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Problems of operationalization and data in EU compliance research

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Problems of Operationalisation and Data in EU Compliance Research

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Abstract

Substantial theoretical, conceptual and empirical advances have been made in research on the implementation of EU policies during recent years. However, our findings have remained ambivalent and our theoretical insights disparate. It therefore seems high time to address some issues that cause concern in this type of research and to raise awareness of the limits of the various theoretical approaches and of the data commonly used. This relates to the challenges of operationalising and of choosing adequate indicators for the dependent variable (compliance). We also discuss promises and pitfalls of different types of data used in the field, such as official statistics on notifications and infringements published by the European Commission as well as mass surveys.

Zusammenfassung

Die EU-Implementationsforschung hat in den letzten Jahren wesentliche theoretische, konzeptuelle und empirische Fortschritte gemacht. Die Ergebnisse sind jedoch ambivalent und unsere theoretischen Erkenntnisse noch immer disparat. Es scheint deshalb an der Zeit einige Problemfelder dieses Forschungszweigs zu benennen und die Sensibilität für die Reichweite verschiedener methodischer Ansätze und Arten von Daten zu vergrößern. Dies gilt für die Operationalisierung der Kernkonzepte und für die Wahl angemessener Indikatoren, um die abhängige Variable (Rechtsbefolgung) zu erklären. Darüber hinaus diskutieren wir die Vor- und Nachteile der verschiedenen Arten von Daten, die von den meisten Studien genutzt werden. Es handelt sich um offizielle Statistiken über Notifizierungen und Vertragsverletzungsverfahren, die die EU Kommission veröffentlicht, und um Umfragedaten.

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1. Introduction[1]

Recent years have seen considerable research activity in the field of (non-)compliance with EU policies. A range of publications by single authors and multi-annual research groups seek to understand this phenomenon. It seems fair to argue, however, that there are evident shortcomings. A clear definition of the dependent variable is frequently missing and the same is even more true for an explicit and detailed operationalisation of "compliance". Additionally, the issue of how to convincingly assess (non-)compliance empirically and of which data to use in doing this, has still not been settled satisfactorily.

Thus our article sets out to discuss the following questions: How to adequately operationalise compliance? What data and indicators are commonly used in various kinds of compliance research and what are their limits? We think that these are crucial issues to be addressed when considering that despite abundant research our empirical findings often remain contradictory and our theoretical insights stay inconclusive.

2. Operationalising compliance

Looking at texts that aim to raise awareness in the field of EU-related compliance problems, one notices many descriptions but few detailed specifications. The first challenge in establishing and discussing the relevant state-of-the-art is thus to demark related but yet differing concepts and to clearly specify the scope of compliance.

When defining compliance in the EU context, reference is often made to international relations studies. Here, a prominent concept is that "[c]ompliance can be said to occur when the actual behavior of a given subject conforms to prescribed behavior, and non-compliance or violation occurs when actual behavior departs significantly from prescribed behaviour" (Young 1979: 104; similarly Raustiala/Slaughter 2001). With a view to EU implementation studies, compliance of both the member states and of their citizens comes into play. As political scientists, our focus is typically on the public side of the coin. Even when we discard the behaviour of individuals "on the ground" from our field of study, however, compliance still covers a whole range of aspects.

[1] This paper is based on joint work and many stimulating debates and helpful comments of our co-authors of "Complying with Europe", Simone Leiber and Oliver Treib. We thank Thomas Gross for research assistance.

For a member state, to comply with an EU related rule will typically include the indispensable fulfilment of duties during various phases of the implementation process, that is

- law-making on domestic level(s), which may be adopting new rules or adapting old ones,
- control of theses laws as to their application in practice and
- enforcement where they are not adequately respected. Often, enforcement is used to denominate both of these stages for it necessarily includes both monitoring and following-up any problems detected.[2]

Compliance with EU law cannot relate to only one of these stages. It needs to cover all of them, for proper enforcement is not possible without the appropriate laws existing on paper, on the one hand. On the other hand, laws remaining dead letters are not in fact being complied with.[3]

In other words, compliance is a potential outcome of the implementation process. It occurs only in those cases where all of its stages are fulfilled in a dutiful manner. It is, therefore, misleading to study only the initial phase of any implementation process, typically the transposition of an EU directive into domestic law or even only the start of the transposition process, while at the same time arguing that the results are on "implementation" (i.e. the overall process) or "compliance" (the conforming outcome).

During each of the outlined phases of implementing EU norms, a member state needs to perform different functions in order to fulfil the necessary conditions for compliance to occur at the end of the overall process.

During the transposition phase, which is often in the focus of political science studies in the realm of EU policy implementation, there are at least two crucial dimensions, timeliness and correctness:

- First, timeliness means to conform to the transposition deadline of a directive. However, the indicators chosen to establish if a country actually performs well during this phase are not always clear or appropriate. At domestic level, different points in time can be of some relevance when considering this: the date of the national legislation adopted[4] to comply with EU requirements; the date it is

[2] However, some authors seem to imply that monitoring is not part of enforcement (Versluis 2007a: 59).

[3] For sure, however, compliance is in principle possible without any adaptation of domestic legal provisions, but only in those empirically rare cases where pre-existing rules already conformed to the EU's standards or where directly applicable EU norms (e.g., regulations) do not even need any accompanying domestic measures.

[4] Or already in place when the EU law is to be implemented.

published, normally in the national official journal; or the date it comes into force and thus needs to be followed by the addressees. Strictly speaking only the latter data gives direct evidence of good performance of a member state with a view to timely transposition. Admittedly, it is harder to establish for it may need detailed research whereas publication dates of national laws are more readily available and may more easily be traced electronically. However, some laws have long intervals before they enter into force and this can spoil analyses of (non-)compliance with EU law.

- Second, correctness of the outcome of a legal transposition process is a crucial facet of compliance. Here, the researcher needs to take into account the content of the EU requirement as well as of the national legislation. Correctness can be complete, hence covering all parts of e.g. an EU directive, or partial. In the latter case, only some of the provisions of a directive may be transposed and others not, or some may be fully fulfilled and others only partially. It is true that full adaptation of every detailed aspect of a directive will often be difficult to reach in practice (and sometimes, it may possibly from a domestic viewpoint even seem disproportionate when considering the necessary effort). Therefore, we have in prior research with colleagues chosen to look not only at full correctness of the transposition outcome but have opted for taking into consideration also the point in time at which the national rules satisfied the standards of the Directive almost completely, with only minor details missing or incorrect (Falkner et al. 2005: 66, footnote 71 and 267-269). It is a further problem for empirical research that in some cases EU law significantly evolves over time, most notably via ECJ judgements that may blur the line of what can be considered full correctness (cf. Hartlapp forthcoming). Thus a choice needs to be made concerning at what stage (essential) correctness is established.[5] In any case, dutiful implementation performance during the initial phase of a directive's life cycle on the domestic level needs to cover both timely and correct transposition into national law.

Turning to the later phases of the implementation process, further issues account for empirical as well as conceptual difficulties in research. With respect to what can be called the application phase in a wide sense, we need to differentiate between enforcement by the state (possibly supplemented by independent agencies and/ or social

[5] Often timeliness and correctness are linked to different stages of (non)compliance as captured by the most commonly used data sources (see in more detail below). It is important to note that the collection and set-up of data is an empirical question and should be analytically distinguished from definition and conceptualisation of a research phenomenon.

partner organisations), on the one hand, and application on the ground, on the other hand. It is typically rather an issue of sociological or legal research if the final addressees of a rule on the level of firms or individuals indeed adhere to it or not. By contrast, it is more astonishing that the crucial role of the state in the enforcement of rules that originate on the EU level is hardly taken into consideration. Article 10 of the EC Treaty makes every Member State responsible for actively taking "all appropriate measure, whether general or particular, to assure fulfilment of the obligations" and to "abstain from any measure which could jeopardise the attainment of the objectives of this Treaty."

Few systematic thoughts have been advanced so far on the post-transposition stages of implementing EU norms[6] and even less thorough empirical studies have been conducted (but see Hartlapp 2005: 41-43; Falkner et al. 2005: 33-40; Versluis 2007a; 2007b). Given the multi-layered phenomenon of compliance in the EU system, however, many challenges exist in the conceptualisation of the phases after transposition.

It is for practical reasons often impossible to establish reliable and representative data on the application of EU-norms on the ground in a micro-level analysis. Moreover, such research in practice needs to make a well founded and justified choice as to which application problems are considered (ir-)relevant. If we assume a need for absolute compliance when it comes to the application of EU norms, we risk overestimating non-compliance, since even national norms are not applied stringently all the time, in every place and by all addressees. Taking (non-)compliance with national legislation as a benchmark (e.g. Ciavarini Azzi 1988: 199) when judging the appropriateness of compliance levels, however, would counteract one of the initial reasons for adopting and implementing community EU norms: the establishment of a level playing field.

Returning to public actors' tasks in the post-transposition phase of implementation, different EU norms may require different forms of monitoring and enforcement to guarantee successful application. Also, the economic situation, geographical conditions and addressees' willingness to respect EU norms differ from Member State to Member State (due to general law abidingness or due to a norm specific inclination to comply, cf. Putnam et al. 1993: 35; Waarden 1999: 96; Bertola et al. 2000: 65-71). Hence, what might be sufficient monitoring and enforcement in one country cannot necessarily assure compliance elsewhere. A possible research strategy to deal with this problem is to assess one or several necessary conditions to be fulfilled during monitoring and enforcement in relative terms (e.g. adequate numbers of labour inspectors per country

[6] The research desideratum of this aspect has been stressed lately though by Mastenbroeck (2005: 1114; more generally see Bertola et al. 2000).

and appropriate fines, see Hartlapp 2005: 41-42), while keeping in mind that even if efficient they may not be fully sufficient to assure compliant behaviour by those applying the rules.

We can summarise the arguments presented in this section by stressing that one of the reasons for disparate findings on compliance in the EU lies in the differing and often unclear conceptualization of the dependent variable: compliance. Often researchers simply do not talk about the same things. And due to the incoherent multitude of indicators included in various studies - which are not even always clearly identified - it comes as no surprise that the results frequently contradict each other.

But even where scholars agree on a definition of compliance and its operationalisation, it remains a challenging task to define and collect adequate data in the next step of any coherent empirical research.

A thorough debate of available data in the field of EU related implementation studies is all the more important since quantitative studies in principle offer important, in some aspects even unique potentials for analysing compliance issues. Across many cases, only statistical analysis can indeed reveal and measure commonalities and differences. This is of particular importance if cross-sectoral differences in compliance patterns and if the evolution of compliance over time is at stake. Alongside these great promises, however, there are also major pitfalls involved in quantitative compliance studies. Even the most soundly crafted calculations or models are misleading and hence dangerous where the data imputed are either unreliable or of questionable usefulness in the realm of the phenomenon studied.

In the following sections we will therefore discuss the most prominent data sources used in EU compliance research: the statistics published by the EU Commission on transposition notifications and on infringement proceedings; and the mass surveys sometimes used to indicate different “cultures of compliance” that may help in explaining outcomes. We will specify what they depict and indicate both the questions that can be thoroughly answered with these data at hand as well as the limits the data entails (for a similar approach with respect to data on the legislative process see König et al. 2006).

3. Official statistics on transposition notifications

The Annual Reports on Monitoring the Application of Community Law provide for various data of interest when studying compliance with EU norms: data on notifications; data on infringement proceedings; and data on judgements by the European Court of Justice. These reports have been published since 1984 (COM(84) 181). Over time the collection of the information presented has become more systematic and the presentation of the data in the report has become more sophisticated.

However, these developments also entail problems as to extracting the data. For example, the reports for 1994 and 1995 present cases of non-compliance chronologically while in other years they are ordered by policy area. The report on the year 1995 seems to be particularly imprecise. This becomes clear from a comparison with previous or following reports that often assess directives differently, although they are classified as "transposed" in 1995. This leaves the researcher with the problem of how to deal with the information for this specific year. More recent reports (on the years 2004 and 2005) do not include notification data but only information on infringement procedures. These differences complicate tracing cases along a number of years and controlling for multiple entries. A mechanistic use of the reports seems therefore problematic (cf. Börzel 2001 for a similar argument).

When using the Annual Reports as data source, basic requirements – which may sound trivial but are often not respected – should be to

- first, explain how data bases are extracted, whether (aggregate) stock or flow of cases is taken into consideration, and how one deals with the problem of multiple entries;
- second, to justify the scope of the sample as to the time span, the geographical area and the policy instruments on which the analysis is based; and
- third, to make the choice of data explicit and thus argue why data on notification, on infringements, or on ECJ cases[7] is used and not one of the alternatives.

In the following we will provide some arguments that might be helpful when making these choices.

[7] Within the universe of ECJ cases of interest in the context of implementation, there are, besides infringement procedures, also preliminary rulings on the basis of Article 234 (see e.g. Stone Sweet/Carporaso 1998; Börzel 2003). Preliminary rulings possibly reveal insight into ambiguous transposition or (potential) application failure at the national level (Hartlapp forthcoming). However, their number is strongly influenced by the specifics of the national legal and court systems (Golub 1996; Alter/Vargas 2000) and thus this data is, first, not representative of compliance performance and, second, cannot be compared across countries.

The data on notification included in the Annual Reports of the European Commission indicates the year in which a Member State has informed the Commission about the national legislation guaranteeing the implementation of a specific EU directive. Typically the Member States provide standardised sheets where for each provision of the directive a corresponding paragraph in a piece of national legislation is indicated. These sheets are sent by the national ministry via the Permanent Representation in Brussels to the European Commission.

The notification information can be characterised as event-oriented data, measuring a specific point in time. It is thus at first sight a relatively good indicator to measure timeliness of transposition. Another strong point of this data is its relative completeness, since all EU directives adopted and requiring implementation by the Member States are covered by relevant scrutiny of the Commission.

However, there are a number of shortcomings and in actual fact, studies using this type of data highlight very different explanations for timeliness. Focusing on EU level factors greater conflict between Member States, more legislative actors involved and qualified majority voting in the Council seem to increase the probability for timeliness (König et al. 2005). Yet others place much emphasis on cross-sectoral variance which rests on typical characteristics of directives in the respective policy sectors (Haverland et al. 2007). Looking at the domestic level, others stress that state capabilities – such as poor bureaucracies, federalism, coalition governments and also parliaments that do not prepare for directives – are much better predictors of timeliness than member state preferences that diverge from the text of the directive (Linos 2007).

Not only are results derived from the data incoherent, there are also several fundamental critical points that need to be kept in mind whenever using the Annual Reports as a database on notification:

- First, the point in time is specified as to the year – not the exact date of notification.[8]
- Second, we are informed about the date of an action that may differ from the date of actual transposition. The indicated notification may predate the event we are actually interested in or may succeed it. That the point in time when the ministry notified the transposition information to Brussels is not in itself the

[8] This is admittedly less of a problem if the information in the Annual Reports is matched by CELEX data on transposition measures which depict the exact date of the notification.

moment of transposition was for example highlighted in a recent empirical study when a government notified a project of law that was actually never adopted.[9]

- Third, we have no exact information on what is precisely captured by the notification act. If the transposition is dispersed and hence includes various pieces of legislation, which one will the government notify: the first (and potentially in a substantial number of cases rather insignificant) part of a complex and incremental domestic transposition process (see Berglund et al. 2006; Kaeding 2006; Thomson et al. 2007; Haverland et al. 2007; Haverland/ Romeijn 2007)? The last and presumably often times most difficult piece of transposition legislation?
- Fourth, differing strategies in this regard by different member states may produce a bias in the data since the Commission does not control for differences in Member State behaviour but mechanistically imputes the date of notification into its database.
- Finally, and most importantly, the data does not contain any information on the content and the completeness of the transposition measure. Therefore, it does not provide any information on the second important aspect of assessing compliance: correctness. This is far from trivial: we have shown in earlier publications that out of 90 cases studied 44% of the transposition measures were flawed even years after the deadline (Falkner et al. 2005: 269-270).

Partly in an attempt to solve problems outlined above, notification data published by the European Commission is prepared in different ways by authors using them in the field of compliance studies. Efforts range from a very broad and rather crude approach using the average transposition percentage per year as dependent variable (Lampinen/ Uusikylä 1998) to a much more sophisticated effort measuring transposition delay by combining different dependent variables. Linos (2007) creates a binary variable specifying whether the country notified or not and a duration variable measuring the distance between the transposition deadline and the actual notification date. Thomson et al. (2007) use the same measures, but include a third indicator: whether a reasoned opinion was sent in the context of an infringement procedure.[10] König et al. (2005) have presented the so far most differentiated approach. Looking at the entire range of transposition measures notified, they offer two alternative measures of timely or delayed

[9] This concerned the Directive on Employment Contract Information in Belgium (Falkner et al. 2005: 63; Hartlapp 2007).

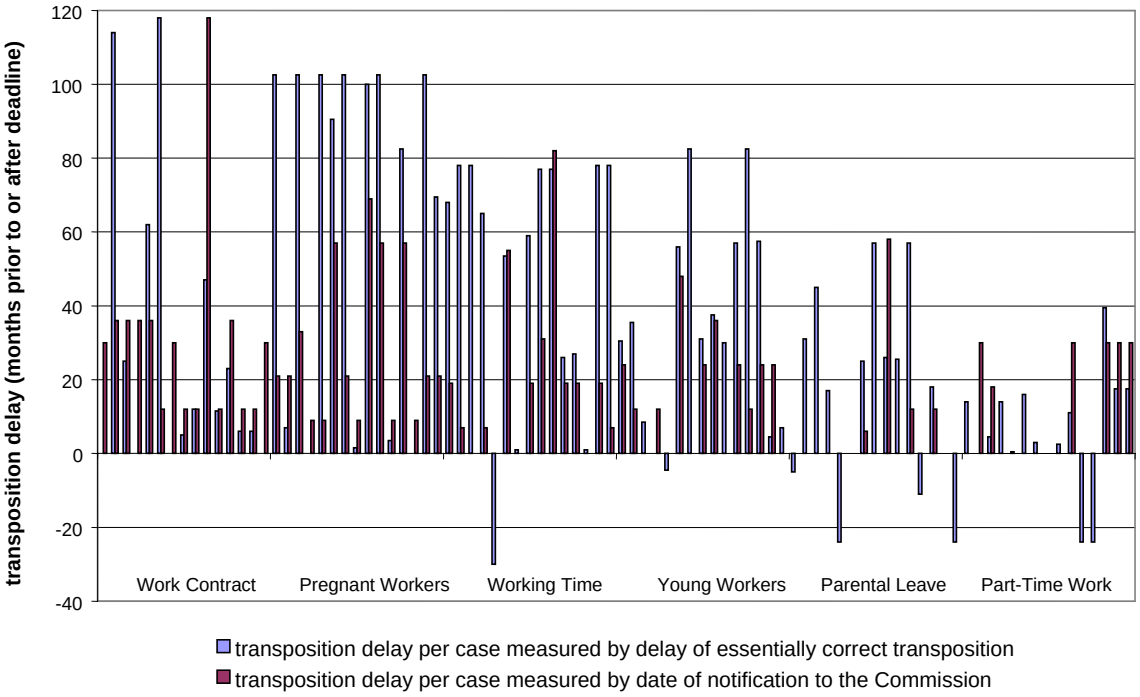
[10] However, in their empirical analysis they stick to one indicator at a time only out of the three introduced in a first place.

transposition. They argue that transposition may be in time when the first measure notified was in time. Alternatively they propose talking of timeliness only in those cases where even the last piece of legislation assuring transposition was notified in time (König et al. 2005: 14-15; cf König/ Luetger 2008). Still others claim to balance the shortcomings by matching the Commission data with national information on notified legislation (Mastenbroeck 2003; Borghetto et al. 2006; Berglund et al. 2006; Kaeding 2006; Haverland et al. 2007; Haverland/Romeijn 2007; Kaeding 2008, forthcoming). However, this last approach solves only the part of the data problem originating in conscious or unconscious mal-administration of notification by the EU Commission.

Basing the analysis on notification data as supplied by the Member State governments under all circumstances means (at least) the following: completeness of transposition is largely unknown and correctness of transposition is unknown. Using notification data to assess compliance also can not account for member state manipulation – be it strategic or unintended. It is thus obvious that Commission notification data does not depict adequately even the first stage of compliance with EU law, i.e. transposition into domestic norms.

But how compliant are the governments actually and how great is the discrepancy of available statistics with the de facto situation in the Member States? On the basis of a large-scale qualitative project covering 90 cases of implementation of six EU social policy directives during the 1990s in all 15 EU Member State we explore the extent to which the official Commission data differ from actual compliance during the transposition phase. More precisely we match data on notification in the Commission's Annual Reports with actual transposition performance in practice. This will give us an idea about differences in the assessment of "compliance" during the transposition phase when using qualitative and quantitative measurement techniques.

Figure 1: Flawed Transposition: Data from quantitative and qualitative sources in Comparison



Source: own calculations on the basis of Annual Reports on Monitoring the Application of Community Law (1991-2003) and Falkner et al. (2005).

Figure 1 gives an overview of the differences between the transposition delays as measured on the basis of the notification data in the Commission's Annual Reports[11] and our data on the delays until countries had reached essentially correct transposition collected from in-depth case studies.[12] It is clearly visible that there are huge differences between the two measurement techniques. The average delay per case for the second kind of data is 34.8 months (a total of 3130) and 18.5 months for the data based on official statistics (a total of 1668). For all cases we can conclude on the basis of the data provided that the Commission seems to significantly underestimate the delay.[13]

[11] The Annual Reports on Monitoring the Application of Community Law do not provide the exact date of notification but the year only. When deadline and notification fall in the same year we do not assume non-compliance at all (which might downplay non-compliance by up to 12 months since in extreme cases a Member State implementing a directive for which the deadline was set for 1 January might have notified on the next 31 December only). For all other cases we assumed that on average notification occurred on 1 July of each year.

[12] Essential correctness is defined as "the point in time at which the national rules and regulations satisfied the standards of the Directive almost completely, with only minor details missing or incorrect" (Falkner et al. 2005: 66, also 267-269).

[13] This includes cases where transposition occurred later according to the notification data than when looking at our qualitative assessment. In addition we find cases where the Commission data indicates that transposition occurred at an earlier point in time than we found in our in-depth case studies. This measures only delay, thus disregarding cases of prior notification. If we consider these transpositions before the deadline in our calculations the average difference between both indicators per case becomes even greater (more than 28 months). Consequently the estimation of the delay by the Commission decreases to an average of 12.7 months per case. Here, we took the difference between both measurement techniques for the number of

What is more important, our analysis clearly shows that the Commission's measurement technique does distort with respect to countries if compared to the data collected in our qualitative in-depth study. We find that the notification data from the Commission reports depicts the record of essentially correct transposition relatively better for some countries.[14] The distance between the assessments of both measurement techniques in the six cases is relatively moderate for Great Britain (82.5 months), Ireland (87.5 months) or the Netherlands (128 months). In other Member States the distortion of the compliance picture for the six cases is substantially greater when using the Commission infringement data, i.e. in Portugal (195.5 months), Belgium (205 months) or Germany (238 months). What is more, the mapping of our data on essentially correct transposition against the quantitative Commission data on notifications revealed that some countries notified before an essentially correct transposition more often than others. In Finland and Portugal notification took place at a later point in time than we had assessed transposition for one directive only, while the Netherlands or Denmark as well as Ireland, Sweden and Italy were rather reluctant to notify even after essentially correct transposition (4 and 3 cases). Here we can not provide a coherent explanation for this picture emerging (but see Falkner et al. 2005: chapter 15 on procedural differences in transposition that potentially impact on behavioural differences between Member States vis-à-vis the Commission).

It needs to be stressed that these findings are based on six directives per country. However, what becomes clear is that relevant differences between Member States exist which should even play out more strongly over a greater number of cases and that therefore notification data of countries can not be easily taken as an adequate cross-country measure for transposition success or failure.

This critical judgement on the limits of notification data as often used in compliance studies is supported by the following arguments, for which we found evidence in our earlier qualitative case studies but which could play an even greater role beyond our empirical cases:

- First, as the Commission's official notification data do not include any hint about substantive correctness, the data conceal many instances of incorrect or insufficient transposition. In our data, transposition is considered essentially correct only after the respective Member States have actually managed to fulfil all of the

months where transposition was delayed and subtracted the number of months where transposition occurred before the deadline (2743 months total or an average of 30.5 months for the qualitative data on essential correctness and 1597 months total or an average of 17.7 months for the quantitative data).

[14] We measured the size of distortion for each Member State by aggregating the number of months the two kinds of data deviated from each other.

important provisions of a given directive. This may be years after the original transposition was completed – and, supposedly, the Commission notification thereof (for 19% of the cases in our sample essentially correct transposition was still pending at the end of the investigation period, see Falkner et al. 2005: 269-270).

- Second, due to the intention of (some) Member States to downplay this incorrect or insufficient transposition they might simply engage in a type of "tick the boxes implementation style" (Richardson 1996: 282). Here EU requirements are superficially answered and notified in order not to risk conflict with the European level. We found evidence for the notification of draft laws that were not yet, or indeed never, adopted; for the notification of legislation where the Member State was well aware that the scope did not correspond to that of the EU directive; and of the notification of pre-existing domestic legislation despite apparent need for adaptation (Hartlapp 2005: 166 and 194).
- Third, the Commission demands to be notified of transposition no matter how small the remaining gap between the European demands and the domestic status quo ante may be. Therefore, there are cases where we, on the basis of a detailed qualitative assessment, considered the level of transposition essentially correct whereas the Commission may still be waiting for a tiny little piece of domestic reform. This could seriously deter performance levels to the detriment of member states that conform rather well but neglect small parts of adaptation requirements without hiding this vis à vis the Commission.
- Fourth, there could be cases where transposition had already been accomplished domestically or where existing regulation already covered the standards of the directive but where the respective Member State, for whatever reasons, had failed to notify the Commission.

It seems rather plausible that these well-known empirical phenomena impacting on the distortion of countries in official notification data could systematically cluster along country lines as typical patterns of answering to EU adaptation requirements. Hence we might speculate that with an increasing number of cases the differences between countries as to their behaviour in notifying transposition to the Commission should become even greater than our comparison of data with six directives at hand suggested.

4. Official statistics on infringement procedures

A second type of data often used in compliance research is data on infringement procedures, also stemming from the Annual Reports on Monitoring the Application of Community Law. If the Commission considers that a Member State has failed to fulfil an obligation under the treaty, it can initiate an infringement proceeding (Art. 226 and 228 ECT).[15] The latter can consist of four different steps: the "Letter of Formal Notice", the "Reasoned Opinion", the "Referral to the ECJ" and the "Judgement by the ECJ".

Commission data on infringements contains information on for what reason the procedure has been initiated and how the process evolved. The different reasons for the initiation of an infringement procedure provide evidence about different forms of compliance: non-notification; incorrectness of transposition; or incorrect application. Data on infringement procedures can be characterised as process-oriented data. A strong point is that it depicts the interplay of the supranational and national level over a period of time and throughout the different stages of the implementation process.

To make use of the information contained in the Commission infringement data authors have prepared the data in different ways. Making claims on the evolution of compliance they present the number of the different stages initiated each year (Ehlermann 1987; Börzel 2003; Sverdrup 2004). Here the main conclusion is that when controlling for increases in legislation and EU enlargement, "non-compliance appears to be modest and has remained stable or even declined over time" (Börzel 2003: 215; Mendrinou 1996; similary Thomson et al. 2007). To come to grips with the question of differential compliance in policy sectors, authors sort infringements by sectors (i.e. Mendrinou 1996), compare policy sectors (i.e. environment and public procurement: Koutalakis 2002) or look at one specific sector in detail (i.e. single market: Colchester/Buchan 1990; or environment: Börzel 2006). They find that environment and consumer policy as well as internal market legislation rank highest by infringement procedures, and that variation in these data is more pronounced by policy areas than by countries. Interested in whether and to what extent Member States or clusters of countries (such as Scandinavia: Sverdrup 2004; or small member states: Bursens 2002) differ in their behaviour they present country information on the number of cases reached in one stage (i.e. reasoned opinion Scott/Trubek 2002) or the different steps (Sverdrup 2005: 10; Börzel et al. 2005); on the time span between different steps (Börzel et al. 2005; Panke 2006), on the relative weight of the cases initiated against a Member State over the total number of cases started by the Commission (Giuliani 2003), or on the relative weight of

[15] The use of this procedure in day-to-day policy-making is laid down in a number of 'internal procedure' documents (i.e. Sécretariat Général 1993a; 1993b; 1996; 1998).

a stage in a country over the total number of cases for this country (Börzel 2003). Alternatively, they aggregate the frequency with which the different stages are reached into a country index (Beach 2005). One common conclusion is that Member States perform differently when it comes to compliance with EU responsibilities. The southern Member States as well as France and Belgium appear to perform significantly worse than their Scandinavian counterparts.

Finally, some authors make use of ECJ rulings, hence only the final stage of infringement procedures. The advantage is that they depict clearly conflicting cases where long term Member State resistance is answered by Commission enforcement. In this sense the ECJ rulings are taken as "least likely case for compliance" (Beach 2005: 113). Mbaye (2001: 267) even argues only ECJ cases depict non-compliance, that infringements not resulting in ECJ referrals are the effect of unintended implementation failure by Member States and can therefore be neglected in implementation analysis.

But are these really findings on compliance proper? It seems to us that if we consider the problems contained in the data some of these findings seem to be built on quicksand. Infringement data depicts Commission policies answering some instances of non-compliance rather than the phenomenon of actual (non-)compliance. These policies may include conscious (strategic) decision but also mistakes and inefficiencies. Hence we cannot systematically link data on infringement procedures published by the Commission to compliance without facing selection biases on the dependent variable. Put differently, this type of research looks at the "tip of the iceberg" of non-compliance only. This entails two major problems: we do not know much about the size nor about the shape of those parts that remain below the waterline.

- First, we do not know in how many cases the Commission does not react where non-compliance takes place. This problem is often mentioned but downplayed by arguing that infringement data "are the only statistical source available" (Börzel 2003: 213). On top of this, the enforcement policy of the Commission varied over time (Tallberg 2003). Although some authors have made this inconsistency of the Commission data over time explicit (Audretsch 1986; for a broad uptake of the argument see Börzel 2001), most research ignores the related problems.

- Second, and even more importantly, the data may be biased as to different forms and stages of non-compliance (timeliness / correctness, transposition / enforcement / application), countries and sectors. Mbaye (2001: 268) admits that

strategic selection of the Commission may produce a "skewed picture" of compliance when looking at ECJ cases. However, for her this is neither a sufficient reason to abstain from using it, nor does she critically discuss her findings in this light. Similarly Thomson et al. argue that although infringements are admittedly "an indirect measure of compliance (…) it is appropriate to formulate and test explanations of variation in these official indicators (since, MH/GF) they can be examined over a relatively large number of cases, enabling generalizations" (Thomson et al. 2007). However, the problem of potential biases, even (or especially) in large N studies is not addressed. Thus it remains at least an open question as to whether infringements "provide a representative sample" as Börzel (2003: 213) assumes. Or whether they are the result of differing Commission enforcement policies. In other words, the Commission might treat the typical latecomers more strictly, and policy priorities or sector priorities may guide her enforcement policy.

To sum up, much of the scholarly research on compliance with EU law is in fact research on the reaction to non-compliance on the part of the European Commission.[16] The central question seems to be to what degree the data on Commission infringements distorts and if it does so, if systematically across countries, across sectors, across forms and across stages of (non-)compliance.

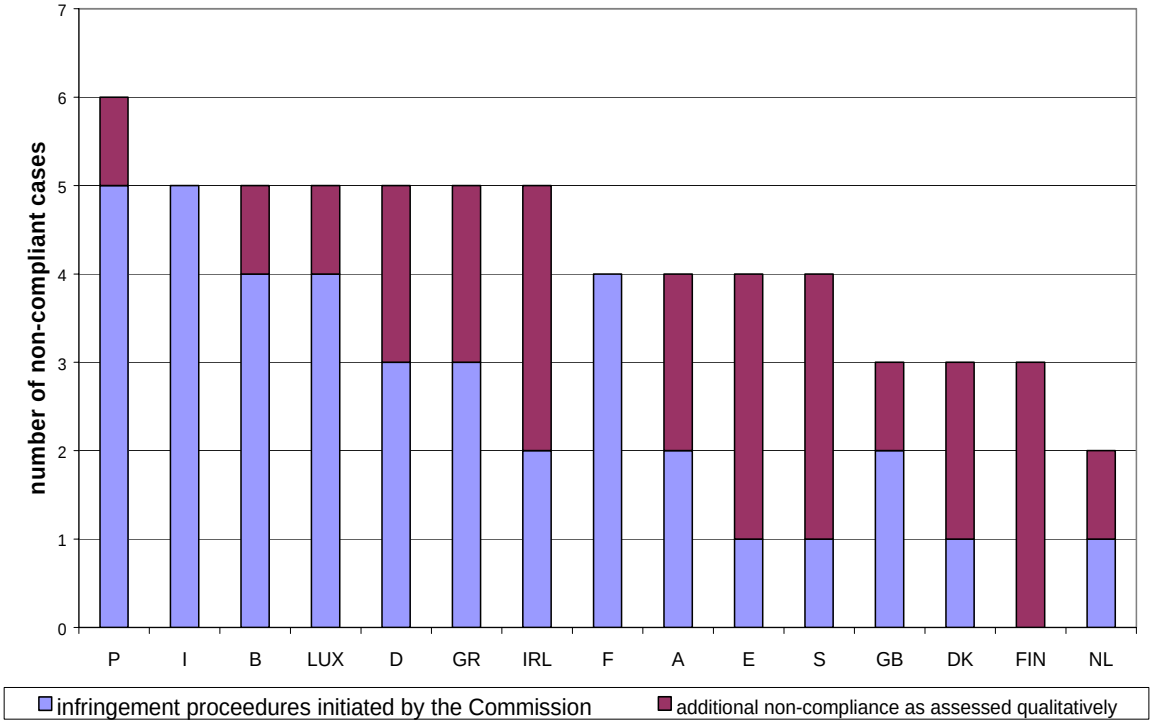
By matching the Commission data on infringements with the information on compliance gained in our large-scale qualitative project covering 90 cases of implementation of six EU social policy directives during the 1990s in all 15 EU Member State (Falkner et al. 2005) we can at least provide a partial answer. We can precisely asses how much of (non-)compliance due to late or incorrect transposition found in our qualitative case studies is reflected in the Commission data; and we can make a judgement whether the Commission data on infringements is biased as to countries, directives or forms and stages of compliance for the 90 cases studied.[17] This matching is unique in that it reveals the cases where (significant) non-compliance has taken place but which have not been subject to an infringement procedure by the Commission. The following graphs demonstrate the discrepancies between the presumed level of non-compliance based on the infringement procedures initiated by the EU Commission, on the one hand, and on the

[16] This view contrasts with research assuming that "duration and stage of the infringement proceeding is a strategic decision on the part of the member state" (Thomson et al. 2007).

[17] Since our study focuses on social policy no evidence can be provided as to a sectoral bias.

other hand the level of compliance assessed in our qualitative case studies (with detailed information on timely and essentially correct transposition).[18]

Figure 2: Non-compliance assessed by Infringement Proceedings and "Complying with Europe" Data (Member States)*



Source: own calculations on the basis of Annual Reports on Monitoring the Application of Community Law (1991-2003) and Falkner et al. (2005).

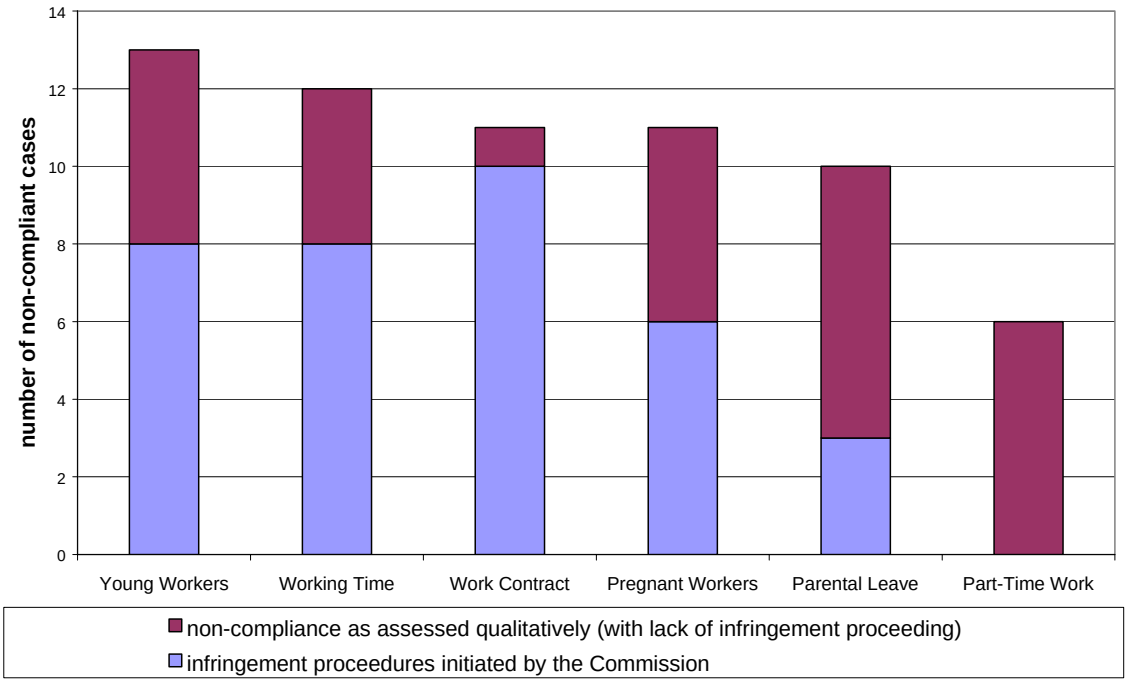
* Member States are sorted by the number of non-compliant cases as assessed in our qualitative study (late and/or essentially incorrect) with the worst compliers close to the y-axis. Note that cases per Member States do not add up to a total of six where initial compliance made enforcement superfluous.

In actual fact, infringement procedures were only initiated in 60% of the cases we found to be in breach of the studied directives (42% of all cases). Thus, the level of domestic non-compliance is significantly higher than that suggested by the Commission data on infringements. More importantly, the graph shows that while some countries are more often subject to Commission infringement procedures than others this can only partially

[18] The numbers presented differ from the data also comparing our and official data published in our book (Falkner et al., 2005: 214-5) where we considered all possible sources of information on infringements (Annual Reports as well as 'Periodic Tables' and 'Recent decisions by the Commission' regularly published on the homepage of the Secretariat General, press releases and expert interviews). In this paper we focus on the differences between measurement techniques based on qualitative and quantitative sources. Therefore the Commission-oriented assessment of compliance is based on the information contained in the Annual Reports only – an approach taken in most quantitative studies.

be explained by differing levels of compliance in the Member States. For our 90 cases, some countries showed a transposition record substantially worse than we should have expected on the basis of the Commission infringement data (Spain, Finland, Ireland and Sweden). At the same time, all cases where we found the Member State to be in breach of the studied directives resulted in an infringement procedure in France and Italy.[19]

Figure 3: Non-compliance assessed by Infringement Proceedings and "Complying with Europe" Data (Directives)*



Source: own calculations on the basis of Annual Reports on Monitoring the Application of Community Law (1991-2003) and Falkner et al. (2005).

* Directives are sorted by the number of cases where non-compliance occurred. Note that cases per Directive do not add up to a total of 15 where initial compliance did not make enforcement necessary.

Similarly, if we look at the six directives studied in our 90 cases we find that non-compliance is not evenly enforced across directives. Especially striking is the fact that no infringement procedures were initiated for the Directive on Part-Time Work although we found six cases of non-compliance. What is more, the Commission itself

[19] This is not to argue for a systematic favouring of some 'good guys' over 'bad guys' by the EU Commission. We hold that the differences between Member States are not results of political clientelism (in such a case one would expect that the EU enforcement policy would be always absent or always present for one country or a group of countries) but of the necessity to prioritise some cases over others.

seems to be aware of these breaches of Community law since the Commissions implementation report highlights most of the instances of non-compliance (CEC 2003). A Commission official admitted in an expert interview that this systematic lack of enforcement was due to

administrative inefficiencies. They originated in the unequal use of extension possibilities by member states regarding the transposition deadline which had prevented a quasi automatic triggering of infringement procedures. At the same time the assessments of the two kinds of data are almost identical for the Directive on Work Contracts.[20] Here the Commission exerted its duty as a watchdog right at the end of the transposition period and later issued an implementation report on the substance of the implementation measures in the different countries (CEC 1999). Without engaging more thoroughly with an explanation we can conclude that the Commission data distorts with respect to directives.

Finally, matching compliance as assessed by data from quantitative and qualitative sources reveals that differences exist as to forms and stages of non-compliance. To address the question whether Commission infringement data is biased in this respect we looked in detail at whether the infringement procedures in the "Complying with Europe" data were initiated for late transposition or for incorrectness, and whether the procedure was carried through according to the Commission's own rules.[21] Most importantly, we find a heavy bias for our 90 cases towards infringement proceedings due to non-notification. Exactly two thirds of the infringement procedures studied dealt with non-notification. When comparing the Commission's reaction to non-notification and to the follow-up of incorrect transposition, we see that infringement procedures were initiated in 95 % of the cases (40 of 42) where Member States had not notified the Commission of their transposition measures in time or within one year after the expiry of the deadline. By contrast, (significantly) incorrect transposition was only answered by an infringement procedure in 51 % of the cases (22 of 43). Moreover, infringement procedures for non-notification were in almost all cases initiated in time and were executed rather rigorously (31 of 40, thus 78 %) while only one out of 22 infringement procedures for incorrect transposition followed the Commission's own rules (Falkner et al. 2005: 220). What is more, if we link these findings to the insight gained about

[20] Nota bene, the mere numerical correspondence does not mean that we can talk of sufficient Commission enforcement in the sense that all instances of non-compliance are correctly identified and followed-up according to the own rules.

[21] Infringement procedures are considered inconsistent when a case of (essentially) incorrect transposition has not been answered by the Commission with a "Letter of Formal Notice" within one year after the transposition deadline or when, after that, more than a year elapses before the subsequent stage is initiated (see Sécretariat Général, 1993a; 1998: 4; even more ambitious 1996: 3-4).

differential behaviour of Member States in notification we should expect the distortion between forms and stages of non-compliance to increase the country bias.

From our qualitative study we can therefore summarize that Commission data on infringement procedures distorts (at least) with regard to countries, to directives, and to the form and stage of non-compliance. To return to the image of the iceberg, it is striking with respect to the directives studied how great the submerged part is and how much its shape differs from the tip. Although our study covered six cases per country only and the results therefore can not prove the existence of systematic country biases, these findings question the adequacy with which Commission infringement data depict compliance.

In the following we will present some arguments that support this conclusion beyond the cases studied.

5. Commission policy, and data from Annual Reports in comparative perspective

There are several typical empirical phenomena that impact on the biases in the assumed level of compliance when using Commission infringement data. They concern the role of the Commission in the EU system as constrained by institutional and political factors. The Commission generally suffers from a lack of resources to systematically follow up all cases of Member State non-compliance (Nugent 2001: 165). And it has been argued that the Commission is more interested in the production of new "rules (…) than in the thankless and politically costly task of implementing existing ones" (Majone 2002: 329; similarly Ludlow 1991: 107). Even where this is not the case the administrative units responsible for monitoring and enforcing Community legislation simply do not have the means (resources and powers) to monitor and follow up all cases of non-compliance.

Personnel resources are limited and so is the necessary expertise and knowledge. A former Commission official confirmed that only a small fraction of the persons working in the area of social policy (covering almost 90 directives) is dedicated to labour law regulation and thus possibly involved in infringement procedures on our cases (interview ECJ1).[22] This is all the more striking since expertise of the national legal system as well as linguistic expertise is necessary to judge whether the standard transposed is fulfilled by the notified legislation. Consequently, external expertise

[22] These factors should broadly hold across Directorates General and we thus assume that in other policy areas too, a lack of means exists to systematically enforce all cases of non-compliance.

(language service and/or national barristers in specialised offices in Brussels, interview COM2) often needs to be taken in, making the process more laborious and time consuming. The scarcity of personnel dedicated to following up non-compliant Member States may have become even more apparent lately since it seems that the introduction of new instruments under the Open Method of Coordination in many areas has not gone hand in hand with a proportionate increase in personnel. Powers to systematically monitor and follow-up all cases of (non)compliance by an infringement procedure are also limited. Last but not least, it must be mentioned that to actively monitor non-compliance in the Member States during the application phase proper, the Commission even lacks the legal powers, i.e. to intervene in national administrative routines or to send own inspection teams.

This lack of means might not only lead to a differential knowledge about the situation in Member States but, in addition, it requires the Commission officials to make choices as to which case of non-compliance to answer by an infringement procedure. The choice to initiate an infringement procedure is largely made by the responsible unit and depends on its workload, on the complexity of the Directive, and on the overall importance attached to the policy. Thus, we assume that in overall terms, non-compliance with directives is more likely to be answered by an infringement procedure in those cases where the unit in the Commission has relatively more resources at its disposal and shows more substantial interest in a directive (e.g. because it is politically important,[23] because of upcoming renegotiations or because the responsible unit is simply especially skilful in making the most of their powers vis à vis Member States). Finally, scarce resources are also the background against which to assume that our finding on the less hesitant use of infringements for non-compliance with notification requirements is likely to hold for other policy sectors, too. The question of whether a member state has fulfilled its notification duties can easily be answered with a simple yes or no. Establishing whether or not the notified measures are correct requires more resources and expertise and is thus a much more laborious task for the responsible Commission unit.

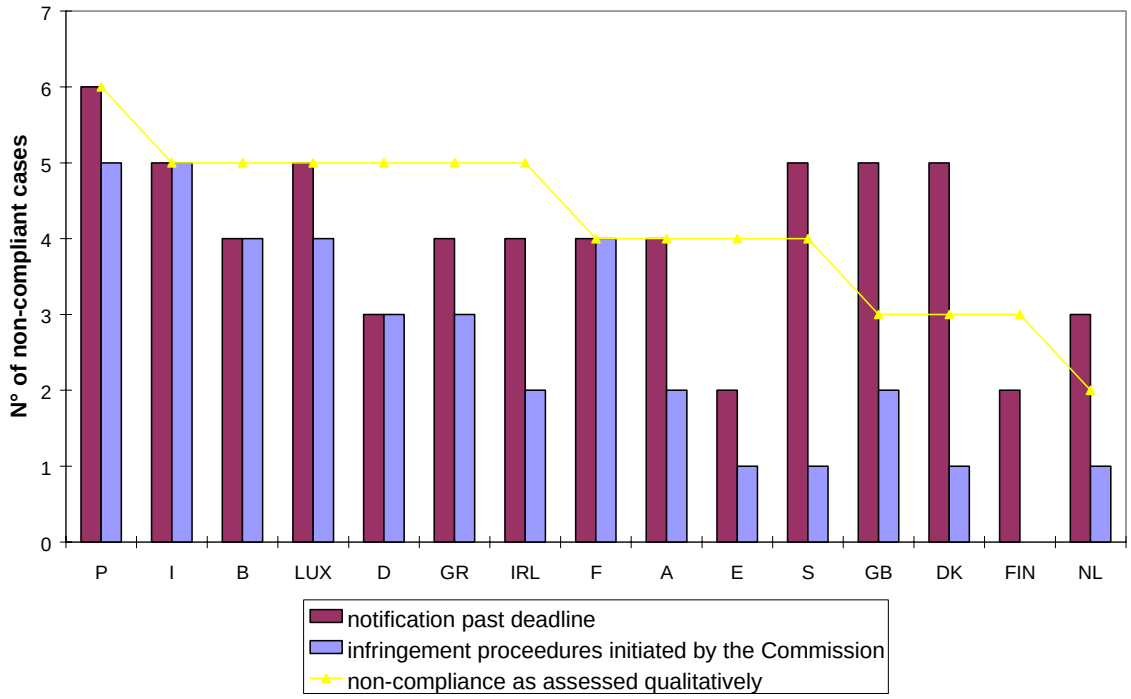
To sum up, a number of arguments substantiate doubts about using the infringement data published by the Commission as an indicator for compliance, in general.

Having so far discussed advantages and drawbacks of both notification data and infringement data one question remains: which type of data is better in depicting

[23] However, Member States are not only the addressees of rules, but at the same time those who decide about (further) community activity. Hence the Commission might also be reluctant to start infringements for a directive related to a particularly contested issue area where it wants to reach an agreement for a new initiative (c.f. Spencer 1994: 111).

compliance?[24] Although we showed that we need to apply great caution in studying EU compliance on this basis, in any case, there may still be different "shades of grey". Figure 4 shows the relative match of the two official data sources with the level of compliance as assessed qualitatively in our study on the implementation of six EU social policy directives.

Figure 4: Relative match of different types of data in assessing compliance (Member States)*



Source: own calculations on the basis of Annual Reports on Monitoring the Application of Community Law (1991-2003) and Falkner et al. (2005).

* Member States are sorted by the number of non-compliant cases as assessed in our qualitative study (late and/or essentially incorrect) with the worst compliers close to the y-axis.

According to figure 4 using notification data would come closer to an assessment of compliance based on our qualitative case studies and taking into account timeliness and essential correctness (indicated by the yellow line).

Assessing compliance on the basis of quantitative data seems to work relatively better for Member States that are rather bad at following commonly agreed standards. At the same time official data of either type seems to be unsuited to correctly measure compliance in countries that adopt EU standards more often in time and correct. For

[24] Thanks to Oliver Treib for suggesting to undertake this analysis.

relatively compliant countries, notification data seems to overestimate the level of non-compliance – Member States were either overly cautious not to notify measures where some minor details still required adaptation or administrative sloppiness prevented that notification took place by the time of essential correctness (six cases concentrated in four countries). In these countries looking at infringement procedures would be equally misleading – although in the opposite direction. Hence at first sight it does not only seem that notification data fares better in assessing compliance levels in Member States than infringement data across all cases, but that there is an interesting pattern where both types of data reveal similar outcomes for some countries, while they come to quite diverging patterns for other Member States.

Such an argument needs careful pondering though. If we go beyond counting cases and consider timeliness and correctness as different dimensions of compliance, notification data may hide more than it actually reveals about compliance. Notification data is relatively complete and provides information on almost all cases out of the universe of transposition processes taking place. Logically it captures more cases of non-compliance than the fewer numbers of infringement procedures. However, it only looks at timeliness. Considerations of completeness and correctness are completely left out of sight. Moreover, notification data does not control for unintended or strategic differences in Member State reporting – hence one should be specifically cautious to use this type of data when interested in a comparison of compliance levels between Member States. Infringement procedures draw in their majority on other information sources. For example, individual complaints help the European Commission broaden its information base and counter the information bias (Hartlapp forthcoming). Hence this type of data should be a relatively better source for those interested in comparing compliance across Member States. Yet, Commission infringement data is plagued by the selective activism of different units and possibly Directorates Generals when it comes to assessing compliance. Given that the Commission is no homogenous actor we expect volatility in adequate assessment of compliance to be high across policy sectors and directives. An analysis interested in comparing policy sectors is thus best advised not to use infringement data.

6. Mass surveys

Mass surveys on public opinion are a third type of data used in more recent quantitative analysis of compliance. The most prominent surveys are the Eurobarometer (http://europa.eu.int/comm/dg10/epo/eb.html)[25] and the more specific European Social Survey (http://www.europeansocialsurvey.org/).26 While the official statistics on notification and infringements discussed so far are typically used to measure compliance the latter is linked to the explanation of compliance, notably when aspects of culture are considered as relevant.[27] Before we engage in discussing how this data can (or cannot) be adequately matched with open questions in compliance research, we will briefly discuss why cultural aspect matter for implementation and which role they have played in compliance research so far.

Legal cultures are known to vary all over Europe. "Obedience differs. Not all Europeans are equally law-abiding citizens" (Waarden 1999: 96). In Denmark, "[w]hen an act is issued it is obeyed, even if one has opposed its adoption and disagrees with its content," (Biering 2000: 959). In the case of Italy, some hold that "laws are made to be broken" (Putnam et al. 1993: 115). Therefore, the EU should not be expected to be a uniform area with regard to compliance with and enforcement of the laws adopted on the supranational level, either. For a long time, however, the European implementation literature did not seriously study domestic compliance cultures. The national styles of digesting adaptation requirements were not considered as explanatory factors when discussing compliance records although this would have followed up the well-known literature on differing overall "policy styles" in Western European countries (Richardson 1982).[28] Not before 2001, the policy styles literature was extended to EU implementation research, but then Dimitrakopoulos highlighted a unique "European style of transposition" (2001: 453ff.). Soon thereafter, however, Sverdrup discovered

[25] Eurobarometer is a public survey conducted twice a year in each member state. It is based on face-to-face interviews with a representative sample of individuals. Different questions have by various authors been linked to aspects of a compliance culture, i.e. "On the whole, are you very satisfied, fairly satisfied, not very satisfied or not at all satisfied with the way democracy works in (your country)?" or "Many important decisions are made by the European Union. They might be in the interest of people like yourself, or they might not. To what extent do you feel you can rely on each of the following institutions to make sure that the decisions taken by this institution are in the interest of people like yourself? (Read out) a) The European Commission; b) The (nationality) government; c) The European Parliament; d) The National Parliament; e) The Council of Ministers of the European Union representing the national governments. Can rely on it/Cannot rely on it/don't know"?

[26] This survey "hopes to measure and explain how people's social values, cultural norms and behaviour patterns are distributed, the way in which they differ within and between nations, and the direction and speed at which they are changing". It is conducted every other year in face to face interviews.

[27] Mass survey results on the public opinion towards EU membership are also often used in compliance analysis (Lampinen/Uusikylä 1998; Mbaye 2001: 265; Scott/Trubek 2002: 24; Börzel et al. 2007: 11-13). Here the assumption is that compliance is more likely, where the public of a country is in favour of EU membership. However, empirical findings do point in the opposite direction (Gibson/Caldeira 1996).

[28] By policy styles, the authors meant "the main characteristics of the ways in which a given society formulates and implements its public policies" (Richardson et al. 1982: 3, emphasis in original).

the "Nordic model" of good compliance, based on a culture of compliance and of compromise, as a crucial factor for a country's implementation performance (Sverdrup 2002a). Transparency and efficient organisation of the administration also help the Nordic countries, as opposed to the big Continental member states of the EU, to react more readily in compliance conflicts (Sverdrup 2002b; 2003).

In our own work with colleagues we discovered different "worlds of compliance" (Falkner et al. 2005; Hartlapp/Leiber 2006; Falkner/Treib 2008; Falkner et al. 2008, forthcoming), each of which is characterised by an ideal-typical implementation style. Among them is, most importantly here, a world of law observance where the compliance goal typically overrides other domestic concerns even if there are conflicting interests or ideologies. Our research revealed a number of elements that can be combined to form a larger picture suggesting a socio-political mechanism that reinforces tendencies to take compliance seriously once a culture of law abidance is in place. By contrast, any culture needs time to mature, and before a culture of law abidance is successfully established very many small-scale struggles will have to be won against those who advocate departures from the path of virtue in individual cases (Falkner et al. 2005: 328-330). Finally, it must be highlighted that a culture of law abidance is by no means an automatism – governments may at times act against a national culture of good compliance. However, case studies indicate every bit as much as aggregate statistics (see, for example, Sverdrup 2002b; 2003: 20f.) that this "good compliance mechanism" produces rather regular effects in some member states. Even the critical contribution by Toshkov (2007: 11)[29] finds some support for the assumption that the Nordic countries belong to a special world, where respecting the rule of law is of particular importance. Nevertheless, it seems doubtful to us if using the above-mentioned survey data is indeed likely to generate answers of great significance and reliability with respect to compliance with EU rules.[30] In any case it seems crucial to us to be aware of the level of analysis and to use the right indicators and questions. Only then are survey data potentially apt to depict the phenomenon adequately.

The notion of "compliance culture" deserves much more attention than we and others have, for reasons of time and resources, been able to pay.[31] This is, however, a

[29] See also our in-depth reply (Falkner et al. 2007) with one section including some of the arguments presented below in earlier version.

[30] There is no space here to discuss the general drawbacks of many relevant mass surveys, such as liability to excess volatility due to small samples, differing sampling methods across countries, changes in the wording of questions from year to year, very different values for "don't know" questions in different countries, etc., some of which seem of over-proportionately big importance in case of the surveys discussed here.

[31] As outlined in depth elsewhere, we did not start our research project "Complying with Europe" (Falkner et al. 2005, see chapter 15 for details) searching for explanations that might be located at the level of culture. We are no "culturalists" by training, and the relevant literature had overlooked the possibility that shared beliefs and values could help explain (non-)compliance with EU rules. Therefore, our multi-theoretical approach with

necessary task to be accomplished before it makes sense to test the existence of such a culture in further studies, be it on the basis of quantitative or qualitative data. A number of issues need to be taken into consideration. First, can the phenomenon be equalled to law abidingness in the domestic realm? Second, what is the universe of individuals bearing this culture (mass / political elites / specialist elites)? Third, can opinions on individual law observance serve as a valid indicator for compliance cultures on a national level? Fourth, can trust in institutions on various levels be taken to indicate law abidance with EU directives? Finally, should survey answers be taken at face value in conclusions regarding abidance with EU directives, or are they – at best – a very indirect indicator?

1) The compliance culture relating to EU law will often, but not always, go hand in hand with the compliance culture relating to domestic law. This is supported by the fact that in many instances actors are not aware that they are dealing with provisions stemming from the EU level once the supranational standards have been incorporated into national law (or even into the legislative proposal only). There are exceptions to this, however. In the case of France, for example, our case studies revealed that a specific form of neglect applies to rules stemming from the EU during the transposition phase, while domestic law is generally respected. This suggests that indicators of domestic compliance cultures cannot per se serve as indicators for the EU-related compliance culture.

2) It is also crucial to respect that a culture of good compliance with rules may potentially exist on the level of the public at large (i.e., the micro level of citizens); on the level of political elites at large (that is actors from the political system that have substantial influence in shaping policies, including, e.g., relevant interest groups); and/or on the level of only those who are directly concerned with the implementation of EU law (i.e., the relevant expert level).

   Our research has revealed by expert interviews that a culture of law abidance with EU directives is in the Nordic EU countries present at least on the third level mentioned above. However, this does not imply at all that it prevails among the whole political elite, or even the entire citizenry, of a particular country. More generally, particular cultural characteristics are by no means necessarily characteristics of entire populations or political systems.

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a large set of hypotheses from extant political science approaches related to compliance with EU law did not include aspects of culture, from the outset. On our way, however, we came across empirical cases that suggested additional useful hypotheses. Therefore, we added elements to our approach inductively – one of them being the factor of compliance culture relevant in some countries. In actual fact, our work started on the theoretical level, proceeded to the empirical level, returned to theorising and adding abstract assumptions to our original catalogue of hypotheses, only to go back to field work, and so forth – just like the "grounded theory" school suggests (Glaser/Strauss 1967; Strauss/Corbin 1990; 1997).

Consequently, establishing the relevant level for the culture of compliance is an empirical question. We would assume that there is a rather higher probability for cultural features that discriminate between countries with respect to compliance to be located on the more specific level of experts concerned with the implementation of EU law or on the level of political elites at large.[32] We warn against simply using general public opinion data as indicators.

3) Can opinions on individual law observance serve as a valid indicator for compliance cultures? While broad values and ideals may be important as structural devices for more specific opinions and expectations towards legal institutions (Gibson/Caldeira 1996: 59), we see several problems. First, the connection between law abidance on the level of the individual and on the level of the state, which is not the same even in the ideals of individuals. In other words, individuals may well be inclined to choose low-budget 'dirty' petrol or electricity providers (or even to individually disobey some environmental law) while they want their government to follow international agreements on improving the environment. Hence it could be misleading to use the European Social Survey's question on ideals "To be a good citizen, how important would you say it is for a person to always obey laws and regulations?" as a yardstick for testing factual country differences with respect to a compliance culture (Toshkov 2007: 12). The same critique applies to using individual support for the rule of law measured by the questions "it is not necessary to obey a law which I consider unfair", "sometimes it is better to ignore a law and to directly solve problems instead of awaiting legal solution" as well as "if I do not agree with a rule, it is okay to violate it as long as I pay attention to not being discovered" (opinion poll questions stemming from Gibson and Caldeira, used in this sense by Börzel et al. 2007: 11)

   Second, the connection between citizens and politicians is problematic, too. That citizens expect dutiful implementation does not in itself mean that the administrators and politicians will conform. Besides a general desire of politicians to be re-elected by citizens, the relationship between citizen opinions and political decisions should be even more indirect in the realm of EU law than when purely national issues are at stake. The clear separation between the levels of individuals, on the one hand, and of political institutions, on the other hand, is

[32] This was not only suggested in our expert interviews, but similar arguments can be drawn from the literature following sociological institutionalism's or constructivist's accounts, which focus on socialisation processes through exchange programs between officials or through regular interaction in the COREPER and other EU working groups (on sociological institutionalist reasoning closely liked to the transposition of EU directives see Rhinard/Dimitrova 2005).

even more important when it comes to the transposition of directives, which are typically not well known in the individual countries, neither concerning their contents nor their implementation deadlines.

4) Can trust in certain institutions serve as a valid indicator for compliance cultures related to EU standards? This includes questionable assumptions on the relation between liking the law-producing institution and wanting to see the laws implemented in one's own country. It seems in fact quite understandable that citizens even of countries with bad implementation performance should still trust, for example, the European Parliament. They might even hope for better laws than potentially produced by their domestic institutions (cf Sánchez-Cuenca 2000). Whether or not they want better compliance with EU law is an entirely different issue, and if they get it is still different.

5) Fifth, we see the problem that what people give as answers in surveys often relates more closely to what they would like to see than to what they actually witness. It seems highly plausible to us that people in a system where rules are frequently disregarded should demand to an over-proportionate extent that laws should be obeyed. Seen from this angle, these statements might reflect a normative desire to change the bitter reality rather than an indication for the actual compliance situation in the respective countries.

This highlights that opinion-poll data are rather problematic when it comes to testing compliance cultures, be it domestic or – even more so – EU-related ones.

7. No easy way out?

Our knowledge about real compliance with EU law in the Member States is, at best, eclectic and partial. On the one hand, there is not enough qualitative work and understandably so, for this needs ample resources. At least in practice, therefore, this kind of research has inherent limits in numbers so that it can hardly be representative. For reasons of research economy and interest, cases are to date mostly chosen for policy-related reasons. On the other hand, quantitative work in the field of compliance with EU policies is often based on broad but questionable data. It hence usually presents a problematic selection of empirical information that may, as we have shown above, distort and/or relate only indirectly to actual compliance.

We can summarise the arguments presented in this paper by stressing, first, that one of the reasons for disparate findings on compliance with EU law lies in the differing and

frequently unclear conceptualisation of the dependent variable: compliance. Often researchers simply do not talk about the same things. And due to the incoherent multitude of indicators included in various studies - which are not even always clearly marked off - it comes as no surprise that the results are frequently contradicting each other. Second, a number of arguments raise severe doubts about using the notification data published by the Commission as an indicator for compliance. Most importantly, it neglects (in)correctness of transposition and is therefore a rather mechanistic and at best superficial measure. Also, much of the scholarly research oncompliance with EU law is in fact research on the reaction to non-compliance on the part of the European Commission. We compared the official data to information collected in qualitative case studies and revealed that the data on Commission infringements distorts with regards to countries, with regards to directives, with regards to forms of (non)compliance and with regards to stages of implementation. Third, we outlined why data based on opinion-polls involving citizens are rather problematic when it comes to testing the presence of a culture of dutiful compliance with EU law. In addition to typical shortcomings of all surveys (such as departures between statements there, true believes of the same individuals, and behavior of the same individuals in practice), there are specific problems involved in using such data in EU compliance research. For example, there is no direct relation either between citizen views' and public decision-making, or between views on national and supranational rules respectively, or between trust in institutions and compliance. Furthermore, compliance cultures may be located on various levels and it seems that experts involved in implementing EU directives are the prime candidates, not the masses.

Facing these severe problems, and in the absence of a magic wand, we need pragmatic solutions to meet the challenges of complex research puzzles and lacking data. As a first step, it seems a crucial move forward to be frank about potential pitfalls involved in either approach. In any case, very explicit operationalisation, more profound data scepticism, and critical reflection on the scope of all findings – concerning both depth and breadth of the argument – seem indispensable. The basic requirement of providing explicit arguments explaining the choice of data and sample, as well as information on data extraction and method also needs more respect.

In the longer run, it seems recommendable to aim at least for the best possible combination of methods. Most productive would probably be more cooperation[33] and less competition between the quantitative and the qualitative camps of researchers.

[33] A step towards combining insight of both approaches (in formal modelling) has recently been made by Steunenberg (2007).

Also, collaborative projects seem more promising with a view to solving additional parts of the compliance puzzle than either a follow-up of solipsistic publications or a non-cumulative sequencing of studies of different kinds (Falkner 2007).

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