Decoupling practical and legal compliance: Analysis of member states' implementation of EU policy

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Decoupling practical and legal compliance: *Analysis of member states’ implementation of EU policy*

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**Abstract:** Despite the vast literature on policy implementation, systematic cross-national research focusing on implementers’ performance regarding different policy issues is still in its infancy. The EU policies are conducive to examining this relationship in a comparative setting, as the EU member states need to implement various EU directives both legally and in practice. In this study, we venture a first attempt to analyze the relationship between legal conformity and practical implementation and the conditions for practical deviations in 27 member states across issues from four policy areas (Internal Market, Environment, Justice and Home Affairs and Social Policy).

In line with existing approaches to EU compliance, we expect that the policy preferences of domestic political elites (“enforcement”) affect their incentives to “decouple” practical from legal compliance. Instead, administrative and institutional capacities (“management”) as well as societal constraints (“legitimacy”) are likely to limit the ability of policy-makers to exert control over the implementation process. The findings suggest that practical deviations arise from policy-makers’ inability to steer the implementation process, regardless of their predispositions towards internationally agreed policies. The results have strong implications for the effective application of international rules in domestic settings, as they illustrate that political
support for the implementation of “external” policy does not ensure effective implementation in practice.

**Keywords:** decoupling, EU compliance, legal conformity, practical implementation

**Introduction**

What is the relationship between legal and practical implementation across different countries and issue areas? Under what conditions do implementation outcomes deviate from legal statutes? For many years, such questions have motivated vigorous debates among scholars interested in the implementation of public policy in various domestic contexts (cf. Bardach 1977; Pressman & Wildavsky 1973; Torenvlied 2000; Treib 2014). Despite the vast literature on policy implementation, systematic cross-national research focusing on implementers’ performance regarding different policy issues is still in its infancy.

The policies adopted by the European Union (EU) provide a unique opportunity to study the implementation of separate issues across different countries, as the EU stipulates common requirements that have to be implemented by all member states. However, cross-country and cross-issue comparative studies generally employ rather indirect indicators of member states’ implementation performance that do not sufficiently capture the legal conformity of domestic measures and provide even less information about their implementation in practice (Hartlapp & Falkner 2009). While carefully crafted case studies generally report the existence of “decoupling” between legal and practical implementation of EU laws (e.g., Falkner et
al 2005, Versluis 2007), there is no systematic approach to test the validity of these findings across countries and issue areas.

In this study, we make a first attempt to analyze the relationship between legal conformity by legislative authorities and practical implementation by administrative actors in a cross-national and cross-sectorial framework. Following more general studies of policy implementation, we address the question under what conditions legislative authorities are willing and capable of steering the implementation process of EU rules (practical compliance) and prevent deviations from formal compliance (“decoupling”) in 27 member states across different policy areas.

To address the question in the context of EU implementation, we combine prominent theoretical approaches to state compliance with international rules. Thus, EU integration studies emphasize the importance of the policy preferences of state actors (“enforcement”), their political and administrative capacities to implement the EU laws (“management”) and the perceived societal legitimacy of formal rules (“legitimacy”). Furthermore, compliance consists of both legal and practical implementation phases that require the involvement of different political and administrative actors. In order to explain practical implementation and decoupling, state-level theories should be adjusted to account for the willingness and ability of political actors to control the implementation activities of bureaucratic agents.

Our findings lend support to the argument that “decoupled” compliance arises from policy-makers’ inability to steer the implementation process and low societal legitimacy for the EU rules. The results have implications for the effective implementation of international rules in domestic settings, as they also show that
political support for the adoption of “external” policies does not guarantee their implementation in practice.

**Decoupling legal from practical compliance?**

The concept of “decoupling” originates from neo-institutional accounts of organizational performance (Meyer & Rowan 1977). The idea rests on assumptions about the existence of an inherent mismatch between external requirements and internal contexts (DiMaggio & Powell 1991; March & Olsen 1989). This notion of “misfit” is strongly rooted in historical institutional assumptions that existing political and administrative practices are generally “sticky”. As a result, it is functional to managers, principals, or policy-makers to signal compliance with external rules only symbolically, while maintaining existing structures. At the policy–practice level, decoupling occurs when rules are unimplemented or routinely violated.

Studies of policy–practice decoupling suggest that policies are rarely a strong predictor for actual behavior by target groups (see Bromley & Powell 2012 for a recent overview). In the context of EU policy-making, decoupling reflects the extent to which practical implementation lags behind the legal implementation of EU rules. Thus, it captures non-compliant practical deviations from domestic measures adopted in response to EU requirements. Similar to organizational studies, different case studies have shown that the “the law in practice” often deviates from “the law of the books” (e.g., Bailey 2002; Haverland 2000; Versluis 2007). So far the most

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2 More general theories of decoupling also incorporate the concept of ‘mimicry’, which implies that organizations often copy or learn from the best practices and adjustment techniques in other organizations in the absence of clear guidelines (“reverse” decoupling). In the EU context, however, decoupling is generally used to describe deviations from formal rules that do not comply with the EU requirements.
comprehensive analysis of practical implementation across 15 member states reveals serious gaps in domestic enforcement systems, even if compliance exists on paper (Falkner et al. 2005). Whereas most of these insights come from environment or social policy, relatively little is known of how the concept of decoupling translates to other policy fields and to what extent decoupling is a widespread political phenomenon. From an institutional perspective, “decoupled” compliance is only one possible outcome of policy implementation, where states can fully comply with the EU requirements or fail to do so altogether (both legally and in practice) (Bromley & Powell 2012; Dimitrova 2010). Furthermore, assumptions about the prevalence of bureaucratic drift disregards the opportunities of political actors to control the implementation process by ex-ante and ex-post instruments for monitoring and penalizing policy deviations (Epstein & O’Halloran 1999; McCubbins et al. 1989). Thus, theory-oriented analysis of policy implementation should focus on the conditions under which decoupling occurs in multi-level-implementation settings.

**Theoretical approaches to EU policy implementation**

Many theory-oriented studies on the impact of European integration on domestic policy and practice have adopted neo-institutional insights and focused on the degree of (mis-)fit between European rules and domestic institutional and regulatory traditions as one the central factors explaining implementation performance (e.g., Caporaso & Jupille 2001; Knill & Lenschow 1998). Low levels of compatibility between European policy demands and domestic policies or institutional arrangements are expected to obstruct implementation by increasing the
adjustment costs to a level that political and administrative actors are unable or disinclined to bear (Falkner et al. 2005; Héritier 1996).

However, the mechanistic conception of the misfit hypothesis has been widely criticized by different strands of literature on the basis that it neglects the role of agency (Mastenbroek 2005; Treib 2014), which has urged scholars to modify their theoretical arguments by including auxiliary or mediating factors (e.g., Haverland 2000; Knill & Lenschow 1998; Risse et al. 2001). Moreover, a proper conceptualization of the misfit argument requires specifying the mechanisms behind domestic (lack of) compatibility with EU requirements. In order for misfit to have an impact on policy outcomes it should trigger opposition by domestic actors to comply with the EU rules (Haverland 2000; Steunenberg 2006). Alternatively, misfit could translate in capacity-limitations reducing the ability of administrative and political actors to meet the EU requirements or emanate resistance by negatively affected citizens (Caporaso & Jupille 2001; Risse et al. 2001). These arguments have urged scholars to unpack the misfit hypothesis by focusing on the willingness and capacity of state actors to comply with EU rules (Börzel et al. 2010; Thomson et al. 2007, Toshkov 2010). States are expected to willfully defect from international agreements, if the perceived benefits exceed the costs of non-compliance (“enforcement” approach). Whereas the benefits of non-compliance are associated with deviating preferences by political actors, the costs are reflected in the perceived threat of detection and ensuing sanctions (Downs et al. 1996; Fearon 1998). Alternatively, violations could be involuntary and transpire when a government lacks the necessary resources or cannot muster sufficient bureaucratic support to comply with an international agreement (Chayes & Chayes 1993; Tallberg 2002).
(“management” approach). Finally, recent studies have also incorporated constructivist assumptions about socialization mechanisms as drivers for compliance with EU law (Börzel et al. 2010) (“legitimacy” approach). Thus, general perceptions about the legitimacy of legal outputs are expected to affect the implementation process by state actors.

While these theories inform us about the most relevant factors explaining why governments / states (fail to) comply with international agreements, general theoretical approaches do not acknowledge that compliance comprises distinct phases: legal and practical implementation (Treib 2014), which are also executed by different actors: legislators and national bureaucrats (Steunenberg 2006). In other words, prominent theoretical ideas about implementation should be adjusted to account for the willingness (preferences) and ability (constraints and capacities) of political elites to control the implementation by administrative actors.

**Political preferences**

Studies focusing on the enforcement approach generally assume that political actors are capable of steering the implementation process in accordance with their policy preferences (Downs et al. 1996; Fearon 1998). In the context of EU policy implementation, the responsibility of drafting legislative outputs often falls in the hands of national ministries. Furthermore, ministries assist administrative actors by allocating resources, providing guidelines and monitoring practical implementation (Steunenberg 2006). Consequently, the likelihood of compliance is expected to
decrease, if national political actors disagree with the content of a EU directive (Thomson et al. 2007).

In these circumstances, “enforcement” scholars expect that effective monitoring and sanctioning by international supervisory authorities is required to force unwilling states into compliance (Downs et al. 1996). In the EU context, non-compliance triggers infringement proceedings by the EU Commission that could ultimately lead to referral to the European Court of Justice (ECJ). Furthermore, the likelihood of detection of legal non-compliance by the Commission is relatively high, as member states are required to notify all their relevant legislation on a particular directive (Tallberg 2002; Zhelyazkova & Yordanova 2015). As a result, the threat of enforcement by the Commission is likely to push recalcitrant ministers to at least formally comply with the EU rules. However, given that the Commission lacks resources to fully monitor the application of EU laws across all member states, unwilling ministers will be less inclined to pay the costs of implementation by committing resources to the implementation of policies that they dislike. Thus, we formulate the following hypothesis:

**H1**: Lower levels of political support for compliance a) decrease the likelihood of practical compliance and b) increase the likelihood of decoupling between legal and practical compliance

*Political constraints and administrative capacities*

Management approaches are generally more flexible in incorporating the role of political and administrative actors by focusing on political constraints and administrative capacities as important factors determining the ability of state actors...
(Börzel et al. 2010). Thus, policy-makers often face difficulty in steering the activities of domestic implementing actors to reach their most desired outcome (McCubbins et al. 1989; Moe 1984), even if they support the implementation of a policy.

Political constraints are generally reflected in the number of veto players that could block a policy outcome (Tsebelis 2002). In the Europeanization literature, a higher number of veto players is generally expected to increase member states’ non-compliance with EU law (e.g., Bailey 2002; Börzel et al. 2010; Haverland 2000; Héretier 2001). This argument partially hinges on the assumption that a higher number of policy-makers negatively affects the clarity and the precision of legislative statutes (Hill & Hupe 2002; May 2003). Even if implementers have no incentives to deviate from legislative outcomes, domestic rules adopted by multiple policy-makers often incorporate incoherent and ambiguous policy objectives that impede the ability of bureaucrats to implement policies in a meaningful way. Moreover, more general implementation models show that a higher number of veto players decreases the ability of legislative actors to effectively monitor and sanction policy deviations. In particular, implementation actors can exploit disagreements between politicians and execute different policy outcomes, while avoiding sanctions, if at least some legislators are likely to benefit from bureaucratic drift (McCubbins et al. 1989; Torenvlied 2000).

**H2:** A higher number of domestic policy-makers (veto players) a) decreases the likelihood of practical compliance and b) increases the likelihood of decoupling between legal and practical compliance.
Management-oriented studies also expect that involuntary non-compliance results from capacity-limitations by administrative actors (Börzel et al. 2010; Chayes & Chayes 1993). In most political settings, legislative actors must rely on already established bureaucratic institutions that may lack the necessary capabilities to properly implement legislative outcomes (Huber & McCarty 2004). Even if legislative proposals win sufficient support by political actors, effective implementation depends on the proper functioning of deeply entrenched domestic institutions that are less susceptible to adaptation pressure than national laws (e.g., Caporaso & Jupille 2001; Knill & Lenschow 1998; Risse et al. 2001). Whereas studies of EU policy implementation have shown that bureaucratic capacity plays an important role in determining the speed of compliance with EU law (e.g., Mbaye 2001; Toshkov 2010), effective bureaucracy is likely to be even more crucial for the practical implementation of national laws, where administrative actors have more responsibility in executing implementation tasks in line with the policy objectives.

In addition, both policy-makers and bureaucratic agents rely on the ability of national enforcement and judicial systems to ensure that law violations are prosecuted and punished. For example, speedy and impartial court proceedings are expected to favor effective practical implementation. Conversely, if domestic courts and enforcement actors generally lack resources to ensure law observance, it is unlikely that legal compliance with EU directives would trigger behavioral change. For example, in an analysis applied to the EU-15 member states, Falkner et al. (2005: 271-276) discovered major shortcomings in the enforcement systems of several countries.
Domestic bureaucratic and institutional capacities also influence the incentives of administrative actors to follow the legal requirements. As bureaucratic capacity declines, administrative actors recognize that their ability to take actions that comply with legislation also declines, diminishing their incentives to ensure proper implementation of policy outcomes (Huber & McCarty 2004). In the same vein, if administrative actors perceive that national courts and enforcement bodies are unable to enforce EU laws, they will be more disinclined to prioritize and put effort in their proper implementation.

**H3:** Lower national administrative and institutional capacities a) decrease the likelihood of practical compliance and b) increase the likelihood of decoupling between legal and practical compliance.

**Societal legitimacy of EU rules**

Finally, the perceived legitimacy of the adopted policies is also expected to play an important role in explaining administrative implementation. According to legitimacy approaches, rules are complied with not only because laws ought to be obeyed but also because the rules are set by institutions that enjoy a high degree of public support (Börzel et al. 2010; Hurrell 1995). In the case of EU policy-making, transferring powers to the EU institutions has made European integration more politicized in public debates (Hooghe & Marks 20092008?), increasing the awareness of citizens about the impact of EU law on domestic policy. In addition, recent models of compliance with EU law predict that the implementation of illegitimate laws (i.e., EU laws that have low societal support) undermine law observance in
transitional democracies (Slapin 2015). Because illegitimate rules are less likely to be adhered to, administrative actors are also less likely to put effort in ensuring their proper implementation.

Furthermore, from the perspective of general implementation studies, societal support for a particular policy is expected to increase the visibility of law violations. Implementation models show that relying on signals about non-compliance (“fire-alarm”) is a more efficient way to control implementation than active monitoring (“police-patrol”) (McCubbins & Schwartz 1984). Because governments and supranational actors expect that negatively affected citizens will voice their discontent against policy deviations, strong societal support for a EU policy is likely to dissuade implementers from deviating from the legal outputs.

**H4:** Higher levels of societal support regarding EU rules a) increase the likelihood of practical compliance and b) decrease the likelihood of decoupling between legal and practical compliance.

**Research design: data-collection on legal and practical implementation**

The major challenge of existing research is measuring practical implementation in a manner that enables comparative analysis across member states and policy areas (Mastenbroek 2005; Treib 2014). In this study, practical implementation is defined as the actions taken by implementation actors (civil servants, implementation agencies, etc.) established and/or coordinated by national ministries that carry the responsibility of ensuring the proper application of EU rules.
We rely on external evaluation reports to extract information about legal and practical implementation. These reports were prepared by consultancies, most of which were contracted by the Commission to provide in-depth analysis of member states’ implementation. Thus, our analysis focuses on directives that were considered consequential by at least some EU stakeholders, but excludes directives introducing less substantive demands on the member states.

In the online supplementary appendix we present the directives, the respective evaluation reports and the agencies that prepared them. Conformity studies were prepared several years after the transposition deadlines and cover member states’ compliance in the period between 2007 and 2013. This time period allows us to study both the “old” 15 member states, as well as the “new” member states from Central and Eastern Europe (CEE). To ensure reliability and validity of the data, we only coded reports with explicit compliance assessments (non-conform, incorrect, problematic, etc.) that focused on all major provisions in a directive for each member state. In addition, the reports had to also provide the rationale behind each evaluation. Finally, to investigate member states’ practical implementation of EU rules, the agencies used a variety of methodologies suited to the context of a particular directive (survey questionnaires, document analysis, interviews with stakeholders, etc.). Due to space limitations, we provide further details about the reports and the coding procedure in the online appendix.

In this study, we focus on four policy areas: Internal Market, Justice and Home Affairs (JHA), Environment and Social Policy. The four areas vary in key theoretical and empirical characteristics, which aim to ensure variation in practical implementation, enhance the validity of the findings across directives, and add to
the cumulativeness of the literature on EU policy implementation. First, Internal Market directives generally comprise of de-regulatory (or market-enabling) directives, whereas Environment, JHA and Social Policy directives are re-regulatory (or market-correcting), although to varying degrees (Börzel 2005; Hix & Høyland 2011). There are also pronounced differences within the category of market-correcting policies. While environmental policy mostly regulates product standards (e.g., limit hazardous content in batteries and accumulators), social and immigration policies generally concern the regulation of process standards (employee’s social rights, treatment of refugees) (Scharpf 1996). The four policy areas also differ regarding levels of centralization at the EU level with Internal Market directives being generally more integrated than JHA and Social Policy. Empirically, however, Environment is the most infringement-prone policy area and fewer infringement cases are opened in the area of Social Policy, according to recent Commission reports. Finally, the study contributes to the cumulativeness of the research field by comparing directives from policy areas that have been the focus of research on practical implementation (Environment and Social Policy) with relatively understudied issue areas (Internal Market and JHA) (Treib 2014).

Our final data set contains information on both legal and practical implementation for 24 directives across 27 member states (three Internal Market, three Environment, four Social Policy, and fourteen JHA directives). Because JHA directives are overrepresented in the sample, we verified the validity of the results by excluding them from the analysis. The results remain stable, with the exception of the variable for political constraints (see online appendix).
**Dependent variable(s)**

In this study, we test our hypotheses on both practical compliance and decoupling. Both legal and practical compliance are measured at the directive level and reflect the share of correctly transposed (legal) and applied (practical) provisions relative to all relevant provisions in a directive. Relevant provisions refer to all articles or sub-articles that were assessed as separate issues in the reports and were evaluated as either implemented in conformity or not. Thus, we exclude provisions that are not applicable to particular member states.³

The evaluations of practical implementation are specific to the requirements of a particular provision within a directive. For example, some provisions require particular *institutional arrangements* associated with the allocation of resources for enforcement. For example, Falkner et al. (2005: 36-38) show that the number of inspectors, the type of controls and sanction capacity are key aspects of domestic enforcement systems. In our study, anti-discrimination directives require the designation of equality bodies to provide assistance to victims of discrimination, conduct inspections and publish reports. However, national experts reported that in practice many of the equality bodies lacked sufficient and qualified personnel to fulfill these tasks (Human European Consultancy & BIM 2010). Other provisions necessitate effective information dissemination to target groups. In the field of Internal Market, the Services Directive requires that member states set up Points of Single Contact (PSCs) to disseminate information about procedures and formalities for service

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³ We should note that not all provisions that are relevant for legal compliance are also relevant for practical implementation. Once an EU directive has been incorporated in national legislation, many of its provisions are directly applicable to the citizens and businesses they target and do not need to be handled by administrative actors.
activities in a given member state. However, national experts uncovered that some relevant PSCs do not provide information by electronic means or in another Community language, contrary to the directive requirements (Eurochambres 2011). Additionally, JHA provisions oblige national immigration offices to distribute information regarding visa or residence procedures for students, researchers, asylum-seekers, etc. Again, according to national experts, visa applicants generally do not receive guidance or explanations in some countries. Several directives also contain provisions that are applicable to the particular policy area or specific directives. For example, the Packaging Waste Directive required member states to comply with specific thresholds of packaging waste for glass, plastic, paper, etc. Practical implementation is then evaluated based on the extent to which the member states achieved and maintained the agreed targets (Ecologic & Institute for European Environmental Policy 2009).

Decoupling is measured by subtracting the share of practically applied provisions from the share of legally conforming provisions in a directive. Positive values indicate that legal compliance outperforms practical implementation, while negative values record better application outcomes. Because the latter is likely to follow a different logic from decoupling, negative values are constrained to 0, assuming that decoupling is not present in these cases. Because this measure lumps together high and low levels of compliance as well as reverse decoupling, we constructed another measure, where decoupled compliance is only compared to high levels of legal and practical implementation (i.e., correct transposition and implementation of more than three-thirds of the provisions). In both cases, an increase in decoupling indicates deteriorating practical implementation compared to similar (high) levels of
legal and practical implementation. In Appendix I, we also present the results when applying different thresholds for high compliance.

**Independent variables and controls**

To collect information about the independent variables on political preferences and constraints, we focus on national ministers as the relevant policy-makers. Existing studies show that legal implementation is mostly executed by governments or national ministries (Steunenberg 2006). While patterns of ministerial involvement vary across member states, national ministers are typically responsible for drafting legislative proposals and overseeing the implementation process. In addition to specific evaluations, conformity studies also provide general information about the transposition process (i.e. the main transposition instrument, its date of adoption and the relevant ministries.). If the reports did not specifically identify the responsible ministries, we checked the content of the main transposition measure and consulted the national databases to obtain that information.\(^4\) The date of the main transposition measure was also used to identify other political actors at the time of transposition (e.g., the prime minister). We retrieved the party affiliations of all political actors from the Political Yearbooks of the European Journal of Political Research. Information about political actors’ positions (regarding common asylum and immigration policy, internal market, environmental, and employment policy) was obtained from the Chapel Hill surveys\(^5\) (Bakker et al. 2012).

\(^4\) Although the reports list multiple transposition measures, they explicitly identify the “main” legal instrument. In exceptional cases, we used the law that transposed most provisions of a directive as the main transposition measure.

\(^5\) Cyprus, Malta and Luxembourg are excluded from the explanatory analysis because of missing information in the Chapel Hill survey.
If there were multiple ministries involved, we took the average of all policy positions.
The number of ministers involved in the legal implementation of a given directive is used as an indicator of implementation veto players in a member state. ⁶

To measure institutional and administrative capacities, we employ the “Rule of Law” and the “Government Effectiveness” indicators from the Worldwide Governance Indicators Database (2016). The “Rule of Law” variable measures different aspects of the quality of existing institutions responsible for enforcing domestic rules, such as the quality of the national judicial system, the operation of the police force, its ability to limit crimes, etc. “Government Effectiveness”, on the other hand, measures the quality of public and civil services. Because these two variables are highly correlated, we test their effects in different models. Both variables are measured at the year of a member state’s transposition of a directive. Societal legitimacy is measured based on various Eurobarometer surveys related to issues from each of the four policy areas. Eurobarometer has regularly asked respondents whether they believe that particular policies should be decided by the national government (coded as 1), or by the EU (coded as 2). The variable is computed by taking the average score for the years we have information on societal preferences regarding a particular policy sector and even a directive, when this was possible. ⁷

The statistical analysis also includes several control variables that could interfere with the effects of political preferences and capacities on practical implementation and decoupling. For example, domestic policy-makers are expected to have higher institutional and administrative capacities, which may explain why they are more prone to implement directives efficiently. However, it is important to control for these factors to isolate the impact of political preferences and capacities on practical implementation and decoupling.

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⁶ We assume that the involvement of different ministers produces more conflicts in decision-making than ideological divergence.
capacity to adapt the EU requirements to specific domestic settings, if directives provide more discretion regarding implementation. A directive’s discretion is measured by the “delegation ratio” (e.g., Thomson et al. 2007) and is calculated as the share of provisions that grant implementation freedom to the member states (i.e., “may”-clauses) relative to all directive provisions. Moreover, we include an alternative indicator for political-level conflict measured as the difference between the prime minister’s sector-specific preferences and the average ministerial preferences based on the Chapel Hill surveys. Because institutional capacities could systematically vary across countries, the analysis compares the performance of Western countries (coded as 1) relative to the CEE member states. We also include policy sector indicators to account for any systematic differences between Internal Market, JHA, Environment and Social Policy directives.

Finally, we account for characteristics of the evaluation reports that could potentially bias the validity of the estimates. For example, longer reports are likely to provide more detailed information about compliance. Furthermore, some reports focus on evaluating directive provisions separately for each country (country-specific), while others analyse separate provisions for all countries together (rule-specific). Country-specific reports may provide more extensive information about a member state’s practical implementation than rule-specific reports do. It is also possible that reports written long after the transposition deadline reveal fewer implementation problems, as member states had more time to apply the EU directives. In order to account for potential biases related to report characteristics, all models control for the structure (rule-specific reports = 1), length (number of pages allotted to a particular country)
and timing of the reports (number of days between the transposition deadline and the publication of the first report).

**Results**

*Descriptive analyses: member state and policy sector differences*

Before testing our hypotheses, we analyze descriptively legal and practical implementation, and the degree of decoupling across member states and policy areas. Figure 1a compares the average scores of member states on both legal and practical compliance. While we observe limited variation across countries, there seems to be some heterogeneity in the extent to which states implement different directives. Furthermore, member states on average implemented between 60% and 90% of all relevant provisions of the 24 directives.

---Figure 1a---

Regarding the two measures for decoupling (Figure 1b), we observe slightly more cross-country and directive-level variation. Country-level differences are generally not significant, although Germany has the lowest average score on decoupling for both measures. It is possible that Germany’s federal system limits the powers of higher-level administrative actors over the implementation process. However, the results remain stable, if we exclude federal states, such as Germany and Austria, from the analysis. In general, we observe more variation in the implementation of different policy issues than systematic differences across member states.

---Figure 1b---
Figure 2 illustrates the association between transposition and administrative implementation across the four policy areas. More generally, we observe a positive relationship in all but one policy area (JHA), while the relationship is most pronounced in the field of Environment. This observation is in line with arguments that the correct transposition of EU environmental policy often requires incorporating detailed administrative practices and technical procedures into national law, which facilitates practical implementation (Falkner et al. 2005: 18) and leads to less decoupling. In line with existing research on Social Policy, the link between legal and practical outcomes appears weaker than for Environment directives (Falkner et al, 2005). Interestingly, Internal Market directives score highest on legal conformity, but with varying degrees of practical implementation. Despite their technical character, Internal Market directives introduce ambitious goals (e.g., liberalization of services and the postal sector) that lead to implementation problems despite political commitments and EU pressure. Finally, the lack of relation between legal and practical implementation for JHA directives is puzzling. A plausible explanation lies in the nature of the policy area. Because JHA directives address sensitive issues, supranational laws often constitute watered-down compromises with weak adjustment pressure on administrative practice. As a result, divergence in administrative implementation persists, despite domestic transposition.
While the relatively few directives prevent us from making generalizations about policy area differences, our small sample is still representative to observed patterns on sectorial variation. In line with the Commission reports, the average number of infringement cases is much higher in the field of Environment than in the other policy fields\(^8\). We further compare the four policy areas in the explanatory analysis.

**Explanatory analysis**

Table 1 presents the results on practical implementation (Models 1 & 2), decoupling practical from legal implementation (all negative deviations) (Models 3 & 4) and decoupled compliance compared to high levels of legal and practical implementation (Models 5 & 6). All dependent variables represent ratios (0-1); and therefore, we employ fractional logit analysis. In the online appendix, we also present the most relevant robustness checks.

--- Table 1 ---

In addition, Models 1 and 2 also examine the relationship between legal and practical implementation. In line with the descriptive analysis, the models show a significant positive association between legal and practical implementation. More precisely, higher levels in legal compliance significantly increase the likelihood that a directive’s provisions will be also implemented in practice. Figure 3 provides a visual representation of the relationship (based on Model 1).

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\(^8\) Furthermore, excluding Environment (strongest relation) or JHA (no relation) does not significantly change the results (see online appendix)
Despite the positive link, the average predicted level of practical implementation is relatively high (i.e., 66% of correctly applied provisions), even if a member state has failed to correctly incorporate most of the EU provisions in national legislation. Thus, while legal compliance improves practical implementation, it doesn’t seem to be a necessary condition for administrative actors to apply the majority of directives’ requirements in practice. One possible explanation is that the implementation process of EU directives doesn’t usually require far-reaching reforms and behavioural change by administrative actors. For example, existing studies show that even the most controversial EU policies are adopted under a “norm of consensus”, taking into account the positions of all member states (Thomson et al. 2006).

Nevertheless and despite the positive relation between legal and practical implementation, the descriptive analysis showed that decoupled compliance is not a rare phenomenon, but it is a common feature of EU policy implementation.

Furthermore, the analysis shows that factors related to the ability of policy-makers to control the implementation process have more leverage than their policy preferences (enforcement approaches). In particular, ministerial support for specific EU sectors does not affect practical implementation. Instead, we find support for management and legitimacy explanations related to the ability of political and administrative actors to comply with EU legislation. Thus, a high number of ministers involved in the policy-making process obstructs successful practical implementation and increases the likelihood of decoupling. Figure 4 shows the effect on decoupling.
with increasing the number of ministers (based on Model 3). There is almost no difference between legal and practical implementation if one minister was involved in the implementation process. The level of decoupling increases to 0.39, if the implementation involves up to 12 ministers. However, we should note that the significant effect of number of ministers on practical implementation is not robust across policy areas.

--Figure 4--

Table 1 also shows that institutional capacities contribute to successful practical implementation and reduce decoupling. Figure 4 illustrates that decoupling decreases from 0.16 to 0.07, as the functioning of judicial and enforcement institutions improves. Although better administrative capacities increase the likelihood of practical compliance, the variable has only a marginal effect on decoupling relative to high levels of compliance. While the literature on EU compliance emphasizes the importance of bureaucratic capacity for directive transposition (Toshkov 2010), the results suggest that the actions of implementers are more influenced by the effectiveness of domestic enforcement and judicial systems than general levels of administrative capacity.

In line with our expectations, EU rule legitimacy is associated with higher levels of practical implementation and lower levels of decoupling. In particular, societal support for a policy helps create a transparent environment for law application and contributes to the legitimacy of the implementation process. As the percentage of societal support for common EU policy increases, the level of decoupling decreases
from 0.18 to 0.05, while the average share of correctly applied provisions increases from 63% to 85%. Furthermore, additional model specifications show that rule legitimacy accounts for variation within policy sectors. While societal support decreases decoupling in Social Policy directives, it may be less relevant for Internal Market directives that have stronger consequences for organised interest groups. In line with the descriptive analysis in Figure 2, Table 1 shows that decoupling occurs less often in the implementation of Environment directives than in the other three policy areas. For example, the average share of incorrectly applied provisions is 20% higher for Social Policy directives and 17% higher for Internal Market and JHA directives.

Regarding the other control variables, directives that grant more discretion to domestic policy-makers over implementation are more likely to be correctly applied in practice, by helping policy-makers adjust supranational goals to domestic needs. Higher preference divergence between the prime minister and the transposing ministers negatively affects decoupling only when legal compliance is high. There is no straightforward explanation for this result. It is likely that threats of ministerial drift and consequent infringement proceedings urge governments to constrain ministers with deviating preferences, so that the latter put more effort into monitoring practical implementation and block policy deviations from successfully transposed directive provisions.

While the length and timing of the evaluation reports do not significantly affect practical implementation and decoupling, the structure of the reports matters for all dependent variables. Thus, rule-specific reports convey significantly more practical problems than country-specific reports. To ensure that the results are not affected
by the structure of the reports, we applied separate analyses for each type (online appendix). While the effects of the variables appear stronger for rule-specific reports, we find that this is because country-specific reports mostly cover JHA directives, resulting in a limited variation for most of the covariates.

Nevertheless, differences in report characteristics do not change the main findings of the study regarding practical implementation and decoupled compliance. Thus, decoupled compliance is more likely to result from capacity-limitations of domestic institutions (management) and low levels of societal support (legitimacy) than political willingness (enforcement). In other words, political actors can exert only limited influence on policy outcomes beyond legal compliance, if the respective rules do not muster sufficient public support or domestic enforcement and judicial institutions are generally ineffective. The latter finding also lends support to arguments regarding the lack of malleability of domestic institutions relative to formal requirements (Caporaso & Jupille 2001; Knill & Lenschow 1998).

Conclusions

In this study, we ventured a first attempt to study the relationship between legal compliance and practical implementation in a comparative framework across different countries and policy areas. Based on a novel data-set combining information about legal conformity and administrative implementation of 24 EU directives in 27 member states, we find a general positive relationship between legal and practical implementation. This finding adds a more positive note to existing
studies of practical implementation, which suggest that the EU directives are often not followed in practice in the member states (e.g., Haverland 2000; Versluis 2007). At the same time, we also observe that the link between legal and practical implementation is stronger for some policy areas than for others and it is virtually non-existent for JHA directives. One could argue that the high flexibility of EU immigration directives and the resultant transposition outcomes are unlikely to be sufficiently demanding to prompt parallel changes in administrative practice. Future research should try to disentangle the reasons for policy area differences by increasing the number of observations within and between EU policy sectors.

Moreover, our findings provide the first empirical evidence about the conditions under which decoupling occurs in a cross-national and cross-sectorial framework. Our hypotheses combined insights from enforcement, management and legitimacy approaches to EU compliance regarding the willingness and the ability of the relevant political actors to ensure practical compliance and prevent policy deviations from formal compliance (“decoupling”).

The findings from this study suggest that practical implementation is mostly shaped by the institutional capacities of member states (management) and the perceived legitimacy of EU policies by societal actors, while the policy preferences of political actors (enforcement) have little impact on practical implementation. In other words, political actors are generally unable to fully steer the implementation process in their most desired direction, even if their preferences are broadly aligned with the goals of internationally agreed policies. By contrast, public support for EU policy and national institutional settings seem to shape the incentives of administrative actors to comply with domestic legal outputs and EU policy requirements. Nevertheless, we
should acknowledge that our analysis does not directly capture the preferences or ideas of administrative actors regarding legislative outcomes. Accounting for more specific characteristics of the relevant bureaucratic actors proved to be unfeasible, given the quantitative design of the study. Instead, in-depth case-study approaches are better suited to analyze implementers’ ideas and preferences towards EU policies.

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Supporting information
Additional supporting information may be found in the online version of this article at the publisher’s web-site:

Appendix I: Descriptive statistics & robustness checks
Appendix II: Expert evaluation reports: coding procedure & references to reports

References


