

# Post-Accession Transposition and Implementation between Administrative Coordination and Political Bargaining

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## **Abstract**

This paper explores the relationship between administrative coordination of EU affairs at the national level and compliance with EU law. First, we develop two hypotheses about the impact of coordination: we expect that the strength of the coordination structure (level of centralisation and political support) will improve levels of transposition of EU law, but if and when the EU laws attain political salience and trigger political opposition coordination becomes irrelevant. 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 coordination 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 coordination cannot help.

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## **Introduction**

The remarkable transformation of the post communist states which entered the European Union in 2004 and 2007 involved, among others, achieving a surprising, for many observers, level of compliance with and transposition of the *acquis communautaire*. 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). Lithuania even came ahead as the best performer in transposition in the Commission internal market report in February 2006, while latecomer Bulgaria achieved a formal transposition deficit of zero in 2008. Given that Bulgaria has also received, post accession, several extremely serious warnings from the Commission regarding corruption, fraud with EU funds and problems with the judiciary, the question of the gap between formal transposition and real implementation post accession arises with new urgency. Several other CEE member states, such as Poland and Slovakia have been known to reverse some of the administrative rules and legislation they had adopted during the pre-accession period (*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.

A great deal of the progress made during pre-accession can be attributed to administrative developments that ensured that the candidate states 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 in Commission advice and candidates' attention shifted to the administrative and political coordination of EU adaptation and to sectoral capacity. This led to an enormous development in sophisticated EU coordination mechanisms which often included levels of coordination 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 have become "islands of excellence" (Verheijen, 2000, 2001, World Bank, 2006) in the post communist administrations, employing highly trained, highly motivated staff, in order to perform well 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 coordination 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 coordination 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 coordination 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 post accession, it is also important to ask if the established coordination systems are sufficient for good transposition. This paper deals with both questions by first exploring whether coordination 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 political debate to see if administrative capacity in the narrow sense (coordination) is enough to explain these different cases of transposition.

## **The importance of coordination systems: theoretical considerations**

Despite the increased scholarly attention, administrative capacity 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 coordination 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). 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 combined 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. Therefore, also taking into account the findings of Zubek on Poland, Hungary and the Czech Republic (2005, 2008), which explicitly highlight the role of administrative coordination, we explore EU coordination systems on their own. A final, practical argument for doing this is the European departments' very separateness from the rest of the post communist administrations, their status of 'islands of excellence' (Verheijen, 2000) and the political attention dedicated to them in the crucial years just before accession.

Therefore, in this paper, we explore whether it is sufficient to focus specifically on coordination of EU affairs when it comes to exploring administrative effects on transposition. 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 affect the transposition and implementation of EU law.

In this section we will explicate the reasoning linking co-ordination systems and compliance with EU law and present several hypotheses that clarify the expected relationship and pose scope

conditions limiting the impact of co-ordinations structures. While in general we expect that stronger domestic EU co-ordination leads to greater compliance and less transposition delays, we also posit that the effect of co-ordination is conditioned on the political salience and political opposition towards the EU policy. With regards to directives with a low degree of political salience and no political opposition, strong co-ordination structure can influence positively the timeliness of compliance. 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.

As we have noted above, in contrast to the overall attention for the impact of domestic institutional structures on implementation (see the recent overview in Steunenberg and Toshkov, forthcoming), attention to the impact of EU co-ordination structures has been scant. A notable exception is Giuliani (2004) who tests the ‘centrality of the Foreign Affairs ministry in the EU coordination structure’ expecting a negative impact on compliance, but the empirical evidence he finds is inconclusive. In the same study, based on data on the EU member states before 2004, he finds that stronger national co-ordination capacity has a negative influence on the standardized index of national adaptation that he uses as an indicator of compliance. Both measures of co-ordination type and capacity are based on the empirical work collected in the volumes edited by Kassim et al. (2000, 2001).

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.

On a more abstract level, co-ordination institutions can affect 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 can put pressure on the Ministry of Transport, for example, to sacrifice some policy adaptation of the EU directive to be downloaded in order to speed up the transposition. In addition, powerful co-ordination actors can ‘persuade’ the line ministry to stick close to the literal interpretation of the EU

law in the process of transposition in order to avoid risks of subsequent challenges by the European Commission and delays in the implementation of the directive. 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.

Even if we assume that compliance with EU policies works according to different logics of compliance in different parts of the EU, co-ordination structures retain their importance<sup>2</sup> (Falkner et al. 2005). In the 'world of neglect' the information-providing and attention-drawing functions of coordination bodies are the most important ones. Since the major stumbling blocks for compliance are the negligence of the administration and the disregard to their European commitments, co-ordination units can ensure that line ministries are well aware of their EU-related responsibilities and that commitments to transpose, implement and enforce legislation are integrated into the working programmes of the ministries. In the world of domestic politics the capabilities of co-ordination systems to arbitrate conflicts and facilitate agreements between different arms of the executive are of prime importance. Because in the world of domestic politics gridlock over the interpretation of the EU law is the most likely cause of compliance troubles, co-ordination structures have a crucial role in providing negotiation arenas and facilitating the search for a solution of the inter-departmental conflicts. Once the conflicts escape the realm of the executive, however, and become politicized, the influence of EU co-ordination structures dwindles (see below). In the world of law observance the main contribution of co-ordination structures is to ensure swift information and communication flows between different national actors and between the EU (represented mostly by the Commission) and the government. 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.

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 EU law compliance.*

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<sup>2</sup> It is unclear, however, whether we should consider the EU co-ordination strength as endogenous or exogenous to the 'world of compliance'.

The hypothesis implies cross-sectional differences between countries, but also diachronic differences within the same country provided that the level of co-ordination changes. Since we do not conceive strong 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 should 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 compliance 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. For the bulk of EU legislation this picture is most likely sufficiently realistic. A large number of EU directives deals with issues that do not touch broader political and societal interests. Despite the inroads made by EU legislators into policy areas like immigration, equal treatment, or social policy (e.g. working time), the proportion of EU rules that address technical issues remains great. Even when the EU tackles problems that are broadly relevant, the contributions of EU law are often marginal and do not challenge fundamentally the established national policies<sup>3</sup>. This is not to say that EU law deals with unimportant problems, but that its directives more often than not do not attain critical salience in the attention of politicians and society.

Some EU laws, however, do reach a high level of political salience touching upon constitutionally enshrined rights or key domestic norms and triggering political reactions. When salience is coupled with 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 transposition of these directives might require super-majorities within the legislatures. Depending on the domestic system of political institutions it might involve powerful legislative second 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, and actors like the president can trigger interventions by the 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.

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<sup>3</sup> A good case in point is the recently published case study of the adoption of EU corporate governance and its implementation in France (Ben 2009).

Post accession, we expect co-ordination structures can do very little to solve compliance problems raised by political opposition. There are several reasons why we think administrative coordination does not 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 coordinating bodies. While co-ordination structures can sometimes arbitrate *sectoral* interests within the government, they have no power and influence to enhance settling 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 second part of this paper tests empirically these two hypotheses and explores the influence of co-ordination structures on compliance with EU law in the post-communist states from CEE



## Research design and operationalization

The empirical analysis presented in the following pages is divided in two parts. The first part looks for a relationship between co-ordination and compliance at the aggregate level – it compares the performance of countries synchronically, and over time. The first part of the analysis therefore focuses on the first hypothesis. Because it is not possible to measure political salience for aggregated data, the second hypothesis is explored in the second part of the empirical analysis which presents a comparative case-study designed to test specifically this conjecture. In this section we provide details about the research design, the operationalization and the measurement of the variables we use.

### *Operationalizing coordination levels*

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 between the 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 changes quite often, so we have presented the organizational location of the main coordinating unit for two points in time: 2004, 2006, and late 2008. For details about the situation in 2004 the reader is referred to Dimitrova and Toshkov (2007). The most notable changes post 2006 include a change of the location of the central coordinating unit in Hungary from the old Foreign Ministry centre to the Prime Minister's office and back to the Foreign Ministry in January 2008.

Table 1 Location of the main coordinating body for EU affairs

	2004	2006	2008
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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

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

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 bulk in the variation in the existing systems of domestic EU coordination<sup>4</sup>. Metcalfe (1994), on the other hand, has developed a scale for measuring the level of coordination which has been used as a starting point by recent work on coordination in the broader EU context (World Bank, 2006, Jordan and Schout, 2008). The lowest levels of his scale describe loose forms of coordination, while higher levels describe more tightly integrated systems that can manage more complex coordination 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 coordination and separately, for EU coordination. The Report distinguishes between a country's overall coordination capacity and coordination of European Integration/EU related issues.

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<sup>4</sup> 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.

For the purposes of identifying, *a priori*, which new member states have the best developed coordination systems, we use the scores developed in the report, if necessary adjusted in view of recent changes.

The coordination scores are based on the coordination levels identified by Metcalfe which range between one and eight. The data on which the scores are based in the World Bank report is derived from in-depth case studies and existing secondary sources. Table 2 presents the score for the year 2006. According to the table, the Czech Republic has the lower score, while Lithuania has the greatest. Using additional information from governmental documents and other secondary sources we have updated the scores for the year 2008, and these are resented in the rightmost column. The Czech Republic has its score improved because it has strengthened coordination units and has created a ministerial post to oversee politically the coordination 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 most recent developments from 2009.

Tables 2 EU coordination 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

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 over time 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 (Koenig and Luetgert 2009). Since the number of country-cases is extremely small (eight) we analyze the relationships between co-ordination type, strength and transposition with the help of scatterplots.

According to the theoretical discussion, the effect of coordination structures on compliance is mediated by the influence of political salience. 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 identified in the theoretical section above.

Table 3 Case selection for the comparative case study

Country	Directive	Coordination strength	Political salience	Political opposition
Czech Republic	Racial equality	2 / WEAK	YES	YES
Estonia	Racial equality	3 / WEAK	YES	YES
Hungary	Racial equality	5 / STRONG	YES	NO
Latvia	Racial equality	7 / STRONG	YES	YES
Czech Republic	Vibration	2 / WEAK	NO	NO
Estonia	Vibration	3 / WEAK	NO	NO
Hungary	Vibration	5 / STRONG	NO	NO
Lithuania	Vibration	8 / STRONG	NO	NO

Altogether we have eight cases which cover transposition performance with regards to two directives – Directive 2000/43/EC on racial equality and Directive 2002/44/EC on protection of workers from vibration. We choose these directives because they provide contrasting levels of political salience. While the racial equality directive touches on constitutional issues for all member states and did spur political debate in the four countries we selected – the Czech Republic, Estonia, Hungary, and Latvia, the transposition of the vibration directive went virtually unnoticed by political actors in the Czech Republic, Estonia, Hungary, and Lithuania. In principle we have more cases than needed to test the two hypotheses outlined above (the minimum number would have been four), but since our theory implies probabilistic and not deterministic relationships we have

included another set of four cases. The case of transposition of the Directive on racial equality in Hungary is also interesting because it presents a situation in which political salience was attained, but there was no opposition to the directive. Hence, this case is useful in evaluating the expectation that salience as such is not sufficient for troubles, but when in combination with opposition leads to delays. In the case studies we are able to bring a lot of contextual information in order to assess the outcomes in terms of compliance which we seek to explain.

## **Analysis**

### ***Country level***

We start the empirical analysis by investigating the link between coordination structures and compliance at an aggregate level. Because of the constraints of having only eight countries, a full-fledged statistical model would be superficial. We opt to present a scatterplot instead and root the discussion in this figure. Figure 1 presents the relationship between coordination levels (strength) represented on the x-axis and compliance (the y-axis). As mentioned, the scores for coordination 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 coordination structures.

The figure reveals a very strong link between coordination 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 than we would expect from its EU coordination level. On the other hand, as expected, there is no direct link between the *type* of co-ordination structures and the compliance level<sup>5</sup>. The two coordination systems located in the foreign affairs ministry 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 coordination have excellent (Lithuania) next to mediocre (Hungary) next to rather poor<sup>6</sup> scores.<sup>7</sup>

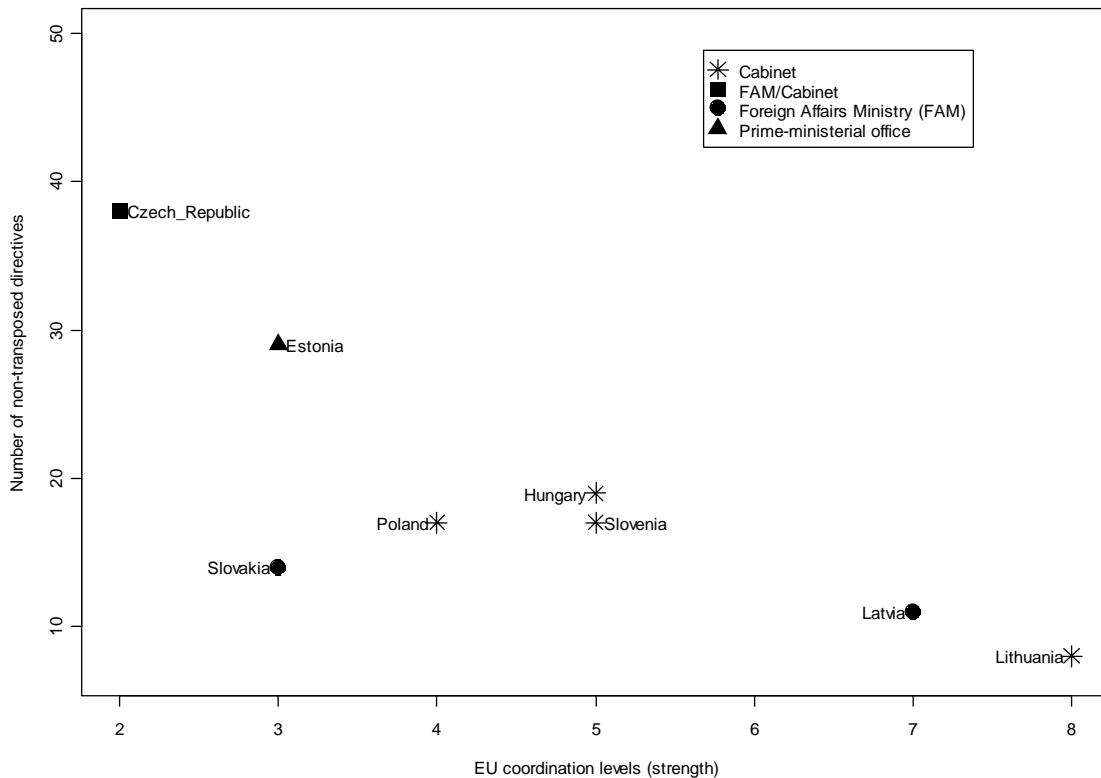
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<sup>5</sup> There is also no direct link between coordination type and strength which confirms that these are two separate characteristics of coordination structures.

<sup>6</sup> 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.

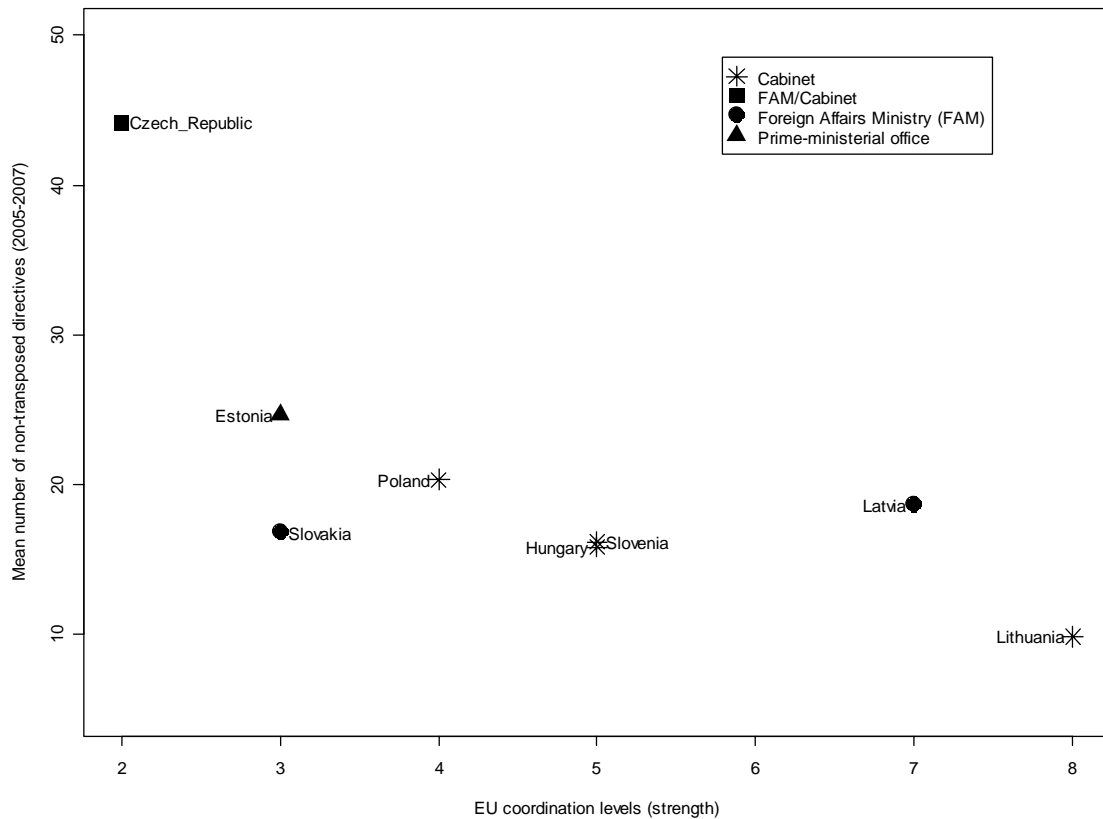
<sup>7</sup> The ranking is only relative to the sample of eight post-communist member states – in fact all the countries with the exception of the Czech Republic do rather well in comparison with the rest of the EU member states.

2006 coordination types & levels and transposition deficit



How robust is the relationship between coordination levels and transposition? Is the strong link revealed in Figure 1 sensitive to changes in the particular year at 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). Figure 2 plots the result: the only difference with Figure 1 is that the y-axis features the average number of transposition acts from 2005 to 2007 instead of the levels of non-transposition at one particular point of time (January 2007). The relationship between coordination levels and transposition performance remains strong albeit the size of the correlation coefficient has dropped to -0.71. We should be noted, however, that our measure of coordination levels is fixed and available at only one time point, so that might explain the reduced strength of the relationship with complaisance.

Coordination types & levels and transposition deficit



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 coordination strength (levels) as measured by the World Bank (2006), but not to the type of coordination 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 coordination levels are not entirely exogenous to the transposition performance. While the World Bank experts which have compiled the measurement of coordination 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 coordination strength. If this would be the case we would over-estimate the relationship between the two variables.

In addition, the link between compliance and coordination 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 coordination 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 the relationship between coordination and transposition remains strong<sup>8</sup>. Hence, we can rule out that the link between coordination 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 coordination 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 out the relationship between coordination and compliance remains strong<sup>9</sup> and is, therefore, robust to the inclusion of this possible confounding variable.

Although these robustness checks lend support to the conclusion that the link between coordination 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 coordination levels which does not allows us to perform a time series analysis. Nevertheless, informal observation suggests that decreases in the coordination levels can be related with drops in transposition performance – for example, the below par performance of Lithuania in terms of transposition from July 2007 until the end of 2008 seem to follow decreases in the strength of the central EU coordination body in the country. Similarly, improvements in the Czech transposition record coincide with upgrades of the coordination 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 coordination 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 coordination levels at the aggregate level, and for technical, low salience legislation, but the effect should disappear when the EU law to be

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<sup>8</sup> We construct a Poisson regression model, which is suitable for count data, with government effectiveness and coordination levels as explanatory variables and the mean level of non-transposed acts 2005-2007 as a dependent variable. The coefficient of coordination levels is negative and statistically significant.

<sup>9</sup> Again, employing a Poisson regression model with the share of ‘Yes’ votes at the accession referenda and coordination levels as explanatory variables we find that coefficient of coordination levels is negative and statistically significant (as is the coefficient of the EU support variable).



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).

### *Comparative case study*

Qualitative comparative analysis (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). Apparently, QCA fits well our research objectives in this paper and can effectively complement the aggregate-level analysis that we offered above.

In order to optimize the analytical leverage of the QCA approach we have to select cases that exhibit all the potential combinations of our explanatory variables. In our cases, we need at least four cases to test our two hypotheses: namely two cases of weak coordination capacity but varying political salience & opposition and two cases of strong coordination capacity and different values on political salience & opposition. It should be reminded that opposition only enters into the picture if salience is high. Because our argument is not strongly deterministic – we do not claim that all cases of transposition delays and implementation problems *should* feature political opposition or lack of coordination capacity, we include another set of four cases to increase the confidence in our findings. The case of the racial equality in Hungary serves, in addition, to explore the situation in which there is political salience but no real opposition to the EU directive. 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. Therefore, we choose two EU directives that are part of the same policy domain at the EU level (social policy) and are adopted and transposed in the same time period.

QCA allows us to represent the variables either as binary (yes/no, 0/1) or to assign them fuzzy score which can capture in with 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. Coordination strength is deemed as ‘present’ if the value of the coordination 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’. The scores on political opposition and salience are derived from detailed case studies summarized later in the paper. 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 4 summarizes the scores on the explanatory variables and the outcome together with the theoretical expectations about transposition delay.

Table 4 Result of the qualitative comparative analysis

Country	Directive	Coordination 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	1	1	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

Analyzing the truth table we derive the following results:

$$\text{DELAY} \rightarrow (\text{SAL AND OPPOS}) \text{ OR } (\sim\text{SAL AND } \sim\text{OPPOS AND } \sim\text{COORD})$$

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 the combination of weak coordination, no opposition and no salience. So, we can identify two paths to transposition delay – political opposition for salient legislation, or weak coordination in the absence of salience and opposition. The conclusion about coordination strength is straightforward: weak coordination is a necessary condition for delays for cases that do not reach political salience but is irrelevant for cases that do 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. As we do not have combination of cases with low salience and political opposition, we cannot reach a conclusion about the effect of political opposition in the absence of salience<sup>10</sup>. In short, all eight cases conform to our theoretical expectations. Therefore, we find no evidence against our two

<sup>10</sup> In addition, if we bring the *type* of coordination in the truth table, the results would not change: in cases of political salience and opposition, the coordination type apparently does not matter since the three cases fitting the description have rather different coordination types (mixed, prime minister’s office, and foreign affairs based). The second causal combination also features two countries having different types of coordination which shows that type is irrelevant.

hypotheses. The strength of EU coordination institutions is important for compliance but only when the process does not trigger political attention and opposition.

Since the conclusion is based on only eight cases we should remain cautious about the confidence we can have in the result. Ideally, when tested on a large number of individual cases, the necessary and sufficiency of the causal configurations will remain visible, although we can not 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. The combination of comparative case studies with the aggregate-level analysis presented earlier in this section, however, has brought substantive evidence that the theoretically plausible impact of EU coordination strength (but not organizational type) on compliance receives empirical support from the analyses of transposition of EU law in the new member states from CEE. The paper has brought ample data that better coordination is translated into better overall levels of compliance although for highly salience legislation the link might be absent.

In the last part of the paper, we provide some empirical details in the case studies that can serve as an illustration of the causal connection we make between political salience and slow transposition. They also show the sufficiency of administrative coordination for good transposition in the case of technical measures.

### **The case studies: the politicized racial equality legislation versus the ‘technical’ vibration directive**

#### ***The transposition of the Racial Equality Directive (2000/43/EC)***

##### *Estonia*

The Estonian government had included the transposition of the Race Equality directive (2000/43/EC) in its pre-accession work plan. The directive, however, was not adopted by the Estonian Parliament and was delayed until the next parliament was elected. The next parliament proceeded to adopt the Gender Equality directive but not the Racial Equality directive, even though the two were initially linked in one legislative proposal. At the very last moment before 1<sup>st</sup> of May, 2004, an amendment was made of existing legislation as a stop-gap measure, in order to report that

the directive had been transposed. The very last amendment to the employment contract law came into force on 1 May 2004.

These measures were evaluated as insufficient as the Commission report of November 2004 indicated Directive 2000/43/EC was not implemented. At the same time, the Estonian government suggested the directive did not need further legislation to be transposed 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<sup>11</sup> 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.

The process, as briefly described above, shows that Estonia had problems with transposition which have been political rather than administrative. The adoption by the Estonian parliament of measures transposing the Gender Equality Directive but not the Racial Equality Directive, even though these were initially included in the same legislative proposal, is a clear indication of this.

### *The Czech Republic*

The Czech Republic produced two draft anti discrimination laws, one from 2005-2006 and another from 2007-2008. Neither has been successfully adopted so far. Both drafts included several anti discrimination directives at once and aimed at transposing them together in one comprehensive law. The debates on the drafts, however, were slowed down by issue linkage, the most disputed provisions in the Czech case being gender anti discrimination provisions.

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 3 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.

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<sup>11</sup> For example, Germany which has been reluctant to adopt a general anti discrimination law.

Various arguments were presented against the 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 setting up an anti discrimination agency and also missed an extended definition of direct discrimination.

The debate in Parliament reflected societal polarization, especially about the need for gender anti discrimination provisions. The second draft passed debates which dealt also with issues such as the shift of burden of proof in the Senate and Chamber of Deputies and was finally approved after 3<sup>rd</sup> reading in April 2008. However, in May 2008, the President refused to sign the law and this it was returned back to Parliament. In cases when the president has used his veto, the Czech Chamber of Deputies can overrule his decision by an absolute majority and adopt the law. However, in June 2008, the Chamber of Deputies postponed the new debate on the law. The Czech Republic has still not managed to pass legislation transposing the anti discrimination directives.

### *Hungary*

Hungary introduced a general law on anti discrimination, the Act CXXV of 2003 on Equal Treatment and the Promotion on Equal Opportunities (ETA). The law came into force in early 2004. The protection provided by the law is strengthened by Articles 76 and 84 of Act IV of 1959 of the Civil Code, which list the right to non-discrimination among the so-called “inherent rights” and prescribe specific sanctions for the infringement of such rights.

The ETA 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 7 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 law establishes an independent Equal Treatment Authority with the task of dealing with anti discrimination complaints, to initiate lawsuits and other broad powers. The Authority is an administrative body functioning under the supervision of the Government with an authorisation to act against any discriminatory act irrespective of the ground of discrimination (sex, age, race, etc.) or the field concerned (employment, education, access to goods, etc.). From the comprehensive way

in which the law tackles the anti discrimination issue, it can be concluded that Hungary complied with the Racial Equality Directive not only on time but also completely.

### *Latvia*

Latvia did not adopt a single anti-discrimination law. The Labour Law from 2001 was amended as late as 2005 in order to comply with the Racial Equality Directive and the Employment Equality Directive (2000/78/EC). A number of other relevant laws contain non-discrimination clauses covering exhaustive or open lists of prohibited grounds of discrimination, but none of these laws covers entire scope of the Directives. The fragmented nature of the adopted or amended provisions does not ensure effective implementation and in this way Latvia does not comply with a requirement that the law should address all grounds of discrimination as stated down in the Directive.

According to the European Commission report (2007) Latvia is among those 17 member states that have received a reasoned opinion for incorrect transposition of Directive 2000/43/EC and a complementary letter of formal notice concerning the Directive 2000/78/EC. The main areas of problematic transposition as identified by the Commission are the complex notions of the Directives (e.g. direct and indirect discrimination etc.) and their application to the domestic laws. Latvia did not transpose the directive on time and adequately despite its well developed EU coordination system.

In contrast to the Racial Equality Directive, the second measure we examine is a typical ‘technical’ directive and its transposition remained firmly the job of administrative actors.

### ***The transposition of the Vibration directive (2002/44/EC)***

### *Lithuania*

The Vibration Directive has been transposed in Lithuania using an administrative instrument: the “Order of the Ministry of Social Security and Labour of the Republic of Lithuania and of the Ministry of Health Care of the Republic of Lithuania: the regulations on workers protection to the risks arising from vibration”.<sup>12</sup> Transposition went well and was many month before the deadline.

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<sup>12</sup>

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 (Socialins apsaugos ir darbo ministro & Sveikatos Apsaugos Ministro, 2004). Coordination between the two ministries did not present a problem given that Lithuania's excellent coordination system was in place.

### *Hungary*

Hungary also 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 (Egészségügyi Minisztérium, 2005).

### *Czech Republic*

The Czech Republic already had existing legislation on vibration values. This was the 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. 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 ( Nařizení vlády č. 502/2000 Sb, 2002 and Nařizení vlády č. 88/2004 Sb, 2004). 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 and amending the 258/2000 law on the protection of public health. This act replaced the former Government Orders 502/2000 and its amendment 88/2004. The Government Order 148/2006 came into force on 22 June 2006. The responsible Ministry was the Ministry of Health (Nařizení vlády č. 148/2006 Sb, 2006).

The second transposition act is 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 made by the Ministry of Trade and Industry and the Ministry of Health and came into force on the first of January 2007 (ZAKON 309/2006, 2006).

With these amendments, the transposition of the vibration directive in the Czech Republic was complete, even though it took longer and was more complicated than in other new member states.

### *Estonia*

Estonia transposed the vibration directive 2002/44/EC with the Regulation “Health and safety requirements for the working environments affected by vibration, maximum vibration limits for the working environments and the vibration measurement procedure (Government of the republic regulation number 109 of 12 April 2007)”. This Regulation was more than 21 months too late, as it came into force on 30 April, 2007. The leading ministry is the ministry of social affairs (Sotsiaal Ministerium, 2007). The limited empirical data we have indicates that the Estonian record in transposition was similarly late as the Czech one, although there was no politicization around the measure.

### **Conclusion**

This paper explored the importance of administrative capacity, defined narrowly as coordination 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 coordination 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 that have the potential of 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 coordination of EU policy making is a necessary, but not sufficient condition for transposition.



Tracing the process of transposition through the short case studies 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, sometimes these parties 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 coordination 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 excellent work by Zubek (2001, 2005, 2008). We have to be careful, however, extrapolating these results beyond a few years after accession, because a number of the new member states have downgraded their European coordination systems (World Bank, 2006). The accession to the EU was *the* political priority project, 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, coordination 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 short case studies have shown, the explanation for transposition problems should be sought in the world of politics and not in administrative capacity issues.

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