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Time to Comply: National Responses to Six EU Labour Market Directives Revisited

ROBERT THOMSON

This paper examines variation in the timing of compliance with European directives. It formulates and tests the hypothesis that member states' policy-based incentives to deviate from the content of directives influence delay in compliance. This hypothesis is tested along with other factors that are posited to influence compliance, including the amount of discretion directives give member states, the level of misfit between national and European-level laws, and characteristics of member states. The hypotheses are examined in a quantitative research design using arguably the best available information on compliance: national responses to six labour market directives investigated by Falkner et al. (2005) for Complying with Europe. The present study develops Falkner et al.'s analysis in two respects. First, it identifies new theoretically important variables and offers measures of these, notably member states' policy-based incentives to deviate and the amount of discretion granted by directives. Second, it tests these hypotheses using multivariate analysis, while Falkner et al. applied bivariate tests only. In contrast to Falkner et al.'s conclusions, the findings indicate that misfit between national and European laws significantly reduces the likelihood of timely compliance. While political opposition at the time of a directive's adoption is not linked directly to compliance, member states tend to oppose directives that do not fit existing national laws. Compliance is more timely for directives that grant more discretion.

This article examines the timing of national legal adjustments in response to European Union laws. Europeanisation, whether it is perceived as a top-down or bottom-up process, depends at least in part on member states' compliance with EU laws. Where directives are intended to eradicate differences in market rules across Europe, failures and delays in compliance cause uncertainty and transaction costs for market participants. Precise estimates of the extent of the compliance problem vary (e.g. Börzel 2001; European Commission 2003; Kaeding 2006; Mastenbroek 2003). However, it is widely acknowledged that there is a problem, and European policy-makers have set themselves the aim of improving compliance as a priority (European Commission 2001; 2005).

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The present study develops and tests preference-based explanations of variation in compliance that have featured prominently in the existing literature. Preference-based explanations emphasise member states' preferences in relation to the European laws to be implemented, and the specific characteristics of those laws. A prominent explanation of this type refers to opposition expressed by member states prior to the adoption of directives (Falkner *et al.* 2004; Thomson *et al.* 2007). This is a particularly difficult explanation to test because of the secrecy that typically shrouds Council decision-making. In a related line of research, Steunenberg's (2007) model of national transposition of EU directives draws attention to the preferences of various national actors within member states. Several researchers have also examined the degree of misfit between the demands of new European laws and existing national arrangements (Börzel and Risse 2003; Héritier 1996).

State-based explanations of variation in compliance have also been put forward in previous research and are examined here. State-based explanations refer to factors that vary mainly among member states. These include administrative efficiency (Ciavarini Azzi 2000; Pridham 1994), the representation of relevant socio-economic interests in national policy-making processes (Lampinen and Uusikylä 1998), and nationally-distinct policy implementation styles (Falkner *et al.* 2005: Chapter 15).

The evidence examined in the present study is arguably the best available quantitative information on compliance with EU directives. It consists of information on compliance with six labour market directives collected by Falkner *et al.* (2005) for the volume *Complying with Europe*. Falkner *et al.*'s study marked an important advance in research on compliance with European Union law. They selected the six main labour market directives adopted in the early to mid-1990s, and examined the process and timing of national compliance in 15 member states up to early 2003. They did so using primary sources, such as national policy documents and legislation, and interviews with key informants in the member states. The evidence they amassed consists of 90 case studies that were conducted carefully in a comparative research design.

The information on compliance collected by Falkner *et al.* has distinct advantages compared with most other quantitative and qualitative studies in this area. Quantitative studies generally have the advantage of being able to examine general patterns, but suffer from the limitation of focusing on readily-available numbers that are indirectly related to compliance. Quantitative studies have examined infringement proceedings and the timing of national implementation measures reported by member states (e.g. Kaeding 2006; Mastenbroek 2003; Mbaye 2001; Svendrup 2004; Tallberg 2002; Thomson *et al.* 2007). Infringements and delays are important indicators worthy of serious research attention. However, infringements and transposition delays are usually used as indicators of compliance. For that purpose, they are indirect measures. There are certainly many more cases of non-compliance than there are infringement proceedings. Furthermore,

there is no guarantee that the national implementing measures reported by member states actually comply with EU laws. Qualitative studies, by contrast, focus on direct assessments of policy practices within states following EU directives (e.g. Héritier *et al.* 2001; Pridham 1994; Steunenberg 2007; Versluis 2007). While qualitative studies have the strength of providing direct assessments of compliance, their limitation lies in uncertainty about the generalisability and comparability of their findings. The information collected by Falkner *et al.* combines the comparability of quantitative research with the validity of qualitative research.

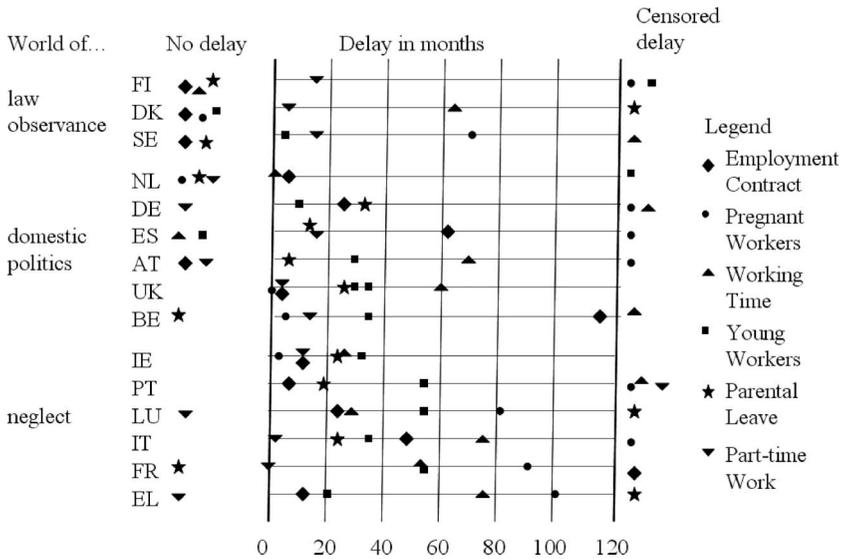
Falkner *et al.* (2005) examined a range of hypotheses derived from the existing literature, including some from the state-based and preference-based explanations referred to above. Their analyses did not provide strong support for any of the hypotheses put forward in the existing literature. This result prompted Falkner *et al.* to develop a typology of national implementation cultures into which each of the 15 member states could be categorised. This typology is intended to capture the essence of the typical national styles of response to European directives.

The present study is an extension rather than a replication of Falkner *et al.*'s (2005) analysis. It develops their analysis in two respects. First, the following analysis contains several concepts that are central to theories of compliance, but that were not systematically examined by Falkner *et al.* For example, the extent to which each member state disagreed with the content of each directive defines each state's incentive to deviate. A quantitative measure of this concept is formulated based on detailed content analysis of preparatory documentation in the Council of Ministers. In addition, the discretion granted by each directive to member states defines states' room for manoeuvre during the compliance stage. I apply a quantitative measure of discretion based on Epstein and O'Halloran's (1999) well-established measure of discretion, which was adapted to the EU by Franchino (2004). Second, the present study examines the hypotheses using a multivariate test, while Falkner *et al.* applied a series of bivariate tests only. A multivariate test is necessary when, as in the present study, several variables are expected to account for variation in the phenomenon to be explained. Moreover, the particular multivariate model used, a form of event-history modelling, takes censored cases into account. Censored cases are those for which the event in which we are interested (national compliance with an EU law) does not occur during the time period examined (the time between the adoption of the directive and the end of Falkner *et al.*'s study in April 2003). Of course, for such cases we do not know how long non-compliance will last.

Six Labour Market Directives from *Complying with Europe*

Falkner *et al.* (2005) assessed the delay in essentially-correct compliance with each of six selected directives in each of the fifteen member states, as depicted in Figure 1. As measures of compliance, Falkner *et al.*'s

FIGURE 1
THE CASES TO BE EXPLAINED



Delay in essentially-correct compliance. Source: Falkner *et al.* (2005).

assessments are qualitatively superior to the indirect measures of compliance, namely infringements and delays. In particular, Falkner *et al.*'s assessments are based on their own research on compliance. It must be acknowledged that this inevitably introduces some measurement error by the researchers themselves. Nonetheless, the researchers' assessments are unlikely to be systematically biased. By contrast, it is more likely that transposition delays are systematically biased, since member states may have incentives to over-report their compliance with EU laws to the Commission. Researchers studying the timing of national implementation measures generally assume that the national implementing measures reported by member states actually comply with the European law in question. Falkner *et al.* identified the dates of both 'essentially' and 'completely' correct transposition for each directive in each member state, and compared these with the deadlines for national transpositions specified in the directives. The present analysis focuses exclusively on essentially correct transposition. Many of the differences between essentially and completely correct transpositions concern policy changes that are rather marginal. The present analysis aims to identify broad patterns in compliance, if these exist, rather than to explain the details of particular cases.

The six directives are the most important labour market directives adopted by the EU in the 1990s. The first is the Employment Contract

Directive of 1991. According to this directive, member states had to set national requirements that obliged employers to give their employees information concerning their employment contract or relationship. Given that the directive was adopted in 1991, Austria, Sweden and Finland were not party to the negotiations prior to the directive's adoption. Falkner *et al.*'s (2005: Chapter 4) research concluded that four member states transposed the directive essentially correctly without delay: Finland, Denmark, Sweden and Austria. Even by April 2003, the month in which Falkner *et al.* ended their study, France had not transposed the directive essentially correctly. In particular, French legislation 'did not provide for information about the commencement date of the employment relationship and about the place of work' (Falkner *et al.* 2005: 67). Second, the Pregnant Workers Directive of 1992 specified a set of compulsory minimum standards concerning the health and safety of pregnant women in the workplace. Astonishingly, by the end of Falkner *et al.*'s study in 2003, six of the 15 member states had failed to transpose the directive essentially correctly (Falkner *et al.* 2005: Chapter 5). Third, the Working Time Directive of 1993 set minimum standards for the organisation of working time. Fourth, the Young Workers Directive of 1994 set provisions to protect young workers, those under 18 years of age. The directive granted the UK a transition period for part of the directive. This meant that the UK had a later transposition deadline for the provisions relating to the duration of working hours. This also means that there are two observations for the timeliness of the UK's transposition of this directive. Fifth, the Parental Leave Directive of 1996 set minimum requirements for parental leave, such as workers must have the right to at least three months' parental leave. Sixth, the Part-time Work Directive of 1997 sought to protect part-time workers and promote part-time work. For instance, the directive stipulates that part-time workers' employment conditions may not be less favourable than those of full-time workers unless objectively justified.

Figure 1 illustrates the three ways in which the timeliness of compliance with directives varies. These three ways, or levels of analysis, will be used as an organising principle for the expectations in the following section. First, at the lowest level of analysis, there is variation among member states regarding the same directives. For example, the Working Time Directive was complied with on time in Finland, but with a lengthy delay of more than 60 months in Denmark. This suggests that part of the variation in compliance must be due to *characteristics of member states in relation to directives*. Second, there is variation among directives. For example, the Employment Contract Directive was complied with comparatively quickly, with only one member state (France) failing to comply by the end of Falkner *et al.*'s study. By contrast, the Pregnant Workers Directive was subject to lengthy delays in many member states. This suggests that part of the variation in compliance must be due to *characteristics of directives*. Third, at the highest level of analysis, there is some aggregate-level variation among

member states. Member states at the top of Figure 1, for example Finland, Denmark and Sweden, generally have shorter delays in transposing the selected directives than member states at the bottom of Figure 1, for example Italy France and Greece. This suggests that *characteristics of member states* matter.

The information depicted in Figure 1 also reveals that the analytic method used must be able to deal with censored cases. Censored cases are those for which the event we are studying, in this case the advent of essentially correct transposition, does not take place within the time-frame of study. In this case, the time-frame of the study is from the deadline for transposition set in each directive to April 2003, when Falkner *et al.*'s study ended. Seventeen of the 91 observations are censored cases (there are 91 observations rather than 90 because one of the directives contains two transposition deadlines for the UK). When conducting their bivariate quantitative analysis, Falker *et al.* compute average delays for each member state. In doing so, they take the number of months between the transposition deadline and the date of the end of their study as the delay for the censored cases (e.g. Falkner *et al.* 2005: 291). A far preferable procedure would be to use an 'event-history' model, such as the Cox regression that is applied later in the present study, which is designed for this type of information. Moreover, this method allows the impact of several variables to be estimated simultaneously.

Explaining Variation in Compliance with EU Directives

Each of the observations in the subsequent analysis consists of a single member state–directive combination. The following hypotheses refer to factors that are purported to explain why some of these observations display expeditious compliance, while others show long delays. The expectations are grouped into three categories, depending on the level of analysis to which they refer. Some of the expectations refer to variables that vary among each of the observations (characteristics of member states in relation to directives); other expectations refer to variables that vary among directives (characteristics of directives), but are the same for each member state; while other expectations refer to variables that vary among member states (characteristics of member states), but are the same for each directive.

Characteristics of Member States in Relation to Directives

At the lowest level of analysis, the first hypothesis refers to member states' incentives to deviate. A state's incentive to deviate refers to the extent to which the representatives of that state disagreed with the contents of a directive. An implementer's incentive to deviate is a key concept in the literature on policy implementation in other political systems (Fearon 1998; McCubbins *et al.* 1989; Shepsle 1992; Torenvlied 1996; 2000). In the context of the European Union, this concept highlights the possible linkage between

the decision-making stage prior to the adoption of the directive, and the implementation stage thereafter. An incentive to deviate indicates that a member state expressed some opposition to the directive when it was a legislative proposal, and that this opposition was unsuccessful in the sense that this state's demands were not incorporated into the directive's provisions. Therefore, Falkner *et al.* (2004: 2005) refer to non-compliance as a consequence of states' incentives to deviate as 'opposition through the back door'. The first hypothesis reflects the common expectation regarding states' incentives to deviate:

Incentive to deviate: The more a state's representatives disagreed with the contents of a directive during the decision-making stage, the later that state is in complying with the directive.

Previous studies examined this hypothesis. The results were mixed, and possibly driven by questionable measurements. Regarding the six directives examined in the present paper, Falkner *et al.* (2005: 278) conclude that opposition through the back door does not explain variation in compliance. They report that in only three of the 91 cases they examined was opposition at the decision-making stage followed by lengthy delays in compliance. However, Falkner *et al.* did not systematically measure the degree of opposition expressed during the decision-making stage. Like Falkner *et al.*, Mbaye (2001: 263) concluded that member states' disagreement with EU laws does not explain variation in compliance. Mbaye assumed that states are more likely to agree with the contents of laws adopted by unanimity than qualified majority voting in the Council of Ministers. Each member state can of course veto adoption under unanimity, but may be outvoted under QMV. Mbaye's quantitative analysis revealed no difference in the likelihood of infringement proceedings between laws adopted by unanimity and QMV. A limitation of Mbaye's analysis is that it is based on very indirect measures of both member states' incentives to deviate and of compliance. By contrast, Thomson *et al.* (2007) use information from key informants to measure states' incentives to deviate in relation to 24 directives. They find that states which disagreed with directives during the decision-making stage are more likely to have infringements launched against them. Although Thomson *et al.* use a direct measure of states' incentives, they focus on infringements, rather than a direct measure of compliance. Infringements are the Commission's behavioural response to perceived compliance problems, rather than a direct measure.

The present paper develops Falkner *et al.*'s (2005) analysis by examining a direct and quantitative measure of states' incentives to deviate, each 'state's disagreement with each directive'. In doing so, the present study combines a direct measure of incentives with Falkner *et al.*'s direct measure of compliance. The information for the measure of incentives is based on a content analysis of all preparatory documentation from the Council of

Ministers relating to each of the six directives. The documents contain detailed summaries of the working group, COREPER and ministerial meetings held on each directive. Many of the documents contain drafts of the legislative proposals with detailed footnotes containing member states' positions on each major provision. A note was taken of every time a member state explicitly opposed or supported a provision contained in the final legislative act. This procedure produced a large amount of information. There are 675 times when a member state opposed a specific provision that was eventually included in one of the six directives. There are 902 times when a member state supported a specific provision that was eventually included in one of the six directives. The quantitative measure of each state's incentives to deviate used in the subsequent analyses is the count of explicit opposition minus the count of explicit support for each member state for each directive. Higher values on this measure indicate that the member state in question had stronger incentives to deviate. Experiments were conducted with other variants of this measure, for example simply the count of all explicit opposition for each member state on each directive, but the results are the same as those presented here. The measure chosen was selected because it maximises the amount of information incorporated into the analysis.

Another explanation of compliance refers to the fit between new European legislation and existing national provisions (Börzel and Risse 2003; Duina 1997; 1999; Heritiér 1996; Heritiér et al. 2001; Risse *et al.* 2001). Public policies usually change only incrementally, if at all. Therefore, other things being equal, European directives that require far-reaching adjustments to national practices are less likely to be complied with than directives that are more congruent with existing national arrangements.

Misfit: The higher the misfit between a state's existing national arrangements and the demands of a new EU directive, the later that state is in complying with the directive.

In the following analyses, I use Falkner *et al.*'s (2005) measures of the degree of misfit between each of the six directives and each member state's existing national arrangements. Falkner *et al.* measured total misfit on an ordinal scale with three categories: low, medium and high misfit. This scale was constructed after estimating the degree of misfit in three respects. First, they assessed the degree of policy misfit by considering the match between the legal provisions contained in the European laws and the existing national laws (Falkner *et al.* 2005: 29). Second, they assessed the degree of politics and/or polity misfit. This type of misfit concerns the match between existing administrative routines and public-private interaction patterns and those required by the provisions of the new European legislation. Third, Falkner *et al.* assessed the level of costs associated with national adjustments to European legislation. These assessments were based on detailed

qualitative case studies in each of the member states involving interviews with key informants and examinations of existing national laws. Total misfit is a qualitative aggregation of these different types of misfit.

Characteristics of Directives

Directives differ from each other in the amount of discretion they grant to member states. Some directives offer member states a number of alternatives that they could apply when transposing and implementing. Other directives offer few alternatives. For directives that grant member states more discretion, broader ranges of policies at the national level are consistent with their provisions. Therefore, a positive relationship between discretion and compliance is to be expected.

Discretion: The more discretion a directive grants, the sooner states comply with it.

Discretion is measured by a content analysis of the directives. The measure follows Franchino's (2004) adaptation of Epstein and O'Halloran's (1999) measure of discretion. The discretion ratio is used; this ratio is multiplied by 100 to ease interpretation. This discretion ratio is the number of major provisions of a directive that grant member states discretionary powers divided by the total number of major provisions in the directive. A provision grants discretionary powers if it allows states to decide among two or more actions when transposing and implementing the directive. Therefore, the measure used gives the percentage of major provisions that grant discretion. Some previous research provides evidence of the importance of discretion during the compliance stage. Thomson *et al.* (2007) find that low levels of discretion in combination with high incentives to deviate are associated with infringement proceedings.

Directives differ from each other not only in the amount of discretion they grant to member states, but also in length. Some directives are short, while others contain pages of detailed provisions. A directive that contains a large number of provisions is likely to require more detailed changes to national laws. A large number of changes does not necessarily mean that big changes are required: in other words, fit may be high. Nonetheless, the sheer number of provisions that need to be complied with may cause delay in compliance. Other things being equal, I expect brevity to cause timely compliance.

Length: The larger number of major provisions a directive contains, the later states comply with it.

The length of each directive is measured simply by the number of major provisions in the main body of the legislation. Franchino (2004: 284) has argued that the length of legislation is a measure of complexity, although he

also acknowledges that using length to measure complexity is subject to criticism. Instead, I consider length to be a measure of detail, which need not imply complexity. Similarly, Kaeding (2006: 236) uses the number of recitals to measure the amount of detail in laws.

Characteristics of Member States

The factors considered in the following expectations vary among states. The first of these factors concerns the centralisation of power within the state. Governments in states where power is concentrated at the national level need less support from regional and local governments to comply with EU directives. By contrast, where formal political authority is shared between levels of government, national adjustment to EU directives may be more fraught with difficulty. Considering other international regimes, Levy *et al.* (1995) suggest that it is easier for centralised states to comply with international law than decentralised states. Mbaye (2001) also found that infringements are more common in systems with high levels of regional autonomy, controlling for other factors.

Decentralisation: States with more decentralised power structures take longer to comply with directives.

Lijphart's (1999) measure of federalism is applied to measure the extent to which authority is vested at the national level in each of the member states. Higher values indicate less centralisation of political power at the national level.

The extent to which the social partners are embedded in national policy-making processes is another potentially salient factor, particularly regarding the six labour market directives examined here. The social partners are the national-level organisations representing employers and employees. In highly corporatist systems, these organisations typically enjoy close and institutionalised relationships with government policy-makers, for example through formal representation on bodies with authority to take decisions or make important recommendations. The structural position of these interests is particularly salient with regard to the cases examined here. The six labour market directives demanded adjustments to the behaviour of employers and employees represented by the social partners. As Falkner *et al.* (2005: 303) point out, there are different views in the existing literature on the question of whether corporatist arrangements lead to more or less compliance. The power of social partners in corporatist arrangements means that they may block policy change. However, it is also acknowledged that corporatist systems provide relatively stable arenas in which these actors can interact and coordinate policy adjustments (Héritier 2001: 44). Consequently, it is proposed that corporatist arrangements are conducive to compliance (Börzel 2003: 36; Lampinen and Uusikylä 1998).

Corporatism: States with stronger corporatist arrangements comply sooner with directives.

The following analysis applies Siaroff's (1999) quantitative index of states' degrees of corporatism. Higher values on this index indicate that employers and employees' organisations were more institutionally integrated into the policy-making processes of the states concerned. An advantage of Siaroff's index is that it integrates insights from previous research and other competing rankings of corporatism. In this respect, Siaroff's index meets Falkner *et al.*'s (2005: 233) concern that there are several different classifications of states regarding their forms of interest group participation in policy-making. Another advantage of Siaroff's index is that it is completely independent of information regarding states' responses to the six labour market directives examined here. This independence is essential if states' degrees of corporatism are used to explain variation in compliance. By contrast, Falkner *et al.* (2005: 303–9) construct their own classification of the extent to which the social partners were involved in the actual implementation of each of the six directives in each of the member states. This is useful information for descriptive purposes. However, for explanation, it is uncomfortably close to the phenomenon we are trying to explain. It may, for instance, have been the case that the form of involvement chosen depended partly on government policy-makers' expectations regarding compliance problems. Using Siaroff's index eliminates this possibility.

States also vary from each other with respect to their administrative capacities. Compliance with EU directives obviously requires substantial bureaucratic and administrative resources at the national level. Mbaye (2001) includes government inefficiency and corruption among the variables that explain the prevalence of infringement proceedings. Studies of the implementation of EU environmental law cited administrative problems as debilitating factors in southern member states and in Ireland (Coyle 1994; Pridham 1994).

Administrative capacity: States with greater administrative capacity comply sooner with directives.

The following analysis uses the measure of relative 'government effectiveness' in 1996 developed by World Bank researchers Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi (2006). This measure refers to 'the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies' (Kaufmann *et al.* 2006: 4). This measure is based on a set of variables measuring the perceptions of governance by citizens, and public and private sector experts collected by several different research organisations. Kaufmann *et al.* (2006) use an unobserved

components model to construct the government effectiveness measure on the basis of these variables. The measure is therefore based on a broad set of information. This is an advantage given the complex array of characteristics and resources that define states' administrative capacities. States' relative administrative capacities are mostly as we would expect. Greece, Italy and Portugal have lower scores than the other 12 member states. The Nordic countries, the UK and the Netherlands have relatively high scores. Perhaps surprisingly, Luxembourg ranks high in terms of government effectiveness, despite the small size of its government.

It has also been suggested that there are essential differences between states regarding their 'specific national culture of digesting adaptation requirements' in response to EU directives (Falkner *et al.* 2005: 319). Falkner *et al.* construct a typology of the EU-15 member states, labelled 'worlds of compliance'. The typology purports to capture the essence of typical national responses to demands for adaptation from the EU. The typology includes a range of factors such as the political importance of compliance with EU law, and the predominant logic followed by relevant actors within each state (Falkner *et al.* 2005: 322). There are three categories in this typology. The 'world of law observance' consists of Denmark, Sweden and Finland. The 'world of domestic politics' consists of Austria, Belgium, Spain, Germany, the United Kingdom and the Netherlands. The 'world of neglect' consists of Greece, Portugal, Luxembourg, France, Ireland and Italy. In the world of law observance, compliance is the dominant norm followed by both political and administrative elites. In the world of domestic politics, while administrative elites adhere to this norm, political actors typically do not. In the world of neglect neither political nor administrative elites adhere to the norm of compliance with EU law (Falkner *et al.* 2005: 325). In the world of law observance 'transposition is typically... on time and correct', in the world of domestic politics it is typically 'on time and correct only if there is no conflict with domestic concerns', while in the world of neglect it is typically 'late and/or "pro forma"' (Falkner *et al.* 2005: 322).

National cultures: States in the worlds of domestic politics and neglect comply later than states in the world of law observance.

The above expectation is clear. However, whether this is a valid explanation of variation in compliance is debatable. This has implications for the way in which 'worlds of compliance' are treated in the following analysis. On the one hand, Falkner *et al.* (2005: 319) state that 'according to our findings, the relatively best point of reference for predicting the fate of any forthcoming case of policy implementation is in fact the specific national culture of digesting adaptation requirements'. This could imply that it is appropriate to treat these distinct national cultures as an independent variable when explaining variation in compliance. On the

other hand, typologies are not explanations. Moreover, although the typology incorporates qualitative information about a wide range of national adaptations other than the six directives studied by Falkner *et al.*, it is not entirely independent of member states' compliance with these six directives. This could imply that it is more appropriate to exclude the worlds of compliance variable from the following analysis. The following section presents the results of an analysis with the worlds of compliance typology, but a separate analysis was also conducted without this variable. Fortunately, the results did not differ substantively.

Analysis

Table 1 contains two Cox regression models (Box-Steffensmeier and Jones 2004: Chapter 4; Cox 1972) of the delay in transposing directives essentially correctly. The cases in these analyses consist of member states' compliance performances on each of the six directives. Cox regression is an event-history modelling technique. This technique facilitates the analysis of the possible causes of a particular event (here, the advent of essentially correct transposition) at a particular point in time (here, months after the deadline for national transposition specified in each directive). Cox regression facilitates the inclusion of censored cases in the analysis. In this study, censored cases are those directives that were not transposed correctly between the deadline for national transposition in each directive and the end of Falkner *et al.*'s (2005) study in April 2003. The dependent variable in the Cox regressions is the so-called hazard rate, or 'risk', of correct compliance occurring. The calculation of the hazard rate uses information on both censored and uncensored cases. Censored cases provide useful information; we might not know exactly how long it took the member state to comply, but we do know that it took at least as long as the period of time between the deadline and the end of Falkner *et al.*'s study.

The first model in Table 1 includes the variable 'states' disagreement with directive'. Austria, Sweden and Finland were not involved in the decision-making on the four directives that were adopted prior to their accession in 1995, and thus have missing values on this variable. Therefore, this first model is applied to a sub-set of 79 cases. The second model excludes the variable 'states disagreement with directive' and so can be applied to all 91 cases.¹

The coefficients in Cox regression models estimate the change in the hazard rate or 'risk' of compliance due to a one-unit increase in the independent variable of interest. The exponent of each coefficient, reported in Table 1, is the proportional change in the hazard rate due to a one-unit increase in the independent variable. They can therefore be interpreted in terms of the percentage change in the hazard or risk of compliance as a result of a one-unit increase in the relevant independent variable.

The findings suggest that the extent of member states' disagreement with directives does not affect the hazard of correct transposition. This finding is

TABLE 1
COX REGRESSIONS OF THE HAZARD OF COMPLIANCE WITH DIRECTIVES

	Model I, with 'state's disagreement with directive' Exp b (s.e.)	Model II, without 'state's disagreement with directive' Exp b (s.e.)
<i>Member state characteristics in relation to directives</i>		
State's disagreement with directive	1.00 (0.01)	—
Misfit (Low misfit = reference category)		
Medium misfit	0.70 (0.23)	0.75 (0.24)
High misfit	0.23 (0.13)***	0.41 (0.19)**
<i>Directive characteristics</i>		
Discretion	1.03 (0.02)**	1.04 (0.02)***
Length	0.96 (0.01)***	0.94 (0.01)***
<i>Member state characteristics</i>		
Decentralisation	0.60 (0.15)**	0.64 (0.15)*
Corporatism	1.45 (0.38)	1.32 (0.31)
Government efficiency	0.99 (0.04)	1.00 (0.04)
<i>National culture (World of law observance = reference category)</i>		
World of domestic politics	0.70 (0.45)	1.57 (0.85)
World of neglect	0.29 (0.17)**	0.69 (0.31)
Likelihood ratio	23.54	23.86
p	0.01	0.00
n	79	91

Cox regressions. Two-tailed tests of significance. * $p \leq 0.10$; ** $p \leq 0.05$; *** $p \leq 0.01$.

Dependent variable: Delay in essentially-correct compliance as assessed by Falkner *et al.* (2005). NB: Since the coefficients are exponentiated, the size of the standard errors relative to the coefficients is not indicative of statistical significance.

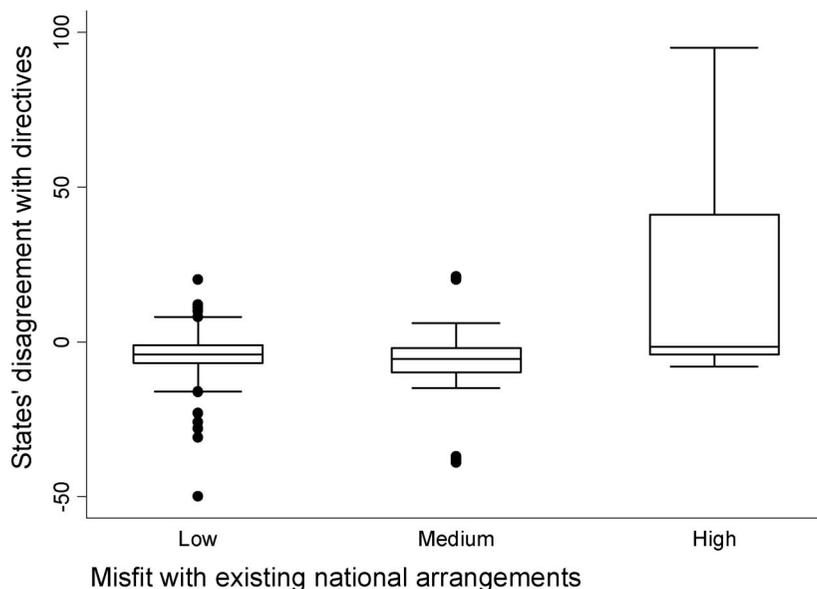
contrary to the first hypothesis concerning states' incentives to deviate. The first hypothesis posits that states comply later with directives with which they disagreed at the decision-making stage. Accordingly, states' disagreement with directives should have a negative effect on the likelihood of correct transposition at any given time point, and the exponent of the coefficient should be less than one. However, the exponent of the coefficient is exactly one, indicating that an increase in a state's disagreement with a directive does not change its risk of compliance. Nonetheless, as will be discussed shortly, there is a significant relationship between disagreement and misfit.

In accordance with the misfit hypothesis, a high level of misfit is associated with a significantly lower hazard of correct transposition at any given time point. In the first model, which applies to the sub-set of 79 cases, a high level of misfit decreases the hazard of compliance by 77 per cent ($\text{Exp}(b) = 0.23$) compared with a low level of misfit. In the second model, which applies to all 91 cases, member states with a high level of misfit have a hazard of complying that is 59 per cent less than states with low misfit

(Exp(b) = 0.41). In both models, member states with medium levels of misfit have a substantially lower risk of compliance than states with low levels of misfit, although the differences are not statistically significant.

There is a strong and significant relationship between states' incentives to deviate, as measured by their disagreement with directives, and misfit. This does not contradict the above finding that disagreement does not affect compliance. However, it does suggest that misfit tends to cause disagreement with the contents of directives. Figure 2 depicts this relationship. States whose existing national arrangements do not fit with the demands of directives tend to disagree with those directives during the decision-making stage. The boxplots in Figure 2 show the distributions of the level of disagreement by the level of misfit. Recall that disagreement was measured using Council documents detailing the discussions held prior to adoption. Disagreement is measured by the number of times each member state disagreed with any particular provision of the final directive minus the number of times each member state approved of any particular provision. The values range from -50 to $+95$. Values of around zero indicate that member states expressed little disagreement or approval, or that they

FIGURE 2
MISFIT AND POLITICAL OPPOSITION



Sources: Total misfit: Falkner *et al.* (2005); States' disagreement with directives: author's own research. The Mann-Whitney Test indicates that cases with high misfit are associated with significantly higher levels of disagreement than are cases with low levels of misfit ($z = -1.69$; $p = 0.09$), and than cases with medium levels of misfit ($z = -1.98$; $p = 0.05$).

expressed roughly equal amounts of disagreement and approval. The cases with high levels of misfit have significantly higher levels of disagreement (on average 18.70; standard deviation 34.57, $n = 10$) than cases with low (average = -5.45 ; s.d. = 12.79; $n = 42$) or medium levels of misfit (average = -6.85 ; s.d. = 12.79; $n = 26$). Note that it is also this high level of misfit that is associated with a significant decrease in the hazard of timely compliance according to the coefficients in the Cox regression models.²

The multivariate models support the third and fourth expectations regarding the characteristics of directives. The third hypothesis stated that directives which grant more discretion to member states will be complied with sooner. Consider the second model presented in Table 1 (the results are substantively the same for the first model). The discretion variable is the percentage of major provisions in each directive that grant member states discretion to pursue various policy actions. Therefore, the exponent of the coefficient associated with the discretion variable ($\exp(b) = 1.04$) indicates that for every one percentage point increase in discretion, the hazard of compliance increases by four percentage points. The length of each directive is measured simply by the number of major provisions it contains. Each additional major provision reduces the hazard of compliance by six per cent at any give time point.

The final variables in the models refer to characteristics of member states. There is some evidence that two of these four variables have an impact on the timeliness of compliance. In line with the fifth hypothesis, member states with more decentralised political systems have a lower risk of complying with directives. This is a strong and statistically significant relationship. In line with the sixth hypothesis, member states with more corporatist patterns of public-private relationships are more likely to comply with directives at any given time point. However, the relationship between corporatism and compliance is weaker, and falls short of conventional standards of significance.

Government effectiveness is not associated with significant variation in the hazard of compliance at any given time point. The exponentiated coefficient associated with the variable government effectiveness does not differ markedly from one. This indicates that more effectively governed states do not have a higher risk of complying.

The coefficients associated with worlds of compliance are not consistently significant. This indicates that states in the world of domestic politics and the world of neglect do not have a significantly lower risk of compliance than states in the world of law observance. The exponentiated coefficient associated with the world of neglect is below one, as expected, indicating that states in the world of neglect are somewhat less likely to comply, and it is statistically significant in the first model. However, the coefficient is not statistically significant in the second model that includes all the cases. Moreover, the coefficient associated with the world of domestic politics is not robust. The exponentiated coefficient is below one in the first model, in

line with the expectation, but above one in the second model. The two models presented in Table 1 were also estimated without the variables referring to the national implementation cultures. This did not affect the main findings presented here.

Conclusions

Falkner *et al.* (2005: 317) conclude that ‘no causal condition pre-supposed by existing theories is able to explain our empirical observations. This suggests, once again, that the search for law-like generalisations and for simple isolated causes that could explain complex empirical phenomena is futile (see, for example Scharpf 2002)’. By contrast, the present analysis of the information collected by Falkner *et al.* reveals significant empirical regularities in compliance that accord with theoretical expectations. Certainly, no single variable could account for variation in compliance with the six directives and 15 countries studied. Given the pattern of variation observed, we would not expect that any single variable could perform such a feat. However, the search for generalisations need not be combined with the view that a single causal factor is behind variation in the phenomenon under investigation. In the present study, expectations were formulated regarding the impact of several potential explanatory variables at three levels of analysis. None of these expectations implies that the factors proposed by the other expectations do not matter. When there is reason to anticipate that several factors influence the phenomenon under investigation, and it is known that the values of these factors vary in the cases studied, it is essential to estimate the effects of these factors in a multivariate analysis. Examining the relationship between a supposed causal factor (for example misfit) and compliance without controlling for the other supposed causal factors leads to biased estimates of the effect of that factor. This is the well-known problem of omitted-variable bias. The analysis presented here includes such a multivariate test, and also incorporates censored cases appropriately.

The evidence presented here in support of the misfit hypothesis stands in stark contrast to Falkner *et al.*'s (2005: 291) conclusion that their ‘results clearly disprove the misfit hypothesis’. Falkner *et al.* even conclude that there is an inverse relationship between the degree of misfit and the delay in compliance. By contrast, I show that high levels of misfit are associated with a significantly lower likelihood of compliance at any given time point. This is an important conclusion because, as Falkner *et al.* (2005: 289) note, this hypothesis has prevailed in much of the recent literature on compliance. Their misspecification of the effect of misfit could be due to one or a combination of the following limitations in their analysis. First, they perform their analysis at the level of member states’ ‘average’ transposition delays across all six directives (Falkner *et al.* 2005: 291). In doing so, they examine whether ‘average’ delay correlates with ‘average’ misfit at the level

of the member states. The misfit hypothesis, however, refers to the relationship at the level of individual directives. Second, they do not conduct a multivariate analysis. Third, censored cases are not dealt with appropriately. Fourth, misfit, which is an ordinal variable, is treated as an interval-level variable by taking its average across member states.

The evidence suggests that there are linkages between the decision-making stage prior to the adoption of directives and the transposition stage thereafter. The extent to which member states disagree with the contents of directives is not an accurate predictor of the likelihood of compliance at any given time point after the deadline. This is entirely consistent with Falkner *et al.*'s (2005: 278) rejection of the hypothesis that non-compliance is 'opposition through the back door'. However, high levels of misfit are associated with a lower likelihood of compliance at any given time point, and member states tend to disagree significantly more with directives that do not fit with their existing national arrangements. In this respect, a high level of disagreement during the decision-making stage is associated indirectly with non-compliance. Although there are exceptions to the rule, in the cases examined here, states generally do not welcome radical changes to their existing national arrangements.

The importance of the discretion granted to member states in each directive highlights another linkage between the decision-making and transposition stages. In congruence with the hypothesis, directives that grant more discretion are significantly more likely to be complied with at any given time point after the deadline specified in the directive. Discretion grants member states the autonomy to pursue one of several policies while still complying with their legal obligations. This room for manoeuvre expedites compliance. Like misfit, discretion is also linked to disagreement. Previous research on the determinants of discretion revealed that EU laws generally grant more discretion to member states on policy issues that give rise to more controversy (Franchino 2004). In other words, when member states disagree with one another, they grant themselves discretion to pursue a range of policy options while being in compliance with the European law. This positive relationship between disagreement and discretion is a particularity of the EU. In other political systems, disagreement among decision-making actors is associated with the granting of low levels of discretion to implementation agencies (Bendor and Meirowitz 2004; Epstein and O'Halloran 1999; Huber and Shipan 2002). One feature of the EU that could explain the positive relationship between disagreement and discretion is the blurred boundaries between decision-makers and implementers. With regard to directives, member states are among the decision-makers prior to the adoption of directives, and member states are also responsible for transposing the directives. Consequently, national governments in the Council may anticipate their roles as implementers when setting the levels of discretion incorporated into EU legislation.

In general, state-based explanations received less empirical support in the findings presented here. This is in line with Börzel's (2003) research in which she observed more variation among policies within states than among states regarding compliance with European environmental law. Four factors referring to the characteristics of member states were examined in the present study: decentralisation of power, corporatism, government effectiveness and national cultures of compliance. Of these, decentralisation explains some of the variation in compliance. States with more centralised power structures tend to comply sooner. There is also some, albeit weaker evidence that states in which corporatist arrangements are more prevalent tend to comply sooner. Neither government effectiveness nor national cultures of compliance are significantly related to variation in the timeliness of essentially correct transposition. The lack of significance of national compliance cultures is remarkable given that the typology of cultures was based at least partly on states' performance on the six directives examined here.

Future research might broaden and deepen Falkner *et al.*'s (2005) study in several respects. The study raised the bar for compliance studies by examining real compliance in a comparative and quantitative research design, rather than readily-available information on infringements and the timing of the national implementation measures reported by member states. The detailed examination of cases required for this necessitated a focus on a relatively small number of directives. This raises the question of how generalisable are the results from six labour market directives in the mid-1990s to compliance processes in other policy areas of the EU. The inferences we draw would be strengthened by similar studies of compliance in other policy areas.

Future research might also deepen Falkner *et al.*'s study by exploring the linkages between aspects of the decision-making stage and real compliance with the individual provisions of directives. This involves focusing on variation in compliance within member states, including variation in compliance with different parts of directives (e.g. Steunenberg 2007). The findings reported here highlight the importance of factors that feature prominently in the decision-making stage: disagreement and discretion in particular, and the related concept of misfit. To examine the impact of these factors more thoroughly, theoretically-informed research designs are needed that include measurements of compliance with the individual provisions of each directive, rather than compliance with each directive as a whole. During the decision-making stage, member states generally do not disagree with proposed directives in their entirety, but rather agree with certain provisions and disagree with others. Similarly, discretion is generally granted to member states in relation to specific provisions within directives, not in relation to directives as a whole. Therefore, comparative research on compliance with the individual provisions of directives would yield further insights into the subtle linkages between decision-making and compliance.

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Notes

1. Table 1 reports Cox regressions using the exact-partial calculation for dealing with ties (Cleves *et al.* 2004: 142). This calculation assumes that the tied observations, cases with the same duration before compliance, really did occur after the same duration following the deadline. Two other ways of dealing with tied observations, the marginal calculation and the Breslow approximation, produced almost identical results.

One of the most important assumptions of Cox regression is the proportional hazards assumption. This assumption is not violated by these data. The assumption is that the effect of a change in each independent variable is proportional and constant over time (Box-Steffensmeier and Jones 2004: 131–2). The assumption was tested in three standard ways. First, a link test was performed on each of the two models presented in Table 1 (Cleves *et al.* 2004: 175). Second, the Grambsch and Therneau global test was applied to both of the models. This test indicates whether there is evidence of non-proportional hazards in the model as a whole (Box-Steffensmeier and Jones 2004: 135). Third, Harrell's rho tests were performed on each independent variable separately. Not one of these tests gave a significant p-value, indicating that there is no reason to reject the proportional hazards assumption.

2. A separate Cox regression (not reported) was performed including the variable 'states' disagreement with directives' and excluding the 'misfit' variables, and the variables relating to discretion and the length of the directives. 'States' incentive to deviate' was still not associated with a significant effect.

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