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Introduction: Post-accession compliance in the EU's new member states*

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1. Post-accession compliance: what's at stake?

In May 2004, ten new member states, mainly from Central and Eastern Europe (CEE), joined the European Union (EU), to be followed in January 2007 by Bulgaria and Romania. This completed not only the biggest but also the most complex and elaborate enlargement round in the history of the EU. Whereas accession always requires the candidate countries to adopt the entire acquis communautaire (with no more than temporary derogations), this process has never before been accompanied by such extensive programming, conditionality, and monitoring as in Eastern enlargement. To some extent, this resulted from the fact that the EU's acquis itself had become more complex and demanding than in earlier times. Above all, however, it reflects the situation that the CEE candidates for membership still had to grapple with their double and in some cases triple transformation from

- autocracy to democracy,
- planned economy to market economy, and
- multinational to independent statehood, when they embarked upon the path to EU membership. In this situation, the EU considered special attention to political conditions, additional requirements beyond the acquis (such as protection of national minorities or administrative reform), and detailed and continued monitoring imperative.

Five years after the 2004 enlargement, there are both practical and theoretical reasons for studying the new member states' compliance with EU rules. At a practical level, it would be useful to know whether the EU's efforts during the accession process have paid off. Have the new member states successfully adopted the acquis communautaire? Do they comply well with EU legislation? In particular, do they not only transpose EU legislation into national legislation correctly and on time but also apply and enforce EU rules in their domestic administrative

practice? This is all the more important as the functioning of the EU as a multi-level governance system with weak central administrative resources and implementation capacity relies strongly on effective national implementation. It is also a politically salient issue because of the widespread concern that at least some of the new member states might have been admitted before their administrative and judicial systems were ready.

At a theoretical level, the study of post-accession compliance is interesting because the literature on pre-accession compliance attributes the candidate countries' adoption of EU rules predominantly to credible EU accession conditionality (Grabbe 2006; Schimmelfennig and Sedelmeier 2004; 2005). More precisely, this literature explains pre-accession compliance by a rationalist bargaining model, which assumes actors to be rational utility-maximizers calculating the material as well as political costs and benefits of adopting and implementing new rules. In this view, sizable and credible external EU incentives are necessary in order to overcome opposition to EU rules by national governments or other domestic veto-players incurring costs from rule adoption.

During the accession process, these conditions for effective rule transfer were generally favorable. EU membership was highly attractive, even indispensable, for the CEE countries but much less so for the old member states. This constellation gave the EU the necessary bargaining power to dictate the terms of accession for the candidates and to enforce its conditionality. Selective invitations to accession negotiations in 1997 and 1999 also lent the EU's accession conditionality high credibility. They demonstrated that, whereas the EU was serious about Eastern enlargement, non-compliant applicants would not be considered. To the extent that EU rules were clear and determinate, and the EU signaled that adopting them was necessary to complete the accession negotiations, the EU was able to overcome potential domestic opposition and ensure pervasive rule adoption in the candidate countries (Schimmelfennig and Sedelmeier 2005). In this view, accession poses a major challenge to compliance: if pre-accession rule compliance was mainly motivated by external incentives that ended with membership, then domestic preferences, costs and veto-players might well trump in the post-accession period. The prospects for a successful implementation, and the sustainability of already adopted rules, thus appear rather bleak (Epstein and Sedelmeier 2008).

Initial empirical studies of the new member states' compliance record offer an ambivalent picture. On the one hand, the formal compliance record of the new member states, as conveyed in the Commission's infringement statistics, is on average better rather than worse than that of the old member states (Sedelmeier 2008: 811-816). This is true for the transposition of EU legislation as well as infringements of EU law. In addition, the new member states settle infringement cases faster than the old member states. Sedelmeier cautions, however, that the good compliance behavior could be a result of acquired habits and routines of the accession process and thus might disappear in the future. Moreover, because of undetected non-compliance, the Commission data might not give an accurate picture of the true situation in the new member states (Sedelmeier 2008: 818-822). This note of caution is supported by a comparative analysis of compliance with EU social policy (Falkner, Treib, and Holzleithner 2008), which expands an earlier study of the same issues in the old member states (Falkner et al. 2005). In this study, the new member states examined (the Czech Republic, Hungary, Slovakia, and Slovenia) end up in a "world of dead letters", in which decent transposition is followed by a neglect of practical implementation. Although this "world" also encompasses old member states such as Italy and Ireland, it is striking that all studied new member states, which include the frontrunners of transformation, have significant problems of implementation. The apparent gap between the strong formal and the weak practical compliance record of the new member states certainly needs to be studied further but, if confirmed, would constitute a major puzzle for research on post-accession compliance.

The generally pessimistic outlook needs to be further specified and nuanced at the theoretical level as well. On closer inspection, it rests on two questionable assumptions. First, weak post-accession compliance only follows from the external incentives model if we assume that accession conditionality has only had an extremely shallow impact on the candidate countries.

Since, however, the pre-accession period has been characterized by the creation of new actors and policy constituencies that benefit from and support the EU's rules, the disappearance of some controversial issues, or the weakening of non-conforming parties or interest groups, the pressure for policy reversal or non-compliance may be much weaker than suggested. The inertia of compliance-friendly pre-accession routines suggested by Sedelmeier (2008) also falls into this category of longer-term or indirect effects of accession conditionality.

Second, the pessimistic prediction does not take into account that other mechanisms could compensate for the absence of accession conditionality – even if pressure for policy reversal was high or would grow in the future. There are four main sources of compensation that may contribute to explaining why compliance has not suffered across the board (see also Epstein and Sedelmeier 2008; Schimmelfennig and Sedelmeier 2005).

1. We find post-accession conditionality in some areas of EU policy, e.g. monetary policy and movement of persons because EU membership did not automatically include participation in the EMU and Schengen regime. In these cases, we would assume continued relevance of the factors highlighted by the external incentives model: credibility and size of incentives as well as domestic costs.
2. Conditionality may be replaced by alternative external incentives. These include mainly the monitoring and sanctioning mechanisms that the EU has in place to ensure compliance among its member states, although it will probably take some time until these mechanisms are fully operational and generate compliance effects in the new member states. In policy areas in which EU competences are weak, other international organizations may fill the gap, e.g. the Council of Europe with its European Court of Human Rights in the field of human rights.
3. External incentives may be replaced by alternative external influences. During the accession negotiations, the attraction of membership and the threat of being excluded were bound to trump and overshadow alternative international influences. With short-term and massive conditionality receding into the background, these processes will have more room to thrive. First, financial and technical support for administrative and judicial capacity-building can prevent involuntary non-compliance and strengthen domestic compliance capacity. Second, more indirect and long-term processes such as transnational exchanges and social learning may lead to norm-conforming change in societal and governmental preferences in the new member states. As a result, external sanctioning would lose its relevance and non-compliance would be less likely to occur.
4. Even in the absence of alternative external influences, the external incentives model would not under all circumstances predict the complete formal reversal of externally induced rules. First, the revocation as well as the initial adoption of rules is strongly dependent on the domestic political constellation, i.e. the threat of a policy reversal would be imminent only in the case of political forces opposed to the rule forming a post-accession government. Second, conditionality may have induced institutional changes (e.g. constitutional provisions) that cannot be reversed by simple majorities and are upheld by domestic control mechanisms (e.g. a constitutional court) acting as veto players. Third, it may be less costly to uphold formal legislation or to keep institutions in place but then undermine implementation through cuts in funding or restrictive regulations.

Whether there are such longer-term conditionality effects and compensating mechanisms, and how and under what conditions they work, constitutes a second major set of research questions for studies of post-accession compliance. The contributions to this special issue seek to provide first answers to these questions.

2. An overview of the contributions

The authors address the issue of post-accession compliance in the EU's new member states from different angles. While some articles apply a broad research focus comparing several countries and/or policies (Dimitrova/Toshkov; Knill/Tosun; Schwellnus/Balázs/Mikalayev;

Sedelmeier), others provide for an in-depth analysis of the dynamics of post-accession compliance in only one (Krizsan, Maniokas) or two (Trauner) new member states. An additional comparative dimension concerns the research on compliance behavior over different time phases (pre-accession versus post-accession) (Schwellnus/Balázs/Mikalayev; Sedelmeier).

Comparative axes	Authors
Time-phases (pre- versus post-accession)	Schwellnus/Balázs/Mikalayeva; Sedelmeier
Policies	Dimitrova/Toshkov; Schwellnus/Balázs/Mikalayeva
Countries	Dimitrova/Toshkov; Knill/Tosun; Schwellnus/Balázs/Mikalayeva; Trauner; Sedelmeier
Single case studies	Krizsan; Maniokas;

Moreover, the individual articles provide a basis for comparing the compliance of the new member states at different stages of the implementation process: transposition, enforcement and application. While the transposition of EU law forms part of the research of all the contributions(1), some articles also deal with the later stages of enforcement and application (Kriszan; Maniokas; Sedelmeier; Trauner). In particular, these articles focus on how EU law is effectively put into practice on a day-to-day basis. The enforcement and application of EU law is a decentralized and complex process involving a range of societal, economic and political actors, although the government has the overall responsibility for properly implementing the law (Falkner et al. 2005: 5-6).

The implementation process	Authors
Transposition only	Dimitrova/Toshkov; Knill/Tosun; Schwellnus/Balázs/Mikalayeva
Transposition plus enforcement and application	Kriszan; Maniokas; Sedelmeier; Trauner

Explaining the transposition behavior of the new member states forms the research interest of Christoph Knill and Jale Tosun (2009). By looking at the transposition deficits measured by the number of letters of formal notice of all new member states, the authors identify a strong variation in the transposition behavior of the Central and Eastern European states. Transposition failures are seen to be mainly related to three explanatory variables: the extent of trade with the EU, bureaucratic capacity and the country's performance in terms of pre-accession policy alignment. The significance of the last variable points to the path-dependency between pre- and post-accession transposition performance and makes the authors highlight the relevance of structural factors in the process of implementing EU law.

Antoaneta Dimitrova and Dimiter Toshkov (2009) focus on the impact of administrative capacity, defined as the coordination capacity for EU affairs, and political salience on post-accession transposition of EU law. Applying a mixed method approach they demonstrate that there is a strong and robust connection between the EU coordination systems of the new member states and their transposition success. However, the strength of the domestic EU coordination structures is not a sufficient pre-condition for the transposition of EU measures of high political salience that meet considerable domestic opposition. The authors substantiate their argument by exploring the transposition of two EU directives of very distinct nature to four new member states, on the one hand the politicized racial equality directive and on the other hand the mainly technical vibration directive.

The importance of administrative capacity and of maintaining the pre-accession institutional infrastructure for achieving a good transposition record is also underlined in Klaudijus Maniokas' (2009) analysis of post-accession compliance in Lithuania. Although Lithuania performs well in terms of transposing EU law, the author argues that shifting the status from a

candidate country to a fully-fledged member state has made successive Lithuanian governments more sensitive to demands of powerful interest groups. The result has been the emergence of cases of voluntary non-compliance. Maniokas maintains, however, that these cases are limited in number, as the fear of sanctions and reputational damage has become a new driver of compliance in Lithuania, replacing the EU's pre-accession conditionality.

Florian Trauner (2009) provides a first analysis at what can be said with regard to post-accession compliance in Bulgaria and Romania, the two latecomers of the Eastern Enlargement. By taking stock of the academic literature and different official sources, the author identifies a likely gap between the transposition and the enforcement of EU law in these countries. While Bulgaria and Romania are good performers with regard to the transposition of EU law, they have not managed to overcome structural shortcomings of their law enforcement structures, pointing to problems at the later stages of the implementation process. The article is concluded by suggesting that the analysis of cross-sectoral variations and differences between Bulgaria and Romania are particularly promising avenues for further research.

In her research on the EU's repercussions on Hungary in the field of equality policy, Andrea Krizsan (2009) demonstrates that some EU mechanisms might succeed in tackling problems at the enforcement and application stage. Social learning and financial assistance based mechanisms are identified as the key factors that have helped improve the problems of law enforcement, in particular with regard to administrative capacity, norm resonance and civil society involvement. The author concludes with the optimistic outlook that these mechanisms have opened space for rule adaptation and behavioral change, leading to slow but steady improvements in Hungary's law enforcement record.

The article of Ulrich Sedelmeier (2009) also deals with EU gender equality legislation yet applies a research perspective different to Andrea Krizsan by comparing the compliance of four new member states across the pre-accession and post-accession period. Assessing the transposition of two directives in the field and the institutional strength of the national bodies created to enforce the gender equality rules, the argument is developed that there appears no evidence for significant differences between pre- and post-accession compliance. To explain the variations of compliance outcomes between the Czech Republic, Hungary, Lithuania and Slovenia, the author conducts a crisp-set Qualitative Comparative Analysis (QCA) and suggests that two causal paths lead to successful transposition and strong equality bodies. These are firstly the absence of high adjustment costs and secondly a combination of strong social democratic governments and NGOs specialized in EU gender equality legislation, although Sedelmeier stresses that neither condition suffices by itself.

A different angle on the issue of post-accession compliance in the EU's new member states is presented by Guido Schwellnus, Lilla Balázs and Liudmila Mikalayeva (2009) who explore the EU's impact on minority protection rules in Poland, Romania, Estonia and Latvia. Minority protection was an important EU political condition for the then applicant countries in Central and Eastern Europe yet it has only a weak foundation in the acquis communautaire. Against this background the authors examine the scope conditions under which minority protection rules are adopted, maintained or revoked. Their multi-value QCA of different time phases, issue areas and countries shows, among others, the importance of favorable domestic conditions for positive change, i.e. a pro-minority oriented governments and veto players in conjunction with small minorities. This path to positive change was empirically the most important one, complemented by a second which included external incentives as a necessary condition.

3. Conclusions

Which general conclusions can we draw from this set of studies on post-accession compliance in the EU's new member states? What do they tell us about the puzzles and problems outlined at the beginning of this introductory article?

On the one hand, the transposition behavior of the new member states is good overall and has not worsened after accession. There is no systematic backlash in formal, legal compliance with EU rules. Even in the most likely case of minority rights (Schwellnus, Balázs and Mikalayeva 2009), a formal revocation of EU-imposed rules has not taken place. There is, however, considerable variation in transposition behavior across countries and policies.

On the other hand, there is a significant gap between transposition, on the one hand, and law enforcement and application, on the other. Even countries with a very good transposition record (such as Lithuania; see Maniokas 2009) face serious application and enforcement problems. These results confirm previous analyses of post-accession transposition, enforcement, and application (Sedelmeier 2008; Falkner et al. 2008). As a consequence, they call even more strongly for an explanation of the double puzzle of post-accession compliance: why transposition has remained so good (in spite of the change in external incentives) and why enforcement and application are considerably weaker.

There is convergent evidence that the transposition record is correlated with bureaucratic capacity and that this capacity has a lot to do with the administrative structures put in place during the accession process. Trauner (2009) shows the challenges to improve the administrative structures post-accession, if they were not properly put in place in the pre-accession period. Knill and Tosun (2009) find that transposition shortcomings decrease as general bureaucratic capacity and pre-accession policy-alignment increase. More specifically, Dimitrova and Toshkov (2009) find a correlation between the strength of EU coordination systems from the accession period and post-accession compliance. Maniokas (2009) also attributes the good Lithuanian transposition to pre-accession administrative capacities remaining in place after accession.

To what extent even strong and EU-oriented bureaucracies are able to shape the implementation record of the new member states depends, however, on the constellation of domestic factors. In line with the theoretical expectations of the external incentives model of pre-accession compliance, these factors gain causal relevance in the post-accession period. In particular, domestic adjustment costs, norm resonance, political salience, and the orientation of domestic veto-players and NGOs were found to be important (Dimitrova and Toshkov 2009; Schwellnus,Balázs and Mikalayeva 2009; Sedelmeier 2009). Favorable conditions for compliance are low domestic adjustment costs, government ideologies that resonate with the rules in question, low issue salience, and supportive domestic veto-players and NGOs. These conditions apply to both pre-accession and post-accession periods. If they are present, the change in external incentives is not relevant but compliance will depend on administrative capacity.

The situation is different when adjustment costs and political salience are high and governments as well as strong domestic interest groups do not agree with the EU rules. Such constellations cause delays and failures in implementation – even if administrative structures are supportive and capable of compliance. In the pre-accession phase, EU accession conditionality could override these obstacles to compliance to some extent. But as Schwellnus, Balázs and Mikalayeva (2009) show in the case of minority rights, conditionality only worked in tandem with pro-minority governments. Other studies indicate that, under adverse domestic conditions, accession conditionality can be compensated by alternative EU incentives and influences. EU legal procedures and sanctions and social influence emanating from threats to a new member state's reputation within the EU appear to have a direct influence on government behavior (Maniokas 2009). By contrast, financial assistance and "teaching" activities work indirectly. Financial assistance strengthens administrative capacity, and social learning supports NGOs and increases resonance. Both will in turn improve compliance in the longer run (Krizsan 2009).

In sum, all contributions agree that the change in EU external incentives – in particular, the disappearance of accession conditionality – had a much less dramatic influence on the new member states' compliance than suggested by pessimistic accounts. It is true that law enforcement and application in the new member states is problematic and that domestic

opposition to EU rules has become more visible and relevant. But the impact of EU conditionality on enforcement and application had been weak even before accession, and its impact on rule transposition – at least in politically salient areas such as minority rights – had always depended on supportive governments and administrative structures in the candidate countries. In addition, the accession process has left its mark in the administration and in civil society organizations that continue to facilitate compliance in the post-accession period. Finally, alternative EU incentives and influences ranging from sanctions to social learning compensate for the more direct accession conditionality to some extent.

More research is needed, of course. Only time will tell whether the continuity of pre-accession and post-accession compliance has only temporary or enduring relevance and whether financial assistance and social learning will have the expected positive medium-term effects on implementation capacity and willingness. The papers assembled here also highlight the need for more comparative work on implementation and across issues. There is a clear imbalance between widespread cross-country analyses of transposition behavior and studies of implementation that are confined to single (or a few) countries and issues.

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Endnotes

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(1) The transposition phase concerns the adoption of relevant national law in order to comply with the EU directive. If appropriate national legislation is adopted and the European Commission notified in time, the EU directive is successfully transposed.

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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 'aquis 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; Schwellnus 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 happing 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; Schwellnus 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 Steunenberg 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

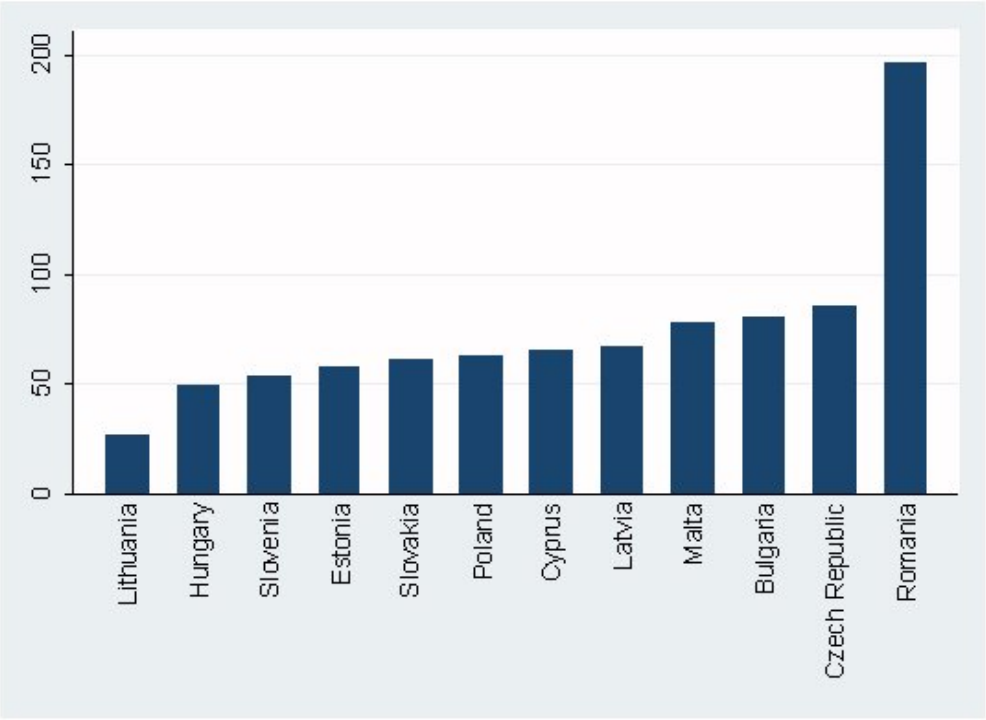
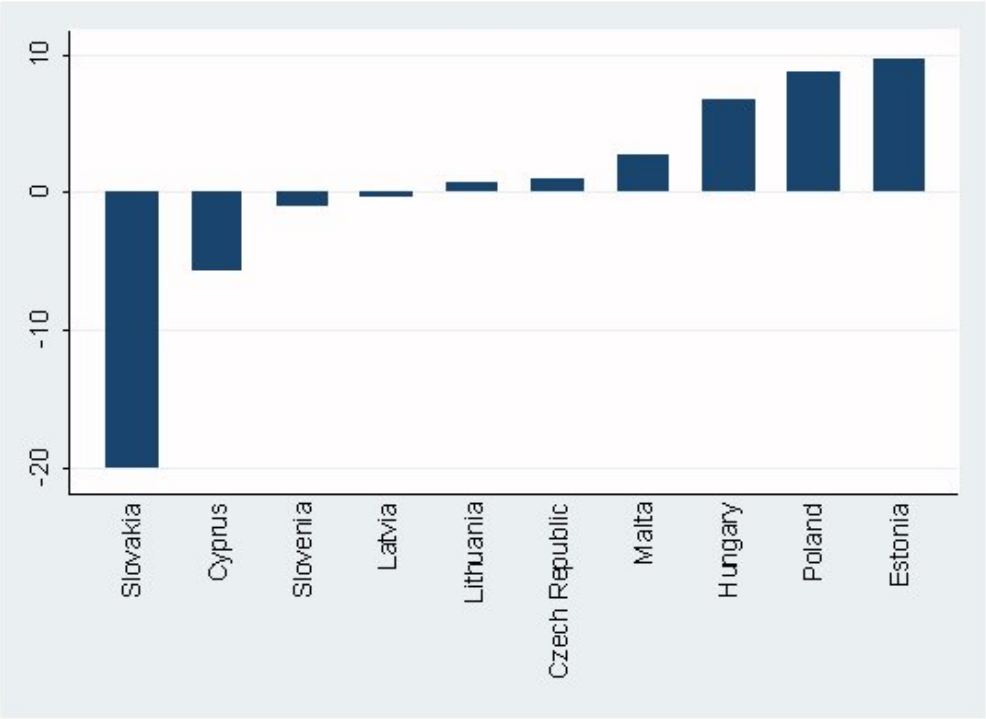


Figure 2: Bar chart of the mean annual change in the number of formal notice letters received by the NMS between 2004 and 2007), excluding Bulgaria and Romania



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

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

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

Table of Contents:

1. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The above discussion leads us to adopt the following hypothesis:

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

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

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

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

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

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

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

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

These considerations lead us to formulate the second hypothesis:

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

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

3. Research design and operationalization

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

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

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

Table 1 about here

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

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

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

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

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

Table 2 about here

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

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

4. Empirical analysis

4.1. Country - level transposition of EU law

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

Figure 1 about here

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

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

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

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

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

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

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

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

4.2. Comparative case studies

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

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

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

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

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

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

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

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

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

4.2.1. The Racial equality directive

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

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

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

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

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

4.2.2. The Vibration directive

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

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

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

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

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

4.2.3. Qualitative comparative analysis

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

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

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

Table 3 about here

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

Table 4 about here

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

(SAL **AND** OPPOS) **OR** ~COORD → DELAY

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

~OPPOS **AND** COORD →~DELAY

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

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

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

5. Conclusion

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

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

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

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

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

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

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

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

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Endnotes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Tables and Figures

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

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

Table 2: EU co-ordination levels in CEE

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

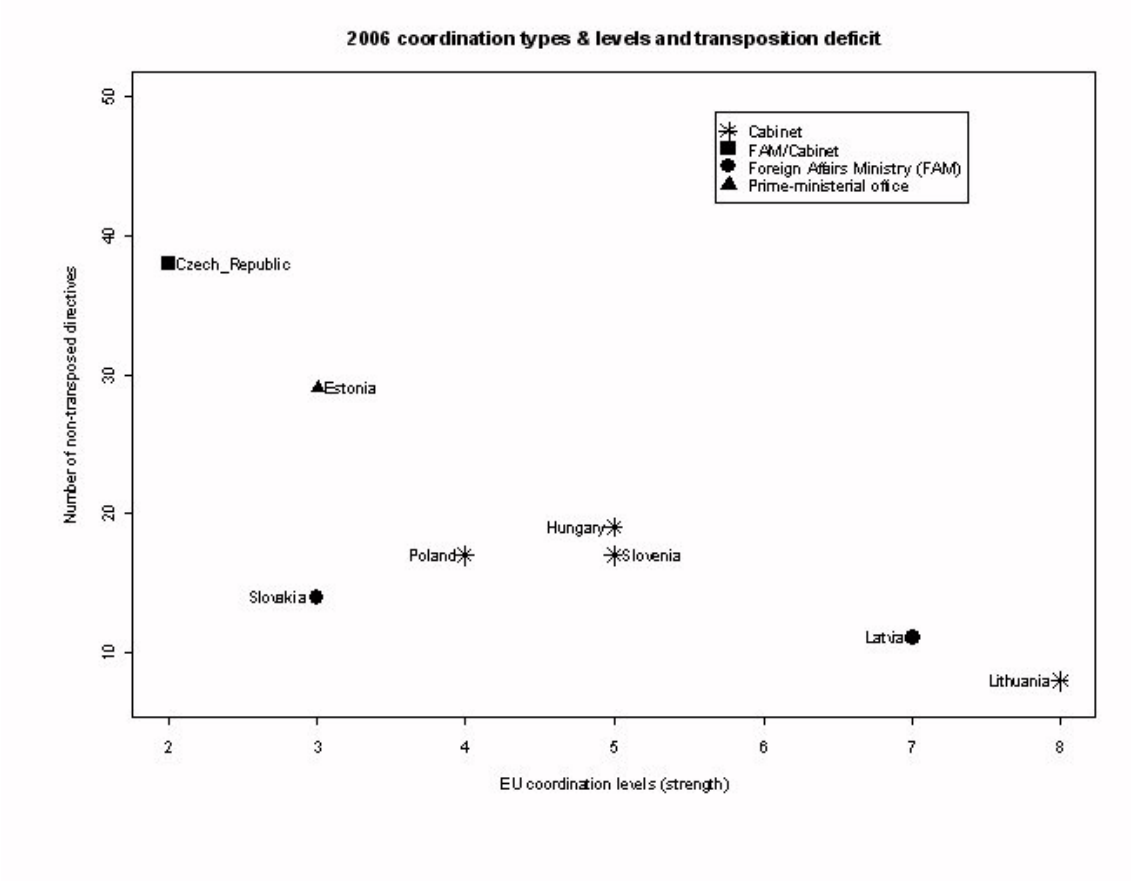
Table 3: Result of the qualitative comparative analysis

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

Table 4: Truth table of the Boolean configurations

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

Figure 1: 2006 coordination types & levels and transposition deficit



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Conditionality and compliance in Lithuania: the case of the best performer*

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Abstract: Data from monitoring reports of the European Commission consistently indicate that Lithuania is among the best performers in transposing and implementing EU law. This article analyses whether this is really the case. Through two case studies – the second gas Directive 2003/55/EC and the closure of the Ignalina Nuclear Power Plant – the paper attempts to verify and explain the results of the monitoring report and finds that, in reality, implementation appears more problematic. Non-compliance due to neglect at the administrative level is not an issue, as the process of EU law implementation in Lithuania is well organized. Special planning and monitoring mechanisms and tools developed to ensure transposition and implementation of the *acquis* remained in place in Lithuania after EU accession. On the other hand, these mechanisms are unable to cope with cases of voluntary non-implementation, which is now practiced more often than previously. However, fear of sanctions and reputational damage has replaced pre-accession conditionality as the main driver of compliance, and effectively limits the number of cases of voluntary non-implementation.

Keywords: Europeanization; non-majoritarian institutions; policy coordination; political science

Table of Contents:

1. Introduction

This article questions if Lithuania's change of status from a candidate country to an EU

member state has led to changes in complying with EU law. Lithuania is particularly interesting in the context of post-accession compliance research. Data from monitoring reports of the European Commission consistently indicate that Lithuania is among the best performers in the transposition of EU law(1).

Table 1 about here

It is difficult to provide a straightforward answer to this question.

- First, there is a lack of comparable data from the pre- and post-accession phases(2) .
- Second, certain data for new member states are simply unavailable, as the time span of their membership has been brief. For example, very few infringement cases launched by the European Commission against new member states have been closed. This short time span prevents generalizations as observed tendencies might be idiosyncratic(3) .
- And, third, it is difficult to track a state's record of implementation because of methodological reasons(4) .

As elsewhere in this special issue, we will distinguish between transposition, enforcement and application of EU law. This article, however, will deal primarily with transposition and enforcement(5) .

The paper will begin with describing the functioning of conditionality in Lithuania during the pre-accession phase and developments in the post-accession period. Then, it will explore the sources of indicators suggesting Lithuania's history of non-compliance and will provide a review of these possible sources. Third, this article will provide a selection of cases for an in-depth examination of past compliance. It will end with conclusions and suggestions for further research.

1.1. Sources

Many compliance studies rely exclusively on statistical data concerning compliance gathered by the European Commission. These sources will be briefly reviewed below. However, the brief time span of new member states' compliance records prohibits one from making far-reaching conclusions. It also points to the need of additional sources. Case studies and qualitative research are particularly important in this context.

This article is therefore based on several cases studies with available statistical data undertaken in one new member state. Case studies, in turn, are supplemented by interviews with government officials, experts and interest groups conducted in the second half of 2008 in Lithuania. Such case studies are still rarely used in compliance literature. Although country specific, these conclusions might help to generate hypotheses, which can be tested in a wider comparative context.

There are several important sources of compliance-related data produced by the European Commission.

- First, there is a series of bi-monthly reports covering the progress of EU member states in transposing EU directives.
- The second important source is the EC's scoreboard concerning the implementation of internal market directives.
- The third source is data on infringement procedures initiated by the European Commission against the member states.

Three stages of the infringement process can be distinguished. The first stage is a formal notice on possible problems of non-transposition or implementation. The majority of these official notifications concern a state government's failure to notify the EU of the transposition in due

time(6), and most are discontinued when satisfactory responses from governments are received. The second stage is a reasoned opinion, and the third is initiation of a case in the European Court of Justice or the Court of First Instance. Reasoned opinions and cases pending in the Courts are indicators of the extent of seriousness of problems of transposition and implementation. The ratio of reasoned opinions to formal notices is a good indicator of the ability of an administrative system to deal with problems detected by the European Commission and expressed in formal notices. Lithuania was clearly ahead of all other new member states(7) with respect to the ability of its administrative system to effectively deal with the transposition of EU directives.

Table 2 about here

So far, however, there are a limited number of solved cases involving new member states(8). Official notifications and reasoned opinions were very few in the first years of membership due to the European Commission's lack of knowledge of a member state – in this case Lithuania(9). This is an important fact to consider, which might indicate a systemic bias in the utilized data.

Table 3 about here

There is an additional source of information on compliance with EU law in Lithuania, which is contained in annual reports on the activities of the Government related to the European Union (LRVK 2004-2007). These reports contain a separate section devoted to the process of transposition and enforcement of EU law in Lithuania.

1.2. Problems and the research framework

The research framework is provided in the introductory chapter of this collection. There are two important dimensions of a theoretical context relevant to this topic. The first dimension relates to the current general state of affairs and conclusions of research on compliance with the EU *acquis*. The second relates to the specific circumstances of new member states and their particular process of Europeanization. The latter is related to the successful use of conditionality which, combined with the powerful enticement of EU membership, brought about quick changes in Central and Eastern Europe (Schimmelfennig and Sedelmeier 2005). The main question of this article specifically and this collection in general is if the degree of compliance changes once this powerful pre-accession conditionality no longer has an effect. Further specifying the general question of this volume, this contribution explores the main reasons for non-implementation in terms of administrative capacities and voluntary non-implementation.

These terms are related to a distinction between management and enforcement approaches to compliance (Tallberg 2002). The Enforcement approach emphasizes the political will to comply as a major cause of a good compliance record. The Management approach places a stronger emphasis on administrative capacities, which essentially determine the outcome.

Finally, there were attempts to address the issue of pre- and post-accession compliance directly (Zubek 2005; Falkner and Treib 2008; Sedelmeier 2008). The main issue addressed in this literature was the presence of a relatively good track record on transposition after accession despite the disappearance of accession conditionalities. This problem became more visible when placed in the context of a prevailing suspicion that quickly transposed EU laws were just "dead letters".

Administrative capacity is understood here as a government's ability to enforce and implement its decisions. It is closely associated with the capacity of the civil service as defined during the pre-accession stage (Sigma 1998). Developments of this capacity together with the process of EU accession were assessed by the World Bank (World Bank 2006). We will also assume that a special system of coordination of transposition and enforcement is an important factor in

matters of compliance(10). As for voluntary non-compliance, we assume that this might be determined by the relative autonomy of a state with regard to interest groups. This autonomy should have diminished after EU accession, as the role of interest groups was no longer kept in check by strict pre-accession conditionality.

The assumption concerning the growing role of interest groups in new EU members states form Central and Eastern Europe (CEE) in the post-accession phase is in line with recent research (World Bank 2006; Pridham, 2008; Sigma 2009; Dimitrova 2010). It suggests that re-politization of the public policy has taken place after accession in these countries. Several new tendencies have been observed. First, as the pressure of conditionality eased, there has been a return to normal politics characteristic of these countries before the pre-accession stage. Second, interest groups generally did not oppose the transposition of new regulations based on the EU *acquis* and EU conditionality, expecting them to remain "dead letters". And, third, there was a tendency toward fragmentation of politics in the CEE demonstrated by higher political instability and weaker coalition governments (Grabbe 2007), which increased the role of interest groups.

It might be provisionally assumed that the high standing of Lithuania with respect to transposition of EU law is related to two factors. The first is common to all new member states and relates to the deliberate choice of these countries to focus their efforts on transposition in the pre-accession phase. As this factor is easier to measure, it remains a point of reference in various implementation studies including implementation reports of the European Commission. It is more difficult to track real implementation; i.e. enforcement after the adoption of a law.

The second factor relates to the pre-accession institutional infrastructure. Lithuania kept an institutional mechanism for planning and monitoring implementation of the EU *acquis* largely untouched after accession, which might explain positive transposition results in the post-accession phase(11) and its good record of reasoned opinions. This thesis is similar to the one offered by Sedelmeier (2009 this issue) and Dimitrova and Toshkov (2009 this issue) who argue that a special legislative and coordination capacity could explain a new member state's good track record.

Our preliminary hypothesis therefore is that administrative capacities created during the accession period determine a generally positive track record in the post-accession phase. However, this administrative capacity is being weakened in the absence of strong EU conditionalities. Moreover, in the absence of a strong EU pressure, the role of interest groups is growing, which leads to cases of voluntary non-compliance. Using the approaches of management and enforcement, we claim that the pre-accession phase could be better explained through the management approach, while an enforcement approach becomes more relevant in the post-accession phase. This means that administrative capacities largely determined the compliance record in the pre-accession phase. EU conditionality helped deter the political will to interfere in matters concerning the implementation of EU law. In the post-accession phase, this political will is less restrained by the EU and can influence the compliance record through voluntary non-compliance or through weakening the administrative structures created to ensure compliance during the pre-accession period. In Lithuanian's case, this leads to the hypotheses that, due to a strong administrative capacity inherited from the pre-accession phase, all major cases of non-compliance are the result of voluntary non-compliance.

Finally, we assume that implementation is the result of a simple fear of sanctions implied by EU law. Yet another factor is sensitivity to "naming and shaming", which is seemingly high in new member states (Sedelemeier 2008). In addition there could be an administrative inertia driving compliance despite the negative cost/benefit ratio for a specific country concerning a specific part of the *acquis*.

2. Pre-accession EU conditionality and post-accession environment

2.1. The development of pre-accession conditionality and its outcomes

The development of accession conditionality and its impact on new member states is a well-researched topic. There were also particular studies conducted on Lithuania in this area (Maniokas 2003; Maniokas, Vilpišauskas and Žeruolis 2005). The pressure to reform due to pre-accession conditionalities was strong. It was particularly important in Lithuania and the so-called "second group" of candidate countries, which were not able to begin accession negotiations with the first group. The influence was broad in scope because of additional membership conditions, such as the Copenhagen criteria and accession partnerships. This time period was condensed because, in only a few years, the former candidate countries had to transpose and implement the whole *acquis*. The candidate states were considerably receptive to EU influence. This receptivity could be attributed to two factors: One was a weak, or in some cases virtually non-existent, institutional structure. This is particularly true for the Baltic States and Lithuania in particular, which were completing state-building process at that time. And, second, the candidate countries had eagerly taken the *acquis* and other membership conditions as a blueprint for their comprehensive transformation and modernization of their economy and public sphere. Finally, the acceding countries had no possibility to influence the outcomes of European policy-making.

The result of this enormous impact on the Lithuanian institutional system could be summarized by a concept of a regulatory state (Maniokas 2003), which was created through EU-stimulated development of regulatory policies and non-majoritarian institutions. The latter could be characterized by the institutions' relative autonomy from political interference and by reliance on technical expertise. The EU pressured Lithuania to consolidate the autonomy of judiciary and public administration through the use of the political criterion of membership. In the area of economic regulation the EU promoted the establishment of an entire set of supervisory institutions, which could be labelled non-majoritarian agencies. Their competence was safeguarded by relevant laws. These institutions were modelled according to those of other EU members, but in many cases were made more autonomous than their counterparts in other states.

Post-accession environment in Lithuania could be characterized by several considerations. First, the post-accession EU policy of Lithuania is not ambitious and lacks targeted policy goals, explicit agreement on the priorities of the country after accession, or even on major EU-related issues. Although the Parliament and Government use a system of prioritization differentiating particular EU norms to indicate their degree of importance for Lithuania, this system is mostly formal and driven by public servants. It is not linked to substantial domestic political priorities. This lack of ambition and strategic approach to the EU after accession is mainly caused by the lack of political interest in and vision of EU matters. The country's political system remains fragmented and is dominated by coalition governments, which tend to focus on domestic concerns. The European neighbourhood policy and energy issues – particularly the security of energy supply and price increases after the closure of the Ignalina nuclear power plant – are two exceptions of issues that receive substantial attention from coalition governments(12).

Following accession, there were attempts to reverse institutional reforms, initially to limit the autonomy of regulatory agencies established for the implementation of the EU *acquis*(13). This is especially evident in the case of the State Energy Pricing Commission and the Competition Council. The State Energy Pricing Commission had experienced periods of heightened pressure from the central and municipal governments with regard to the regulation of heating prices. The selection of Commission members was reported to be influenced by interest groups. Polarization of appointments and activities of the regulatory agencies were also observed in other policy areas.

There was recently a similar pressure to streamline governance and increase responsiveness of the administrative system to political decisions. In an effort to reduce the number of holders of budgetary appropriations, a number of regulatory agencies were scheduled for integration into the programs of line ministries. The new Government in Lithuania is planning further measures in this regard(14).

The role of interest groups and other social partners in the management of EU affairs was limited during the pre-accession phase (Maniokas, Vilpišauskas and Žeruolis 2005). It remains limited in the process of coordinating EU policy in the post-accession phase (Maniokas and Vilpišauskas forthcoming). Specific lobbies, such as the lobby for manufacturers competing with cheaper imports from third countries, are the most active and effective. However, the role of interest groups in domestic policy-making is becoming more important. Weak coalition governments of the post-accession era have depended on powerful interest groups. Domestic policy, especially economic policy, which was largely isolated from political interference in the pre-accession phase, has been in the gradual process of re-politization(15).

2.2. Institutional infrastructure for coordinating the implementation of EU law

Institutional infrastructure for tracking transposition and, to a certain extent, implementation, is well developed in Lithuania, and has remained rather stable throughout the pre- and post-accession phases. It could be characterized by

1. highly developed rules, procedures and a well-functioning exchange of information;
2. a clear division of competences;
3. a clear and uncontested leadership of the Department of Co-ordination and Monitoring of European Law Implementation in the Office of the Government; and
4. a functioning mechanism for resolving inter-agency disputes over competences.

The final example is typically a major cause of non-transposition. If these disputes are resolved at an early stage, there is a chance of achieving a positive record in transposition. Points 3 and 4 are related, as clear institutional leadership contributes heavily to the ability of the system to solve disputes over competences. It should also be added that a formal leadership (assignment of the coordinating function by a legal act) is well supported by the institutional arrangement of the department and civil servants working within it. Most the civil servants continue their work from the pre-accession period, and a sense of trust and confidence has developed between them and line institutions. A specific factor contributing to the first point is the special information management system LINESIS, initially developed during the pre-accession stage and then adjusted for the post-accession period. It is considered one of the best systems of its kind functioning in EU member states (World Bank 2006, assessment of interviewed experts). The system has a specific sub-component developed to plan the transposition and enforcement of the newly adopted *acquis*, as well as to monitor it.

Transposition or implementation of every newly adopted EU legal act is assigned to a responsible Lithuanian institution, which further engages in the planning, preparation, adoption and implementation of necessary measures. Within three weeks of the assignment, responsible institutions have to submit concrete plans for the transposition and implementation of the act to the Office of the Government. Following the submission, a single national program for transposition and implementation of EU law is prepared and constantly updated. The program specifies the dates for preparation and adoption of relevant Lithuanian laws. This plan and briefings on its implementation are presented and discussed monthly in the meetings of the Ministries' State Secretaries. Arising problems are addressed in special meetings organized by the Office of the Government, while the most difficult questions are included into the agenda of the Government's Strategic Planning Committee or the Government's meetings. Questions related to drafting and adoption of laws that implement the provisions of EU law are discussed every month in the meetings of the Committee on European Affairs of the Parliament.

On average, Lithuanian institutions transpose over 100 directives into national law every year,

and implement over 2000 regulations and decisions. For this purpose, approximately 50 laws, 30 Government regulations and 200 legal acts on the level of Ministerial orders are adopted annually. These tasks are accomplished by using the LINESIS information management system.

Figure 1 about here

3. Implementation of EU law after accession

Several cases were selected to test if implementation of the EU *acquis* in Lithuania is as good as transposition, and to look for possible explanations. First, we will look into the cases of infringement that attempt to establish if these cases are linked to a lack of administrative capacities or if they are cases of voluntary non-compliance. Then we will examine two cases of attempted voluntary non-implementation. The first case is the case of closure of the Ignalina Nuclear Power Plant (Ignalina NPP). It was a major, though unsuccessful, attempt of voluntary non-implementation following accession. It may therefore help to look into the new mechanisms replacing pre-accession conditionality. The second case is a seemingly successful attempt of voluntary non-implementation related to the second Gas Directive 2003/55/EC.

3.1. Cases of possible infringement

There were only three such cases initiated against Lithuania in 2004-2007. In the field of telecommunications, on June 7, 2007, the European Commission initiated a case against Lithuania for the possible breach of obligations under Directive 2002/22/EC on universal services (Article 26.3). It was related to a failure to set-up a fully functioning service to be provided through the emergency number 112. This issue was not specific to Lithuania; The EC initiated action against 13 member states regarding this particular directive (6 of them were new member states). The reason for non-implementation was the considerable budgetary and organizational resources needed for the infrastructure of this service. This case can hardly be related to voluntary non-implementation. The second case was related to Directive 2001/83/EC as amended by the Directive 2003/63/EC on the marketing of pharmaceuticals within the EU internal market. The EC accused Lithuania of authorizing the marketing of a product that did not satisfy the requirements of this directive. The case has not been closed yet, and it is also not an obvious case of non-implementation. However, in this instance there was an obvious presence of an interest-based line of action, as this product is produced by a Lithuanian company that exercised a considerable pressure on the Government to authorize marketing of the product. Furthermore, a counter-balancing pressure was exerted by a US pharmaceutical company that wished to protect its own product. Even if the final outcome of the case is disregarded, the case indicates an increasingly important role of interest groups in the process of implementation of EU law. Administrative capacities hardly played a role in this case.

The third case concerned citizenship requirement for the exercising of professional activities of notaries, which the European Commission considered in breach of provisions of the Directive 89/48/EEC regarding the recognition of diplomas. In this case, Lithuania was brought to the Court along with other member states, including Germany, France, Austria, Belgium and Luxembourg. This case is hardly a straightforward case of non-implementation as it relates to a genuine difference of interpretation of the provisions of EU law.

To conclude, while the number of cases in which Lithuania was referred to the Court by the European Commission has been very limited and their resolutions still uncertain, only one of the three cases is related to the presence of interest groups. Due to a limited number of cases of infringements, there is a need to look into the cases of attempted infringements and cases of de facto non-implementation, which were not registered formally. The first case study was chosen by its significance. It deals with a major attempt of infringement publicly undertaken by the Government of Lithuania. The second case was selected by looking into the areas where the stakes for voluntary non-compliance could be high due to the economic importance and

presence of strong interest groups. Moreover, this area must be regulated by the EU law.

This definite choice for the second case is the sector of energy. It is significant economically, and powerful economic interest groups are present, such as owners of vertically integrated companies targeted by EU law to be functionally or legally separated. We will look into the main issues of compliance in this area and will analyse the implementation of one important piece of the EU *acquis*. The second case will concern de facto non-implementation.

3.2. Closure of the Ignalina Nuclear Power Plant

This is an effective case to test the rationale behind compliance before and after accession. The Ignalina NPP was likely the most important issue during Lithuania's accession negotiations (Maniokas and Stanionis, 2005). Closure of the plant was an informal condition of Lithuanian membership in the EU. Negotiations concerned closing two Chernobyl type reactors of Lithuania's only nuclear power plant, which generated approximately 80% of the energy in Lithuania, in exchange for EU assistance.

Negotiations with the EU on the decommissioning of the Ignalina NPP began in 1999, well before the official start of EU membership negotiations. To a great extent, this issue determined public opinion regarding the outcome of accession negotiations. Lithuania had to agree to the EU's principal position to close the plant, but managed to attain considerable compensation, which the EU initially did not intend to grant. At Lithuania's insistence, the EU accepted that decommissioning of Ignalina NPP was a matter that concerned the entire EU and therefore had to be solved in solidarity. It also admitted that the decommissioning costs were related not only to a direct decommissioning of the NPP, but also to the modernization of the entire energy sector of Lithuania. As a consequence, a special EU financial facility was deployed to address both closure and modernization of the conventional energy sector. The EU also admitted that assistance to decommission the INPP would be a long process and had to be fixed by legal rather than political measures. A special protocol on the subject was annexed to the Accession Treaty.

The first reactor of the Ignalina NPP was closed, as foreseen, in 2004. The closure of the second is due at the end of 2009. The post-accession years, and especially the years 2007-2008, were marked by an attempt of the Lithuanian Government to postpone the closure of the Ignalina NPP and could be interpreted as an attempt of voluntary non-compliance in the new post-accession context.

The first serious attempt to postpone the closure of the Ignalina NPP and to renegotiate the Accession Treaty was undertaken by the newly-elected president of Lithuania immediately after accession in 2004. He made postponement explicit in his election campaign and kept his promise by raising the issue with leaders of EU member states.

The second attempt to open the issue was undertaken in 2007-2008. The debates took place within the framework of the adoption of the new national energy strategy confirming the final closure of Ignalina NPP at the end of 2009. The Lithuanian Parliament adopted the strategy only conditionally by asking the Government to undertake an analysis of the consequences of the closure, to consult with the European Commission and to inform the Lithuanian Parliament accordingly, as well as EU member states(16). This was an indirect mandate for the Government to start the renegotiation of closure dates. A number of studies were undertaken in 2007 to prove tremendous difficulties associated with the final closure of the NPP. Informal consultations with the European Commission and Member States intensified throughout 2007.

The response from the EU, however, was a very cool and unequivocal "no". Nobody wanted to open Pandora's box, particularly given Bulgaria's failed attempts to renegotiate the closure dates of their own nuclear power station.

A third attempt was made in the second half of 2007 after a change of Government in

Lithuania in 2007. A new prime minister took the issue of prolongation of the life of the Ignalina NPP as one of the priorities of his Government. A special task force was created by the Government at the beginning of 2008, headed by a former prime minister of Lithuania(17). It was officially mandated by the Government to investigate problems related to the security of the supply of energy to Lithuania after 2009. It was presented to the public as a team of negotiators tasked to re-negotiate the closure of Ignalina NPP and to extend the date of its operation by at least three years(18).

The team undertook several studies, which were discussed with the European Commission and presented to member states, and was also discussed in a number of official fora including the EU Councils of Energy, Environment and European Council(19). It mobilized all responsible ministries and agencies. This issue was included in the agendas of all major meetings between the Lithuanian government officials and their EU counterparts at the highest level. Even a special referendum was held on the issue on October 12, 2008.

The attempt to postpone closure of the NPP failed after the European Commission and EU member states did not accept Lithuania's position and threatened to use all possible sanctions to deter Lithuania. As the head of the special task force has put it, the EU had clearly indicated that any attempt to breach the terms of the Accession Treaty would be "a disaster". Apparently, it worked. The conclusion was that the political and possible financial costs of a unilateral breach of EU law would be too high. A new government formed after the October 2008 elections, and while it was aggressive on the issue before elections, it dropped the case in a low-key manner and accepted a bigger CO2 quota as an additional compensation in the December 2008 European Council.

It seems that this case demonstrates that a mix of credible threats of sanctions and potential political damage(20) replaced the role of pre-accession conditionality.

3.3. Implementation of the Second Gas Directive 2003/55/EC and other measures on the liberalization of an energy market

Implementation of EU norms in the energy industry is a good case for a compliance study as there are strong economic interests in this industry and, accordingly, strong motives for voluntary non-compliance with problematic provisions of the *acquis*.

The Lithuanian public policy context of the past three years was largely dominated by energy issues and, in particular, by an attempt to create a national vertically-integrated energy company in Lithuania. It was finally created in 2008, allegedly for the purpose of building a new nuclear power station as well as electric interconnectors with Poland and Sweden. Creation of this company could be regarded as a reversal of previous reforms undertaken to separate electricity transmission and distribution companies as a response to the EU electricity directive. One distribution company was even privatized. It was not by accident that the new owners of this distribution company strongly lobbied for the recreation of a vertically-integrated company as a private-public partnership (PPP) initiative. This case can hardly be formally attributed to a case of non-compliance, but the move was clearly against the aims and spirit of a directive. Strong economic interests were obviously at work.

A case related to the liberalization of the gas industry is also quite complex. The issue of compliance with EU law in this industry has re-emerged in the context of a third energy liberalization package, where the issue of splitting vertically-integrated monopolies in the gas sector of the EU was central. The European Commission proposals issued in 2007 were built on the previous two gas directives of 1998 and 2003 respectively. The European Commission considered the previous measures inadequate, as vertically-integrated monopolies blocked the creation of infrastructure necessary for EU-wide trade in gas.

The aim of the second gas directive was to promote faster liberalization of the gas market by introducing, among other things, measures similar to those in the electricity industry, such as

legal or functional separation of production, transmission and distribution within vertically-integrated gas companies and separation of accounts related to these activities.

Lithuania did not transpose this directive until 2005 and, accordingly, did not notify the transposition to the European Commission. The first warning letter from the European Commission followed. Amendments to the Law on Natural Gas were debated for a considerable amount of time in the Parliament and caused major disagreements among the ruling coalition between the Social Democrats and the Labour party. The founder and leader of the Labour party had special interests in the natural gas industry. It seems that the Social Democratic party was also influenced by opposing interest groups. The major point of disagreement was the regulation of gas prices.

Then, in 2005, Lithuania notified the European Commission of its intention to use the exemption clause of the 2003 amended gas directive because of the physical isolation of Lithuania. It was a valid argument indeed, as Lithuania was connected to the only source of gas. Thus competition between suppliers was possible only nominally. There were three companies supplying gas to Lithuania at the time, but they were all directly or indirectly controlled by the Russian gas company Gazprom.

However, the Labour party was forced to withdraw from the coalition, and the amendments were subsequently adopted and the European Commission was notified of transposition. The willingness to use the exemption was therefore forgotten, and the relevant provisions of the directive, including those on separation, were fully transposed. It created a complex legal situation in the context of transposition.

While Lithuania transposed the provisions of the two previous gas directives, their main provisions remained unimplemented. While there could be different views with regard to the qualification of the fact of infringement, it was clear that the essential provisions of the law were not implemented. The functional separation of transmission and distribution prescribed by the Second Gas Directive was not undertaken.

Functional separation was not the main issue at stake, because the debate revolved around the regulation of prices and the establishment of a cap on profits. However, functional unbundling created a possibility to split *AB Lietuvos dujos* (the Lithuanian Gas Company).

Lietuvos dujos admitted to the fact of non-implementation openly and argued that this separation was useless. Whenever the issue was raised, the company threatened the Government it would demand higher tariffs on the transportation of gas if forced to implement the directive. The threat was based on the false argument of high costs of functional separation, but the real issue was Gasprom's threat to raise the price of Russian gas sold to Lithuania.

The Government and the Ministry of the Economy, which was responsible for implementation, silently agreed with the gas company. The European Commission initiated an investigation into the matter and sent questionnaires regarding implementation of the directive. However, the Commission did not start an infringement procedure, most likely due to the highly complex legal situation and the need to have Lithuania support the third liberalization package.

4. Conclusions

This was a single country case study on compliance with EU law following accession. However, hypotheses formulated in this case can also be tested in a comparative context. Lithuania was chosen because it was the best performer with respect to compliance with EU law among member states who joined in 2004. Using the approaches of management and enforcement, we claimed that the pre-accession phase could be better explained through the management approach, and an enforcement approach was more relevant in the post-accession phase. In the Lithuanian case, this amounted to an argument that, due to a strong administrative capacity inherited from the pre-accession phase, all major cases of non-

compliance were the result of voluntary non-compliance. Finally, we looked into the mechanisms that replaced conditionality as the main driver of compliance. This article was based on several case studies, which remain rare among compliance literature.

The cases analyzed do not indicate an existence of an under-world of "dead letters". Lithuania indeed appears to be a good performer concerning compliance with EU law. The laws transposed are subsequently applied and enforced. This is mainly due to a well-functioning administrative system designed for this purpose during the pre-accession phase, despite the fact that it focuses on the transposition of EU law. We found several cases of non-compliance due to administrative reasons after accession, such as the case of the creation of the emergency 112 service, but they remain very limited.

However, the picture is far from rosy. Public policy after accession in Lithuania became more politicized as coalition governments became weaker and interest groups grew stronger. In this context, cases of voluntary non-compliance emerged as a problem. De facto non-enforcement of an importance piece of the *acquis* in the energy industry, namely the Second Gas Directive, demonstrated that special institutional structures for the coordination of implementation of EU law could not cope with it.

It is also quite likely that further politization of the administration will take place in Lithuania and other new member states. The current EU affairs coordination infrastructure, including an infrastructure dealing with compliance with, EU law, is being dismantled in Lithuania. The role of the administration and regulatory agencies might be weakened further, thus creating a problem of administrative capacities and corresponding problems of compliance. If the trend of weak coalition governments continues, the number of cases of voluntary non-compliance is likely to grow. New member states might indeed become part of a separate world where EU law exists and functions only on paper.

However, it seems that this problem can be controlled, as the fear of sanctions and the reputational damage remain a powerful deterrence against non-compliance. The EU has not lost its grip on new member states; the case of closure of the Ignalina NPP demonstrated that the fear of sanctions and resulting reputational damage has replaced pre-accession conditionality as the main driver of compliance.

Further comparative case studies are needed to complement European Commission reports on compliance. As the number of cases initiated against new member states in European courts is likely to grow, they will also provide a new pool of data concerning the actual enforcement of EU law. Only then can we better observe the application and enforcement of EU law. These new data can also help test if the fear of sanctions can actually stop this slow but sure trend of weakening the administrative capacity of new member states.

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Endnotes

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(1) Lithuania was consistently either top performer or among the top three performers with respect to both transposition and infringements. See European Commission Reports and Annual Reports of the Office of the Government of Lithuania (European Commission, various years and LRVK, various years).

(2) Data provided by the European Commission in its databases of transposition and infringements concern only member states. Data on transposition and enforcement of EU law for candidate countries can be found in the European Commission progress reports, but they are difficult to compare.

(3) Comparison by sector is especially difficult as different accidental factors, such as activism of a European Commission service, might play a disproportionate role.

(4) Implementation is difficult to define, and it is difficult to establish clear confirmation of non-implementation. Case studies must be used for this purpose.

(5) Application of EU law in courts is difficult to establish for methodological reasons. Special research into the decisions of courts and reference to EU law in their decisions and deliberations could be helpful, but difficult to undertake due to limited accessibility and high costs. According to the opinion of lawyers practicing civil law in Lithuania, Lithuanian courts are still quite reluctant to apply EU law in relevant cases. However, this situation is slowly changing. Much also depends on the ability and willingness of economic agents to use the opportunities offered by EU law. Both ability and willingness still appear limited in Lithuania.

(6) Two-thirds of infringement procedures initiated against Lithuania in 2007 were related to the failure to notify EU officials of problems encountered in the transposition of directives on time (LRVK 2007: 61).

(7) We take only 10 new member states, as we disregard Romania and Bulgaria in order to use more data.

(8) In the list of recent infringement cases solved by the European Court of Justice provided by the European Commission, there are only five cases against new member states: four against the Czech Republic (all concerning pharmaceuticals) and one against Malta.

(9) This can also be explained by the fact that information on possible infringements is better supplied to the European Commission if there is a sufficient number of former civil servants and other citizens of a particular member state working in the Commission. This is important bearing in mind language issues and an understanding of a particular administrative tradition. A limited number of citizens from new member states employed by the European Commission in the early years of accession might also explain a limited number of infringement cases.

(10) This argument has been developed in a comparative context in another contribution to the special issue by Dimitrova and Toshkov (2009).

(11) This argument must be supported by comparative studies. While it is not a subject of this single country case study, a comparison between Lithuania and Latvia could be quite illustrating. The dismantling of the European Integration Bureau in Latvia could be a reason why the transposition record of Latvia deteriorated after accession and Lithuania remained at the top of the best performing countries (World Bank 2006).

(12) See Maniokas and Vilpišauskas (2007) for a more extensive review of post-accession Lithuania.

(13) There is a recent case of an infringement procedure regarding the telecommunications regulatory agency. The key requirement in this and many other areas relates to the separation of a regulatory function from those relating to the disposal and management of property rights. The European Commission believed that this requirement was not observed.

(14) See the activities of the so-call Sunset Commission established for governance reform http://www.lrv.lt/lt/veikla/komisijos/saulelydzio-komisija/komisijos-veikla/ (accessed on 11 December 2009). The main proposal of this Commission during the first half of 2009 was to integrate the majority of institutions under the Government into line ministries. However, only a limited number of these proposals have been passed by the Parliament.

(15) See World Bank (2006) for a similar conclusion with respect to all new member states.

(16) Decision No. X-1047 of the Lithuanian Parliament of 18 January /2007 On Implementation of the National Energy Strategy.

(17) It was formed on February, 26 2008, by the Lithuanian Government decree No. 187.

(18) In fact, fully aware of the difficulties of formal re-negotiations of the Accession Treaty, the Task Force

tried to persuade the EU to re-interpret the terms of the Accession Treaty only.

(19) The Head of the Task Force alone performed 33 visits during 9 months of the work of the Task Force.

(20) This can confirm the statement of Sedelmeier (2008) about vulnerability of the new member states to shaming by the EU institutions.

List of Tables and Figures

Table 1: Infringement proceedings initiated against new EU member states (10)

2005 - 2007

New EU member state	2005	2006	2007	Total
CZ	72	54	84	210
EE	59	64	61	184
CY	83	47	63	193
LV	57	54	59	170
PL	58	75	103	236
LT	**26**	**33**	**41**	**100**
MT	55	77	97	229
SK	51	37	54	142
SI	55	47	65	167
HU	52	50	71	173

European Commission, 25th Annual Report on the Application of Community Law (2008), Annex II, Infringement procedures – break down per stage reached, legal basis, Member State and sector, p. 10 and author's own calculations.

Table 2: Reasoned opinions per new EU member states (10)

2005 - 2007

New EU member state	2005	2006	2007	Total
CZ	40	18	13	71
EE	18	12	9	39
CY	14	20	7	41
LV	18	12	4	34
PL	18	21	24	63
LT	**1**	**10**	**5**	**16**
MT	19	18	16	53
SK	21	17	3	41
SI	17	14	5	36
HU	10	18	6	34

European Commission, 25th Annual Report on the Application of Community Law (2008), Annex II, Infringement procedures – break down per stage reached, legal basis, Member State and sector.

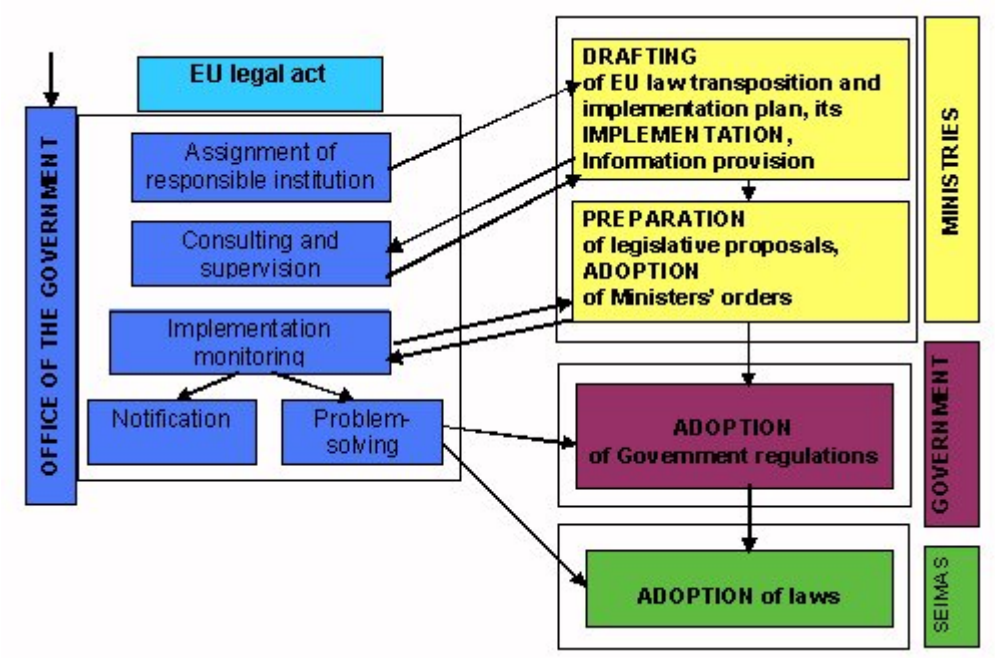
Table 3: Referral to the Court per new EU member state (10)

2004 - 2007

New EU member state	2004	2005	2006	2007	Total
CZ	-	0	4	5	9
EE	-	1	2	0	3
CY	-	0	0	1	1
LV	-	0	0	0	0
PL	-	0	3	7	10
LT	-	**0**	**0**	**1**	**1**
MT	-	0	3	3	6
SK	-	0	2	1	3
SI	-	0	0	1	1
HU	-	0	0	2	2

European Commission, 25th Annual Report on the Application of Community Law (2008), Annex II, Infringement procedures – break down per stage reached, legal basis, Member State and sector.

Figure 1: Administrative system coordinating transposition and implementation of EU Law in Lithuania



Source: Office of the Government of the Republic of Lithuania, http://www.euro.lt/img/koordinavimas/Teises%20perkelimo%20schema_EN.bmp (accessed on 13 December 2009)

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Post-accession compliance with EU law in Bulgaria and Romania: a comparative perspective*

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Abstract: This paper takes stock of academic literature and official sources on post-accession compliance in Bulgaria and Romania, the only new member states where the Commission has preserved the right to monitor key reforms following accession. The data used in the analysis suggests that formal compliance with EU law has not decreased since their accession. Quite the contrary; Bulgaria and Romania have performed well with regard to the transposition of EU law, yet signs of shortcomings have appeared at the enforcement level, possibly on a greater scale than in other CEECs. Moreover, it is argued that in the first years of membership, the Commission's post-accession monitoring did not yield the same results in Bulgaria and Romania. While Romania has managed to convince the Commission of its good will and determination to meet the benchmarks set by the EU, Bulgaria has failed to do so and has faced sanctions in relation to the EU's extended conditionality. The analysis concludes by presenting possible directions for further research.

Keywords: administrative adaptation; benchmarking; Bulgaria; European law; implementation; post-Communism; Romania; political science

Table of Contents:

1. Introduction

Bulgaria and Romania, which joined the European Union (EU) on January 1, 2007, were widely regarded as the two laggards of the Eastern Enlargement. Their accession process differed in some respects from that of the Central and Eastern European countries (CEECs) of the 2004 enlargement. Depending on the point of view, the two countries can be considered as being "either the last to benefit from the old enlargement policies, or the first to experience the

novel, and expectedly more restrictive, stance of the EU to the admission of new member states" (Smilov 2006, 161). Despite emerging discussions on the EU's "absorption capacity" and a growing enlargement fatigue, the two countries were allowed to accede to the EU on the pre-scheduled date of January 1, 2007, though with the provision that stricter conditions would be applied than on any other candidate country before. Following accession, the Commission preserved the right to monitor Bulgaria's and Romania's judicial systems and the fight against corruption and organized crime, and may invoke "safeguard measures" against the two countries. The extension of EU conditionality to the post-accession stage was an unusual procedure; It marked the final point of a pre-accession process in which EU officials frequently complained that there would be a strong discrepancy between rhetoric and action over EU conditionality issues (Pridham 2007, 170).

The particular characteristics of their pre-accession process make Bulgaria and Romania interesting case studies for research on post-accession compliance in the EU's new member states. While it is widely acknowledged that their transformation was lengthier and more difficult than other states of the CEE group (Noutcheva and Bechev 2008; Vachudova 2005; Papadimitriou and Gateva 2009), the Commission has, at present, more avenues of external leverage for encouraging compliance than in other CEECs. Does extended conditionality impact post-accession compliance in Bulgaria and Romania? How successful are Bulgaria's and Romania's records of transposition? Are there signs of a gap between transposing and applying EU law?

These questions provide guidance to the present article, although the countries' short time period of EU membership and the limited availability of official data require that the findings be treated with caution. This paper's ambition is to provide the reader with a first comprehensive overview of what we know concerning post-accession compliance in Bulgaria and Romania, on the basis of existing empirical knowledge. Rather than testing theory-guided variables, the overall objective is to take stock of the still under-researched cases of Bulgaria and Romania and to present potential directions for further research.

The analysis proceeds according to the following three steps: firstly, the literature on compliance with EU law in Central and Eastern Europe is reviewed and discussed in view of the guiding research interest. Secondly, the paper analyses the patterns of rule adoption in Bulgaria and Romania's pre-accession process, and asks what type of information these patterns might give with regard to their post-accession compliance. Finally, the paper elaborates on the countries' compliance with EU law in the first years of their membership, drawing particularly on the EU's transposition and infringement data and the Commission's monitoring and verification reports.

2. Compliance with EU law in a pre-accession and a post-accession context

The section elaborates on what is known concerning the practice of EU law in a pre- and in a post-accession context in Central and Eastern Europe. The emphasis is placed on the question of whether the Central and Eastern European states can be expected to comply with EU law once they have managed to shift their status from an applicant state to a new member state.

Regarding the pre-accession context, a rich body of literature emerged dealing with issues of rule adaptation, transformation and compliance in Central and Eastern Europe (for an overview, see Sedelmeier 2006a). The rational institutionalist argument proved to have particularly strong explanatory power by emphasizing that adherence to EU rules prior to accession is mainly driven by rational cost-benefit calculations and actors in pursuit of maximising their own power (Schimmelfennig and Sedelmeier 2004; Dimitrova 2002; Grabbe 2003; Vachudova 2005). The crucial mechanism employed by the EU to make candidate countries accept its rules is the use of conditionality, meaning that the EU sets its rules as conditions which the applicant country has to fulfil in order to receive rewards (see Schimmelfennig et al. 2003, 496f). This incentive-based governance model, however, gives a rather pessimistic outlook for compliance with EU law in a post-accession setting. "The

absence of these incentives should significantly slow down or even halt the implementation process" (Schimmelfennig and Sedelmeier 2005, 226). Similarly, Steunenberg and Dimitrova showed that EU conditionality loses its effectiveness once the accession date for an applicant state is set. "This can lead to potential problems with the transposition of EU directives just before and after accession" (Steunenberg and Dimitrova 2007, 1).

The absence of accession conditionality and an altered cost-benefit calculation at the domestic level are not the only factors that may negatively influence the new member states' compliance with EU law. A lack of societal activism and limitations of the state bureaucracies are two other factors (Sedelmeier 2008, 809-810). The litigation and pressure activities of private actors or supportive interest groups, at times in combination with the Commission's outside pressure, played an influential role for the application and enforcement of EU law (see, inter alia, Börzel 2006; Slepcevic 2008; Cichowski 2007). The fact that private actors are less organized and that the civil society is rather weak in the new member states (Howard 2003) therefore may have a negative impact on the compliance of these states. Other studies point to the importance of an efficient administration for the successful implementation of EU law. "The functioning and the quality of the domestic bureaucracy constitute crucial pre-conditions for effective alignment with EU policy requirements" (Hille and Knill 2006, 382). In his analysis of the implementation of social policy directives in the new member states, Toshkov (2007) equally underpins that administrative efficiency is of strong explanatory power vis-à-vis party political preferences and institutional capacity. Due to the legacies of the communist era, the reform of the public administration in Central and Eastern Europe was regarded as a key to implement - as opposed to only adopt - the *acquis communautaire*, yet it is questionable if the reforms undertaken have created sufficient capacities to ensure full compliance in the accession aftermath (Emmert 2003; Curtin and von Ooik 2000).

In view of these assumptions, the question remains whether compliance with EU law has indeed reduced now that the CEECs shifted from a pre-accession to a post-accession context. In the JEPP Special issue 15(6) of September 2008, a group of scholars provided a first insight on the reverberations of the EU in post-communist Europe "beyond conditionality" (Epstein and Sedelmeier 2008). Their guiding research interest was whether or not the incentive-based 'conditionality hypothesis' is right in predicting that the influence of international institutions has decreased after the Eastern Enlargement and in the presence of less significant membership incentives. Among these studies that cover a broad range of issues in Central and Eastern Europe (Vachudova 2008; Johnson 2008; Sasse 2008; Epstein 2008; Orenstein 2008) and beyond this geographical setting (Schimmelfennig 2008; Lavenex 2008), Ulrich Sedelmeier elaborates on the compliance of the eight new member states in Central and Eastern Europe with the *acquis communautaire.* By drawing a comparatively positive picture on post-accession compliance with EU law, the author argues that the EU is far from having an "Eastern problem" with "virtually all of the new member states outperform[ing] virtually all of the old members during the first four years of membership" (Sedelmeier 2008, 806). According to infringement and transposition data published by the European Commission, the new member states have done reasonably well in implementing EU law since early 2005, with better transposition rates, significantly less reasoned opinions than the EU-15 and only one fifth of their ECJ referrals. Moreover, in case an infringement procedure was opened, the countries have settled them, on average, at an earlier stage than the EU-15 (Ibid, 811-814). To explain this rather unexpected outcome, Sedelmeier suggests looking at two factors that are "a greater susceptibility of the new member states to shaming and an institutional investment in legislative capacity" (Sedelmeier 2008, 806). Processes of socialization could have left their traces in the new member states by making them more sensitive about public shaming and by making them consider good compliance as appropriate behavior. Moreover, the substantial investment into the institutional capacity and the maintenance of pre-accession implementation practices could explain why EU law is transposed in the new member states timely and formally correctly (Ibid, 820-822). The author emphasized, however, that his findings should constitute only a starting point for further research, since the data used focused on the transposition of EU law, thus leaving aside the practical application and enforcement.

One of the few studies that also takes into account these stages of the implementation procedures was presented by Falkner, Treib and Holzleithner (2008). The scholars elaborated

on the transposition and implementation record of Slovenia, Hungary, Slovakia, and the Czech Republic in three EU social law directives. Their findings suggest that the four states did comparatively well in transposing the directives into their domestic legislation regardless of the fact that most "reform processes were politically highly contested" (Treib and Falkner 2008, 162). The main reason why incumbent governments overcame political contestation at the transposition stage was "accession conditionality" and the "Commission's pre-accession pressure" (Treib and Falkner 2008, 164). The social law directives were transposed in a relatively timely and correct manner. A less positive implementation record was achieved with regard to the enforcement and application stage, however. A range of problems, in particular regarding the possibilities of individual litigation and the inefficient monitoring activities by labor inspectorates, hindered the efficient enforcement of the adopted EU directives. "As a result of the societal and institutional difficulties associated with the transposition from Socialist rule, the Czech Republic, Hungary, Slovakia and Slovenia are all plagued by a multitude of problems that have so far largely prevented the legislation from being realized in practice" (Treib and Falkner 2008, 165). In terms of theoretical implications, the scholars conclude that the four Central and Eastern European countries form a separate "world of dead letters" within the EU's "worlds of compliance". The "worlds of compliance" typology was developed by Falkner, Treib, Hartlapp and Leiber (2005) in a comprehensive research in the field of labor law in the EU-15. It maintains that member states can be clustered in three different worlds, each of which reveals an "ideal-typical patterns of how member states handle the duty of complying with EU law" (Falkner et al. 2005, 320). With regard to the "world of dead letters", the implementation process is seen to be typically characterized by a politicized yet relatively successful transposition and systematic shortcomings at the enforcement and application stage (Treib and Falkner 2008, 172). These shortcomings are based on malfunctioning structures (courts, labor inspectors, civil society) that cannot be expected to improve in a short-time perspective, even after accession.

To sum up, the research so far suggests that compliance with EU law in the new member states does not significantly decrease after accession, at least with regard to the transposition stage. Regarding enforcement and practical application, however, the new member states face several problems that prevent the European law from being efficiently put into practice.

3. Compliance with EU law in Bulgaria and Romania

"The mode of pre-accession rule transfer is a first key factor that affects post-accession compliance" (Sedelmeier 2006b, 157). Before analyzing post-accession compliance in Bulgaria and Romania, this section therefore starts with a brief analysis of the patterns of EU rule adoption which prevailed in the two countries' accession process to the EU.

3.1. Patterns of EU rule adoption in the accession process of Bulgaria and Romania

Scholarly writing holds that, following the end of Communist rule, an illiberal democracy took hold in both Romania and Bulgaria (Vachudova 2005, chapter 2). In the absence of a liberal opposition, the non-opposition governments (meaning governments that had not opposed Communisms) "wrapped democratic institutions, sabotaged economic reform and fostered intolerance in their efforts to concentrate and prolong their power" (Vachudova 2005, 38). Despite the EU treating them in equal terms as the other CEECs and including them in all programmes in support of the postcommunist states, the "passive leverage"(1) of the EU in the early transformation stages did not yield the same results. The two countries did not start sincere reforms "before they were sanctioned either by the market and/or by the exclusion effects of the EU's conditionality machine" (Noutcheva and Bechev 2008, 119-120). From 1995 onwards, the EU increasingly applied "active leverage"(2) and was no longer satisfied with reforms on paper (see detailed Vachudova 2005, chapter 5). Bulgaria and Romania were not invited to start accession negotiations in the 1997 Luxembourg European Council. A group of member states tried not to invite them at the 1999 Helsinki summit as well, but pressure

from key member states such as Great Britain and geopolitical factors, in particular the Kosovo crisis and the EU's efforts to stabilise South-Eastern Europe, turned the balance in favor of Bulgaria and Romania (Noutcheva and Bechev 2008, 122).

The begin of accession negotiations created a momentum for reform in both Bulgaria and Romania (Spendzharova 2003)(3), yet the two states did not manage to catch up with the other CEECs. When the European Council decided in the 2002 Copenhagen summit to clear the way for the "big bang" enlargement, Romania and Bulgaria were not among the states which were allowed to accede the EU in 2004. The EU called for further progress in meeting the membership criteria in general and in reforming the administration and judiciary in particular. However, the Copenhagen summit conclusions confirmed that "the objective is to welcome Bulgaria and Romania as members of the European Union in 2007" (European Council 2002). In the years that followed, the EU-Bulgarian and Romanian relations were a seesaw, with the EU calling for enhanced reform efforts and the two countries reacting to it. "Bulgaria and Romania accelerated reform when they felt the 'stick' of EU conditionality. Every time the EU penalised the two laggards, their governments would rapidly respond by presenting revised reform strategies and making pledges for additional measures" (Noutcheva and Bechev 2008, 124). In this way, the two countries gradually came closer to the objective of joining the EU. After the two countries had provisionally closed all *acquis* chapters, the Brussels European Council of 16-17 December 2004 confirmed the accession date of 2007, yet introduced the instrument of "safeguard clauses" that may withhold the benefits of membership before accession or in the three years after accession, if certain reforms are not completed (European Council 2004).

On 25 April 2005, Bulgaria and Romania signed the Accession Treaty with the EU, according to which they would become EU member states on 1 January 2007. At the same time, the Accession Treaties codified the safeguards clauses, meaning that the Commission was given the right to invoke safeguards measures up to three years after accession if serious shortcomings were observed in three areas of the *acquis*, i.e. the economic (Art. 36), the internal market (Art. 37) and the justice and home affairs areas (Art. 38). The activation of the safeguard measures may result in the suspension of EU funds or in export food bans. Technically speaking, the safeguard clauses for Bulgaria and Romania were nothing new: they had already been included in the Accession Treaties of the other Central and Eastern European countries. Still, the possibility for invoking them was never seriously discussed in the context of 2004 enlargement (Noutcheva 2006, 2).

Moreover, in Article 39, the treaties included a postponement provision, which provided the EU with the power to delay the accession date for one year in case unsatisfactory progress was noticed with regard to key issues like the judicial reform or fighting corruption. Even though the application of the postponement provision was regarded as unlikely, the possibility for using it increased in the aftermath of the negative referenda on the European Constitution in France and the Netherlands. The climate for further enlargement became less favorable resulting in the application of stricter conditionality. In June 2005, the Commission sent a "yellow card" to Sofia and Bucharest complaining about the "insufficient speed" of reforms. Germany went even further by threatening not to ratify the accession treaty with the two countries, thus effectively blocking their EU accession (see Smilov 2006, 162-163). In September 2006, when the Commission (2006) released its final monitoring report, it became clear that the postponement clause would not be activated. In the report, the Commission recommended against a delay of the accession date and concluded that the countries were sufficiently prepared for accession. At the same time, remedial measures were proposed to ensure the functioning of EU policies after accession, in particular in the areas of food safety, air safety, EU agricultural funds and the judiciary and fight against corruption (Ibid, 9).

According to a Commission official employed at the DG Enlargement in 2006, the European Commission recognized that the shortcomings of Bulgarian and Romanian law enforcement structures and governance standards jeopardized the countries' ability to correctly apply EU law in the post-accession phase; However, they also noticed a lack of political alternatives. If the Commission suggested the activation of the postponement clause, it was believed that

Bulgaria and Romania would further slow down the pace of reform due to an increasing frustration with the EU accession process(4). As noted by Dimitris Papadimitriou and Eli Gateva (2009, 22), the decision of the EU to grant full membership to Bulgaria and Romania was hence to some extent "a reflection of wider security imperatives which led the EU to allow the accession of 'imperfect' new member states instead of risking the unpredictable costs of their exclusion."

The post-accession monitoring of governance standards was a new element introduced in the accession process and tailored to Bulgaria and Romania. The Commission established a cooperation and verification mechanism (CVM) which defined benchmarks for the fight against corruption, organised crime and the reform of the judiciary against which the progress of Bulgaria and Romania should be measured. Bulgaria and Romania remained under the scrutiny of the European Commission beyond the date of accession.

3.2. Post-accession compliance: What do we know from the academic literature?

The extension of conditionality beyond accession indicates that post-accession compliance with EU law may not decrease in Bulgaria and Romania. On the basis of research on Romania's compliance with the EU's political conditions preceding accession, Geoffrey Pridham extrapolates that the "extended conditionality could be significant in compelling further progress. As the poorest member state, Romania would find the blocking of EU funds a painful experience" (Pridham 2007, 186). His research finds little evidence of patterns of social learning, which point to "the continuing importance of external pressure in propelling change" (Ibid). Therefore, the Commission's extended conditionality mechanism and continuing pressure on Bulgaria and Romania may produce further progress and efforts in complying with EU conditions and law.

What is more, Philip Levitz and Grigore Pop-Eleches (2009) develop the argument that not only the extended conditionality and a growing importance of EU funding for Bulgarian and Romanian economy but also a third factor prevent the backsliding of reform efforts post-accession: migrants. The increasing migration of Eastern workers to Western democracies is a likely antidote against the backsliding of post-accession governance in Bulgaria and Romania as well as in the other new member states. The East Europeans who work and travel in Western Europe are turning into an electorate which becomes more sensitive to rule of law standards and corruption which, in turn, is likely to have a positive and important impact on the political culture in their home countries (Ibid, 19-23). In their research, Levitz and Pop-Eleches comprehensively assessed whether, in the views of Bulgarian citizens, political reforms have slowed down after EU accession. They commissioned from the Bulgarian survey firm Alpha Research a survey consisting of a sample of 1.200 face-to-face interviews that focus on four priority areas of political reforms: democracy, minority rights, corruption control and the rule of law (unfortunately, a comparable survey is not available for Romania). The data suggests that the reform process has indeed slowed down, yet that the assumption of a systematic backsliding of political reforms post-accession cannot be maintained (Ibid).

Table 1 about here

That said, there are some scholars who have a considerably less optimistic view on Bulgaria and Romania's willingness and capacity to complying with EU conditions and law. Tom Gallagher (2009) questions, at a fundamental level, if Romania deserves EU membership since the country "tricked" the EU into offering full membership in return for far-reaching reforms, which Romanian politicians have refused to carry out in the post-accession stage. The Romanian political elite is believed to have "converted" to EU principles, though mainly in rhetoric alone (Mungiu-Pippidi 2008). Also, Svetlozar A. Andreev (2009) analyses the peculiarities of Bulgaria and Romania that may set them permanently apart from other CEECs, notably the "unfinished political and socio-economic transformation of both countries, accompanied by the consolidation of certain 'reserve domains' occupied by the former secret

services and semi-mafia structures" (Andreev 2009, 375).

There are indeed a number of factors that point to problems in enforcing and applying EU law in Bulgaria and Romania. The administrations have serious shortcomings with key reforms "still pending" (Noutcheva and Bechev 2008, 132) regardless of the work done in the course of the accession process. These reforms in view of accession resulted mainly in the improvement of the capacities and working methods of the few departments specialized in European integration matters, described in the literature as "island of excellence" (Pridham 2005, 120-121). In Romania, successive cabinets did not manage to outline a clear-cut policy and strategy for public administration reform, so that the EU conditions were at times the only real pressure towards reform (Hinþea et al. 2004). Also, Dimitris Papadimitriou and David Phinnemore (2004; 2008) showed by using Romania as a case study that the twinning programme, the EU's main instrument to assist in the process of reforming public administration, had a very diverse effect on different corners of the administration. The success was dependent on several factors, including the design of the programme, the institutional fluidity the individual agency involved and the degree of politicization within the administrative branches involved in the project (Ibid 2004, 141). With regard to Bulgaria, Giatzidis argues that "though significant success has been achieved in harmonizing Bulgarian legislation with the acquis, its application is still rather ineffective, whilst the public administration is considered unfit for the utilization of the pre-accession funds" (Giatzidis 2004, 449). He underlines that the shortcomings of the public administration are worsened by unusually close links between Bulgarian civil servants (and politicians) and organized crime.

Political corruption and corrupt ties between the state apparatus and private business are serious problems that undermine public trust in state institutions and hamper economic development and the creation of a favorable business climate. The issue of corruption has become a particularly salient political theme in both countries, contributing to the paralysis of the Romanian cabinet during the first year of membership and to the growth of powerful populist parties in Bulgaria (Andreev 2009). According to data from Transparency International, Bulgarians and Romanians perceive their homelands as the most corrupt in the EU. The two countries topped an EU-wide corruption ranking with 3.6 and 3.8 on a scale from 0 to 10, with zero being the most corrupt and ten the least (Pop 2008).

Another factor which hints to a rather weak enforcement record is the dysfunctional judiciary. The judicial systems of both Bulgaria and Romania were considered as slow and inefficient with trials lasting for years and prisons being overcrowded. As a result, the Commission pointed out the reform of the judiciary in almost every Regular Report, even if the emphasis differed in the two countries. In Romania, the Commission pressured to ensure full independence of the judiciary from the executive, while Bulgaria was asked to introduce more accountability for the judiciary which, at times, used its independence to pursue political purposes (Noutcheva and Bechev 2008, 133). The two countries have made some progress in meeting these demands. Nevertheless, the perceived need to further reform the judiciary was one of the major reasons why the EU decided to extend its conditionality mechanisms to the post-accession stage. A final factor which may create problems in enforcing EU law is the lack of societal activism. There is a widespread disbelief in the functioning of state institutions which contributes to a rather low engagement of Bulgarian and Romanian citizens in civic and political life. Moreover, due to limited faith in the system as a whole, people consider unofficial ways to solve problems frequently more efficient than the official ones. To bribe a government official, a policeman, university administration and the like may prove more cost-effective than taking somebody to trial or doing the official procedure. "Bribery has become the principal mode of solving problems [in Bulgaria] while the law no longer serves as the chief regulator of society" (Giatzidis 2004, 448-449).

3.3. Official statistics: The transposition and infringement data

A valuable indicator for assessing post-accession compliance is the Commission's transposition and infringement data, although this dataset has met with criticism in various

forms (Börzel 2001; Knill 2006; Falkner et al. 2005: 19-20). According to the transposition data, Bulgaria and Romania have done very well with regard to the transposition of EU legislation With regard to the internal market legislation, Bulgaria was actually the first member state to achieve a transposition deficit of 0% in 2008 (Commission of the European Communities 2008e, 7). This means that Bulgaria has transposed all directives on internal market within the predefined deadlines. Romania achieved a transposition deficit of 0.4% in the first six months of 2008, placing it second together with Slovakia (Ibid, 11). The two countries had already been well placed in the previous scoreboard which was the first to integrate data on them(5).

The results on the internal market legislation reflect a broader trend. According to the tables of the European Commission about the progress of the respective member states in notifying the transposition of EU directives, Bulgaria and Romania have improved steadily. While in March 2007 Romania was the weakest country of the EU-27 with only 91.4% transposition rate, it was able to gradually improve its performance. In January 2009, it reached 99.30% transposition rate, which made the country rank in ninth place of all member states. Bulgaria reached a better transposition rate right from the start, so that its improvement in notifying the transposition of EU directives has been less considerable. The country improved its transposition rate from 98.46% in March 2007 to 99.39% in January 2009, putting it in sixth place of the EU-27.

Table 2 about here

The good transposition performance of Bulgaria and Romania corresponds to what has already been found in other new member states of the Eastern enlargement (Falkner et al. 2008; Sedelmeier 2008) . According to research interviews with Bulgarian and Romanian politicians, the transposition of EU rules has so far taken place in a rather standardized way, with political controversies about the advantages and disadvantages of the EU rules being rather exceptional. According to a Romanian MEP, legislation that comes from Brussels is often conceived in the public point of view as “much better than what comes from Bucharest”, a point which would facilitate the transposition(6). In the case of Bulgaria, the claim that national bills have to be drafted “for the country’s successful EU integration” is used not only with regard to the transposition of EU law but also for the adoption of all kinds of other national bills and regulations (Ivanova 2009, 28), at times even for those that serve primarily “corrupt private interests” (Ibid).

Romania and Bulgaria have so far been included only in one Annual Report on infringements (Commission of the European Communities 2008a). This document, which outlines the infringement data for 2007, casts a shadow on the good transposition rates of the two countries, however. It maintains that Romania was the member state which received by far the most “letters of formal notice” of the EU-27 (namely 195)(7). Receiving 80 letters of formal notice, Bulgaria did better than Romania, but Bulgaria still ranks among the poorest performing EU-12 countries in this regard. The fact that the overwhelming majority of these letters were sent due to “non-communication” indicates that the non-compliant behaviour might be more because of a lack of institutional capacities and of internalising the EU’s procedural “ways of doing things” than because of altered cost-benefit calculations(8).

Also, it is worth mentioning that the letters of formal notice are not equally spread across all policy fields, pointing to cross-sectoral differences with regard to post-accession compliance. Romania, for instance, received 45 letters of formal notice alone in the policy field of “environment”(9). Bulgaria received most letters in the policy fields of “enterprise and industry” (12) and “justice, freedom and security” (13 letters) (Commission of the European Communities 2008b). The letter of formal notice is the first step in the infringement procedure and implies that the Commission demands the respective member state to submit its observation on an identified legal problem. If the case remains unsettled, the next stages represent the reasoned opinion and the referral to the European Court of Justice (ECJ)(10). With regard to Bulgaria and Romania, the numbers of reasoned opinion and referral to the ECJ are low, yet the time period of examination has been too short for these numbers to be

significant.

Table 3 about here

3.4. EU conditionality beyond accession: the Commission's monitoring activities

While infringement data have so far been of limited significance, another source of information possibly helps shed light on Bulgaria and Romania's post-accession compliance: the Commission's monitoring activities. As mentioned, Bulgaria and Romania did not manage to remedy deficiencies particularly with regard to the judicial reform and the fight against corruption by the date of their EU accession so that the Commission was given the right to monitor the remaining areas of concern on a regular basis and to publish the results in special reports.

Due to their precisely defined focus, the Commission's post-accession monitoring reports do not allow assessing the countries' general performance in terms of transposing or enforcing EU law. Still, in almost every monitoring report it is underlined that "without irreversible progress on judicial reform, fight against corruption and organized crime [these countries run] the risk of being unable to correctly apply EU law" (see, for instance, the Commission's first monitoring report on Bulgaria 2007b, 3). Therefore, the monitoring reports are useful indicators for assessing the Commission's view as to how the Bulgarian and Romanian law enforcement structures and governance standards have developed since their EU accession. However, it is important to note that the Commission's monitoring reports do not provide us with conclusive insight on a causal linkage between transposition and enforcement of EU law in Bulgaria and Romania.

The European Commission tabled the first monitoring reports in July 2007. In Bulgaria's case, the Commission was cautiously positive and reported some progress in the area of veterinary and animal health. Moreover, the Bulgarian government was "committed to judicial reform and cleansing the system of corruption and organized crime" (Commission of the European Communities 2007b, 5). While the Commission mentioned positively that some progress was achieved in improving the transparency of the judicial process, it called for more efforts with regard to the judicial treatment of high-level corruption cases. Overall, the Commission judged that Bulgaria has made some – yet not enough – progress and, in general, that it needed more time for implementing the benchmarks set by the EU.

In the second report on Bulgaria, published in February 2008, the Commission applied a less diplomatic tone and complained that "in key areas such as the fight against high-level corruption and organised crime, convincing results have not yet been demonstrated" (Commission of the European Communities 2008g, 9). The report indicated a growing impatience in Brussels towards the slow pace and insufficient reform efforts of Bulgaria and were accompanied by "uncharacteristically sharp on-the-record remarks" (Stoyanov et al. 2008, 255). In February 2008, the Commission therefore decided to impose first financial sanctions on Bulgaria. Following mismanagement and revelations of interest conflicts and corruption in the Bulgarian Road Agency, the Commission blocked funding from the Instrument for Structural Policies for Pre-Accession for Bulgaria (Ibid). After this case, the EU's anti-fraud office OLAF carried out a series of audits in Bulgaria and revealed mismanagement and corruption on a serious scale. The OLAF report was confidential yet was leaked to the media(11). It pointed at misuse under the SAPARD programme and presented evidence of one of the most serious cases of fraud, called the "Nikolov-Stoykov-Group"(12).

The OLAF report went public only days before the Commission presented its third monitoring report, published jointly with a report on the management of EU funds in Bulgaria. The third report was harsh in its assessment of Bulgaria's reform efforts and stated that "progress has been slower and more limited than expected and the need for verification and cooperation will

continue for some time. "The judicial system and the administration need serious strengthening" (Commission of the European Communities 2008g, 2). The Commission criticized that investigations into corruption and organised crime rarely lead to arrests and prosecution. With regard to the functioning of the judicial system, it noticed that "institutions and procedures look good on paper but do not produce results in practice" (Commission of the European Communities 2008g, 5). Moreover, the separated report on the management of EU funds pointed to irregularities and fraud on part of Bulgaria. As a result, the Commission suspended €560 million from the Phare programme, €121 from the SAPARD programme and €144 million from the ISPA programme, resulting in a total of €825 million of suspended assistance. The Commission also withdrew the accreditation of two Bulgarian agencies responsible for the management of EU pre-accession funds (Commission of the European Communities 2008f, 3).

On 25 November 2008, it became clear that Bulgaria would definitely lose a big amount of the frozen money. After an "in-depth analysis", the Commission decided to keep the suspension in place. From the point of view of the Commission, the Bulgarian government had failed to take sufficient measures against the ill-use of the money. This had the direct consequence that €220 million of Phare pre-accession assistance were definitely withdrawn, as the deadline for applying for tenders expired on 30 November 2008 (Agence Europe, November 25, 2008). Bulgaria was the first EU member state to lose EU funds due to ill-use (Ibid).

The loss of EU funds marked a low in the EU-Bulgarian relations, which prompted Bulgaria to step up efforts to reform. According to the interim report of February 2009, Bulgaria made "significant developments" in combating corruption and organized crime, and "some developments" in reforming the judiciary (Commission of the European Communities 2009a, 2). This progress was confirmed in July 2009 when the Commission noted a positive change of attitude and "a new momentum" of the country's efforts to improve the judiciary and combat corruption. The question remains if these measures are sustainable given that they so far have been limited to a technical level and have lacked a broad political consensus. As the Commission noticed, fighting corruption and organized crime has yet to become a top political priority for Bulgaria in the country's third year of membership (Commission of the European Communities 2009c, 8).

In Romania's case, the Commission was more satisfied with the results produced. According to the first report, published in July 2007, "the Romanian Government is committed to judicial reform and cleansing the system of corruption. In all areas, the Romanian authorities demonstrate good will and determination" (Commission of the European Communities 2007c, 5). The Commission positively mentioned progress with the fight against local-government corruption and with the establishment of a national integrity agency, yet pointed to shortcomings in the judicial treatment of high-level corruption. Overall, the Commission concluded that "in the first six months of accession, Romania has continued to make progress in remedying weaknesses that could prevent an effective application of EU laws, policies and programmes" (Commission of the European Communities 2007c, 19). The fight against high-level corruption remained a salient issue, however. At the beginning of 2008, it went public that persecutors investigated several high politicians over allegations of corruption and gathered evidence against Prime Minister Adrian Nastase, former transport minister Miron Mitrea, the then labour minister Paul Pacuraru and five other senior officials (see EurActiv 2008). Yet, the investigations were hindered by a ruling of the Romanian constitutional court which stated that the parliament must first approve the investigations against high-ranking politicians. The ruling was controversial and prompted the Romanian president Traian Basescu to label the constitutional court "a shield against corruption" (Ibid).

Against this background, the fight against high-level corruption was the most important issue for the Commission. In February 2008, it complained that with regard to the fight against high-level corruption "convincing results have not yet been demonstrated" (Commission of the European Communities 2008c, 7). The Commission, however, conceded that Romanian authorities displayed a "serious commitment" (Ibid, 2) towards implementing the benchmarks set by the EU. The Romanian government had swiftly prepared and adopted an action plan on

how to meet the benchmarks and advanced the reform of the judiciary.

The overall assessment of the Commission also remained positive in the third Commission report on Romania, published in July 2008. The report was considerably less harsh than the one on Bulgaria. The Romanian government was praised for its efforts to reform the judiciary and to investigate corruption, two areas where "the institutional and procedural changes introduced in recent years […] are starting to produce first results" (Commission of the European Communities 2008h). Yet, the Commission encouraged Bucharest to do more in several areas, in particular "to show that the judicial system works and that investigations into corruption lead to arrests, prosecution and, depending on the court's judgment, convictions with dissuasive effect and seizure of assets" (Ibid, 6). From the Commission's point of view, the country's fight against corruption was clearly too politicised.

The lack of support across political parties in dealing with high-profile corruption has remained a major issue in EU-Romanian relations. In July 2009 the parliament was encouraged to "show its full commitment to pursuing the fight against high level corruption" meaning that it should refrain from protecting politicians from prosecution. However, on a positive note, the Commission mentioned the adoption of new Criminal and Civil Codes and a number of initiatives taken by the Romanian government in response to concerns expressed in the February 2009 report in which Romania had been criticized not to maintain the pace of reforms (Commission of the European Communities 2009b, 2). Romania was thought to have regained its "reform momentum" even if the positive results of reforms "remain fragmented, […] have not yet taken firmly root and shortcomings persist" (Commission of the European Communities 2009d, 8).

In short, the Commission's post-accession monitoring reports reflect that neither Bulgaria nor Romania were believed to have yet completed the unfinished preparations for EU membership. In the first years of membership Romania has performed better in terms of progress towards meeting benchmarks set by the EU. Contrary to Bulgaria, the Commission did not freeze EU pre-accession funding for Romania. However, Romanian institutions have problems creating a sufficient number of eligible projects. According to media reports, Romania may lose substantial portions of EU agricultural funds due to poor management (Vucheva 2008).

4. Conclusions

This paper has analyzed post-accession compliance with EU law in Bulgaria and Romania, on the basis of existing empirical knowledge.

The analysis has shown that Bulgaria and Romania have performed well with regard to the transposition of EU law, with Bulgaria being the first EU member states to achieve a 0% transposition deficit in internal market legislation in 2008. Romania is also among the better-performing member states, according to the Commission's transposition data. However, the unusually high number of "letters of formal notice" sent by the Commission to Romania and, less frequently, to Bulgaria, point to the fact that the incorporation of European legalisation into domestic law remains problematic. Moreover, the Commission's monitoring and verification reports and academic research highlight the problems with regard to law enforcement structures and governance standards. Bulgaria and Romania have entered the EU with unfinished reforms in key sectors and have refrained from completing them in the first years of membership.

If the findings are discussed in the context of the "world of compliance" typology (Falkner et al. 2005; 2008), the outlook for successfully enforcing and applying EU law - as follow-up stages to transposing - is rather bleak for Bulgaria and Romania. The unfinished transition of the countries could potentially have a strong impact on the political, cultural, and institutional factors that determine the compliance culture of a EU member state. Less favorable cultural factors include the widespread distrust in the functioning of the rule of law and the political and administrative system as a whole, fostered by the highly salient problem of corruption;

political factors such as the persisting dominance of an "old" political elite which signed up for (EU-oriented) reforms in rhetoric, but not in action; and institutional issues such as dysfunctional court-systems and deficiencies in administrations. Overall, the implementation process in Bulgaria and Romania seems to follow a pattern comparable to what has been observed as the "world of dead letters" (Falkner et al. 2008). As outlined, member states belonging to this group of the "world of compliance" typology typically transpose EU law in a compliant manner yet have substantial problems when enforcing and applying the legislation.

Due to a lack of significant data and the short period of membership, these findings should be regarded as tentative and should be complemented with small-n studies clarifying how problems at the enforcement level actually impact the application of EU law. A particularly promising avenue for further research is the analysis of cross-sectoral differences. The available infringement data points to the fact that transposition and enforcement problems differ across issue areas, begging the question of which factors account for these differences. Does the "world of dead letters" argument hold true only for certain policy fields and not for others? The present analysis might serve as a point of departure for a thorough empirical study of the transformation of selected EU provisions into practical policy. A second promising avenue of research relates to the differences between Bulgaria and Romania. The analysis has shown that in the first years of membership the EU's extended conditionality did not yield the same results in both countries. Regarding Bulgaria, the Commission observed serious cases of mismanagement and high-level corruption which, together with insufficient reforms in the administration and judiciary, prompted it to freeze a substantial amount of pre-accession funding and to withdraw the accreditation of two Bulgarian agencies responsible for the management of EU funds. Regarding Romania, the Commission was more convinced of the country's good-will and determination to meet benchmarks set by the EU. So far, the Commission has advised against the activation of safeguard measures. Still, the question for further research is to what extent these findings reflect a broader trend or whether they are only a temporary snapshot, also against the background that only a few years ago, the EU believed that Romania lagged behind Bulgaria in its accession preparations (Noutcheva and Bechev 2008, 124)(13).

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Endnotes

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(1) Milada Anna Vachudova defines passive leverage as “the traction that the EU has on the domestic politics of credible candidate states merely by virtue of its existence and its usual conduct” (Vachudova 2005, 5).

(2) Active leverage can be understood as the “deliberate policies of the EU toward candidate countries” (Ibid).

(3) On sectoral reforms and the EU’s influence exerted through conditionality see e.g. Guido Schwellnus (2005) who elaborates on the adoption of non-discrimination and minority protection rules in Romania, Hungary and Poland, Lora Borissova (2003) who deals with the adoption of the Schengen and the justice and home affairs *acquis* in Bulgaria and Romania and Gallina Andronova Vincelette (2004) who analyses the challenges to Bulgarian monetary policy on its way to the EU.

(4) Confidential interview, European Commission, DG Enlargement, March 19, 2009. With the chosen compromise the Commission hoped to “maintain the momentum”, according to the EU official.

(5) In the December 2007 scoreboard, Bulgaria and Romania had an average transposition deficit of 0.8% (Commission of the European Communities 2008d, 12). To be exact, the first time Bulgaria and Romania were mentioned was in the July 2007 scoreboard. It stated that the two countries had a strong transposition deficit (5.2%), which would not be surprising however, “given the enormous task that they faced in transposing the whole Community acquis in time for accession on 1 January 2007” (Commission of the European Communities 2007a, 11). Therefore, the document did not integrate Bulgaria and Romania’s transposition data into the scoreboard figures.

(6) Confidential interview, Romanian MEP, March 17, 2009.

(7) Italy was second with 101 letters of formal notice.

(8) In a research interview, a Bulgarian MEP supports such a view by stating that “in Bulgaria, we saw a strong discipline before accession. After accession we have – how to say – the feeling ‘ok, we managed it, we are in the club’. There remain things that have to be done, but the discipline was somehow relaxed” (author’s

interview, 18 March 2009).

(9) By contrast, Bulgaria received only 6 letters of formal notice in the policy field of environment .

(10) In a reasoned opinion, the member state has to give a detailed legal statement on the reasons why the implementation of the EU law has failed or took place in an incorrect way. By referring the case to the ECJ, the Commission opens the way for the litigation procedure.

(11) The Nikolov-Skoykov Group, a network of around fifty Bulgarian enterprises, "who are said to have close links to the current Bulgarian government", was set up for the purposes of tax fraud, document forgery, money laundering and the illegal importing of Chinese rabbit and poultry meat with falsified health certificates. OLAF estimated that the financial impact on the Community budget of these projects was more than € 30 million. The OLAF report can be downloaded at: http://www.mediapool.bg/site/images/doklad_OLAF_en.pdf (accessed on 4 December 2009).

(12) Ibid, p. 2.

(13) One indication was that the Justice and Home Affairs Council removed Bulgaria from the Schengen negative visa list in April 2001, while Romania had to wait until January 2002 to be permitted visa-free travel to the EU.

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Table 1: Bulgarian perceptions of post-accession political reforms

	Democracy	Minority rights	Fighting corruption	Rule of law
Reforms have been reversed	5%	3%	15%	12%
Reforms have stopped	20%	11%	21%	24%
Reforms have continued at a slower pace	34%	26%	30%	28%
Reforms have continued at the same pace	32%	35%	22%	26%
Reforms have continued at a faster pace	9%	24%	13%	11%

Source: Levitz and Pop-Echeles (2009, 11)

Table 2: Bulgaria and Romania's progress in notifying national measures implementing all EU directives

	March 2007	July 2007	November 2007	April 2008	August 2008	October 2008	January 2009
Romania	91.4%	97.4%	99.73%	99.45%	99.33%	99.65%	99.30%
Bulgaria	98.46%	99.09%	99.63%	99.77%	99.55%	99.68%	99.39%

Source: Secretariat-General of the European Commission; National implementation measures notified to the Commission (different tables).

Table 3: 2007 infringement data for Bulgaria and Romania

		Total	Non communication	Non conformity	Bad application
Bulgaria	Formal Notice	80	70	3	3
	Reasoned Opinion	2	2	0	0
	Referral to the Court	0	0	0	0
Romania	Formal Notice	195	186	1	2
	Reasoned Opinion	5	4	0	0
	Referral to the Court	0	0	0	0

Source: European Commission (2008a, annex I)

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From formal adoption to enforcement. Post-accession shifts in EU impact on Hungary in the equality policy field*

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Abstract: Research on EU conditionality in equality policy in Hungary shows that while the formal EU acquis has been transposed in a fast and successful way, its enforcement and application largely lag behind. Most researchers explain this weak enforcement with factors such as state capacity problems, the absence of inclusive policy making, and low norm resonance at the domestic level. This paper analyzes how changes in EU influence in the post-accession, post-conditionality period contribute to maintaining compliance with and improving the enforcement of EU equality policy in Hungary. It aims to understand implementation processes that take place in the post-accession period through the Hungarian case of equality policy. The paper argues that in order to capture the impact of the EU in the post-accession period, one must look beyond formal transposition-related mechanisms and increasingly at financial assistance and social learning mechanisms. While mechanisms connected to formal transposition might suggest major drawbacks in formal compliance, financial assistance and social learning mechanisms seem to address more directly the application and enforcement problems that Hungary faces in the equality realm. The paper shows that these mechanisms directly and indirectly impact the most crucial factors that determine enforcement – state capacity, the strength and involvement of civil society, and norm resonance. A slow but steady move toward sustainable improvement in enforcement is indicated.

Keywords: Central and Eastern Europe; Hungary; civil society; Europeanization; enlargement; implementation; policy learning; policy diffusion; policy coordination; non-discrimination; gender policy; Roma; structural funds; political science

Table of Contents:

1. Introduction

The European Union had a critical role in shaping equality policy in its new Central and Eastern European Member States, among them Hungary. During the accession process, these states went from having fragmented, unenforceable equality policies limited to a few politically-privileged inequality grounds, to adopting, in most cases, comprehensive, legally-enforceable equality policies and adjacent institutional structures that cover multiple inequality grounds and multiple inequality domains in complex ways.

However, relatively little academic research has been conducted on the influence of the EU in countries in Central and Eastern European (CEECs) in this policy field. Most available work focuses on pre-accession conditionality and the emphasis is typically on transposition. Far less research deals with how the EU influences the application and enforcement of the transposed norms. Existing work on equality policy, as well as the wider social policy realm, recognizes a quite good transposition record among CEECs that was achieved by the accession date, as well as persistent problems in application and enforcement (Treib, Falkner, Holzleithner 2008; Sissenich 2007; Krizsan and Papp 2005).

The aim of this paper is to identify and understand the mechanisms through which the EU influences equality policy in the post-accession period as compared to the period preceding accession. In particular, the paper uses a process-tracing approach (Checkel 2005) to look in-depth at mechanisms that act towards improving the application and enforcement of the transposed equality acquis in the specific case of Hungary. By explaining and analyzing mechanisms in place in the rich context of one country and one policy field, the paper attempts to fill a gap in understanding the EU impact in the new Member States in the post-accession period. Specifically, it investigates what policy processes the EU generates, how it brings about change, and how it responds to existing application and enforcement problems. Understanding the complexity of processes through which the EU continues to impact post-accession in one country will contribute to the refining of research agendas on European integration of CEECs.

Equality policy is the focus of this paper. Three major equality directives – the Race Equality Directive, the Employment Directive and the Equal Treatment Directive (as amended in 2002) – are taken to form the core of EU equality policy. For the purposes of this paper, these three directives are read together with EU soft regulations in the field of equality policy, particularly under the social policy chapters of anti-discrimination and gender equality. These regulations can be seen to indicate directions for the enforcement of the directives, especially in areas that reach beyond legal transposition. This includes measures on prevention, the promotion of "full equality," or the obligation to review all relevant laws, regulations, provisions, and even contracts to prevent conflicts with the "principle of equal treatment." Soft law also goes beyond the narrow equality understanding of the directives and toward more comprehensive European approach to equality – one that includes, beyond anti-discrimination, the promotion of equal opportunities, positive action, and mainstreaming (Verloo 2001). Starting from Booth and Bennett's (2002) conceptualization, this paper sees these three approaches to equality – anti-discrimination, positive action policies, and mainstreaming – as components of a "three-legged stool" in that they are interconnected and complement each other. In this understanding, which is supported by other equality thinkers (O'Cinneide 2006; Fredman 2005), anti-discrimination law as one leg cannot be seen to be fully enforceable without the use of elements of the other two legs. This comprehensive view of equality policy also corresponds to the multilayered conception of equality that the EU conveys to accession and new Member States through the conditionality criteria on equality as formulated in regular reports as well as through soft regulations that come to complement hard law(1).

What do enforcement and application of equality law mean in the EU context? Elements of EC ideas about the meaning of enforcement can be discerned partly from the relevant directives, but more thoroughly from the relevant Community Action Plans. Four pillars of enforcement are proposed, much along the lines suggested by earlier thinking on anti-discrimination enforcement bodies (McEwen 1997; PLS Ramboll Management 2002).

- The first pillar relates to the investigation of discrimination cases and includes facilitating complaint procedures and strategic and structural investigations of discrimination cases. It also includes the creation of equality bodies which, beyond being complaint mechanisms, may also conduct strategic ex officio investigations in structural and institutional discrimination cases (McCrudden 1982; O'Cinneide 2006).
- The second pillar consists of promotional activities directed at victims, stakeholders, and potential perpetrators.
- The third pillar focuses on generating systematic knowledge on discrimination, so that beyond the scarce individual complaints, structure-oriented procedures can be launched to address discrimination.
- Finally, the fourth pillar entails supporting civil society organizations that make claims for, or often instead of, victims of discrimination and promoting their participation in relevant policy processes. Such an understanding of enforcement clearly implies proactive measures and makes implementation of equality law not only an issue of compliance, but also of resources.

This paper argues that to capture the impact of the EU on Hungarian equality policy since the last years of accession, one must look beyond the formal transposition-related external incentive mechanisms and increasingly at financial support and social learning mechanisms. Many financial support and social-learning mechanisms are grounded in soft EU policy measures and in different funding mechanisms, such as Progress or Structural Funds spending. While mechanisms connected to formal transposition continue to indicate major drawbacks at the formal level (Epstein and Sedelmeier 2008), the other mechanisms seem to

address in more direct ways the application and enforcement problems that the country faces in the equality realm. The paper shows that these mechanisms directly and indirectly impact the most crucial factors that determine the enforcement problem: state capacity, strength and involvement of civil society and norm resonance. They indicate a slow but steady move toward sustainable improvement in enforcement.

The following section reviews previous research on EU influence on Hungary's equality policy. Next, the paper attempts to establish a causal link between post-accession EU mechanisms that are relevant from the point of view of equality policy and progress in some of the domestic factors that are most crucial from the point of view of more efficient enforcement and application of EU equality law in Hungary. Separate sections look at the different EU mechanisms: formal transposition mechanisms, soft policy mechanisms and financial assistance mechanisms, and their relevance, and the different domestic factors these mechanisms impact – namely norm resonance, state capacity, and the standing of civil society actors.

2. Previous research

This section analyzes previous research that has put forth two arguments that are of major relevance for the paper. The first says that, despite good formal transposition, enforcement is lagging behind in Hungarian equality policy. The second argues that soft policy mechanisms and financial assistance mechanisms have the potential to complement and ease the transposition of EU norms by facilitating their enforcement and application.

There is wide-ranging agreement that Hungary's accession performance in the social policy field in general and equality policy specifically can be characterized by timely and correct formal transposition, even in comparison with the EU-15 (among others Treib and Falkner 2008; Sissenich 2007; Krizsan and Papp 2006). Supply-side explanations for success are based primarily on the determinacy and legitimacy of hard conditionality in this field (Schwellnus 2005). Equality policy-related demands formed part of the conditionality criteria quite consistently during the entire accession period, despite the fact that they were, with the exception of the gender equality chapter, new to European social policy.

Explanations of good performance are also based on domestic factors. Treib and Falkner (2008) argue for the importance of policy misfit in understanding performance. Favorable governments are also seen as important factors in the success of formal transposition (Treib and Falkner 2008; Jacoby 2005). Different studies on Hungary note the visible effects of government change from center-right to left-liberal in 2002 on the transposition of EU norms (Schwellnus 2005; Jacoby 2005; O'Hagan 2004; Buzogany 2008). The quality of the policy process is also discussed as a domestic factor that influences success. Jacoby (2005) argues that change can better be explained if, beyond rule determinacy and the legitimacy of EU norms, domestic factors are also taken into consideration. He specifically emphasizes openness of the policy-making process in terms of involvement of epistemic communities and NGOs and receptivity to other international influences. He argues that such factors play a role particularly in cases when social-learning mechanisms are at the center of the transposition process. Buzogany (2008) attributes the success of transposition in Hungary (as opposed to Romania) largely to the impact of NGOs and Constitutional Court activism.

Besides the recognition of successful transposition, much of the available research notes problems in application and enforcement of transposed EU norms. Comparing the Hungarian and Polish cases, Sissenich (2005; 2007) highlights two factors that determine successful rule transfer: state capacity and organized, non-state interest (specifically, parties in social dialogue). A combination of weak states and weak organized interest, a situation that Sissenich regards as typical for CEECs, will accordingly lead to low formal and low behavioral adoption. She finds that in Hungary and Poland, formal adoption of the secondary law was high, but was followed by weak enforcement and no behavioral change. Sissenich explains this by focusing on the low state capacity of the two states and weak participation of organized interest, despite all efforts by the EU. She points to the state-building attempts of the EU (in terms of administrative capacity building, capacity building of sub-national governments, and the creation of regulatory and enforcement agencies) to address this double weakness (2007: 5).

Treib and Falkner (2008), in their work on enforcement of several equality directives in four CEECs, categorize Hungary as belonging to the "world of dead letters" model. This model is best characterized by politicized transposition burdened with political contestation and enforcement problems. Treib and Falkner explain enforcement problems with weak state capacity, which derives from lack of resources, weak bureaucracies, inefficient courts and enforcement agencies and low respect for rule of law, and with weak civil society and interest group participation. Buzogany's (2008) post-accession analysis of enforcement of equality based on sexual orientation attributes Hungary's relative success in comparison with Romania to supportive governments and continued involvement of non-state actors in the policy process. Meanwhile, he draws attention to what he calls the "lacking ownership" of equality norms and the negative influence this plays in enforcement.

Similarly, research specifically on gender equality in the CEEC enlargement process agrees that progress is undisputed in terms of formal adoption in fields where hard law has governed accession (Beveridge 2008; Bretherton 2006; Krizsan and Zentai 2006; Sloat 2006; Krizsan and Papp 2005). At the same time, there is widespread agreement related to enforcement and application abound. It is also argued that the formal adoption of rules has not been followed by adoption at behavioral and discursive levels (Beveridge 2008; Bretherton 2006; Krizsan and Zentai 2006; Sloat 2006; Krizsan and Papp 2005). Analyses list the absence of political will, shortages of both financial and human resources, and the low resonance of norms as main explanations for failure.

Stepping away from transposition-focused analyses, Lendvai (2005; 2008) argues for the path dependency of CEECs in the context of social policy in European integration. Her approach challenges the paradigm of adoption and learning and argues that impact can rather be formulated in terms of state formation and complex transformation processes – a quantum leap in which post-communist countries face the almost impossible task of approximating their welfare regimes to the EU social model (Lendvai 2008). She terms "problems" both as performance gaps and as discursive and normative failures specific to the realm of social policy. According to her, five specific criteria make post-communist countries (including Hungary) unable to adapt the social policy mechanisms of the EU (Lendvai 2005). These criteria are: rigid budgets, "messy contracts" (where legal obligations do not always result in service provision), broken policy cycles, weak social dialogue, and weak or unavailable statistical data. Lendvai adds the impossibility of coordination and cooperation and reluctance to cross-sectoral cooperation.

Thus, most research focusing on enforcement failure in Hungary tends to converge in that it attributes failures in a large part to structural factors, such as problems with state capacity, low inclusiveness in policy making, and behavioral, norm-resonance problems.

Responding to shifts in EU-driven policy processes, research has also increasingly started to discuss soft policy mechanisms in the CEE context. For instance, analyses point to ways in which they improve the enforcement of EU norms. Research has shown that the social learning-type impact that soft policy mechanisms may bring is important in smoothing the accession process and improving the efficiency of the massive rule adoption that these states had to perform (O'Hagan 2004; Pfister 2008). Meanwhile, critiques of soft policy methods draw attention to inefficiency that stems from the absence of stronger incentives. O'Hagan (2004) positively evaluates the role soft law played in Hungary in maintaining structures of social dialogue in a period of governmental hostility to social dialog institutions. She argues that, in Hungary, soft law was successful in combination with incentives coming from financial support mechanisms and the pressure of regular EU monitoring. Ferge and Juhasz (2004) find that the main benefits of soft policy mechanisms in Hungarian social policy are the introduction of new social policy concepts to the policy agenda, improved inclusion of civil society in policy making, and cognitive Europeanization.

Other authors (Pfister 2008; Fagan et al. 2005; Krizsan and Zentai 2006; Ferge 2004) specifically note the high potential of soft social policy mechanisms for equality policy in accession and new Member States. Research on the European Employment Strategy (EES) and the European social inclusion process has been conducted with a particular focus on gender equality. The EES was initially seen as a major opportunity for promoting substantive forms of gender equality (specifically gender mainstreaming) more widely in the EU (Rubery 2002). Documents produced within the framework of these processes are seen as especially relevant and carrying a high potential in the case of Hungary (Fagan et al. 2005; Krizsan and Zentai 2006; Ferge 2004). Pfister (2008) views the soft approach of the EES as a conceptual influence capable of influencing the agenda and setting the terms of the debate. Analysis partly confirms this potential for Hungary. It finds that the language of the National Action Plans (especially the 2004 round) is far more sophisticated and advanced in terms of equality than most of the national level documents (Krizsan and Zentai 2006; Fagan et al. 2005). Pfister also notes the importance and strength of the Hungarian Employment National Action Plan (NAP) in 2004 and the Revised NAP in 2006. Especially in comparison with German and UK programming in the field, he sees these plans as outstanding, forward-looking strategy papers that are backed by a ministerial-institutional framework (2008: 529). Pfister evaluates Hungary's performance in this soft policy field as quite good.

Research also notes the importance of Structural Funds (SF) and particularly European Social Funds (ESF) for promoting equality. Given the importance of these funds in financing development in the EU, their requirements on equality may gain serious importance for different countries. Braithwaite (2000: 10) argues that mainstreaming gender into SF and ESF entails the introduction of equality in a wider range of priorities and measures, the improvement of monitoring and enforcement tools (such as data collection, indicator development) for gender equality, and increased involvement of equal opportunity organizations in programming and management. Meanwhile, she also notes the variation in the importance of gender between the different programming fields: gender is taken into account more in fields that spend less money and bring softer change (such as human resources). Little evaluation of SF and ESF spending took place for Hungary, and little of that had an equality focus. Preliminary research findings on the first programming period more generally already show the indirect impact of SF on inclusive policy making (Lakatos 2007).

Existing equality evaluation findings concerning the same programming period indicate inconsistency in terms of incorporation of equality priorities, as well as some good practices in integrating equality (MTA RKK 2007).

It is argued that the importance of soft EU policy mechanisms for promoting equality norms should be considered in the wider EU equality policy context in which equality norms, and particularly gender equality, have been competing with other priorities. The marginalization of gender equality was noted in the EES context (Radulova 2009; Pfister 2008; Fagan et al. 2005): researchers have argued that this marginalization impacts particularly heavily on the equality components of the National Action Plans of CEECs. Pfister (2008), analyzing EES impact in Germany, UK, and Hungary, notes the shifts in the priorities of the EES towards activation and away from gender equality. This has resulted in the loss of visibility, detail, and specificity of gender equality in the national debates and the documents produced. It seems that the marginalization of equality in on-going EU debates is particularly important in countries, such as Hungary, where the equality agenda is not so well established outside EU processes.

It is clear that soft law may bring much more in terms of equality than just a better and smoother application and enforcement of hard laws. Of particular significance for this paper, however, is the relevance of soft mechanisms for furthering behavioral change and for improving state capacity and inclusiveness of policy processes – and as such, contributing to application and enforcement of EU norms.

This section highlighted two claims presented by earlier research: first, that despite good formal transposition, enforcement is lagging behind in Hungary, and second, that soft policy mechanisms and financial assistance mechanisms have the potential to improve the enforcement and application of EU norms. Following from these claims, the next section of the paper looks at how these mechanisms complement the formal transposition mechanisms available to the EU to improve the implementation of EU equality norms in post-accession Hungary.

3. EU mechanisms at work

3.1. The EU conditionality story

The period between 2001 and 2008 brought dramatic improvements to the equality architecture of Hungary. The post-1989 Hungarian legal system has not been entirely averse to equality thinking. However, initiatives developed before the EU accession period were framed in terms that differed largely from the EU equality-related norms that were to be adopted within the framework of the accession process. While Hungary had wide constitutional protection against discrimination from 1989 and legislation protecting ethnic and national minorities from 1993 and disabled persons since 1999, the protection provided was not backed by enforcement measures and sanctions to make these laws effective. In the case of legislation, protection was also not framed primarily in equality and non-discrimination terms.

It is against this background and within the context of the EU accession process that from 1998, increasing NGO and expert mobilization in Hungary targeted the achievement of improved equality policy. Mobilization revolved around discrimination against Roma and women in the early stages and disabled persons and persons disadvantaged based on their sexual orientation(2) in the later stages. Conferences, publications, and test court cases pursued by public interest groups all pointed in the direction of the necessity to introduce change. The Minority Parliamentary Commissioner and different opposition MPs aligned with this mobilization. In 2000-2001, three anti-discrimination bills were developed and submitted before different Parliamentary committees: the Minority Commissioner's Bill on Racial Discrimination, an anti-discrimination bill concerning all grounds of discrimination by two Socialist MPs, and a bill on gender discrimination by two liberal MPs. All three bills were turned down.

Hungary started EU accession negotiations in 1998. The right-wing government in power between 1998 and 2002 posed a major obstacle to policy development in the social field generally (O'Hagan 2004; Jacoby 2005) and the equality field specifically. Using a language of external requirements (Dombos et. al 2007), this government favored – as a response to the EU accession conditionality – a politics of marginal change in the different sectors of the legal system as opposed to a comprehensive reform in the field of equality policy. In 2000-2001, as noted by the relevant Regular Reports on Hungary, a wave of amendments (especially of the Labor Code) made an important step towards the adoption of the social- and employment-related acquis, including most of the core elements of the equality acquis. While the government's approach failed to respond to the requests of the national policy debate, the Regular Reports (1998, 1999, 2000, 2001) indicate general reassurance from the European Commission towards the incremental change approach of the government. The main criticisms in the Regular Reports in the social field relate to enforcement issues. Also, they come from an assessment of the social status of the vulnerable groups that is not tied strongly to EU acquis, but rather to a wider EU understanding of equality principles – for instance, the low proportion

of women MPs in Parliament, the need for educational integration of Roma, integrated employment for the disabled, and low civil society participation. Some minor critical remarks note the need for further legal refinement particularly in the field of anti-discrimination, both connected to the Race Directive and to the Employment Directive. The need for improvement of the institutional set-up is also mentioned. The main focus of criticism in this period, besides the need for improving and speeding up implementation in all fields, seems to be the failure of social dialogue (Jacoby 2005; O'Hagan 2004) and the social exclusion of Roma.

The 2002 change of government to left-liberal coalition almost instantaneously brought changes in the government's attitude towards European integration and also towards equality policy. The new government framed the harmonization of EU norms more in terms of adherence to an abstract and positive Europeanness than as fulfillment of requirements (Dombos et. al 2007). In December 2003, after a one-year, intensive preparation and Parliamentary debate with NGO and expert involvement, the Act on Equal Treatment and Promotion of Equal Opportunities was passed. The law covers a generous list of equality grounds that far exceeds the EU list and covers all aspects of the equality acquis including the establishment, as of 2005, of an independent Equal Treatment Authority. Minor aspects of the law remained in contradiction with the acquis (Kadar 2007; Krizsan and Papp 2005). A round of post-accession amendments in 2006, upon pressure from NGOs and experts, rectified some of these problems, while others continued to be deemed problematic by the expert report (Kadar 2007) and infringement records.

After accession, in the equality field, infringement procedures continue to provide negative incentives. Hungary has been part of two infringement procedures, both of which started in 2008. The first concerns the Employment Directive. The problems noted mostly relate to the letters of the directive – primarily definitional inconsistencies and divergences. But, the infringement letter also notes the absence of proper regulation of reasonable accommodation for disability. The second infringement procedure concerns the 2002 amended Equal Treatment Directive between women and men. The reasoning notes the limited scope of the law and the mandate of the Equal Treatment Authority. Both infringement procedures are quite recent, and it is unclear what the response will be from the Hungarian state. It is important to note that most comments concern the cost-demanding aspects of transposition – particularly, reasonable accommodation and the mandate of the Equal Treatment Authority to go beyond complaint solving to also assist victims, produce reports, and make recommendations.

By and large, however, with the adoption of the Equal Treatment Law and subsequent amendments, Hungary harmonized much of its legislation with the equality related acquis (see also Falkner et al. 2008; Krizsan and Papp 2005) by the accession date, with some minor updates following that.

This story indicates the presence of a number of favorable domestic factors beyond the external incentives logic that played a role in successful transposition. The presence of some equality thinking in Hungary since the mid-1990s is quite obvious. In this context, starting from the end of the 1990s, NGOs, norm entrepreneurs, and some left-liberal politicians started to pursue a campaign for comprehensive equality policy. This campaign was rather unsuccessful while Hungary had a government unfavorable to developments in the social policy field, but it prevailed immediately after the political shift in 2002. While the EU influence cannot be neglected – neither in terms of strengthening political will to act, nor in terms of defining the framing of the adopted document (see Dombos et. al 2007) – the story clearly shows the importance of domestic factors in the success of transposition. Infringement procedures should be looked at against this background. Given the importance of domestic factors in the transposition process, a reversal upon accession seems unlikely. They seem to matter in terms of providing an impetus for more prompt fine-tuning of existing legislation vis-à-vis EU norms. Meanwhile, some implications of the infringement procedure for enforcement and application issues can be noted. The reluctance to integrate reasonable accommodation for disabled persons into law not only has serious cost components, but also raises applicability problems, given that it is meant to at least partly transfer accommodation costs to employers. The problems with the mandate of the equality body – namely, that it does not conduct research and surveys or assist victims – also has resource- and capacity-shortage elements. It is clear that the infringement procedures will not be able to go much deeper in addressing application and enforcement problems of the equality acquis.

3.2. Soft policy mechanisms and behavioral change

In parallel with the process of the formal transposition of the acquis, from 2001, Hungary started to join a series of soft social and employment policy mechanisms. After a three-year preparatory period, Hungary launched its first National Employment Action Plan in 2004. In 2003, the government signed the Joint Inclusion Memorandum, followed in 2004 by the 2004-2006 National Action Plan on Social Inclusion. While these processes are not directly part of EU equality thinking, equal opportunity thinking related to both gender and other recognized inequality grounds informs them as horizontal principles. In the EES and the social inclusion processes, documents contain separate equal opportunity chapters; also, equality is

mainstreamed to varying degrees of success in all the other parts (Rubery 2002; Fagan et al. 2005; Pfister 2008). Hungary is considered a "disciplined programmer" and as a state that has given serious and strategic weight to documents produced in the process of the formal transposition of the acquis (Pfister 2008). These documents brought a new language of equality to Hungary with emphasis on horizontal and mainstreaming-driven thinking on equality (Krizsan and Zentai 2006). Also, they introduced a more strategic focus in Hungarian social policy, based on programming, enforcement, and capacity building. As such they seem to respond directly to some of the more systemic failures in the field of equality that have underpinned the difficulties of proper enforcement of EU equality norms. A second round of these documents was launched around 2006. While the National Strategy Reports on Social Protection and Social Inclusion (for 2006-2008 and for 2008-2010) clearly continued on pursuing a forward-looking, mainstreaming-minded equality agenda, the new NAP on employment has clearly reacted to the redrawing of priorities in the EES at the European level and the marginalization of equality considerations in it (Pfister 2008).

Beyond the more general, soft social policy processes, post-accession Hungary became part of European equality programming. Two such processes stand out: the European Year for Equal Opportunities for All (2007), and the domestic implementation of the EC Roadmap for Equality between Women and Men (2006-2010). Both meant the launching of new and important strategies for Hungarian equality policy and the start of programming along the priorities established in the respective EU processes(3). The Roadmap is important especially in terms of defining priorities and harmonizing strategies on gender equality across Europe. The year of equal opportunity provided direct impetus through some funding and initiative on actions of awareness raising, improving representation of inequality issues, promoting research and understanding and state-non-state actor cooperation on all equality grounds. States developed domestic equality strategies under its aegis and undertook national level campaigns along these lines. While measures supported under the Year of Equal Opportunities are of soft nature, they clearly lead in the direction of improving enforcement of EU equality norms.

EU normative pressure comes from the EU Expert Groups established for the different equality aspects, as well. These groups are formed by experts from every Member State and are financed by EC Funds. They include: the EC network of legal experts in anti-discrimination, an EU expert group on Gender, Social Inclusion and Employment, the European Network of Legal Expert on Gender Equality, and to some extent, the European Network of Equality Bodies - EQUINET. The task of these expert groups and networks is to issue expert reports in which equality-related conceptual matters are tackled and proposed for EU Members States, to regularly monitor and evaluate practice in the field at the domestic level, and to make recommendations for improvement. Their work is informed by domestic challenges and solutions in equality policy brought by the experts to the group; their work informs equality policy changes and debates in the domestic realm. They also feed information into the EC monitoring of legal transposition. The regular monitoring reports produced by these expert groups contain country evaluations for every Member State and often address – besides narrow transposition issues – issues of application and enforcement. Even though these reports have no mandatory power, they nevertheless feed into domestic policy-making processes by social learning mechanisms.

Social learning and normative pressure come to Hungary in the equality field through every major policy mechanism that was launched in the field in the last years of the accession period as well as in the post-accession period. While criticism concerning the weaknesses of soft policy mechanisms in terms of efficiency and impact should not be neglected (Pfister 2007: 71), two kinds of potential impact can nevertheless be discerned. These soft policy mechanisms may bring a strategic programming approach to policy making that has not been around in the field before Hungary's EU accession; they have the potential to enhance state capacity. The other potential impact comes in terms of aligning Hungarian policy frames with EU framing and improving norm resonance in the field. Section 4 of this paper looks at how some of this potential impact comes across in Hungary.

3.3. Financial support mechanisms

In the post-conditionality context, Schimmelfennig and Trauner (2009 this issue) see alternative external influence mechanisms, including financial and technical support mechanisms, to be instrumental in preventing involuntary non-compliance and strengthening domestic capacity for improving the enforcement and application of transposed norms. Financial assistance seems to be particularly efficient in environments that are politically favorable to compliance but that lag behind in terms of implementation for various reasons (such as due to administrative or resource-related issues). The case of the equality realm in Hungary, with its strong formal compliance and connected enforcement problems, fits perfectly with this view. Several funding mechanisms reach out to the equality agenda and can be seen to contribute in one way or another to the enforcement of EU equality norms.

Distinction may be drawn between different types of financially-driven influence mechanisms. While some may act as external incentives, which are only allocated upon compliance and can be withdrawn with non-

compliance, others act towards supporting compliance more along the lines of financial assistance. EU financial mechanisms vary according to the extent to which they operate as external incentives mechanisms: some are solely external incentives type, others are financial assistance type, and yet others combine the two aspects, in that their allocation is conditional on fulfilling some of their core programming criteria, but not on fulfilling other criteria. While Structural Funds allocation, discussed below, is an external, incentive-type financial mechanism with respect to some core criteria of its distribution, such as transparency, the equality aspects are more marginal to their allocation and do not threaten withdrawal. It is also important to note that most of the instruments analyzed here go beyond funding. This section also recognizes instruments' roles in facilitating social learning through guidance in programming, and also through cross-Member State cooperative action, such as networking, disseminating good practices or knowledge-transfer. Therefore, some points made in the previous section of this paper also apply to mechanism discussed in this section.

The year 2004 marked the beginning of Hungary's full access to relevant EU funding. Some funding mechanisms were targeted directly towards the equality policy agenda. The Community Action Program to combat Discrimination (2001-2006) and the Community Program on Gender Equality (2001-2006), merged in 2006 in the PROGRESS program (2007-2013), is the enforcement pillar of, among others, the equality-related directives. Hungary gained full access to this package from 2004, as well as to more general funding mechanisms of relevance, such as the EU Structural Funds, their European Social Funds, and the specific ESF targeted community initiative, the EQUAL program. In order to explain the potential of these mechanisms to impact the enforcement and application of EU equality norms, this section looks at how the programming of these funding mechanisms integrates equality policy aims, complemented with information on specific projects implemented within the framework of these mechanisms and targeted specifically to the equality field(4).

3.3.1. Community Action Programs

The mechanisms of financial support closest to the equality policy of the EU were the two Community Action Programs: the Community Action Program of the Community strategy on gender equality (2001-2006) (5) and the Community Action Program to combat discrimination (2001-2006)(6). Both programs aim to support and finance the enforcement of the EU gender equality policy respectively the EU anti-discrimination policy in cooperation between the EC, Member States and civil society. Both programs primarily financed projects that impacted across several Member States and focused mainly on three aspects: awareness-raising, capacity development of relevant stakeholders, and knowledge and expertise generation. Both their funding targets and their transnationality indicate that they were meant not only to provide financing for enforcement, but also to promote social learning in enforcement matters across Europe. Both specifically state in their programming documents that they were intended to be complementary to and coordinated with other programs and grants aiming to promote equality – specifically, Structural Funds and the Community Initiative EQUAL .

The Community Action Program on gender equality (2001-2006) spent a bit less than half of its funds on capacity building, more than one-third on awareness raising and "sensibilization," the rest on knowledge and expertise generation. More than one-fourth of the funds within the programs priority on capacity-building and on awareness-raising went towards state actors. One-fourth of awareness-raising actions targeted the larger public opinion (European Commission 2008). Similarly, the evaluation of the Community Action Program to combat discrimination finds that the Action Program has played a key role both in raising awareness of the issues surrounding discrimination and in developing the ability of stakeholders to tackle discrimination(7). On average, half of the spending went towards capacity development, primarily for NGOs promoting the interests of vulnerable groups and pursuing actions against discrimination. More than one-third of the budget targeted awareness raising and sensibilization. This work was geared in particular towards the general public, but also entailed training judges and practitioners in working with anti-discrimination law (European Commission 2006).

The Progress Program(8) was launched in 2007 to continue, among others, the activities of the previous Community Action Programs for the period 2007-2013. The idea was to rationalize and streamline EU funding in the social policy field and to improve its impact. Two out of its five priority areas are relevant for our purposes: non-discrimination and gender equality; another two, social inclusion and employment, are indirectly relevant. The main targets of the program are Member States, local and regional authorities, public employment services, national statistics offices, as well as specialized equality bodies, universities and research institutes, as well as the social partners and non-governmental organizations, all of these key actors in enforcement of equality related norms. Training, knowledge generation, policy transfer and learning, and engaging all stakeholders in the process are the main tools used by the Program(9). No evaluations are available yet on the Progress Program.

Community Acton Programs are specifically geared towards addressing the specific enforcement problems of equality policy. The driving force in programming is the recognition that pro-active measures are needed to enforce anti-discrimination measures (O'Cinneide 2006). They directly address components of such an

approach to enforcement, both through funding and through facilitating cross-Member State networking and transfer of enforcement models.

3.3.2. Structural Funds

One-third of the EU budget is spent on EU Structural Funds (SF), which aim to facilitate the development of economically disadvantaged regions of the EU. The Funds are allocated to countries in accordance with their National Development Plans, developed within the framework and along the principles of the EU regional policy, though largely by the Member States themselves. Hungary, as a New Member State, currently participates in the second programming period in SF spending. The first programming period (2004-2006) was driven by the National Development Plan (2004-2006), the second was launched in 2007 and is grounded in the New Hungary Development Plan (2007-2013). The importance of SF spending to Hungary is best indicated by the amount of the funds disbursed to the country, which was 2.68 billion EUR for the first programming period and is expected to be 22.4 billion EUR for the second programming period (roughly 4% of the country's GDP). Structural Funds spending largely defines Hungarian development policy. Beyond direct impacts – that is, the money coming from the EC – it has been argued that SF priorities also indirectly impact Hungarian spending. Given the SF co-financing and additionality principle (25% for the 2004-2006 period, 15% for the 2007-2013 period), and the large budget deficit with which Hungary struggles, SF programming determines most of the development-related spending of the country, often coercing all public tenders within the framework set by the Development Plans (Lakatos 2007). Structural Funds spending influences Hungarian policy making and implementation in many different ways. Its influence can be discussed under two aspects. First, SF (and particularly ESF) programming and implementation are clearly and directly relevant to equality issues. Second, SF indirectly influences equality policy implementation through impacting the different problematic factors that hinder good enforcement and application of equality policy, such as state capacity, inclusive policy making, and norm resonance.

First, how are SFs directly relevant to equality policy? Structural Funds in Hungary relate in two ways to the promotion of the equality agenda. First, the EC, in its core SF regulations(10), sets the elimination of inequalities and the promotion of equality between women and men as horizontal priorities for the functioning of SF. As such, equality is to be applied in all aspects of the functioning of the SF. Thus, it is relevant for all Operational Programs (OP), in all their programming and implementation efforts, including all grant distribution, monitoring, and evaluation. Accordingly, the 2004-2006 National Development Plan sets equality of opportunity between women and men as horizontal priorities. In different parts of the document, equal opportunities for Roma are also included among the horizontal principles. The New Hungary Development Plan (2007-2013) takes up a wider approach and defines the horizontal principle with reference to equal opportunity and anti-discrimination on all grounds, while specifically mentioning equal opportunities for women and men(11). Detailed descriptions of the horizontal principle put the focus on gender, ethnicity (specifically the Roma minority), disability, and regional inequalities (NHDP: 64-65).

The horizontality of equality has specific and far-reaching implications for the implementation of the SF. It implies that all Monitoring Committees have representatives of the three main vulnerable groups recognized in Hungary: women, Roma, and the disabled. Also, equal opportunity guidelines were developed for every OP to inform both the tenders and the preparation and evaluation of the projects. Every submitted project must reach certain scores on fulfilling the equal opportunity horizontal principle. Unfortunately, only minimal scores should be reached; this has been one of the criticisms regarding the efficiency of the system (MTA-RKK 2007). Specific evaluation concerning the horizontal principle of equality is only available for one of the OPs of the previous programming period (MTA-RKK 2007). The evaluation notes several programming and practical problems, but it also emphasizes several equal opportunity success stories (MTA-RKK 2007).

Besides the horizontality principle, specific Operational Programs focus on different aspects of the implementation of the EU equality policy, some of the objectives and spending of which might be relevant from the point of view of the enforcement and application of equality norms. In the 2004-2006 National Development Plan, one OP – the Human Resources OP – had a focus on equality-related matters. The New Hungary Development Plan (2007-2013) has two OPs that can be seen as particularly relevant to equality policy: the Social Renewal OP, and the Social Infrastructure OP. The Social Renewal OP has, as one of its five core objectives, the strengthening of social inclusion and promotion of equal opportunities in society, with the specific goal to strengthen and promote anti-discrimination policy. Projects developed with these OPs can often be linked directly to improving the enforcement of equality policy. For example, a 2008 tender under the Social Renewal OP specifically targeted the improvement of the awareness-raising and knowledge-generation capacities of the Equal Treatment Authority(12). While the focus of these OPs goes well beyond improving the enforcement and application of EU equality norms, they may be instrumental in backing equality policy enforcement through projects and programs directed towards structural forms of inequality, but also, quite importantly, through collecting data and developing indicators for specific inequality phenomena.

Structural Funds programming and spending also indirectly impact Hungarian policy processes by improving the enforcement and application of norms in the equality field through (potentially) state capacity development. The implication here is that SF programming and spending can lead to more inclusive, transparent, and facts-based policy processes at all stages of policy making, as well as the recognition of the need for better indicators and data collection for these purposes. These processes also have components such as developing state infrastructure, building capacity within the state administration (including bodies in charge for enforcing equality policy), and providing funding for programs and activities in the field that could not be pursued because of the lack of funds. Beyond the overall impact, specific OPs might also feed directly into developing state capacity. The State Reform Operational Program of the New Hungary Development Plan could be especially relevant. The two main priorities of the OP are the renewal of processes and the organizational development and improvement of the quality of human resources. Both are of high importance from the point of view of the enforcement of equality norms.

Another important indirect gain of the SF mechanisms is their focus on inclusive policy making, through partnering with civil society, as one of the core principles in both programming and implementation (Lakatos 2007). Lakatos, in his evaluation of the 2004-2006 National Development Plan, depicts the impact of the SF on taking the partnership principle increasingly seriously. Despite the soft guidance that is attached to the SF programming, Lakatos argues that the two core principles given by the EU – regionalism and partnership – nevertheless have a strong, indirect impact on Hungary. They impact and they are implemented because they are seen to serve more efficient programming and therefore more efficient absorption of funds (Lakatos 2007: 178). The strength of civil society and non-state organizations is also improved by their access to this important funding mechanism. It should also be noted, however, that small NGOs may face extreme difficulties in fulfilling the stringent criteria SF sets for partners in winning bids (13).

Finally, the SF mechanism has the potential to improve norm resonance in the field of equality policy. Research has already noted the visible shift in framing equality, specifically in the field of gender equality, brought by the Development Plans (Krizsan and Zentai 2006), as well as by instruments such as the equal opportunity guidelines developed for each OP, or practices such as the equal opportunity screening of each project. Through these, a higher awareness and understanding of the equality agenda is likely to spread among some of the most important stakeholders in the equality norms enforcement process (state, non-state, and labor market actors, as well). More research and analysis on how exactly the programming and distribution of funds translates to progress in the equality policy field are clearly needed.

4. Domestic Changes

The discussion of EU impact mechanisms in the context of an analysis of enforcement and application of EU equality norms has highlighted the importance of soft social learning mechanisms and financial assistance mechanisms. This section discusses the progress of three domestic factors that have been discerned in the literature as particularly important in enforcing equality norms in the context of these EU mechanisms. It assesses their actual and potential change and also the aspects that resist change and continue to constitute an impediment to better enforcement, and attempts to causally link this change to EU influence, as much as possible within the framework of this paper. While it is difficult to delimit the impact of EU mechanisms from other causal mechanisms bringing change, the fact that the equality policy agenda in Hungary is largely set by the EU makes the assumption of at least partial causality safe in the case of this policy field.

4.1. Norm Resonance

The resonance of norms has been emphasized by several authors as being an important endogenous determinant of EU impact both in the success of transposition and in enforcement (Buzogany 2008; Dombos et. al 2007; Schwellnus 2005). Norm resonance is important in the context of enforcement of equality policy in two ways. First, norm resonance can engender awareness and understanding of discrimination among victims, potential perpetrators, and those who are in a position to detect discrimination; as such, it leads to fewer violations, more active rights claiming, and more cases of discrimination that are dealt with by authorities. Second, norm resonance, manifesting in the work of different policy stakeholders, leads to better implementation and programming documents and to addressing the enforcement problem at stake more extensively, through a range of different available policy tools. This section looks at both of these aspects.

The recent Eurobarometer survey (2008) on perceptions of discrimination and attitudes towards groups vulnerable to discrimination can be used to assess the awareness and equality norm resonance of the general public in Hungary. Perceptions of discrimination in society is generally around the average of the EU population or above in the realm of ethnicity, age and gender. Below average are perceptions of

discrimination based on religion and sexual orientation. One-fifth of Hungarian respondents (which is above the EU average) felt they had been discriminated against in the previous 12 months. Here, while grounds of discrimination are quite dispersed, age and ethnicity seem to be the most prominent. On diversity attitudes, Hungary performs worse than the European average in every single category except religion: close to half of the sample would not like to see Roma or members of sexual minority groups as neighbors or high-level elected politicians; disabled persons also do not fare well as politicians.

Meanwhile, in terms of awareness and acceptability of equality policies and equality rights in Hungary, there is an above-average perception of the insufficiency of domestic equality policy, especially on grounds of age and gender and in the domain of education. The Hungarian population is also particularly supportive (9 out of 10) of providing positive measures for promoting equality for groups on all grounds, with the exception of sexual orientation. Hungarians believe almost 10 percentage points more than the European average that they know their discrimination and harassment related rights (Eurobarometer 2008: Hungary Fact Sheet).

Data indicate that in Hungary, there is an above-average (within Europe) norm resonance among the population concerning equality standards and the rights-related to them. At the same time, the population is generally more intolerant and averse to diversity than the European average, especially as far as Roma or sexual minorities but in some contexts disability is concerned.

As compared to the 2006 Eurobarometer survey (Eurobarometer 2007) data show a moderate increase or relative stability in terms of perception of discrimination. The survey also shows a clear (15-20%) increase in awareness of rights over the two years, and an increasingly favorable attitude (10% increase) towards positive action measures on all grounds. Data on change show improvement at least in terms of the potential for improving the enforcement of equality law.

Data on norm resonance and identification with equality norms by actors that are important in the enforcement of equality policy – judges, employees of employment offices, police, public administrators that work with clients – are obtainable from the end of the 1990s. Data indicate pervasive anti-Roma sentiments within the police (OSI EUMAP 2001: 242). While no direct measurement of change of norm resonance of enforcement actors with the EU accession is available, data on the general public has implications for the attitudes of enforcement actors, as well. In their case, stagnant negative attitudes toward vulnerable groups seem even more problematic since such attitudes lead to persistent patterns of institutional discrimination.

Attitude change takes place in the context and under the impact of media campaigns, awareness-raising actions, and trainings directed at different segments of the population, much of which has been financed by the Community Action Programs and Progress and different SF-related programs.

Analyses of the resonance of policy frames between Hungary and the EU in the gender and sexual orientation-based equality policy field show that the EU had an important impact on framing equality in Hungarian debates. However, this has not brought full resonance between the two. Analysis done with frame analysis methodology (Krizsan and Zentai 2006) indicates that there is a difference between framing gender equality in domestically-developed policy documents and policy documents developed in some kind of cooperative model with the EC, particularly the Joint Inclusion Memorandum (2003), National Employment Strategy (2004), or National Development Plan (2004-2006). These documents have used a much more sophisticated gender equality framing, which is close to the frames used at the EU level. Recent research (Dombos et al. 2009) that compares framing of policy debates in Hungary and the EU in several gender equality and LGBT rights-related policy issues argues that in Hungary the dominant frames of the debates are, as a rule, less gender equality-sensitive than the dominant frames in the respective EU debates (14). Even in the fields of gender equality where there is strong EU impact, only partial frame convergence has taken place; there is no full resonance (Dombos et. al 2009). Progress in convergence of policy frames in the laggard fields of gender and sexual orientation can be seen as a good proxy for progress in other equality fields that traditionally have developed more dynamically in Hungary(15).

Improvement in frame resonance can largely be attributed to programming in different EU policy processes (Krizsan and Zentai 2006). Meanwhile, as soft policy processes do not impose specific policies, the framing in these documents can at least partly be regarded as the result of some level of norm resonance and behavioral change of policy actors that are highly relevant for the application and enforcement of EU equality norms in Hungary. As such, they may stand to indicate the potential for sustainable improvement in the enforcement and application of these norms.

Improvement in norm resonance in Hungary can thus be identified in two realms: of awareness concerning rights and the need for state intervention to prevent and address inequality; and of understanding and use of an equality language and framing in policy documents that increasingly conforms with that of the EU. While these factors might lead to better enforcement of anti-discrimination policy, especially in terms of

identifying violations and bringing more complaints, the persistence of negative attitudes towards vulnerable groups indicates that a social problem, which is the source of these violations, is not likely to decrease.

4.2. State capacity

Relevant literature converges on attributing the limited success in the enforcement of the formally adopted EU anti-discrimination norms at least partly to state weakness (Falkner et. al 2008; Sissenich 2007; Lendvai 2004; 2005; 2008). A comprehensive analysis of state weakness in the equality field is beyond the scope of this paper. Instead, the paper will proceed to illustrate some of the illnesses of the system through the limited yet emblematic case of the gender equality machinery(16), and indicate the potential for change by looking at the Equal Treatment Authority, the Hungarian anti-discrimination body.

Initially established at the end of 1995 upon the impact of the Beijing Platform for Action, the gender equality policy machinery in Hungary has been at the whims of different government administrations. Its place in the governmental hierarchy has shifted repeatedly, ranking somewhat higher under left-liberal government and lower with right-wing governments, ranging from lower secretariat levels up to the ministerial level. But changes frequently occurred even within the course of one government (Krizsan and Zentai 2006; Krizsan and Papp 2005). The relation of gender equality to other policy sectors – and consequently, the placing of the machinery within different ministries – has also shifted repeatedly, placing gender equality within social and employment affairs, or family affairs, or international and European integration affairs, or ultimately, as an independent equal opportunity policy field. Staff of the machinery has changed frequently. At one moment in 2005, the whole department staff was dismissed and replaced with people who had limited or no expertise in gender equality (Hungarian Women Lobby 2007). Ultimately, since 2006, relative stability can be noticed: the Ministry for Social and Labor Affairs at the level of a separate state secretary is responsible for equal opportunities. Separate departments deal with Roma equality issues, disability equality issues, and equal opportunities as an umbrella term taken to include youth and children issues, elderly policy, and equal opportunities between women and men. As of late 2009, the gender equality department had a staff of five, with varying expertise in the field. With its instability and the related lack of professionalization among the staff, the machinery had never operated in a transparent way. For instance, annual reports were rarely released (reports were available for 2003 and 2004, never before and after). It works on the basis of six months work plans, and for a long time (until 2003), had no rules of procedure. The lack of financial and human resources and the significant fluctuation in the past explain to a large extent the absence of strategic planning and implementation in the field of gender equality policy. The consultative mechanism for coordinating the government, NGOs, and experts on gender equality issues – the Council on Gender Equality, originally established in 1997 – had a similarly stormy history, which resulted in the poor relationship between the government and its gender equality machinery with NGOs and experts in the field (Hungarian Women Lobby 2007). Only its 2008 reform(17) resulted in a more transparent functioning and agenda, and increased NGO participation and increased state attention, which makes the Council currently the main state NGO interface in gender equality policy in Hungary.

The story of the gender equality machinery illustrates several of the symptoms of state weakness. We see an absence of strategic planning and conscious programming in the field that have a debilitating impact on the place of gender equality within the larger social field and within equality policy. The machinery is a clear-cut case of dependency on political cycles and beyond that, even on changes of higher-level governmental officials. The lack of expertise, continuity, and capacities among staff impact the quality of work in the machinery. Besides the absence of in-house expertise, the machinery by and large has failed – until recently – to establish good cooperation with NGOs and experts who can inform their work. The best confirmation for the failure of the machinery in establishing itself as a hub for gender equality expertise within the government is the recently-planned initiative of the SF managing authority, the National Development Agency, to establish its parallel structures for gender equality. As the Agency found that the governmental machinery on gender equality fails to give sufficient support and information for developing the gender equality components of the SF spending, it is pondering to establish parallel institutions to serve as its own programming support mechanism in the field with the involvement of experts and NGO representatives(18).

The story of the gender equality machinery shows a case of how state capacity problems lead to inefficiency in policy enforcement. Though extreme, it nevertheless illustrates well some of the problematic patterns that occur in other fields of equality policy and need to be acted upon to improve enforcement.

Some recent improvements in the activity of the machinery can clearly be linked to soft EU policy processes of equality programming, such as the launching of the national Roadmap for Gender Equality. Beyond becoming the first strategic gender equality document in the last decade, the Hungarian Roadmap also projects the development of further gender equality strategies and acts as a catalyst for involving experts and NGOs in the strategic work of the machinery. EU-driven soft policy mechanisms thus bring a

strategic programming approach to equality policy making that has not existed in the field before Hungary's accession to the EU.

A less extreme manifestation of state capacity problems in the field of equality is shown by the case of the Equal Treatment Authority. Established along the lines set in the Race Directive and the 2002 Equal Treatment Directive as an independent enforcement body, the Authority's main purpose is the enforcement of the Equal Treatment and Equal Opportunities Law, which incorporates most of the EU equality law in Hungary(19). The Authority has been in place since 2005 with a steadily increasing staff and number of complaints received and addressed on all grounds of inequality covered by EU norms(20). While seemingly successful in compliant-solving, it clearly transpires from the annual reports of the Authority. The November 2008 infringement letter also noted that the Authority focuses exclusively on complaint-handling and does not act along the other tasks set by the Directives and Hungarian law. It fails in launching ex officio investigations, a crucial feature of such bodies (Krizsan 2006), and does not play a role in producing reports and commissioning research to improve understanding of discrimination. It does almost no awareness-raising, has very little involvement in the monitoring, review, and development of legislation and policy in the field. Finally, it does not act as a state-NGO interface. The Authority, while it could be a catalyst for change in enforcement of anti-discrimination policy (European Commission 2007), fails mainly because of the limited financial and human resources allocated to it(21).

Financing and capacity-building activities under the different EU mechanisms discussed above come to address directly these kinds of capacity problems. For example, the 2008 tender coming out under the Social Renewal OP, which specifically targeted the improvement of the awareness-raising and knowledge-generation capacities of the Equal Treatment Authority(22) is an excellent example for how the SFs can be applied to deal with enforcement problems that do not flow from voluntary non-compliance. But of course, the question of sustainability of such progress in case of decrease or withdrawal of EU funds from the field remains on the table.

4.3. Empowering and including non-state actors

The role of NGO actors in the enforcement of equality policy is twofold. NGO participation in policy-making and implementation processes can be seen as a guarantee for better targeted policies with more transparent implementation and more responsiveness to the realities of the social problem at hand. At the same time, in the equality field. NGOs are important actors in the enforcement and application of the law as organizations that support victims, bring cases by representing victims, and develop projects, trainings, guidelines for improving enforcement of anti-discrimination law. This section discusses post accession changes in NGO participation along these two lines.

In the Hungarian equality policy development, along with the EU impact, NGOs had a relatively important role to play from the early stages of agenda-setting. NGOs took part in the process from as early as the end of the 1990s, both as mobilizers and as norm entrepreneurs. They acted both as catalysts of domestic norm development and as brokers of EU norms. The adoption of the Act on Equal Treatment and Promotion of Equal opportunities was preceded by a rather intensive consultation process involving a wide range of NGOs and experts(23).

The consultation process on the Equal Treatment Act stands out as quite exceptional in the pre-accession process, consultation not being ab ovo part of the policy process during this period. Other major documents relevant from equality point of view, such as the Joint Inclusion Memorandum, the first Social Inclusion Strategy, the first National Employment Strategy, or the National Development, involved much fewer and more pro-forma consultations with NGOs. Improvement in going beyond pro-forma consultation towards meaningful consultation processes is noted by activists with the second round of programming documents. For example, the launching of the New Hungary Development Plan is seen by activists to have been preceded by a much more thorough and successful consultation procedure than the previous development plan. The procedure included representatives of inequality groups that are recognized under the Plan: women, Roma and the disabled(24).

Consultative bodies formalizing civil society consultation in velvet triangle-type (Woodward 2004) patterns in the realm of equality policy have been around in Hungary from surprisingly early on, but with varying efficiency. Consultative bodies that bring together experts, NGOs, and the government were established for most major inequality grounds in the 1990s. The relatively successful and stable National Council for Disability Affairs was established in 1998; the above-described Council on Women's Affairs (later Council on Gender Equality) was established as early as 1997. The Roma Integration Council – in its current form – came about only in 2006(25). No such mechanism exists for the LGBT groups and for youth. The scope and functioning of these institutions has varied in time, with some tendency towards better functioning during the last years (as is especially visible in the case of the Council on Gender Equality and the Roma Integration Council). The instrumentality of these consultative bodies can partly be linked to the EU

demand for inclusive policy making and partly to EU-driven demand for more professional policy-making processes in which expertise is only available from outside the government, most often from NGOs.

Another way in which NGOs that work on equality policy are included in policy-making processes is through Monitoring Committees (MC) that have been established mandatorily under every OP of the SF implementation. Equality work in the MCs has brought some successes already in the first programming period (2004-2006), but has been especially wide-ranging in the second period. Gender equality groups and disability groups have been especially active in the MCs(26).

Over time, a professionalization and expertization of equality NGOs and their leaders can be discerned. The integration of equality into the different aspects of policy making both as horizontal and as targeted policy priorities increasingly required expertise many times available only from NGOs. While this improves recognition of NGO members and makes the lines between NGOs and experts much permeable, it does not necessarily lead to better resources allocated to sustaining core NGOs. The scarcity of funding is obvious across all equality-related NGO sectors. State funding is especially scarce – almost nonexistent for NGOs working on gender equality or LGBT issues. Roth (2007) argues that while NGOs in the New Member States seem to have gained better access and funding through the accession to the EU, the very same process has lead to a loss of funding from international donors that were around earlier (like the Ford Foundation, Open Society Institute, UNDP, UN Trust Fund, USAID, World Bank, and so o.). The absence of state funds providing institutional-organizational support for the groups leaves them entirely at the whims of project-linked money coming almost exclusively from different EU sources. While EU funding towards equality norms enforcement may fill an important gap, financial preconditions for applying for such funds and the delays in disbursing the funds exclude small, financially weak NGOs from the calls, and favour larger groups with a longer history of EU funds management and larger reserves – features that are typically not applicable to equality groups. The funding problem has an important impact on NGO participation in enforcement activities in the equality field. While in principle, their involvement is promoted by new EU mechanisms, in practice, the absence of solid state backing typically prevents these groups from contributing to the process. The funding problem not only threatens the participation of most of these groups in projects, but puts them in an uncertain financial situation(27).

This section showed, on the one hand, the improvement of standing of NGOs in policy-making and implementation processes and the connected professionalization of these groups and their representatives in the context of discussed EU mechanisms. On the other hand, it pointed out the intervening funding problem, which, if not dealt with structurally, can become a hindering factor in the efficient inclusion of NGOs in equality law enforcement processes regardless of the EU mechanisms in place. The section pointed to the failure to translate NGO professionalization, largely linked to involvement in EU driven policy processes, into stronger and more sustainable organizations, which can become long-term partners of the state.

5. Conclusions

This paper started its argument from findings in previous research that suggest that transposition of EU norms in the equality field can be seen as a success, though this success is riddled by enforcement and application problems. The paper argues that while strong compliance mechanisms, such as the infringement procedures used in EU equality law, may stand to detect non-compliance in formal terms, they are not able to address the enforcement and application problem that Hungary struggles with in the field. Alternative EU influence mechanisms (Schimmelfennig and Trauner 2009 this issue), based on social learning and on financial assistance, can address the problems at hand more directly. They impact the most important factors that were suggested by previous research to inhibit enforcement: state capacity, norm resonance, and NGO standing. Mechanisms discussed indicate processes in which there is move away from fast, formal compliance along fixed criteria towards slower processes in which there is more space for adaptation and for behavioral change. These processes may be partly determined by the character of the European equality project as it is embedded in the wider social policy agenda much defined by soft policy coordination; they also have to do with smoother adaptation brought by the post-accession period.

The paper has shown the potential of these mechanisms to act towards the improvement of a number of hindering domestic factors. Where data were available, it also pointed to already-detectable changes and improvements. Identified progress has two components. First, improvements can be seen specifically in the equality field, in terms of improved norm resonance, inclusion of NGOs in processes specific to equality policy, and the professionalization of NGOs. Second, the discussed EU mechanisms bring change and improvement in policy enforcement processes more generally. This means improvement in strategic programming, in recognition of the need for facts-based policy making, increasing use of monitoring and evaluation, and the creation of formal mechanisms for inclusion of NGOs in policy-making processes. While this paper attempted to locate the manifestations of these changes in relation to the equality policy enforcement process, they can be expected to occur across the board in most policy fields where the EU has competence, and even to spill over to other policy fields.

In terms of equality policy enforcement, this paper has presented the potential for steady improvements, especially in the realm of norm resonance, where some positive changes in raised awareness among the Hungarian public concerning anti-discrimination policy and rights has been discerned. Improvement has also been shown with respect to NGO inclusion in the policy processes and professionalization of NGOs. Signs for improving state capacity have also been found, though it remains unclear to what extent the improvements that are closely related to the equality policy enforcement are sustainable in the long-term. Meanwhile, analysis pointed out that problems remain in the norm resonance realm in terms of unchanging intolerance levels, which means that the social problems to be addressed by equality policy is here to stay – though perhaps, more people will be willing to voice their complaints. The analysis also showed that the scarcity of institutional funding for NGOs could be seen as a factor hindering the sustainability of NGO inclusion in equality policy processes in the long-term, despite EU-driven processes opening up to them. These difficulties point, on the one hand, towards the tasks to be fulfilled by wider EU equality policies that go beyond the narrow equal treatment approach of the EU equality law; on the other hand, towards the need for more complex structural reforms that address domestic hindering, structural factors in Hungary.

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Endnotes

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(1) For example through the Community Action Programs. See section 3.3.

(2) In the following LGBT persons (lesbian, gay, bi-sexual and trans-sexual persons).

(3) For the Roadmap on Equality between Women and Men, see http://ec.europa.eu/social/main.jsp?catId=422&langId=en accessed on 7 December 2009. For the Year of Equal Opportunities, see http://ec.europa.eu/employment_social/eyeq/index.cfm accessed on 7 December 2009.

(4) Little evaluation work is available specifically on the impact of these funding mechanisms, and even less that is specific to Hungary.

(5) http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10904_en.htm accessed 7 December 2009.

(6) http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/l33113_en.htm accessed 7 December 2009.

(7) The program spent EUR 100 million in the period between 2001 and 2006 in 31 countries (including candidate countries).

(8) http://ec.europa.eu/social/main.jsp?catId=327&langId=en accessed 7 December 2009.

(9) The program has a budget of over 700 million EUR for seven years.

(10) Council Regulation No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds.

(11) New Hungary Development Plan at http://www.nfu.hu/the_new_hungary_development_plan accessed 7 December 2009.

(12) TAMOP-5.5.5/08/1 - A diszkrimináció elleni küzdelem – a társadalmi szemléletformálás és hatósági munka erositese (Fight againts discrimination. Strengthening administrative work and transforming social attitudes. In Hungarian) http://www.nfu.hu/doc/13 11 accessed 7 December 2009.

(13) This was one of the main points of criticism on the first programming period coming from civil society actors. See social debate of the New Hungary Development Plan (in Hungarian)

(14) Data analyzed within the framework of the QUING project (http://www.quing.eu accessed 7 December 2009). The policy fields covered include: general gender equality, equality machinery, non-employment (including tax-benefit policies, reconciliation of paid work and family, care work, and gender pay gap and equal treatment in employment) intimate citizenship with focus on partnership (includes divorce, marriage and separation; same sex partnership and sexual orientation discrimination and reproductive rights) and gender based violence (includes domestic violence, sexual harassment, rape, trafficking) . Policy debates around most recent policy shifts were analyzed. For more on methodology see the project website.

(15) No such systematic analysis of framing is available for disability or ethnicity based inequalities.

(16) For a detailed discussion of the machinery see Krizsan and Papp (2005), Krizsan and Zentai (2006), Hungarian Women's Lobby (2007).

(17) 1008/2009. (I. 28.) Governmental Decree on Operation of the Council on Gender Equality.

(18) Interview with Member of Central Monitoring Committee (December 2008).

(19) Act CXXV of 2003 on equal treatment and the promotion of equal opportunities.

(20) Website of the Authority (in Hungarian) http://www.egyenlobanasmod.hu/ accessed 7 December 2009.

(21) Interview with Member of the Advisory Board of the ETA. October 2008. The Budget has also been decreasing in nominal terms in the last years. See website http://www.egyenlobanasmod.hu/ accessed 7 December 2009

(22) TAMOP-5.5.5/08/1 - A diszkrimináció elleni küzdelem – a társadalmi szemléletformálás és hatósági munka erositese http://www.nfu.hu/doc/1311 accessed 7 December 2009

(23) On the dismissed opinion of the Hungarian Women Lobby (umbrella organization of feminist NGOs) see Dombos et. al (2007)

(24) Interview with Member of Central Monitoring Committee (December 2008).

(25) Government Decision 1129/2006. (XII. 25.) on establishment of the Roma Integration Council.

(26) Interview with Member of Central Monitoring Committee (December 2008).

(27) This is the case with some women's rights groups.

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Post-accession compliance with EU gender equality legislation in post-communist new member states*

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Abstract: This paper analyses the transposition of EU legislation on gender equality at the workplace in the Czech Republic, Hungary, Lithuania and Slovenia, as well as the enforcement powers of their national equality institutions. It does not find significant differences between post- and pre-accession compliance. Overall compliance can be considered good in Hungary, Lithuania, and Slovenia, while it is considerably worse in the Czech Republic – both pre- and post-accession. As an explanation for these variations in legal transposition and enforcement bodies, the paper finds two equifinal paths towards correct transposition of EU gender equality legislation and strong enforcement bodies: either the absence of high adjustment costs, or the combination of strong social democratic governments and NGOs with special expertise in EU gender equality legislation.
Keywords: acquis communautaire; Czech Republic; directives; enlargement; gender policy; Hungary; implementation; Lithuania; NGOs; non-discrimination; post-Communism; Slovenia; political science

Table of Contents:

1. Introduction

Do the new member states of the European Union (EU) comply with EU law even after they have obtained membership? The conditional incentive of EU membership has been a key factor in the transfer of the EU rules to the then candidate countries (Schimmelfennig and Sedelmeier 2004). After membership is no longer conditional, does compliance suffer? Available data on infringements of EU law suggests that post-accession compliance in the new member states is much better than might have been expected in view of the changing incentive structure. During the first five years of membership, most new members outperformed virtually all of the old member states (Sedelmeier 2008).

However, is this finding borne out in a closer analysis of specific issue areas? Doubts may arise since the source of detecting infringements could be less developed in the new members than in the old members (Sedelmeier 2008: 818-19). About half of the suspected infringements that the Commission investigates result from complaints – by private individuals, firms, NGOs, etc. – but their importance as a source of detecting infringements in the new member states is much lower. There might be a suspicion that the good performance of the new members might mask a higher incidence of undetected non-compliance. In-depth case studies are therefore necessary to complement quantitative data on cross-national variation. Indeed, one of the first issue-specific qualitative studies of compliance in the new members suggests that EU directives are generally faithfully transposed into national law, but remain 'dead letters' as application and enforcement are not satisfactory (Falkner and Treib 2008; Falkner, Treib, and Holzleithner 2008).

This paper contributes to the emerging research agenda on post-accession compliance in the EU's post-communist member states (Epstein and Sedelmeier 2008; Schimmelfennig and Trauner 2009 this issue; see also Sedelmeier 2010 forthcoming). It analyses pre- and post-accession compliance with EU gender equality legislation in four new member states – the Czech Republic, Hungary, Slovenia, and Lithuania. These countries display variation with regard to the explanatory factors that this paper analyses. A comprehensive analysis of compliance needs to include the study of application, but the scope of this paper's analysis is more modest. The paper focuses on the transposition of EU legislation into national law and the enforcement powers of domestic equality institutions established to support implementation. At the same time, it compares not only pre- and post-accession performance, but also takes a step towards explaining differences in transposition and enforcement capacities across countries and time periods.

The following section clarifies the dependent variable of the analysis: the correct transposition of EU legislation on workplace equality between women and men and the enforcement powers of the national bodies set up to promote the implementation of gender equality legislation. Section three presents the explanatory factors that this paper focuses on: partisan preferences of governments, adjustment costs, and societal mobilisation. Section four provides an assessment of whether transposition in the four countries is broadly correct and of the equality bodies' enforcement capacities. I do not find significant differences between post- and pre-accession compliance. Overall compliance can be considered good in Hungary, Lithuania, and Slovenia, while it is considerably worse in the Czech Republic. As a first step towards explaining variation in legal transposition and enforcement bodies, section five uses crisp-set Qualitative Comparative Analysis (csQCA) to present a structured comparison of the configuration of explanatory conditions and compliance outcomes in the four countries, distinguishing between the pre- and post-accession period. The result of the analysis is that there are two equifinal paths towards correct transposition of EU gender equality legislation and strong enforcement bodies in the new members: either the absence of high adjustment costs, or the combination of strong social democratic governments and NGOs with special expertise in EU gender equality legislation.

2. Dependent variable: compliance with EU gender equality legislation

With regard to the dependent variable, this paper makes three choices that narrow down the focus of the analysis. The first choice concerns the specific rules within the broader area of EU gender equality legislation. Second, the paper focuses on a narrower aspect of compliance by distinguishing between the legal transposition, enforcement, and the application of legislation. The third choice concerns the temporal distinction between the pre-accession and post-accession period.

2.1. EU gender equality rules: equal pay and equal treatment at work

At the time of the accession of the post-communist new members, EU gender equality legislation consisted of nine different directives (four of which were consolidated in the so-called Recast Directive of 2006). These directives include issues such as equality with regard to part-time work, self-employment, social security schemes, occupational pensions, the burden of proof in discrimination cases, protection of pregnant workers, and parental leave. In order to make the analysis more manageable, this paper focuses on two directives that arguably cover the most important provisions of EU gender equality legislation: the *Equal Pay* Directive and the *Equal Treatment* Directive.

The *Equal Pay* Directive (75/117/EEC) provides for equal pay for the same work or work of equal value. The *Equal Treatment* Directive (76/207/EEC, amended in 2002 by Directive 2002/73/EC) prohibits direct and indirect gender discrimination in a wide range of areas, including employment, promotion, and working conditions. It also introduces definitions of harassment and sexual harassment; guarantees victims access to judicial and/or administrative procedures, and compensation; provides the right for organisations to engage in judicial procedures on behalf of, or in support of, victims; and requires the imposition of dissuasive sanctions. A key innovation of Directive 2002/73 is the requirement to establish an equality body 'for the promotion, analysis, monitoring and support of equal treatment.' This body's competences have to include providing independent assistance to victims of discrimination in pursuing complaints; conducting independent surveys; publishing reports; and making recommendations.

2.2. Assessing compliance: transposition and enforcement machineries

Compliance with EU law comprises at least two distinctive stages (see e.g. Falkner et al. 2005: 4). The first stage is the correct (and timely) *transposition* of the requirements of EU law into national legislation. The second stage is the subsequent correct *application* of the rules by those towards they are addressed, including the *enforcement* of the rules by public authorities if the targets of the rules do not comply. The differences between these stage is also captured in the distinction between formal compliance or the formal adoption of rules and behavioural compliance or behavioural rule adoption (Schimmelfennig and Sedelmeier 2005: 8).

Of course for a complete assessment of compliance, an analysis of the correct application of legislation in practice is crucial. Even correctly transposed legislation can remain 'dead letters' (Falkner and Treib 2008; Falkner et al. 2005) if it is not applied on the ground by the targets of legislation and if public authorities do not take measures to enforce legislation if the target actors do not comply. Problems with application can be expected to be particularly salient in the area of gender equality – both in old and new member states – which is difficult to monitor. Application would need to be monitored at the level of individual firms and there are no readily available quantitative indicators. By same token, practical application is also difficult to evaluate for researchers. Although interviews reveal the existence of widespread application problems, it is still very difficult to establish on the basis of this information a comparative assessment of problems across countries, which could lend itself to an

explanatory analysis of such variation. In view of these methodological problems, this paper focuses primarily on transposition and enforcement, and leaves an analysis of application – which ideally should also include old member states as comparators – for follow-up research.

With regard to transposition, the paper assesses the timely and correct transposition of the provisions of the EU's equal pay and gender equal treatment directives into national law. The assessment whether legislation has been correctly transposed is not as straightforward as it may appear (as opposed to whether national transposition measures are notified in time). Even legal experts can disagree about whether the definition of key terms in national legislation is adequate. Another challenge is a comparative assessment of correct transposition. In most member states there are at least some shortcomings in legal transposition. For example, with regard to Directive 2002/73 alone, the Commission opened infringement procedures for incorrect transposition against 25 member states (Commission 2009: 3). This paper's comparative analysis is therefore based on a qualitative assessment of relative differences in the extent to which legislation is broadly correct and how serious the shortcomings are, rather than a simple count of each instance in which national legislation is incompatible with the requirements of EU directives.

In terms of enforcement, the paper analyses the institutions that were set up to enforce gender equality legislation. The literature on 'Europeanisation' identifies the existence of domestic institutions that provide resources for changes in line with the goals of EU legislation as important factors that mediate the EU's adaptational pressure (Risse, Cowles, and Caporaso 2001: 9). In the area of gender equality in particular, such institutions have been found to play a crucial role (Alter and Vargas 2000; Caporaso and Jupille 2001: 31-34; Conant 2001: 110-12). These institutions include labour inspectorates or specialised courts, but of central importance are public bodies that have been specifically established to promote gender equality. While such equality bodies are considered an independent variable in analyses of the application of equality legislation, this paper assesses variation in the characteristics of these institutions across countries as part of the dependent variable. It is precisely the importance of such equality bodies for the enforcement and subsequent application of legislation that makes it necessary to analyse the characteristics of these bodies as an aspect of compliance outcomes.

As mentioned above, Directive 2002/73 requires the member states to designate institutions to promote gender equality. However, its requirements with regard to the tasks and competences of such bodies – the conduct of independent surveys concerning discrimination, publishing independent reports and making recommendations, as well as the provision of 'independent assistance to victims of discrimination in pursuing their complaints' – specify only minimum requirements. This paper therefore does not only evaluate – in terms of transposition– whether national equality bodies meet the minimum requirements, but also – in terms of enforcement – the extent to which these bodies are endowed with resources beyond these minimum requirements.

In terms of the three-fold classification of equality institutions by Krizsan et al. (2009: 6-7), enforcement powers are characteristic of 'statutory complaint bodies' with an investigatory, complaints-driven mandate and some independence from the executive, rather than of 'equality policy machineries' with monitoring functions within the executive, or coordinating and advisory 'consultative council-type bodies' that bring together representatives from different ministries and non-state actors. Apart from this broad distinction, the power of such statutory complaints bodies can still vary considerably across countries. To assess the relative enforcement capacities of equality bodies, this paper focuses on the following three characteristics. The legal and organisational status of the institution concerns both the independence and the authority of an equality body. *Independence* increases when the body responds directly to parliament, rather than being part of the executive; within the executive, independence is higher if it is a separate ministry, or part of the prime minister's or president's office, rather than a unit within the ministry of labour or family affairs (see also Avdeyeva 2009: 163). The *authority* of the equality body increases the more its competences go beyond monitoring and advocacy, towards an ability to investigate claims, issuing binding opinions on discrimination cases, imposing fines on offenders (and the more significant such fines can be),

as well as when the equality body has legal standing in courts and if it has the right to pursue legal proceedings in courts on behalf of victims. A further factor is the extent to which the equality body has *specific expertise on gender equality* (see also Caporaso and Jupille 2001: 31), rather than on other possible grounds of discrimination, such as race, ethnic origin, age, disability, or sexual orientation. This paper considers that an equality body has enforcement capacity if it has independence and if it can either adjudicate discrimination cases or has legal standing. In addition, it requires at least a moderate extent of specialisation, while a high degree of specialisation can compensate – in the margins – for shortfalls in independence and authority.

2.3. Time periods: pre- and post-accession

In order to assess whether obtaining EU membership has made a difference, the paper analyses compliance with EU gender equality legislation in the various countries in two distinctive periods. The pre-accession period starts roughly 1998/1999, after the Commission's first assessments of the then candidate countries' alignment with EU legislation - its opinion on their membership applications in 1997 and the first annual monitoring report at the end of 1998. The post-accession period starts in 2004, when the countries concerned joined the EU. The analysis of two separate periods for each country allows us to assess whether compliance deteriorates after accession, and to increase the number of observations.

Two objections could be raised against using such a distinction to disaggregate cases. One concern might be that compliance during the two periods consists of different activities. If the pre-accession period was characterised by the need to carry out formal changes to national legislation and their actual application became only necessary after accession, a comparison of compliance between the two periods would be difficult. However, it would be wrong to equate pre-accession compliance with transposition, and post-accession compliance with application. The new members indeed had to transpose the equal pay directive prior to accession, but the transposition deadline of the amended equal treatment directive fell into the post-accession phase. With regard to equal treatment, upon accession thus only the provisions of Directive 76/207 had to be implemented, but the extensive an much more demanding provisions of Directive 2002/73 transposition mentioned earlier only needed to be in place in October 2005.

A related concern might be that the two periods do not constitute independent observations of the outcome. Correct transposition in the pre-accession phase (t0) increases the likelihood that the same legislation is correctly transposed in the post-accession period (t1). However, the need to transpose new legislation during the post-accession phase makes it an independent observation, as separate transposition measures are necessary during pre- and post-accession. Moreover, even for legislation that was already transposed prior to accession, the maintenance of compliant legislation is not guaranteed.. In principle, legislation can be amended and dismantled. Maintaining previously transposed legislation therefore can be considered as a separate incidence of compliance. Although reversing correctly transposed legislation might be problematic in areas of the *acquis communautaire*, it might be particularly salient with regard to the enforcement capacities of the equality body, for which the *acquis* only specifies minimum requirements. In sum, while the analysis needs to be mindful that compliance in the post-accession period might not always be independent from the outcomes in the pre-accession period, a separate analysis of the pre- and post-accession periods can be justified.

3. Explanatory conditions: government orientation, adjustment costs, and societal mobilisation

Different explanatory factors matter for transposition and application respectively(1).To explain transposition and enforcement institutions, this paper focuses on the following three factors that appear particularly pertinent: the government's ideological orientation (and its parliamentary strength), the costs of compliance with EU legislation, and societal mobilisation. The penultimate section of the paper also considers alternative explanatory factors, such as the

resonance of EU rules with domestic political culture; monitoring and adjustment pressures exercised by EU institutions, and national administrative capacity and coordinating structures for the transposition of the acquis. This section discusses the three explanatory factors that the paper analyses and their constellation in the Czech Republic, Hungary, Lithuania, and Slovenia.

3.1. Partisan preferences of the government

While EU compliance research has started only more recently to focus on party political preferences of national governments (see e.g. Treib 2008: 10; Mastenbroek and Kaeding 2007; Linos 2007), the importance of this factor is more established in comparative studies of gender equality. The influence of the government's left/right orientation on a country's general compliance patterns might be less obvious, but it is arguably indeed particularly salient in areas of EU social policy, such as gender equality. There is 'considerable evidence that [...] social democratic and labour parties are more favourably disposed to gender equality issues than parties to the right of the political spectrum' (O'Connor, Orloff, and Shaver 1999: 202-3; see also Anderson 2006).

Table 1 (below) provides an overview of the party political configuration in the four countries during the pre-accession and post-accession periods. I use two different indicators of the strength of social democratic governments. I consider a period to be characterised by a strong left government if social democratic parties held over 40 percent of parliamentary seats for at least two years, and over 66.6 percent of cabinet positions (using the cut-off point in Armingeon et al. 2008) in a majority government for at least two years. As Table 1 shows, both indicators lead to the same result for the countries and periods under consideration.

Table 1 about here

3.2. Adjustment costs

The key factor emphasised by 'enforcement' approaches to compliance with international institutions are the adjustment costs that international rules impose on national governments, either directly or indirectly if these targets of such rules are private actors on which the government depends to stay in power (see e.g. Fearon 1998; Tallberg 2002: 611-12).

One way to assess the adjustments is to focus on the institutional and policy 'misfit' between the requirements of EU legislation and the domestic level (see e.g. Börzel 2003). Under communism, equality between men and women was portrayed as much more advanced than in capitalist countries, which suggests that EU gender equality legislation should not create high adjustment pressures. However, this presentation is misleading. Equality might have been more developed in terms of female employment levels, and progressive attitudes towards reproductive rights, but across all the candidate countries legislation on workplace equality reveals major deficiencies with regard to the provisions of EU legislation. This indicator therefore does not capture much cross-national variation in adjustment costs.

An indicator of the costs that the implementation of gender equality in employment imposes on companies is the gender pay gap. It presents the difference in average gross hourly earning, calculated as a percentage of men's earnings. Caporaso and Jupille (2001) use the pay gap as one indicator of the 'fit' between EU directives and national practice. Still, it has to be used with caution. It is not a direct measure of the extent to which women and men receive the same pay for work of equal value. Part of the pay gap results from the gender segregation of the labour market. Women are disproportionately employed in part-time and low-paid work, and underrepresented in the highest paid positions in a particular occupation. Yet to the extent that the gender pay gap also reflects these more subtle forms discrimination, it appears suitable as a more general indicator of workplace discrimination – and hence of the adjustment costs that equal treatment involves – rather than only the lack of equal pay. On the other hand, low pay

gaps do not always reflect less discrimination. In states with a low female employment rate (e.g. Italy and Poland), the pay gap is lower than average, which may reflect the smaller proportion of low-skilled or unskilled women in the workforce.

Moreover, as the figures published by Eurostat draw on unadjusted national survey data, they are problematic for precise cross-national comparisons. Still, the broader patterns appear nonetheless suitable to establish at least broader patterns of variation in the extent to which countries face adjustment costs. Table 2 (below) presents the pay gap in 1999 and in 2004, as an indicator of the adjustment costs at the beginning of the pre-accession and post-accession periods respectively. This paper considers the adjustment costs high if they are 4 percent or more above the EU average.

Table 2 about here

3.3. Societal mobilisation: specialised women's NGOs

Mobilisation by domestic groups benefitting from the rights that EU legislation bestows on them is a factor that has recently become more prominent in EU compliance studies (Börzel 2003: 38–9, 53–4; 2006; Cichowski 2004; Conant 2002; Falkner et al. 2005: 36–7). The EU's decentralised monitoring mechanism relies heavily on private actors at the domestic level to raise complaints with the Commission or to litigate in national courts if national governments fail to implement EU legislation (Tallberg 2002: 620-22). Comparative studies of gender equality also emphasise the strength and mobilisation of women's groups as an important factor (Alter and Vargas 2000: 457–9; Anderson 2006; Avdeyeva 2009; Caporaso and Jupille 2001: 25; O'Connor, Orloff, and Shaver 1999: 202).

Gender equality is a hard case for the mobilisation of societal groups. As gender equality benefits diffuse societal interests, NGOs that promote it face a collective action problem, in contrast to issue areas in which the beneficiaries of EU rules are businesses. A methodological problem is that neither membership in women's organisations, nor strong social movements promoting women's rights might be a reliable indicator of societal capacities to mobilise for the implementation of EU workplace equality. Membership in women's groups – recorded e.g. in the World Values Survey – does not distinguish between NGOs that aim to promote women's rights and leisure groups only open to women. Moreover, women's rights movements might be strong, but the typical focus of their advocacy is not workplace discrimination, but issues such as reproductive rights or domestic violence that are outside the scope of EU law. This paper therefore focuses on whether a country has (in the respective periods) NGOs that have specialised expertise on EU law concerning gender equality at work.

I do not attempt to determine whether there are further cross-national variation in the mobilisation capacities of such women's NGOs that might result from differences in, e.g. their funding, staffing levels and membership. Moreover, transnational linkages – such as to the European Commission or transnational women's NGOs – can increase the capacity of domestic groups. However, where specialised women's groups exist in East Central Europe, their cross-national linkages appear fairly similar, both with regard to the Commission, as well as concerning membership in the European Women's Lobby and the KARAT coalition (the regional association of gender equality NGOs). The paper does, however, consider differences in the extent to which such women's NGOs cooperate or compete for funding and influence, and in the quality of their links with government and equality bodies. The following sections present an overview of whether specialised women's NGOs existed in the four countries, drawing on interviews with women's NGOs, equality bodies, and government officials in the countries concerned during 2005 and 2006. Table 3 summarises these findings.

Table 3 about here

- In Hungary, two main NGOs have expertise in gender equality at the workplace: the Women's Rights Association (NANE) and the Hungarian Women's Foundation

(MONA), created in 1994 and 1993 respectively. Although NANE is mainly concerned with domestic violence, both organisations have specialised expertise on EU workplace equality legislation, run projects in this area, and engage in policy advocacy. MONA also conducted the Hungarian study for the Open Society Institute (OSI) report on the implementation of EU gender equality legislation (Krizsan and Pap 2005). Although the two organisations potentially compete, it appears that in practice their activities are complementary and their relationship is cooperative. The formulation of common positions on legislative changes under the umbrella of the Hungarian Women's Lobby works well. Some policy-makers suggest that women's groups in Hungary are fragmented, yet this observation appears to hold not so much for the relationship between the main NGOs working on gender equality, but to their critical attitude towards the equality body, in which their perceive gender equality concerns inadequately represented.

- In the Czech Republic, the most active women's NGO with specialised expertise on gender equality at work is 'Gender Studies o.p.s.', founded in 1992. Its activities include the publication of a 'shadow report' on equal treatment (Pavlik 2004), compiled by a number of individuals from the non-governmental and academic sectors with funding from the Open Society Fund Prague. The organisation was initially reluctant to support such a confrontational strategy of shaming the government over shortcomings in the implementation of EU gender equality legislation. Disagreement over such a strategy also caused some friction between women's groups. Otherwise, however, relations between women's groups are cooperative, although cooperation is mainly ad hoc despite the creation of umbrella associations such as the Association for Equal Opportunities and the Czech Women's Lobby.
- In Lithuania, two NGOs have specialised expertise on gender equality at work. The Women's Issues Information Centre (WIIC) was created in 1996 and the Centre for Equality Advancement (CEA) in 2003, continuing the work that the Open Society Fund-Lithuania Women's programme had carried out from 1997. However, workplace equality is not a main concern for the WIIC, and although the CEA carried out the Lithuanian study for the OSI's monitoring of the implementation of EU workplace equality (Mackeviciute 2005), its main focus with regard to EU gender equality legislation has otherwise been on parental leave and the promotion of paternity leave.
- Slovenia stands out among the four countries for not having an NGO with specialised expertise and activities on gender equality at work. In principle, the absence of a specialised women's group might be compensated with societal mobilisation through women's sections in trade unions, which are relatively strong in Slovenia compared to other countries in the region. However, gender equality is generally not one of the main concerns for unions in East Central Europe.

Table 4 summarises the settings of the three explanatory factors discussed in this section.

Table 4 about here

4. Compliance outcomes: transposition and equality institutions in the Czech Republic, Hungary, Lithuania, and Slovenia

This section provides a brief overview of the transposition of the Equal Pay and Equal Treatment directives in the Czech Republic, Hungary, Lithuania, and Slovenia, as well as of the enforcement capacities of the equality bodies that these countries have established. It draws on interviews conducted with representatives from women's groups, women's sections in trade unions, equality bodies and government departments, and independent gender equality experts in the four countries, but refers to secondary sources wherever possible. The overview shows that transposition is generally good, although there are some shortcomings in all countries. Especially if the equality bodies are taken into account, a broad comparative assessment suggests that Lithuania, Slovenia, and Hungary perform better than the Czech Republic, mainly due to shortcomings with regard to the equality body. At the same time, the performance did generally not differ between pre- and post-accession.

4.1. Czech Republic

The Czech Republic did not establish one single legal act to transpose EU legislation on gender equality in employment. Instead, transposition is fragmented through numerous amendments of several laws that affect equal treatment in employment. The key legal changes were two amendments to the Labour Code in 2000 and 2004 and elements of the Employment Act of 2004 (see also Havelkova 2006: 300-03; Falkner, Treib, and Holzleithner 2008: 41-43).

Transposition has a number of shortcomings. Concerning equal pay, for example, the narrow definition of remuneration in the Act on Wages excludes a range of financial benefits, and although the Labour Code affirms the principle of equal pay, it does not explicitly state 'for the same work and work of equal value' (Havelkova 2005: 11). Concerning equal treatment, the fragmented transposition created inconsistencies (see also Havelkova 2006: 300-01; Falkner, Treib, and Holzleithner 2008: 42-3). For example, after the entry into force of amendments to the State Service Act and the Military Service Act was postponed, the employees concerned were not covered by equal treatment provisions. Definitions of sexual harassment in the Labour Code, Employment Act, and Military Service act differ, and none corresponds to the 2002 amendment of the Equal Treatment directive. Discriminatory prohibitions in the Labour Code remain, such as of underground work for women (based on an ILO Convention that is incompatible with the acquis, but can only be repealed every 10 years). Access to self-employment is not covered, nor the right of associations to engage in judicial procedures in support of victims. The shortcomings led the government to propose a new Anti-discrimination Act, which was passed by the Chamber of Deputies, but rejected by the Senate in 2006 (although primarily in opposition to other non-discrimination grounds than gender), and the lower House failed to obtain the necessary majority to overturn the veto.

The equality institutions are rather weak, with limited competences and arguably lacking independence (Koldinská 2005: 12). The Government Council for Equal Opportunities for Women and Men, created in 2001, is not a permanent institution, but a forum for regular meetings of representatives of government ministries, gender NGOs, and the social partners. It is a consultative council with only advisory functions (recommendations; policy coordination across ministries) and does not engage in monitoring and enforcement, nor does it provide independent support for victims. It is supported by a unit in the Ministry of Labour and Social Affairs with limited autonomy and a small staff. The work of the Gender Equality Unit consists primarily of the publication of an annual report on the government's programme and activities on gender equality. In sum, in both pre- and post-accession there are important shortcomings with transposition and the equality body is rather weak.

4.2. Hungary

Initially, the transposition process in Hungary was also rather fragmented. Pre-accession alignment consisted of piece-meal amendments of various laws affected by EU gender equality acquis and was completed with an amendment of the Labour Code in 2001. The approach changed after the centre-left won the election in 2002. A comprehensive Act on Equal Treatment and Promotion of Equal Opportunities was passed by parliament in December 2003 and entered into force in January 2004. The Act does not only cover gender equality but also discrimination on other grounds, including race, ethnicity, religious belief, disability, age, and sexual orientation.

The Equal Treatment Act is generally well developed and progressive (see also Falkner, Treib, and Holzleithner 2008: 79; Krizsan and Pap 2005; Krizsan 2009). Still, some shortcomings with regard to gender equality remain. One reason is the government's desire to treat all grounds of discrimination equally, rather than treating gender as a special case, not least since gender discrimination in Hungary is perceived as less salient than racial discrimination – especially of the Roman minority. As a result, sexual harassment is not explicitly prohibited.

The drafters of the act in the Ministry of Justice argued that sexual harassment is covered by the general prohibition of harassment. This argument neglects that sexual harassment does not only concern harassment on the ground of a person's gender, but also of a sexual nature. Another shortcoming is that the burden of proof is more onerous than intended by Directive 2002/73. Plaintiffs have to prove that they have 'suffered a disadvantage', rather than just provide facts that suggest that discrimination may have happened (Falkner, Treib, and Holzleithner 2008: 78; Krizsan and Pap 2005: 12).

The equality body created through the Equal Treatment Act – the Equal Treatment Authority – is comparatively powerful, with more competences than required by Directive 2002/73, especially in the area of enforcement. It can investigate claims ex officio and initiate lawsuits – also in parallel to the labour court – that can lead to the imposition of fines. As the Authority covers all discrimination grounds, women's groups criticise the comparatively weak representation of gender discrimination (see also Krizsan 2009 this issue). Indeed, although the Authority has adjudicated an increasing number of cases after it started operating in 2005, only few concerned gender discrimination (Kollonay-Lehoczky 2005: 24). Concerns for its autonomy were raised by the transfer of its budget from an independent chapter into a sub-heading within the Ministry for Youth, Family, Social Affairs and Equal Opportunities.

In sum, notwithstanding comparatively minor shortcomings, the transposition of Equal Pay and Equal Treatment legislation both in the pre-accession and post-accession period has been good. Enforcement capacities through the equality body are also comparatively strong, albeit concerns that gender equality does not have equal importance as other grounds of discrimination.

4.3. Lithuania

Lithuania was the first among the new member states to pass an act on gender equality. The Law on Equal Opportunities for Women and Men was adopted in December 1998. Several amendments between 2002 and 2005 broadly achieved an alignment with EU gender equality legislation, but certain specific problems remained. These include clarifications in the definitions of sexual harassment and direct discrimination, the inclusion of access to self-employment and professional organisations, or the right of associations to engage in judicial procedures in support of victims of discrimination (Davulis 2005: 35-36; Mackeviciute 2005: 13-14). With regard to equal pay, the law on Equal Opportunities refers only to 'equal work', rather than 'work of equal value' (in contrast to the official English translation).

The equality body is a fairly strong, autonomous enforcement institution. The Office of the Equal Opportunities Ombudsperson was created as early as May 1999. As an independent state institution answerable to parliament it has considerable autonomy. Its enforcement powers include the investigation of complaints, including anonymous complaints and on its own initiative. During an investigation, its requests for information and documentation are binding. If it concludes that discrimination has taken place, it can imposed administrative sanctions, make recommendations to discontinue discriminatory practices, or refer the material to other investigative bodies. It can also provide legal advice to victims, but not legal representation in judicial procedures. The 2003 Act on Equal Treatment that introduced a general anti-discrimination bill expanded its mandate to other grounds of discrimination, but through its legacy as a gender equality institution, this has remained a strong focus.

In sum, although a number of shortcomings with regard to the transposition of specific provisions occurred both pre- and post-accession, its broader pattern is satisfactory. The equality body has long-standing expertise in gender equality, and considerable enforcement powers and autonomy.

4.4. Slovenia

The Employment Relationships Act passed in 2002 already includes a general prohibition of discrimination and sexual harassment, as well as provisions for equal pay for work of equal value. The two main acts transposing EU gender equal treatment legislation are the 2002 Act on Equal Opportunities for Women and Men, and the 2004 Act on the Implementation of the Principle of Equal Treatment. The remaining shortcomings are rather specific, relating to clarifications on pregnancy and maternity within the definitions of discrimination, and to the definition of sexual harassment (Koderman-Sever 2005: 53).

The equality body is comparatively strong and has long-standing experience in promoting gender equality. The Government Office for Equal Opportunities, an independent government body, was formally established in 2001, but originated in 1992 as the Office of Women's Policy. Enforcement within the Office is primarily carried out by the Advocate for Equal Opportunities for Men and Women. The Advocate investigates complaints, including anonymous complaints. If s/he concludes that discrimination has taken place, the Advocate can recommend measures to rectify it and request to be notified of such measures. If the offending party does not comply with the recommendations, the Advocate can refer the case to other investigative bodies, such as the labour inspectorate.

In sum, gender equality legislation is generally well transposed in Slovenia. The equality body has independence, long-standing experience in promoting gender equality, and significant enforcement capacities, even if it cannot impose sanctions.

A broad comparison of the four countries (see Table 5) shows that transposition and enforcement capacities through the equality body are generally well developed in Hungary, Lithuania, and Slovenia, but both of these aspects of compliance are rather problematic in the Czech Republic, both during the pre-accession period and after accession. In the countries with a positive record, there is no significant deterioration in the post-accession period compared to pre-accession.

Table 5 about here

5. Explaining cross-case variation in compliance outcomes

5.1. QCA results for the main explanatory conditions

This section conducts a crisp-set Qualitative Comparative Analysis (csQCA) (Ragin 1987) in order to explain the different outcomes across the countries. Table 6 presents the raw data with regard to the configuration of explanatory conditions and outcomes for the eight cases. In contrast to fuzzy-set QCA, csQCA only distinguishes whether or not a case has membership in the set of cases that share a causal condition (or outcome), but not between different degrees of membership in these sets. In Table 6, the number 1 expresses membership in the set, while a 0 expresses the absence of membership (note the difference between membership in the set of countries that do not have high adjustment costs and those with low adjustment costs). Table 7 presents the same data in a 'truth table' of all eight logically possible constellations of the three conditions. Two of these constellations are not empirically observed among the cases analysed in this paper. The corresponding truth table rows therefore remain empty (while two of the constellations fit two cases each).

Table 6 about here

Table 7 about here

Using Boolean algebra, a minimisation of the results for the constellations that share the outcome 'compliance' yields two equifinal explanations, or causal paths to compliance(2): either the *absence of high adjustment costs, or a strong left government in combination with specialised interest groups* (solution without any simplifying assumptions about the unobserved cases). The first path covers the case of post-accession in Hungary, as well as pre- and post-accession in both Lithuania and Slovenia. The second path covers post-accession in Lithuania, and both periods in Hungary. None of the three explanatory factors are by themselves necessary conditions.

How plausible are these results? The result that the absence of high adjustment costs is a sufficient condition fits well with the findings of other studies on the EU's impact on candidates/member states (see e.g. Schimmelfennig and Sedelmeier 2004). However, in the area of gender equality policy this finding might appear more problematic: companies do not usually lobby against gender equality legislation, despite the potential costs involved. The difficulty to quantify the costs is a disincentive to lobbying, especially since a more effective way to minimise the adjustment costs is to flout equality legislation in practice, as long as the risk of court cases and sanctions is low. Indeed, concerns about costs have not generally figured prominently in opposition to equality legislation. The finding that adjustment costs matter is nonetheless not necessarily just a spurious correlation. The financial implications were the main reason for the postponement for over two years of the entry into force of the Czech State Service Act and Military Service Act containing non-discrimination provisions (Havelkova 2006: 300).

The explanation of a combination of strong left governments and specialised interest groups is not only logically plausible; its causal relevance is also confirmed by a closer analysis of the cases. Social democratic governments are more likely to take gender equality seriously, and more willing to endow equality bodies with enforcement capacity, but they need sufficient support in parliament to implement these changes. For example, key changes in Hungary were only carried out after the centre-left replaced the centre right government in 2002. In the Czech Republic, the social democratic party lacked the strength to pass a more comprehensive anti-discrimination act. Women's groups by themselves are not sufficiently strong to push through changes against unfavourable governments. At the same time, favourably disposed and sufficiently strong government as such might also not be enough for correct transposition and equality bodies with adequate enforcement capacities. These might only be achieved if willing governments can draw on the specialist expertise of NGOs.

5.2. Alternative explanations

In view of the limited number of cases, this paper's in-depth analysis has focused on three explanatory conditions that appear particular salient. This sub-section considers additional explanatory factors in order to ascertain whether this selection can be justified or whether the findings are biased due to the neglect of other plausible factors.

Key explanatory factors at the EU level concern the strength of the external incentives (granting/withholding membership prior to accession; fines by the European Court of Justice after accession) as well as the intensity of EU monitoring after accession, which increases the likelihood that non-compliance is detected. With regard to the latter, we are more likely to find variation across issue areas, but not across countries within the area of gender equality. With regard to external incentives, of course the starting point of the paper was the question whether the changing incentive structure after accession has a negative effect on compliance. At first glance, the findings of this paper appear to reject the importance of external incentives for domestic compliance: the changing incentive structure did not matter for compliance in Hungary, Lithuania and Slovenia; and even prior to accession, the potential threat of withholding membership did not lead to compliance in the Czech Republic. Instead, domestic conditions seem to trump external incentives.

However, first, such a reading neglects that an 'external incentive' model of domestic change

does not claim that external incentive always override domestic factors, but rather that they might change governments cost/benefit calculations – depending both on the size and credibility of the benefits offered by the EU and on the size of domestic costs (Schimmelfennig and Sedelmeier 2004: 664). The lack of compliance in the Czech case fits the explanation that EU incentives (or rather the threat of withholding incentives) in the area of social policy were not sufficiently credible, due to mixed signals from EU actors (Sissenich 2007), to trump unfavourable domestic conditions. Second, although the cases of pre-accession compliance required favourable domestic conditions, it would be difficult to explain the changes in equality policies without the demands made by the EU. Domestic changes in equality policy and institutions in each of the three cases (as well as the more limited changes in the Czech Republic) were triggered by adjustment pressure from the EU. Thus, in terms of the explanatory power of external incentives, the paper confirms that when these face problems of credibility, favourable domestic conditions were necessary for domestic compliance with EU legislation. Moreover, a key finding of the paper is indeed that the changing incentive structure after accession as such does not necessarily lead to a deterioration of compliance.

An explanatory factor drawn from constructivist approaches to the domestic impact of international institutions is the extent to which international rules resonate positively with domestic rules or political culture more broadly (Schimmelfennig and Sedelmeier 2004: 668). As mentioned earlier, the widespread perception that equality between men and women had been achieved already under communism led to a lack of positive domestic resonance of EU gender equality policies. This perception undermines arguments that gender discrimination is a salient issue in post-communism, while communism left traditional gender stereotypes and role perceptions with regard to work and family intact. While the lack of positive resonance can be considered a general obstacle to compliance across post-communist new members, currently available data does not lend itself easily to establish clear variation across countries, which might explain differences in outcomes.

Administrative capacities are an explanatory factor generally emphasised in compliance studies (Tallberg 2002; Treib 2008). More recently some studies have suggested to focus more specifically on the coordinating mechanisms – the administrative and legislative arrangements – for the implementation of the acquis (Dimitrova and Toshkov 2009 this issue; Sedelmeier 2008: 820-1; Zubek forthcoming). These macro-mechanisms might be more suitable to explaining aggregate cross-national differences in compliance patterns, while as explanations for issue-specific variation across countries coordination is more likely to interact with other factors. Indeed, Dimitrova and Toshkov (2009) suggest that it only facilitates transposition in the absence of political opposition – which in turn can be considered to depend precisely on factors that this paper has focused on, such as government partisan preferences and domestic adjustment costs. While at first glance the effectiveness of national coordination appears a sufficient condition for compliance – among the four countries, only in the Czech Republic is the coordination mechanisms weak (Verheijen 2007: 26) – a closer analysis refutes this interpretation (apart from the methodological problem that we only have data for 2006). For example, in Hungary, the most significant changes were related to the change in government in 2002, not to a change in coordination mechanisms; the lack of compliance in the Czech case remained largely due to political opposition among the centre-right parties, rather than the weak administrative coordination.

6. Conclusions

Does compliance with EU law in the new member states deteriorate after they have achieved accession? This paper provides a preliminary answer based on an analysis of the transposition of EU gender equality legislation – in particular equal pay and equal treatment at the workplace – and of the enforcement capacities of equality bodies in the Czech Republic, Hungary, Lithuania, and Slovenia. The analysis suggests that despite the decline in the sanctioning power of EU institutions, there is no significant deterioration in the post-accession period compared to the pre-accession period. The Czech Republic had transposition problems and the equality body lacked enforcement capacities both before and after accession.

Transposition in the other three countries has some shortcomings (as indeed do all other member states), but in broader terms, it is adequate, and the equality bodies have considerable enforcement capacities – again, both before and after accession.

The paper also makes a first step towards explaining these differences in outcomes across the four countries (and time periods). The results of a csQCA suggest two different causal paths that can lead to broadly ad equate transposition and strong equality bodies. One is the absence of high adjustment costs, even if businesses do not usually lobby strongly against the adoption of equality legislation. The other path to compliance is the combination of strong social democratic governments and NGOs specialising in EU gender equality legislation. Neither is sufficient by itself. NGOs are powerless when faced with unfavourable governments. Conversely, even favourable governments need the expertise and support of NGOs to devise adequate legislation and equality bodies.

In terms of the study of the role of the incentives that international institutions provide for domestic compliance with their rules, this paper does not challenge the argument that such international incentives are a necessary part of an explanation for compliance in post-communist Europe. However, with regard to pre-accession compliance, it confirms that such incentives (i.e. the positive incentive of a credible promise of membership) have to be combined with favourable domestic conditions. With regard to post-accession, the paper's findings suggest that the weakening of such incentives (the threat of financial sanctions through the ECJ and the reputational costs associated with infringement procedures, rather than the pre-accession threat of withholding membership altogether) as such does not necessary lead to a deterioration of compliance if domestic conditions are favourable.

Further research in this area will need to take account of the application of legislation for the assessment of compliance. First studies in this vein argue that there is a gap between good transposition and problems with application (Falkner and Treib 2008; Falkner, Treib, and Holzleithner 2008). One challenge is to go beyond a more general acknowledgement of the existence of application problems towards an operationalisation that lends itself to establish variation in the nature and extent of such problems (and subsequently to explain them). Moreover, such studies should also include the old member states in order to analyse to what extent the gap between transposition and application is characteristic of post-accession compliance patterns or of this particular issue area.

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Endnotes

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(1) A broad range of factors matter for correct application of legislation. They include the authority of institutions mandated to promote specifically the implementation of workplace equality legislation, such the equality bodies (arguably, they can also matter for formal compliance if a body established at t0 mobilises for correct formal transposition of equality legislation at t1), or labour law more generally (such as Labour Inspectorates). Another set of factors affects the likelihood that victims of discrimination attempt to, and are able to, claim their rights, such as the working of the legal system (trust in it; expertise; existence of specialised industrial tribunals and Employment Appeals Tribunals; speed of proceedings; case law; etc.); beneficiaries' information about their rights; and unemployment levels.

(2) As QCA does not assume causal symmetry, usually a separate analysis for the outcome 'non-compliance' should be conducted. In view of the limited number of cases with the outcome 'non-compliance' in the sample, the results of such an analysis might not be particularly useful.

List of Tables

Table 1: Strength of social democratic parties

	Czech Republic		Hungary		Lithuania		Slovenia	
	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006
Parliamentary seats (%)								
mean	36,3	35.7	38.5	46.8	24.1	49.7	27.8	43.3
2 best years	37	36	46.1	47.2	36.2	49.7	27.8	43.3
Years of dominance in majority government	0	0	2 (1.7)	3	0	2	0	2
Strong left government?	No	No	Yes	Yes	No	Yes	No	Yes

Source: calculated from Armingeon et al. (2008)

Table 2: Gender pay gap

EU average		Czech Republic		Hungary		Lithuania		Slovenia	
1999	2004	1999	2004	1999	2004	1999	2004	1999	2004
16	15	22	19	21	11	16	16	14	9
High adjustment costs?		Yes	Yes	Yes	No	No	No	No	No

Source: calculated from Commission (2006: 15).

Table 3: Existence of NGOs with expertise in EU gender equality legislation

Czech Republic		Hungary		Lithuania		Slovenia	
1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006
Yes	Yes	Yes	Yes	Yes	Yes	No	No

Source: own compilation

Table 4: Overview of configuration of explanatory factors

	Czech Republic		Hungary		Lithuania		Slovenia	
	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006
Strong left government	No	No	Yes	Yes	No	Yes	No	Yes
High adjustment costs	Yes	Yes	Yes	No	No	No	No	No
Specialised NGOs	Yes	Yes	Yes	Yes	Yes	Yes	No	No

Table 5: Compliance outcomes (transposition and enforcement bodies)

	Czech Republic		Hungary		Lithuania		Slovenia	
	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006
Broadly correct transposition and capable enforcement bodies?	No	No	Yes	Yes	Yes	Yes	Yes	Yes

Table 6: Configuration of explanatory conditions and outcomes

Cases	not high adjustment costs	strong left government	specialised interest groups	compliance (transposition/ enforcement)
CZ (pre-acc.)	0	0	1	0
CZ (post-acc.)	0	0	1	0
HU (pre-acc.)	0	1	1	1
HU (post-acc.)	1	1	1	1
LT (pre-acc.)	1	0	1	1
LT (post-acc.)	1	1	1	1
SI (pre-acc.)	1	0	0	1
SI (post-acc.)	1	1	0	1

Table 7: Truth table

not high adjustment costs	strong left government	specialised interest groups	compliance (transposition/ enforcement)	cases
0	0	0	(no cases)	
0	0	1	0	CZ (pre-acc.); CZ (post-acc.)
0	1	0	(no cases)	
0	1	1	1	HU (pre-acc.)
1	0	0	1	SI (pre-acc.)
1	0	1	1	LT (pre-acc.)
1	1	0	1	SI (post-acc.)
1	1	1	1	HU (post-acc.); LT (post-acc.)

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It ain't over when it's over: The adoption and sustainability of minority protection rules in new EU member states*

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Abstract: This paper conducts a multi-value Qualitative Comparative Analysis (QCA) of the formal adoption and sustainability of minority protection rules in four new EU member states (Poland, Romania, Estonia, Latvia) over a twelve-year period including pre- and post-accession phases (1997-2008) and five minority protection related issue areas (non-discrimination, language use, education, citizenship, integration of Roma) based on four conditions (external incentives, government position, veto players, size of minorities), in order to investigate under which external and domestic conditions minority protection and non-discrimination measures are adopted, maintained or revoked in new member states before and after accession to the EU.

Keywords: enlargement; minorities; educational policy; language policy; non-discrimination; Roma; citizenship; Poland; Romania; Estonia; Latvia; political science

Table of Contents:

1. Introduction

Since its inclusion in the "Copenhagen criteria", the protection of ethnic and national minorities has been an important political condition set by the European Union (EU) for applicant states. Research so far has predominantly confirmed a strong influence of EU conditionality on the adoption of minority protection rules in Central and Eastern European candidate countries (Kelley 2004; Schimmelfennig, Engert and Knobel 2003; 2006; Schwellnus 2005). In a way, minority protection constitutes a paradigmatic case for rationalist explanations of rule adoption in reaction to external incentives: the contested and politicized character of minority rights makes it both a least likely case for alternative constructivist explanations (Checkel 2005, 10) and a crucial case for proving the effectiveness of external incentives in situations with considerable domestic opposition.

In order to establish the effectiveness of external incentives, researchers have mostly selected "hard" cases in which conditionality was applied and initial domestic resistance to adopt minority protection legislation was high. Although the possibility of purely domestically-driven rule adoption is acknowledged (albeit considered to be an "easy" case of self-socialization) and domestic adoption costs are an important explanatory factor determining whether conditionality is successful or not, some open questions remain to be answered. First, the approach does not allow any assessment about the relative empirical weight that external factors carry in comparison to domestic ones when explaining the adoption of minority protection rules in Central and Eastern Europe. Second, the effectiveness of conditionality may have been overstated by treating domestic factors as adoption costs: once initially unfavorable domestic conditions improve and rule adoption occurs subsequently, this is interpreted as an instance of successful conditionality, although the changed domestic conditions might have produced the outcome irrespective of external incentives. Third, the theoretical expectation for the sustainability of minority protection measures after accession is rather dim, because with the exception of non-discrimination on the basis of race and ethnicity, minority protection is not part of the *acquis communautaire* (De Witte 2000; Toggenburg 2000), so that when EU conditionality has ceased compliance is not enforced by the internal EU sanctioning mechanism. Hence, when external incentives are assumed to be the decisive factor explaining rule adoption, the revocation of these rules is to be expected once the incentives disappear (Sasse 2006; Schimmelfennig and Sedelmeier 2004, 675).

This paper builds on the insights of existing research on EU conditionality in the field of minority rights, but considers external incentives as only one possible explanation for rule adoption that can work in combination with as well as parallel to domestic factors. With its ability to account for causal complexity and equifinality, Qualitative Comparative Analysis (QCA) seems well suited to this end (see George and Bennett 2005; Ragin 2008). The paper conducts a multi-value QCA of the formal adoption and sustainability of minority protection rules in four new EU member states (Poland, Romania, Estonia, Latvia), systematically over a twelve-year period including pre- and post-accession phases (1997-2008) and five minority protection related issue areas (non-discrimination, language use, education, citizenship, integration of Roma) based on four conditions (external incentives, government position, veto players, size of minorities). The main research question is:

Under which external and domestic conditions are minority protection and non-discrimination measures adopted, maintained or revoked in new member states before and after accession to the EU?

The paper is structured as follows: part 2 presents the theoretical assumptions and hypotheses; part 3 elaborates on the case selection, the method and the operationalization of the outcome and the conditions; part 4 discusses the results of the QCA analysis based on the overall

dataset as well as pre-/post-accession, country- and issue-specific subsets.

2. Theoretical background: External incentives vs. domestic factors

The theoretical starting point of the paper is a rationalist external incentives model of externally driven rule adoption (Schimmelfennig and Sedelmeier 2004; 2005; 2007), which assumes actors to be rational utility maximizers calculating the material as well as political costs and benefits of rule adoption. From the perspective of the external incentives model, the main driving force of rule adoption is membership conditionality. "The dominant logic underpinning EU conditionality is a bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions" (Schimmelfennig and Sedelmeier 2004, 662). The basic prediction of the external incentives model is that a candidate state "adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs" (Schimmelfennig and Sedelmeier 2005, 12). External incentives alone are therefore not sufficient to induce rule adoption – they also have to surpass domestic adoption costs. If adoption costs are prohibitively high, rule adoption is not likely.

If domestic factors are conceptualized as adoption costs, which are assumed to be always larger than zero, it follows that high political costs may prevent rule adoption, while moderate costs lead the model to expect compliance as a result of effective conditionality. Governments of applicant countries are not assumed to gain benefits out of rule adoption in the absence of external incentives. The possibility of domestically driven rule adoption is acknowledged, but generally only in countries where domestic conditions were favorable before the onset of EU conditionality. In such cases, conditionality is not necessary and therefore also not applied. If conditionality is used, however, it is assumed that candidate countries incur at least moderate costs for compliance. This might lead to an over-estimation of the effectiveness of conditionality in cases where it was applied and rule adoption took place, but where domestic change led to conditions with positive net gains for rule adoption. With regard to minority protection, positive political gains might arise for governments that represent minorities, view them as an important electorate, or are ideologically leaning towards a pro-minority position.

We conceptionalize the domestic factors that might facilitate (or even in itself sufficiently cause) or inhibit rule adoption through three different conditions: first, the government position, whose policy preferences can be either in favor of (in the case of a government with a pro-minority orientation or under inclusion of the minorities themselves), indifferent or opposed to minority protection measures (the latter in case of nationalists forming or taking part in the government); second, the existence of veto players that might – depending on their policy preferences – block either positive proposals or the attempted revocation of existing rules; and third, the size of minorities, which can be interpreted as an indicator of the salience as well as possible financial costs of minority protection. These factors will be further specified below in the part dealing with the operationalization of the conditions.

The importance of domestic factors is even enhanced after accession. If external incentives are necessary to induce rule adoption in the candidate states, the prediction for the sustainability (let alone further development) of already adopted minority protection rules is rather pessimistic if conditionality is not replaced by other incentives, e.g. EU sanctions such as infringement procedures. To be sure, the external incentives model would not under all circumstances predict the complete formal reversal of externally induced minority protection measures (see Schimmelfennig and Trauner 2009 this issue). First, the revocation as well as the initial adoption of rules is strongly dependent on the domestic political constellation, i.e. the threat of a policy reversal would be imminent only in the case of political forces opposed to minority protection forming a post-accession government. Second, conditionality may have induced institutional changes (e.g. constitutional provisions) that cannot be reversed by simple majorities and are upheld by domestic control mechanisms (e.g. a constitutional court) acting as veto players. Third, it may be less costly to uphold formal legislation or to keep institutions in place that are costly to set up or change, but undermine implementation through cuts in funding or restrictive regulations.

Still, under certain political conditions we would expect formal rule adoption to stagnate and in extreme circumstances even formal legislation to be revoked. Because external incentives are expected to only temporarily upset the domestic equilibrium and the calculations of political actors, the external incentives model would not predict the establishment of a stable pro-minority consensus in the cases where the introduction of minority protection rules was initially contested and only achieved in reaction to conditionality. Once the incentives disappear or the reward is delivered, the domestic situation should revert to the status quo ante, because conditionality is not expected to induce preference change, socialization or internalization. Elections do of course change actor constellations and may bring more or less minority-friendly governments into power, but we should not see the emergence of a stable equilibrium in favor of minority rights, if it did not exist prior to accession and only external incentives triggered domestic change.

Three main hypotheses regarding the conditions for positive as well as negative change in formal rule adoption can be derived from these assumptions:

> *H#1: Positive change should occur independently of any external incentives, if domestic conditions are favorable, i.e. a pro-minority government and no nationalist veto players exist, and if minorities are small.*

This "domestic path hypothesis" captures a situation with favorable domestic conditions, in which rule adoption can be expected without any external incentives. In general, it is often assumed that such cases are predominantly to be found among the early democratizers, which are often excluded from analyses of the effectiveness of EU conditionality. However, minority rights are also contested in seemingly "easy" cases, and conversely, positive domestic constellations can occur in countries facing strong EU conditionality.

> *H#2: Strong and determinate external incentives should induce positive change also in cases where domestic conditions are less favorable, e.g. if large minorities, indifferent or even moderately nationalist governments and/or veto players exist, as long as they are not ultra-nationalist and would incur prohibitively high political adoption costs.*

This "external incentives path hypothesis" lies at the heart of the external incentives model: strong and determinate conditions should overcome domestic resistance, if the expected reward for compliance outweighs the domestic adoption costs. Since authoritarian or ultra-nationalist governments that would incur prohibitively high political adoption costs (such as the Mečiar government in Slovakia) no longer existed in any of the candidate states after accession negotiations started (in fact, this was a necessary condition for the negotiations to start), we should expect conditionality to be effective in all cases where it was applied, even with negatively oriented governments and veto players. The incentive of accession should supersede these obstacles.

> *H#3: Negative change should occur when external incentives are weak, indeterminate or absent and a combination of nationalist government and no pro-minority veto player exists.*

This "revocation hypothesis" follows from the external incentives model, because in this case strong domestic preferences against minority protection are not countered by external incentives. Since the EU can be expected to monitor compliance and be watchful if problematic domestic conditions arise (e.g. after an election), the configuration of absent EU leverage through conditionality and negative domestic conditions should only arise after accession. Hence, we should expect revocation only to set in after accession, and then to depend on domestic conditions in the absence of external incentives.

3. Case selection, method and operationalization

As countries we selected four new member states: Poland, Romania, Estonia and Latvia. The selection follows the desire to cover countries with variation regarding different causal paths to rule adoption. Estonia and Latvia are considered to be "hard" cases, in which external incentives met strong domestic resistance, and which conversely also produced some theoretically puzzling instances of rule adoption (Schimmelfennig, Engert and Knobel 2006, 235). Romania is usually taken to be a paradigmatic case of successful conditionality, although the positive developments only set in after the minorities themselves joined the government, so that domestic conditions alone might be a sufficient explanation (see Kelley 2004, 159). Poland is mostly presented as an "easy" case of self-socialization, where conditionality was not necessary to induce rule adoption (Schimmelfennig 2000, 133), yet the development of a comprehensive protection of minorities has been slow and contested (Schwellnus 2005; Vermeersch 2007).

The analysis covers a *time-period* of twelve years from 1997, when the European Commission's Opinions on the candidate countries were issued and the accession negotiations with the first countries started, to 2008, i.e. it covers both pre- and post-accession phases. Five issues are under investigation: non-discrimination, language use, education, citizenship, and the integration of Roma. The inclusion of non-discrimination introduces external incentives after accession, since the adoption of anti-discrimination legislation is part of the EU *acquis* and therefore backed by EU sanctions against non-compliance. Not all of the five issues are relevant for every country or at every point in time. To avoid including irrelevant cases, we excluded cases where the highest level of protection was already reached prior to the time-period in question, so that further improvement was not possible by definition.

The method applied in the paper is multi-value Qualitative Comparative Analysis (mvQCA) as developed by Lasse Cronqvist (Cronqvist 2007; see Rihoux and Ragin 2009, 69-86), which is an extension of Charles Ragin's crisp-set or csQCA (Ragin 1987). QCA focuses on the configuration of conditions that are necessary or sufficient to bring about a specific outcome. It is specifically designed to rigorously handle and analyze a larger number of cases than usual case studies – without, however, applying statistical, regression-based techniques. QCA is capable of examining complex patterns of interactions between conditions and contains procedures to minimize these patterns in order to achieve parsimony (Ragin 1987, 121-123). The data for QCA is arranged as a "truth table" (see Appendix II). That is, each possible configuration (combination of values of the conditions) is represented as one row together with the associated value of the outcome. Configurations for which no empirical case is reported constitute "logical remainders", which might be used as counterfactuals to achieve a more parsimonious result. The value added of mvQCA as compared to the dichotomous coding necessary for csQCA is that it can handle conditions (but not outcomes) with more than two values. Finally, the truth table is analyzed and reduced with procedures of combinatorial logic to arrive at a solution specifying a parsimonious combination of necessary and sufficient causes for the presence or the absence of the outcome to be explained. Further measures of the degree to which a QCA solution explains the outcome are its consistency, i.e. whether all cases under this constellation show the expected outcome or only a percentage of them, and coverage, i.e. how many of the cases with a positive outcome are covered by the solution (Ragin 2008; Rihoux and Ragin 2009; Schneider and Wagemann 2007).

In correspondence with the combinatorial logic of QCA, a case for the use in this paper is a specific configuration of conditions, which can vary across countries, over time, and across issues. Whenever the value of a condition changes for one country in one issue area, this new combination constitutes a new case. The main reasons for coding a domestic situation as a new case are elections and government changes. Although the Commission progress reports were delivered on a yearly basis, we aggregated external incentives over the time of a government. Overall, the analysis is based on 93 cases (62 pre- and 31 post-accession), which cover 22 of 36 possible configurations.

3.1. Operationalizing the outcome: Formal rule adoption in five minority protection related issue areas

As the outcome to be explained we selected changes in formal rule adoption – i.e. legislation or the adoption of policy programs, but not their implementation, application or enforcement – in relation to the prior level of adoption(1). For the use of this paper, we coded formal rule adoption in five minority protection related issue areas: non-discrimination, language use, education of and in the minority language, citizenship (applicable only to Estonia and Latvia) and the integration of Roma via specific policy programs. In accordance with most definitions of national and ethnic minorities we restrict the application of the term to traditionally resident minorities, thereby excluding immigrants. However, in the case of Estonia and Latvia we include the Russian-speaking population without citizenship, although their status as national minorities might be disputed. Still, international institutions generally consider them to be national minorities.

Non-discrimination in the context of EU enlargement predominantly relates to the transposition of the EU *acquis communautaire* represented by the "Framework Directive on equal treatment in employment and occupation" (Council Directive 2000/78/EC, OJ 2000 L303, 16-22), and the "Directive on equal treatment between persons irrespective of racial or ethnic origin" (Council Directive 2000/43/EC, OJ 2000 L180, 22-26), the so-called "Race Equality Directive". The coding of the level of rule adoption therefore mainly follows the degree of transposition of these Directives, although it is formulated in a way that it can also be applied to the time before the directives were adopted. The lowest level (--) is the complete absence of any non-discrimination rules. The next level (-) is characterized by general provisions such as an equality clause in the constitution, but without any specific codification in simple legislation. A medium level (=) is reached, if non-discrimination clauses are inserted in specific laws (e.g. the labor code), which amounts to a partial transposition of the EU Directives. A high level of rule adoption (+) corresponds to comprehensive anti-discrimination legislation constituting a full transposition of the EU's anti-discrimination *acquis*. The highest level (++) is achieved, if non-discrimination laws exceed the minimum requirements of the Directives, especially by allowing for positive measures to support or compensate discriminated groups ("affirmative action").

Language use refers to the use of minority languages in different aspects of private and public life (see Pan and Pfeil 2002, XXV). On the lowest level of rule adoption, the use of minority languages is only allowed in private (--). The higher levels are determined by how many of the following aspects of language use are permitted: first, whether general human rights with regard to language use can be utilized by minorities, such as the use of a translator before court (+1); second, whether minority languages may be used beyond the purely private sphere, e.g. in professional life, but not yet on the official level (+1); third, whether the minority language may be used for public signs (+1); fourth, whether it can be used in official documents and before state authorities, at least in areas with considerable minority population (+1).

Education for minorities includes two elements: education of and in the minority language (see Pan and Pfeil 2002, XXV). The lowest level of educational rights (--) corresponds to no education of or in a minority language. The most fundamental educational provision (-) is that children belonging to minorities have the right to learn their mother tongue in school. A medium level (=) of educational rights is that at least parts of the curriculum (e.g. history or religion) are taught in the minority language. A high level of protection (+) is achieved when minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools. The highest level (++) is reached, when minorities have their own universities.

Citizenship refers to the level of difficulty of naturalization procedures members of minorities have to go through to become citizens of the state, in case a large part of minority population does not possess its citizenship. The lowest level of rule adoption (--) corresponds to the

practical impossibility for a large number of persons belonging to minorities to accede to citizenship (see for example the so-called "window system" in the Latvian case). A low level of rule adoption (-) means that the naturalization process is difficult and does not foresee exceptions for specific categories of people, such as seniors, disabled, juniors, etc. As medium level (=) are coded instances in which the naturalization process is difficult or rather difficult, but sizeable exceptions exist for specific categories of people. Granting exceptions for important groups and simplifying procedures in general is usually a clear sign of liberalization in citizenship legislation. A high level of rule adoption (+) means that not only exceptions exist, but also incentives are created in order to motivate people to naturalize. Finally, the highest level (++) corresponds to extremely easy, virtually automatic, procedures for naturalization of persons belonging to minorities.

Integration of Roma is an issue area that is not addressed via general legislation but is usually the focus of specific policy programs and action plans. The absence of any specific Roma program is coded as the lowest level of rule adoption (--). As there is no clear hierarchy of measures readily available, higher levels are represented by how many of the following areas are addressed: housing, health and social security, education and training, dissemination of information and awareness-raising. In addition, we include the temporal (only short-term solutions to specific problems, mid-term programs over at least a year, permanent programs) and territorial (local regional or national application) scope of the program. The highest level (++) is reached, if all these aspects are incorporated into a comprehensive program for the integration of Roma.

On the basis of this information about the level of protection in each issue, we firstly excluded all cases where the top level of rule adoption was already reached, so that further improvements were impossible. Secondly, we used the level coding as our main indicator for the outcome: positive change in formal rule adoption. If a policy program or piece of legislation that lifts the level of adoption in the issue area by at least one level is adopted during the period of one case, the outcome was coded as "1"(2). Additionally, we also coded as positive change the signature or ratification of important international conventions such as the Council of Europe's Framework Convention on the Protection of National Minorities (FCNM) or the European Charter for Regional or Minority Languages (ECRML), since they are considered to be major improvements in formal minority protection despite not having direct effect(3).

3.2. Operationalizing the conditions for rule adoption: External incentives, government position, veto players, and the size of minorities

Based on the theoretical assumptions of the external incentives model, the three hypotheses spell out under which configuration of external and domestic conditions a positive development (H#1+2) and a revocation of already adopted rules (H#3) can be expected. In the following, these conditions shall be specified.

External incentives: Before accession, the EU gives candidate states positive incentives for compliance with conditionality in the form of a membership perspective. According to the external incentives model, rule adoption depends on the following external conditions: the size of the reward, the credibility of delivering or withholding the reward, the strength of conditionality, and the determinacy of conditions. For the countries and the pre-accession time-period covered in this analysis we assume that both the credibility of EU conditionality and the size of the most important reward – EU membership – were always high. This leaves the strength of conditionality and the determinacy of conditions as the central external factors to determine the likelihood of rule adoption.

After accession, conditionality no longer applies as the reward is paid out, but in areas that are part of the *acquis* the internal sanctioning mechanism of the EU sets in, so that negative incentives (sanction threat) against non-compliance replace positive incentives (membership reward) for compliance. In the domain of minority protection this only applies to non-

discrimination on the basis of race and ethnicity, but not to minority rights proper. The same criteria used for conditionality apply to EU sanctions as well, although in addition to credibility also the determinacy of the rules is constant and high, since it relates to the implementation of legally defined rules such as EU Directives.

External incentives are coded dichotomously, i.e. as either present or absent. We code strong and determinate external incentives as present when in the pre-accession phase measures in the respective issue area are explicitly and clearly demanded, e.g. in the European Commission's progress reports or as short-term priorities in the accession partnerships, or if after accession a specific sanction threat is issued, e.g. in the form of a Commission statement threatening the start of infringement procedures against a member state because of non-compliance with Community law. It is not enough that the issue falls under the general condition to transpose the acquis or is part of the vague Copenhagen criteria regarding minority protection, nor does it suffice when the issue area is mentioned without any specific requests.

Government position: According to Kelley (2004), the government participation of national minority parties on the one hand and nationalist parties on the other is an important factor in determining the state policy towards minorities and the reaction to external demands to protect minorities. Coalition governments under the inclusion of parties representing national minorities are expected to be willing to implement minority rights, whereas governments with a strong nationalist influence are likely to resist this. The straight-forward rationale behind this intuitive hypothesis is that political decisions follow directly the policy preferences of the ruling decision-makers.

We code the government position as a multi-value condition with three possible values. The GOV(+) position, i.e. a positive commitment towards minority protection, can be expected, if parties representing the minorities themselves are part of a coalition government, but also for governments that do not include minority parties but are comprised of parties that have minority protection as part of their party programs or election manifestoes. The neutral position GOV(=) applies to governments comprised of parties with an indifferent position to minority issues, or heterogeneous coalitions. In this case we would not expect the government to adopt minority-friendly policies out of their own initiative, but they are also not opposed to such policies or incur high political costs when complying with external demands to adopt or implement minority protection rules. Governments including nationalist parties are coded as GOV(-), i.e. governments with an anti-minority position, since nationalists predominantly portray minorities as a threat to national identity and unity and are likely to incur high political costs for adopting minority protection rules.

Veto players are defined as "actors whose agreement is required for a change of the status quo" (Tsebelis 2002, 17). Veto player theory predicts increasing policy stability with a higher number of veto players, because it becomes increasingly likely that a change from the status quo will be blocked. However, not only the institutional power to block a decision is important, but also the policy preferences of the veto players. A player will only veto a decision if s/he has both the institutional capability to veto and preferences that differ from the government that proposes a policy.

Instead of assuming a random distribution of policy preferences and conducting a probabilistic analysis on the basis of the number of veto players, we assume that one veto player is sufficient to block a decision and code the political positions of possible veto players in analogy to "government position". Our coding takes three types of possible veto players into account: first, the president, who generally has veto powers; second, a parliamentary majority against the government, either in a second chamber (in bicameral systems) or the first chamber (in case of a government lacking a parliamentary majority)(4); and third, the constitutional court. Coding follows the strongest veto player (in terms of intensity of preferences) with a policy preference contrary to the government's preference as coded under "government position".

As in the "government position" condition we code veto players according to a multi-value

coding scheme with three possible values. A VETO(=) coding indicates that veto players are absent or indifferent, so that any decision may be passed. Veto players with a VETO(+) coding are assumed to be permissive for the adoption and implementation of positive minority protection measures but veto their revocation or the adoption of restrictive rules. Veto players coded as VETO(-), by contrast, are expected to be permissive for negative measures or the revocation of positive rules, but block any improvement in terms of minority protection.

The *size of minorities* acts as an indicator for the political salience and potential financial costs of adopting minority protection rules: if the respective measures only apply to very small minority communities, this is not likely to be either politically very controversial or particularly costly, whereas large minorities are more likely to be considered "problematic" politically, and the provision of costly goods is also a much higher financial burden if it applies to a large number of people. Of course, large minorities can also act as a supportive factor for rule adoption, e.g. by constituting a sizeable electorate or by being able to mobilize. However, if minorities are large and organized enough to exert significant influence, this is most likely to be via their own political parties and their participation in government, which is already covered under "government position". Hence, we assume large size to be a hindering factor for rule adoption.

The size of minorities is coded dichotomously. It is coded as large, when either the Roma community (for the Roma integration issue) or national minorities (for the other issues) constitute at least five percent of the population. Consequently, both kinds of minorities are small for Poland, Estonia and Latvia have large national minorities but small Roma communities, and in Romania both groups are coded as large (see for the official numbers Pan and Pfeil 2002).

4. Analysis

In the following, the results of the QCA analysis are discussed. We conducted four different runs: first, for the complete dataset of all cases; second, for the pre-and post-accession phases separately; third, for the cases representing each country; fourth, for each issue area. The formal QCA analysis, conducted with both the TOSMANA (Cronqvist 2007) and fs/QCA3.0 (Ragin, Drass and Davey 2006) software under the crisp-set "truth table algorithm"(5), was only used for positive change as the outcome(6). The conditions under which revocation occurred could easily be determined by hand, because only two such cases exist in the dataset (see the coding tables in Appendix I). With our 93 overall cases we cover 22 of the 36 possible configurations, with 14 logical remainders, i.e. configurations of conditions without empirical cases. However, when smaller subsets of cases are analyzed separately – especially in the country- and issue-specific analyses – the problem of limited diversity increases.

We chose a conservative strategy both for the consistency cutoff and the treatment of logical remainders. Regarding the former, only configurations that consistently show a positive outcome (i.e. a consistency of 1.00) are included in the solutions, although the comparatively high number of cases tends to produce contradictory configurations and would have lent itself to introducing some quantitative element in the form of consistency or frequency cutoffs. However, the contradictory configurations are always well below the consistency threshold of 0.75 that Ragin considers to be the minimum for an inclusion – there are no configurations in which positive outcomes almost always occur with only one or few negative cases (Ragin 2006, 293). Only in analyses in which no fully consistent solution is to be found, we consider the best contradictory configuration (represented in italics in Appendix III). The solutions produced in these cases are, however, clearly no indicator of a configuration that is sufficient for the outcome.

We also did not include counterfactual cases by allowing simplifying assumptions on the basis of logical remainders in order to come to more parsimonious results – only the "complex" solution is used, i.e. the one that is represented by actual cases. The aim is not to provide the most simple theoretically possible solution based on a minimal set of conditions (which the

"parsimonious" solution does), but to identify the configurations under which the outcome to be explained consistently occurs in our cases.

In accordance with official QCA nomenclature, solution terms are represented as upper case if the condition is present and lower case if it is absent (lower case starting with a capital letter indicates only the name of the variable, not its value). Hence, "VETO(-)" means the presence of a nationalist veto player, whereas "veto(-)" indicates its absence – in this case indicating that both positive and neutral veto players are combined under this condition. "*" is a logical "and" operator joining the elements of one solution term, whereas "+" is a logical "or" that is placed between different equifinal solution terms.

4.1. All cases

The first analysis on the basis of all 93 cases produces two fully consistent solutions revealing two equifinal paths to positive change – one domestic and one including external incentives as a necessary component:

GOV(+)*VETO(+)*size + INCENT*GOV(+)*VETO(-)*SIZE

Together the two solutions cover roughly a third of all cases with a positive outcome (ten out of 29). The remaining instances of positive change are situated in contradictory configurations, none of which can be classified as almost always leading to a positive outcome, because the highest consistency achieved by such contradictory configurations is 0.5, i.e. the number of positive outcomes reported for the constellation is outweighed by an at least equal number of negative cases. Both fully consistent solutions are theoretically meaningful and confirm the theoretical expectations in principle.

The domestic solution covers a "best case" scenario, in which a pro-minority orientation of both the government and potential veto players combines with small minorities, whose accommodation is assumed to be neither costly nor politically problematic. Examples for this configuration are found in Poland, where it accounts for seven positive changes between 2003 and 2004 under the Miller (pre-accession) and Belka (post-accession) governments. Both governments were led by the post-communist Social Democrats (SLD), which had adopted a pro-minority position early after the democratization. The governments lacked a parliamentary majority after the minority-skeptical Peasant Party (PSL), which rendered the overall position of the prior government neutral, had left the coalition. Still, the government could count on support by the liberal opposition with regard to minority rights (see Schwellnus 2005), so that the minority-skeptical opposition parties did not possess a blocking majority in parliament. Since President Aleksander Kwaśniewski also belonged to the SLD, potential veto players showed a pro-minority position nonetheless. Strong conditionality prior to or sanction threats after accession were present only in the field of non-discrimination, whereas all other issues remained part of the weak conditionality of the general Copenhagen criteria. In this phase, Poland signed the ECRML, amended the Labor Code to partially transpose the EU Race Equality Directive in workplace-related areas, replaced the prior "Małopolska" pilot program for the integration of Roma (which had ended) with a long-term program for the Roma community in Poland, thus expanding the temporal and territorial scope considerably, and finally adopted a Law on National Minorities and Regional Languages.

This combination is sufficient for positive change, irrespective of external incentives being present (two cases) or absent (five cases). This is not as trivial as it might seem. First, the domestic explanation is the empirically more important of the two solutions with a coverage of 0.24 (seven cases) as compared to only 0.10 (three cases) explained by the external incentives solution. Second, comparison with other constellations reveals the importance of the constituent causal factors as necessary conditions for the solution. Both positive government position and small size of the minority appear to be necessary for a positive result in the absence of external incentives: With large minorities, none of the three cases with positively oriented governments and veto players (two without and one with external incentives; all under

the centre-left Kallas government in Estonia 2002-2003) show a positive outcome. The "second best" situation with neutral veto players, which theoretically should still produce a positive result, because indifferent veto players are not expected to block positive government proposals, also fares badly: none of the three cases with conditionality present (non-discrimination under the short-lived Emsis government in Latvia 2004 and the two Ansip governments in Estonia since 2005) and only one out of eight cases in its absence (language use in Estonia under the first Ansip government as opposed to the same issue under the second Ansip government, citizenship under the two abovementioned Ansip governments as well as non-discrimination and education in Romania for the Popescu-Tãriceanu government from 2004) report a positive outcome.

In the absence of a pro-minority government the consistency with a positive outcome sharply declines as well. As the most significant example, in the well documented configuration with a neutral government, minority friendly veto players and small minorities in the absence of external incentives, five positive cases are outweighed by twelve negative outcomes, leaving the overall consistency of the configuration at 0.29, i.e. no higher as the general percentage of positive results in all cases. With neutral veto players it fares even worse (only one positive out of five cases).

In addition, the not sufficient but nonetheless noteworthy consistency of the configuration *incent*GOV(+)*VETO(-)*SIZE* (0.4, two out of five cases) suggests that government position is the most important of the domestic variables. One example for this configuration is given by the center-left PDSR (Romanian Party of Social Democracy, later Social Democratic Party/PSD) government in Romania, headed by Adrian Nãstase, who governed from 2000 to 2004 with the negotiated support of the Democratic Alliance of Hungarians in Romania (UDMR) on the basis of yearly renewed cooperation protocols that spelled out the exact terms and conditions of cooperation. A leading figure of the immediate post-1989 Romanian political scene dominated by salient nationalism, PDSR-nominated President Ion Iliescu constitutes a potential anti-minority veto player.

In this context, one of the main positive developments of this period was the adoption of the Law on Local Public Administration of 2001 granting the right to communication with state authorities in the mother tongue, as well as bilingual street signs in localities where minorities represent more than 20 percent of the population. Further provisions for minority language use were included into the 2002 Audiovisual Law and the 2002 Law on the Status of Policemen. The improvements brought to minority language use and education were further reinforced by the inclusion of special provisions referring to these fields in the amended Romanian Constitution of 2003. Very importantly, the National Strategy for Improving the Condition of the Roma, a "comprehensive and high quality document" (European Commission 2001b, 29), was also adopted in this period.

The role of veto players, however, is less clear, as there are no empirical cases with small minorities, a pro-minority government, and either neutral or nationalist veto players. Hence, while the theoretical assumption is that neutral veto players should not block change initiated by pro-minority oriented governments, whereas nationalist veto players should prevent any positive development, this is not supported by any empirical case.

The second solution based on the presence of external incentives *(INCENT*GOV(+)*VETO(-)*SIZE)* adds consistently positive results under less favorable domestic conditions, namely with large minorities and nationalist veto players. This configuration is illustrated by the case of Romania and its 1996-2000 coalition government of a predominantly right-of-center ideological orientation including the UDMR. The cooptation of the minority party into the government was contested within the governing coalition itself, had no programmatic underpinnings, and the overall coalition can be considered moderately pro-minority at best. This ambivalent government stance on minority issues was complemented by the recurring phenomenon of spontaneous loss of parliamentary majority by the government on minority issues, which has been coded as a potential anti-minority veto player.

As for external incentives, the lack of a coherent strategy to tackle the Roma issue was the main point of concern of the European Commission in its Romania Progress Report of 1998. Subsequent Accession Partnerships emphatically called for the elaboration and implementation of a "strategy to improve economic and social conditions of the Roma" as a short-term priority (European Commission 1999c, 4), which is coded as strong and explicit conditionality. In the field of education, the Commission reports in this period specifically mention the Petőfi-Schiller multicultural state university, the legal basis for which "has still to be completed" (European Commission 1999b, 18). While the establishment of the multicultural state university did not materialize, the adoption of an amended Law on Education in 1999 constituted an important development in the area of education. The new law satisfied most minority demands by removing previous limitations on education in the mother tongue. Developments in the field of Roma protection were, however, limited to legislation in the field of access to education. As a considerable development in the field of non-discrimination a highly encompassing government Ordinance on Preventing and Punishing All Forms of Discrimination was also adopted in August 2000.

However, only three cases are covered by this "external incentives" configuration, and it is puzzling from a theoretical perspective that the configuration *INCENT*GOV(+)*SIZE* is fully consistent with a positive outcome in combination with *VETO(-)*, but not when combined with the more favorable veto player coding *VETO(=)* in three cases or even *VETO(+)* in one case. The role of veto players remains thus rather unclear, because in the cases examined positively inclined governments receiving explicit incentives to make formal changes to the legislation complied only if an anti-minority veto player was present but did not do so with neutral or positive veto players.

Such configurations occurred, for example, in Estonia under the government of Andrus Ansip (2005-2007). This government was moderately pro-minority, according to its program and its popularity in the minority electorate. External incentives were clearly present, as in this period the adoption of comprehensive anti-discrimination legislation became a formal requirement for Estonia as a member of the EU, and there was no anti-minority veto player. However, no positive change in the area of non-discrimination occurred. The configuration with a positive veto player present applies to the non-discrimination issue in Estonia under the centre-left coalition government of Siim Kallas (2002-2003), which was moderately in favor of minorities. Despite clear incentives for legislative action and with the President Arnold Rüütel acting as a positive veto-player, a comprehensive anti-discrimination law still was not adopted.

Moreover, the same domestic constellation as in the solution already achieves positive change without external incentives – *incent*GOV(+)*VETO(-)*SIZE* – in two of five cases (consistency 0.4), both reported in Romania. On the other hand, in combination with a neutral government and pro-minority veto players, the configurations with external incentives outperform those without them, both with small and large minorities. They reach a consistency of 0.5 (two out of four cases) each, as compared to 0.29 (five out of 17) and 0.17 (one out of six) for small and large minorities respectively. Still, a closer look at the cases covered under these configurations is inconclusive.

In Poland, the configurations (always with small minorities) apply to the first three governments included in the analysis. Under the conservative-liberal coalition government headed by Prime Minister Jerzy Buzek (1997-2000), which is coded "neutral" despite the inclusion of the pro-minority liberal UW because the main coalition partner AWS was a conglomerate of several parties ranging from moderately pro-minority oriented liberal conservatives to a small number of catholic nationalists, no change is reported in any of the issue areas, although the Commission's opinion on Poland's application for membership in 1997 noted that the "Roma (or gypsies), who are few in number in Poland, are sometimes the victims of violence or discrimination" (European Commission 1997, 18). After the UW had left the government (as did the nationalist right wing of the AWS), the Buzek minority government (2000-2001) ratified the FCNM and initiated a pilot program for the Roma community in the Małopolska region, which was welcomed by the EU (European Commission 2001, 24). Hence, positive developments occurred in areas with and without external

incentives. After the change towards the leftist-rural Miller government (2001-2003), in which the minority-skeptical PSL coalition partner rendered the government "neutral" despite the positive position taken by the leading SLD, positive change was achieved in the field of language use (where no conditionality was applied) by an ordinance of the Minister of the Interior regarding the translation of Polish signs into foreign languages in March 2002, but not in the field of non-discrimination, although the necessity to transpose the Race Equality Directive was reiterated in the Commission reports (European Commission 2000, 57; 2001a, 22 and 68; 2002, 28), indicating persistent strong conditionality in this area.

In Estonia, the Laar government (1999-2002) represents the constellation with an indifferent government, pro-minority veto player and external incentives present in both the issue-areas of non-discrimination and citizenship, but a positive change is only reported in the latter case. The Parts government (2003-2005), on the other hand, shows positive change in three issue areas: non-discrimination (with external incentives), citizenship and Roma (both without external incentives). In Latvia, positive change in the configurations in question is coded only once in the field of Roma integration under the Repše government (2002-2004), where no external incentives were present, but not in the same issue area under previous governments which all represent the same configuration, not for other issues in the absence of conditionality under the Repše government (language use and citizenship), and also not for the non-discrimination issue at the same time, where external incentives applied.

In sum, although external incentives are a necessary condition in this second fully consistent solution, they seem to have a limited impact, mainly reinforcing domestic factors, most importantly a pro-minority oriented government. Given that in the cases under investigation there is no ultra-nationalist or anti-democratic government that would bear prohibitively high political costs, external incentives do not fulfill the theoretical expectation of overcoming considerable domestic opposition.

Negative change is only reported in two cases, both under the following configuration:

*INCENT*GOV(-)*VETO(+)*SIZE*

Both cases occurred in the issue area of language use in 1999: first in February – in Estonia, then in December – in Latvia. To start with the Estonian case, it was the center-right "Triple Alliance" government of Mart Laar that adopted amendments to the language legislation introducing regulations of professional use of language. A list of professions and corresponding levels of proficiency in the state language, necessary for the occupation of offices was issued. It concerned not only the public, but also the private sector and covered the whole country, including the regions almost exclusively populated by minorities. It has to be noted that the overall stance of this government on the issue of minorities was rather neutral, as the nationalist part of the coalition was mostly pragmatic at the end of the 1990s, but still intransigent on the question of language use. The adopted amendments called a strong critique by European organizations including the European Commission, who dedicated a major part of its 1999 Progress Report to the negative impact of this law (European Commission 1999a, 14-15). The law was sent back to parliament by the President, where it was amended with clauses delimiting its scope. These limitations, which satisfied the European organizations, did not prevent the law from regulating the use of language in private sphere, so that the negative change compared to the situation before the adoption of the amendments was not reversed.

The Latvian case is similar, although somewhat more dramatic. The new language law, adopted under the center-right coalition government of Andris Šķēle, prohibited the use of foreign languages in dealings with authorities, except in emergencies. The previous – rather generous – version of the law had allowed for the submission of documents in Russian, German and English. While the old Civil Code permitted the use of foreign languages in some cases, the new law excluded these possibilities. In addition to this, the use of public signs in foreign languages was also forbidden. As in the Estonian case, the first version of the new law met opposition from European organizations and was sent back to parliament by the President. The final version, although still containing the abovementioned language restrictions alongside

some limitations of scope, was finally judged acceptable.

Although in both cases international organizations finally accepted the outcome, we code it as a negative change, since in both cases more restrictive language regulations were passed. This disconfirms the theoretical assumption that revocation will predominantly happen in the absence of external incentives, while strengthening the observation made for positive change, namely that government position and the size of minorities are more important than veto players – pro-minority oriented veto players should have prevented revocation. The solution *INCENT*GOV(-)*VETO(+)*SIZE* is, however, not even close to constituting a sufficient condition for revocation. In fact, under the configuration all three possible outcomes occur: positive change (one case), status quo (five cases), and negative change (two cases). The consistency for revocation is therefore only 0.25 (two out of eight cases).

The case of a positive change under this configuration occurs in Latvia: in the issue of citizenship, under a center-right coalition government of Guntars Krasts led by the nationalist For Fatherland and Freedom Union, an important liberalization of naturalization legislation took place. The system of naturalization windows was abolished and simplified procedures were introduced for certain categories of persons (children and elderly), thus marking a change of even two levels on our scale at once. Even the opposition of some parliamentarians, who insisted on putting the issue to a referendum, could not prevent the amendments from being passed.

As an illustration for the case when the same constellation led to the preservation of the status quo, the issue of citizenship in Estonia can be cited. There, in the context of a moderately anti-minority position of the government of Mart Siimann on this issue, the presence of clear incentives and of a positive veto player could not push for an adoption of favorable pieces of legislation.

In any case, the very small number of negative cases prohibits any strong conclusions regarding the conditions for revocation.

4.2. Pre- and post-accession phases

In a second step, the 62 pre-accession cases were analyzed separately from the 31 post-accession cases in order to determine whether the solutions discovered in the overall analysis apply to one of the phases only, or whether some of the contradictory configurations are based on diverging trends before and after accession and can therefore be dissolved by treating them separately.

A look at the general percentages of positive change confirms the hypothesis that rule adoption should slow down significantly after accession. This general trend shows throughout most country- and issue-specific subsets (see second column of the table in Appendix III). All countries and issue areas taken together, positive change is reported for slightly over one third of the pre-accession cases (22 out of 62), but only about one fifth of the post-accession cases (seven out of 31). Of course, this could be due to the fact that a generally higher standard later in the process makes further improvements less likely, but since we excluded all cases in which the maximum level of protection was already reached, at least the possibility of positive change was present in all cases. On the other hand, the theoretical expectations regarding the revocation of legislation are again not corroborated, since both instances of negative change occurred prior to accession.

The QCA analysis produces the same two solutions already present in the overall analysis. This means that no contradictory configurations are resolved by splitting the dataset into pre- and post-accession cases. However, the solution including external incentives only applies to the pre-accession phase, whereas the domestic solution is present in both phases. Of course, this could be explained by the fact that there are not only considerably less post-accession cases, but EU conditionality ceased for all issue areas except non-discrimination. Still, in the

remaining eight cases where external incentives were present after accession, only those report a positive outcome that are already explained by favorable domestic conditions.

The domestic solution covers three of the seven instances of positive change after accession (coverage 0.43). For the pre-accession phase this means that the coverage of the domestic solution decreases in comparison to the overall analysis, whereas the relative empirical importance of the external incentives solution slightly increases. However, the domestic solution still explains one more case than the one including external incentives (coverage 0.18 to 0.14, or four compared to three cases explained by the respective solution term) and overall solution coverage is comparatively lower for the pre-accession (0.32, i.e. seven out of 22 positive cases) than for the post-accession phase.

4.3. Country-specific analysis

The separate analysis for each country shows extreme variation in the configurations that produce positive outcomes. First, we can distinguish Poland and Romania as countries with a high percentage of positive change, especially prior to accession (general consistency of above 0.5 before accession and above 0.4 overall in both cases) from Estonia and Latvia as countries with a lower percentage (general consistency of overall 0.21 in the former and 0.25 in the latter case). The reason of the apparently low performance of Estonia and Latvia is, however, not so much the small amount of positive change in the period under study, but high political instability leading to shorter government duration. This creates more cases, while the number of positive outcomes recorded overall is roughly equal to Poland and Romania. Also, as both Estonia and Latvia guaranteed the highest level of protection in education already in 1997, this best performing issue is automatically excluded from our analysis from the very start, while no issue area had the highest level of protection in 1997 in Poland or Romania.

What is more important from the perspective of QCA, only Poland and Romania show fully consistent QCA solutions. These solutions – one for each country – correspond to the two equifinal solutions discovered in the overall analysis: Poland represents the domestic solution *GOV(+)*VETO(+)*size*, Romania the external incentives based solution *INCENT*GOV(+) *VETO(-)*SIZE*. In both cases the coverage is comparatively high (roughly 0.6 for both countries), i.e. the solutions cover a good amount of the cases within each country that show a positive outcome.

By contrast, Estonia and Latvia contribute nothing to the overall explanation, because they both show not a single fully consistent solution. If we look for the contradictory configurations with the best consistency, Estonia has one solution with a consistency of 0.67, i.e. two thirds of the cases are positive (two out of three) and a coverage of 0.40 (two out of five cases with a positive outcome):

*INCENT*GOV(=)*VETO(+)*SIZE*

These two positive cases were: first, the adoption of liberalizing amendments to the citizenship legislation under the center-right coalition government headed by Mart Laar (introducing simplified procedures of naturalization for young graduates and disabled persons); and second, the introduction of anti-discrimination clauses into the Law on Employment Contracts and the Penal Code under the government of Juhan Parts from the conservative-populist Res Publica party. In both cases, the center-right coalition governments are considered to be rather neutral on the issues in question – other issues, such as economy, dominated political life.

This solution seems to be consistent with the theoretical assumptions: external incentives should be able to induce an indifferent government to adopt rules even if they apply to large minorities. However, the same solution with positive governments did not result in a positive change on two occasions when it occurred. This finding together with the low consistency counter the possible conclusion that external incentives might have worked effectively under worse conditions in Estonia than in Romania.

The analysis of the Latvian cases exhibits even stranger results. This is perhaps best exemplified by the diverse result under the configuration already discussed under negative change in the overall analysis: *INCENT*GOV(-)*VETO(+)*SIZE*. In Latvia alone, this configuration results in a positive change under the Krasts government, in the preservation of the status quo in two other cases and in a negative change once (the above described amendments to the language legislation under the Šķēle government).

Latvia appears to be a specifically difficult case for compliance research, as no government in its modern history positioned itself or could be identified as having a positive stance to the very large Russian-speaking minorities, highly visible in all the major towns of the republic and possessing certain economic resources. The subsequent perceived vulnerability of the majority population plays for the isolation of minority parties in parliament, even when they get sizeable electoral support. With the general weakness of left-wing parties in Latvia, this leaves center-right coalitions to govern the country during all the period under study.

Only two of the positive changes in Latvia resulted from the same configuration:

*incent*GOV(-)*VETO(+)*SIZE*

First, in the absence of clear incentives and under a center-right coalition government of Vilis Krištopāns, in March 1999 the Law "On the Unrestricted Development and Rights to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups" was adopted. It contained anti-discrimination provisions designed specifically for Latvian residents who were not Latvian citizens and guarantees, for example, to all permanent residents equal rights to work and remuneration. Second, in Andris Bērziņš from the Latvia's Way government (2000-2002), a major information campaign aimed at "advertising" naturalization was initiated, bringing the official engagement in the sphere of naturalization one level up, with no incentives from the EU being present nor the government being pro-minority. However, in four other cases this same configuration did not bring about a positive change: for example, this applies to the issue of language for the Krištopāns government – the same government that initiated a positive change in the area of non-discrimination. Hence, the consistency of this solution is only 0.33 (two out of six cases).

The best consistency (0.50) of all the configurations in the Latvian subset analysis is achieved by two solutions:

*INCENT*GOV(=)*VETO(=)*SIZE + incent*GOV(-)*VETO(=)*SIZE*

However, both solutions are based on single cases with a positive outcome (i.e. one out of two cases each), which results in a low coverage (0.14 for each term and 0.29 for the overall solution), and they are also only due to the ratification of the FCNM by Latvia in 2005, which can arguably be considered a weak case of improvement, as it not only requires implementation but transposition into domestic law to take effect. In sum, the QCA analysis of the Latvian cases gives no clear and meaningful account for the instances in which positive change took place.

4.4. Issue-specific analysis

As a last analysis of case subsets, the five different issue-areas are analyzed separately. Perhaps not surprisingly, citizenship, which applies only to the two Baltic countries, is the "odd one out" with regard to the solutions produced by the QCA analysis. What does surprise, however, is that it shows fully consistent solutions at all (which was not the case in either of the country-specific analyses for Estonia and Latvia), and that its general percentage of positive change is comparatively good, especially in the pre-accession phase (0.44), sharply dropping only after accession with not a single positive development reported.

Of the two solution terms, the first *(INCENT*GOV(=)*VETO(+)*SIZE)* corresponds to the contradictory configuration showing the highest consistency (0.67) in Estonia, the second *(incent*GOV(-)*VETO(+)*SIZE)* to the contradictory configuration covering two positive cases (but also four negative ones, hence a consistency of only 0.33 in the country-specific analysis) in Latvia. This means that treating citizenship separately from the other issues at least partly clarifies some of the contradictions in both countries (without completely resolving them, because the non-citizenship issues under these configurations still produce one positive outcome each), leading to fully consistent – albeit highly individualized – solutions, as both solutions are based on a single case.

The solutions of the other four issue areas largely correspond to the two solution terms of the overall analysis. Still, they show some interesting variation. Education of and in the minority language exhibits both the external incentives based and the domestic solution of the overall analysis. However, the configuration resembling the "domestic path" includes the absence of conditionality (instead of its irrelevance): *incent*GOV(+)*VETO(+)*size*. This is due to the fact that the configuration *INCENT*GOV(+)*VETO(+)*size* is simply missing. The same applies to Roma integration policies. In this issue area, also the constellation usually found with external incentives as a necessary component is shifted away from external influence, as one case of rule adoption in the absence of conditionality (found in Romania) renders external incentives irrelevant: *GOV(+)*VETO(-)*SIZE*. The adoption of Roma integration programs can therefore be explained without reference to external incentives.

The use of minority languages and non-discrimination result in only one solution term each, namely the domestic path. Language use is the only issue where consistent positive outcomes are exclusively reported in a configuration without external incentives *(incent*GOV(+)*VETO (+)*size)*. In combination with the finding that the two instances of revocation also concern this issue and took place in the presence of external incentives, we can conclude that for the use of minority languages EU conditionality had no decisive positive impact. Although external incentives are rarely present in this issue area (three out of 23), this is also true for other issues in which positive outcomes in the presence of external incentives are reported (Roma: three out of 20; education: one out of 11).

Non-discrimination, by contrast, is the issue area in which external incentives are most often present (17 out of 25 cases) due to the fact that it is part of the acquis communautaire and therefore compliance is routinely demanded in the progress reports before accession starting from 2000 and also beyond accession. This puts into perspective that the solution for non-discrimination includes the presence of external incentives together with highly favorable domestic conditions *(INCENT*GOV(+)*VETO(+)*size)*, as there are no cases with this domestic configuration combined with the absence of external incentives. Also, the fact that this issue area is the one with the highest number of cases involving conditionality, but shows no better percentage of positive outcomes (0.28) than the other issue areas questions the effectiveness of conditionality.

5. Conclusions

This paper conducted a multi-value QCA of the formal adoption and sustainability of minority protection rules in four new EU member states (Poland, Romania, Estonia, Latvia) over a twelve-year period including pre- and post-accession phases (1997-2008) and five minority protection related issue areas (non-discrimination, language use, education, citizenship, integration of Roma) based on four conditions (external incentives, government position, veto players, size of minorities), in order to investigate under which external and domestic conditions minority protection and non-discrimination measures are adopted, maintained or revoked in new member states before and after accession to the EU.

The overall analysis of all 93 cases shows two equifinal paths to positive change – one domestic, in which pro-minority oriented governments and veto players in conjunction with small minorities always lead to positive change irrespective of external incentives, and one

including external incentives as a necessary component, which consistently produces a positive outcome in less favorable domestic conditions, i.e. with large minorities and in presence of nationalist veto players. The first solution supports the "domestic path hypothesis" (H#1), while the second largely corroborates the "external incentives path hypothesis" (H#2). However, although both solutions are generally consistent with the theoretical assumptions, they reveal that domestic conditions need to be more favorable than expected in order to be sufficient conditions for positive change. Specifically, external incentives turn out to be less effective than assumed in overcoming domestic opposition, as they depend on pro-minority oriented governments to be consistently successful(7). Also, the external incentives solution is empirically less important than the domestic path, as it covers fewer cases (see Ragin 2006, 299).

The separate analysis of pre- and post-accession cases reveals a marked decline in positive developments after accession, but no revocation of minority protection rules. After accession only the domestic explanation remains, despite external incentives still being present in one issue area, namely non-discrimination. The two instances of revocation do not lend support to the "revocation hypothesis" (H#3) and also put the effectiveness of conditionality slightly into question, as both happened prior to accession and despite strong conditionality, so that again domestic factors seem to be more important.

Cross-country analysis shows a clear distinction between Poland and Romania on the one hand, and Estonia and Latvia on the other. The latter produce no consistent QCA solution, i.e. show no constellation under which positive change always occurs. Hence, the overall solutions are entirely based on Polish and Romanian cases. Moreover, each of the countries accounts for one of the two equifinal solutions discovered in the overall analysis, which indicates that country-specific variation is the most important factor in producing different paths to positive change. Across issues, the absence of a superior performance of non-discrimination despite more frequently used conditionality is noteworthy, as is the role of language use as a problematic issue with both instances of revocation belonging to this issue area.

Theoretically, the results suggest that the theoretical model used to specify the conditions for rule adoption seems to capture some country cases – namely Poland and Romania – rather well (with the abovementioned qualifications), whereas the Estonian and Latvian cases as well as the (absence of) revocation are not sufficiently explained by the conditions considered in the model. From a QCA perspective, this is only an intermediate result: one next step could be the inclusion of further factors on the basis of theoretical assumptions and empirical case knowledge in order to resolve the contradictory configurations as far as possible. This will be a task for future research.

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Endnotes

(1) Formal rule adoption thus corresponds to the transposition stage of implementation as outlined in the introductory chapter (see Schimmelfennig and Trauner 2009 this issue). However, since among our issue areas only non-discrimination actually includes the transposition of EU law, we have opted for rule adoption as a more general term.

(2) To account for the revocation of minority protection rules, negative change was coded as "-1", which was treated as a "0" for the QCA with positive change as the outcome. However, as we coded only two instances where a negative change was recorded, a separate formal QCA run for negative change was not feasible.

(3) Positive change in form of the signature or ratification of international conventions as opposed to changes in the domestic level of protection is represented in brackets in the coding tables (see Appendix I).

(4) Not every government lacking a parliamentary majority constitutes a case of the first chamber acting as veto player, as the government may be able to rely on ad hoc support by opposition parties. Only when there is a majority against the government regarding the respective issue we code it as a veto player.

(5) The fs/QCA software was used in addition to TOSMANA, because it allows the calculation of consistency and coverage. In order to accommodate the multi-value coding of the government as well as the veto player condition within the dichotomous crisp-set analysis of the fs/QCA program, we split both conditions into two separate conditions: Gov(+)/Gov(-) and Veto(+)/Veto(-), with the neutral value expressed by the combination of both being coded as "0". The main disadvantage of this procedure is the creation of logically impossible remainders, since the combination of both conditions being present cannot occur. However, since we do not use logical remainders as simplifying assumptions, the results of both calculations are the same.

(6) As part of the standard QCA procedure we also checked for the absence of positive change, but do not report the results here, because conditions for no positive change are very diverse (up to seven distinct solution terms for some subsets).

(7) The fact that GOV(+) appears in both solution terms does not mean that a pro-minority oriented

government is a necessary condition for positive change – there are instances of positive change in the absence of such a government, they are just not part of the solution because they are found in contradictory configurations (see Schneider and Wagemann 2007, 112-114).

List of Appendices

Appendix I: Coding tables

POLAND

PL97 (Buzek, conservative-liberal coalition government)						
	Incent	Gov	Veto	Size	Level	Change
ND	-	=	+	-	-	=
Language	-	=	+	-	-	=
Education	-	=	+	-	+	=
Roma	+	=	+	-	--	=
PL00 (Buzek, conservative minority government)						
ND	+	=	+	-	-	(+)*
Language	-	=	+	-	-	(+)
Education	-	=	+	-	+	(+)
Roma	+	=	+	-	--	+
PL01 (Miller, leftist-rural coalition government)						
ND	+	=	+	-	-	=
Language	-	=	+	-	-	+
Education	-	=	+	-	+	=
Roma	-	=	+	-	=	=
PL03 (Miller, leftist minority government)						
ND	+	+	+	-	-	+
Language	-	+	+	-	=	(+)
Education	-	+	+	-	+	(+)
Roma	-	+	+	-	=	+
PL04 (Belka, leftist minority government)						
ND	+	+	+	-	=	+
Language	-	+	+	-	=	+
Education	-	+	+	-	+	+
Roma	-	+	+	-	++	=
PL05 (Marcinkiewicz/Kaczyński, right-wing coalition government)						
ND	+	-	-	-	=	=
Language	-	-	-	-	+	=
Education	-	-	-	-	+	=
Roma	-	-	-	-	++	=
PL07 (Tusk, liberal-rural coalition government)						
ND	+	=	-	-	=	=
Language	-	=	-	-	+	=
Education	-	=	-	-	+	=
Roma	-	=	-	-	++	=

*(+) refers to positive change in form of the signature or ratification of international conventions such as the FCNM or the ECRML.

ROMANIA

	Incent	Gov	Veto	Size	Level	Change
RO96 (Ciorbea, Vasile, Isãrescu center-right coalition government under inclusion of Hungarian minority)						
ND	+	+	-	+	=	+
Language	-	+	-	+	+	=
Education	+	+	-	+	=	+
Roma	+	+	-	+	-	+
RO00 (Nãstase, center-left government formally supported by Hungarian minority)						
ND	-	+	-	+	+	=
Language	-	+	-	+	+	+
Education	-	+	-	+	+	=
Roma	-	+	-	+	=	+
RO04 (Popescu-Tãriceanu, center-right coalition government under inclusion of Hungarian minority)						
ND	-	+	=	+	+	=
Language	-	+	=	+	++	=
Education	-	+	=	+	+	=
Roma	-	+	=	+	++	=
RO07 (Popescu-Tãriceanu, center-right coalition government under inclusion of Hungarian minority)						
ND	-	+	=	+	+	=
Language	-	+	=	+	++	=
Education	-	+	=	+	+	=
Roma	-	+	=	+	++	=

ESTONIA

ES97 (Siimann, center-left coalition government)						
	Incent	Gov	Veto	Size	Level	Change
ND	+	=	+	+	-	=
Language	-	=	+	+	=	=
Education	+	-	+	+	++	=
Citizenship	+	-	+	+	-	=
Roma	-	=	+	-	--	=
ES99 (Laar, center-right coalition government)						
ND	+	=	+	+	-	=
Language	+	-	+	+	=	-
Education	-	=	+	+	++	=
Citizenship	+	=	+	+	-	+
Roma	-	=	+	-	--	=
ES02 (Kallas, center-left coalition government)						
ND	+	+	+	+	-	=
Language	-	+	+	+	-	=
Education	+	+	+	+	++	=
Citizenship	-	+	+	+	=	=
Roma	-	=	+	-	--	=
ES03 (Parts, center-right coalition government)						
ND	+	=	+	+	-	+
Language	-	=	+	+	-	=
Education	+	=	+	+	++	=
Citizenship	-	=	+	+	=	+
Roma	-	=	+	-	--	+
ES05 (Ansip, centrist coalition government)						
ND	+	+	=	+	=	=
Language	-	+	=	+	-	+
Education	-	+	=	+	++	=
Citizenship	-	+	=	+	+	=
Roma	-	=	=	-	-	=
ES07 (Ansip, center-right coalition government)						
ND	+	+	=	+	=	=
Language	-	+	=	+	=	=
Education	-	+	=	+	++	=
Citizenship	-	+	=	+	+	=
Roma	-	=	=	-	-	=

LATVIA

	Incent	Gov	Veto	Size	Level	Change
LV97 (Krasts, center-right coalition government)						
ND	-	-	+	+	-	=
Language	-	-	+	+	+	=
Education	+	-	+	+	++	=
Citizenship	+	-	+	+	--	+
Roma	-	=	+	-	--	=
LV98 (Krištopāns, center-right coalition government)						
ND	-	-	+	+	-	+
Language	-	-	+	+	+	=
Education	-	-	+	+	++	=
Citizenship	+	-	+	+	=	=
Roma	-	=	+	-	--	=
LV99 (Škēle, center-right coalition government)						
ND	-	-	+	+	=	=
Language	+	-	+	+	+	-
Education	-	-	+	+	++	=
Citizenship	+	-	+	+	=	=
Roma	-	=	+	-	--	=
LV00 (Bērziņš, center-right coalition government)						
ND	+	-	+	+	=	=
Language	+	-	+	+	-	=
Education	-	-	+	+	++	=
Citizenship	-	-	+	+	=	+
Roma	-	=	+	-	--	=
LV02 (Repše, grand coalition government)						
ND	+	=	+	+	=	=
Language	-	=	+	+	-	=
Education	-	=	+	+	++	=
Citizenship	-	=	+	+	+	=
Roma	-	=	+	-	--	+
LV04a (Emsis, center-right minority cabinet supported by leftist parties)						
ND	+	+	=	+	=	=
Language	-	=	=	+	-	=
Education	-	=	=	+	++	=
Citizenship	-	=	=	+	+	=
Roma	-	=	=	-	-	=
LV04b (Kalvītis, center-right coalition government)						
ND	+	=	=	+	=	(+)
Language	-	-	=	+	-	(+)
Education	-	=	=	+	++	(+)

Citizenship	-	=	=	+	+	=
Roma	-	=	=	-	-	+
LV07 (Godmanis, center-right coalition government)						
ND	+	=	=	+	=	=
Language	-	-	=	+	-	=
Education	-	=	=	+	++	=
Citizenship	-	=	=	+	+	=
Roma	-	=	=	+	+	=

Appendix II: Truth table (all cases)

Conditions				Cases N	Outcome		Consistency N
					1	0	
GOV(+)	VETO(+)	INCENT	SIZE	1	0	1	0.00
GOV(+)	VETO(+)	INCENT	size	2	2	0	1.00
GOV(+)	VETO(+)	incent	SIZE	2	0	2	0.00
GOV(+)	VETO(+)	incent	size	5	5	0	1.00
GOV(+)	VETO(=)	INCENT	SIZE	3	0	3	0.00
GOV(+)	VETO(=)	INCENT	size	-	-	-	-
GOV(+)	VETO(=)	incent	SIZE	8	1	7	0.13
GOV(+)	VETO(=)	incent	size	-	-	-	-
GOV(+)	VETO(-)	INCENT	SIZE	3	3	0	1.00
GOV(+)	VETO(-)	INCENT	size	-	-	-	-
GOV(+)	VETO(-)	incent	SIZE	5	2	3	0.40
GOV(+)	VETO(-)	incent	size	-	-	-	-
GOV(=)	VETO(+)	INCENT	SIZE	4	2	2	0.50
GOV(=)	VETO(+)	INCENT	size	4	2	2	0.50
GOV(=)	VETO(+)	incent	SIZE	6	1	5	0.17
GOV(=)	VETO(+)	incent	size	17	5	12	0.29
GOV(=)	VETO(=)	INCENT	SIZE	2	1	1	0.50
GOV(=)	VETO(=)	INCENT	size	-	-	-	-
GOV(=)	VETO(=)	incent	SIZE	4	0	4	0.00
GOV(=)	VETO(=)	incent	size	5	1	4	0.20
GOV(=)	VETO(-)	INCENT	SIZE	-	-	-	-
GOV(=)	VETO(-)	INCENT	size	1	0	1	0.00
GOV(=)	VETO(-)	incent	SIZE	-	-	-	-
GOV(=)	VETO(-)	incent	size	2	0	2	0.00
GOV(-)	VETO(+)	INCENT	SIZE	8	1	7	0.13
GOV(-)	VETO(+)	INCENT	size	-	-	-	-
GOV(-)	VETO(+)	incent	SIZE	6	2	4	0.33
GOV(-)	VETO(+)	incent	size	-	-	-	-

GOV(-)	VETO(=)	INCENT	SIZE	-	-	-	-
GOV(-)	VETO(=)	INCENT	size	-	-	-	-
GOV(-)	VETO(=)	incent	SIZE	2	1	1	0.50
GOV(-)	VETO(=)	incent	size	-	-	-	-
GOV(-)	VETO(-)	INCENT	SIZE	-	-	-	-
GOV(-)	VETO(-)	INCENT	size	1	0	1	0.00
GOV(-)	VETO(-)	incent	SIZE	-	-	-	-
GOV(-)	VETO(-)	incent	size	2	0	2	0.00
All				**93**	**29**	**65**	**0.31**

Appendix III: QCA solutions, consistency and coverage

	Consistency	N	QCA Solutions	Consist.	Raw/Unique Coverage	Solution Coverage
All countries and issues						
all	0.31	93	GOV(+)*VETO(+)*size	1.00	0.24	0.34
			+ INCENT*GOV(+)*VETO(-)*SIZE	1.00	0.10	
pre	0.35	62	GOV(+)*VETO(+)*size	1.00	0.18	0.32
			+ INCENT*GOV(+)*VETO(-)*SIZE	1.00	0.14	
post	0.23	31	GOV(+)*VETO(+)*size	1.00	0.43	0.43
Poland						
all	0.48	25	GOV(+)*VETO(+)*size	1.00	0.58	0.58
pre	0.56	16				
post	0.33	9				
Romania						
all	0.42	12	INCENT*GOV(+)*VETO(-)*SIZE	1.00	0.60	0.60
pre	0.50	10				
post	0.00	2				
Estonia						
all	0.21	24	*INCENT*GOV(=)*VETO(+)*SIZE*	*0.67***	*0.40*	*0.40*
pre	0.25	16				
post	0.13	8				
Latvia						
all	0.25	32	*INCENT*GOV(=)*VETO(=)*SIZE*	*0.50*	*0.14*	*0.29*
			*+ incent*GOV(-)*VETO(=)*SIZE*	*0.50*	*0.14*	
pre	0.20	20				
post	0.33	12				
Non-discrimination						
all	0.28	25	INCENT*GOV(+)*VETO(+)*size	1.00	0.29	0.43

			+ INCENT*GOV(+)*VETO(-)*SIZE	1.00	0.14	
pre	0.31	16				
post	0.22	9				
Language						
all	0.30	23	incent*GOV(+)*VETO(+)*size	1.00	0.29	0.29
pre	0.27	15				
post	0.38	8				
Education						
all	0.36	11	incent*GOV(+)*VETO(+)*size	1.00	0.50	0.75
			+ INCENT*GOV(+)*VETO(-)*SIZE	1.00	0.25	
pre	0.43	7				
post	0.25	4				
Citizenship						
all	0.29	14	INCENT*GOV(=)*VETO(+)*SIZE	1.00	0.25	0.50
			+ incent*GOV(-)*VETO(+)*SIZE	1.00	0.25	
pre	0.44	9				
post	0.00	5				
Roma						
all	0.35	20	GOV(+)*VETO(-)*SIZE	1.00	0.29	0.43
			+ incent*GOV(+)*VETO(+)*size	1.00	0.14	
pre	0.40	15				
post	0.20	5				

** QCA solutions in italics are based on the contradictory configurations with the highest consistency in case no fully consistent solution exists.