As the previous discussion showed, scholars in the fields of transposition, implementation and Europeanisation argue that the misfit hypothesis does not stand up to the empirical reality and that it is too static. Yet, there are two major problems with the current conceptualisation of the misfit hypothesis. *First*, empirical research in the field is inconclusive, which is related to the operationalisations used by scholars. In other words, the type of misfit being measured has important implications for the results obtained. Is it institutional, policy, both or even another type of misfit? To what extent and under which conditions are domestic actors influenced by misfit levels, if at all? Observed discrepancies should not be used to categorically rule out the argument. Rather, they should point at where researchers left a blank space that still has to be filled. As Duina remarked, the link between transposition and the degree of fit may indeed exist but not be active all of the time (2007: 340), so the task of researchers is to find the conditions activating this linkage. This will provide a reasonable scope for the hypothesis.

Previous research did not always test the hypothesis for situations where its underlying argumentation holds. Scholars rarely acknowledged explicitly that domestic actors provide the actual linkage between EU requirements and domestic arrangements. They are the “key translators” (Laffan 2005) and may be reluctant to change the domestic *status quo* whenever institutional change involves insurmountable costs that they are *unwilling* to assume, are *incapable* to undertake, or even are *unable* to understand. And so, research focused upon how the level of misfit generates technical difficulties and incapability in transposition (Type I). Other studies tried to uncover misfit-generated opposition or unwillingness to domestic change (Type II). Still other scholars looked at deeper normative changes and the related inability to change the domestic *status quo* because the nature of the change is not well understood or perceived (Type III). While Types I and II may point at determinants going beyond the misfit (e.g., management and administrative factors or political ideology), Type III situations do actually relate the analysis to what the misfit hypothesis originally predicted. Clearly, using the argument indiscriminately perpetuates the infamous chronicle of the “goodness-of-fit” death.

Second, and if the classical claim made by Lowi that “policy determines politics” (1972: 299) holds, it may also be the case that domestic actors are more likely to behave according to the logics of the misfit hypothesis for some policy areas, but not for others depending on the domestic institutional context, its thickness and stickiness. The study of individual policies and their change, however, cannot be considered effectively without relation to their historical and locational structures and actor constellations (see the concept of “policy contingency” by Windhoff-Héritier 1983: 359). This is a crucial point because previous

research has mainly focused on the material-organisational costs related to changing domestic institutions, without consideration to the broader institutional structure and the particular normative situation in which actors have to solve or define a problem. Few studies showed the possibility of having such "qualitative costs" (e.g., Héritier *et al.* 2001 and their "belief system"; or Börzel and Risse 2003 and their "political and organizational culture").

This material-organisational bias might have more to do with the development of the EU polity and its legislative competences than with deliberate myopia from the part of the research community. The EU is frequently characterised as a "regulatory state" or "regulatory order" (e.g., Majone 1996, 2000; Nugent 2003), where a clear and unambiguous normative dimension was secondary and technical expertise and issues of economic governance have often been at premium. Accordingly, EU directives were habitually conceived as mere sets of technical rules, with a limited or even absent normative content. Yet, while this may be true for the bulk of policy areas such as transport or environment, the EU has also been active in developing "progressive" regulation, often without having a strong legal basis in the Treaties. This is the case of recent legislation in social policy and labour law, biotechnological policy, the fight against climate change, or consumer protection. Interestingly enough, and relatedly, recent "progressive" social policy and labour law directives required longer transposition times than past legislation in areas such as health and safety at work (Haverland and Romeijn 2007: 761-3). These novel EU directives have sometimes been recognized as containing a non-ambiguous normative dimension, despite demanding ambitious normative changes in the domestic arenas of the member states. What is more, even directives with an apparently unimportant normative facet may actually trigger substantial normative debates domestically (Dimitrova and Rhinard 2005: 4).

Re-Operationalisation: The Material-Organisational Dimension

This paper acknowledges the cumulative character of the most sophisticated measure of the (classical) misfit hypothesis to date, put forward by Falkner and her research collaborators (2005). Therefore, this is the point of departure for a comprehensive re-operationalisation of the hypothesis. They considered that the measure of total misfit included the degree of policy misfit; the degree of politics and polity misfit; and the level of expected costs. These various misfit levels could be high, medium or low. The total level of misfit was computed after consideration of the highest level obtained in any one of these (material-organisational) dimensions, as no single dimension of misfit could eradicate or soften the adaptational pressure created in another dimension (*Ibid.* p. 32).

First, policy misfit comprises the level of legal misfit and the practical significance, obtained by looking at the scope of application and coverage of any newly attributed right. A high level of legal misfit happens when completely new legal rules are created from scratch, with far-reaching gradual changes and/or with important qualitative innovations, and no limitation on

the level of practical significance. This implies high levels of policy misfit. Similarly, when all or a significant number of workers are affected by a directive, the level of policy misfit is also high. When a directive has no practical significance and/or the levels of legal misfit are low, only a low degree of policy misfit is obtained. *Second*, mismatches can also appear in the politics and/or polity areas. Most frequently, this happens when new bodies have to be set up or when a crucial domestic body, organisation or procedure is challenged. For example, this occurs when patterns of public-private interaction are affected. The level of politics/polity misfit will therefore depend on the intensity of this challenge. *Finally*, the total level of misfit also depends on the economic costs of a required reform. Since the exact costs are almost always virtually impossible to calculate, only *expected* costs are taken into account. Costs are often used in domestic pros and cons debates, particularly among those groups of workers and sectors negatively concerned by a directive and can be traced accurately. For example, when Small and Medium-sized Enterprises or special interests (Churches) are opposed to a given directive, their representatives echo this opposition through relevant media channels. Ministerial units will do the same if a directive imposes important administrative burdens.

The operationalisation developed by Falkner *et al.* (2005, 2007a and 2007b) stressed the quantitative side of misfit, focusing on how EU rules strengthen (or weaken) existing policies, foster the creation of new national institutions and structures, as well as mandate the replacement of existing ones. It is therefore insufficient to capture qualitative clashes at the ideational level, even though Falkner *et al.* (2005) studied six social policy and labour law directives, where norms could *prima facie* be at stake. Although reference is made to clashes of "regulatory philosophies or deeply entrenched national models" to work in favour of misfit in the "world of domestic politics", these concepts are not further specified or tied to the particularities of their policy area.

Re-Operationalisation: The Normative Dimension

The existing literature has seldom provided an explicit operationalisation for the qualitative dimension of misfit. When both quantitative and qualitative dimensions were under the same roof, the qualitative side lacked explicit operationalisation. However, this may impact on the final misfit level because norms have a deeper impact than material or organisational considerations. In the study of norm compatibility, the focus lies on "how European norms relate and interact with different domestic norms" (Dimitrova and Rhinard 2005: 2), and how this process affects transposition outcomes since domestically transposed legislation has to become a blend of domestic and European choices (Bugdahn 2005: 177). Clashes are probable because perfect norm concordance is unlikely, given the "patchwork" nature of the European policy-making process (Héritier 1996: 1350-1351). The creation of European norms reflects a compromise between European states and their normative structures may

be foreign for a number of them. Whether this is the case is determined by member state variables (Gurowitz 2006: 305).

Previous works analysed directives that were costly to transpose from a material-organisational point of view but were unable to shed light on deeper departures from the institutional *status quo*, defined to include ideational elements. When norms approach the domestic arena, they have to fit into the "nested hierarchy" of norms already existing within a society (Campbell 1998: 399). Domestic institutions therefore reflect the societal normative super-structure upon which they are constructed and their change is expected to affect the actors called to interpret incoming norms. Indeed, domestic actors are "norm takers" (Acharya 2004: 269) and the possible levels of normative incompatibility are crucial in understanding their behaviour and, in turn, final transposition process and outcomes.

Normative incompatibilities have similar consequences as material-organisational clashes, depending on their strength. Different EU norms require incorporating different forms of monitoring or enforcement strategies to guarantee successful application, and may underpin different philosophical understandings, which again may be different from member state to member state (Hartlapp and Falkner 2007). Hence, as March and Olsen remark (2004: 9), domestic actors may "find the rules and situations they encounter to be obscure. What is true and right and therefore what should be done may be ambiguous. Sometimes they may know what to do but not be able to do it because prescriptive rules and capabilities are incompatible". In such situations, actors "apply criteria of similarity in order to use the most appropriate rule or account" (*Ibid.*). They engage in a search around them for potentially relevant rules, looking at the broader norm set that governs their polity and, at the same time, re-evaluating its appropriateness (Hage 2000). Thus, the misfit logic is not exogenous or active only through domestic actor coalitions and their interests (willingness) or powers (capabilities), but indeed is inherent to how domestic actors perceive and interpret their reality (abilities). This is important because purely material-organisational measures assume domestic actors are able to change the *status quo*. In other words, it may not always be that these players are unwilling or incapable to do so in a timely and/or correct manner.

The most sophisticated operationalisation of the impact of norms was developed by Dimitrova and Rhinard (2005). Their norm-based approach looks at the properties of norms themselves, their character, degree and extent of legalization (Legro 1997).[5] Building upon Peter Hall's types of "ideational change" in the policy arena (1993: 279), they find three normative levels. They apply this three-layer hierarchy to the transposition of EU directives and derive hypotheses on how processes and outcomes are affected by collisions between the domestic norm set and European norms. Clashes may occur with domestic first-,

---

[5] For a similar operationalisation of norms see Raustiala and Slaughter (2002: 546).

second- or third-order norms. *First-order norms* operate at the sector level and raise technical questions among policy-specific communities and experts (e.g., sector agencies, Non-Governmental Organisations or interest groups). The role of parliaments and political parties is minor here because the law to be implemented has specific characteristics that concern only a limited number of specialised actors. Hence, these norms are to be found in the policy-specific discourses and the documents of these actors, but rarely outside an affected community. First-order norms have limited policy effects, which are easy to predict and do not span policy boundaries or compromise complex policy interdependencies. This is the case, for example, of workplace safety norms that only concern a limited group of experts dealing with specific safety concerns.

Second-order norms operate across various social sectors. They raise more political questions and their impact is more diffuse. Given this, the predictability of their effects is more difficult to determine. For example, this happens with the introduction of a new regulatory style or environmental protection norm. These norms span policy sector boundaries and require the consideration of more complex policy interdependencies. As a result, they may involve various constellations of ministries and experts, as well as interest groups, elected officials and agency representatives. These norms affect the policy discourse of multiple communities and actors at once and therefore the study of their arguments evidences if conflict existed. EU directives usually contain such second-order norms, related to the regulation of styles and objectives of a policy area (Majone 1996; Richardson 2001).

Finally, *third-order norms* affect society as a whole, questioning deeply-held values, which legitimise the action of all players in a polity. These norms abound and are to be found in the constitutional order of a society. Constitutions specify how all other legal rules are to be produced, applied and interpreted in a polity, as well as the major commitments of a society. They declare a number of rights, even if most of them are primarily aspirational (Gallagher *et al.* 2005: 58). Examples of these norms are civil liberties, human rights, anti-discrimination or equal treatment. These norms have considerable policy effects, operating across policy boundaries and their interdependencies. The effects of such norms are, not surprisingly, most difficult to estimate and conflict at this level leads to markedly political, if not philosophical, society-wide debates, also reflected in the popular press and news reports. Thus, agencies and organisations are not as affected as parliaments and political parties here.

There are two upshots with the approach presented by Dimitrova and Rhinard. *First*, in practice, norms are not always so clear-cut because definitions and sanctions of a given behavioural pattern are bound to a particular cultural context (Liebert 2002: 12). While third-order norms can be easily found in constitutional texts, the empirical distinction between second- and first-order norms may not always be as straightforward. These associated "boundary problems" require empirical caution whenever labels are applied and norms are

sought after. Legro's (1997) criteria of character, degree and extent of legalisation of a norm are helpful in this respect, as well as the arena and community concerned by it. *Second*, a purely normative approach understates the material-organisational dimension, which characterises the domestic impact of virtually all EU directives. Therefore, this paper argues that the combination of both quantitative and qualitative dimensions is bound to upgrade the explanatory power of the classical misfit hypothesis and provide new insights on how transposition processes are conducted and outcomes reached.

Re-Operationalisation: The "Pressure Context"

A comprehensive and truly cumulative re-operationalisation of the misfit approach requires the combination of both quantitative and qualitative dimensions. On the one hand, directives create quantitative pressure to adapt to EU law. This dimension encompasses the level of policy misfit (legal misfit and practical significance), the level of polity/politics misfit and the amount of expected costs, as in Falkner *et al.* (2005). The total level of misfit can either be high, medium or low. It links the analysis to how willing or capable a domestic actor is to change the *status quo*. On the other hand, directives generate qualitative pressure as incoming norms interact with domestic norm sets and clash at first-, second- or third-order levels, which therefore sheds light on the extent to which domestic actors are able to change the domestic *status quo*. Such a conceptualisation of the misfit approach evidences that previous approaches focusing on either the quantitative side or, more rarely, the qualitative angle, could only provide partial explanations of transposition processes and outcomes. This is precisely the added value of looking at both dimensions simultaneously. The combination could be understood as the total "pressure context". The double dimensionality of the "pressure context" is summarised in Table 1.

The Pressure Context Generated by EU Directives

Quantitative Context	Low level of misfit Medium level of misfit High level of misfit
Qualitative Context	First-order normative incompatibility Second-order normative incompatibility Third-order normative incompatibility

Source: Dimitrova and Rhinard 2005; Falkner *et al.* 2005.

There are three important remarks to make at this stage. *First*, the two dimensions are related. Domestic debates on the appropriateness of a norm, at any given order, reflect a domestic empty space, a partial absence, or an addition to the domestic normative set. Intuitively, this also reflects a total or partial absence of domestic rules, instruments and

competences for a given policy area. Yet, the higher the normative incompatibility order, the more densely populated the domestic rule space for domestic actors, and the higher the expected material-organisational costs of shifting the focus of domestic policy legacies and structures. Thus, norms may more often than not be at the base of domestic resistance to change and non-compliant outcomes than a purely material-organisational analysis would assume and be able to observe. As the final policy outcome is perceived and analysed through the lens of domestic norm sets, strategic domestic actors may try to use the material-organisational cost and benefit analysis to influence the transposition process. Such "issue relabeling" is common whenever a policy has to be reformed and may be motivated by domestic actor inability to transpose (see Windhoff-Héritier 1987: 56-57). Beyond domestic actor abilities, an "issue relabeling" strategy may also be pursued to cover domestic actor unwillingness or incapability to transpose a particular directive or provision of a directive.

Second, and relatedly, directives typically display multi-faceted pressure contexts, where various material-organisational and normative combinations occur simultaneously for different provisions covered by a directive. As a result, domestic actors may only base their action upon some of the issues contained in a directive, which may determine the adaptation process and its outcome. In doing so, they may also divert attention away from issues they do not consider a political priority. This visualises EU directives dynamically as complex pieces of legislation, where legislators are able to deal with some provisions better than with others. Compliance with a directive, nonetheless, means that all provisions have to be transposed – even the most disliked ones (Falkner 2007: 1016). Thus, the pressure context is able to capture the manifold complexities faced by domestic actors during transposition. It informs about why delays took place and where incorrectness was actually observed.

Third, the operationalisation of the pressure context follows the same logic as that used in the previous misfit discussion concerning the material-organisational dimension (see Falkner *et al.* 2005: 32). The pressure context is classified as being high when a third-order normative clash and/or a high level of misfit are recorded domestically. A medium level of pressure is achieved in the presence of second-order normative mismatches and/or medium misfit levels. Finally, whenever first-order norms are compromised and/or a low level of misfit happens, the level of total pressure context is low. On the one hand, if a high pressure level is attained because of third-order normative incompatibilities, it will not be softened by material-organisational considerations, and will therefore impregnate the transposition process and outcome. In that event, domestic actors will be unable to transpose on time and in a correct manner. Higher material-organisational costs are only likely to further confuse domestic actors, delay the process and worsen outcome correctness. The lower the level of normative incompatibility, on the other hand, the more likely will be that domestic actor willingness and capability drive transposition. In other words, for such cases, even if material-organisational costs are high, it may not necessarily be that the transposition outcome is delayed and incorrect. The ultimate process and outcome will be determined by

the variables explaining actor willingness and/or capabilities (e.g., political ideologies or management factors respectively). In such cases, moreover, domestic actors are more likely to engage in "issue relabeling".

Illustration: Austria's Transposition of Two EU Anti-Discrimination Directives

Case Selection Rationale

The comprehensive re-operationalisation of the misfit hypothesis presented here still needs to be empirically tested. An illustration is provided here for the study of two Anti-discrimination directives (ADDs) passed by the European Union in the year 2000, namely the Employment Framework Directive (EFD)[6] and the Race Directive (RD).[7] Although an employment law conception of anti-discrimination law treats anti-discrimination as a small piece of the wider social problem of inequality (Bamforth 2004: 700), the directives are unique additions to the EU's legislative landscape. The ADDs regulate several grounds of anti-discrimination at once, expanding the levels of protection to numerous, potentially vulnerable communities in employment, occupation, vocational training, membership of employer and employee organisations, social protection, including social security and health care, education. In addition, for the RD, rights are extended to the access to goods and services available to the public, including housing. While the EFD covers the grounds of age, belief, disability, religion and sexual orientation, the RD covers the grounds of ethnicity and race.[8] The RD had to be transposed by July 2003 and the EFD by December 2003, except for the grounds of age and disability, which could be transposed until December 2006 upon member state request.

The ADDs go beyond traditional conceptions of supranational social policy and labour law. Indeed, the European Commission placed ideational and social citizenship logics ahead of the economic logic of correcting market externalities for an area that is not directly linked to the creation of a single market (Bell 2002). Anti-discrimination legislation may have advantages compared to other forms of regulation to tackle societal inequalities since its costs are assumed to be little compared to other more common redistributive measures used in the field. Yet, not all grounds covered by the ADDs imply the same material-organisational costs. Importantly, the ADDs contain several clearly identifiable norms. In the "old" member states, non-discrimination and equal treatment are norms with a prominent moral dimension, typically enshrined in constitutions both explicitly and implicitly (e.g., by ratifying or mentioning the European Convention on Human Rights). EU anti-discrimination policy has a long tradition dating back to the gender directives of the 1970s and subsequent revisions of these laws since then. The ADDs take stock of this *acquis communautaire* and so many

---

[6] Directive 2000/43/EC, *OJ L 303, 2.12.2000, 16.*

[7] Directive 2000/48/EC, *OJ L 180, 19.07.2000, 22*.

[8] A deeper and more sophisticated analysis of the ADDs can be found elsewhere (Waddington and Bell 2001).

third- and second-order anti-discrimination and equal treatment norms are familiar to domestic policy-makers.[9] Their transposition, therefore, ensures that both material-organisational and normative dimensions are picked up during the empirical analysis, even across covered grounds. This is possible because, as Dimitrova and Rhinard note (2005: 12), "the grounds for possible discrimination are specified in such a way that they can be treated as separate norms (…) there could be a norm prohibiting discrimination on racial grounds and ethnicity (…), on the basis of (a) religion or belief, (b) disability, (c) age and (d) sexual orientation. Their identification as separate norms is critical because it is possible that one norm might conflict with domestic norms at some level, while others would not". The same can be said about each ground's material-organisational consequences. This is why the present paper only studies two relatively different grounds of discrimination included in the ADDs, namely disability and race/ethnicity. These grounds provide versatility for the key variables of the pressure context argument presented here. Legislation and policy against disability discrimination is more common and less polemic than that for the ground of ethnicity and ethnic origin. In addition, both grounds have received scant scholarly attention beyond legal analysis.

The transposition of these provisions is studied for the federal-level in Austria, a case that presents optimal levels of variance for the independent variables explained earlier. As will be discussed immediately below, Austria displayed high material-organisational costs from transposing the provisions on the ground of disability, while at the same time having a low normative clash on this ground. In terms of race and ethnic origin, Austria was faced with more moderate material-organisational costs but deeper normative clashes. Yet, despite these differences, Austria was on time and over-implemented the ground of disability, but was delayed and incorrect for the ground of race and ethnicity. The following sections briefly trace the Austrian policy tradition for these two areas, as well as the total pressure context generated for domestic policy makers. The formal transposition process is described and the final outcome is evaluated in the light of the present argument.

Austrian Policy Legacy

Discrimination on disability grounds was the most developed ground prior to the arrival of the ADDs in Austria. Protection dates back to the 1969 Disabled Persons Employment Act, which introduced quotas and a fund to support and train disabled workers. This was complemented with further welfare programs in the 1980s (Obinger 2002: 32), as for example the creation of integration companies. Disability was explicitly mentioned on social

---

[9] Contrary to Dimitrova and Rhinard (2005), this paper considers that the ADDs contain not only third-order norms in terms of frame, but also second- and first-order norms in terms of substance. They found the ADDs to carry third-order norms in their study of a "new" member state (Slovakia), where the concept of anti-discrimination was domestically incorporated for the first time when acceding the EU.

security legislation, the law on compensation for special sacrifices or efforts, or the regulation of worker dismissals. There was even case law defining the "reasonable accommodation" of disabled people in the workplace, even though jurisprudence had not generated a specific policy to regulate work environments systematically.

In 1997, the Federal government inserted a new clause in the constitutional catalogue of Human Rights prohibiting discrimination of people with disabilities (Article 7(1), sentences 3 and 4). The clause even provided for the establishment of a sanctions system if discrimination were to occur. However, legal experts considered insufficient these "utterly vague" changes because private behaviour was not regulated and sanctions were rarely applied (Davy 2004: 1). In 2000 social welfare and employment promotion schemes for disabled people were cut down, but special employment and training programmes were introduced. Finally, in the context of the 2002 Austrian Action Plan for Employment, a programme to overcome prejudice towards the disabled was also developed; and in the context of the 2003 Vocational Training Act, disabled apprentices were also given the opportunity to enter apprenticeship-based occupations. All in all, even though policy and discourse for the disabled had gradually developed in Austria, a total ban on discrimination was "not effectively prohibited" until the ADDs (*Ibid.* p. 2).

With regards to the ground of race and ethnicity, Austria had transposed the 1972 International Convention on the Elimination of all forms of Racial Discrimination, introducing penal provisions in criminal and administrative law against the incitement to racial hatred, racist insult and discrimination in the supply of goods and services. A broader anti-discrimination framework in employment was, nonetheless, absent. Nationality was difficult to acquire, yet it is a condition for public sector employment. In the private sector, third country national workers could vote in works council elections but could not themselves be elected to these workers' representation bodies. Furthermore, when reducing their workforce, employers were obliged to give priority to non-nationals in redundancies. Also, it is crucial to note that regardless of the length of residence, the right to reside in Austria was tied to the ability to generate a sufficient *per capita* income. Finally, foreign workers were entitled to around 30 weeks of unemployment benefit, after which they had to be self-sufficient or risked losing residency rights. As Mark Bell notes (2002: 179), the Austrian policy legacy created a situation where foreign employees were highly dependent on their employer, vulnerable to exploitation and systematically allocated to the worst occupations without upward mobility to better jobs. The legal discrimination operating against migrant workers through national policy even overshadowed discriminatory practices at the informal level. In addition, most provisions aiming at the protection of this ground had limited effectiveness (Schindlauer 2004: 2).

Austrian Pressure Context

The total pressure context merges the traditional material-organisational dimension captured by the misfit to the normative dimension of domestic adaptation. *First*, the level of *legal misfit* was high because there was no specific law dealing with anti-discrimination issues for the grounds covered by the ADDs, save for disability. For this ground, the misfit level was medium. The *practical significance* of the directives was high for the ground of disability, but less important for that of race/ethnicity in the case of Austria. In sum, the total level of *policy misfit* was medium for race but high for disability. In the *politics* and *polity misfit*, the ADDs prescribe administrative reforms for their enforcement and modified the traditional channels of domestic dialogue. This affects the grounds under study here because, not belonging to the core membership of social partners, both had to be considered in transposition. In addition, existing administrative routines had to be modified in order to extend legal standing to organisations working to promote equal treatment during transposition and enforcement. Finally, independent bodies had to be created and financed to investigate and pursue complaints in cases of discrimination, but only for race and ethnicity. These obligations implied an extension of competences of already existing gender equality bodies in Austria. Thus, the directives generated a medium level of misfit in the *politics* and *polity* dimension for both grounds. Finally, *expected costs* differed substantially for the two grounds of discrimination. For example, the extension of the concept of discrimination to the area of civil law for the ground of race/ethnicity, given the low practical significance of this ground, or the inclusion of NGOs in the fight against discrimination beyond transposition, were expected to have low costs in Austria. Other novelties introduced by the ADDs were to generate medium costs. For example, the increase in administrative costs to issue and provide written information on discrimination matters for public and private employers, the establishment of independent anti-discrimination bodies for the ground of race/ethnicity, and the costs linked to the necessary changes in behaviour so as to not discriminate in the future, could be more important – but still affordable for the Austrian state. Yet, in addition to this, the area of disability carried substantial costs. According to the EFD, working places had to be accommodated to the necessities of the various types of disabled people. These changes would be negatively biased towards Small and Medium-sized Enterprises, backbone of the Austrian industrial landscape but with fewer resources and lower awareness of changes in the law than larger firms, public institutions or social partners. Hence, total expected costs were medium for the ground of race/ethnicity and high for that of disability. All in all, the *total misfit level* was high for the ground of disability but medium for that of race and ethnicity.

Second, the lack of legalisation of specific equal treatment norms in Austria did not reveal third-order incompatibilities. The Austrian Federal Constitution protects all citizens equally and requests equal treatment for all citizens, the European Convention of Human Rights and its protocols are part of the Constitution, and European Court of Human Rights judgements are legally binding. Moreover, Austria protected explicitly against gender discrimination in the workplace, protection that expanded after joining the EU. Thus, the overarching third-order

normative structure carried by the ADDs, as well as some second-order definitions and concepts, were already present. It is nonetheless noteworthy that these norms had only been recently adopted and that their source stemmed from foreign normative contexts. Nonetheless, several other norms included in the ADDs were not present domestically in Austria. The ground of race/ethnicity generated second-order normative clashes, while disability only first-order. *Firstly*, the extension of anti-discrimination principles to the area of civil law had been hitherto "hardly ever addressed" (Schindlauer 2004: 4), and came even before being extended to gender. *Secondly*, the directives also modified the domestic norm of social dialogue. As seen before, the ADDs required the extension of social dialogue to the NGO community. This was an important change for a country with a successful, deeply-rooted trilateral model of concertation and social partnership. It was also the first time that their involvement in the enforcement process was domestically envisaged, thus producing a normative incompatibility at the second-order level, particularly for race/ethnicity since disability civil society organisations have a longer history and stronger presence than other NGOs in Austria. *Thirdly*, the directives prescribed the introduction of sanctions and compensations in cases of discrimination for any of the grounds covered, resembling more the Anglo-Dutch case law tradition than Austrian legal positivism. A certain sanction system existed already in Austria, but only for the ground of disability. *Finally*, and in addition, first-order clashes also occurred, mainly for the ground of disability and with respect to the definition of the burden-of-proof, and the definition of indirect discrimination, which were modified compared to previous domestic conceptions. The philosophy behind these clashes had changed and now leaned closer to the victim of discrimination. All in all, the ground of disability generated second-order normative clashes, while that of disability mainly first-order clashes.

When both quantitative and qualitative dimensions are combined, a more comprehensive picture of the domestic pressure context for each of the grounds emerges. This exercise evidences interesting additional insights that would have been neglected if the level of misfit, on the one hand, and the degree of normative incompatibility, on the other hand, had been studied separately, as will be seen later. The ground of race and ethnicity represented relatively inexpensive, yet normatively profound changes for domestic legislators. The ground of disability was relatively uncontroversial but with significant material-organisational implications. The expectations of having such pressure contexts still have to be compared to the formal transposition process and outcome.

Transposition Process and Outcome

Austria transposed the ground of race and ethnicity almost on time and essentially correctly by a government formed by the Christian Democrat agenda-setter *Österreichische Volkspartei* (ÖVP) and the extreme-right veto player *Freiheitliche Partei Österreichs* (FPÖ). The first draft proposals, including *inter alia* the area of race and ethnicity, were presented in

July 2003 – a few weeks before the deadline of the RD and six months before that of the EFD. After a broad consultation process, which did not modify the governmental proposals, the new laws were accepted by the government in November 2003. The NGO community, trade unions and opposition parties criticised the drafts for establishing a restrictive and incomprehensible anti-discrimination regime but could not oppose or modify the drafts (Interview AT1, AT6). Employers and economic circles supported minimal transposition. Through their close ties to the ÖVP, they could easily feed their position into the transposition process. In this context of domestic contestation, the ÖVP agreed to hold a Parliamentary expert hearing where discussants from the opposing parties and the NGO community could voice their opinion on the proposed law. This only led to minor revisions, such as the expansion of the equal treatment bodies to all EFD grounds, as well as minor semantic changes. The Bills were handed over to the National Council in May 2004, which passed them with the votes of the governing coalition. The Federal Council gave its consent on June 2004, and the laws entered into force on the 1st of July 2004.[10] This supposed a *significant delay* for the RD (almost a year after the official deadline).

In terms of correctness, the most crucial requirements of the ADDs were transposed. Still, legal experts doubt whether all provisions were properly transposed. *First*, Austria only shifted partially the burden-of-proof. This went against the letter and spirit of the ADDs because victims of discrimination would bear some of the costs of being discriminated. *Second*, the bills established specialised bodies to enforce the law. The Equal Treatment Commissions and the Office for Equal Treatment were divided into three Senates. The second dealt, *inter alia*, with race and ethnicity in employment, while the third addressed the access to goods and services for that same ground. The broad mandate of these bodies contrasts with their lack of organisational and financial independence. The amount of physical and material resources at their disposal depends on the political lead of the party controlling the Ministry hosting them. In addition, members of the bodies would perform their functions on a voluntary, unpaid basis. *Third*, the ADDs mandated the inclusion in transposition and enforcement of civil society and social partners. During transposition, however, inclusion was restrictive. The NGO community and labour organisations were officially consulted during the process, even though they had initially been excluded from the process altogether. Although the criteria used to evaluate the "quality" of dialogue are always relative, it seems fair to say that the dialogue was not very intense in the case of transposing the race/ethnicity provisions. The Austrian government sent a few letters or e-mails of correspondence to NGOs, as well as organised a parliamentary hearing that left no room for dialogue among stakeholders. In contrast to this, the Austrian government organised a

---

[10] Act adopting the Federal Equal Treatment Act (*Gleichbehandlungsgesetz – GlBG und Änderung des Bundesgesetzes über die Gleichbehandlung von Frau und Mann im Arbeitsleben*); Act on the Equal Treatment Commission and the Equal Treatment Office (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*); both under BGBl. I Nr. 2004/66. In addition, Austria passed the Act amending the Equal Treatment Act (*Änderung des Bundes-Gleichbehandlungsgesetzes*); BGBl. I Nr. 2004/65.

conference gathering all interested NGOs and social partners to talk about how to transpose the EFD provisions on disability. In terms of inclusion in the enforcement process, a Plaintiff Association for the Enforcement of the Rights of Victims of Discrimination in the Courts was created, even though this body would depend on the precarious finances of its member NGOs.[11] *Fourth*, the level of Austrian sanctions was far from being "effective, proportionate and dissuasive". There were no criminal sanctions and the administrative penal proceedings initially totaled 360 Euro. Punishment for first-time-offenders was excluded and, depending on the courts' will, the level of sanctions could be further reduced. Even though sanctions have been raised, the level is still not deterrent enough. Given these deficiencies, transposition was *essentially, but not fully correct* (e.g., Frey 2006; Interviews AT2, AT4).

For the ground of disability, the same governmental coalition passed a "disability package" consisting of a new Disability Equality Act passed by the National and Federal Councils on July 2005[12] and a bundle of amendments to existing legislation passed between November and December 2005.[13] The whole "package" entered into force on January 2006. Although Austria had not formally requested an extension of the official deadline for this ground, the European Commission did not act upon it given the inherent difficulties in legislating for this particular ground. Thus, Austria transposed this ground in a *timely* manner. The new Disability Act and other amended Acts *over-implemented* the requirements of the EFD, including the definition of the concept of "reasonable accommodation", the creation of a separate Ombudsperson, and the establishment of compulsory conciliation and mediation procedures in cases of discrimination. Finally, during the transposition process, NGOs were also consulted several times, thus having a meaningful impact on the final outcome.

Discussion

The previous sections evidenced the usefulness of using the comprehensive pressure context approach developed in this paper. On the one hand, the traditional focus upon material-organisational elements would have proven incomplete to understand process and outcome of transposition in Austria and would have led to the rejection of the misfit hypothesis. On the other hand, a purely normative analysis of the transposition of the ADDs in Austria also would have left important unexplained gaps. The pressure context approach thus mattered in understanding the Austrian transposition process and outcome.

---

[11] After transposition, a meeting on May 2006 between ministers and NGOs participating in the organisation was held to discuss anti-discrimination issues. Although the meeting was received positively by NGOs and financial support for the Association was promised, this institutionalisation of dialogue came late.

[12] Federal Disability Act (*Bundes-Behindertengleichstellungsgesetz*); BGBl. I Nr. 2005/82.

[13] The Act on the Employment of People with Disabilities (*Behinderteneinstellungsgesetz*), the Federal Disability Act (*Bundesbehindertengesetz*) and the Act on Federal Social Service (*Bundessozialamtgesetz*).

Examining the Austrian transposition of the disability provisions of the EFD, a purely material-organisational focus in the study of the process and outcome would have been misleading. Indeed, a purely quantitative focus would not have predicted over-implementation and/or timely transposition of the disability provisions. However, adding the normative dimension to the picture of transposition provides a different analytical vision of the story. Indeed, the area of disability was normatively well-fleshed in Austria before the ADDs with a long history of intervention, laws, rules and policies at various levels, including the area of employment. This explains why domestic actors were less opposed to transposing the provisions on disability, actors could relate to the existing normative structure and look for solutions to transposition within the system. In other words, domestic actors were not lost in translating European requirements to the Austrian scene. Why disability was singled out for comprehensive over-implementation and a re-organisation and consolidation of the domestic normative order cannot be explained with the material-organisational dimension of the misfit hypothesis, and indeed would require the study of why domestic actors were willing and/or capable of doing so.

The opposite emerges from the study of the transposition of the Race Directive. This proved to be the most controversial issue during the Austrian transposition process. In this case, expected material-organisational costs were medium and lower than those generated by the ground of disability. Yet, transposition was delayed and contained incorrect elements. This outcome, again, would have made the misfit hypothesis fail and cannot be understood without reference to the significant normative pressure at the second-order level. Domestic actors were unable to embrace EU requirements, having no domestic norm set to which they could relate. As expected, domestic actors shifted domestic debates from what kind of anti-discrimination policy would be necessary in Austria to totally questioning the use of anti-discrimination policy. This "issue relabeling" was also justified in the fact that the RD demanded changes beyond the "mentality" and the "way of doing things" in Austria (Interview AT1, AT3). This normative distance explains why Austrian actors were "hesitant" and "over-cautious" in addressing a sensitive issue with implications that had not been well understood. A good example of this was the establishment of equal treatment bodies with broad functions, copied *verbatim* from the EFD, but with limited effectiveness. Similar remarks also characterise the transposition of sanctions to deter discrimination for this ground of discrimination.

Conclusions

This paper drew upon existing explanatory frameworks developed by EU scholars in an attempt to clearly locate the misfit hypothesis in the variable spectrum of political scientists. Hitherto, scholarly efforts to achieve a common theoretical and empirical understanding of the misfit argument have been meager. Taking stock of the literature leads to inconclusive and confusing results and requires substantial re-conceptualisation work. This was precisely the main endeavour of this paper. *First*, from a theoretical point of view, the paper brought the argument back to its classical roots, without neglecting the advances made in the field in the last decade. This exercise allowed a careful delineation of the argument's scope of action to situations where domestic actors are unable to transpose EU requirements, in contrast to situations where actors are unwilling or incapable. For these instances, the hypothesis may not be the most adequate explanatory variable, as many empirical works have shown.

Second, the paper proposed a comprehensive re-operationalisation of the hypothesis. This novel operationalisation built upon the classical material-organisational dimension developed by Falkner *et al.* (2005), which looks at three levels of mismatch: the policy, polity and politics misfits. To this dimension, the normative incompatibility indicator developed by Dimitrova and Rhinard (2005) was appended. In doing so, the conceptualisation explicitly accounts for ideational elements in the form of norms. The combination of both dimensions gave rise to a measure of the domestic pressure context, a more powerful indicator of the domestic structure *ex ante* that provides better tools to predict process and outcomes of transposition.

The usefulness of this approach was illustrated empirically. The analysis focused on the Austrian transposition experience of disability and race/ethnicity provisions included in two EU Anti-discrimination directives. The empirical part showed that transposition of these grounds could not have been predicted by focusing on the classical material-organisational dimension of misfit. Only when domestic norms are taken into account can the domestic logic of action be fully understood and predicted. High levels of normative incompatibility are telling of actors' inability to translate EU requirements successfully, as was seen for the case of race and ethnicity. In that situation, material-organisational costs cannot soften the domestic pressure context and indeed, the higher these costs, the more likely will actors engage in "issue relabeling". In such cases, delays and incorrectness are to be expected. By contrast, the lower the level of normative incompatibility, the greater will material-organisational costs matter and, as shown in the literature, the more likely will transposition be driven by actors' incapability and/or unwillingness. This situation was observed for the case of disability.

All in all, the empirical reality confirmed that a broadly understood misfit still has a space in the family of independent variables that explain transposition, implementation and Europeanisation processes and outcomes. Moreover, it also confirmed that previous works

based on the misfit hypothesis may not be automatically wrong but require re-conceptualisation and a deeper understanding of the causation logics behind the argument. More empirical work will be necessary to further refine the typology presented here. But cutting through the "misfit" jungle allowed finding a new path that fares well empirically, and so the misfit does not have to be a "very rarely true theory" or be abandoned altogether. On the contrary, if revised in the ways presented here it may still provide novel insights to scholars on how transposition, implementation and Europeanisation processes operate.

References

Acharya, Amitav (2004) 'How Ideas Spread. Whose Norms matter? Norm Localization and Institutional Change in Asian Regionalism', International Organization 58(2): 239-95.

Bamforth, Nicholas (2004) 'Conceptions of Anti-Discrimination Law', Oxford Journal of Legal Studies 24(4): 693-716.

Bell, Mark (2002) Anti-discrimination Law and the European Union, Oxford: Oxford University Press.

Börzel, Tanja (1999) 'Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain', Journal of Common Market Studies 37(4): 573-96.

Börzel, Tanja (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, Tanja (2003) 'Improving Compliance through Domestic Mobilisation? New Instruments and the effectiveness of implementation in Spain', in Christoph Knill and Andrea Lenschow (eds.), Implementing EU Environmental Policy: New Approaches to an Old Problem, Manchester: Manchester University Press, pp. 221-50.

Börzel, Tanja (2005) 'Europeanization: How the European Union Interacts with its Member States', in Simon Bulmer and Christian Lequesne (eds.), Member States and the European Union, Oxford: Oxford University Press, pp. 45-69.

Börzel, Tanja and Thomas Risse (2000) 'When Europe Hits Home: Europeanization and Domestic Change', European Integration Online Papers 4(15). Available online at: http://eiop.or.at/eiop/pdf/2000-015.pdf, 05.08.2008.

Börzel, Tanja and Thomas Risse (2003) 'Conceptualizing the Domestic Impact of Europe', in Kevin Featherstone and Claudio Radaelli (eds.), The Politics of Europeanization, Oxford: Oxford University Press, pp. 57-80.

Bugdahn, Sonja (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.

Campbell, John L. (1998) 'Institutional Analysis and the Role of Ideas in Political Economy', Theory and Society 27(3): 377-409.

Caporaso, James (2006) 'Polanyi in Luxembourg: Market Participation, Embeddedness, and Rights in the EU'. Conference Paper, International Political Economy Society Conference (IPES), Princeton, N.J., November 17-18.

Checkel, Jeffrey (1999) 'Social Construction and Integration', Journal of European Public Policy 6(4): 545-60.

Checkel, Jeffrey (2001) 'The Europeanization of Citizenship?', in Maria Green Cowles, James A. Caporaso and Thomas Risse (eds.) Transforming Europe. Europeanization and Domestic Change, Ithaca: Cornell University Press, pp. 180-97.

Cowles, Maria Green, James Caporaso and Thomas Risse (2001) Transforming Europe: Europeanization and Domestic Change, Ithaca: Cornell University Press.

Davy, Ulrike (2004) 'Disability Discrimination Law in the Field of Employment. Executive Summary on Austria', Community Action Programme to Combat Discrimination, Brussels: European Group of non-governmental experts in the field of combating discrimination on the grounds of racial and ethnic origin and religion or belief.

Dimitrova, Antoaneta and Mark Rhinard (2005) 'The Power of Norms in the Transposition of EU Directives', European Integration Online Papers 9(16). Available online at: http://eiop.or.at/eiop/texte/2005-016a.htm, 05.08.2008.

Duina, Francesco G. (1997) 'Explaining Legal Implementation in the European Union', International Journal of the Sociology of Law 25(2): 155-79.

Duina, Francesco G. (1999), Harmonizing Europe: Nation-States within the Common Market, Albany: State University of New York Press.

Duina, Francesco G. (2007) 'Domestic Actors and Europeanization: Why "Fit" Still Matters', Comparative European Politics 5(4): 339-41.

Duina, Francesco G. and Frank Blithe (1999) 'Nation-States and Common Markets: The Institutional Conditions for Acceptance', Review of International Political Economy 6(4): 494-530.

Dyson, Kenneth and Goetz, Klaus H. (2003) 'Living with Europe: Power, Constraint and Contestation', in Kenneth Dyson and Klaus H. Goetz (eds.), Germany, Europe and the Politics of Constraint, Oxford: Oxford University Press, pp. 3-35.

Falkner, Gerda (2007) 'Europeanization and Social Policy', in Paolo Graziano and Maarten Vink (eds.), Europeanization: A Handbook for a New Reseach Agenda, Houndsmill: Palgrave Macmillan, pp. 253-65.

Falkner, Gerda, Oliver Treib, Miriam Hartlapp and Simone Leiber (2005) Complying with Europe: EU Harmonisation and Soft Law in the Member States, Cambridge: Cambridge University Press.

Falkner, Gerda, Miriam Hartlapp and Oliver Treib (2007a) 'Worlds of Compliance: Why Leading Approaches to European Union Implementation Are Only "Sometimes-True Theories"', European Journal of Political Research 64: 395-416.

Falkner, Gerda, Oliver Treib and Holger Bähr (2007b) 'Modes of Governance: A Note Towards Conceptual Clarification' Journal of European Public Policy 14(1): 1-20.

Frey, Volker (2006) 'Umsetzung der Anti-Diskriminierungsrichtlinien in Österreich' in Dilek Çinar, Hakan Gürses, Sabine Strasser, Mark Bell and Mieke Verloo (eds.), Auf dem Weg zu einer Politik der "differenzierten Gleichheit": Reflexionen über die Anti-Diskriminierungspolitik der Europäische Union, Vienna: Universität Wien and Europäisches Zentrum für Wohlfahrtspolitik und Sozialforschung.

Gallagher, Michael, Michael Laver and Peter Mair (2006) Representative Government in Modern Europe. Institutions, Parties, and Governments, New York: McGraw-Hill.

Goetz, Klaus H. (2005) 'The New Member States and the EU: Responding to Europe', in Simon Bulmer and Christian Lequesne (eds.), The Member States of the European Union, Oxford: Oxford University Press, pp. 254-80.

Gurowitz, Amy (2006) 'Mobilizing International Norms: Domestic Actors, Immigrants, and the Japanese State', World Politics 51(3): 413-45.

Hage, Jaap (2000) 'Rule Consistency', Law and Philosophy 19(3): 369-390.

Hall, Peter A. (1993) 'Policy Paradigms, Social Learning, and the State', Comparative Politics 25(3): 275-96.

Hall, Peter A. and Taylor, Rosemary C. R. (1996) 'Political Science and the Three New Institutionalisms', Political Studies 44(5): 952-73.

Hansen, Troels B. and Bruno Scholl (2002) 'Europeanization and Domestic Parliamentary Adaptation – A Comparative Analysis of the Bundestag and the House of Commons',

European Integration Online Papers 6(15). Available online at: http://eiop.or.at/eiop/texte/2002-015a.htm, 05.08.2008.

Hartlapp, Miriam and Gerda Falkner (2007) 'Problems of Operationalisation and Data in EU Compliance Research', Conference Paper, 4th ECPR General Conference, Pisa, 6-8 September 2007.

Haverland, Markus (2000) 'National Adaptation to European Integration: The Importance of Institutional Veto Points', Journal of Public Policy 20(1): 83-103.

Haverland, Markus and Marleen Romeijn (2007) 'Do Member States make European Policies Work? Analysing the EU Transposition Deficit', Public Administration 85(3): 757-78.

Héritier, Adrienne (1996) 'The Accommodation of Diversity in European Policy-making and its Outcomes: regulatory policy as a patchwork', Journal of European Public Policy 3(2): 149-67.

Héritier, Adrienne, Dieter Kerwer, Christoph Knill, Dirk Lehmkuhl, Michael Teutsch and Anne-Cécile Douillet (2001) Differential Europe: The European Union Impact on National Policymaking, New York: Rowman & Littlefield.

Knill, Christoph (1998) 'European Policies: The impact of national administrative traditions', Journal of Public Policy 18(1): 1-28.

Knill, Christoph (2001) The Europeanization of National Administrations: Patterns of Institutional Change and Persistence, Cambridge: Cambridge University Press.

Knill, Christoph and Dirk Lehmkuhl (1999) 'How Europe Matters. Different Mechanisms of Europeanization', European Integration Online Papers 3(7). Available online at: http://eiop.or.at/eiop/texte/1999-007a.htm, 05.08.2008.

Knill, Christoph and Dirk Lehmkuhl (2002) 'The National Impact of European Union Regulatory Policy: Three Europeanization Mechanisms', European Journal of Political Research 41(2): 255–280.

Knill, Christoph and Andrea Lenschow (1998) 'Coping with Europe: the impact of British and German administrations on the implementation of EU environmental policy', European Journal of Public Policy 5(4): 595-614.

Knill, Christoph and Andrea Lenschow (1999) 'Neue Kontepte – alte Probleme? Die institutionellen Grenzen effektiver Implementation', Politische Vierteljahresschrift 40(4): 591-617.

Knill, Christoph and Andrea Lenschow (2000) 'On deficient implementation and deficient theories: the need for an institutionalist perspective in implementation research', in Christoph Knill and Andrea Lenschow (eds.), Implementing EU Environmental Policy. New Directions and Old Problems, Manchester: Manchester University Press, pp. 9-35.

Knill, Christoph and Andrea Lenschow (2001) 'Adjusting to EU Regulatory Policy: Change and Persistence of Domestic Administrations', in Thomas Risse, Maria Green Cowles and James Caporaso (eds.) Europeanization and Domestic Change, Ithaca: Cornell University Press.

Ladrech, Robert (1994) 'Europeanisation and Domestic Politics and Institutions: The Case of France', Journal of Common Market Studies 32(1): 69-87.

Laffan, Brigid (2005) 'Law into Action': The Struggle to Comply with the Habitats Directive in Ireland, Greece and Finland', Conference paper, Multilevel Governance in Europe Conference. Structural Funds, Regional and Environmental Policy Workshop, 5-7 May, Athens.

Legro, Jeffrey W. (1997) 'Which norms matter? Revisiting the 'failure' of internationalism', International Organization 51(1): 31-63.

Liebert, Ulrike (2002) 'Between Diversity and Equality: Analysing Europeanisation', in Ulrike Liebert (ed.), Gendering Europeanisation. Brussels: Peter Lang, pp. 11-46.

Lowi, Theodore J. (1972) 'Four Systems of Policy, Politics and Choice', Public Administration Review 32(4): 298-310.

Majone, Giandomenico (1996) Regulating Europe, London: Routledge.

Majone, Giandomenico (2000) 'The Credibility Crisis of Community Regulation', Journal of Common Market Studies 38(2): 273-302.

March, James G., and Johan P. Olsen (2004) 'The Logic of Appropriateness', ARENA Working Papers, WP 04/09. Available online at: http://www.arena.uio.no/publications/working-papers2004/papers/wp04_9.pdf, 05.08.2008.

Mastenbroek, Ellen (2005) 'EU Compliance: Still a 'Black Hole'?', Journal of European Public Policy 12(6): 1103-1120.

Mastenbroek, Ellen and Michael Kaeding (2006) 'Europeanization Beyond the Goodness-of-Fit: Domestic Politics in the Forefront', Comparative European Politics 4(4): 331-354.

Mastenbroek, Ellen and Michael Kaeding (2007). 'Transcending the Goodness of Fit', Comparative European Politics 5(4): 342-343.

Nugent, Neil (2003) The Government and Politics of the European Union, Houndmills: Palgrave Macmillan.

Obinger, Herbert (2002) 'From Habsburg to Haider. Federalism and Social Policy in Austria', Manuscript, Bremen: Center for Social Policy Research. Available online at: http://www.columbia.edu/~as48/Comparative%20Federalism_files/Obinger%20-%20Austria.pdf, 05.08.08.

Peters, Guy (1999) Institutional Theory in Political Science. The New Institutionalism, London: Pinter Publishing.

Pierson, Paul (1996) 'The Path to European Integration. A Historical Institutionalist Analysis', Comparative Political Studies 29(2): 123-63.

Premfors, Rune (2001) 'Historical-Institutional. A Comparative Analysis', Conference paper, Score Conference, Sastalholm, November.

Pülzl, Helga and Oliver Treib (2006) 'Policy Implementation' in Frank Fischer, Gerald J. Miller and Mara S. Sidney (eds.), Handbook of Public Policy Analysis, New York: Dekker, pp. 89-107.

Putnam, Robert D. (1988) 'Diplomacy and Domestic Politics: The Logic of Two-Level Games', International Organization 42(3): 427-60.

Radaelli, Claudio (2000) 'Whither Europeanization? Concept Stretching and Substantive Change', European Integration Online Papers 4(8). Available online at: http://eiop.or.at/eiop/texte/2000-008a.htm, 05.08.2008.

Radaelli, Claudio (2003) 'The Europeanization of Public Policy', in Kevin Featherstone and Claudio Radaelli (eds.), The Politics of Europeanization, Oxford: Oxford University Press, pp. 27-56.

Raustiala, Kal and Anne-Marie Slaughter (2002) 'International Law, International Relations and Compliance' in Walter Carlsnaes, Thomas Risse and Beth A. Simmons (eds.), Handbook of International Relations, London: Sage, pp. 538-58.

Richardson, Jeremy (2001) 'Policy-making in the EU: Interests, Ideas, and Garbage Cans of Primeval Soup', in Jeremy Richardson (ed.), European Union: Power and Policy-making, London: Routledge, pp. 3-26.

Risse, Thomas (2001) 'A European Identity? Europeanization and the Evolution of Nation-State Identities', in Maria Green Cowles, James A. Caporaso and Thomas Risse (eds.) Transforming Europe. Europeanization and Domestic Change, Ithaca: Cornell University Press, pp. 198-216.

Risse, Thomas (2004) 'Social Constructivism and European Integration' in Antje Wiener and Thomas Diez (eds.) European Integration Theory, Oxford: Oxford University Press, pp. 159-76.

Risse, Thomas, Maria Green Cowles and James Caporaso (2001) 'Europeanization and domestic change: introduction', in Maria Green Cowles, James Caporaso and Thomas Risse (eds.), Transforming Europe. Europeanization and Domestic Change, Ithaca: Cornell University Press, pp. 1–20.

Schindlauer, Dieter (2004) 'Executive Summary – Discrimination based on racial or ethnic origin. Austria', Community Action Programme to Combat Discrimination, European Group of non-governmental experts in the field of combating discrimination on the grounds of racial and ethnic origin and religion and belief, Brussels: European Commission.

Steunenberg, Bernhard (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.

Thomson, Robert (2007) 'Time to comply: National responses to six labour market directives reconsidered', West European Politics 30(5): 987-1008.

Toshkov, Dimiter (2005) 'Taking seriously the misfit hypothesis', Conference Paper, Politicologenetmaal, Antwerp, 19-20 May 2005.

Toshkov, Dimiter (2007) 'In Search of the Worlds of Compliance: Culture and Transposition Performance in the European Union', Journal of European Public Policy 14(6): 933-54.

Waddington, Susan and Mark Bell (2001) ‘More equal than others: distinguishing the EU equality directives’, Common Market Law Review 38(3): 587-611.

Windhoff-Héritier, Adrienne (1983) ‘Policy und Politics. Wege und Irrwege einer politikwissenschaftlichen Policy-Theorie’, Politische Vierteljahresschrift 24(2): 347-60.

Windhoff-Héritier, Adrienne (1987) Policy-Analyse. Eine Einführung, Frankfurt a. M: Campus.

Authors: Juan Casado Asensio

Title: Cutting through the “misfit” jungle: Can a re-consideration of the goodness-of-fit hypothesis help us understand the transposition of EU anti-discrimination directives in Austria?

Reihe Politikwissenschaft / Political Science Series 117

Editor: Oliver Treib
Associate Editor: Elisabet Torggler

ISSN: 1605-8003
© 2008 by the Department of Political Science, Institute for Advanced Studies (IHS),
Stumpergasse 56, A-1060 Vienna • ☎ +43 1 59991-0 • Fax +43 1 59991-555 • http://www.ihs.ac.at

ISSN: 1605-8003