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Post-accession transposition of EU law in the new member states: a cross-country comparison*

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Abstract: In this paper we examine the transposition of European Union (EU) legislation in the twelve 'new' member states during the post-accession stage. To this end, we scrutinize the number of formal notice letters received by the new member states in the period from 2004 to 2007. Our analysis shows that there is considerable variation in the transposition behaviour. While Lithuania, Hungary as well as Slovenia are the best performers, the transposition of EU legislation is less effective in Bulgaria, the Czech Republic, and particularly Romania. The comparatively high number of transposition shortcomings by this latter country group clearly indicates that even the process of incorporating European provisions into domestic law is far from unproblematic, which suggests the existence of even more substantive problems with the practical side of implementation. The results of our descriptive analysis show that transposition failure is predominantly related to the degree of trade with the EU, bureaucratic capacity and pre-accession policy alignment. We conclude that in the intermediate-term increasing bureaucratic capacities and stronger economic ties with the EU may help to reduce transposition failures.

Keywords: *acquis communautaire*; public administration; implementation; economic integration; enlargement; Europeanization; harmonization; comparative public policy; post-Communism; European law; political science

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1. Introduction

Implementation research has emphasized that administrative agencies by no means always follow unrestrictedly the political guidelines and even if they do so, in some cases the results remarkably deviate from the political expectations (Pressman and Wildavsky 1973). The general finding that in the national context shifts in policy objectives are frequently observed during the implementation stage provoked negative expectations for the implementation of European Union (EU) policies. Against this backdrop, the implementation effectiveness of EU policies attracted considerable scholarly attention and produced an insightful body of literature (see e.g. Mendrinou 1996; Knill and Lenschow 1998; 1999; 2000; Tallberg 1999, 2002; Börzel 2000, 2001; Haverland 2000, 2005; Mbaye 2001; Falkner et al. 2005; Mastenbroek 2005).

In view of the recent enlargement of the EU from 15 to 27 member states, this topic gained even more prominence since the ‘new’ member states (NMS) have generally been associated with a lacking capacity and willingness to implement European policies (Holzinger and Knoepfel 2000). Five years after the ‘historic’ enlargement round of 2004, the empirical reality seems to look much different from those projections. Recent research efforts (e.g. Sedelmeier 2008) show that the new member states are outperforming the EU-15 countries as regards the transposition of European policies. However, so far only scarce attention has been paid to the variation in the transposition effectiveness across the NMS in the post-accession period. Accordingly, this paper addresses the following two research questions: How strongly does the transposition effectiveness of European legislation vary across the single NMS? Which factors account for this variation?

For evaluating these questions, we analyze empirical data on the transposition behaviour of the NMS for the post-accession period from 2004 to 2007. Our analysis shows that there is considerable variation in the transposition behaviour of the member states: Lithuania, Hungary as well as Slovenia are the best performers, whereas the transposition of EU legislation is less effective in Bulgaria, the Czech Republic, and particularly Romania. The results of our descriptive analysis show that trade with the EU, pre-accession policy alignment, and bureaucratic capacity have a significant impact on the number of letters of formal notice, which forms the dependent variable of this analysis.

These results have two implications. First, there is a more ‘flexible’ dimension to post-accession transposition given by the factors trade and bureaucratic capacities. Hence, in the intermediate-term, increasing bureaucratic capacities and economic exchange with the EU may help to reduce transposition failures. Second, however, there is a more ‘structural’, path-dependent dimension to the post-accession transposition performance represented by the significant effect of pre-accession policy alignment. From this it follows that the NMS possess temporally consistent preferences with regard to transposing EU policies, which are unlikely to change in the short-run. We believe that the importance of pre-accession policy alignment for the post-accession transposition behaviour is a new finding in the literature.

Our findings, however, must be interpreted against the backdrop of the fact that the Commission data employed primarily report a country’s record in terms of formal transposition, i.e. whether a member state has fully and correctly transposed EU requirements into domestic regulations within the given time schedule. The data only provide very limited information on the practical side of implementation, i.e. the stages of enforcement and application. These stages of the implementation process so far have only been analyzed in case studies for individual countries and a limited number of policy fields (see e.g. Falkner et al. 2008; Krizsan 2009 this issue). As the collection of systematic aggregate data on these aspects is highly demanding and resource-intensive, most of the existing quantitative accounts of the implementation of EU law – including the underlying study – are hence restricted to the analysis of the formal transposition stage. Still, the relatively high number of transposition shortcomings in some of the NMS clearly indicates that even the process of incorporating European provisions into domestic law is far from unproblematic. From this we conclude that

again more drastic problems can be expected with regard to the practical application and enforcement of European legislation.

The paper is structured as follows. As a first step, we review important empirical studies addressing EU policy implementation in both the EU-15 and the NMS. This presentation of the state of the art helps us to locate the contribution of this paper in the appropriate context. Second, we explain in more detail our research interest and outline the theoretical framework of this analysis. Moreover, we provide information on how we measure the single explanatory variables and present some summary statistics. Third, we explain the measurement of the dependent variable and report the results of our descriptive analysis. In the final section, we summarize our argument and point to open questions setting the stage for future research.

2. Research on EU policy implementation

With the completion of the Internal Market in 1992, an increasing concern about the ability of national authorities to implement EU law emerged, which was also reflected by the increase in scholarly research on the implementation of supranational legislation. No comprehensive overview is attempted here – rather, we concentrate on the main topics and the most prominent explanatory factors related to ‘Europeanization’ research.⁽¹⁾ The Europeanization literature focuses on supranational policymaking and domestic factors accounting for the extent of adaptation pressure, or ‘mistfit’ (e.g. Radaelli 2000; Börzel 2000, 2001; Knill 2001, 2005; Cowles et al. 2001; Héritier et al. 2001; Knill and Lehmkuhl 2002; Olsen 2002; Börzel and Risse 2003; Falkner 2003). In this sense, domestic political systems, comprising national parliaments, party systems, state-society relationships, and bureaucratic structures are at the centre of attention. More recent research confirms the relevance of domestic factors, but goes a step further by shedding light on political preferences of the key actors (Grabbe 2001; Treib 2003, 2004), issue salience (Versluis 2004), and generic benefits derived from EU membership (Perkins and Neumayer 2007).

As concerns the implementation effectiveness of EU policies, there are two rampant findings. First, the implementation effectiveness of EU policies strongly varies across policy sectors. Comparative data reveal that implementation problems are much more pronounced for policies directed at environmental protection, the integration of the Common Market, consumer protection or social policy than for other policy fields of the Community (Knill 2006). Second, differences in the implementation performance of the member states are by far less pronounced than one might have expected. In particular, the often stated hypothesis of the so-called ‘Mediterranean syndrome’, which expects that southern member states implement EU policies less effectively is not confirmed (Börzel 2000, 2001). Implementation deficits rather vary in a relatively unsystematic manner across countries, regardless of their geographic location (Knill and Lenschow 1998, 1999, 2000). This holds particularly true, if implementation effectiveness is not only measured by focusing on the formal transpositions of EU policies, but also by considering the dimension of practical application.

The small but growing literature on the implementation of European policies by the NMS countries particularly addresses the second aspect. In this regard, Andonova (2003) argues that the domestic institutional framework has been of importance for the adoption of EU environmental legislation. In a similar vein, Hille and Knill (2006) show that the NMS’ ability to adjust domestic arrangements to EU requirements depends on their respective bureaucratic strength. Along the same lines, Steunenberg and Dimitrova (2007) focus on the pre-accession stage and draw attention to the importance of administrative reform and the intensity of ‘acquis conditionality’ (see Schimmelfennig and Sedelmeier 2004, 2005). In this context, they argue that the main reason that Slovakia and Latvia lagged behind in implementing the internal market acquis was the ‘premature’ announcement of accepting their application and therefore a notable reduction of the conditionality pressure, which decreased the pace of political reforms and the adoption of the acquis.

A different research question is posed by Sedelmeier (2008), who explicitly focuses on

differences between the implementation performance of the EU-15 and the NMS against the background of political conditionality in the post-accession period. He argues that two legacies of pre-accession conditionality are predominantly responsible for the good post-accession record on EU law implementation, namely institutional investment and a higher susceptibility to 'shaming'. Falkner et al. (2008), however, qualify this finding by highlighting the gap between law and action. In view of the lacking factual implementation of European law in the Czech Republic, Hungary, Slovakia and Slovenia, they assign these four countries to a specific 'world of compliance' (see Falkner et al. 2005), namely the 'world of dead letters'.

In sum, hitherto studies have mainly focused on cross-country variation in the pre-accession period, or they explored differences in the implementation behaviour of the EU-15 and the NMS. These studies offer numerous theoretical and empirical insights and form the point of departure for our theoretical model. However, there are good theoretical and practical reasons to shift the analytical focus to the post-accession phase and scrutinize the differences across the single NMS rather than comparing them to the EU-15. In theoretical terms, the post-accession phase is interesting since we assume that *acquis* conditionality – which had been instrumental for the transposition during the pre-accession period – has either faded away or has been lowered considerably (see Schimmelfennig and Trauner 2009 this issue; Schweltnus et al. 2009 this issue). Thus, the question that now emerges is which particular causal mechanisms become activated in the NMS once conditionality is over. For being able to identify these mechanisms, an exclusive focus on the NMS seems to be more appropriate than a comparison with the EU-15. In practical terms, we believe that exploring the determinants of post-accession compliance is relevant since the experience with transposition in the NMS may have repercussions on the European Commission's position when negotiating the membership perspective of current accession candidates, namely Turkey, Croatia, and the Former Yugoslav Republic of Macedonia.

So far, there have been only few studies scrutinizing how effectively and under which conditions EU policies are transposed during the post-accession stage. Our paper addresses this shortcoming. To this end, it describes and explains the patterns of cross-country variation in the transposition effectiveness of EU legislation in the NMS.

3. Theoretical framework and explanatory variables

To account for differences in the transposition performance of the NMS, we consider four factors as particularly relevant: trade linkages with the Common Market, pre-accession policy alignment, administrative capacities, and adjustment pressure emerging from EU requirements. While these factors are closely related to important arguments raised in the general literature on EU implementation, we suggest a distinctive operationalization of the respective indicators taking account of the peculiarities of the NMS.

The assumption underlying our theoretical framework is that the NMS – analogous to the EU-15 – are rational actors. Their transposition behaviour will be better when the perceived benefits exceed the expected costs. This is the basic reasoning that we take up when elaborating a number of theoretical conjectures in the following sections.

3.1. Trade with the EU

At the centre of the discussion of gains from EU membership and legal harmonization are economic rewards from trade (Eichenberg and Dalton 1994). As a rule, the economic rewards gained from intra-EU trade are likely to vary depending on the extent to which the economies of the member states are interlinked with the Common Market. Not only the EU-15, but also the NMS differ in the extent to which their economies are integrated. While some countries are economically strongly dependent on the Common Market, for other countries, the EU is economically less relevant. This can either stem from the relative importance of trade relationships outside the EU or the size of the domestic economy that reduces the relative

weight of external trade exchanges (see Jovanovic 2005).

How does economic integration relate to EU policy transposition? In accordance with Perkins and Neumayer (2007) we argue that NMS that depend more in their trade on other EU partners benefit more from Europe-wide rules. Thus, the overall gains derived by consumers will be greater in countries that are economically dependent on the Common Market generating political pressure on the governments of the NMS to transpose EU legislation timely and correctly (Börzel 2000). In terms of micro-foundation, this implies that transposition is a function of public demand based on perceived economic benefits rather than of the economic rewards per se.

This theoretical expectation is based on several considerations. First, especially in the case of product regulations all member states have a harmonization advantage, as uniform standards reduce costs of adjusting similar products in light of different national regulatory requirements (Scharpf 1997). We hence should expect no problems with regard to the transposition of EU product regulations – an area that makes up an important part of the legislative activities of the Union. Second, for countries that are economically strongly dependent on their trade linkages with the Common Market, we should assume that they have strong incentives to effectively comply with EU law beyond product regulations in order to strengthen their reputation as a reliable and ‘fair-playing’ trading partner. As trade relations display the nature of repeated games, cooperation is more likely than defection (Axelrod 1984). Thus, transposition has a far-reaching strategic importance since defection might trigger a reciprocal response by other member states in areas related to free trade, ultimately threatening the functioning of the Single Market. The ones losing most from such an outcome would then be the most export-oriented countries (Perkins and Neumayer 2007: 187). We hence formulate the conjecture that trade relations with the Common Market positively affect a country’s willingness to transpose EU legislation.

Conjecture 1:

The more a NMS is economically dependent on trade relations with the EU, the more effective is its transposition of EU law.

3.2. Pre-accession policy alignment

A central explanatory factor that is emphasized in the implementation literature is political will. In this perspective, the member state governments are conceived as the central actors in the process of transposing Community law. Effective transposition can hence only be expected as long as national governments are actually committed to this goal. Following the so-called enforcement approach (see Tallberg 1999, 2002), the most promising way to ensure proper transposition and implementation is a coercive strategy of sanctioning and monitoring (see Schimmelfennig et al. 2003). Especially these powers, however, are not very well developed in the EU, given the rather weak competences of the EU Commission in this regard (Knill 2008). Against this backdrop, the crucial aspect determining an effective transposition of EU law is in the first place the respective commitment of national governments.

There are several ways of assessing this commitment. In particular, one can analyze the policy positions of the parties represented in government and the legislature (see e.g. Treib 2003, 2004). Moreover, the number of veto players has been taken into account in order to analyze potential obstacles for national governments to get their positions adopted in the political process (see e.g. Giuliani 2003). In addition, several studies have investigated public support for European integration as a potential proxy (see e.g. Mbaye 2001). However, these measures are not suitable for assessing the ‘structural’, i.e. rather constant, characteristics of the single NMS.

In light of these considerations, we rely on a different strategy for assessing a country’s political commitment to an effective transposition of EU law. More specifically, we seek to

model political will from an historical institutionalist perspective (see Hall and Taylor 1996) in order to take into account path-dependencies in the transposition behaviour (Bulmer and Radaelli 2005: 351). Akin to Steunenberg and Dimitrova (2007), we believe that the pre-accession stage reveals essential information for understanding post-accession behaviour. This way, we rely on a country's behaviour in the pre-accession phase as a proxy for its overall political will to transpose European legislation. Of course, we cannot directly measure the preferences of the single NMS but we can see whether their 'revealed' preferences in terms of pre-accession transposition behaviour impact the 'hidden' preferences as concerns the post-accession transposition of European legislation. Here the underlying assumption is that preferences are relatively stable over time since they can be thought of as a function of only slowly changing factors, such as administrative or political culture, which affect the NMS calculus about costs and benefits accordingly. To date, no study has addressed this important aspect.

Which theoretical expectations can we draw from the pre-accession alignment performance for the post-accession transposition commitment? Two scenarios are principally conceivable. The first one rests on the assumption that there is a close linkage between pre- and post-accession behaviour as put forward by the theory of historical institutionalism. Countries that have shown their political will to align their policies with EU requirements already prior to accession should be similarly well equipped when it comes to the transposition of EU legislation in the post-accession stage. Thus, it is reasonable to hypothesize that the better the pre-accession policy alignment performance of a NMS, the more effective is its transposition of EU law in the post-accession stage.

This scenario, however, only holds true, if the NMS do not act strategically. In this case, we expect that once the NMS eventually have achieved their major objective of becoming a member, their overall transposition strategy changes fundamentally leading to a second scenario. While prior to accession, their dominant rationale was to avoid any behaviour that could raise doubts about their reputation as a worthwhile prospective member, the achievement of membership status crucially changes their strategic opportunities. They are in a much more powerful position as they are no longer dependent on the evaluation of other members or the European Commission and therewith no longer have to fear major sanctions. In short, the fact that conditionality is replaced by regulatory cooperation fundamentally alters the strategic constellation in which the NMS operate. This way, an inverse relationship between pre-accession policy alignment and post-accession transposition effectiveness becomes more realistic. In view of these two theoretically plausible scenarios, we formulate competing conjectures with regard to the direction of the effect of pre-accession policy alignment.

Conjecture 2a:

The better the pre-accession policy alignment performance of a NMS, the more effective is its transposition of EU law in the post-accession stage.

Conjecture 2b:

The better the pre-accession policy alignment performance of a NMS, the less effective is its transposition of EU law in the post-accession stage.

3.3. Bureaucratic capacities

Theoretical approaches to account for varying degrees of transposition effectiveness of EU policies in the member states are not restricted to the analysis of the political commitment of national governments. Rather and in line with the so-called management approach to compliance (Egeberg 1999; Tallberg 1999, 2002; Perkins and Neumayer 2007; Trondal 2007), there are numerous studies that emphasize the need to investigate the resources and characteristics of national bureaucracies. Overall, the management approach assumes that transposition and in more general terms implementation failures can rarely be attributed to a

deliberate decision but are more often the result of problems of state capacity, namely, governmental or general resource scarcity (Falkner et al. 2005; Dimitrova and Toshkov 2009 this issue).

This factor seems particularly important when scrutinizing NMS since they have greatly invested in improving their bureaucratic capacities (Sedelmeier 2008). Nevertheless, we expect considerable variation across the individual NMS since there are no EU treaty provisions regarding the design of public administrations (Dimitrova 2002: 180). Administrative capacity to transpose European legislation is not only affected by the financial resources of the bureaucracy but also by the effectiveness and quality of organizational structures and practices. First, it depends on the extent to which national bureaucracies can perform their functions with a certain degree of autonomy from political pressure. Especially in transformation countries, which have been characterized by rapid changes in government, a certain degree of bureaucratic stability and independence from political developments has to be seen as an important precondition to ensure continuity when adjusting domestic arrangements to EU requirements. By contrast, in countries that lack the cushioning effect of an autonomous and well-developed bureaucracy there is a higher probability that a change in government will yield negative effects with regard to the performance of policy formulation and day-to-day administrative functions. Second, bureaucratic strength increases with the extent to which administrative activities are based on clearly specified legal rules. Third, accountability is generally seen as a crucial factor that increases the quality and effectiveness of administrative authorities (Evans and Rauch 1999; Knill 2001; Peters 2001).

Analogous to the management approach, we expect that higher administrative capacities have a positive impact on post-accession transposition. This relationship is stated by the third conjecture.

Conjecture 3:

The better the administrative capacities of a country are developed, the more effective is its transposition of EU law in the post-accession stage.

3.4. Adjustment pressure

Ineffective transposition and implementation cannot only be traced to a lack of bureaucratic capacities, but might also be the result of a misfit between domestic administrative styles and structures with the requirements emerging from European legislation (see e.g. Knill and Lenschow 1998, 1999, 2000; Knill 2001; Börzel 2001; Mastenbroek 2005). According to this argument, effective transposition can only be expected as long as European requirements do not challenge well-established administrative styles and structures at the national level. Thus, a positive relationship between the institutional fit of national administrations and their performance in transposing EU legislation is expected.

However, in contrast to the EU-15, many of the NMS have been undergoing a far-reaching process of political, administrative and economic transformation while trying to bring domestic arrangements in line with European requirements (Grabbe 2001). As a result of this development, we consider theories emphasizing the institutional fit as a crucial predictor of transposition performance to be of limited relevance. We can hardly expect that administrative traditions in the sense of well-established administrative styles and structures are of explanatory relevance because these traditions themselves were subject to fundamental changes in the context of the transformation process.

This statement, however, does not mean that the theoretical argument about different levels of adaptation pressure is irrelevant in the context of our study. For the NMS, adaptation pressure is not so much a question of compatibility of existing structures with EU requirement, as it is the case for EU-15 countries, which are characterized by well-established and deeply rooted legal and administrative traditions. Instead, adaptation pressure is rather a matter of transition

periods given for often economically and administratively costly adjustments. Consequently, we consider the number of exceptions and extended transposition deadlines as an appropriate indicator for grasping differences in adjustment pressure for the NMS.

Based on the state-of-the-art arguments made with regard to the ‘goodness of fit’ (see e.g. Börzel 2000; Knill 2001), we anticipate that the higher the number of such exceptions, the lower the adaptation pressure for the individual NMS and therewith the higher the likelihood of transposition. This inverse causal relationship is summarized by the fourth and final conjecture.

Conjecture 4:

The lower the level of adjustment pressure a country faces from EU legislation, the more effective is its transposition of EU law.

4. Measurement and analysis

On the basis of the theoretical discussion, we have derived four conjectures that might explain the variation in the transposition of EU law in the NMS. In the following, the conjectures will be evaluated empirically.

4.1. Variables and operationalization

In our theoretical assessment, we identified four explanatory variables to be of importance for explaining post-accession transposition, namely economic integration with the Common Market, pre-accession policy alignment, administrative capacity, and adjustment pressure.

To assess the economic dependence of a NMS on the Common Market, we measure its imports from and exports into the EU and divide this sum by the country’s gross domestic product (GDP) (see Perkins and Neumayer 2007: 194). The data for trade with the EU have been extracted from the International Monetary Fund’s Direction of Trade Statistics, whereas the data for the countries’ GDP have been taken from the World Bank’s World Development Indicators.

The performance of the NMS in pre-accession alignment has been subject to a systematic analysis by Hille and Knill (2006). The authors analyze the Commission’s reports on the performance of applicant states in aligning their legislation with the *acquis communautaire*. These reports were made on a yearly basis during the period from 1998 until 2004. The reports contain information on the state of both formal and practical adoption and enforcement of EU requirements. On the basis of these reports, the authors construct an indicator for measuring the candidate countries’ progress in pre-accession alignment. To do so, they conduct a content analysis, applying a word-in-context method that measures the frequency, direction, and intensity of criticism or approval of candidate countries’ performances. As the Commission generally uses a highly standardized language to evaluate the progress of the applicants, this method provides us with a reliable assessment of the candidate countries’ commitment to comply with the *acquis*. The data on pre-accession alignment have been taken from the authors’ homepages.

To measure the varying strength of bureaucracy, we rely on an indicator of overall bureaucratic quality, as measured by the World Bank’s index developed by the project Governance Matters IV: Governance Indicators for 1996–2007 (Kaufmann et al. 2008), which represents an open-access data source. The indicator combines analysts’ ratings of the quality of the bureaucracy, including the independence of the civil service from political pressure, political stability, bureaucratic accountability and transparency as well as the extent to which administrative activities are based on legal rules and proceedings in the candidate countries.

This measure thus offers a suitable proxy for the overall strength of the bureaucracy.

The data on the degree of adaptation pressure is based on the number of exceptions and extended transposition deadlines. We produced this original data on the basis of the accession negotiation documents provided by the Commission's enlargement website.(2)

Table 1 gives a description of the four explanatory variables forming our theoretical framework and indicates the corresponding data sources. While the number of observations is forty-eight in the summary statistics, it is important to stress that in the analysis that follows we only use the mean values, i.e. averaged over the period 2004-2007, which reduces the number of observations to twelve. We decided to take the mean values since this procedure takes into account time lags with regard to the occurrence of transposition problems. Although this implies a reduction of empirical information, we argue that this strategy provides the safer way given the data structure at hand.

Table 1

Our dependent variable is the mean number of (supplementary) letters of formal notice in accordance with articles 226 and 228 of the Treaty establishing the European Community received by the NMS between 2004 and 2007. The data for the dependent variable have been taken from table 2.1 of the 25th annual report from the Commission on the application of community law (European Commission 2008: 10).

The sending of letters of formal notice represents the second stage in the EU infringement procedure. If the Commission believes that there is an infringement against Community law in a member state, it first takes up informal contacts with the competent national authorities in order to discuss the details and possible problems concerning the execution of the affected measure. Depending on the results of these informal discussions, the Commission can send a letter of formal notice, in which it asks the relevant state to submit its observations regarding the suspected breach. In this vein, the member state shall be given the opportunity to clarify potential obscurities and problems within the transposition process and eliminate them if necessary. If a consensual solution is not found even at this level, in a third step, the Commission gives a reasoned opinion explaining to what extent the affected member state has infringed the Community law. Beyond that, the state will be given a time-limit within which the detected transposition deficits have to be redressed. If the member state does not comply with the obligations resulting from the reasoned opinion within the given time-limit, the Commission can appeal to the European Court of Justice (see Jordan 1999; Börzel 2001).

We decided to rely on the letters of formal notice for two reasons. First, in view of the relatively short duration of the membership and the occurrence of a series of bilateral discussions between the Commission and the competent national authorities, the letters of formal notice represent the action which provides for the most complete empirical information about the state of transposition in the NMS. Second, the measurement of transposition effectiveness through the letters of formal notice received is more fine-grained than approximating it through reasoned opinions since they are meant to address any potential problem within the transposition process and not only persistent ones. Accordingly, we expect the letters of formal notice to offer a more realistic account of what is happening in the NMS with regard to transposition than reasoned opinions or referrals to the European Court of Justice.

Nevertheless, for providing a balanced discussion of the data quality, we must state that the Commission data have also been criticized for a number of reasons. Most importantly, the data suffer from partial inconsistencies and incompleteness (Jordan 1999; Börzel 2001; Knill 2006). Nevertheless, these data still provides the only comprehensive source for judging the transposition effectiveness of European policies. Consequently, they are broadly applied for research purposes (see e.g. Tallberg 1999, 2002; Mbaye 2001; Perkins and Neumayer 2007). Moreover, we argue that for the purpose of this study, the data are adequate since data inconsistencies reported by some authors mainly refer to their longitudinal character. In fact,

the Commission did change the basis for the collection and assignment of transposition failures. However, for the period from 2004 to 2007 the same method of data collection was applied. Additionally, we regard the data to be relatively complete since we are exclusively interested in problems of formal transposition but not practical application in a wider sense.

4.2. Findings of the descriptive analysis

After having clarified the operationalization of the variables, we now turn to the empirical analysis. The data for the number of letters of formal notice allow for identifying county-specific transposition patterns. In this sense, [Figure 1](#) presents a bar chart of the mean number of formal notice letters received by the ten NMS that joined the EU in 2004, and the number of formal notice letters received by Bulgaria and Romania in 2007. We decided to take the average values since this procedure takes into account the years of membership, which corrects for potential cumulative effects in the number of notification letters received.

[Figure 1](#)

The bar chart shows that the transposition behaviour clearly varies across the single NMS. The best-ranked countries in terms of the lowest mean number of notification letters are Lithuania, Hungary and Slovenia. They are followed by Cyprus, Estonia, Latvia, Malta, Poland, and Slovakia. The three countries ranked lowest are Bulgaria, the Czech Republic, and Romania. In fact, immediately in 2007, i.e. the year of EU accession, Bulgaria received 80 and Romania even 195 letters of formal notification. Yet, the placement of Bulgaria and Romania in the lower end of the country ranking is not overtly surprising. In several screening reports, the Commission highlighted the need for a further reform of Bulgaria's and Romania's judicial structures as well as the need for further efforts to fight against corruption and organized crime, and to achieve a better integration of the Roma community (Noutcheva 2006; Krizsan 2009 this issue; Schweltnus et al. 2009 this issue). The slow pace of Bulgarian and Romanian political reform was also reflected by the postponement of their accession to 2007 (see Trauner 2009 this issue).

The comparatively poor transposition performance of the Czech Republic is somewhat puzzling since case study evidence from single policy fields, such as environmental policy, points to the opposite direction (see e.g. Andonova 2003). Our results hence rather support the more general findings for the state of EU policy implementation in the Czech Republic as reported by Steunenbergh and Dimitrova (2007), and the findings of Wiedermann (2008) in the field of Czech labour and social policy reform.

When further considering the mean change in the number of formal notice letters received by the ten countries that joined the EU in 2004 as presented by [Figure 2](#), the picture for EU law transposition in the Czech Republic looks less grim. In fact, the figure reveals that the highest reduction rate is denoted for the Czech Republic. Other NMS that show a reduction are Cyprus, Estonia, Latvia, Malta, and Slovakia. By contrast, an increase is notable for Hungary, Lithuania, Poland as well as Slovenia. While it would be premature to extract any regularity from this illustration, it can easily be recognized that in the course of time the good performers tend to experience an increase in the mean number of formal notice letters.

[Figure 2](#)

In this regard, it is a serious setback that, so far, no additional data are available for Bulgaria and Romania. Once more data are accessible, an analysis of the changes in the average transposition performance may be a worthwhile undertaking for evaluating the transposition behaviour in a more nuanced manner. Here we must limit ourselves to pointing at these developments as a starting point for future research.

4.3. Findings of the correlation analysis

How can these differences be explained? To address this question, we calculate Pearson correlation coefficients since the number of observations is too small to run more powerful estimation models for count data. The Pearson correlation coefficient ranges from (-1) to 1. A value of 1 indicates that there is a perfect positive linear relationship between two variables, with all data points lying on the same line and with Y (dependent variable) increasing with X (independent variable). A score of (-1) shows that all data points lie on a single line but that Y increases as X decreases. Finally, a coefficient with the value 0 shows that there is no linear relationship between the variables. The Pearson correlation coefficient represents a very basic statistical tool, but in view of the characteristics of our data also the most appropriate one. Table 2 reports the four correlation coefficients and states whether we find preliminary support for our conjectures. The significance levels are given in parentheses.

Table 2

With the exception of adaptation pressure, all explanatory variables turn out to be significant with the predicted sign. The coefficients of the variables measuring pre-accession policy alignment and administrative capacities are significant at the 1-percent level, whereas the coefficient of the trade variable is significant at the 5-percent level. As predicted by the theoretical reasoning, the sign is negative in all of these three cases. From this it follows that we do not find any evidence for a ‘strategic’ pre-accession alignment in a sense that the NMS tend to transpose EU laws less effectively once they have become full members. In substantive terms, our results imply that the more a country is economically interlinked with the Common Market, the better its political commitment to bring its policies into line with EU law already before accession, and the higher its administrative capacities are developed, the better is its transposition performance.

The highest correlation coefficient is observable for administrative capacity, indicating a rather strong – although not perfect – negative linear relationship between both variables. As a consequence, administrative capacity must be regarded as the key variable when scrutinizing transposition performance. This finding matches with Sedelmeier’s (2008) argument that post-accession transposition in the NMS can principally be explained by investments in bureaucratic capacity-building. In more general terms, it confirms the theoretical reasoning underlying the management approach. Though slightly weaker, our findings also parallel the estimation results reported by Perkins and Neumayer (2007) for the impact of intra-EU trade on the transposition behaviour of the EU-15. Consequently, this particular factor seems to affect ‘old’ and new member states in a similar way.

The finding that reaches beyond the state-of-the-art research on the transposition of European law relates to the significant impact of pre-accession policy alignment. Our result somewhat underlines the adequacy of the analytical perspective taken by Steunenberg and Dimitrova (2007), but its implications are more far-reaching. In fact, this finding shows that the transposition behaviour of the NMS involves some structural, path-dependent characteristics that cannot be easily changed in the short-run. This entails that changes in the transposition behaviour of the NMS will depend on whether the more flexible or path-dependent dimensions will dominate the domestic transposition process.

This finding has important implications for future research. First, scholarly research focusing on the analysis of post-accession transposition should explicitly take pre-accession preferences into account. This entails the need for carefully theorizing and measuring the relationship between pre- and post-accession behaviour. Second, it would be worthwhile to conceive of the forming of these preferences as an endogenous variable and to explore how they are formed and whether they are indeed temporally stable as we assumed here.

5. Conclusion

In this paper we examined the transposition effectiveness of EU legislation in the twelve NMS of the EU in the post-accession period from 2004 to 2007. We showed that transposition deficits as measured by the number of letters of formal notice vary across the NMS. Our descriptive analysis highlighted that the more a NMS is economically interlinked with the Common Market, the better its political commitment to bring its policies into line with EU law already before accession, and the higher its administrative capacities are developed, the better is its transposition performance. The significant effect of the pre-accession transposition record on post-accession EU law transposition also shows the path-dependency between pre- and post-accession behaviour and therefore represents an aspect which may not be easily modifiable in the short-term. Future research may approach this phenomenon from a more fine-grained empirical analysis, involving more clear-cut research questions and process tracing. Another promising venue for future research may be given by a sector-specific analysis of the transposition behaviour of the NMS in order to find out whether there are patterns similar to those detected for the EU-15 countries.

As a closing remark, we underline that the data considered for this analysis only cover a rather early period of membership. In other words, the data might just report phenomena of transition, i.e. neither the Commission monitoring nor the full range of formal transposition problems in the NMS might have reached their 'full levels'. As a result, our findings should be regarded as preliminary ones – also in view of the fact that we merely use very basic analysis techniques. It is well conceivable that over the next years not only empirical differences but also the differences in theoretically accounting for them gradually disappear between old and new member countries. To overcome these problems for the time being, it might be a useful approach to systematically compare the transposition performance of the NMS with the performance of the EU-15 during their first five years of membership.

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Endnotes

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(1) For a systematic overview of the literature on how EU policies are being put into practice by the member states see Radaelli (2000), Mastenbroek (2005) and Treib (2008).

(2) Of the thirty-one chapters in total, we excluded the transitional arrangements of chapter 30 on institutions as they merely refer to representation and voting issues at the supranational level.

List of Tables and Figures

Table 1: Summary statistics of the explanatory variables

Variable	Number of Observations	Mean	Standard Deviation	Minimum	Maximum	Data Source
EU trade	48	.707	.243	.287	1.12	International Monetary Fund/ World Bank
Pre-accession alignment	48	-1.86	19.99	-34.2	28	Hille and Knill (2006)
Administrative capacities	48	.758	.406	-.094	1.25	World Bank
Adjustment pressure	48	23.67	6.62	17	37	Commission

Table 2: Correlations between transposition effectiveness and explanatory variables

		Notice letters	EU Trade	Confirmation
Conjectures 1	Notice letters	1		yes
	EU Trade	-0.3168 (0.03)	1	
		Notice letters	Pre-Accession Alignment	Confirmation
Conjectures 2a and 2b	Notice letters	1		yes (2a)
	Pre-Accession Alignment	-0.4961 (0.00)	1	
		Notice letters	Administrative Capacity	Confirmation
Conjectures 3	Notice letters	1		yes
	Administrative Capacity	-0.6266 (0.00)	1	
		Notice letters	Adaptation Pressure	Confirmation
Conjectures 4	Notice letters	1		no
	Adaptation Pressure	0.1868 (0.20)	1	

Figure 1: Bar chart of the mean number of formal notice letters received by the NMS between 2004 and 2007

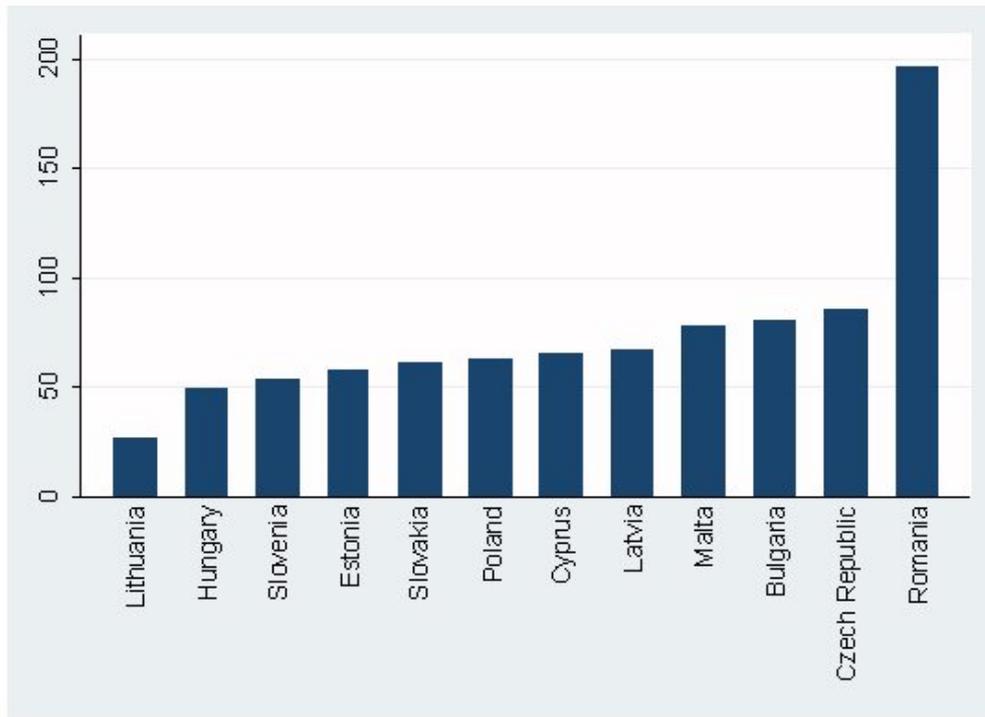


Figure 2: Bar chart of the mean annual change in the number of formal notice letters received by the NMS between 2004 and 2007), excluding Bulgaria and Romania

