

EUI WORKING PAPERS

RSCAS No. 2006/22



Worlds of compliance: Why leading approaches
to the implementation of EU legislation are only
'sometimes-true theories'

Gerda Falkner, Miriam Hartlapp and Oliver Treib



EUROPEAN UNIVERSITY INSTITUTE
Robert Schuman Centre for Advanced Studies

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

*Worlds of compliance:
Why leading approaches to the implementation of EU legislation are only
'sometimes-true theories'*

GERDA FALKNER, MIRIAM HARTLAPP AND OLIVER TREIB

EUI Working Paper **RSCAS** No. 2006/22
BADIA FIESOLANA, SAN DOMENICO DI FIESOLE (FI)

© 2006 Gerda Falkner, Miriam Hartlapp and Oliver Treib

This text may be downloaded only for personal research purposes. Any additional reproduction for such purposes, whether in hard copies or electronically, require the consent of the authors.

Requests should be addressed directly to the authors.

See contact details at end of text.

If cited or quoted, reference should be made to the full name of the authors, the title, the working paper, or other series, the year and the publisher.

Any reproductions for other purposes require the consent of the
Robert Schuman Centre for Advanced Studies.

The authors should inform the Robert Schuman Centre for Advanced Studies at the EUI if the paper will be published elsewhere and also take responsibility for any consequential obligation(s).

ISSN 1028-3625

Printed in Italy in July 2006
European University Institute
Badia Fiesolana
I – 50016 San Domenico di Fiesole (FI)
Italy
<http://www.iue.it/RSCAS/Publications/>
<http://cadmus.iue.it/dspace/index.jsp>

Robert Schuman Centre for Advanced Studies

The Robert Schuman Centre for Advanced Studies carries out disciplinary and interdisciplinary research in the areas of European integration and public policy in Europe. It hosts the annual European Forum. Details of this and the other research of the centre can be found on:

<http://www.iue.it/RSCAS/Research/>

Research publications take the form of Working Papers, Policy Papers, Distinguished Lectures and books. Most of these are also available on the RSCAS website:

<http://www.iue.it/RSCAS/Publications/>

The EUI and the RSCAS are not responsible for the opinion expressed by the authors.

Abstract

This paper summarises the main theoretical findings of a large-scale qualitative project on the transposition, enforcement and application of six EU labour law Directives in fifteen member states. Focusing on the transposition stage, our argument starts from a theoretical puzzle: When confronting the empirical results from our 91 cases with the various hypotheses that we derived from the literature, it turns out that all causal conditions suggested by existing theories, and even two of the most prominent hypotheses (on misfit and veto players), have at best rather weak explanatory power. On closer inspection, our qualitative studies show that even their basic rationale does not hold in some groups of countries. As a solution, we offer a typology of three worlds of compliance within the fifteen EU member states covered by our study, each of which is characterised by an ideal-typical transposition style: a 'world of law observance', a 'world of domestic politics', and a 'world of neglect'. This typology provides the key to understanding when and how individual theoretical propositions are relevant.

Keywords

worlds of compliance, EU policy implementation, Europeanisation, misfit approach, veto player theorem

1. Introduction*

The growing literature on the domestic impact of European Union (EU) policies provides for a range of explanatory factors that positively or negatively influence timeliness and correctness of implementation (i.e. transposition, enforcement and application in the member states). While the relevance of many of these factors seems to be highly plausible, EU scholarship is still missing a study that uses an encompassing theoretical approach that also takes into account the findings of earlier implementation studies and helps to understand when and where individual theoretical propositions are at all relevant in a world of diverse institutional patterns.

Towards this aim, we will present results from a collaborative research project that analysed the national transposition, enforcement, and application of six EU labour law Directives in the fifteen 'old' member states (for the full range of findings, see Falkner, Treib, Hartlapp & Leiber 2005). For scholars interested in implementation, EU Directives are of particular interest. They are not directly applicable at the national level, but have to be incorporated into national law first. We chose six crucial labour law Directives from the 1990s regulating national issues, hence EU labour law that actually alters pre-existing national rules. They concern written information on contractual employment conditions (91/533/EEC); parental leave (96/34/EC); working time (93/104/EC); and the protection of pregnant (92/85/EEC), young (94/33/EC) and part-time workers (97/81/EC).

More than 180 expert interviews were conducted with experts from the ministries, interest groups and labour inspections in the fifteen member states. We collected material on the pre-existing national standards and on the process of adjustment. In addition to assessing implementation success or failure on a case-by-case basis, we tried to trace the origin of implementation problems. Which factors lead to better or worse compliance with EU law? Do these factors hold across countries and Directives? For reasons of time and space, this paper will focus on the process of incorporating EU Directives into domestic law (transposition), and it will concentrate on two of the most important hypotheses in explaining transposition. Empirical evidence indicates that the causal conditions these approaches suggest are of little help in explaining the outcomes across all countries. Therefore, we will present an alternative concept of how to explain domestic transposition patterns, which builds on the idea of different country clusters with different characteristic styles of treating EU adaptation requirements.

2. Prior approaches and their limited explanatory capacity

In the late 1990s, analysing the effects of Europeanisation on domestic systems of governance became a new core issue in political science. Focusing mainly on environmental policy, many scholars have pointed to the degree of *fit* or *misfit* between European rules and existing institutional and regulatory traditions as one of the central factors determining implementation performance. Seen from this angle, European policies face deeply rooted institutional and regulatory structures. If both fit together, that is if adaptational pressure is low, implementation should be a smooth and unproblematic process easily accomplished within the given time limits. If European policies do not match existing traditions, however, implementation should be highly contested, leading to considerable delays, and involving a high risk of total failure (see in particular Duina 1997, 1999; Duina & Blithe 1999; Knill & Lenschow 1998, 2000; Börzel 2000).

* The final version of this article is forthcoming in the *European Journal of Political Research*. Earlier versions of this paper were presented at the ECPR's 2nd Pan-European Conference on EU Politics in Bologna, the EUSA's 9th Biennial International Conference in Austin, Texas and the ECPR Joint Sessions of Workshops in Granada. We thank all participants of these conferences as well as the anonymous reviewers for helpful comments. Special acknowledgements go to Simone Leiber, our fourth partner on the project and co-author of our joint book, whose research greatly contributed to the findings that are presented here in a fresh form and whose helpful comments on this text are gratefully acknowledged.

Building on this misfit-centred approach of the first wave of Europeanisation studies, but considerably expanding the perspective, Thomas Risse, Maria Green Cowles and James Caporaso (2001) have suggested a number of ‘mediating factors’ which may lead to adaptation even in the face of high levels of incompatibility. Among these factors, a decision-making structure with a small number of *veto players* figures prominently or, alternatively, a consensus-oriented decision-making culture that may be able to avoid stalemate even in systems with multiple veto actors. Similarly, Adrienne Héritier and her collaborators developed a catalogue of factors impacting on domestic adaptation to EU policies, including the national ‘reform capacity’ which is shaped by supportive actor coalitions and veto positions (Héritier *et al.* 2001). The veto player argument, which was originally developed in the general context of comparative politics, starts from the assumption that the reform capacity of a political system decreases as the number of distinct actors whose agreement is required to pass such a reform increases. Hence, countries with higher numbers of veto players should be plagued much more frequently by reform impasses than systems with low numbers of veto players (Tsebelis 1995, 2002). Since the transposition of EU Directives also requires the enactment of legislative reforms at the domestic level, this argument can also be applied to the more specific area of EU implementation research. In fact, this was done by Markus Haverland, who criticised the misfit approach by arguing that, in his case studies on the transposition of the Packaging Waste Directive in three countries, ‘veto points tend to shape the timing and quality of implementation regardless of differential gaps in the goodness of fit between European requirements and national traditions’ (Haverland 2000: 100; for a similar analysis that highlights a broader range of macro-institutional factors, see Giuliani 2003).

While recent research has pointed to a range of other factors that may have an impact on transposition outcomes (for an overview, see Mastenbroek 2005), the misfit and veto player arguments still feature prominently in the literature. Therefore, the following discussion will concentrate on these two factors.

2.1 The misfit hypothesis: mixed outcomes, contradictory causal mechanisms

As a starting point for testing the misfit hypothesis, we assessed the degree of required adaptations for our 91 cases of EU-induced policy adjustment.¹ Policy misfit can be of either a quantitative or qualitative nature. In other words, it can relate to a gradual difference (e.g. two months of parental leave instead of three as a minimum) or to a matter of principle (e.g. there is no individual right to parental leave but the entitlement is restricted to mothers only). Having assessed the *legal misfit*, we calculated a kind of discount in case the *practical significance* of a legal innovation was comparatively lower. For example, a new right may not have been enshrined in domestic law, but it may have related to a large part of the workforce through collective agreements. Furthermore, we include in the concept of legal misfit an evaluation of the *scope of application*. In other words, we looked at the coverage of any newly attributed right. The importance of such a right may, in some cases, seem very important, but may then be seriously limited by a narrow scope of application (e.g. when all atypical workers or important sectors of the economy are excluded).

We assigned a *high* degree of legal misfit if there are completely new legal rules, far-reaching gradual changes and/or important qualitative innovations. Each of them will lead to a high degree of policy misfit in our system under the condition that all or a significant number of workers are affected and that there is no essential limitation on the level of practical significance. Otherwise, only a medium (or even low) degree of policy misfit will result in our classification. A similar logic is applied to medium and low degrees of legal misfit.

1 In one of our cases, we have two separate transposition processes due to an exemption granted for a specific time span. Therefore, transposing the 6 selected Directives in 15 member states results in 91 cases.

Table 1: Degrees of misfit and transposition performance

Timing	Degree of Misfit		
	low	medium	high
less than two years delayed	25	13	3
delays of two years or more	19	20	7

Notes Benchmark: essentially correct transposition. Dark shaded cells represent cases which are inconsistent with the misfit hypothesis. White cells refer to cases for which no clear expectations may be derived from the hypothesis. Light shaded cells denote cases which are in principle consistent with the misfit hypothesis. 4 cases have been omitted since essential correctness existed from the outset.

The first important observation emanating from Table 1 is that a significant share of our cases (38 per cent altogether) is located in the area of medium adaptational pressure, for which no clear expectations may be derived from the hypothesis. This means that the misfit hypothesis is not relevant for a significant part of empirical reality. Among the remaining cases, about 60 per cent (37 per cent of all cases) are in line with the expectations of the hypothesis (light shaded cells). In order to avoid hypercritical benchmarks, this analysis is based on the premise that ‘major delays’ are those where essentially correct transposition is reached only two years or more after the given deadline. Everything below this cross-over point is treated as being on time or having delays that are of comparatively minor relevance. Still, 40 per cent of those cases that fit into the dichotomous logic of the hypothesis (25 per cent of all cases) are at odds with the misfit hypothesis (dark shaded cells), either because small adaptation requirements were followed by major delays or because large-scale misfit was accompanied by relatively smooth transposition. These findings tie in with the theoretical arguments against an exclusive focus on the ‘goodness of fit’ suggested by Mastenbroek and Kaeding (2004).

If that were all, we could continue to stick to the basic concept and keep on adding further auxiliary variables in order to explain those cases that do not match the expectations of the parsimonious basic argument, as many of the original proponents have done. For example, Börzel’s (2000) ‘pull-and-push-model’ introduces the mobilisation of supportive societal groups, sometimes also facilitated by interventions of the Commission and the European Court of Justice, to explain how reluctant governments and administrations may be forced to comply with EU Directives despite high degrees of misfit. Knill and Lenschow (2001) add to their misfit-centred model the element of a high administrative reform capacity to explain cases where adaptation succeeded despite contradictions with core principles of existing regulatory and administrative traditions. But what if the basic rationale that underpins the argument, notably that domestic politicians and bureaucrats in general tend to act ‘as guardians of the status quo, as the shield protecting national legal-administrative traditions’ (Duina 1997: 157), does not hold? Our detailed qualitative case studies reveal that this basic assumption is only weakly supported by empirical reality.

First, a high degree of misfit may be a welcome opportunity for domestic governments to change the status quo in a politically more desirable direction. Governments are not necessarily motivated by the will to protect their domestic policies and practices from being fundamentally overhauled. If that were true, there would be no major legislative reforms at the domestic level in general. All we would be able to observe is gradual, incremental adjustments to otherwise highly stable policy legacies. Examples such as the dramatic reversal of some economic and social policies in Britain after Margaret Thatcher assumed power in 1979 should suffice to demonstrate that this assumption is overdrawn. Our cases clearly demonstrate that party political factors may overrule the misfit logic. For example, the Working Time Directive implied huge reforms in Ireland. However, the Irish centre-left government not only voted in favour of the Working Time Directive in the Council of Ministers but also readily implemented (and even considerably over-implemented) it afterwards because it supported the thrust of the reforms politically. Conversely, even relatively minor changes to domestic policies may spur ideologically motivated resistance by government parties and thus may give rise to significant delays in transposition despite altogether lower degrees of misfit. To exemplify, the German centre-right

government refused to comply with the minor reform requirements arising from the Parental Leave Directive since the need to include men from single-income couples was at odds with its conservative family-policy preferences. It was only after a change of government that the incoming centre-left government brought German law fully in line with the Directive and even followed many of its non-compulsory recommendations.

Second, our empirical cases also include examples where domestic actors initially resisted the fundamental changes implied by EU provisions, but swiftly dropped their resistance in order to avoid being in long-term non-compliance with European law. A case in point is Denmark's rather rapid surrender to the fundamental challenges that EU Directives in the field of labour law posed to its system of autonomous social partner regulation (for more details, see Leiber 2005). In the working time case, the Danish government tried to make use of a Treaty clause that explicitly allowed member states to transpose Directives by way of collective agreements since working time was an area traditionally left exclusively to the social partners. When it turned out that the Commission did not accept this method of transposition because collective agreements even in Denmark are not able to guarantee full coverage for all employees, the Danish government and the social partners initially refused to sacrifice their established model of social partner autonomy. This gave rise to serious delays in transposition. Despite the fundamental clash with historically deeply-rooted traditions, however, Danish officials gave in to the Commission's pressure even before the case was handed over to the ECJ, and the Danish government passed legislation that covered all employees to comply with EU law. Soon afterwards, the same issue came up again when the Part-time Work Directive had to be transposed. Although this Directive also touched on an area that had traditionally been left to autonomous social partner regulation, the Danish government and the social partners did not insist on defending the 'Danish model' since the working time case had revealed that this was not in line with EU law. Therefore, the Directive was rather smoothly transposed by way of legislation. This reveals that in Denmark, the duty to comply is taken very seriously even in cases of considerable misfit.

Finally, our case studies demonstrated that under certain conditions, the existence of considerable adaptational pressure may even have a positive effect on transposition performance. Luxembourg's rather swift compliance with the fulfilment of the Parental Leave Directive is illustrative in this context. Whereas Luxembourg was the prime example among our countries for considerable delays in transposing European Directives due to a serious shortage of administrative resources, the government in this case, which involved considerable changes to the domestic status quo, managed to pass the transposition legislation in an unusually fast and smooth way. Ministry officials stressed that under conditions of permanent administrative overload, Directives that require more important changes may be treated with higher priority than measures that demand only minor changes.

It was primarily in some of the cases where regulatory philosophies or deeply entrenched national models were at stake that the rationale underlying the misfit argument actually showed up. In these cases of qualitative misfit, domestic governments sometimes actually behaved as expected in that they tried to protect their traditional ways of doing things. In overall terms, however, our findings demonstrate that the causal mechanism underlying the misfit approach may be found only rarely in empirical reality.

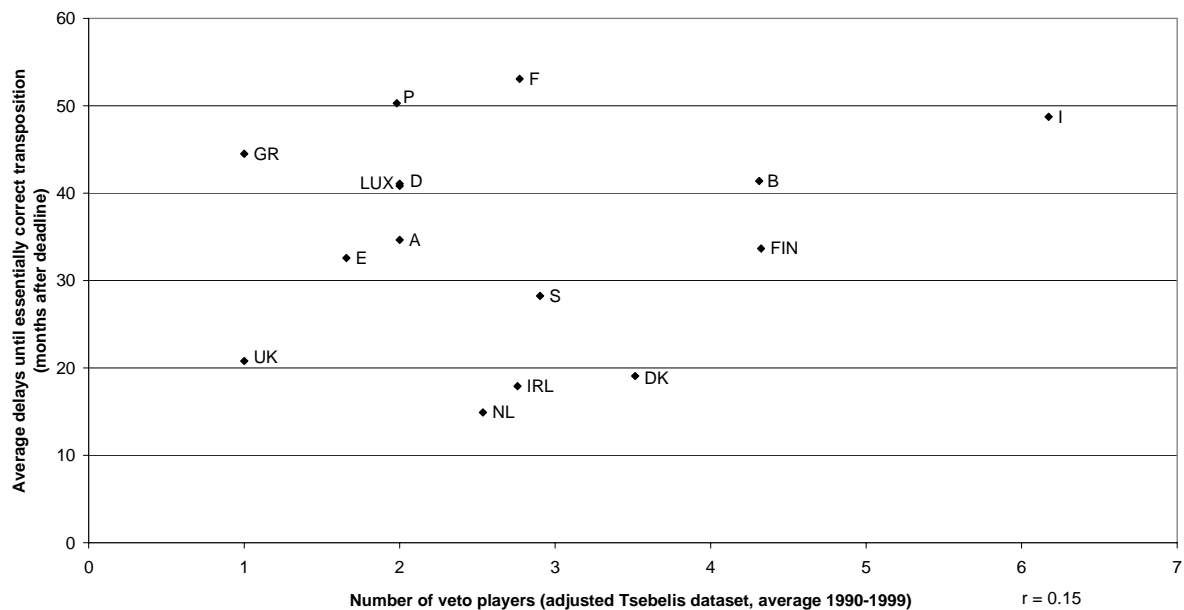
2.2 The limited explanatory power of the veto player argument

Our empirical analysis demonstrates that the veto player argument does not match our results very well either. The first important observation is that each and every country *in principle* seems to be able to stick to the deadlines. Even Italy's political system, which is marked by multiparty coalitions and therefore a very high number of veto players, managed to transpose one of our six Directives almost on time. Another country with many veto players, Belgium, succeeded in completely meeting the deadline in one case and had a delay of only seven months in another case. At the same time, even a country with a very low number of veto players like the UK occasionally surpassed the deadlines

significantly. Besides three cases that were almost on time, we also found three other cases where it took two, two and a half and six years until the UK had reached the status of an essentially correct transposition.

These examples should suffice to demonstrate that the veto player argument does not make sense if applied to individual cases of transposition.² There are so many idiosyncratic influences that may give rise to delays in an individual case that systematic causal effects may only show up if we move away from this level of analysis. Such a conceptualisation is also more in line with the thrust of the veto player argument, which suggests that countries with high numbers of veto players will *generally* (but not in each and very case) have more difficulty in getting reforms enacted swiftly. Therefore, it seems more appropriate to look at whether there is an influence of veto players on the *average* delays of our fifteen countries across the six selected Directives in our sample (see Figure 1).³

Figure 1: Veto players and transposition performance⁴



Source: Falkner, Treib, Hartlapp & Leiber (2005: 297)

The figure suggests that there is only a weak relationship between the number of veto players and member state transposition performance. To be sure, some countries apparently do seem to correspond to the expectations of the veto player theory, like the UK, Belgium and Italy. But many of the other countries do not fit in nicely. Hence, Greece has as few veto players as the UK, but nevertheless performs much worse. Luxembourg, Portugal or France are also examples of countries whose

2 At the level of individual cases, there is no significant relationship between the number of veto players and transposition performance, measured as the time needed to reach essentially correct transposition ($r = 0.04$).

3 It should be noted that we use the ‘simple’ version of the veto player argument theory here, since this is also the version that was introduced to EU implementation research by Markus Haverland. Unlike the general theory suggested by Tsebelis (2002), therefore, our analysis focuses only on the number of veto players and does not account for the ideological distances between these veto players.

4 This figure is based on an adjusted version of the veto player data set provided by George Tsebelis. First, missing data were added using information reported in Ismayr (2002). Second, we did not count the German Bundesrat as a veto player even for periods where the government parties did not hold a majority in the second chamber of the German legislature since the transposition of the largest part of our six sample Directives did not require the approval of the Bundesrat. Third, following the argument of Steffen Ganghof (2003), we adjusted the data in order to account for the specific situation of minority governments. Since a minority government needs the support of the parliamentary opposition to get legislation enacted, we calculated one more veto player for periods of minority government.

performance is far poorer than one would have expected on the basis of their moderate numbers of veto players. Denmark, on the other hand, is clearly better than its institutional reform capacity would suggest.

Taking a closer look at the causal mechanisms behind these aggregate findings reveals two shortcomings of the veto player argument in transposition research. First, we found a significant number of cases where the preferences of the veto players had to be taken into account in order to explain the outcomes. In some countries, however, these were not only party political preferences, as used by Tsebelis (2002) in order to measure ideological distances between veto players, but also the preference to comply with EU law, which was shared by politicians from all kinds of parties. Denmark's transposition of the Young Workers Directive is a good case in point. Among other things, the Directive required Denmark to raise its minimum age limit, which decided at what age children would be allowed to perform light work, from 10 to 13 years. The left-wing minority government supported this reform, but the liberal and conservative opposition parties were fiercely opposed to such a move. Since the government did not hold a majority in parliament, it needed the consent of at least one opposition party. As the policy preferences between the government and the opposition were far from harmonious, this was the prototype situation for expecting transposition deadlock, to be resolved only after long negotiations and/or by a compromise solution that may make unlawful concessions to the opponents. But no such thing happened in Denmark. As the transposition deadline was fast approaching, the government offered some concessions in areas that were not related to the controversial lifting of the minimum age limit, and the opposition readily gave up its resistance in order to avoid a delay in transposition. In other words, policy and ideological differences were superseded by a shared commitment to complying with the law.

The second qualitative finding is even more important: There are a considerable number of countries where transposition regularly remains an administrative process isolated from political actors, at least for a long time. Under these conditions, which are best illustrated by Greece, the number of political veto players is irrelevant for long periods of the process, as political actors do not even become involved in the first place. This is the explanation for why Greece performed so poorly despite its low number of veto players – Greece was governed by a single-party government throughout the 1990s, and this government was even made up of the left-wing PASOK, which should be ideologically in favour of social policy standards. To be sure, the low number of veto players makes it very easy for the Greek government to enact transposition decrees or laws once the pressure from the Commission and the ECJ have become strong enough to put an end to bureaucratic inactivity. However, this does not help much if the administration fails to initiate a political reform process in the first place. The veto player logic is thus not wrong, but veto players sometimes simply do not play a crucial role in transposition.

Altogether, therefore, the world seems to be more complicated than both the misfit and the veto player arguments suggest. By contrast, the next section will discuss a more selective application of both theoretical propositions, on the basis of our own approach to explaining transposition performance.

3. Three worlds of compliance: typical modes of reacting to EU adaptation requirements

In our project, we originally coded all interviews with Atlas.ti and used these data to test the misfit and veto player arguments as well as a wealth of other hypotheses derived from the literature across all of our 91 cases. As the above analysis has demonstrated for the misfit and veto player arguments, however, no causal arrow pre-supposed by existing theories seemed either necessary or sufficient in practice and none of the correlations was strong enough to yield satisfactory explanations (Falkner, Treib, Hartlapp & Leiber 2005: chapter 14). Somewhat disappointed, we returned to our original data, re-read our interviews and discussed what the researchers responsible for each member state had concluded after all their lengthy interviews in the individual countries. Through this second, more inductive process of data analysis, we finally discovered that some EU member states displayed quite a regular pattern of compliance or non-compliance, regardless of how the specific provisions actually

fitted with the relevant national policy legacy or of the number of veto points in the political system. Starting our evaluation from a country-specific perspective anew, we then also paid attention to the broader context and to what the interview partners had told us about compliance with EU law in their countries more generally.

This re-evaluation of our data finally revealed three clusters of countries, each showing a specific typical pattern of reacting to EU-induced reform requirements, hence a specific *national culture of appraising and processing adaptation requirements*.⁵ ‘Culture’ has been defined as a ‘general set of cognitive rules and recipes in terms of which agents, institutions, and structures are constituted’ (Berger/Luckmann 1967 quoted in Swidler 2001: 3064) or as a ‘shared interpretive scheme’ (Douglas 2001: 3149). Since cultural norms typically change slowly and reflect enduring patterns of political action, political culture is a critical element in understanding politics across countries (Almond, Powell, Strøm & Dalton 2000: 49f.).

Since we discerned three different patterns of how member states handle the duty of complying with EU law (with differing weights of cultural, political and administrative factors in the implementation process), a typology seemed the natural solution to going beyond casual empiricism (Castles 2001: 141). Starting from the ‘real types’ we found in our six cases per country, we hence formed the ‘ideal types’ presented below, including also the broader information regarding national specifics collected in our interviews. Our intellectual map now builds on three different *worlds of compliance* within the fifteen EU member states covered by our study: a *world of law observance*, a *world of domestic politics*, and a *world of neglect*.

The three worlds do not indicate outcomes,⁶ but typical modes of treating transposition duties. The specific results of particular examples of compliance tend to *depend on different factors* within each of the various worlds: the compliance culture in the field can explain most cases in the *world of law observance*, while in the *world of domestic politics* the specific fit with political preferences in each case plays a much larger role, and in the *world of neglect* this is true for administrative non-action. These patterns seem to be *rather stable over time* and to outlive governments of opposing ideological orientation.

3.1 The worlds of law observance, domestic politics and neglect

In the *world of law observance*, the compliance goal typically overrides domestic concerns (see Table 2). Even if there are conflicting national policy styles, interests or ideologies, transposition of EU Directives is usually both in time and correct. Additionally, citizens are used to complying. This pattern is supported by a national ‘compliance culture’. Non-compliance, by contrast, typically occurs only rarely and not without fundamental domestic traditions or basic regulatory philosophies being at stake. In addition, the tendency is for instances of non-compliance to be ended quickly. Based on a detailed empirical analysis of the typical transposition patterns prevalent in our fifteen countries, we assigned Denmark, Finland and Sweden to this country cluster.

5 While our study indicates that attitudinal factors should play a central role in the study of EU-triggered implementation processes, only a few studies have already taken this into consideration. Outside the area of EU implementation research, a similar approach was followed by Jeremy Richardson and his collaborators (1982), who argue that Western European countries are characterised by certain ‘policy styles’. On a much more general level Klaus Goetz (2002) identifies ‘Four Worlds of Europeanisation’. Starting from Commission data on infringement proceedings Ulf Sverdrup (2004) identifies a ‘Nordic Model’ of good compliance. He argues that a culture of compliance and of compromise, together with transparency and organisation of the administration, is a crucial factor for a country’s implementation performance.

6 The implementation performance in a particular sample of cases may be as mediocre (or bad) in a country belonging to the world of domestic politics as in a country in the world of neglect, or it may turn out to be as good (or mediocre) as in a country from the world of law observance. What is important is that these outcomes are reached through very different processes.

By contrast, obeying EU rules is at best one goal among many, in the *world of domestic politics*. Domestic concerns frequently prevail if there is a conflict of interests, and each single act of transposing an EU Directive tends to happen on the basis of a fresh cost-benefit analysis. Transposition is likely to be timely and correct where no domestic concerns dominate over the fragile aspiration to comply. In cases of a manifest clash between EU requirements and domestic interest politics, non-compliance is the likely outcome. While in the countries belonging to the world of law observance, breaking EU law would not be a socially acceptable state of affairs, it is much less of a problem in one of the countries in this second category. At times, their politicians or major interest groups even openly call for disobedience with European duties – an appeal that is not met with much serious condemnation in these countries. With regard to transposition, we subsumed Austria, Belgium, Germany, Italy, Ireland, the Netherlands, Spain and the UK under this type (but Italy and Ireland belong to the third group presented below, in overall terms⁷).

Table 2: Three worlds of compliance

	World of LAW OBSERVANCE	World of DOMESTIC POLITICS	World of NEGLECT
Typical process	Dutiful adaptation.	Conflict / compromise.	Inertia.
Transposition is typically...	... on time and correct (even where conflicting domestic interests exist).	... on time and correct only if there is no conflict with domestic concerns.	... late and/or 'pro forma'.
Conditions of non-compliance	Lack of awareness; otherwise non-compliance occurs rarely and briefly.	Political failure (lack of compromise among conflicting interests or compromise against the terms of EU law). If non-compliance occurs, it tends to be rather long-term.	Bureaucratic failure (inefficiency, non-attention). Non-compliance is the rule rather than the exception.
Factors facilitating compliance	Culture of good compliance as a self-reinforcing social mechanism.	Fit with preferences of government and major interest groups.	Accelerating issue linkage with domestic reforms, high profile of particular cases.

Source: adapted from Falkner, Treib, Hartlapp & Leiber (2005: 322)

In the countries forming the *world of neglect*, compliance with EU law is no goal in itself. Those domestic actors that are calling for more obedience thus have even less of a sound cultural basis for doing so than in the world of domestic politics. At least as long as there is no powerful action by supranational actors (like an infringement procedure triggered by the European Commission), transposition obligations are often not recognised at all in these 'neglecting' countries. A posture of 'national arrogance' (in the sense that indigenous standards are typically expected to be superior) may support this, as may administrative inefficiency. In these cases we found inertia to be the most frequent road to transposition failure. Thus, the typical initial reaction to an EU-related implementation duty is inactivity. After an intervention by the European Commission, the transposition process may finally be initiated and may even proceed rather swiftly. The result,

7 Our typology differentiates between stages of the implementation process. Since neglectful enforcement of a Directive's standards may counterbalance dutiful performance during the transposition stage, we suggest looking at both the stage of transposition and the subsequent stage of enforcement and application when assigning countries to the different worlds of compliance. In fact, there are two countries (Ireland and Italy) that follow a logic of domestic politics when it comes to transposition but neglect their duties to ensure proper enforcement. As the focus in this paper is on transposition only, we treat these countries as members of the world of domestic politics, although they belong to the world of neglect if we look at the implementation process as a whole.

however, is not infrequently correct only at the surface. This tends to be the case where ministerial decrees are used (instead of laws) and where literal translation of EU Directives takes place. According to our empirical findings, France, Greece, Luxembourg and Portugal belong to this country cluster when it comes to transposition.⁸

Approaching an explanation of these patterns, it seems useful to distinguish between the *administrative* and the *political phases of the transposition process*. It is the task of the administrative systems in the member states to identify reform requirements implied by EU law and to initiate a process leading towards adaptation. The second phase then typically involves more than administrators only. In a political process, politicians, interest groups and potential further actors in a country's political system interact in order to reach decisions on domestic transposition. We found that in each world, a characteristic constellation of more or less dutiful action dominates in each phase. In the world of law observance, abiding by EU rules is usually the dominant goal in both the administrative and the political systems. The same is only true for the administrative system when it comes to the world of domestic politics. There, the process can easily be blocked or diverted during the phase of political contestation. In the world of neglect, by contrast, not even the administration acts in a dutiful way when it comes to the implementation of EU Directives. Therefore, the political process is typically not even started when it should be. It needs to be mentioned, however, that politicians in the world of neglect also do not tend to take compliance with EU law very seriously, otherwise the bureaucrats could not get away with such behaviour, at least in the longer run. Table 3 below outlines these patterns for all three worlds.

Table 3: Law-observance of administrative and political systems in the three worlds of compliance

EU law-observance dominant in ...	World of LAW OBSERVANCE	World of DOMESTIC POLITICS	World of NEGLECT
... administrative system	+	+	-
... political system	+	-	-

Source: Falkner, Treib, Hartlapp & Leiber (2005: 325)

3.2 Sometimes-true theories and the worlds of compliance

The above suggests that crucial hypotheses in the EU implementation literature may only be 'sometimes-true theories' (Coleman 1964: 517). This does not only mean that there are general scope conditions delineating the areas of empirical reality for which these theoretical propositions are relevant at all, but also that the factors highlighted by these theories may have a *systematically* differential impact in various groups of countries. Our typology of three worlds of compliance provides an important filter suggesting that different mechanisms matter in different worlds. Even the direction of their influence may vary between different clusters of countries. Let us illustrate this by means of the two arguments discussed earlier.

Our analysis revealed that the logic underlying the misfit hypothesis only showed up in few cases, which were mostly associated with challenges to deeply entrenched institutional or policy traditions. To paraphrase Coleman's dictum, this implies that the misfit argument in general seems to be a 'very rarely-true theory'. The typology helps explain why that is the case, and it reveals that the 'goodness

⁸ As already mentioned, Ireland and Italy would have to be added to this list if we extended our focus to include also the phases of application and enforcement.

of fit' may have an inverse effect in different country clusters. In the world of neglect, high degrees of misfit may even facilitate transposition, as negligent or ineffective administrations tend to treat more visible cases with higher priority, which means that the usual pattern of long phases of administrative inertia may be avoided in cases of significant misfit. In the world of law observance, in turn, the strong commitment to compliance with the law prevalent among administrative and political actors usually means that even major deviations from traditional paths are fulfilled dutifully. However, misfit related factors seem best suited to explaining deviant cases in our sample (particularly misfit with deeply engrained features such as corporatism, or extremely minor misfit that seems unworthy of legislative action). To the extent that resistance arises, it is typically of a short-term nature only and may be overcome rather swiftly. In the world of domestic politics, finally, the amount of misfit with existing traditions may spur opposition from disadvantaged groups. Yet, it is the political assessment of the required reforms by governments that determines whether or not the opposing forces will prevail. This political assessment may well follow a party political logic, which can lead governments to support even major policy shifts if these correspond to their party political goals. In contrast, however, the realisation of rather minor adaptations may also be seriously delayed if these modifications run counter to some core goals of the parties in office (Treib 2003, 2004).

Overall, the veto player argument fares better than the misfit hypothesis, but its primary field of application is restricted to the world of domestic politics. As our above account of Greece demonstrates, in contrast, the number of veto players is of little relevance for transposition performance in the world of neglect. This is because the typical pattern in this country cluster is the absence of any political process due to long phases of administrative inertia. Veto players involved in the political process only come into play in those exceptional cases where administrative inertia is avoided, e.g. by high degrees of misfit or by linkages to other domestic reform processes, or after inertia has been overcome by external interventions from the Commission. It is only under these conditions that countries with a low number of veto players tend to perform relatively better than those with more unfavourable political structures in the world of neglect. In the world of law observance, the number of veto players will not tell us much about transposition outcomes either. Here, cultural dispositions typically ensure that irrespective of the significance of the required reforms, all veto players, even those that are negatively affected, take the duty to comply with EU law more seriously than the pursuit of their own interests.

In the world of domestic politics, political contestation about the costs and benefits of required adaptations is the typical pattern. The number of veto players in domestic politics therefore plays an important role in determining whether opposing interests will be able to prevail. This is one of the major reasons why the overall transposition performance of Italy or Belgium, which are marked by multi-party coalition governments, was worse than that of the two-party coalition governments in Germany or Austria, and why the performance of these countries tended to be worse than the performance of the UK's 'Westminster system' of single-party governments that are unconstrained by any other veto players. To be sure, there are also other important factors that play a role in this country cluster, especially the party political preferences of governments. However, the more actors need to agree to a piece of transposition legislation, the higher the likeliness that one of the veto players will have reservations against transposition, either for ideological reasons or because of concerns voiced by important groups of voters. Among the countries in the world of domestic politics, therefore, those with low numbers of veto players by and large performed better than those with many veto players.

This demonstrates that our typology of three worlds of compliance is instructive in telling us when and how the existing 'sometimes-true theories' on compliance with EU legislation are actually applicable. In the world of domestic politics, we should focus on veto players, party political preferences, changes of government and interest group pressure. Determining how governments and major interest groups assess the required reforms on the basis of their own political preferences will be of great importance for explaining implementation success or failure here.

In the world of neglect, administrative factors play a crucial role in explaining the way Directives are incorporated into national law. However, these administrative shortcomings come in different forms, including administrative inefficiency and coordination problems, administrative overload and the general unwillingness of administrative actors to acknowledge reform requirements imposed by EU law. Focusing merely on the amount of administrative resources would therefore miss the point, as the administrations in some countries seem to have enough resources, but are either organised too ineffectively to ensure proper performance or are characterised by a lack of willingness on the part of administrative actors to accept EU demands and to initiate processes of adaptation. Irrespective of these differences, the major problems in these countries lie in the administrative rather than the political sphere. High degrees of misfit tend to facilitate transposition in these countries, as these cases are more easily visible and are therefore treated with higher priority by administrative actors.

In the world of law observance, finally, the presence of a shared culture of good compliance among both political and administrative actors is the most important determinant of transposition performance. This cultural factor ensures that the administrations in these countries are generally organised effectively and that political conflicts over how to incorporate EU Directives into domestic legislation usually are solved without significant transposition delays and without compromises that run counter to EU law.

4. Conclusions and outlook

The typology of three worlds of compliance presented in this paper (see in more detail Falkner, Treib, Hartlapp & Leiber 2005) can be seen as a filter that decides which factors are relevant for different countries and what the direction of their influence is. In this sense, crucial theoretical propositions in EU implementation research, including the misfit and the veto player approaches, are only 'sometimes-true theories'. While our own approach is certainly less parsimonious than any of these arguments, it draws a much more realistic picture of member state performance in fulfilling the prescriptions of EU law. We trust that the typology of three worlds gives a more valid impression of compliance processes in the fifteen countries covered by our study than any of the causal factors presented in earlier research on compliance with EU law across all EU member states. Expressed in a more technical language, we expect the following:

- Hypothesis 1: If a country belongs to the world of law observance, transposition will typically proceed in a dutiful manner for both administrators and politicians act according to a culture of respecting the rule of law. This cultural factor is hence crucial in explaining outcomes since it usually overrides other variables both from the political and from the administrative sphere.
- Hypothesis 2: If a country belongs to the world of domestic politics, the transposition process will be typically characterised by political negotiations between parties and interest groups, sometimes leading to swift adaptation and sometimes to resistance. Veto players and political ideology are therefore the crucial variables to look at.
- Hypothesis 3: If a country belongs to the world of neglect, the typical process pattern will be long phases of inertia, as the administration does not even initiate the transposition process properly. Non-transposition will be the typical outcome, at least until Commission intervention may serve as an external trigger. Administrative interests and traditions hence explain most problems in this cluster of countries.

The extensive and intensive empirical analysis of our 91 cases was indispensable for laying the foundations of our innovative approach to EU implementation theory. Without field work on many individual cases of (non-)compliance, one cannot know whether a case is typical of others and which cases may be subsumed under the heading of a relatively homogenous group. At least, this is true if we are looking for the *processes* and *causal mechanisms* that are at work in the different member states

producing compliance or non-compliance with EU law. While countries could also be classified on the basis of statistical methods, there would still be uncertainty as to whether the resulting groups of cases are actually kept together by the same causal mechanisms rather than by similar (but potentially spurious) statistical correlations.

We developed the typology on the basis of fresh data on the transposition of EU labour law Directives in 15 member states. It is possible, however, that the scope of our findings may be broader. One argument could be that the leeway for any administration to disregard EU duties will not fundamentally differ between issue areas. It also seems that the specific compliance cultures can reasonably be expected to cover not only labour law and even the social policy arena, but also all or many EU-related policies (see also Sverdrup 2004). However, systematic empirical research is certainly needed to establish whether and to what extent the typology may actually shed light on other policy areas.

Ideally, testing should be done on the basis of a large number of new qualitative case studies. Such research could directly scrutinize whether the process features we claim to be typical for countries in the three worlds may actually be found beyond our particular cases. If qualitative studies revealed different procedural patterns than those suggested by our typology, our theory would be falsified. Testing with quantitative data, such as Commission statistics on infringement proceedings, is only a second-best option, as transposition outcomes are only an indirect indicator for the underlying processes prevalent in the different worlds (see below for a second drawback of the Commission's infringement data). While our typology clearly expects the world of law observance to perform much better than the world of neglect, things are less clear if it comes to the world of domestic politics, where different political circumstances may give rise to either good compliance or transposition problems. It is only if we look at a large number of cases that cover many different (favourable and unfavourable) constellations of government etc., that we can expect the transposition performance of the world of domestic politics to fall in between the two other worlds.

While stressing again that our typology relates to typical process patterns, and not to outcomes, it is still of interest to mention here that the three clusters on average perform as expected when we look at the transposition performance of the six Directives we studied empirically. The average total delays until countries had reached the status of essentially correct transposition (Falkner, Treib, Hartlapp & Leiber 2005: Table 13.6) are shortest in the world of law observance (27 months after the deadline) and longest in the world of neglect (47 months), with the world of domestic politics in the middle range (31 months).

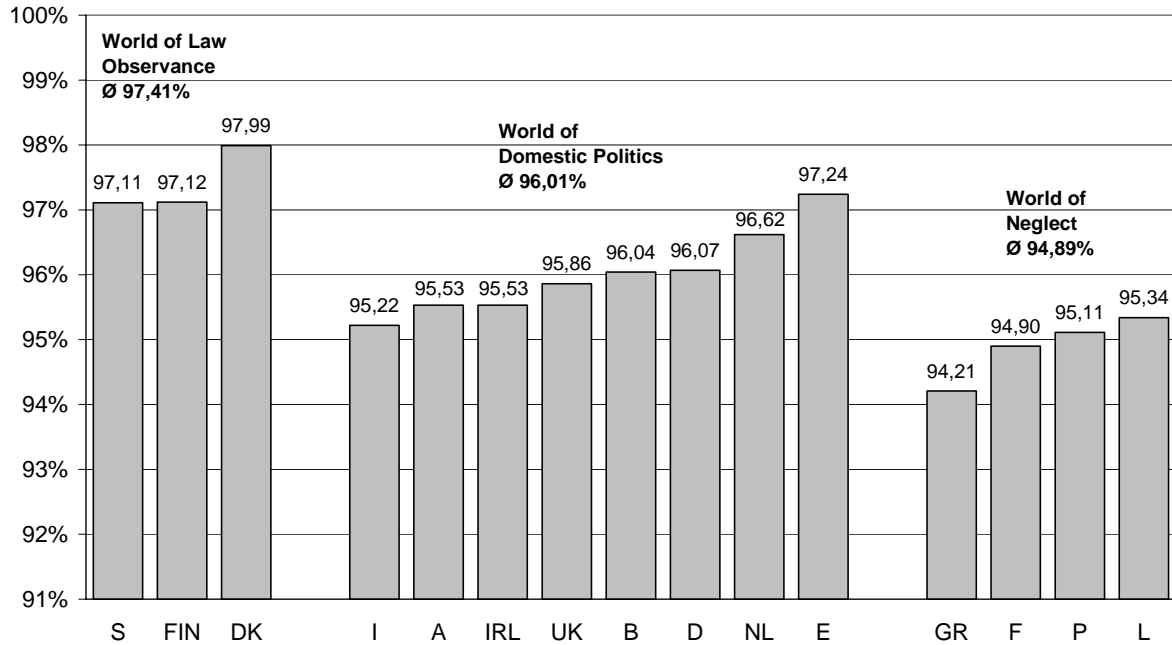
Much less reliable than the data we gained from in-depth case studies are certainly the statistics on notification rates provided by the member states themselves for the Commission. Still, we found that our ideal typical clusters indeed show systematically differing performances: while the countries in the world of law observance on average claimed to have transposed 97,41% of all Directives, the rate was only 96,01% in the world of domestic politics and 94,89% in the world of neglect.

Although our study revealed that the Commission's data on legal steps initiated against member states that did not comply with EU law are quite problematic⁹, we also confronted our typology with these statistics. Once again, we find confirmatory patterns. The countries in the world of law observance received on average only 12 reasoned opinions per year between 1998 and 2002; those belonging to the world of domestic politics received 38, and those in the world of neglect even

9 There is a fundamental difference in analysing data on official Commission infringement procedures and in looking at actual non-compliance in the member states, for Commission action often does not take place at all (20 per cent of all cases in which Commission intervention would have been required) or only takes place in an inconsistent manner compared to the Commission's internal rules (59 per cent of all cases in which action would have been required). The Commission statistics represent only the tip of the iceberg, which does not necessarily say much about the size or the shape of those parts that remain below the waterline (see Hartlapp 2005: 188-197; Falkner, Treib, Hartlapp & Leiber 2005: 219).

received 48.¹⁰ These data suggest that at the aggregate level of transposition outcomes, the three clusters of member states actually perform as expected by our typology. Despite the poor quality of these cross-sectoral data, this finding may serve as an indication that the typology is empirically relevant beyond the specific cases we studied.

Figure 2: Average annual transposition rates in the three worlds of compliance



Source: Annual Reports on Monitoring the Application of Community Law 1998-2002

In sum, the typology of three worlds of compliance presented in this article may serve as a powerful key to understanding when and where individual theoretical propositions from earlier studies in the field are more or less viable, and as a useful theoretical starting point for further research in the field.

10 Calculated from the Annual Reports on Monitoring the Application of Community Law 1998-2002.

References

- Almond, G. A., Powell, G. B., Strøm, K. & Dalton, R. J. (eds.) (2000). *Comparative Politics Today: A World View*. New York: Longman.
- Börzel, T. A. (2000). Why There Is No 'Southern Problem': On Environmental Leaders and Laggards in the European Union, *Journal of European Public Policy* 7(1): 141-162.
- Castles, F. G. (2001). Reflections on the Methodology of Comparative Type Construction: Three Worlds or Real Worlds?, *Acta Politica* 36(2): 140-154.
- Coleman, J. S. (1964). *Introduction to Mathematical Sociology*. Glencoe: Free Press.
- Douglas, M. (2001). Culture as Explanation: Cultural Concerns. In: N. J. Smelser & P. B. Baltes (eds.), *International Encyclopedia of the Social & Behavioral Sciences*, pp. 3147-3151. Amsterdam: Elsevier.
- Duina, F. G. (1997). Explaining Legal Implementation in the European Union, *International Journal of the Sociology of Law* 25(2): 155-179.
- Duina, F. G. (1999). *Harmonizing Europe: Nation-States within the Common Market*. Albany: State University of New York Press.
- Duina, F. G. & Blithe, F. (1999). Nation-States and Common Markets: The Institutional Conditions for Acceptance, *Review of International Political Economy* 6(4): 494-530.
- Falkner, G., Treib, O., Hartlapp, M. & Leiber, S. (2005). *Complying with Europe: EU Harmonisation and Soft Law in the Member States*. Cambridge: Cambridge University Press.
- Ganghof, S. (2003). Promises and Pitfalls of Veto Player Analysis, *Swiss Political Science Review* 9(2): 1-25.
- Giuliani, M. (2003). Europeanization in Comparative Perspective: Institutional Fit and Domestic Adaptation. In: K. Featherstone & C. M. Radaelli (eds.), *The Politics of Europeanization*, pp. 134-155. Oxford: Oxford University Press.
- Goetz, K. H. (2002). Four Worlds of Europeanisation. Conference paper, ECPR Joint Sessions of Workshops, 22-27 March 2002, Turin.
- Hartlapp, M. (2005). *Die Kontrolle der nationalen Rechtsdurchsetzung durch die Europäische Kommission*. Frankfurt/M.: Campus.
- Haverland, M. (2000). National Adaptation to European Integration: The Importance of Institutional Veto Points, *Journal of Public Policy* 20(1): 83-103.
- Héritier, A., Kerwer, D., Knill, C., Lehmkuhl, D., Teutsch, M. & Douillet, A.-C. (eds.) (2001). *Differential Europe: The European Union Impact on National Policymaking*. Lanham: Rowman and Littlefield.
- Ismayr, W. (ed.) (2002). *Die politischen Systeme Westeuropas*. Opladen: Leske + Budrich.
- Knill, C. & Lenschow, A. (1998). Coping with Europe: The Impact of British and German Administrations on the Implementation of EU Environmental Policy, *Journal of European Public Policy* 5(4): 595-614.
- Knill, C. & Lenschow, A. (2000). Do New Brooms Really Sweep Cleaner? Implementation of New Instruments in EU Environmental Policy. In: C. Knill & A. Lenschow (eds.), *Implementing EU Environmental Policy. New Directions and Old Problems*, pp. 251-282. Manchester: Manchester University Press.

- Knill, C. & Lenschow, A. (2001). Adjusting to EU Environmental Policy: Change and Persistence of Domestic Administrations. In: M. G. Cowles, J. Caporaso & T. Risse (eds.), *Transforming Europe: Europeanization and Domestic Change*, pp. 116-136. Ithaca: Cornell University Press.
- Leiber, S. (2005). *Europäische Sozialpolitik und nationale Sozialpartnerschaft*. Frankfurt/M.: Campus.
- Mastenbroek, E. (2005). EU Compliance: Still a 'Black Hole'?, *Journal of European Public Policy* 12(6): 1103-1120.
- Mastenbroek, E. & Kaeding, M. (2004). Europeanization Beyond the Goodness of Fit. Unpublished paper. Leiden: Leiden University.
- Richardson, J. J. (ed.) (1982). *Policy Styles in Western Europe*. London: Allen & Unwin.
- Risse, T., Cowles, M. G. & Caporaso, J. (2001). Europeanization and Domestic Change: Introduction. In: M. G. Cowles, J. Caporaso & T. Risse (eds.), *Transforming Europe: Europeanization and Domestic Change*, pp. 1-20. Ithaca: Cornell University Press.
- Sverdrup, U. (2004). Compliance and Conflict Management in the European Union: Nordic Exceptionalism, *Scandinavian Political Studies* 27(1).
- Swidler, A. (2001). Cultural Expression and Action. In: N. J. Smelser & P. B. Baltes (eds.), *International Encyclopedia of the Social & Behavioral Sciences*, pp. 3063-3069. Amsterdam: Elsevier.
- Treib, O. (2003). Die Umsetzung von EU-Richtlinien im Zeichen der Parteipolitik: Eine akteurzentrierte Antwort auf die Misfit-These, *Politische Vierteljahresschrift* 44(4): 506-528.
- Treib, O. (2004). *Die Bedeutung der nationalen Parteipolitik für die Umsetzung europäischer Sozialrichtlinien*. Frankfurt/M.: Campus.
- Tsebelis, G. (1995). Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism, *British Journal of Political Science* 25: 289-325.
- Tsebelis, G. (2002). *Veto Players: How Political Institutions Work*. New York: Sage.

Gerda Falkner
Department of Political Science
Institute for Advanced Studies
Stumpergasse 56
1060 Wien, Austria.
E-Mail: falkner@ihs.ac.at

Miriam Hartlapp
Social Science Research Center
Berlin, Germany

Oliver Treib
Institute for Advanced Studies
Vienna, Austria