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# ***Procedural legitimacy and EU compliance***

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## **Abstract**

In recent years, a call has been made to bring domestic politics back in to the research on EU compliance. Various researchers have heeded this advice and developed political theories of EU compliance. Some of these authors view compliance as a process of domestic preference aggregation, which can be analyzed using the conventional tools of analytical politics. Others view compliance as a process of norm-taking in which member states internalize new norms through processes of persuasion, learning, or socialization. Differences notwithstanding, the two views are united in their basic view of politics: both revolve around the *substantive* likings of actors involved in compliance—whether coined in terms of preferences or norms. This paper challenges this overly substantive focus, and highlight the role of procedural politics in processes of compliance. Generalizing important findings of social psychologists, it argues that actors' willingness to comply is also influenced by their perceptions of procedural legitimacy, i.e. fairness in the decision-making process. It tests this hypothesis for the case of timely transposition, using a focused comparison of two directives transposed in the Netherlands. The conclusion is that perceptions of procedural illegitimacy may lead to severe problems of compliance and hence thwart the EU's objectives.

## 1 Introduction

The EU has an impressive track record. What started out as a scheme for bringing peace and prosperity to Europe has evolved into a potent regime that regulates an astonishing variety of policy areas. Many of these policies are decided by a majority of the member states- a significant break with the principle of unanimity that characterizes regular schemes of international cooperation. In addition, the EU has developed strong mechanisms to enforce its policies. These mechanisms are unprecedented and without parallel in other international organizations. The EU seems to be the living proof that international organizations may become more than the sum of their national parts.

Yet many scholars have a hard time ignoring their realist reflexes. Could it be that the member states try to evade the EU's invasive influence by shirking their duties? Add to this the European Commission's alarms about the 'implementation deficit' and a fascinating topic for research is born. Since the late 1980s, many authors have addressed the question to what extent the member states try to 'make European policies work' (Siedentopf and Ziller, 1988). In other words: to what extent and under what conditions do member states comply with EU policies?

In recent years we have witnessed the maturing of the field of EU compliance. Initially an eclectic mixture of legal, administrative and political explanations (Mastenbroek, 2005; Treib, 2008), the literature has taken on a much more theoretical character since recent. The current consensus seems to be that domestic politics must enter the equation (Treib, 2003; Mair, 2004; Falkner et al, 2005; Mastenbroek, 2005; Mastenbroek and Kaeding, 2006). Only then might we be able to understand why member states at times break EU law, while other times doing their utmost best to give timely and full effect to EU injunctions. Puchala's 1975 advice to open up the black box of the state and study the domestic dilemmas concerning EU compliance is now widely heeded.

We can discern two different types of theories on the 'politics of compliance'. A first group of researchers has applied rational choice insights to the matter of EU compliance. Generalizing Haverland's (2000) insight that compliance involves several veto players that interact in their

response to EU policy inputs, several rational choice oriented authors view transposition as a process in which various domestic stakeholders must agree on a particular transposition outcome (Dimitrova and Steunenberg, 2000; Mastenbroek and Kaeding, 2006; Steunenberg, 2006, 2007, Kaeding 2008a).<sup>1</sup> Central to these accounts are the preference constellations of domestic actors, who are assumed to want to maximize their utility in transposition processes. In other words, compliance becomes a matter of substantive politics, revolving around the question ‘who gets what, how, and when’ (Kaeding, 2008a, 116).

The rational choice account of compliance is highly atomic and calculative view in nature, and thus disregards the ‘normative pull’ actors may experience when involved in the process of transposition. This normative pull has been theorized by sociological institutionalists.<sup>2</sup> The core notion of this branch of institutionalism is that life is organized by relatively stable sets of shared meanings and practices (March and Olsen, 1996, 249). These ideational factors combine to form an institution, which may be defined as ‘a relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations’ (March and Olsen, 1998, 948). Crucial to sociological institutionalism is the interaction between institutions and behavior. The central mechanism linking the two is the *logic of appropriateness*. It supposes that actors’ behavior is not so much led by rational choice, but by duties and obligations (March and Olsen, 1984, 741). Institutions provide standards of obligation, which help actors to assess which course of action is expected from them in a certain situation. ‘Individuals face choices all the time, but in doing so they

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<sup>1</sup> It must be noted that many recent rationalist contributions- or contributions including rationalist explanations- assume the member state to be a unitary actor, operating strategically in its decision to comply (Mbaye, 2001; Linos, 2007; König & Luetgert, 2009; Perkins & Neumayer, 2007; Thomson, Torenvlied, & Arregui, 2007; Toshkov, 2007; Zhelyazkova & Torenvlied, 2009).

<sup>2</sup> In this paper, I use the label sociological institutionalism also to refer to IR constructivism. The main difference is that the former originates in the field of international relations, and the latter in comparative politics (Risse, 2000). The two approaches are essentially the same in outlook; that is, if we concentrate on the modernist version of constructivism (Checkel, 1999, 554). First, both approaches subscribe to the logic of appropriateness as the mechanism underlying human behavior. A second core characteristic is the mutual constitution of structure and agency, of norms and actors- even though in reality both approaches usually bracket institutions (see Checkel, 1998 and Sending, 2002; for a more reflexive approach, see Wiener, 2004). Third, both approaches stress collectivism instead of the methodological individualism underlying rational choice institutionalism.

seek guidance from the experiences of others in comparable situations and by reference to standards of obligation' (Dimaggio and Powell, 1991, 10).

To explain the fate of directives within one member state, SI scholars have mostly viewed compliance as taking place on a rule-by-rule basis, with member states applying standards of appropriateness to individual pieces of policy (for an overview, see Finnemore and Sikkink, 2001). The core assumption of this literature is that member states' responses to integrative challenges are determined by their values, beliefs, and identities (Aspinwall and Schneider, 2000, 21). Compliance thus is conceptualized as a piece-by-piece assessment of EU policies in the face of pre-existing domestic norms, driven by ideational factors.<sup>3</sup> If a directive fits a member state's norms<sup>4</sup>, that state will deem the directive appropriate and speedily comply with it. If the member state finds the directive inappropriate, because it runs counter to national norms, compliance will be more time-consuming, dependent on a process whereby the norm is diffused into the domestic system, with internalization of the rule as the endpoint (Sending, 2002, 456). One of the key objectives of this literature has been to identify the mechanisms leading to norm internalization in the face of a normative misfit, such as socialization, persuasion, and learning.

Whereas most IR theorists would agree that rationalism and constructivism differ in their ontological outlook (Finnemore and Sikkink, 2001; Keohane, 1988; Checkel, 1998), their work is united by a crucial common denominator. Both rational choice and sociological institutionalists portray compliance as a process revolving around the *substantive* liking of member states or their constituent parts- whether coined in terms of preferences or norms. This shared focus is nicely

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<sup>3</sup> Most constructivist studies take a top-down orientation, starting with the EU input, and ending with the policy result. Some authors, however, claim that we should work the other way around, stressing the agency of domestic actors, who use international norms actively and selectively (e.g. Gurowitch, 1999; Acharya, 2004).

<sup>4</sup> So far, most of these accounts have been based on a unitary actor assumption, if mostly left implicit. For instance, Risse (2000, 29), in a study on socialization into human rights norms, distinguishes between governments or target states, transnational organizations, and domestic opposition located in civil society. This unitary actor assumption seems to have been borrowed from the broader literature of IR constructivism. Most IR constructivists are statists, even though few of them make this claim as explicitly as Wendt, who yields that 'the state-centrism of (his) agenda may strike some (...) as depressingly familiar' (Wendt, 1992, 424). This implicit unitary actor view is in line with the conceptualization of the logic of appropriateness as a collective, rather than an individual property: norms are defined by the political and social system (March and Olsen, 1984, 741).

captured by Toshkov (2007, 337): ‘A political vision of compliance and implementation necessarily emphasizes the role of preferences and attitudes. If transposition is a genuinely political process, then the analysis should start with what the actors want to achieve.’

The substantive orientation of compliance theory is not surprising for rational choice oriented work, which has the strategic interaction of rational individuals as its starting point. For sociological institutionalism, this substantive focus is less intuitive, as it does not do justice to March and Olsen’s original conceptualization of the logic of appropriateness focus on the rules governing the business of politics (March and Olsen, 1984). It can be explained, though, by the historical origins of constructivism, which arose as a response to IR rationalism, aimed at exploring the contents of state interests (Checkel, 1998, 324). This ‘holistic and ideational’ agenda (Finnemore and Sikkink, 2001), still echoes in IR constructivism. The procedural aspects of the logic of appropriateness, though, have received hardly any attention. In addition, because of its holistic character, constructivism it has an underdeveloped theory of agency (Checkel, 1998; Sending, 2002), which makes it even less surprising that procedural perceptions of decision-makers have not yet entered the equation.

This paper challenges the overly substantive focus of present day constructivist work on EU compliance, highlighting instead the role of procedural politics<sup>5</sup>. My main claim is that domestic actors base their stance towards EU obligations not only on substantive considerations, but also on the perceived legitimacy during the transposition process. This legitimacy is largely *procedural* in nature, i.e. referring to the perceived fairness of the decision-making process.

The article proceeds as follows. Section 2 discusses the effects of legitimacy on compliance. A key to the ease of compliance, as I will argue, is with the procedural legitimacy as perceived by the players. I will proceed by developing a conceptual framework. The hypothesis will be tested on a focused comparisons of two directives transposed in the Netherlands. The next section will discuss the results and their implications.

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<sup>5</sup> Please note that this usage of the word is different from that used by Jupille (2004, 1), who defines procedural politics as ‘the everyday conduct of politics not within, but with respect to, political institutions.

## 2 Legitimacy and compliance

A core insight in studies of international relations and European integration is that legitimacy is crucial for international organizations to be effective. As for any political system, legitimacy is a crucial characteristic, for it buys the support and obedience of its citizens (Beetham and Lord, 1998, 9). The key question in the ‘crowded territory’ of EU legitimacy (Kohler-Koch and Rittberger, 2007, 1)<sup>6</sup> therefore is whether the EU has a moral standing among its citizens (Beetham and Lord, 1998). In focusing on the legitimacy perceived by citizens, Beetham and Lord (1998) sidestep another level of legitimation: that of the member state. Even though they indicate that ‘any regime is particularly dependent on the cooperation of its own officials and their acknowledgement of its authority is therefore especially important,’ they do not follow up on this claim, paying attention to direct legitimacy only. Yet, if not sufficient to obtain full EU compliance (Beetham and Lord, 1998, 14), legitimacy at the level of member states may be a necessary condition. This *indirect* legitimacy is central to the present paper.

In the field of IR it has become widely accepted that the legitimacy of international rules may lead to non-compliance (Hurd, 1999, 381). From this perspective, it is a bit puzzling that indirect legitimacy so far has received scant attention in the EU literature. Even though many EU rules and allocations directly impinge on citizens (Beetham and Lord, 1998, 13), most of them first need to be implemented by national authorities. A lack of perceived legitimacy at the level of implementers hence may hinder compliance. Yet and so far, fairly little attention has been paid to legitimacy at this level.<sup>7</sup> What type of legitimacy is likely to affect their stance towards compliance?

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<sup>6</sup> Even though this may be the case for the matter of *direct* legitimacy of the EU, this statement does not apply to the matter of indirect legitimacy.

<sup>7</sup> A notable exception is the work by Beach (2005) concerning compliance with ECJ judgments. He argued that member states may feel compelled to follow EU law even in the absence of manifest instrumental incentives. However refreshing, Beach’s account suffers from a shortcoming, which makes it unsuitable for analyzing EU transposition: it views member states as unitary actors.



### **3 The concept of legitimacy: from substance to procedure**

Legitimacy is at stake at many levels of generality. The main distinction is between legitimacy as a property of a rule or of a rule-making institution (Franck, 1990, 16; Hurd, 1999, 387). Føllesdal (2006, 450), drawing upon Easton (1965), refers to this distinction as between specific and more diffuse support. He proposes a range of objects of legitimacy, ranging from particular policy decisions and particular political actors to more diffuse objects such as public institutions, the political order as a whole, a regime's principles, and the political community. What level of legitimation is most important for analyzing compliance? So far, several scholars of EU compliance have paid attention to legitimacy at the level of the EU as a political order, by measuring the effect of EU support (Lampinen and Uusikyla, 1998; Mbaye, 2001) or deference to EU law more specifically (Falkner et al, 2005). For instance, Sedelmeier (2008) argued that the new member states may have been socialized into 'perceiving good compliance as appropriate behaviour for good community members'. He operationalized this type of legitimacy by the general pro-EU stance of a country, but found no relationship with compliance patterns. Toshkov (2007) did find such an effect, and argued that substantial policy preferences can be outweighed by the strength of support for the EU. 'If an actor regards EU integration positively, it might be willing to tone down substantial concerns and proceed with swift and timely policy transposition and implementation' (Toshkov, 2007, 339). This finding nicely parallels Easton's argument that diffuse legitimacy may ensure specific support of particular decisions and authorities (Føllesdal, 2006, 451).

Arguably, though, diffuse legitimacy is not the most suitable concept to explain EU compliance. First, because the EU is still a nascent institution, it is questionable whether such diffuse support already exists. Second, more diffuse legitimacy of the EU as a whole is ill-suited to explain intra-country variance in the ease of compliance. As various researchers have shown, there is considerable intra-country variance in the ease of compliance (Mastenbroek, 2003). This variation can hardly be explained by the EU's overall legitimacy as perceived in different member states. It

hence seems sensible to start at the lowest level of generality, that of individual rules. The question then becomes to what extent stakeholders attach legitimacy to the inputs into the compliance process, i.e. EU policies. To research this matter, we must discuss what makes rules legitimate in the eyes of their addressees.

When considering sources of legitimacy, we can draw on the crucial distinction between substantive and procedural conceptions (Clark, 2005, 18). According to the *substantive* view, rules may be deemed appropriate when they embody 'proper ends and standards' (Beetham and Lord, 1998, 3; *ibidem*). This type of legitimacy is closely related to the substantive logic of appropriateness that has dominated the literature on compliance so far. If member states believe particular EU directives to embody 'the proper ends and standards', they are believed to comply swiftly and correctly. If, on the other hand, member states believe EU directives to be 'inappropriate', i.e. representing norms that do not fit well with a nation's norms, compliance will suffer.

Substantive legitimacy should also be differentiated from the logic of consequence that is central to rational choice institutionalism. Legitimacy may lead to a generalized 'reservoir of support' for authorities and a general willingness to obey rules, besides immediate self-interest (Tyler, 2006, 381). It hence offers individuals a reason for compliance with policies, regardless of their perceived merits (Flathman, 2007, 678). In other words, legitimacy offers a logic distinct from the substantive focus of rational choice institutionalism. This is nicely captured by Franck (1995, 9): 'I can understand the need to provide everyone with basic health care even if my personal level of health care will be lowered to achieve that objective.' In other words, legitimacy is expected to exert a normative pull on the domestic stakeholders responsible for EU compliance.

Second and alternatively, legitimacy has been conceptualized in *procedural* terms (Clark, 2005, 18). The question then becomes whether or not a particular policy has been adopted by the 'rightful source of authority' (Beetham and Lord, 1998, 3; *ibidem*). Procedural legitimacy comes down to 'the perception of those addressed by a rule or a rule-making institution that the rule or institution has come into being and operates in accordance with generally accepted principles of right process'

(Franck, 1990, 19). Legitimacy, in other words, then depends on the extent to which people believe policies were made in accordance to what they believe to be a right process (Franck, 1995, 7).

The notion of procedural legitimacy can be easily tied to the agenda of sociological institutionalism. As March and Olsen (1989, 52) argued, institutions organize the political process by providing a structure of routines, roles, forms, and rules. Institutions provide the procedural framework within which politics takes place (March and Olsen, 1989). This function of institutions as standard operating procedures channeling the political process- rather than shaping the political process- so far has not received any attention in the literature on compliance. Compliance is then viewed as taking place in an institutionalized setting, or a 'stable collection of practices and rules defining appropriate behavior' (March and Olsen, 1989, 22). These practices and rules may not so much relate to the contents of a particular directive or proposed measure for transposition, but also to the decision-making process. Smooth compliance in this view not only depends on the substantive fit of a rule with the norms of domestic policy makers, but also on the fit of the compliance process with the well-institutionalized rules and routines for decision-making that guide the behavior of domestic stakeholders in compliance processes.

So far, this 'procedural logic of appropriateness' has received barely any attention in the compliance literature (but see Grimes, 2006). The effect of procedural fairness on compliance is a rather new insight to the field of IR and EU studies,<sup>8</sup> where compliance has been interpreted as a matter of substantive likings. This is a marked difference with the state of the art in compliance research in an adjacent field, that of social psychology. Here, a consensus has formed that perceptions of procedural legitimacy exert a strong moral pull on people that may even overshadow actors' self-interest and perceptions of substantive legitimacy. The core finding from this surprisingly vast literature is that authorities and institutions are viewed as more legitimate when they use fair procedures, which in turn fosters acceptance of the decisions they make. This effect of procedural justice on legitimacy has been documented for legal, political, and managerial settings (Tyler, 2006,

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<sup>8</sup> Some notable exceptions to this rule are Applbaum (2000, 319)

382).<sup>9</sup> Concerning legal settings, perceptions of procedural justice increase the chances that people abide by the decisions of police officers, judges, mediators, and other third-party authorities (Tyler, 2001, 216). As for political settings, an important contribution has been made by Gangl (2003), who found that a perception of procedural legitimacy leads to more positive assessments of the outcomes of lawmaking.<sup>10</sup> Concerning management, finally, researchers have reported that fair exercise of authority leads to greater acceptance of decisions<sup>11</sup> (Tyler, 2006, 380; Tyler and Blader, 2005).

All in all, when people believe that decision-makers exercise their authority in a fair way, they become legitimate, which increases the chances of voluntary compliance with the decisions they make. This situation may have an important parallel in EU compliance: domestic constituents may base their decision whether or not to comply at least partly on perceptions of procedural legitimacy. This expectation represents a break with the current literature, which is largely substantive in nature.<sup>12</sup> This was also the case in the more general field of social psychology. As Tyler (2001, 216) argues for public feelings concerning the police and the courts, the finding that procedural justice matters runs counter to many people's ideas. Our intuitive notion is that people base their views on legal authorities on the nature of outcomes they themselves receive. This intuitive prioritizing of substantive considerations closely resembles the situation in IR and EU studies. In this field, the general assumption, uniting sociological and rational choice institutionalists, is that domestic actors judge international policies on their substantive merits, whether coined in terms of preferences, norms or output legitimacy. In reality, it may well be that procedural legitimacy, as perceived by domestic norm takers, is an equally or more important driver of compliance.

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<sup>9</sup> It must be said that this literature makes a clear analytical distinction between the origins of legitimacy, among which procedural fairness, and the concept itself. This is a further refinement of the political science literature on legitimacy, which talks about procedural legitimacy, thus collapsing origins and content. For the present paper, I will choose the second option.

<sup>10</sup> See Tyler (2006, 382) for a thorough overview of this literature.

<sup>11</sup> It must be noted that, in a meta-analysis of 190 studies, Cohen-Charash and Spector (2001) did not find an effect of perceived procedural justice on compliance.

<sup>12</sup> It is all the more surprising that the notion of procedural justice so far has gone unnoticed in the field of IR, as this finding originates not from social psychology, a relatively 'foreign' field, but from dispute resolution theory, where it was introduced by Thibaut and Walker, already in 1975.

The importance of procedural legitimacy chimes well with a literature less foreign to students of EU compliance, that of deliberative democracy (Elster, 1986, 1991, 1998; Page, 1996; Habermas, 1984; Steenbergen et al, 2003; Gutmann and Thompson, 2004). One alleged effect of ‘good’ deliberation is that it increases legitimacy. When people believe that they have been heard and treated correctly by the other parties in a deliberative process, they may accept results they otherwise would not, even when no preferences are changed by the deliberation (Shapiro, 2003, 123; Fearon, 1998b, 56)<sup>13</sup>. Conversely, low discourse quality, for instance in the form of manipulation or threats (Neblo, 2005, 175) may destroy the goodwill of participants to open up to the views of others, thus diminishing possibilities for compromise. Serious breaches of the maxims of deliberation may cause inter-group hostility in deliberative processes, bringing differences to the surface (Shapiro, 2003, 123). Such breaches may destroy the ‘good faith’ (Johnson, 1998, 174) of other participants and hence cause the conflict to escalate. When the deliberators do not perceive other participants as friendly, but as a rival “outgroup” (Sunstein, 2003), the members of the former group will be less receptive of the other party’s arguments. As a result, the two groups will polarize, and shift towards a more extreme point than held in the beginning (ibidem, 81). Deliberation under these conditions is expected to result in stalemate, with the various groups fiercely opposing each other.

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<sup>13</sup> There is a crucial difference between this body of literature and the IR literature that views compliance as a process of deliberation (Checkel, 2001; Risse, 2000). That is, the latter has substantive normative misfit center stage and uses deliberative theory to explain normative change, in the sense of socialization, learning or persuasion. Deliberative theory, as well as procedural legitimacy as such, does not have consensus as its analytical endpoint. As becomes clear from the Shapiro quote, good deliberation may lead to acceptance of policies, without normative change having taken place. Legitimacy provides political systems with the capacity to induce citizens to accept defeat (Grimes, 2006, 306). Please note that this expectation goes against the argument made by Hurd (1999) that legitimacy leads actors to revise their interests.

#### 4 Towards a procedural legitimacy model

All in all, I believe that we should refocus the sociological institutionalist work on compliance on the notion of procedural legitimacy, in line with the more general findings in the field of social psychology. In doing so, I restrict myself to the stage of transposition, which is a first and crucial step in the overall process of compliance. Furthermore, I want to point out that procedural considerations are expected to play a role next to substantive considerations (cf. Tyler, 2001; Grimes, 2006).

In order to model the transposition process, I make the following assumptions. First, transposition is a process in which various domestic actors interact. I thus depart from the unitary actor assumption, which has been central to most SI work on compliance, if often implicitly. I assume that several domestic have a formal or informal veto position in transposition, as posited by Steunenberg (2006). Second, these actors have their normative position regarding the transposition of a particular directive. Whereas some norms are shared by all of society, others are very much group-specific (Elster, 1989, 99; Johnston, 2001, 495). Such a disaggregated view would be in line with the recent finding of Zürn and Checkel (2005, 29) that we should theorize the role of domestic politics in EU socialization. Also, it echoes the more general call made in IR theory to bring domestic politics back in if we want to understand compliance (Haggard and Simmons, 1987, 513; Keohane, 1988, 392; Milner, 1998, 767; Checkel, 2005; Zürn and Checkel, 2005, 29).

What is the ‘cognitive sequence’ (Grimes, 2006) in the mind of those involved in transposition? As is depicted in figure 1, the dependent variable is the willingness to agree with a particular proposal for transposition, made by the agenda-setter.<sup>14</sup> This variable basically has two values: contestation or deference.<sup>15</sup> Domestic actors involved in the process make this decision on the procedural fairness they experience. This procedural fairness may take two forms: first, it may concern the EU decision-making process. If any of the actors deem this to have been unfair, they

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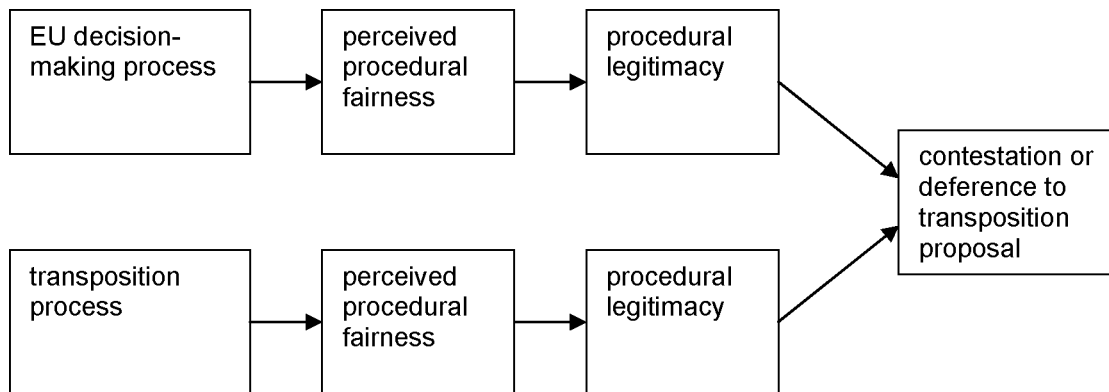
<sup>14</sup> This variable is more attractive than that of ‘transposition timeliness’ per se, because the latter can be influenced by a host of other variables.

<sup>15</sup> This is parallel to the dependent variable in the social psychology literature, which is contestation of a decision-making outcome by its objects (cf. Grimes, 2006).

may frustrate the transposition process. A second level is the transposition process: if any of the actors perceives this to be unfair, they may frustrate the process. Accordingly, the following hypothesis will be tested:

*Hypothesis: the lower the procedural fairness of either the decision-making process or the transposition process as perceived by its participants, the less willing they are to accept a proposal for transposition.*

**Figure 1 Cognitive sequence**



A question that arises from this model is how perceptions of procedural fairness relate to substantive norms. What if an actor agrees with a particular proposal for transposition, but does not perceive EU decision-making or the transposition process as fair? Vice versa, what happens if an actor deems these processes fair, but does not agree with the proposal for transposition? In the first case, I expect procedural considerations to come second to substantive considerations. In other words: substantive fit is a sufficient condition for deference to a transposition proposal. Vice versa, I expect procedural legitimacy to be a necessary condition for deference to a proposal in the case of a substantive misfit as experienced by any of the actors. In other words, a fair decision-making process may lead people to accept outcomes they do not favor.

## 5 Method, data, and operationalization

In order to test the hypothesis formulated above, I carry out a focused comparison, based on a previous statistical model on the time needed for transposition, which comprised various legal and administrative variables (Mastenbroek, 2003). The particular procedure followed is nested analysis as described by Lieberman (2005). According to this method, statistical analysis is followed by in-depth study of an outlier and a comparable ‘on-the line case’, which is a case that was well-explained by the model. The objective of this analysis is to identify any omitted variable bias, i.e. systematic factors that explain the bad fit of a statistical model (King, Kehoane, and Verba, 1994, 168).

The first step in case selection was to compile a list with the ten worst outliers. With an eye on the availability of interviewees, only fairly recent cases were selected. The selected outlier was directive 1997/27 on the masses and dimensions of motor vehicles, which was transposed two years after the deadline, and had a standardized residual of 2.23. The similar ‘on-the-line’ case was directive 1998/76 on access to the profession of road transport operator. Despite their difference in the dependent variable, time needed for transposition, these two cases were highly similar. Both were revisions of older directives. Both directives were transposed through modification of an administrative order by the Ministry of Transport. One difference is the time allotted for transposition. This difference is unproblematic, though, because the ‘slow’ directive had more time allotted than the one that was transposed on time. Moreover, as there is no statistical difference between directives adopted by codecision versus consultation, this variable is not crucial either. Finally, both directives were plagued by obscurities, and transposed in a period of a shortage in administrative capacity. All considered, the cases are similar enough to warrant a focused comparison.



**Figure 2 Comparison of selected cases**

	<b>outlier</b>	<b>control case</b>
	<b>97/27 (masses and dimensions)</b>	<b>98/76 (access to the profession)</b>
allotted time	104 weeks	52 weeks
decision-making proc.	codecision	consultation
clarity	poor	poor
administrative capacity	poor	poor
legal measure	administrative order	administrative order
lead ministry	Transport	Transport
number of ministries	1	2
novelty	modification	modification
existing legislation	yes	yes
transposition	yes	yes
transposition timing	95 weeks after the deadline	8 weeks before the deadline

Data on the hypotheses were gathered through a combination of qualitative, semi-structured interviews and document analysis. For each directive, a member of the European Commission, national civil servants, and members of relevant interest groups were consulted. Also, prospective enforcers and relevant experts were enforced, so as to increase intersubjectivity. I made sure that both adversary and advocate opinions were heard. As a second step, document analysis was performed to further substantiate the views of the interviewees. I cross-checked the information as much as possible using written materials, or by getting back to the interviewees.

How about operationalization? The key variable, that of procedural justice, was measured using the Discourse Quality Index (DQI) developed by Steenbergen et al (2003). The DQI was developed to assess the discourse quality of parliamentary debates, scoring speeches on the first five criteria mentioned above. The sixth, authenticity of expressed preferences, is excluded from the index, because the authors find that it is impossible to empirically ascertain to what extent a stated preference is true (Steenbergen et al, 2003, 26). The unit of analysis of the DQI is a speech, an element of the debate voiced by a participant. An individual may hold various speeches. For coding purposes, only the speeches containing a demand are included, i.e. a proposal about the decision to be made (ibidem, 27).

However useful, the DQI also suffers from several important disadvantages. First, the index can only be applied to the cases that have been transposed through a statute, and not to the cases for which delegated legislation was used, as there are no written transcripts of the deliberation process available. Second, the index is rather narrow in scope, due to its focus on the actual parliamentary debate. It runs the risk of neglecting aspects of the broader decision-making process of which the debate forms a part. The actual parliamentary debate may be conducted when the decision has already been made. This harbors the risk of several biases. For instance, the DQI operationalizes the requirement of open access by counting the number of times a speaker is interrupted. However, it seems more interesting to see which actors are allowed to participate in the broader process of decision-making, of which the parliamentary debate is but one stage. Also, deliberation is not necessarily a face-to face activity; it may also take the shape of textual exchange between institutions (Tulis, 2003, 200-201), and possibly also take place in rather informal settings. Therefore, analyzing the parliamentary debate will only reveal a subset of the actual process. Third, it can be doubted if the various speeches that serve as the units of analysis can be viewed as independent. It can be expected that disrespect towards one player in one particular speech act will lead to 'tit-for-tat' disrespect by that player in a subsequent speech. Fourth, the discourse quality index is not suited for the present study because it requires multiple coders, with an eye on reliability. Therefore, I suggest using a less sophisticated but more valid and feasible operationalization. Instead of quoting all speeches, I will look for flagrant violations of these criteria, as perceived by the participants to the process.

## 6 Trucks versus transport operators

### 6.1 Masses and dimensions

In 1970 the member states adopted framework directive 70/156/EEC on the type-approval of motor vehicles and trailers. The directive's end goal was a situation in which vehicles fulfilling EU-wide standards could be placed freely on any member state's market without having to meet additional or different criteria. The directive sought to achieve this aim by setting a procedure for EC type-approval of vehicles. Under the umbrella of the 1970 framework directive, a great number of follow-up directives have been adopted, covering the features and components of various types of vehicles. One of these directives, 1997/27, concerned the masses and dimensions of trucks and buses. This directive lists the technical requirements that vehicles must meet in order for their producer to obtain an EU type-approval. The directive is extremely technical in nature, setting maximum dimensions and explaining how masses and dimensions should be measured.<sup>16</sup>

The directive finds its origin on a Commission proposal dating back to 1991.<sup>17</sup> The negotiations took place primarily in Council working groups. Due to the technicality of the directive, technical experts played a key role. For the Netherlands, negotiations were carried out by the Government Road Transport Agency (*Rijksdienst voor het Wegverkeer* or *RDW*). This is an independent regulatory agency charged with regulating road transport. Amongst other things, it is responsible for the admission of vehicles and their parts, as well as monitoring of manufacturers and vehicles. During negotiations, the Netherlands only had some minor, technical objections to the Commission proposal (interview).

The directive's key provision is article 2, which specifies that no member state may refuse to grant EC type-approval or national type-approval of a vehicle type, or prohibit the sale, registration, entry into service or use of an individual vehicle, on grounds relating to its masses and dimensions if

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<sup>16</sup> The directive does not set maximum masses, as the negotiators did not reach consensus on this point. One of the interviewees indicated that he doubts that harmonization of this aspect will ever be reached.

<sup>17</sup> Commission proposal COM(91)23 def.syn 348.

these satisfy the requirements set out in Annex I to the directive. The text refers to directive 96/53 for the maximum dimensions, providing definitions of these for measurement purposes. Whereas it does not harmonize the masses of vehicles, it does provide a uniform procedure for measuring a vehicle's mass, which member states have to apply upon request by a manufacturer. Finally, the directive contains several highly technical derogations.

**Table 1 Key elements of directive**

Element	Required or optional	Discretion
requirements for EC type-approval	required	no
requirements and definitions for measurement	required	no
derogations	optional	yes

The directive fit rather well to the existing Dutch standards. Yet those involved in transposition agree that the directive was far from crystal-clear on the question whether or not it provided for full harmonization. This would have been disastrous for Dutch transport companies, as some of the directive's requirements were more restrictive than existing national requirements. Mainly, this concerned the question whether so-called axle lifts should be included when measuring a vehicle's length. The question was whether or not member states could maintain such less stringent national requirements.

The transposition process consisted of modifying the Motor Vehicles Regulation, and various ministerial decrees. The responsibility for this process was borne by two policy divisions from the Ministry of Transport: the Directorate-Generals of Road Haulage, and of Passenger Transport. In reality, however, most work was done by the division of Legal Affairs. This division was responsible for drafting the transposing measures and had to consult the Government Road Transport Agency (RDW), which had the required expertise. These two actors played the main part in the transposition soap that was to ensue.

At the Legal Division, a ‘super specialist’ in transport law (interview) drafted the bill. After an impressive 1,5 years of work, he submitted the bill to the RDW for an assessment. Convinced that the directive provided for full harmonization, he had dutifully transposed all requirements listed by the directive as obligatory for national type approval. This interpretation came as a total surprise to the RDW, which wanted to keep several looser requirements. It rejected the proposal, arguing that the member states were free to impose looser requirements for national type approval as long as they would not discriminate against cars meeting the stricter requirements (*Staatsblad*, 2001, nr. 448, p. 7; interview).

The conflict between the lawyer and the RDW was bitter and persistent. Trying to win the conflict, the legal officer gathered evidence to support his point of view. He composed a memo containing an advanced legal argument, arguing that the directive implied total harmonization. The RDW argued that, as it attended the negotiations, it knew better and that it had been obvious throughout the decision-making process that the directive only provided for partial harmonization. The legal officer denied this, stubbornly maintaining his carefully concocted legal argument. He further aggravated the conflict when he stated that the RDW formally only had an advisory role, and that it could not veto proposals for transposition. Yet the RDW refused to give the green light. As a next step, the legal counsel contacted the European Commission, hoping to get the authoritative answer that the directive provided for total harmonization. Soon, though, he received a phone call from the Commission, declining. In July 1999, still not convinced, he sent a formal letter to the European Commission, carefully stating his point of view. Again, and this time on paper, the Commission answered that the directive did not make EC type approval complete, and that the requirements could coexist with national ones. The civil servant refused to accept the Commission’s answer, allegedly because a civil servant too low in the hierarchy had composed it (interview). In the words of another interviewee ‘he thought he knew better than the EU legal experts.’

All this time, the policy divisions, who should have coordinated the process, did not intervene. The conflict could not be resolved until the civil servant from the legal department was

replaced, which happened late 1999, when the deadline had already expired. This lawyer soon concluded that the directive indeed did not entail total harmonization. The result was that the new and stricter requirements would not become mandatory, which was good news to the RDW, as well as the transport and vehicle business. The new civil servant drafted a new proposal for transposition, which was adopted in September 2001, two years after the deadline.

## **6.2 Access to the profession of road haulage operator**

A cornerstone of European road transport policy concern access to the profession of road haulage operator. By these directives, the Commission seeks to regulate the quality of EU transport. Directive 1996/26 laid down the basis for this system. The system laid down by this directive works as follows: if a person wants to start a transport company, they must request a permit from the national authorities, which depends on the fulfilment of certain requirements: good repute, financial standing, and professional competence. Diplomas granted in the various member states must be mutually accepted. Yet integration was insufficient. The criteria for obtaining a permit differed greatly between the member states. Some countries were known for their leniency on diplomas, which led to ‘diploma tourism’. To prevent a race to the bottom, the European Commission in 1997 proposed a new directive, with stricter requirements.

The Netherlands wholeheartedly embraced the Commission proposal, supporting the aim for stricter requirements for transport operators. In the 1990s, the Netherlands was plagued by diploma tourism. Allegedly, the Ministry of Transport actively lobbied for the directive, and ‘even went to the European Commission to make its case’ (interview). The Netherlands’ main concern was to improve the standards of professional competence, as the Netherlands had strict requirements and relatively demanding exams. The directive was adopted on 1 October 1998, and had to be transposed within only one year.

The main goal of the resulting directive was to harmonize the criteria for access to the profession of road transport operator in national and international transport (see table 27 for an

overview). According to most of the interviewees, the directive modified the existing directive 96/26 only slightly (see Mason, 2003). To begin with, the scope of the directive was extended to smaller vehicles. Second, the condition of good reputation was made more stringent, as the directive adds environmental protection and professional liability as requirements. Also, no longer must a permit be taken back only when a serious and *repeated* offence is committed, but only when a serious offence is committed. Third, when it comes to professional competence, the content and organization of the courses and exams were elaborated, and a three-year restriction on ‘diploma tourism’ was added. Fourth, the financial threshold for access to the profession was raised; transport undertakings now were to have reserves of at least 9 000 Euro for the first vehicle, and 5 000 for each additional one. Finally, the directive contains some new provisions on enforcement, namely that regular checks were to be held every 5 years, to verify whether transport companies still fulfilled the criteria mentioned.

**Table 2 Key elements of directive**

Topic	Element	Required or optional	Discretion
scope	extended to smaller carriers	required	no
good reputation	<ul style="list-style-type: none"> <li>- environmental protection and professional liability</li> <li>- ‘repeated’ dropped</li> </ul>	required	disputed
financial standing	<ul style="list-style-type: none"> <li>- higher threshold</li> </ul>	required	disputed
professional competence	<ul style="list-style-type: none"> <li>- content and organization of courses and exams</li> <li>- three years restriction to diploma tourism</li> </ul>	<ul style="list-style-type: none"> <li>- required</li> <li>- optional</li> </ul>	no
enforcement	<ul style="list-style-type: none"> <li>- verification every five years</li> </ul>	required	no

The interviewees agree that overall, the goodness of fit with existing legislation was rather good. The Netherlands already had extensive rules for professional competence in place, as well as a financial threshold higher than the directive’s minimum. The only new point concerned the condition of good reputation. As said, the directive listed two new grounds for withdrawal of a permit, and dropped the

word 'repeated'. Whereas some interviewees claimed that the Netherlands already complied with this point, others hold that this implied a large misfit for the Netherlands, as the existing points system that implemented the provisions on good reputation was based on the notion of *repeated* offences. On the basis of the points system, a permit could only be withdrawn after a company had committed serious and repeated offences. Therefore, there was a serious policy misfit. Possibly, the respondents did not acknowledge this because this misfit was played down during the transposition process.

Transposition of the directive required changes in two administrative orders in the fields of road haulage and passenger transport, and two ministerial decrees. In addition, the new rules had to be further operationalized by various functional agencies. The directive was discussed in a project group, consisting of representatives from the directorate-generals of Road Haulage and Passenger Transport. Around 1997, two legal counsels from Legal Affairs were added to the group, both those responsible for road haulage and passenger transport. Formally, the two policy divisions were veto players. The legal department played a somewhat weaker role than in the previous case, as the policy departments wielded the formal clout.

The transposition stage consisted of three stages: drafting, consultation and further detailing. Whereas the latter two were fairly unproblematic, the former was fairly politicized. The main issue concerned the new requirements for *good reputation*. Earlier, this requirement had been transposed by means of a so-called points system. Transport operators were given penalty points for offences against good reputation, such as violations of the rules on driving times. After gathering a certain number of points, NIWO could withdraw a transport operator's permit. In reality, though, the system did not work. As a result of privacy legislation, the courts would not forward information on offences to the NIWO. The NIWO was hence unable to apply the points system to withdraw permits. What is more, breaches of employment conditions, as specified by directive 96/26, do not fall under criminal law, but under civil law. Unfortunately, breaches of employment conditions are hardly ever reported, as most employees are reluctant to file a lawsuit against their employer.



The ministry's legal department therefore recommended replacing the points system with a new system. They proposed that the judges themselves could be made responsible for withdrawing permits. However, there was much resistance to this view. To begin with, the established business was not particularly keen on a new system, not wanting to increase the likelihood of losing their permits. According to one of the interviewees, the points system was initially designed with 'the knowledge that it would not work anyway'. The main interest of established business was to keep out unwanted competition, while protecting its own position. The views of the policy sections diverged. Initially, the directorate-general for road haulage initially did not want a better system, fearing negative publicity for the minister. Later, it changed its opinion. However, it was opposed by Passenger Transport, which did not want a better system. After intense discussions, no solution could be found and it was decided to maintain the ineffective system.

A related issue concerning good reputation was that directive 98/76 speaks of 'serious offences', whereas directive 96/26 speaks of 'repeated and serious offences'. However, the notion of repetition was the building block of the points system. As stipulated by article 34 of the Road Haulage Decree, a road haulage operator does no longer comply with the criteria of good reputation if, in a three years period, he is repeatedly convicted of serious offences. Therefore, officials from the legal department argued that the system had to be modified. The policy divisions did not support this wish. The lawyers composed several memos, explaining why this went against the directive, but the relevant policy official decided that the existing positions would suffice for 'Brussels'.

Another issue concerned the threshold for financial standing. As said, the directive raised the amounts required to start a transport undertaking to 9000 Euro for the first, and 5000 for each additional truck. Yet the Netherlands wished to maintain its higher threshold of 18.000 Euro. This implied that for companies with one truck, the Dutch criteria were higher than those of the directive. There was great consensus among the policy departments, businesses and the trade unions that this was desirable, so as to keep out unwanted newcomers. The legal department, however, maintained that the directive did not allow for this possibility. They argued that the phrase 'at least' did related to

the amount of capital to be held by the undertaking, and not to the level of the threshold set by the member states.

Eventually, the greatest part of the directive was transposed in time, as the administrative order modifying the existing administrative orders in the fields of road haulage and passenger transport entered into force on 1 October 1999.<sup>18</sup> Transposition was not completely correct, as the provisions for good repute still imply ‘repeated offences’. Another problem concerns the continued infeasibility of the points system, as set out above. The old system does not work, but no new system has been devised either.

## 7 Discussion

The case descriptions lead to the following finding regarding discourse quality. In the case of 97/27, discourse quality was very low. When it comes to the *openness of participation*, the RDW felt aggravated by a lack of involvement in the drafting stage, and by the minimalist interpretation of its advisory role provided by the legal officer. Vice versa, the legal officer felt aggrieved by the fact that he was not consulted during negotiations. Several people from the legal service express their annoyance about the fact that the RDW dominated the negotiations, without involving the lawyers. What is more, there seems to be an important problem with the *respect towards counterarguments*, as the legal officer brushed aside the interpretations of the European Commission that went against his own point of view. Also, the RDW breached the maxim of *justification*, claiming that it knew better because it had attended the negotiations. In addition, the fierce clash of personalities that occurred implied that the process was far from *constructive*. As several interviewees report, after a while the two sides were not even on speaking terms, which made decision-making impossible.

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<sup>18</sup> *Staatsblad*, 1999, 352.

In the case of 98/76, discourse quality was rather low for the part on road haulage. Here, the lawyers also complained about their lack of involvement in the negotiations. As becomes clear from the interviews, this is a more general problem at the ministry. As one interviewee remarks rather pitifully: 'They don't let me join them. (...) The good ones inform us, but often they even forget that. Involving the lawyers is simply not the habit at Transport'. On the other side of the spectrum, a policy officer complains: 'They even want to join us to Brussels! They would prefer to constantly sit next to you, to sit on your chair. (But) policy isn't made by lawyers.' Second, concerning *respect* towards counterarguments, the carefully argued memos written by the legal officer to defend his views of the issues of good reputation and financial standing were not considered seriously by the policy officers. None of the interviewees on that side even remembered reading them. Finally, personalities are also reported to have clashed here, and the process is reported to have been far from constructive.

If both directives score similarly low on discourse quality, how come transposition was timely for the first, and not for the second directive? The answer is with hierarchical intervention. Numerous interviewees reported that turf wars diminish at higher levels in the hierarchy. In the case of 97/27, transposition was stalled because the responsible policy department, Road Haulage, did not intervene. As indicated by five of the seven interviewees, its role was highly unsatisfactory. The division did not intervene in the conflict, allegedly because it did not understand the technical complexities of the directive, and because the topic had low political priority. Also, because of alleged capacity limitations, it could not develop this expertise (interview). It is claimed to have lacked in leadership and expertise. The conflict hence remained at a lower level, instead of being solved higher up in the hierarchy. In contrast, transposition of 98/76 was timely because the policy divisions were involved from the start. Even though the legal officials tried to persuade them that the points system needed to be abolished and the financial threshold needed to be lowered, they did not have the formal power to push through their point. The policy divisions played an adequate role in

coordination and control, as opposed to the masses and dimensions case. As there were no conflicts to speak of between the two policy divisions, transposition was timely.

The cases also show a factor that aggravates problems with input legitimacy, namely the different images of implementation held by lawyers and policy officers. In both cases, decision-making was impeded by the fact that policy officials and lawyers spoke different 'languages' and had different views of the transposition duty in general. The lawyers reported to take great pride in honestly interpreting the directive and its contents. In the words of one of the interviewees: 'as lawyers we are trained to be perfectionists. We often have almost theological discussions about those directives, aiming at getting it completely right. We do so out of professional skill and pride.' It is striking that the interviewees from the legal department generally do not speak of 'issues' or 'conflicts' in the transposition process, but rather of 'problems', understood as ambiguities arising from the directive, and differences in understanding. Along these lines, the policy officials see the lawyers as self-perceived guardians of the law, somewhat out of touch with the real world, interpreting directives far too strictly and perfectionist. As a policy official remarks, 'they want to do it too well and too accurately.' Another interviewee remarks that the lawyers should take a more acquiescent stance, and merely translate policy ideas into legislation.

Vice versa, the lawyers complained that the policy officials are too lenient when it comes to EU law. National political objectives are deemed central by policy officials, and are thought to take primacy over EU law. Allegedly, policy officials will go to great lengths to dodge unwelcome EU directives, and lawyers are expected to assist them in doing so. This is acknowledged by one of the policy officials, who acclaims that transposition may be difficult 'when we have ideas that run counter to a directive.' The problem, according to a lawyer, is that in the end, ministers can 'score' with national policies, but not with transposition. It hence seems that policy officials on the one hand and lawyers on the other hand, have incompatible normative views of transposition. That is, the underlying standards of appropriateness held by the two groups seem to diverge. The policy officials take a rather political stance, viewing transposition as secondary to national politics, and deeming it

legitimate to dodge EU law if called for. The lawyers, however, generally are committed to legal purity and perfectionism, attaching primacy to the implementation duty of member states.

Finally, as the interviews bear out, the problems between the legal department and policy divisions are more than an idiosyncratic cause for delay. As six of the eight interviewees indicate, transposition problems are regularly caused by conflicts between policy officials and lawyers. Whereas some interviewees were rather neutral in their wording, others were more outspoken, sketching a situation of trench war, or of two different tribes coexisting. One of them even estimated that a quarter of the delays are caused by such conflicts. It also must be noted, though, that the legal department is internally divided on its role vis-à-vis the policy departments. Whereas one group of lawyers takes a very legalistic and perfectionist stance, attaching primary importance to the rule of EU law, another group agrees that political considerations should take primacy over legal concerns. One of the interviewees belonging to the latter group holds that it is the role of legal officers to 'help out "policy" by conceiving of tricks'. It may be that perceptions of restricted procedural justice lead lawyers to adopt a more rigid stance.

How about the conflict with the RDW, though, which delayed transposition of 97/27? This seems not an idiosyncratic finding either, as the interviewees agree that the difficult relationship between the ministry and the RDW is a notorious cause of transposition problems. Allegedly, the key problem is that all technical expertise is with the RDW, while the policy sections do not assume a clear supervisory role. A couple of years ago, the legal department has tried to mitigate this problem by organizing regular the before mentioned 'triangle meetings' between the policy divisions, the legal department, and the RDW. According to one interviewee, these meetings have indeed solved the problem, as problems are solved much faster. Other interviewees, however, claim that the meetings do not function well, as the policy sections still do not take real interest. All in all, it seems that problems with transposition may flourish in a culture of mutual disrespect and perceived procedural injustice.

## 8 Conclusion

Problems with compliance are not necessarily caused by substantive problems, but instead may be the result of protracted turf wars between various stakeholders involved in transposition. The two transposition processes described in this chapter both suffered from serious conflicts between civil servants responsible for policy choices and lawyers responsible for drafting of transposing measures. Two mechanisms underpin these conflicts. First, lawyers in the Ministry of Transport generally feel aggrieved by the fact that they are not at all consulted in an early stage. Second, both groups have entirely different conceptions of the transposition process, which are hard to bring into line with each other. The general picture is that the lawyers at the ministry view directives as 'biblical messages', doing their utmost best to accurately transpose the difficult concepts contained by them. Policy specialists, for their part, especially when involved in the negotiations, tend to view directives as political compromises, and transposition as a political process. More relaxed about the prospects of being found out, they try to model transposition after the wishes of business or their minister. These orientations clash frequently and often lead to delayed transposition. This may lead to delay when, as occurred in the masses and dimensions case 97/27, the higher-level coordinators do not intervene. In the second case, the policy dimensions were involved from the start, as a result of which the legal division could not exercise its veto.

In sum, procedural legitimacy seems to matter. Actors may experience a serious sense of aggravation when they are excluded from decision-making processes. Perceptions of procedural injustice, as becomes clear from the discussion of the masses and dimensions case, may lead to 'negative emotional reactions in the forms of mood and anger' (Cohen-Charash and Spector, 2001, 308-309). As can be seen from these cases, the 'intellectual wars' that ensue when veto players perceive decision-makers to be unfair are hard to solve, which may lead to protraction of the compliance process.

Yet this is not to say that substantive considerations do not play any role. As Tyler (2001) argued, instrumental considerations may co-exist with notions of procedural fairness. Rather than drawing up either/or accounts of compliance, we should try to synthesize these different motives into our work. Also, it seems more fruitful, after all, to view procedural legitimacy as a more structural concept. That is, when transposition processes become standard operating procedures, chances become that perceptions of unfairness in one process become generalized, thus thwarting the ease of compliance in other cases, as became clear from the first case.

To conclude, this paper has made some contributions that in my view merit further thought. First, There is a need to come to grips with the notion of indirect legitimacy, i.e. the legitimacy perceived by decision-makers. Whereas this aspect of legitimacy has barely received attention so far, it might offer an important clue for understanding the fate of the European Union and its policies. Second, political science has much to gain from incorporating non-substantive claims into our theories. Politics is not only about substance, it is also about emotion. Jealousy, fairness, and other questions of 'mood and anger' are important drivers of human behavior. Currently ending up in the error term of our neat but bloodless models, they deserve a role in our theories. Compliance may be a matter not only of reasoned reflection about the merits of international rules, but of less visible considerations of procedural politics. Let us turn to the adjacent field of social psychology and find out to what extent procedural justice plays a role in EU compliance.

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