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“A Concept Structural Model of Compliance with European Union Law”

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1. Introduction

Comparing the reactions to international arrangements with domestic law-making quickly unveils different requirements regarding their implementation. The absence of a central authority at the international level, the sovereignty of contractual partners and the difficulty of effectively sanctioning infringements makes problems with the correct adaptation of international commitments more probable than in the case of national law. In this context, questions arise about the conditions for effective transposition, their correct implementation and infringements against contractual duties. In the case of the European Union, the incorporation of supranational into domestic law can be conceived as one of the operational keystone of European integration. Political science scholars, but partly also economists and legal scholars deal with such questions within implementation and compliance research. In most cases, they ask if European directives are transposed into national law and what reasons might exist for possible delays. On first sight, the widespread success of the European multi-level system seems paradoxical in light of divergent national norms, preferences and ideals. In order to address this initially unclear situation, political science research on compliance with EU law came up in the 1980s (cf. Ciavarini Azzi (Hg.) 1985, Siedentopf/Ziller (Hg.) 1988a and 1988b). Since then, many explanatory factors for delays or problems with the adherence to European law have been analyzed within quantitative and qualitative studies, although without pinpointing any universal causal mechanisms. On the conceptual level, some basic considerations for the description of compliance have been developed starting from the comparison of intergovernmental and neofunctionalist approaches, but much of the work has focused on causal analysis.

In this paper, an alternative approach of analyzing causal relationships which is based on systematic theoretical considerations will be introduced in order to address some of the irritations about compliance with European Union law. The research question of this paper can be summarized as follows: *Which conditions determine the quality of transposition of European Union law?*

2. Literature overview

The following section features a short overview of the EU compliance literature in order to present some of the most important explanatory patterns that have crystallized within the political science debate in the course of time. Falkner *et al.* (2005), Mastenbroek (2005), but also Kaeding (2007) and subsequently Berglund (2009) differentiate three main phases of EU compliance research. Note that although these phases roughly focus on different explanations, they overlap with regard to the

studies' publishing dates. Berglund (2009: 14) firstly alludes to an "early day attention for the issue" which came up at the end of the 1980s in connection to far-reaching reforms at the EG level. At that time, many explanatory factors were introduced into the debate, mostly administrative or legal in nature. They were either generally related to the legislative process or more specifically to the transposition of EU law (cf. Kaeding 2007: 26). Examples for these types of variables include coordination, inter-ministerial conflicts, the politico-administrative culture as well as legislative and bureaucratic procedures (Siedentopf/Ziller (Ed.) 1988a, 1988b; Pridham/Cini 1994). More than that, the European Commission played an important role as one of the central actors at the European level which it exercised within the scope of its monitoring and sanctioning powers (Mendrinou 1996; Peters 1997). In this context, one can point to a conceptual distinction that is still widely used today: Whereas the management approach accentuates the inability to transpose a legal act, the enforcement approach refers to the strategic behavior of the member states (e.g., cf. Chayes/Handler Chayes 1993; Tallberg 2002).

According to Berglund and also Kaeding, the second phase started in the late 1990s. It is connected to the emergence of neo-institutionalist approaches and subsequently to Europeanization as a field of research. This was complemented by a stronger theoretical foundation of explanations which unfortunately led to contradictory results (cf. Kaeding 2007: 26) and paradoxically counteracted a systematic theory-based explanation of non-compliance with EU law. Within such studies, authors would oftentimes focus on the goodness of fit as the theoretical starting point. Goodness of fit generally refers to the adaptational pressure that member states experience with regard to the adoption of rules from the European level. In addition to the fit of national regulatory structures and procedures, the compatibility of policies also seemed to be of significance (Duina 1997; Duina/Blithe 1999; Green Cowles/Caporaso/Risse 2001; Börzel/Risse 2003). Institutional and administrative obstacles as well as the opposition to legislative acts of the EU may also add to the prevention of compliance. Lastly, some other explanatory factors such as the amount of liberalization (policy match), the reform capacity (political match) and the accordance of belief systems (Héritier *et al.* 2001) as well as the existence of political legacies, i.e. of legal and administrative traditions (Duina/Blithe 1999), have been put forward. Nevertheless, some studies (Knill/Lenschow 1998; Haverland 2000; Héritier *et al.* 2001; Falkner *et al.* 2005) show that "a 'good fit' is neither a necessary nor a sufficient condition for problem-free implementation" (Kaeding 2007: 27; emphasis added), and thus the approach seems to be inadequate when taken as a comprehensive theoretical explanation of EU compliance.

Attention has recently turned more towards political factors or on the “role of domestic politics on the process of implementation” (Kaeding 2007: 28), as Kaeding describes the third phase of compliance research. In this phase, actor-related factors such as the number of bureaucrats and interest groups that are involved at the national level (König/Luetgert 2009) and the number of institutional veto points (Haverland 2000) as well as veto players (Dimitrova/Steunenberg 2000; Mbaye 2003; Steunenberg/Rhinard 2005; Kaeding 2007; Steunenberg/Rhinard 2010) are at the center of compliance research. Additional political variables concern the preferences of actors (Mastenbroek 2005; Mastenbroek/Kaeding 2006) and coordination with respect to policies and between actors at the EU and national level (Dimitrova/Steunenberg 2000; Giuliani 2004; Steunenberg 2006 and 2007; Haverland/Romeijn 2007; Mastenbroek 2007; Dimitrova/Toshkov 2009). At the same time, characteristics of the legal acts which are required to be transposed and the administrative discretion of the member states play an increasing role (Ciavarini Azzi 2000; Mastenbroek 2007; Kaeding 2007). Adding to that, some of the factors that were already considered important in the earlier phases have been examined anew: Public support for the EU or its institutions respectively and, more specifically, the support for individual European legal acts (confirmed by Gibson/Caldeira 1995, Mbaye 2003, Steunenberg/Rhinard 2005; not confirmed by Lampinen/Uusikylä 1998, Mbaye 2001) can exert a dominant influence on the transposition of directives and ECJ rulings. Likewise, national courts gain importance within the research field, e.g. in the context of their role with regard to preliminary references (Alter 1998, 2000 and 2009; Garrett/Kelemen/Schulz 1998; Obermaier 2008 and 2009). Finally, authors also analyze other variables such as the administrative or institutional capacity of transposing states (Burens 2002; Sverdrup 2004; Toshkov 2008), bureaucratic efficiency (Mbaye 2001, 2003; Haverland/Romeijn 2007; Börzel *et al.* 2010) or the country-specific political culture and the traditional handling of transposing supra- and international law, respectively (Giuliani 2004; Sverdrup 2004; Falkner *et al.* 2005; Falkner/Treib 2008).

3. Irritations within compliance research

As a consequence of looking at studies on EU compliance, several irritations arise that call for new and innovative approaches to address the many open questions within the scientific debate. This section illustrates some of these irritations in order to make them visible and provide context for the approach that will be introduced in the next section. They can roughly be divided into two categories, namely ‘theoretical/conceptual’ and ‘empirical/data-related’. The first theoretical/conceptual irritation is related to the term ‘compliance’ itself and its specification within

the scientific literature. Not much has been done to address the conceptual fundamentals of compliance: discussions are oftentimes construed in the form of short and narrow remarks to accommodate particular empirical interests – or they are even missing entirely in some cases. This regularly leads to a focus on the statistical explanation of transposition delays on the basis of numerous variables and without a more detailed look at the complex causal relations between those factors and the political processes within the transposing member states. But also the scarcer qualitative studies do not necessarily approach the discussion about conceptual fundamentals in a systematic way or they focus heavily on the empirical research goal, thereby neglecting the theoretical part to a certain extent. Thus, the term ‘compliance’ is theoretically underspecified.

Secondly, theoretical aspects of compliance and especially the relationships between them have not yet been clarified sufficiently and thus remain diffuse, at least partly. This applies to the individual phases of an (ideal type) process of compliance, such as transposition, implementation and application, but also to the enforcement of those steps by the European Commission and within the member states. Infringement procedures and consequently judgments of the ECJ are closely related to enforcement, yet won’t be treated accordingly within much of the existing literature. More than that, authors regularly mention several dimensions of compliance, but rarely relate them to one another in a systematic fashion. These dimensions include the timeliness or delay of compliance as well as its correctness and completeness, although their role has not been described consistently.

A third conceptual aspect can be identified when acknowledging that intervening influences with regard to compliance have rarely been mentioned, although they are essential to the formation of such processes and the paths they take. Such influences may include domestic sub-processes and reactions towards compliance which for example originate from societal actors. But the Commission and the ECJ also engage in activist behavior themselves (cf. e.g. Martinico/Pollicino 2008, Grimm 2010, Solanke 2011) and fine-tune their decisions (cf. e.g. Obermaier 2008, 2009) by which they directly or indirectly influence or even steer domestic processes of implementation.

Fourthly, many studies focus on the search for additive causal effects which are then addressed in statistical analyses or traced in qualitative case studies. The latter oftentimes account for the procedural aspects of compliance in the member states which in turn can lead to a more comprehensive reproduction of the causal effects that played a role in the process. Nonetheless, compliance research lacks alternative approaches, for example those based on the logic of necessary and sufficient conditions which is at least implicitly rampant within the social sciences and seeks to explain specific outcomes through certain logical configurations of necessary conditions.

Finally, systematization and generalization especially regarding qualitative studies has been called a desideratum foremost within the European implementation literature (cf. e.g. Matland 1995, Balázs/Mikalayeva/Schwellnus 2011). Most of these studies consist of highly specific analyses whose results can hardly be used outside of their scope. Implementation research has apparently not been able to find a viable solution for the lack of systematic approaches and even conceptual standard works, such as Mazmanian/Sabatier (1989), provide for (overly) detailed ‘laundry lists’ of variables which include highly complex intra-factor relationships (cf. the flowchart in Mazmanian/Sabatier 1989: 40 as a particular striking example).

On an empirical/data-related level, one can identify a notorious explanatory weakness which is shared by a considerable number of EU compliance studies. Although many factors have been addressed since the mid-1980s, causal analysis faces a twofold challenge: On the one hand, results regarding the explanatory power of individual factors regularly turn out to be contradictory, and the very same factors oftentimes depend heavily on countries and policy sectors. According to Berglund (2009), only about half of the variables have been proven to be relevant in the empirical tests conducted so far. This allows for the conclusion that compliance is based on complex, non-trivial causalities which of course reduces the validity especially of some purely quantitative analyses. For example, Giuliani (2004), Mbaye (2003), Steunenberg/Rhinard (2005) and Kaeding (2007) confirm the negative effect of a high number of veto players, whereas Mbaye (2001) and Börzel/Hofmann/Sprungk (2004) cannot substantiate this claim. Börzel/Hofmann/Panke (2011) even find a contrary effect whereupon a high number of veto players contributes to better compliance by positively influencing existing misfits (ibid: 24).

Studies on compliance generally assess rather small parts of the explanatory variance, and the share of causal variance that can be explained is still quite low in most instances despite the multitude of variables examined (Berglund 2009: 20). Beyond the causal complexity already mentioned, the low explanatory degree further implies that the causes for non-compliance heavily depend on the context and differ according to the policy sector and content as well as domestic conditions in the member states. This problem can at least partly be balanced out by combining quantitative approaches with qualitative small-n studies which can lead to more detailed accounts of the complex causal interactions. A problem in this regard is posed by the fact that case studies have so far been constrained to only a few policy fields. Not counting a few exceptions, sector-specific studies have mostly been conducted in social and environmental policy while important sectors that carry a huge amount of directives have not received much attention yet. Those include, for example,

agricultural policy, competition and transport policy as well as common market policies; cf. Kaeding 2007: 31f.).

Empirical problems are particularly evident when realizing that many studies about infringement procedures explicitly or at least implicitly equate non-compliance with the Commission's efforts to end cases of infringement it detects or those which have been brought to its attention. This approach is, however, not necessarily a sign of conceptual ignorance or poor theoretical groundwork. One of the reasons to confine compliance in this manner lies in the difficulty of gathering empirical data from sources other than the Commission, simply because not many sources of data exist beyond the official reports on infringement procedures. This is why studies have to use rather general indexes for the operationalization of independent variables when departing from the Commission data, for example Börzel's use of the Corruption perceptions index when dealing with compliance in EU environmental policy (cf. Giuliani 2004: 6). This further augments the problems of validity and reliability: Strictly speaking, general data sets do not allow the measurement of explicitly defined criteria, if they miss some of the data necessary to cover the criterion in question (cf. King/Keohane/Verba 1994: 25). Subsequently, such studies do not actually measure the degree of compliance (however that might be defined), but rather the reaction to presumed cases of non-compliance. Accordingly, they exclude cases which the Commission does not detect or is not notified about, and for this reason cannot pursue as infringements. This is why in the end only a certain amount of meaningful information about the total degree of non-compliance can be gathered from these types of data.

In addition, many studies have found that the Commission data is in itself inconsistent (cf. Börzel 2001 for a detailed account on this problem). Knill (2005: 170f.) points out that one cannot directly gather an increase of infringements from a higher number of infringement procedures, opinions and warnings, because this development could date back to a change in the Commission's behavior and thus to a more rigorous pursuit of enforcement (cf. Jordan 1999: 81). More than that and as Knill (2005: 171) points out, the assessment of practical application of the law turns out to be quite a difficult task. Considering the lack of resources, it becomes obvious why the Commission is not able to fulfill this task by itself. The author also mentions problems concerning the interpretation of empirical data, because alleged shortcomings in the implementation of European law might actually reflect political-administrative differences between the member states. Overall, one can agree with the statement of Falkner *et al.* that the Commission's statistics "are not a reliable measure of the amount of (non-)compliance in the EU's multi-level system" (Falkner *et al.* 2005: 19; cf. *ibid* 2004, Hartlapp 2005, Kaeding 2007: 30f.).

4. A concept structural model of compliance with European Union law

Numerous theoretical and empirical problems within compliance research generate the need for new and innovative ways of approaching the topic beside the important but rare major undertakings which include large-n case studies. The project on which this paper is based on aims exactly at this niche by developing a concept structural model that addresses at least some of the difficulties mentioned earlier on. The theoretical foundation and starting point for the model is Goertz' *concept construction and use* which he introduces in his 2006 book *Social Science Concepts* and is based on the logic of necessary and sufficient conditions as well as the family resemblance structure. The following section will contain a short introduction to this approach in order to provide a wider context for the next steps.

Quantitative social science is usually based on a correlational and thus factor-analytical causality which uses statistical methods (cf. Goertz 2006: 66). It emanates from *independent* variables which on their own or in addition to other factors explain certain *dependent* variables. Essential to this is the assumption of covariance, according to which systematic relationships between changes of independent and dependent variables must exist. More than that, the cause-and-effect principle has to be met, causes must thus occur chronologically before their alleged effects. Lastly and ideal-theoretic, no alternative explanations for the relationships under investigation should exist, although this can oftentimes only be ensured to a certain extent empirically. The course of action then regularly involves a measurement of statistical relationships between the variables which is either complemented by non-statistical information (e.g., the chronological order within the process in question) in order to permit statements about the underlying causality, or causal presuppositions are incorporated into the statistical analysis (e.g., in the case of regression analysis).

In contrast, Goertz' approach is based on alternate conceptions of causality which he describes as "structural principles for constructing multidimensional and multilevel concepts" (Goertz 2006: 7) within the context of social sciences. The first principle dates back to Aristotle and uses the structure of necessary and sufficient conditions in order to define concepts: "Each of these necessary conditions is a secondary-level dimension: the structural glue that binds the secondary-level dimensions together to form the basic level is the mathematics of necessary and sufficient conditions" (ibid). Furthermore, he mentions the family resemblance structure which emanates from the work of Wittgenstein and serves as a counterpart to the first principle to some extent. This structure does not contain classical necessary conditions, but merely requires a resemblance of dimensions to count as "part of the family" (ibid). Both construction principles are at least implicitly based on the mathematical foundations of formal logic and set theory which is why they

can also be formalized accordingly. In reference to Aristotelian logic, the logical operator AND generally stands for the logic of necessary conditions, because several logically necessary conditions together become sufficient to explain a specific outcome. On the other hand, the logical operator OR from this perspective is closer to the family resemblance structure, because the mere presence of m out of n conditions is sufficient to explain an outcome (ibid: 45) – although with regard to its most basic meaning, it refers to sufficiency. The traditional mathematical understanding of sets eventually traces back to Aristotelian propositional logic which ascribes one of two values to each speech act, for example ‘true’ and ‘false’. As a consequence, conditions in this understanding will be formalized dichotomously, i.e. the elements of a set are either not at all (0) or completely (1) members of this set. In the case that the subjects of investigation are non-dichotomous, (quasi-)continuous conditions, an extension of classical logic becomes necessary. Fuzzy logic can be utilized for such situations, an advancement of multi-valued logic that adds to the traditional understanding of sets. Fuzzy sets allow for different degrees in membership, i.e. an element no longer has to be either not at all (0) or completely (1) member of a set, but in theory may take on any possible value, for example 0.2 or 0.6. Values below the so called breaking point (e.g., 0.5 on a 0-1 scale) thus lie more out of the set, while values above the breaking point lie more in the set. In this sense, fuzzy sets represent a generalization of traditional sets, because the latter can be understood as a special case of the former (cf. Ragin 2000: 6ff.).

There are different possibilities to apply the concept structural approach to actual research projects, two of which Goertz portrays in *Social Science Concepts*. Firstly, existing theoretical approaches which are implicitly based on the logic of necessary and sufficient conditions or the family resemblance structure can simply be revisited using concept structures. It can be called the *reconstructive approach* on concept structures. Goertz applies this way of using concept structures throughout his book in order to illustrate his approach and give practical examples of the implicit usage of different principles and tools provided by concept structures (cf. Goertz 2006: Ch. 2 and 9). It also sheds light especially on those studies within the social sciences that are either not structured in a clear and stringent way, or simply to highlight the structures employed in such studies, thus contributing to their better understanding. Finally, revisiting existing work in this fashion can attribute to how concepts in future projects are developed (cf. ibid: 268). On the other end of the spectrum lies the development of independent theoretical concepts on the basis of Goertz’ concept structural considerations, combined with an empirical causal analysis using the QCA method. I call this the *comprehensive approach*, because it involves constructing a comprehensive concept according to Goertz’ guidelines and at the same time use it in order to

conduct an empirical analysis with the very tools that concept structures are ‘naturally’ linked to. As cited above, the author encourages this kind of application of concept structures for future research projects, facilitating the argument that many studies within the social sciences lack systematic concept building and thus fail to pay attention to this important aspect of connecting theories and their practical application: “Without valid concepts, our theories have little value.” (ibid).

Beyond that, at least two intermediate ways of applying Goertz’ approach may be considered: What can be called the *mid-range approach* consists of a concept structural set-up of empirical analyses and their execution via QCA. The concept structural model presented here is an example of such a mid-range approach: While no comprehensive theoretical concept will be developed, an intermediary connection between theoretical and/or conceptual aspects of a project are linked to a QCA-based empirical analysis via a concept structure – in the case at hand by developing a specific model which is then used to execute the empirical analysis. Finally, a *low-range approach* of applying concept structures would consist of simply structuring empirical research designs through the application of concept structural considerations, but without building comprehensive concepts or actually using QCA. Realizing that a research design explicitly or implicitly makes use of the conditional logic or family resemblance structures and illustrating it accordingly can contribute to a better understanding of how a specific analytical approach assesses the empirical reality and helps to clarify the ‘explanatory logic’ upon which the approach is based. This holds true for both the scholars themselves and for the audience of their work, because – similar to the reconstructive approach – visualizing logical conjunctions and causal paths that are implicitly contained in numerous analytical approaches might benefit their rigor and structure.

How can Goertz’ considerations be made viable for examining compliance with EU law?

As stated above, a mid-range approach which involves developing a model of compliance based on Goertz’ considerations on concept structures will be chosen for this purpose. This model includes several conditions for compliance that are aggregated from within the research literature and as a consequence allows for conclusions about the quality of compliance as well as the deduction of ideal types. Empirical hypotheses are implicitly incorporated into the conditions, meaning that theoretical assumptions of the underlying case studies are bound to the conditions themselves. An extensive literature review allows for the clusterization of existing explanatory factors and subsequently the identification of core aspects of EU compliance. At the same time, these aspects represent the most dominant explanations within the research field and can therefore be understood as aggregates of explanatory mechanisms or patterns. Categorizing the variables which have been

used to analyze compliance in the last 30 years has insofar brought about the conditions which represent *clusters* of closely related categories. It must be considered in this context that even these categories prescind from specific operationalizations and indicators, i.e. they each contain several variables that fall under the same explanatory mechanism or pattern.

Six of these clusters have been identified and serve as conditions for the compliance model. Firstly, actors' attitudes and other factors connected to them seem to be of great importance within the literature on EU compliance, because they fundamentally contribute to the very decision whether and how European law is implemented domestically. Favorable preferences of actors (governments and third parties), low domestic political conflict and political priorities of governments are regarded as the main sub-categories – or, more precisely: subsets – of the condition 'ATTITUDES'. Secondly, culture plays a considerable albeit rather general and diffuse role for the handling of EU law. The most obvious aspects of the condition 'CULTURE' are favorable administrative, legal and political traditions. Note that legitimacy of European and national institutions, procedures and actors can be considered part of political culture. In contrast, 'POLICIES' contains elements that relate to the legal act at hand. One element is the influence of specific characteristics of a policy that requires adaptation on the transposition process (compatible legal act features). Another element lies in a compatible domestic context of existing policies and practices which are affected by European legislation. The fourth condition, 'INSTITUTIONS', contains structural features of the member states and their effects on compliance (compatible state structure). A second sub-category is situated on a more concrete level in comparison to the fundamental structure of a country and addresses the specific regulatory structure of a policy area affected within the implementing member state (compatible regulatory structure). Fifth, the condition 'CAPACITIES' addresses questions about the different capacities needed to cope with implementing EU law. Not only does this include financial or human resources of administrative institutions, but also those of societal actors and interest groups as well as their ability to mobilize (extensive resources). Secondly, a compatible regulatory style within the policy sector in question is part of this condition which refers to predominantly administrative patterns of acting on compliance issues and ways of interacting with societal or other third party actors as well as their involvement in the process. Lastly, 'ENFORCEMENT' occupies a somewhat special position compared to the other conditions, because it does not only cover several potential explanations for the correctness of compliance, but it also constitutes one of the main phases of the overall compliance process, albeit an optional one. Traditional examples of enforcement can be summarized as extensive infringement pressure and aim at the Commission's possibilities to get member states to comply with EU law. This includes

official infringement proceedings, monitoring measures, but also assistance from European institutions, be it financially or by way of expertise. Beyond EU-level enforcement and unfortunately neglected within the literature, extensive domestic enforcement alludes to the potentially important aspect of ensuring administrative implementation and practical application of transposed EU law by national enforcement institutions. The coding of these conditions and their subset solutions are illustrated in *Table 1*.

Table 1: Coding of conditions

Condition (clusterized)	Coding (quadrivalent fuzzy set)	Condition subsets / solutions
ATTITUDES	0.00 high conflict and/or preferences strongly against legislation	favorable preferences of actors (ACPREF) low domestic conflict (DOMCON)
	0.33 considerable conflict and/or preferences moderately against legislation	favorable government priorities (GOVPRI) /
	0.67 moderate conflict and/or preferences moderately in favor of legislation	ACPREF + ACPREF*DOMCON + ACPREF*GOVPRI + DOMCON*GOVPRI → ATTITUDES
	1.00 (almost) no conflict and/or preferences strongly in favor of legislation	acpref + acpref*domcon + acpref*govpri → attitudes
CULTURE	0.00 administrative and/or political traditions strongly against legislation	favorable administrative traditions (ADTRAD) favorable legal traditions (LEGTRAD)
	0.33 administrative and/or political traditions moderately against legislation	favorable political traditions (POLTRAD) /
	0.67 administrative and/or political traditions moderately in favor of legislation	ADTRAD + POLTRAD + ADTRAD*LEGTRAD + ADTRAD*POLTRAD + LEGTRAD*POLTRAD → CULTURE
	1.00 administrative and/or political traditions strongly in favor of legislation	adtrad + poltrad + adtrad*legtrad + adtrad*poltrad + legtrad*poltrad → culture
POLICIES	0.00 highly incompatible legal act features and/or domestic policy context	compatible legal act features (LEGFEAT) compatible domestic policy context (POLCON)
	0.33 moderately incompatible legal act features and/or domestic policy context	/ LEGFEAT + POLCON + LEGFEAT*POLCON → POLICIES
	0.67 moderately compatible legal act features and/or domestic policy context	legfeat + polcon + legfeat*polcon → policies

	1.00 highly compatible legal act features and/or domestic policy context	
INSTITUTIONS	0.00 highly incompatible regulatory and/or state structure	compatible regulatory structure (REGSTR)
	0.33 moderately incompatible regulatory and/or state structure	compatible state structure (STASTR) /
	0.67 moderately compatible regulatory and/or state structure	REGSTR + STASTR + REGSTR*STASTR → INSTITUTIONS
	1.00 highly compatible regulatory and/or state structure	regstr + stastr + regstr*stastr → institutions
CAPACITIES	0.00 highly incompatible style and/or (almost) no resources	compatible regulatory style (REGSTYL) extensive resources (administrative / financial / human / societal) (RESAFHS) /
	0.33 moderately incompatible style and/or moderate resources	REGSTYL + RESAFHS +
	0.67 moderately compatible style and/or considerable resources	REGSTYL*RESAFHS → CAPACITIES
	1.00 highly compatible style and/or high resources	regstyl + resafhs + regstyl*resafhs → capacities
ENFORCEMENT	0.00 (almost) no domestic enforcement and/or infringement pressure	extensive domestic enforcement (DOMENF)
	0.33 moderate domestic enforcement and/or infringement pressure	extensive infringement pressure (INFPRES) /
	0.67 considerable domestic enforcement and/or infringement pressure	DOMENF + INFPRES + DOMENF*INFPRES → ENFORCEMENT
	1.00 high domestic enforcement and/or infringement pressure	domenf + infpres + domenf*infpres → enforcement

Source: author's illustration

The conditions are analytically connected to three different outcomes which can be understood as the ontological constituents of the overall phenomenon 'compliance'. Certain European legal acts – first and foremost directives – must initially be transposed into national law, leading to the outcome 'TRANSPOSITION'. But compliance also entails the administrative implementation of such acts. 'IMPLEMENTATION' in this narrow sense refers to the establishment or modification of administrative institutions and practices. Lastly, practical application of legal acts that have already been transposed and implemented alludes to the outcome 'APPLICATION'. In ideal theory, formal transposition is a scope condition for administrative implementation which in turn is a scope condition for practical application. Although this distinction contributes to a clearer analytical

understanding of compliance, it prescind from the reality of European law, especially because implementation oftentimes fails to be pinpointed easily. Insofar as EU legislation will regularly be integrated into existing domestic institutional structures and practices, administrative implementation can become diffuse analytically as well as empirically. Moreover, member states might apply requirements from directives in practice even before the formal steps of transposition and implementation have concluded. Implementation and application can therefore exist before transposition is achieved, because specific requirements are already met by existing administrative structures and practices. This is of course also possible in the case of direct effect which has been established as a major legal principle by the ECJ. In conclusion, the analytical assumption that the outcomes of compliance are connected with each other in the form of scope conditions cannot be upheld without exception when facing the reality of European law. *Table 2* shows the coding of the outcomes and their ideal type solutions.

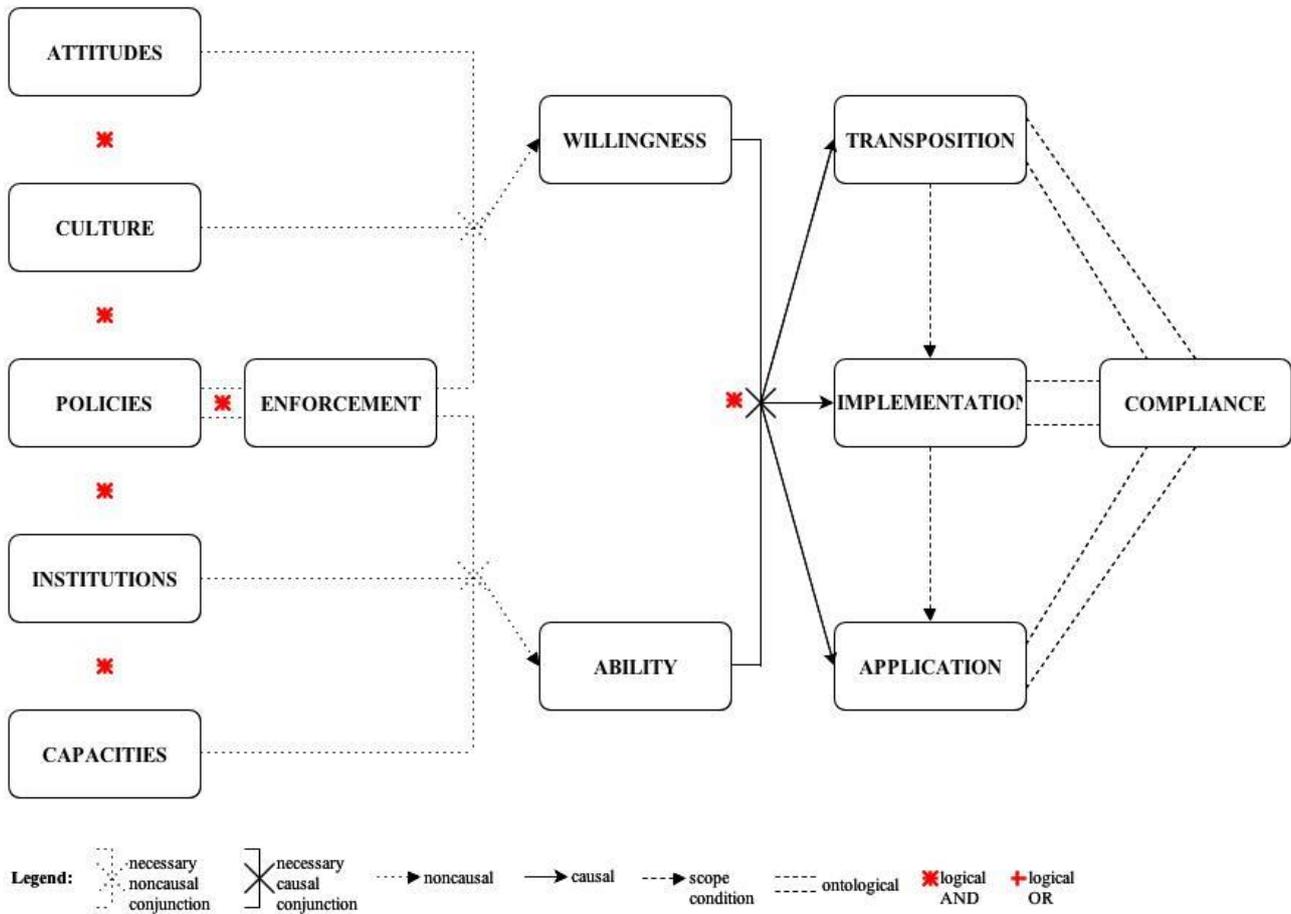
Table 2: Coding of outcomes

Outcome	Coding (quadrivalent fuzzy set)	Outcome subsets / ideal type solutions
COMPLIANCE	0.00 (almost) none	correct transposition (TP)
===	0.33 widely incorrect	correct application (APP)
TRANSPOSITION		/
--->	0.67 moderately incorrect	(TP +) TP*app + TP*APP → COMPLIANCE
APPLICATION	1.00 (widely) correct	(tp +) tp*app → compliance

Source: author's illustration

Within the theoretical compliance model, the conditions ‘attitudes’, ‘culture’, ‘policies’ and ‘enforcement’ are jointly sufficient to substitute WILLINGNESS (logical AND; non-causal relationship). In contrast, ‘policies’, ‘enforcement’, ‘institutions’ and ‘capacities’ are jointly sufficient to substitute ABILITY (logical AND; non-causal relationship). Willingness and ability subsequently constitute necessary conditions which are jointly sufficient for the outcomes ‘transposition’, ‘implementation’ and ‘application’ (logical AND; causal relationship). Compliance itself ontologically consists of these outcomes, whereas the first serves as a scope condition for the second, and the second as a scope condition for the third (ontological and non-causal relationship). Finally, the aggregation of individual variables which make up the sub-categories of the compliance model takes place on a third level which is not shown in the above figure. The theoretical model is illustrated in *Figure 1*.

Figure 1: The theoretical compliance model

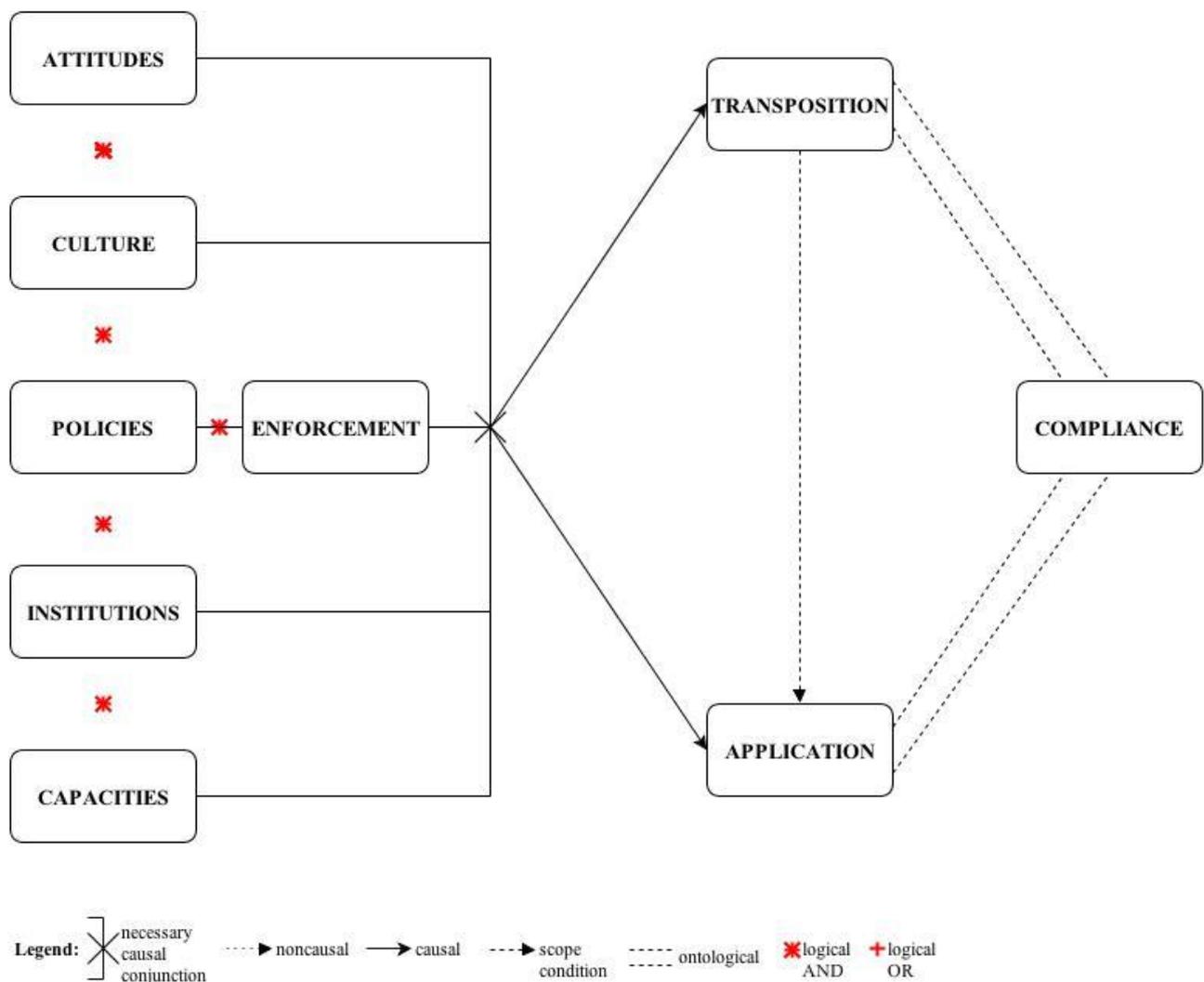


Source: author's illustration

The actual analysis then operates with a constricted version of the model that serves empirical purposes and consists of the six conditions and two outcomes, while both models reflect an overall explanatory path based on the main explanatory patterns from within the EU compliance literature. Within the theoretical model, this path is **WILLINGNESS*ABILITY → COMPLIANCE** (including all three outcomes). In contrast to how Goertz illustrates concept structures, the two models shown here do not represent empirical results. They are developed on the basis of theoretical and literature knowledge, so the QCA results can lead to a modification and diversification of explanatory paths in terms of a model fit. ‘Willingness’ and ‘ability’ will not be part of the QCA and insofar represent purely conceptual mechanisms which establish a heuristic logical connection of the conditions to compliance and its ontological components. By constituting a part of the underlying concept of compliance, these aspects primarily entail a heuristic benefit. Moreover, the empirical part does not include the outcome ‘implementation’, because the ideal-theoretic assumption that transposition serves as a scope condition for implementation will not necessarily be fulfilled empirically, as

stated above. But another viable reason to discard the investigation of administrative implementation as an empirical outcome exists. The sub-elements of the conditions ‘institutions’ and ‘capacities’ already deal with aspects of administrative structures and practices on the input-side of the analysis which could lead to causal interdependencies with the outcome ‘implementation’. Administrative implementation of transposed European law therefore reproduces the establishment of new institutions or the restructuring of existing ones as well as institutional practices which are in turn part of the conditions named above. This should be avoided from a methodological perspective, or else the validity of any given result would be weakened considerably. The reduced empirical model is shown in *Figure 2*. It entails the explanatory path ATTITUDES*CULTURE*POLICIES*INSTITUTIONS*CAPACITIES* ENFORCEMENT → COMPLIANCE (including two of the outcomes).

Figure 2: The empirical compliance model



Source: author’s illustration

Two different analytical goals can be achieved on the basis of this compliance model. Firstly, it allows for statements about the aggregated value for quality of transposition and application as the essential ontological components of compliance. By connection certain logical conjunctions of conditions to the extent that transposition and/or application have been achieved correctly, the causes behind differences in the quality of compliance within the EU can be evaluated. Secondly, a typology can be developed which consists of fuzzy-set combinations of the three outcomes and allows for the deduction of certain ideal types of non-compliance. These ideal types are constrained to the scope conditions mentioned above and can be introduced as follows, using a simplified dichotomous notation: $0*0*0$, i.e. no compliance; $1*0*0$, i.e. formal compliance (or, alternatively and in reference to Falkner *et al.* 2005: ‘world of dead letters’); $1*1*0$, i.e. structural compliance (extended formal compliance including the adaptation of institutional structures and procedures); $1*1*1$, i.e. full compliance (or, alternatively and in reference to Falkner *et al.* 2005: ‘world of law observance’). Accounting for the simplified empirical model, only the following three ideal types remain: $0*0$ (no compliance), $1*0$ (formal compliance), and $1*1$ (full compliance).

5. Application of the empirical compliance model

In the empirical part, a selection of existing case studies on EU compliance will be transferred into a structured and parsimonious framework by way of recoding the results of case studies in a simplifying manner. The motivation behind this approach lies in the long-time proliferation of case studies which lack convincing attempts of systematization. In this context, questions arise about the specific method used to analyze the data. In light of Goertz’ work on concept construction, QCA (Qualitative Comparative Analysis) lends itself as a suitable empirical approach for this purpose. This socio-scientific method was introduced by Ragin (1987) and is based upon the mathematical rules of Boolean algebra as a generalization of logical operators and set-theoretic conjunctions. It illustrates the logic of necessary and sufficient conditions for a medium-sized number of cases with the aim to causally determine specific outcomes. Different than in the case of statistical analyses, QCA is a deterministic and not a probabilistic method. At the same time, it constitutes a causal analysis insofar as it identifies necessary conditions that in conjunction become sufficient for an outcome. The compliance model at hand seeks to determine the quality or extent of compliance (‘How much?’) and will be implemented using a fuzzy set QCA (fsQCA) which was also developed by Ragin (2000) as an extension of the originally dichotomous approach (crisp set QCA).

In this regard, the concept structural model establishes a systematic framework for the empirical analysis. QCA methodologically requires constricting the possible degrees of freedom and thus the number of conditions, because the explanatory power of the results will decrease in case this is neglected. The theoretically and empirically well-founded pre-selection of conditions that make up specific logical conjunctions able to explain a certain outcome is actually essential for this method of analysis. For the purpose at hand, QCA is then used as a model-testing tool. First, expectations for the interaction between the conditions are established on the basis of theoretical and empirical knowledge, and empirical data is then tested in order to show in what way these expectations can be verified. Falsification would then lead to the rejection or amendment of conditions, and thus to a fine-tuning of the calibration in the sense of a model fit. The model introduced here does not represent a purely empirical tool of analysis as used in quantitative research on a regular basis ('enter variables and evaluate the results'). Understood as a concept structure, it serves as a theoretical compliance model that includes conceptual as well as causal specifications.

Several aspects have to be accounted for when applying the model. With regard to the coding process in QCA, it should usually be avoided from a methodological point of view to code outcomes dependent on time, because the data and results of an analysis can be rendered unfeasible. In its simplest form, coding outcomes based on the year under investigation leads to a loss of consistency. Panel data in such cases would contain information similar to the following example¹: $x(A)=0$, $x(B)=0$, $x(C)=1$; $y(t_0)=0$, $y(t_1)=0$, $y(t_2)=1$. Here, transposition of a directive happens to take effect in the year t_2 . The causal relation between the conditions and the actual outcome (e.g., the act of transposition) would be lost in the process. Disregarding this methodological problem, such an approach contradicts the compliance model which does not focus when an outcome occurs, i.e. the transposition delay, but on the extent or quality of transposition and application. Variance of outcomes will instead follow from looking at their different values, because they are coded as quadrivalent fuzzy sets and not as dichotomous crisp sets, thus every outcome can take on any of four different values.

In order to strengthen the procedural character of adaptation to EU law as well as temporal variance within the model, the following strategies are employed: Firstly, not raw data but existing studies will be the object of recoding which implicitly transfers procedural elements from those studies to the empirical application of the model. This will be reflected in the conditions chosen which in part affect the compliance process only for a certain period of time and are thus inherently time-

¹ With x representing conditions, y representing outcomes and t denoting a specific year.

dependent. This dependence will in turn affect the values of fuzzy sets, for example when looking at actors' attitudes. Secondly, the procedural character of compliance directly shows in the outcome which is coded according to different degrees of correctness. Precisely these different degrees of correctness have been highlighted as an attribute of a procedural analysis of compliance, for example by Panke (2007: 860ff.). Thirdly, every change in government and every change of the time period under investigation when accompanied by an alteration of at least one condition constitutes a new case (cf. the next paragraph). Finally, a time factor such as 'sufficient government duration' for the conditions policies, institutions and capacities could be introduced if necessary, simply because a short-lived government lacks possibilities to adapt many European laws.

Turning to the case definition and selection, cases are defined as 'directive per country', although the actual data stems from existing studies. This is due to the aim of the project which is to compare results of case studies, not the studies themselves. Two particular events play a role regarding the distinction of cases within the empirical model (cf. *Table 3*): A new case will be established every time there is either a change in government during an ongoing compliance process or the investigation period of a given study changes, while at the same time leading to a significant² alteration of at least one condition. This approach does not only increase the number of cases, but it also strengthens the procedural aspects of the model by contributing to the reproduction of temporal developments – an inherent weakness of QCA.

Table 3: Coding relevancy of particular events

Event	Criterion	Effect
government change	government change during an ongoing compliance case, if conditions differ	constitutes a new case
assessment period change	different time period of assessment, if conditions differ	constitutes a new case

Source: author's illustration

The cases are gathered mainly from qualitative studies, although missing empirical information can be taken from similar cases or quantitative data if necessary. Whilst this can be criticized even in light of the underlying motivation, quantitative data within QCA still poses certain additional problems with regard to its structure and the aspect of calibration. Qualitative studies oftentimes

² Significant in this case means that the condition's value must change at least to the extent of one coding step.

contain hints on where important ‘anchors’ for the determination of theoretical thresholds are located – at least as long as the fuzzy set scale is not divided into too many sections. Quantitative studies, however, regularly use raw data which is merely structured by values for the minimum, maximum and average, but rarely give any indications on the breaking point, i.e. the crossover from ‘more out of the set’ to ‘more in the set’. The calibration of such data will additionally be aggravated in the case of composite indicators, because it becomes even harder to determine breaking points in these situations.

Directives are chosen according to comparability and availability of data. The latter problem implies a focus on social and environmental policy as the main sources of information, simply because they provide for sufficient data. To increase generalizability, directives from ‘liberalizing’ policy sectors such as telecommunication, energy or transport may be added to the empirical analysis. Case studies are chosen in a way that they complement each other, yet accounting for a variety of member states so that country-specific characteristics as well as different compliance styles are covered within the case selection. In order to achieve this, the actual choice of member states can vary from one directive to another, so a member state need not be included across all directives. On the one hand, committing to a fixed set of countries would decrease the availability of data considerably and thus entail negative effects with regard to the validity of any given result. On the other hand, varying countries across directives or policy sectors increases comparability, systematization as well as generalization of results, because they add diversity and therefore smooth out empirical outliers.

If data turns out to be incomplete or missing in the course of the empirical analysis, several possible solutions seem feasible. QCA does not generally require the same amount of data for every condition and case, but of course data gaps pose a problem especially should they accumulate. Pragmatic solutions seem to be constructive in this context: On the one hand, country selection is not fixed for every directive under investigation. On the other hand, if data does not turn out to be sufficient in individual cases in order to establish a plausible coding value, gaps can be closed with the help of alternative data sources. These could consist of information taken from other studies which investigate similar cases and can be transferred to the case at hand, for example regarding political culture or the regulatory style of a member state within a specific policy sector. Especially with regard to structural characteristics of a country, quantitative data may be used to fill possible data gaps. Caution is however advised in this context in order to avoid distortion of the empirical evaluation and the systematic comparison of case studies by case-independent data. Note that the individual sub-elements of the main conditions must not all be present at the same time, so they are

not logically necessary for coding the respective conditions. Moreover, these sub-elements will not be seen as part of the concept structural model in a narrow sense, but in fact serve as aggregations of equivalent explanatory mechanism from within the case studies and thus as a tool that assists with the coding procedure. Finally, these categories are related to the main conditions in an ontological way and not causally. If several elements of a condition are present, their hypothetical values will be combined with each other in order to obtain a final coding value for any given condition while taking into account the relative importance of said elements.

Preliminary results

The empirical compliance model was applied on the basis of 34 cases which include six different directives from environmental and social policy, i.e. the directives on Environmental Impact Assessment (85/337/EEC), Access to Environmental Information (90/313/EEC), Drinking Water (98/83/EC), Pregnant Workers (92/85/EEC), Working Time (93/104/EC), and on Parental Leave (96/34/EC). The environmental directives cover France, Germany, Great Britain and Spain while the social policy directives cover Belgium, Germany, Great Britain, Ireland and the Netherlands. Seven out of the 34 cases result from applying the ‘government change’ criterion (EIA, AEI, PW and PL in Germany; AEI, DW and WT in Great Britain). The preliminary results only concern the outcome ‘transposition’.

First, crisp set QCA is used in order to receive results that can be interpreted more easily than in the case of fuzzy set QCA, because consistency and coverage are related to case ratios in the former case. Initially, all six conditions are used with transposition as the outcome, of course allowing for a considerable amount of logical remainders as the number of possible configurations ($2^6=64$) surpasses the actual number of cases (34). The parsimonious solutions reveal several sufficient causal paths for the outcome: ATT*POL³ (raw coverage: 0.37, unique coverage: 0.16, consistency: 1.0)⁴, ATT*INST (0.47, 0.32, 1.0), cul*POL*INST (0.16, 0.11, 1.0) and CUL*CAP*ENF (0.11, 0.05, 1.0), with a solution coverage of 0.84, a solution consistency of 1.0 and the consistency cutoff at 1.0. When accounting for easy counterfactuals, all six conditions are set to ‘present’ for the intermediate solution, because they all are theoretically expected to positively contribute to good compliance. The results read as follows: ATT*INST (0.47, 0.32, 1.0), ATT*POL*CAP (0.37, 0.16, 1.0), cul*POL*INST*CAP (0.16, 0.11, 1.0) and CUL*CAP*ENF (0.11, 0.05, 1.0), with the values

³ The conditions are abbreviated as follows: ATTITUDES: ATT, CULTURE: CUL, POLICIES: POL, INSTITUTIONS: INST, CAPACITIES: CAP, ENFORCEMENT: ENF.

⁴ The first value in brackets shows the raw coverage of a solution, the second stands for unique coverage and the third for consistency.

for solution coverage and consistency again being 0.84 and 1.0.⁵ Very similar results exist when enforcement is excluded from the analysis. According to case knowledge, enforcement in the transposition phase was either not very strong in most cases of the sample at hand, or it was rather ineffective and did not lead to a significant improvement of transposition. This is reflected within the data as its individual membership values for sufficiency are the lowest of all conditions. If the condition ‘enforcement’ is thus excluded to reduce the number of logical remainders, the first three parsimonious solutions from above show up again: ATT*POL (0.37, 0.21, 1.0), ATT*INST (0.47, 0.32, 1.0) and cul*POL*INST (0.16, 0.11, 1.0) with a combined coverage of 0.79, a consistency of 1.0 and the cutoff again at 1.0. In contrast, the complex solution for the case without ‘enforcement’ includes ATT*POL*CAP (0.37, 0.32, 1.0), ATT*cul*pol*INST (0.32, 0.32, 1.0) and cul*POL*INST*CAP (0.16, 0.11, 1.0), again solution coverage and consistency being 0.79 and 1.0. Accounting for easy counterfactuals, the intermediate solutions include ATT*INST (0.47, 0.32, 1.0), ATT*POL*CAP (0.37, 0.21, 1.0) and cul*POL*INST*CAP (0.16, 0.11, 1.0), solution coverage 0.79 and consistency 1.0.

Turning to fuzzy set QCA, the first analysis accounts for all six conditions. The parsimonious solution resembles the corresponding crisp set results, although there are some differences: ATT (0.76, 0.18, 0.94), POL*INST (0.54, 0.03, 0.97), CUL*CAP*ENF (0.3, 0.02, 0.95), and cul*POL*enf (0.43, 0.0, 0.93) with a solution coverage of 0.84, consistency of 0.88 and consistency cutoff at 0.939502.⁶ Accounting for easy counterfactuals (all conditions ‘present’) leads to the following intermediate solution paths: ATT (0.76, 0.18, 0.94), POL*INST*CAP (0.54, 0.03, 0.97), CUL*CAP*ENF (0.30, 0.02, 0.95), cul*POL*enf (0.43, 0.0, 0.93), solution coverage 0.84, consistency 0.88. When ‘enforcement’ is excluded from the analysis, the parsimonious solution includes ATT (0.76, 0.29, 0.94), POL*INST (0.54, 0.05, 0.97) and POL*cap (0.39, 0.0, 0.96) with a solution coverage of 0.83, a consistency of 0.91 and the consistency at 0.951009. The complex solution without enforcement shows the following configurations: ATT*cul*INST*CAP (0.57, 0.05, 1.0), POL*INST*CAP (0.54, 0.05, 0.97), ATT*cul*pol*cap (0.47, 0.05, 0.97), ATT*POL*CAP (0.54, 0.03, 1.0), ATT*CUL*inst*CAP (0.52, 0.0, 0.97), att*cul*POL*inst*cap

⁵ The complex solution in this scenario will not be discussed here. It reveals the following results: ATT*cul*pol*INST*enf (0.32, 0.32, 1.0), ATT*POL*inst*CAP*enf (0.16, 0.11, 1.0), ATT*CUL*POL*CAP*enf (0.16, 0.11, 1.0), att*cul*POL*INST*CAP (0.11, 0.05, 1.0), ATT*CUL*POL*inst*CAP (0.11, 0.05, 1.0), cul*POL*INST*CAP*ENF (0.11, 0.05, 1.0), and att*CUL*pol*inst*CAP*ENF (0.05, 0.05, 1.0), combined coverage 0.84 and consistency 1.0.

⁶ The complex solution for this scenario will not be discussed here: ATT*cul*pol*INST*enf (0.49, 0.05, 1.0), ATT*POL*inst*CAP*enf (0.39, 0.03, 1.0), CUL*POL*INST*CAP*enf (0.43, 0.03, 0.96), cul*POL*INST*CAP*ENF (0.24, 0.03, 1.0), ATT*CUL*POL*inst*CAP (0.44, 0.02, 1.0), att*POL*INST*CAP*enf (0.35, 0.02, 0.96), att*CUL*pol*inst*CAP*ENF (0.25, 0.02, 0.94), ATT*CUL*inst*CAP*enf (0.44, 0.0, 0.96), ATT*cul*pol*cap*enf (0.41, 0.0, 0.96), att*cul*POL*inst*enf (0.30, 0.0, 0.90), solution coverage 0.79, consistency 0.89.

(0.31, 0.0, 0.95), solution coverage 0.78 and consistency 0.92. Lastly, the intermediate solution corresponds to the parsimonious solution.

What can be gathered from these results at first sight is that the condition ‘attitudes’ plays a pivotal role for many solution terms. In the crisp set analysis, it can be found in configurations with ‘policies’ and ‘institutions’, while consistency values in these cases are always at 1.0. Empirically, ATT*INST is the strongest solution as it comes with the highest unique coverage values, followed by ATT*POL*CAP, whereas cul*POL*INST*CAP scores lower and CUL*CAP*ENF even lower. This partly holds true for the fuzzy set solutions which supports the importance of these findings, although the strongest solution is now ATT, which is probably because a considerable number of condition values are at 0.33 and 0.67. Besides POL*INST*CAP and CUL*CAP*ENF, the fourth solution is cul*POL*enf, albeit with a unique coverage of 0.0. Additionally, the unique coverage values are considerably lower, indicating that the solution paths overlap considerably with regard to the cases they can explain. These results make sense judging from the case studies in the data set, because favorable actors’ preferences (especially from the government) and low domestic conflict enable ‘good’ transposition and can be regarded as the most important starting point, depending on the solution in conjunction with a compatible state and regulatory structure. These solutions are therefore called the ‘attitude paths’. Secondly, there are also what can be called ‘capacity paths’: high resources and a compatible regulatory style are part of nearly all of the alternative paths. This means that high administrative and societal resources combined with a compatible regulatory style help provide the basis for a smooth transposition process in several configurations, which is also convincing as the administrative context within the member states serves as the main connection of European law and existing rules and practices. Surprisingly enough, the condition ‘culture’ and thus favorable traditions as well as strong enforcement do not play a crucial role in this data set beyond one single solution term, which of course does not necessarily mean that the assessment of Falker *et al.* (2005) about the strong impact of cultural aspects must be negated. Still and not less unexpected, policy-related and institutional influences turn out to be of a higher relevance, especially when ‘enforcement’ is excluded from the analysis.

6. Concluding remarks

This paper started with a short literature overview and the illustration of several important irritations that can be identified within the scientific debate in order to introduce EU compliance research and put the subsequently explicated compliance model into a wider context. The concept structural

model consists of distinctive causal conditions and outcomes which are connected causally. At the same time, these conditions represent aggregates of the most important explanatory patterns that came about from around three decades of research. The model was then reduced and relieved of its heuristic and ideal-theoretic parts for the purpose of empirically assessing the quality of transposition and application of European law as well as the deduction of ideal types. The preliminary analysis established a surprisingly clear pattern, yet offering some unexpected results. While ‘attitudes’ stands out as a pivotal condition, ‘policies’ and ‘institutions’ also come into play with regard to dominant causal paths. Contrary to that, no overarching role of cultural aspects can be found so far. A more thorough analysis and the inclusion of additional cases will ultimately provide even richer insights into the causal patterns which explain the quality of EU compliance.

As an alternative and innovative approach on compliance in the European Union, the compliance model introduced in this paper contributes to the study of EU compliance primarily by developing a general framework of analysis that allows for the systematical comparison of qualitative case studies which has been considered a desideratum within the implementation literature for a long time. Due to how the model is constructed, it also illustrated how the core explanatory patterns of EU compliance can be aggregated into several clusters that ultimately make up the conditions. Moreover, this approach establishes a path towards generalizing the results of case studies through the development of a structured and parsimonious model that does not merely add up ‘independent variables’, but accounts for logical conjunctions of conditions and thus the interaction between possible elements of causal explanations. Finally, it serves as a basis for further comparisons and as a starting point for alternative applications such as the aggregation of solely quantitative factors or indices with the goal of analyzing macro-level data and at the same time avoiding some of the problems that are connected to certain quantitative methods.

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