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Fighting Non-Compliance with EU Equality and Social Policies: Which Remedies?

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Harriet Taylor Mill-Institut für Ökonomie und Geschlechterforschung
Discussion Paper 10, 10/2010

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- Development of employment and social policies in the EU,
- Employment and equal opportunities considering the Scandinavian Model,
- Employment and equal opportunities in the New Member States of Middle and Eastern Europe,
- The concept of discrimination in the legal norms of the EU and the extension of non-discrimination principles to other social features,
- Strategies and lobbying of gender equality political players,
- Gender dimensions of the present economic and financial crises. Speakers from European and national research contexts presented their recent work.

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Fighting Non-Compliance with EU Equality and Social Policies: Which Remedies?

Gerda Falkner

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Abstract

This chapter presents in brief the EU's policy geared towards equality issues, both with regard to gender and more broadly. It then discusses (non-) compliance with EU law as a major problem and presents potential remedies. The latter are tailor-made on the basis of findings from two large-scale research projects on EU policy implementation, in the „old" EU15 plus later four countries from Central and Eastern Europe: the Czech Republic, Hungary, Slovakia and Slovenia.

Going beyond the traditional „compliance" debate that is ongoing in various journals and geared towards a specialized political science sub-community, this contribution focuses on the wider social reform issues arising from the finding that there are serious compliance problems almost everywhere in the EU, particularly when enforcement and application of the equality and working time standards are considered and not only formal „transposition" into domestic law.

Table of Contents

1 Introduction: EU equality policies and the problem of (non-) implementation 1
2 Challenges and Remedies: The World of Law Observance 5
3 Challenges and Remedies: The World of Domestic Politics 7
4 Challenges and Remedies: The World of Transposition Neglect 8
5 Challenges and Remedies: The World of Dead Letters 9
6 Conclusions and Outlook 13
References 17

1 Introduction: EU equality policies and the problem of (non-) implementation

There are three main fields of EU social regulation: health and safety, other working conditions, and equality at the workplace and beyond. In 2009, approximately 80 binding norms existed in the three main fields of EU social regulation. Additionally**,** approximately 90 amendments and geographical extensions to such binding norms have been adopted (e.g. to new member states). On top of these binding EU social norms come approximately 120 non-binding policy outputs, e.g. soft recommendations to the member states (Falkner 2010).

With regard to equality, one of three major fields of EU activity in social policy, matters such as equal pay for work of equal value, the equal treatment of men and women regarding working conditions and social security, and even the issue of burden of proof in discrimination law suits were, over time, regulated at the EU level (Hoskyns 1996, Ostner and Lewis 1995). Since the EU's 1997 Treaty of Amsterdam with its new (then) Article 13, a more general equality policy has been developed, targeting discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Bell 2004). It also needs mentioning that in the field of equality, in particular, the European Court of Justice (ECJ) has become a major actor ever since it had provided a broad interpretation of Article 119 on domestic measures to ensure equal pay for both sexes, opening the way for action by the EU.

On the basis of these important regulative developments, Europe's women (and further groups that have often been discriminated) could profit from slowly but surely improved legal rights. However, this chapter will highlight that this is by no means enough. Laws on the statute books can as such never guarantee equality in daily life. This is already problematic with national laws, but even more so in case of a supra-national legal order such as the EU's. In many cases, the EU's provisions are formulated in so-called „Directives" that need „transposition" into domestic law – like a „translation" but with leeway as to the ways and instruments used and to further specifications that may be needed (as long as compatible with the overall goal of the EU Directive).

The causal factors potentially accounting for better or worse compliance with EU policies have in recent times attracted much scholarly debate. Many articles have spelled out hypotheses and tested them in either qualitative or

quantitative research.[1] Facing the steady flow of publications[2] in different journals specialised on European integration, however, one is left wondering about an apparent shortcoming: there is hardly any debate on what could be done to improve the state of affairs. Problem-solving seems not to be a dominant concern of contemporary political scientists, at least not in the realm of the compliance studies literature.[3]

Particularly in the field of EU equality and social policies, though, we dispose of a few large-scale qualitative research projects, a generally rather scarce resource in political science. This actually allows not only to describe the shortcomings of the state of the art in compliance with supranational norms but also, most importantly here, to recommend strategies for improving the situation. Arguably, such an approach can fill the existing gap between analytical studies of EU social policy[4] (which typically miss an in-depth section on the compliance dimension because this would demand additional empirical work and would increase text length), on the one hand, and general studies of European integration (which may contain a discussion of the compliance dimension but do not cover the policy-level, most importantly here: social policy), on the other hand. Although the degree and procedures of Europeanization of social policies in various fields have received excellent academic treatment, including in most recent times (Sindbjerg Martinsen 2009, Natali 2009, Mabbett and Schelkle 2009, Heidenreich and Bischoff 2008, Guiraudon 2007, Braams 2007), the dimension discussed here stayed a research desideratum until very recently.

This article is based on qualitative case studies of six Directives[5] in the EU15 (Falkner *et al.* 2005) and on further 12 qualitative case studies on three Di-

[1] For an overview of the state of the art, see the Living Review in European Governance by Treib 2008.

[2] This paper does not offer a review of the rich literature from the compliance studies field because it is geared towards social policy experts and is facing length restrictions. For an overview of the state of the art and all relevant references, please see the Living Review just cited and, most importantly, Toshkow 2010.

[3] It seems that much of the literature is driven by the data available from EU sources. These refer to the governments' notification of transposition of EU directives and/or to infringement proceedings opened against member states (typically because of non-notification, hardly ever because of incorrect transposition or non-application).

[4] See, most importantly: (Leibfried 2005), (Leibfried, Castles and Obinger 2005), (Obinger, Leibfried and Castles 2005a), (Obinger, Leibfried and Castles 2005b), (Daly 2006), (Starke, Obinger and Castles 2008).

[5] We analysed six labour law Directives from the 1990s that actually altered pre-existing national rules, concerning written information on contractual employment conditions (91/533/EEC); parental leave (96/34/EC); working time (93/104/EC); and the protection of pregnant (92/85/EEC), young (94/33/EC) and part-time workers (97/81/EC).

rectives[6] in new member states from the Central and Eastern European Countries (CEECs), more specifically from the Czech Republic, Hungary, Slovakia and Slovenia (Falkner *et al.* 2008). That we studied different social policy Directives yields insights into a field that is both of immediate relevance for citizens and at the core of political controversies. The case selection also allowed measuring the adaptation requirements actually brought about in the various member states and, finally, the overall impact of EU social policy (although these details are not within the scope of this chapter). Most importantly, for this context here, the studies covered highly equality-relevant Directives such as on parental leave, on the protection of pregnant or young or atypical workers, and on equal treatment in employment.

It should be mentioned here that all qualitative case studies rely on numerous expert interviews with relevant Ministry officials and on control interviews with representatives from trade unions, employer's organisations and NGOs, in addition to the analysis of available legal documents, statistics and the scarce literature available in the field. It is crucial to mention that the information collected in our interviews extends far beyond the realm of the specifically targeted Directives. Most importantly, they revealed what is considered standard procedure and why derogations from typical implementation patterns took place in individual cases. Since the factors classically researched in compliance research (e.g. policy misfit and veto players[7]), when applied across all of our social policy cases and all countries, could not

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[6] We covered the transposition, enforcement and application of three EU Directives: the amended version of the Working Time Directive (2003/77/EC), which aims to improve the health and safety of workers by laying down maximum working time limits and minimum rest periods as well as annual leave entitlements (*the Working Time Directive has hence been studied across the EU15 and the above-mentioned new member states*); the amended Equal Treatment Directive (2002/73/EC), which prohibits direct or indirect gender discrimination as regards access to employment, vocational training and promotion, and working conditions; and the Employment Equality Directive (2000/78/EC), which prohibits discrimination based on religion or belief, disability, age or sexual orientation as regards access to employment, vocational training and promotion, and working conditions.

[7] Conventional theories on EU policy implementation mostly trust that individual causal factors will explain the success and failure of implementation across <u>all</u> EU member states, e.g. the number of veto players or the size of misfit of the act to be implemented. However, this can be regarded as highly questionable taking into consideration that various studies declared the same factor both crucial or vain (Treib 2008: 18), and because our qualitative enquiries have highlighted that even the basic logic of these approaches does not work across the clusters (e.g. because in some countries, political bargaining hardly happens during the transposition phase and therefore, veto players hardly come in at all; another example is that cases with sizeable misfit tend to be prioritised over nitty-gritty detail adaptations in a couple of our interesting case studies, which contradicts the logic that countries should systematically block major adaptations (Falkner, Treib, Hartlapp and Leiber 2005).

explain to our satisfaction the performance differences found, we finally formulated clustered ideal-types.

Indeed, our studies show that different causal factors dominate the compliance performance in *different groups* of countries. The compliance culture favouring dutiful performance both in the bureaucracy and in politics can typically explain cases in the *world of law observance*. In the *world of domestic politics*, transposition is decisively influenced by the extent to which the EU's rules match the political preferences of political parties and major interest groups, while application and enforcement are generally effective. In the *world of transposition neglect*, the decisive factor is administrative inertia at the transposition stage, caused by countervailing bureaucratic interests or malfunctioning routines. Given the huge problems in transposition, practical implementation is of secondary importance. Finally, the *world of dead letters* is very similar to the world of domestic politics when it comes to typical transposition processes. Enforcement and application of the domestic transposition laws, however, are typically obstructed by systematic shortcomings in the court systems, the labour inspectorates and the civil society systems. The main part of this paper will discuss these issues and the arising consequences in more detail (for a brief overview, see Table 1 in the concluding section).

Like in many sub-fields of the social sciences, there is a controversial debate ongoing and chances are that it will never lead to a unitary view on what determines EU policy implementation. In the absence of full consensus, I hold that our qualitative approach benefits from digging deeper than the level of (potentially spurious) correlations between variables. In practical terms, our „worlds of compliance" typology has two main advantages: it is a helpful filter for both

- expectations about causal factors determining the process of EU policy implementation in specific parts of Europe (for this argument see in detail Falkner *et al.* 2007) and, perhaps politically even more important, for
- remedies directly targeting the specific compliance shortcomings typical for each (cluster of) countries.

It is the latter aspect that will be explored in depth for the first time in this article. I will turn to each ideal-typical „world of compliance" describing first the classic procedural patterns we found in the implementation of EU social policies. Relatively more attention will be paid to the results of our more recent study concerning new member states. Second, I will argue which strategies seem most promising to optimise dutiful compliance and a bene-

ficial effect of EU policies in the country cluster in question. This paper concludes with an outlook and a summary with overall recommendations, focusing in particular on the European Commission's role in policy enforcement.

2 Challenges and Remedies: The World of Law Observance

In the world of law observance, transposition of EU Directives is usually both in time and correct even if there are conflicting national policy styles, interests or ideologies, because the compliance goal typically overrides domestic concerns.

This is supported by a 'compliance culture' in the sense of an issue-specific 'shared interpretive scheme' (Douglas 2001: 3149). Such a culture of good compliance with rules can potentially exist on at least three different levels: on the level of public opinion (i.e., the micro level of citizens); on the level of political elites at large (that is actors from the political system that have substantial influence in shaping policies, including, e.g., relevant interest groups); and on the level of only those who are directly concerned with the implementation of EU law (i.e., the relevant expert level). We collected the information about this culture from our expert interviews and we know that it is present at least on the third level mentioned above.[8]

In the world of law observance, application and enforcement of the national implementation laws is according to our findings also characteristically successful, as the transposition laws tend to be well considered and well adapted to the specific circumstances. Enforcement agencies as well as court systems are generally well-organised and equipped with sufficient resources to fulfill their tasks.

Non-compliance, by contrast, typically occurs only rarely and when fundamental domestic traditions or basic regulatory philosophies are concerned. In addition, instances of non-compliance tend to be remedied rather quickly once detected and pursued by the Commission (see also Sverdrup 2003). The three Nordic member states (Denmark, Finland and Sweden) belong to this country cluster.

Can anything be done to make the things that function well in this cluster of countries even better? It is true that *comparatively* less attention will have

[8] But this does not necessarily imply that it also prevails among the whole political elite, or even the entire citizenry, of a particular country. This is a promising field of further empirical investigation.

to be paid to the countries in the world of law observance. Since the latter normally tend to fulfill their duties arising from Community law, the Commission should focus more closely on the other, more problematic worlds. However, we actually found a number of compliance problems in these countries. These were considered to stand in stark contrast with what the experts perceived as the typical modes of implementation in the country. Still, these shortcomings existed and they impinged severely on the outcome in terms of implementation delay for the Nordic countries in our study (Falkner *et al.* 2005: 270, Table 13.6).

One crucial issue here concerns *misfit in the politics or polity dimension*. Some of our Danish and Swedish cases have revealed that significant implementation problems are likely to arise if compliance with a Directive does not merely require policy change, but if it actually interferes with established procedural or institutional traditions. In our cases, the issue being examined was a tradition of social partner autonomy in the regulation of employment conditions. This pattern was called into question because collective agreements could not guarantee full coverage of the workforce. Hence, autonomous transposition of Directives by the social partners, even though explicitly provided for in the Treaties, was de facto not a viable solution for transposing Directives (Falkner, Treib, Hartlapp and Leiber 2005), (Falkner and Leiber 2004).

It could be argued that such interference with deeply entrenched domestic traditions is normatively questionable and thus should best be avoided. Such an argument, however, needs careful pondering. In the cases under consideration, the existing system of autonomous social partnership in effect prevented a group of workers from being able to take legal action in order to assert their rights conferred on them by EU law. In this sense, the EU's insistence on guaranteeing full coverage of the workforce served the purpose of securing the principle of equal rights for all citizens of the European Union. If no such principles are at stake, however, the EU should be very careful to avoid intruding *unnecessarily* in domestic traditions in the area of state–society relations or in constitutive features of the polity. This would help to avert implementation problems and it could prevent heated debates at the domestic level that might otherwise de-legitimise European integration in these countries.

More attention to such aspects during the policy preparation phase (consultation of experts, close administrative contacts) promises an optimal adaptation of EU-level policies to domestic circumstances.

3 Challenges and Remedies: The World of Domestic Politics

Each single act of transposing an EU social Directive tends to occur on the basis of a fresh cost–benefit analysis in the world of domestic politics. Obeying EU rules is at best one goal among many there, and „national" concerns frequently prevail if there is a conflict of interests. Transposition is likely to be timely and correct only where no domestic concerns dominate over the fragile aspiration to comply. In cases of a manifest clash between EU requirements and domestic interest politics, by contrast, non-compliance is the likely outcome. While in the countries belonging to the world of law observance breaking EU law would not be a socially acceptable state of affairs, it is much less of a problem in one of the countries in this second category. At times, their politicians or major interest groups even openly call for disobedience with European duties. Since administrations and judiciaries generally work effectively, application and enforcement of transposition laws are not a major problem in this world – the main obstacle to compliance is political resistance at the transposition stage. Austria, Belgium, Germany, the Netherlands, Spain and the UK belong to this type (Falkner *et al.* 2005: chapter 15).

These countries at the same time feature rather well-developed systems of organised interests, and typically one or many of these influential actors will be keen to see advantageous provisions implemented. Since transposition processes are hence highly politicised, undiscovered violations of European law are usually infrequent. Rather, open resistance will have to be overcome as non-compliance in the world of domestic politics usually arises from the unwillingness of governments or the de facto blockage of the transposition process by other political actors.

Therefore, enforcement in these countries is best ensured if the Commission is able to pursue its infringement proceedings quickly so that the opposition may be overcome by mounting pressure „from above". Additionally, dissemination of information about the rights arising from EU policies should be as wide as at all feasible in order to make actors aware of potential compliance gaps in their country. „Whistle blowing" is an important mechanism for the European Commission to collect information about the state of compliance in the member states, in general, but is of particular importance in this cluster. Therefore, it should be promoted more actively.

4 Challenges and Remedies: The World of Transposition Neglect

Turning now to the countries forming the world of transposition neglect, it becomes apparent that the typical reaction to an EU-related implementation duty is inactivity.[9] Transposition obligations are often not recognised at all, at least as long as there is no forceful action by supranational actors. A posture of 'national arrogance' (in the sense that indigenous social standards are typically expected to be superior) may support this, as may administrative inefficiency. Deficiencies in enforcement and application may occur, but they do not belong to the defining characteristics of this ideal-typical world. Instead, negligence at the transposition stage is the crucial factor in this cluster of countries, which includes France, Greece, Luxembourg and Portugal.[10]

Since many of the problems in the countries belonging to this group are caused by administrative inefficiency, guidance on effective organisational reforms seems crucial. For example, supranational training programmes for administrative staff at the national level seem in place.

An additional problem is that in the absence of domestic transposition laws whose adoption might spur media and public interest, information about compliance duties that exist in principle but are not met by domestic obedience will be lacking in the country. In turn, whistle blowing will also occur more infrequently and information about infringements is hence unlikely to come to the attention of supranational actors.

As a consequence, information campaigns on the potential social rights connected with innovative EU policies are indeed urgent in these countries, and the same applies to increased efforts to actively monitor compliance. Particularly, tight control during the transposition stage (in this aspect, some improvements have occurred in recent years) and a speedy initiation of infringement proceedings as soon as the Commission finds out about non-notification or other shortcomings are in place.

On the part of domestic politicians, it might take some time in these countries before they actually react to the shortcomings in their administrations' performance. Note that if the politicians had indeed shown a strong prefe-

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[9] Building on the results of our study on compliance in Central and Eastern Europe (Falkner and Treib 2008), we improved the labeling of this world (previously: 'world of neglect').

[10] In our original work, Ireland and Italy were also subsumed under the overall heading of what we then called the 'world of neglect' (Falkner, Treib, Hartlapp and Leiber 2005). However, against the background of our new research on Central and Eastern Europe, we decided to revise this assignment and to include both countries into the new fourth cluster, the world of dead letters (Falkner and Treib 2008).

rence for good compliance with EU law, bureaucrats would have a much harder time getting by with their sloppy attitude of neglecting relevant duties.

Therefore, raising awareness for the long term benefits arising from the type of compliance culture prevailing in the Nordic countries also seems highly appropriate in countries of the world of transposition neglect (and this is indeed one of the general recommendations to the EU Commission, see the conclusions of this paper).

5 Challenges and Remedies: The World of Dead Letters

In this group of countries, what is written in the statute books rarely becomes effective in practice. The factors accounting for this detrimental situation include overburdened courts and various obstacles to individual litigation; ineffective labour inspectorates and supporting agencies; and weak civil society actors (for details see Falkner *et al.* 2008). Member states belonging to this cluster may transpose EU Directives in a fully compliant manner, depending on the prevalent political constellation among domestic actors, but on the wider level of monitoring and enforcement they are typically non-compliant.

The pattern is most clearly visible when we compare the findings of our first and second books. Considering the *transposition phase* only, the four CEE countries we studied actually fared comparatively well (for details see Falkner and Treib 2008, Falkner *et al.* 2008). With regard to the Working Time Directive, all four countries managed to complete the transposition process in an essentially correct manner before they joined the EU. Although the transposition outcomes of the two equality Directives are somewhat more mixed,[11] the overall record of Slovenia, Hungary, Slovakia and the Czech Republic was good in terms of legal compliance: 10 out of 12 cases (more than 80 per cent) were completed largely on time and in an essentially correct manner. This may come as a surprise, especially in comparison with the fifteen 'old' member states' poorer performance in transposing six similar labour-law Directives. There, „not even one third of all cases was trans-

[11] While Hungary completed transposition well before the deadline, Slovenia and Slovakia managed to adopt their respective anti-discrimination acts only a few days (Slovenia) or weeks (Slovakia) after their actual accession to the European Union. Given that the delays were very short (less than six months), we treat these cases as having been completed largely on time. The Czech Republic, however, has so far failed to transpose the two Directives in an essentially correct manner.

posed 'almost on time' and 'essentially correctly'" (Falkner *et al.* 2005: 267).

The good transposition record is all the more remarkable since most reform processes were politically highly contested. With regard to working time, the conflict between political parties, trade unions and employers' associations concerned the extent of flexibility. In the transposition of the two equality Directives, the partisan orientation of governments again played a crucial role. The transposition processes of the two Directives in Hungary and Slovenia were completed relatively swiftly, primarily due to the determination of the two centre-left governments to push these reforms, backed by trade unions and civil society organisations.[12] In the Czech Republic and Slovakia, by contrast, Christian-democratic government parties dragged their heels on the creation of encompassing anti-discrimination legislation.

As already mentioned, however, the picture changes significantly if we look at the *enforcement and application stage*. As a result of the economic, societal and institutional difficulties associated with the transition from Socialist rule, the Czech Republic, Hungary, Slovakia and Slovenia are all plagued by a multitude of problems that have so far largely prevented the legislation to be realised in practice.

A note on caution is in place here, for assessing the efficiency of institutions and actors involved in the enforcement policy of any country (i.e. the „enforcement system") is always a cumbersome task (Hartlapp 2005). Not only because of research practical reasons, but also because the character and the manner of enforcement have to address the problems and needs of each specific country. However, we argue that there are some minimum requirements that have to be fulfilled in every member state in order to guarantee that proper enforcement is at least possible. In our study of compliance in the EU15, we therefore set up an analytical framework specifying that national enforcement systems have to meet three criteria to make good application possible: they have to possess adequate *co-ordination and steering capacities*, they must be able to exert sufficient *pressure* on non-compliant individuals, and they have to provide enough *information* to target actors. If there are significant shortcomings for one or more of these criteria, effective enforcement is affected and application problems are more likely to occur (Falkner *et al.* 2005: 35-40). It should be noted that we found significant problems in at least one of these dimensions

[12] The resulting anti-discrimination acts even went far beyond the European minimum requirements. They both covered many more grounds of discrimination than laid down in European legislation, and they extended the scope of the non-discrimination principle beyond the area of employment.

in six countries, that is France, Greece, Italy, Ireland, Portugal, and Spain (Falkner *et al.* 2005: 272). It is hence crucial to underline that also in old member states, enforcing EU rules is anything but trivial.

Returning to the specific patterns of politicised transposition battles on the one hand, and very serious enforcement shortcomings on the other hand, the style that we found in our empirical work on CEECs is quite similar to two of the countries in the 'old' EU15, Ireland and Italy. Both feature procedures characterised by domestic politics considerations when it comes to transposition and both have clearly inappropriate enforcement systems.[13] The Irish enforcement system was - at least at the time we conducted our empirical research, there may have been improvements since - still marked by considerable shortcomings, most importantly the central labour inspectorate's extremely scarce resources. In Italy, administrative inefficiency was already quite a problem at the transposition stage of EU social policies, but they became dominant with regard to enforcement (Falkner *et al.* 2005: Chapter 13).

I will now discuss the most crucial *measures that could improve the status quo* of compliance (inter alia) with EU law in the world of dead letters (for further suggestions, see Falkner *et al.* 2008). Strengthening the *Labour Inspectorates* will be an indispensable means for improved enforcement of EU social law, in the CEECs and elsewhere. Labour Inspectorates are usually well-established monitoring agencies, but they struggle to fulfill the manifold tasks put to them. In the East, these bodies focus on issues of illegal work as well as safety and health at work, so their traditional scope should be broadened to better cover all relevant issues when it comes to implement EU social policies. One way of improving their authority could be increasing the severity of sanctions and of leverage for the individual inspectors on the most suitable sanction(s).

A second major field of urgent improvements in the world of dead letters concerns shortcomings in the *judicial sphere* at large. The apparent lack of active litigation by the norm addressees has a number of reasons. As the introduction of the new laws was not accompanied by effective information campaigns either by the governments, by lower-level public authorities or

[13] Therefore, we originally classified these two countries as belonging to what we then called the 'world of neglect' if the focus is placed on the implementation process as a whole, and not only on transposition (Falkner, Treib, Hartlapp and Leiber 2005). With our new cases at hand, however, and with a view to ensuring a systematic and comprehensible typology, it seems preferable to conceptualise an additional world of compliance to grasp the new combination of typical patterns in the different phases. Consequently, we now subsume Ireland and Italy, along with the Czech Republic, Hungary, Slovakia and Slovenia, under a separate world of compliance.

by civil-society actors, employees often are not aware of their rights.[14] Moreover, many employees do not dare to file complaints against their employer because they are afraid of losing their jobs.[15] Finally, as a result of the socialist heritage, individual court actions are still perceived as an alien element of enforcement.

Additionally, court system improvements seem an essential remedy in the CEECs we studied if citizens shall be empowered to make living their social rights granted in EU Directives. Under this heading, relevant steps could include

- specialised Labour Courts to improve the quality of jurisprudence in this field;
- mediation, for less adversarial means of dispute resolution can sometimes be more effective and efficient in finding the best possible way forward;
- giving individuals the opportunity to join in a collective action to ensure that the violation of their rights is addressed (actio popularis) and
- giving NGOs (equality realm) and trade unions (employment realm) the right to initiate cases, opening the possibility for individuals to join in;
- protecting more carefully victims and witnesses;
- supporting Court Proceedings where victims cannot bear the costs; and, finally,
- extending training possibilities, for judges and other experts in all transition countries have had to adjust to a rapidly changing legal landscape.

In addition to the measures outlined a number of more indirect improvement strategies could also be of use to proffer compliance with EU social standards in the world of dead letters. Strengthening *cooperative governance* and the not yet deeply institutionalised culture of Tripartism seems

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[14] This is particularly true for the field of equal treatment. In the area of working time, employees are traditionally better informed, mostly through their trade union organisations.

[15] Although the equality Directives explicitly rule out such retaliatory action by employers, our information on everyday practice in the four CEE countries suggests that this provision has not been effective in overcoming litigation reluctance. The problem seems to be particularly severe in post-socialist countries because employees were used to life-long job security. The problem is aggravated in regions and branches with high unemployment rates and, therefore, low chances of finding a new job.

one promising project (see also Sissenich 2007, Sissenich 2005). Furthermore civil society actors, such as women's groups and trade unions, could in principle contribute significantly to a better implementation of EU social law by raising awareness among individual citizens and by acting as watchdogs vis-à-vis their governments. However, their potentials need to be much further exploited and this implies support in both economic and other terms and ideally from various levels.

Although much could be achieved in the CEE countries independently, in principle, everything will depend on *available resources*. It seems that the problem of scarce means applies to all enforcement and litigation bodies more or less equally. In particular, labour inspectorates, courts and equal treatment bodies in most cases require a significant increase of funding to provide more personnel and advanced training for staff to ensure higher effectiveness and better quality of decisions. Clearly, prioritising such reforms would be desirable in the CEECs (and elsewhere, see above).

At the same time, solidarity with relatively less prosperous economies will be indispensable if the EU partners want to see improved enforcement at any point soon and EU-level action will also be needed to tackle the problems discussed (see also conclusions below).

6 Conclusions and Outlook

Our studies on implementation of EU equality and social Directives in a large number of member states revealed that there is no single overriding factor that determines the compliance performance in all countries alike and that could thus serve as a safe anchor for predicting the success or failure of future implementation cases across the board. By contrast, different causal factors dominate the different, typical implementation *processes* in a number of clusters of countries, the so-called „worlds of compliance" (Falkner *et al.* 2005, Falkner and Treib 2008).

- A beneficial compliance culture that is very much abidance-oriented can explain many cases in the world of law observance.
- In the world of domestic politics, transposition is decisively influenced by the extent to which the EU's rules match the political preferences of political parties and major interest groups.
- In the world of transposition neglect, the decisive factor is administrative inertia at the transposition stage, caused by countervailing bureaucratic interests or malfunctioning routines.

- Finally, the world of dead letters is very similar to the world of domestic politics when it comes to typical transposition processes. Enforcement and application of the domestic transposition laws, however, are typically obstructed by systematic shortcomings in the court systems, the labour inspectorates or the civil society systems of these countries.

In light of our finding that there are different worlds of compliance at the national level, with very different causes of non-compliance requiring very different remedies, the EU Commission could to some extent differentiate its enforcement policy accordingly. Note, however, that certainly no discrimination should take place and that additional strategies should always complement the continued, and where possible even intensified, classic enforcement procedures.

As outlined in the above sections of this paper, the most pressing problems and the most promising remedies in the various worlds are the following:

Table 1: Suggested remedies in four Worlds of Compliance

	World of Law Observance	World of Domestic Politics	World of Dead Letters	World of Transposition Neglect
Process pattern at transposition stage	+	o	o	–
Process pattern at practical implementation stage	+	+	–	+/–
Adequate remedies	Avoiding unnecessary misfit in politics or polity dimension by close administrative contacts during policy preparation phase.	Pressure „from above", information campaigns on EU policies to promote whistle blowing and court cases.	Structural reforms re labour inspectorates and court systems; strengthening cooperative governance and civil society.	Administrative reforms; training programmes for administrative staff; tight control during transposition phase and speedy initiation of infringement proceedings.
Countries	Denmark, Finland, Sweden	Austria, Belgium Germany, Netherlands, Spain, UK	Ireland, Italy, Czech Republic, Hungary, Slovakia, Slovenia	France, Greece, Luxembourg, Portugal

+ = respect of rule of law; o = political pick-and-choose; – = neglect

In terms of the EU Commission's role as „guardian of the Treaties"[16], in overall terms, our analysis points to a number of steps through which the enforcement policy vis-à-vis non-compliant member states could be made more effective. It is true that the Commission has (as a response to increasing public awareness of compliance failures) implemented several reforms since the beginning of the 1990s in order to streamline the internal handling of infringement proceedings, increase the use of public „naming and shaming" by scoreboards and the like, and pay a little more attention to the substantive correctness of transposition and actual application (Falkner *et al.* 2005: Chapter 11, Hartlapp 2005).

These measures are to be welcomed, but further efforts are needed to keep up with compliance problems throughout the (enlarged) European Union:

- The *Commission lacks information* about many, if not most violations of Community law in the gender and social field (see the rather shocking data presented in Hartlapp and Falkner 2009). Improving contacts with domestic pressure groups that might act as watchdogs can be one means of bringing potential violations to the attention of the Commission. However, such groups are inexistent or too weak to be effective in a number of member states (most importantly, in the world of dead letters). Therefore, the Commission should devote more resources to actively monitoring itself whether a Directive's standards are actually fulfilled in the member states.
  Of help could be more systematic and regular Commission scrutiny, leading for example to annual publication of individual national reports on the implementation of the *acquis* – including new legislation – in all the member states.

- A rather daring suggestion put forth in our 2005 book that might still be applicable is to establish an „*observatory for compliance*" in each member state:[17] These observatories could publicise and report domestic breaches against good compliance to the EU. For example, they could intervene in various manners if interested actors publicly

[16] The EC-Treaty requires the European Commission to ensure that its provisions as well as the „secondary law" derived from it are properly implemented (see Article 211 ECT). The „failure to act" procedure under Article 226 ECT provides that the Commission can initiate infringement proceedings, potentially leading up to a ruling by the European Court of Justice and, if this is not complied with, potentially even to financial sanctions to be imposed in a second procedure at the ECJ.

[17] Somewhat similar institutions have been reported, e.g. in the area of the Internal Market where a network of offices located in the Member States (SOLVIT) offer assistance to individuals or businesses exercising their rights under Internal Market rules and encounter unjustified obstacles within the national administration of their Member State (Hartlapp and Falkner 2004).

contest the need or usefulness of compliance, or put undue pressure on those who promote law observance. An observatory might even directly counteract the potential long-term harm done by such a statement by issuing countervailing press statements or organising public events involving civil society. Furthermore, such observatories could function as „ombudsoffices" and provide information and potentially even out-of-court arbitration if a citizen feels to be denied a right under EU law because the member state did not comply properly with the rules. They should receive powers to monitor the domestic compliance with EU rules, including a right to investigate individual cases of alleged non-compliance. Finally, the observatories should be in a situation to conduct studies on the state of implementation of EU law in specific geographic or issue areas, e.g. on the request of the European Commission, the government or parliament of the relevant member state or any other member state.

- Overall, the *timing of the Commission's response* to breaches should be speeded up whenever possible and more resources need to be oriented towards the enforcement of EU derived standards, particularly social ones.
- The Commission could also improve the exchange of information between domestic bureaucrats and politicians in order to *raise awareness* of the benefits arising from the type of compliance culture prevailing in the Nordic countries. Just as in the open method of coordination, the Commission could identify best practice solutions and try to induce domestic actors to learn from each other.

These general measures could be applied across the board of countries and would add in a beneficial manner to the cluster-specific remedies discussed in the main sections of this paper.

To end on a note of urgency: Improving the implementation of EU law in the member states clearly involves intricate issues at various levels including the economy, the administrations, the legal systems, the interest group set-ups and the interest intermediation systems. Therefore, effective reforms will often be difficult to achieve and will mostly be long-term affairs. In this light it is all the more important not to lose any more time in kick-starting the urgently needed improvements in compliance performance. It is almost tragic to see how those very laws that are so cumbersome to achieve in intricate EU-level negotiations (and particularly so, in the area of equality and social policies) are later so often not respected in the member states.

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