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EU Policies and Domestic Compliance.

Between International Relations,
Implementation and Europeanization

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1. Introduction[¶]

The new (and future) member states of the European Union have to abide by certain political and economic conditions in order to join the rapidly expanding membership of the EU. The traditional institutions that have long embodied the division of powers at the national level – executive, legislative and judiciary – have relinquished much of their autonomy, given that they are not being permitted to decide, legislate and adjudicate in contrast to the *acquis communautaire* and its corollary jurisprudence. The same institutions that represent those powers now have to bow to the rules of Brussels, abide by its regulations and decisions, and transpose EU directives. The economic policies of several EU members are strictly constrained by the rules of the Stability Pact, and even countries not belonging to the Euro zone indirectly experience the effects of monetary union in terms of reduced degrees of freedom. The same happens, in various forms, in the case of those policies over which the Union exercises no precise powers, but whose external effects in terms of cognitive influence and competitive emulation has been repeatedly confirmed by studies of the europeanization process. Even the softest instruments designed by the Union for the purpose of intervention in those policy areas where a clearer transfer of sovereignty would have been highly improbable – in particular, the various open coordination methods (OMC) designed to cope with the absence of a clear core of European social policies – require the observance of timetables, of monitoring standards and appointments, as well as efforts towards approaching those benchmarks represented by best practices, if not the payment of sanctions in the case of failed “coordination”. Something similar could be said for the often underestimated instrument of EU recommendations, whose homogenizing potential can sometimes be used as an argument for extremely pragmatic processes¹. Finally, even purely symbolic policies require some kind of answer from national policy-makers, if only to address the form, if not the substance, of the problems that led to their adoption.

What we intend to underline is that the concept of “compliance” goes well beyond the process of transposition of legal provisions. It includes the implicit recognition of firmly-established “ways of doing things”, the observance of loosely-established pacts, rational compliance with self-interested agreements, the observance of appropriate conduct within the EU “club”, the fulfilment of rather severely controlled and sanctioned obligations and duties.

[¶] This paper has been presented for the first time at the Workshop on “Making EU policy work: national strategies for implementing, postponing and evading EU legislation”, ECPR Joint session, Granada 15-19 April 2005. I would like to thank all the participants for their useful comments, especially in view of the future developments of this project.

¹ E.g. the differential impact of the Bologna process on higher education; in Italy it has been exploited to facilitate a reform that was already under way, but at the same time extremely controversial.

2. The term “compliance”

In itself, the term “compliance” can be interpreted in a variety of ways, since its semantic potential is more varied than is commonly perceived in European studies. In fact, the first entry in the Merriam-Webster online dictionary for the term “compliance” reads:

“the act or process of complying to a desire, demand, or proposal or to coercion”.

The Oxford English Dictionary refers to the verb “to comply”, which it defines as:

“to fulfil, accomplish”.

Finally, if we wish to adopt a kind of constructivist approach to semantics, then Wikipedia, the free online encyclopaedia, sees compliance as being:

“the act of adhering to, and demonstrating adherence to, a standard or regulation” .

What seems to be a simple question of terminology turns out to be a much more complex theoretical problem [Mastenbroek 2005]. Definitions of the term itself range from the compulsory response to an obligation, to the voluntary loyalty towards a common aim or purpose. In the European arena, this equates with a series of diverse perceptions ranging from the “out of question” observance of treaties and regulations, to the shared pursuit of synchronization under the Open Method of Coordination: in other words, from hard- to soft-law issues.

First of all, *if* the topic of compliance in European politics travels, by definition, beyond the confines of mere observation of the law – with all its corollary of prescriptions, deadlines and sanctions – we believe that our conceptual understanding should be somehow more complex than the “simple” tripartition of the universe of compliance – the world of law observers, of domestic politics, and of neglect” [Falkner, Treib, Hartlapp, Leiber 2005] – or the classification of member-states’ responses to EU pressures and opportunities in terms of pace-setting, foot-dragging and fence-sitting [Börzel 2002]². *If* compliance had many faces³, we should be able to find some other instruments with which to “bring order out of chaos” (as Falkner and her colleagues suggest). We have used the term “if” twice here, because the wide range of meanings associated with the term “compliance” may have already been tackled by other schools of thought – such as the extremely prolific “politics of europeanization”. Were this the case, then there would be no place for any independent, wide-ranging “politics of compliance”, which on the contrary would be confined to the already complex world of law-abiding processes.

Secondly, this short-sightedness is not limited to European studies because of the unique multi-level system of governance of the EU. Even International Relation (IR) Studies (especially the institutional approach) share a similar problem. The point is not that decisions in the EU arena may be the product of either sanctioned norms or of mutual

² Obviously, those efforts preserve all their explicative potential and utility in the empirical researches and line of reflection in which they have been elaborated, but do not seem to be perfectly fit for some more general investigation of the politics of compliance.

³ We adapt here the title and considerations made by Olsen [2002] for the concept of Europeanization, and implicitly even by Featherstone [2003].

understanding, whereas in other international arenas they do not enjoy such variety. Neither is it to do with the way in which authoritative power manifests itself, or with the underlying juridical system, but rather with the form taken by collective agreement. There are some hard-edged features of compliance even with WTO decisions, with UN resolutions and with other international economic or political systems of conditionality [Checkel 2000], although their binding character is not monitored by an executive power such as the EU Commission, and neither can an appeal be made to an ad hoc Court of Justice. At the same time, certain other international arrangements, such as environmental global decisions like the Kyoto agreement, despite the potentially set guidelines they may posit, leave a greater degree of freedom to national policy makers, and thus rely on the latter's goodwill and cooperation. It is because of this common character that Tallberg [2002] takes the case of the European Union to illustrate the potential of stick-and-carrot strategies in trying to improve compliance in the wider international context as well.

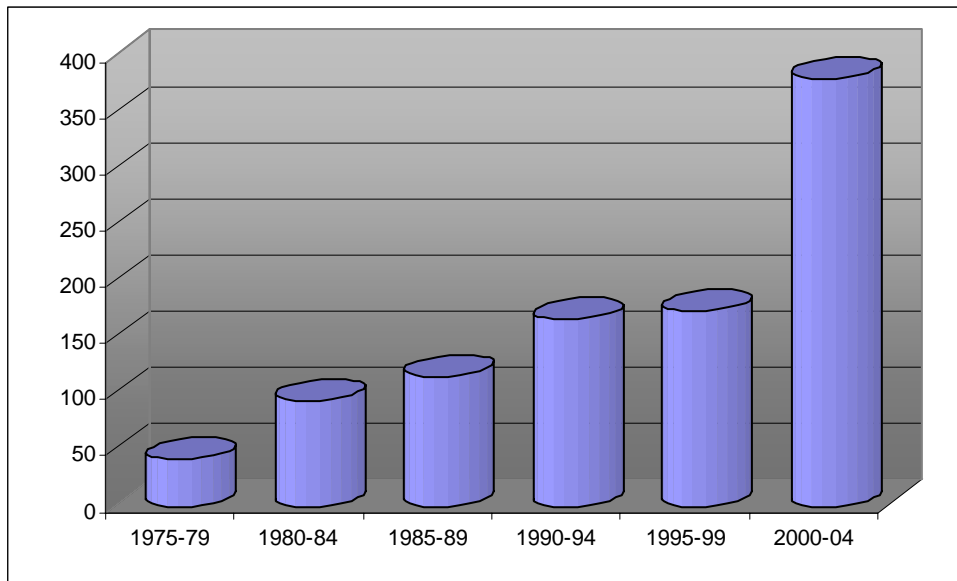
Finally, the risk of adopting a broader (though terminologically correct) understanding of compliance is that of conceptual stretching. For example, the standard instruments used in the comparative investigation of the problems faced by national policy-makers when transposing EU directives, may indeed fail to accommodate a wider, more abstract meaning of compliance. At the very best, there will be trade-off costs in adapting already consolidated categories to a looser conception of compliance. In the worst-case scenario, this operation will prove either impossible or methodologically inappropriate. However, a third possibility is simply that this process may reveal itself to be "inefficient", if not completely redundant, as a result of the overlapping of already existing, wider concepts and research fields: the literature on compliance in IR is obviously the prime candidate, although EU studies of Europeanization and writings on implementation in the generic field of Public Policy, may turn out to be better equipped for the task of addressing our re-defined field of inquiry. In this case, as we have just said, what we would have would be the classic example of unfruitful "old wine in new bottles".

3. "Compliance" as a field of inquiry

Compliance has gradually emerged as a field of investigation, and research into its determinants and dynamics has become one of the "academic growth industries"⁴, as testified by the steadily increasing number of articles dealing with it.

⁴ Even in this case the quotation is taken from Olsen [2002: 221] and originally referred to Europeanization studies.

FIG. 1 NUMBER OF ARTICLES ON COMPLIANCE SINCE 1975



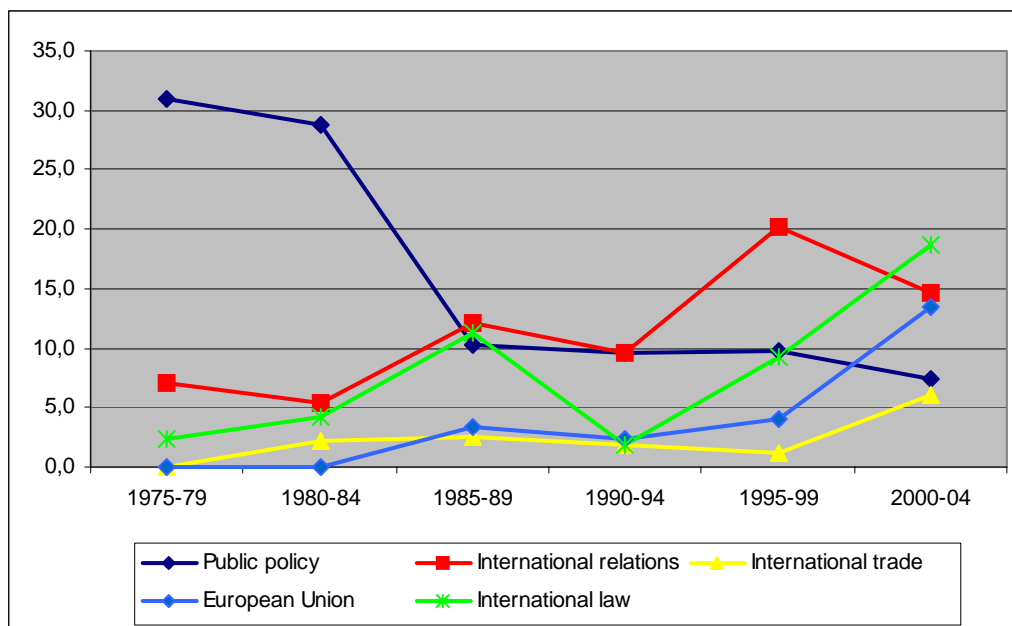
Source: Worldwide Political Science Abstract: "compliance" as keyword

Figure 1 shows the number of articles published in international journals since 1975 that the "Worldwide Political Science Abstracts" classifies as focussing on "compliance". The graph clearly shows that growth has been steady over the past thirty years, and has not simply been determined by the parallel growth in scientific journals, and thus of articles published. However, the most significant increase has been over the last five years, during which time the total number of articles has more than doubled the already high level reached in the 1995-1999 period. The concept has evidently become fashionable within the scientific community, but its growing usage is clearly the result, as much as anything, of the increasing need to deal with the growth in "compliance problems" themselves⁵.

A closer look at academic studies reveals a few other interesting points pertaining to this constantly growing interest of scholars from various academic fields. Let us look at the evolution of those topics dealt with by articles focusing on compliance problems.

⁵ The progressive extension of the "public sphere" [Rose 1984], the transformation of governance, requiring the cooperation of multiple actors [Peters, ecc.], the increasing number of international organizations [McGrew and Lewis 1992] and of international agreements, are probably among the factors leading to growing interest in compliance problems. In this sense, it has been more an increase due to the transformation of political reality than an endogenous-driven process [Mayntz 1999].

FIG. 2 TOPICS COVERED BY ARTICLES ON COMPLIANCE SINCE 1975 (%)



Source: Worldwide Political Science Abstract: calculated on “descriptors”

Figure 2 shows the percentage of articles on compliance according to their specific content, or rather, according to some of the possible combinations of the topics covered⁶. Whereas each of the categories represented in the graph displayed an increase in the absolute number of articles reported in the Worldwide Political Science Abstract, their percentage of all articles on compliance revealed diverse trends.

Public policy problems of compliance typically refer to administrative and enforcement difficulties registered in domestic politics. In fact, it is the most highly-represented category during the early periods covered by our analysis - years during which, in comparative terms at least, the political world was less internationalised, and the European Community itself had fewer powers. Nevertheless, the 1970s and early 1980s witnessed a boom in public policy studies, and especially of those specifically addressing implementation problems [Pressman and Wildavsky 1973; Bardach 1977; Berman 1978; Hjern and Porter 1981; Mazmanian and Sabatier 1981; 1983]: this field of research gradually lost academic prominence [Hill and Hupe 2003] as is shown by the downward

⁶ Each article has several descriptors specifying its content, including the country or the policy issues addressed. We chose to further aggregate some of the more general descriptors in order to get a picture of the recurrent topics dealt with by the article itself. For instance, “international relations” and “international organizations” have been aggregated into the same category, likewise “international law” and “treaties and international agreements”, “public policy” and “regulation”. Generic descriptors such as “law”, or “law and the legal system”, have been excluded from our classification of the most representative categories.

slope of the share of compliance articles classified in the public policy category in our graph⁷.

At the opposite side of the spectrum, we find articles on compliance in studies of international trade. Bearing in mind that our source only partially covers the range of economic journals, and that the problem of establishing, respecting or breaking rules has grown together with the extension of the issues and countries covered by international trade agreements (eg. from the 1970s Tokyo Round to the Uruguay Round of the late 1980s, early 1990s), and with the establishment of new or more formalized international organizations (eg. NAFTA, or the transformation of the GATT into the WTO), it is not surprising to discover that the percentage of articles devoted to these issues slowly, but constantly, increases in the lower part of the diagram.

Two of the fields of research that are central to our picture are International Relations and International Law. If we do not consider the “all domestic” declination of compliance generally adopted by public policy studies of implementation, these two fields are to the fore in the empirical and analytical use of the concept of “compliance”. The role played by the growing number of international organizations – at regional and global levels, both wide-ranging and specialized (in economics, military matters, environmental issues, human rights, etc.) – lies at the core of the institutional approach to IR. However, at the same time those factors underlying international compliance (or the lack thereof) are also common to the realist approach. In any case, the existence of such institutions and agreements poses new problems for international jurists, who have to solve questions relating to the juridical value, weight, stringency and interpretation of the rules governing relationships between countries in the world arena, and between countries and international organizations (including the observance of formal treaties such as those governing the European Union).

Finally, the most interesting factor for EU specialists in particular, is the impressive proliferation of articles on compliance within the European arena published over the last five years. The trend in this specific field of research – calculated on the basis of the share of articles – partially resembles the trend presented in figure 1 regarding the total amount of publications on compliance: a gradually upward trend during the 1980s (in the EU, this was probably due to the issue of Internal Market completion), was clearly given a boost as we moved into the new millennium. It is probably correct to attribute this proliferation to two parallel factors: on the one hand, the conversion of many EU scholars from ontological to post-ontological issues, from the problem of explaining European integration to that of explaining processes within the EU arena [Caporaso 1996, Radaelli 2003]. From this point of view, from the late 1990s onwards, there has been a steady rise in the number of studies of the relationship between the EU and its member states, with the problem of national compliance to EU decisions coming to the fore [Rometsch and Wessels 1996, Rideau 1997, Siedentopf and Ziller 1998; Zeff and Pirro 2001; Bulmer and

⁷ It is evident that most, if not all, problems of compliance are to do with public policies; nonetheless, the gradual decline of this category in figure 2 clearly shows the decreasing interest in the analytical, methodological and empirical problems related to implementation processes within domestic arenas.

Lequesne 2005]. On the other, the evident “deepening” of the EU policy-making capacity and its progressive enlargement to new countries, increases the probability of “meeting” compliance problems in the European arena. These difficulties appear in new forms – the observance of formal deadlines, the re-interpretation of pacts, the fulfilment of cooperative expectations, the establishment of terms for new entrants, contributions to the constitutive aims of the Union itself – all of which enhance the variegated character of this emergent field of research within the framework of EU studies, and contribute towards its recent growth as shown in figure 2.

If we take just one small step further in this analysis of the literature on compliance and the European Union, we may unsystematically screen the issues recently dealt with in those articles⁸.

First of all, empirical research touched on diverse policy fields over which the EU exercises various forms of power. These include: agricultural and environmental policies - over which the Union should have considerable say, and for which it possesses several command-and-control instruments; - economic and monetary policies governed by specific rules; foreign and immigration policies, which fall outside the first pillar of the Treaties; labour and fiscal policies, where the role of the EU is restricted (if not almost absent) and which are mostly managed by means of coordination mechanisms. This fact confirms that compliance actually relates to very diverse matters, as our acknowledgement of the meaning of the term suggests. It may also point to the need to consider this variety of issues and policy characteristics as a potentially interesting variable, in order to build a framework for interpreting the “politics of compliance” in the EU (see below).

Secondly, this necessity would even seem to be confirmed by non-policy-specific issues associated with the reviewed articles (see table 1).

Compliance in the EU is treated in association with macro-issues such as political integration, political development, state and democracy, and at the same time involves the analysis of specific processes of policy-making and implementation, of governance mechanisms and intergovernmental relations. It is not only a question of norms and treaties, but also of incentives and consensus. It is both inward and outward looking (eg. membership and national identity v. international aspects and developing countries). Even such a cursory monitoring reveals the complexity of the multi-faceted nature of the concept of compliance.

⁸ Our screening is unsystematic for two reasons. On the one hand, at this micro-level we have to rely on the rather complex framework used by the Worldwide Political Science Abstract when cataloguing articles: although our source is reliable and consistent with regard to macro-categories (such as the ones used in figure 2), it may be rather more contingent when we consider specific issues. On the other hand, we have chosen to deal only with those issues which were qualitatively important for the purposes of our reconstruction (and which were listed at least twice), without conducting any exhaustive form of analysis. For example, we have not included theory- or methodology-related articles because they were rare and unnecessary for the purposes of our argument.

TAB. 1 ISSUES DEALT WITH BY ARTICLES ON COMPLIANCE IN THE EU

POLITICAL INTEGRATION (P655000)	TREATIES (P905100)
POLICY MAKING (P649200)	CONSENSUS (P164400)
POLICY IMPLEMENTATION (P648900)	CONSTITUTIONS (P165900)
EASTERN EUROPE (P242400)	INCENTIVES (P399000)
INTERNATIONAL LAW (P424200)	INSTITUTIONS (P416700)
INTERNATIONAL TRADE (P425400)	INTERGOVERNMENTAL RELATIONS (P421350)
INTERNATIONAL RELATIONS (P424800)	MEMBERSHIP (P525900)
DEMOCRACY (P207600)	NATIONAL IDENTITY (P565800)
DEVELOPING COUNTRIES (P216000)	POLITICAL DEVELOPMENT (P653400)
GOVERNANCE (P341100)	STATE (P858600)
NORMS (P585900)	

Source: Worldwide Political Science Abstract: descriptors' codes in parenthesis

4. Multiple schools of thought

As we have said, compliance has been analysed by scholars from more than one academic field. One of its clear merits is that, unlike other terms used in the social sciences, it has a rather intuitive meaning in everyday life as well, which renders it attractive from various different viewpoints and as operationalization of more abstract concepts. At the same time, and for the same reasons, the fact that problems of compliance are viewed as important by international jurists, economists and political scientists, has somehow hindered its autonomous evolution, and prevented the emergence of general propositions regarding a "politics of compliance".

In this section we shall take a brief look at three different fields of research which intersect around the empirical investigation of compliance: implementation studies, Europeanization and compliance in international relations⁹. The point, as we have already mentioned, is to see whether there is the analytical space needed in order to develop an independent theory of compliance, or if the existing theories would render this futile, much like "pouring old wine into new bottles". Clearly, our aim is not that of formulating any kind of full analysis of each approach itself, but only that of underlining those elements of potential interest from the point of view of a theory of EU compliance.

⁹ These fields of research emerge even from the review of the literature realized with the help of the diagram in figure 2 in the preceding paragraph.

4.1 Compliance within the international arena

The problem of compliance in international relations is one of ensuring the observance of pacts and agreements in the anarchic “state of nature” that characterizes relationships among nation-states or between them and international organizations. The Latin expression “*pacta sunt servanda*” represents an attempt to exorcise what is a real risk in the absence of any superior legitimate authority: the risk of breaking (or failing to fulfil) any arrangement that reveals itself as inconvenient (or no longer convenient). This problem is particularly grave for international organizations, since whatever their own degree of institutionalization, when their goals clash with the original Westphalian sovereignty of states, their aims are seriously endangered.

We have deliberately chosen the concept of “institutionalization” here because, together with the degree of specialization and autonomization, one of its constituent ingredients is that organizations develop into institutions when they become “taken for granted” and no longer require continuous legitimation¹⁰. The problem of compliance for international organizations is precisely a matter of weak institutionalization; a sign that their actions are continuously exposed to problems of legitimation, and to the self-interest of national states, almost never “appropriate” by definition [March and Olsen 1989; 1995]¹¹. In this sense, states may choose to “exit” agreements while raising their “voices”, and they seldom abide by them purely for reasons of “loyalty” [Hirschman 1970], even when they were among the original signatories [Putnam 1988].

Given that they cannot rely on institutionalised compliant behaviour, organisations operating in the international arena have to refine their instruments as “principals controlling national agents”. In this sense, the distinction between “enforcement” and “management” strategies for compliance [Chayes and Chayes 1993; Tallberg 2002], perceived as the correspondence between “actual” and “prescribed” behaviour [Young 1979], is substantially a question of the most efficient mix of various different instruments, but it does not represent a departure from the logic of principal-agent. The same can be said of the debate on conditionality, and even about the importance of credibility [Checkel 2000; McGillivray and Smith 2004]. It could also be argued that the constructivist approach to compliance in IR [Checkel 1999; Risse 2004] does not radically abandon that logic: “Obedience is rule-induced behaviour” which works through normative and legitimacy processes and not through rational expectations, but still “rule-induced behaviour” [Raustiala and Slaughter 2002, p. 544]. In a sense, the causes of non-compliance according to this approach may be found in the sphere of domestic politics – the features of the democratic regime, its rule-of-law tradition, the internal process of

¹⁰ See, e.g. Powell and Di Maggio [1991]. There are obviously other syntheses of the required elements for institutionalisation, but they all, in one way or another, suggest the need for self-referential forms of authority.

¹¹ Generally speaking, Olsen [2000] argues that there may exist several reasons for following rules: “Rules may be obeyed out of habit and traditional unreflective reverence for authority ... Compliance maybe governed by rational calculation ... Rules may also be followed due to an identity-derived internalised feeling of a moral obligation to do so ... Or compliance may be based on interaction and argumentation”. We argue that, typically, compliance in IR has to rely on the second mechanism identified by Olsen, although international organizations continuously try to “turn incentives into authority” [*ibidem*].

interpretation and justification of international norms, etc. – but still “the primary function of international law is to help mobilize compliance with the rules of what ...Bull [1977] termed international society” [Simmons 1998, p. 86]¹².

The specificity of the European arena has been considered a crucial case study for those interested in testing instrumental against normative models of compliance, or trying to integrate the two approaches [e.g. Beach 2005]. For this reason, focussing on factors affecting the behaviour of principals and agents may represent a first step towards developing an independent theory of EU compliance.

4.2 Implementation studies

Implementation is a slippery, albeit familiar, term. For English-speaking scholars it's an everyday word that has been applied in a scientific context [Hill and Hupe 2002]. It is for this reason that, especially when we talk about compliance to EU norms, implementation is often used as synonymous with transposition, and little attention is paid to whether we are looking at the legal aspects of incorporating the *acquis communautaire* or to the actual achievement of the goals of the original EU policy¹³. The use of the English language as a “communicative platform” in the scientific community has favoured this undifferentiated adoption of the same term for very different problems¹⁴, in spite of the fact that the EU Commission itself makes the distinction between “non communication”, “non-conformity” and “incorrect application” even when issuing directives.

Indeed, in most “continental European” languages, and in spite of the Latin origin of the term, the word “implementation” has been (re-)imported in the form of more or less accepted neologisms. It is for this same reason that the term is often used in a more theory-laden manner, with explicit or implicit reference to a precise approach within the broader field of public policy studies [e.g. Knill 1998; Knill and Lenschow 2000; Sverdrup 2004]. The problem is not so much that of recognizing the history of a concept, but rather that the theory of implementation may help in dealing with issues ranging from cooperation under the open method of coordination to the correct implementation of a directive or regulation (from soft to hard-law issues), whereas, paradoxically enough, implementation perceived as the equivalent of transposition severely limits its scope.

“Implementation” as a theory dates back to the early 1970s, when Pressman and Wildavsky wrote their seminal book with the odd subtitle of “How great expectations in Washington are dashed in Oakland; or why it's amazing that federal programs work at

¹² In this tradition, “a clearer sign of inefficacy of a set of rules [...] is not merely a lack of conformity as between actual and prescribed behavior, but a failure to accept the validity or binding quality of the obligations themselves” [Bull 1977, p. 137].

¹³ E.g. Lampinen and Uusikylä 1998; Mbaye 2001, but even several of the papers presented at the Granada Joint session; see <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/granada.aspx>.

¹⁴ Sometimes with the further specification of an adjective, like “legal”, “administrative” or “judicial” implementation. Actually, as Pressman and Wildavsky [1973] already said in the preface of their seminal work “a verb like “implement” must have an object like “policy”, and a policy is something conceptually broader than a law.

all, this being a saga of the Economic development administration as told by two sympathetic observers who seek to build morals on the foundation of ruined hopes". At least four important things emerge from this study. Firstly, the federal (multilevel?) environment within which the case study presented by the authors emerged. Secondly, the fact that problems of actual implementation grew not out of any lack of will, capacity or resources: they were, on the contrary, a sort of unforeseen consequence, and not the result of poor investment. Thirdly, the relative importance of public actors or, rather, of the chain of authority: in spite of the federal program, of the interest manifested by Oakland's local authorities, and of the competence of the public administration involved, the policy failed. Finally, the central element which, in the views of Pressman and Wildavsky, explains much of the entire story: the difficulty of reaching any agreement between multiple, independent, public and private actors. Long before Scharpf [1988], Immergut [1992], or Tsebelis [1995; 2002] showed interest in the "joint decision trap", in "veto points" or "veto players", "Implementation" raised the issue of how multiple agreements (which they called "links") can prevent the implementation (more than the formulation) of a policy. It is beyond the scope of the present work to reconstruct the subsequent debate both on this central assumption and on other aspects of this "seminal" work. Suffice it to say that other scholars further refined Pressman and Wildavsky's initial idea: sometimes they formalised a model of the implementation process [Van Meter and Van Horn 1975; Sabatier and Mazmanian 1979; 1980], at other times they focused on specific junctures or actors within the process itself [Bardach 1977]; however, they all shared the *top-down* – and eventually pessimistic – view that performance had to be evaluated against the standards and objectives set by the original policy-makers¹⁵. With this benchmark in mind, two risks emerge: the first is that of seeing each and every policy as being unsuccessful, since there will always be some unfulfilled promises; the second is that of failing to recognize the factors underlying the various different levels of implementation, and especially that of underestimating the role played by exogenous or contingent factors¹⁶.

In order to address these shortcomings, a new generation of implementation scholars tried to reverse the original perspective [e.g. Ingram and Mann 1980; Elmore 1980; Hjern and Porter 1981]. *Bottom-uppers* and their successors [e.g. Elmore 1985; Sabatier 1986; Lane 1987] stopped thinking of implementation as a hierarchic process, and they emphasised the (necessary) discretion of street-level actors and the creation of consensual networks while, at the same time, elaborating on incremental (and then "garbage-can"), rather than synoptic, models of decision-making. Implementation processes had to be traced back from the actual preferences, behaviour and interpretations of implementers up "to the rules, procedures and structures that have the closest proximity to [their] choices, to the policy instruments available to affect those things, and hence to feasible policy objectives" [Elmore 1981 quoted by Hill and Hupe 2002, p. 58]. The ambition of "policy accomplishment" had to be replaced, or at least complemented, by some notion of "accountability", especially in situations in which policy goals and means are loosely

¹⁵ Wildavsky later changed his position in subsequent editions of the book, when, together with Majone, he adopted a more "evolutionary" view of the entire policy process, whereby implementation is nothing more than an analytical phase of the seamless web of policy-making [p. 178, 1979 ed.]

¹⁶For example, in Italy, a law obliging scooter and moped riders to wear helmets had a perverse impact on health policy, in that it reduced the availability of organs for transplants: this is an example of exogenously-induced policy failure. On the contrary, the slump in production in Eastern European States after the fall of the Berlin Wall and the break-up of the USSR, made them automatically compliant with environmental emission standards: this contingent "success" had nothing to do with the action of policy implementers.

defined, if not clearly ambiguous and conflicting [Matland 1995]. It is patent that these criticisms involve the notion of successful policy itself, together with the prescriptive elements designed to steer the governance process [Kickert, Klijn and Koppenjan 1997].

Despite the fact that implementation theory has been developed almost exclusively for domestic policy-making purposes, our passing review sheds light on a few interesting factors of importance even in the case of two-level processes of compliance. First of all, there is the variable definition of what constitutes “successful implementation: compliance with statutes’ directives; compliance with statutes’ goals; achievement of specific success indicators; achievement of locally specified goals; improvement of the political climate around a programme” [Hill and Hupe 2002, p. 75], or even the consensus reached by policy-implementers, the satisfaction of policy-takers and the institutional renovation pushed through by new policies. Secondly, the strategic juncture represented by joint decisions when multiple actors are involved. Finally, the possibility of reasoning in terms of coordination rather than (or in addition to) hierarchy.

4.3 Europeanization

As we have already said, the importance given to the issue of Europeanization is a consequence of the “new” post-ontological trend in European studies. It is probably unfair to maintain that the relationship between the EU and the domestic level had been ignored up until the new millennium, although it is undeniable that it has evolved into a set of general propositions only over the last five years. This area was already the focus in the 1990s of the study of the “Europeanization of national policy-making” [by Andersen and Eliassen 1993], and was characterised by the still widely-used definition offered by Ladrech [1994]; however, the theoretical leap only came after the publication of the volume edited by Cowles, Caporaso and Risse [2001].

Though the concept has been linked to changes induced at the policy, political and even polity levels [Börzel and Risse 2003], Europeanization has been mostly analysed as an “impact” of the EU on public policies. Its precise definition is still debatable, especially whether it refers to a transformation in the EU arena with consequences at the domestic level, or to a process taking place in the national arena but initially of EU origin, although several causal mechanisms have been already hypothesized [Radaelli 2005]

The first to be debated is the *goodness of fit* hypothesis. Pressure on domestic policy-making to adapt is directly related to the degree of policy misfit. Changes have a curvilinear relation to such pressure since for low levels of misfit there are insufficient incentives to modify pre-existing arrangements, while on the other hand, in the case of greater degrees of misfit, the costs of adaptation may be too high and national policy-actors may decide to opt-out, resist or choose other immobilist strategies¹⁷. The existence of mediating factors may hinder or facilitate internal changes. Structural factors include veto points, supporting institutions and a cooperative culture, whereas, on the agent side,

¹⁷ “Retrenchment”, “fence-sitting”, “foot-dragging” are amongst the available options identified by different authors [Radaelli 2003a; Börzel 2002]

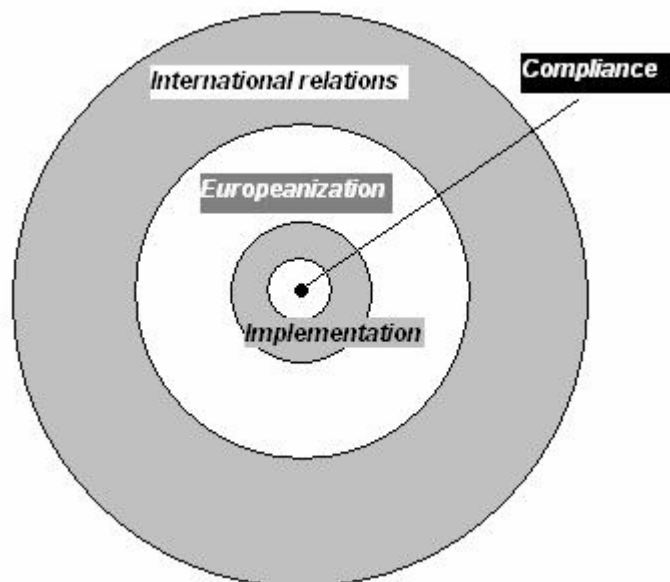
players empowered by the pressure to adapt and by their capacity to activate policy learning, become of crucial importance. Thus the pressure to adapt may take a double route: 1) reliance on the new set of incentives and constraints put forward by EU policies on domestic policy-making; 2) counting on cognitive changes affecting the collective interpretation of problems through social and institutional learning [Börzel and Risse 2003].

The central role played in this seminal model by the concept of misfit has been criticized for two reasons. Firstly, the rather mechanical conception of domestic change, only partially softened by mediating factors and by the conceptual stretching of adaptational pressure in order to include cognitive factors as well. Secondly, the necessary presence of an EU “model” or “template” which constitutes a benchmark for the evaluation of misfit and exercises pressure for adaptation, which is available only for hard-law positive integration policies, and which is indeed absent in the case of negative integration or softer forms of EU policy [Bulmer and Radaelli 2005]. Misfit is but one of several Europeanization mechanisms, and it can account for vertical forms of Europeanization fostering isomorphic adjustments to the EU. Regulatory competition affecting the domestic structure of opportunity, is another one, working in situations of negative integration (hard) policies: a horizontal form of Europeanization under the shadow of vertical enforcement by the Court of Justice. Lastly, “there are at least three other soft framing mechanisms of horizontal europeanization” [Radaelli 2003a, p. 43]: minimalist directives or recommendations, which legitimate new ideas for policy advocates in search of solutions; the convergence around a more or less structured process of mutual understanding of the existing best-practices, as in the case of the diverse methods of open coordination [De la Porte and Pochet 2002; Radaelli 2003b]; finally, the long-term promotion of new practices of governance that are more open, transparent, participative, democratic and network-oriented than corporatism, statism or pluralism [Kohler-Koch and Eising 1999; EU Commission 2001].

Europeanization studies clearly parallel the issue of EU compliance. International relations certainly adopt a broader perspective, whereas implementation studies are mainly oriented towards all-domestic processes, whereas compliance models that fail to concentrate exclusively on obedience and transposition, run the serious risk of overlapping with Europeanization studies. Their identification of various different mechanism binding EU policies to domestic practices provide the most useful suggestions for those interested in compliance; however, they also clearly embody the risk of repeating similar propositions under a new heading.

In fact, there are several alternatives ways of conceptualising the relationship between these different trends of research. On one side, it can be seen as a system of theoretical “Russian dolls”, or as a sort of “shooting-target”, where narrower disciplines or approaches are nested into wider ones (see figure 3).

FIG. 3 NESTED THEORETICAL APPROACHES TO COMPLIANCE



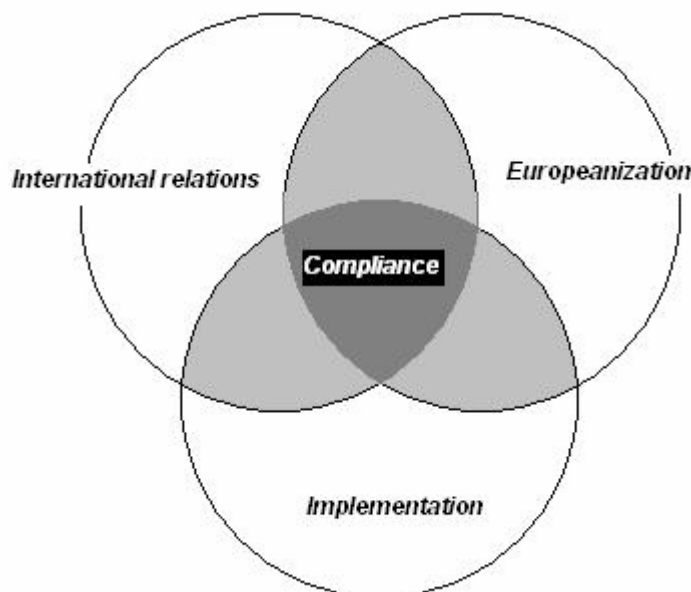
A the outer level, International relations is the most comprehensive approach, having to do with compliance in different settings – the anarchic system of interaction between nation states, the observance of soft recommendations from behalf of International organizations, and structures of regional integration which are different from the European Union. Europeanization can be conceived at a lower level on the ladder of abstraction, but its empirical domain still extends itself beyond the stricter definition of compliance, including not only policy convergence¹⁸, but other forms of policy change (retrenchment, inertia, absorption, transformation) and several mechanisms by which the EU “impacts” on member states [Radaelli 2003a; Radaelli and Pasquier 2006]. Implementation research seems to better approximate our target, but still, as we have seen, much depends on the preferred top-down or bottom-up approach, and if empirical research is concentrated on outputs or outcomes. In spite of the fact that implementation is often used as a synonym of “transposition”, still the first theoretical field seems to include political phenomena which are outside the standard horizons of compliance researchers. In this perspectives, these limit themselves to problems of timely and correct incorporation of EU norms, and mostly of transposition of EU directives. In other words, the analytical space for EU compliance studies is but a portion of implementation studies, which are a fraction of Europeanization studies and, at their turn, are part of the wider field of International relations. The greatest advantage of defining the scope conditions of compliance studies in such a narrow way, lies in the possibility of concentrating all the efforts in the empirical operationalization of the variables, and in testing and controlling our hypotheses using the same “language” and without much possibility for misunderstandings¹⁹.

¹⁸ See Knill [2005] and the whole special issue dedicated to “policy convergence” by the “Journal of European Public Policy”, vol. 12, n. 5, 2005.

¹⁹ Which, by the way, seems one of the problem of Europeanization studies, with first, second, if not third generation approaches [Radaelli and Pasquier 2006].

A different way of conceptualising the interactions between these approaches, in order to clarify how they relate to compliance problems, is to conceive them as partially overlapping (and not nested) fields, as in figure 4.

FIG. 4 OVERLAPPING THEORETICAL APPROACHES TO COMPLIANCE



Each one of the three major approaches is a theoretical field in its own, but it intersects the other two independently in arenas in which they share the same empirical interest. For instance, International law lies at the intersection between IR and implementation studies; how the special international organization represented by the EU interacts with member states is tackled at the junction of IR and Europeanization studies; finally, convergence problems among European member states are studied in the overlaps between Europeanization and implementation theories. At the same time, this portrayal is much less demanding than that in figure 3, because it does not assume that each field is entirely subsumed under the theoretical and empirical interests of the “wider”: the world asset for IR, the multiple definitions of europeanization given by Olsen [2002] or Featherstone [2003], and the implementation difficulties of domestic policies are simply let aside our scheme. In this second diagram, the “realm” of EU compliance lies at the intersection of all three different strands of research, probably permitting a less “restrictive” use of the concept itself, and the potential elaboration of an autonomous “theory”.

These are but two different accounts on how IR, Europeanization and Implementation studies collide or integrate themselves around the issue of EU compliance. There are (theoretical) costs and benefits in both approaches and, although there seems to be little

space for an autonomous development of a “politics-of-compliance-theory” following the first one, still, even the second has to demonstrate its utility in such a theoretically dense arena.

5. A tentative example

The title of the paragraph clearly reveals the rather preliminary stage of proceedings. Our impression is that the analysis of compliance may now follow two alternative paths. On the one hand, it may further its comprehension of the way in which member states respond to EU norms – mainly directives and regulations. Through the use of quantitative and qualitative methodologies, scholars can evaluate the relevance of certain important dichotomies: political will v. administrative capacity; rational expectations v. appropriateness; structure v. agent explications; macro v. micro factors, etc. What is at stake is a better understanding of what happens after the formulation of a norm, in order to focus on relevant variables that may improve a member state’s performance. On the other hand, it may attempt to develop general propositions regarding the process itself, based on the idea that compliance, in a broad sense, can partly explain the relationship between the EU and its member states within the general framework of the new governance of the Union. The two aims are certainly not mutually exclusive, since the first approach may provide an indication of important analytical dimensions to the second, although they are, nevertheless, separate options.

We are now going to try to exemplify how the second path may be taken. Our starting point will be a simple suggestion stemming from Raustiala and Slaughter’s [2002, p. 545] review of compliance in IR, which actually tries to establish guidelines for the formulation of a theory of compliance. In an interesting section of their review, they identify six components of compliance: problem structure, solution structure, solution process, norms, domestic linkages and international structure. We are going to focus only on the first one for several reasons. First and foremost because it seems the most promising one. We have already mentioned (in section 2) how compliance has been related to a number of very different policy issues. Given the path-breaking observation made by Lowi [1964] that “policy determines politics”, the problem structure has all the potential for becoming a central element in our analytical model.

By placing the policy problem to the fore, we then have the task of classifying it. Innumerable suggestions have been made on this point, and each policy typology may constitute a useful starting point here. Lowi’s [1970; 1972] distinction between distributive, redistributive, constituent and regulatory issues is naturally one of the most important, but even Wilson’s [1973] analysis of the concentration/distribution of benefits and costs may be a valid alternative, as may the difference between zero-sum and positive- (and negative-?) sum games, or the analysis based on the intersection of public salience and technical complexity of the problem, to name but a few. Each one of these could indeed be a fruitful starting point, but we have, however, decided to move in

another direction; our classification of policy problems shall centre around the nature of the issue itself, distinguishing between private, public, club and positional goods²⁰.

The notion of private good should not be problematic, both theoretically and empirically. Private goods are rival and excludable. They are delivered to individuals, groups, organizations and, in the present case, to member states without this directly affecting the parallel distribution of similar goods also to others: EU structural funds are an example. Public goods, on the other hand, are those goods whose “consumption”, as soon as they are produced, cannot discriminate between those who have taken part and invested in their production, and those who have not. Using Samuelson’s and Musgrave’s categories, they are non-rival and non-excludable: the Internal Market here seems the most appropriate case in point. Club goods are reserved for the group of actors that has decided to contribute towards the collective effort of producing them but cannot be exploited by free-riders as in the case of public goods. Formally, “a club good is an impure (congestible) public good for which exclusion is possible, (...) the club being a voluntary group deriving mutual benefit from sharing one or more of the following: production costs, the members’ characteristics, or a good characterised by excludable benefits”²¹. Schengen and the EMU, with their opting-out options, together with reinforced cooperation policies, seem to share these features. Positional goods can be “consumed” by each participant, but not by everyone at the same time, as can the peace and quiet of a sunset on a solitary shore [Hirsh 1976]. They can be considered as another special type of exclusive common-pool resource: we would claim that issues under the OMC may boast some of these characteristics. The first and last types of good have the underlying problem of the (fiscal or social) scarcity of overall resources (money as well as quiet places), whereas public and selective goods often have the problem that they have to exceed certain thresholds (due to the logic of collective behaviour or to the critical mass of joiners) before actually being delivered²². Note, at the same time, that our distinction has no formal juridical basis – such as treaties, regulations, directives, recommendations, etc. – since it is the issue itself, and not the way in which it is legally formalized, that should produce different paths of compliance.

The question is: are these categories in some way important to the distinction between different types of compliance process/problem in the EU arena, given those aspects illustrated in the previous section? Table 2 summarises our somewhat tentative reflections on this question

²⁰ We are aware of the problem that lie behind any exercise of classification of the goods provided by a policy [Ostrom 2002], and we don’t want to state neither that the goods we have identified are exhaustive, nor that they are the best example to choose. They can be considered as illustrative categories for a first effort.

²¹ <http://www.sai.uni-heidelberg.de/abt/WIW/sommer04/exp8.pdf>

²² This is an element which induces Olson of talking about “inclusive goods”, because participants are induced to increase the number of “producers”, as opposed to “exclusive goods”, for which, given the infeasibility of putting boundaries to consumers, groups are expected to be as small (and intensively participated) as possible.

TAB. 2 A FRAMEWORK OF EU COMPLIANCE AND POLICY TYPES

	PRIVATE GOODS (e.g. Cohesion policy and structural funds)	PUBLIC GOODS (e.g. Internal market - Treaties)	CLUB GOODS (e.g. EMU, Schengen, reinforced cooperation)	POSITIONAL GOODS (e.g. Policies under the Open method of coordination)
- What is compliance?	TD. Correct fruition of private goods BU. Institutional adaptation	Harmonization	Internal respect of self-imposed external constraints	Exploration of the potentiality of benchmarking
- Principal/agent - Instrumental/normative	Instrumental	Normative	Instrumental (long term ideological)	Long-term instrumental Normative
- Joint decisions - Coordination/hierarchy	Local problem of coordination	EU problem of coordination Vps Hierarchy	Coordination in setting procedures, hierarchy in enforcing standards	Establishment of authoritative epistemic communities
- Mechanism	Competitive regulation	Positive and negative integration	Emulation External constraint	Comparative cognitive disposition towards paradigm shift
- The misfit issue	Less problematic	Misfit	Neo-functional attraction	No misfit ; comparative evaluation
- Problem of compliance	Self-injuring behaviours; short-sightedness Administrative capacity	Free riders Domestic interests with high preferences	Two-level games Political will	Path-dependency Reluctant advocacy coalition

In the case of *private goods*, that is, of EU policies providing resources to member states, their unique aim should be that of utilising the said resources. Lack of compliance seems a paradox, a sign of self-inflicted injury probably denoting a lack of administrative

capacity or problems of coordination at the national level²³. In this sense, incentives should regulate and encourage a positive attitude towards compliance, conceived both as the observance of rules governing fruition of those private goods (in a top-down perspective), and the organizational adaptation needed to achieve that goal (in a bottom-up one). Adaptational pressures should not emerge from some sort of misfit between the EU and the national level, but rather from the “competition” over the most effective way of dealing with the distributed goods [e.g. Zerbinati 2004]. Eventually, in fact, the abuse, mistreatment or under-utilization of those goods may result in a reduction in their delivery, and in their re-direction towards more effective countries. The Commission, as major principal, should not encounter any great difficulties problems in enforcing or managing observance of these policies, since the main incentives to implementing them correctly should rest on national shoulders.

The complete opposite is true for *public goods*, such as the completion of the Internal Market (more than other kind of directive) or compliance with Treaty norms and regulations. Here, member states may have strong incentives to avoid rulings whenever they have (or discover) that their own interests urge free-riding behaviour. The monitoring costs are unbearable for EU institutions, and lack of compliance may sometimes be discovered too late, thus requiring costly ex-post agreements²⁴. Each and everyone, in spite of the contribution to their provision, can exploit the delivery of public goods. If, for example, an Internal Market directive is adopted by 24 member states out of 25, the remaining one enjoys a clear competitive advantage, exploiting the absence of barriers within the Community but preserving certain barriers to the internal circulation of foreign goods. It is also for these reasons that the DG Internal Market, besides publishing the standard statistics for each country’s rate of transposition, normally provides a separate table in which the number of Internal market measures that are complied with by *all* member states is counted. Thus, veto players are crucial in a situation in which even one country can put at risk the general support for policies that are crucial for the realization of a proper Community. Public goods are the most sensitive to problems of legitimacy: since local interests are their worst enemies, and despite the hierarchical command-and-control efforts made by the EU, they have to rely on a degree of respect for the rule of law. Positive and negative integration experience the same difficulties when there is a lack of compliance, which can here be defined as harmonization.

We have referred to the next category as *club goods*, notwithstanding the potential confusion with other types of excludable goods, in order to identify those programs that can be put into force and applied/respected by a subset of the present 25 member states:

²³ In the past, it has been argued that Italy low spending capacity as regards as EU funds depended on the availability of more accessible and less monitored funds at the national level, which favoured clientelistic relationships. In the early '90s this possibility actually vanished with the financial crisis, and obtaining and correctly using EU structural funds became an imperative which was at odd with the prevailing domestic policy style and organization, which at turn fostered the reorganization of specialized institutions at the governmental level with linkages to the regional one, and new abilities in EU negotiations [Gualini 2004; Brunazzo and Piattoni 2004].

²⁴ There are several examples of these situations. For example the lack of compliance with assigned production quotas under the ECSC, milk quotas, social-dumping practices for sustaining or recovering industries, national subsidies to soccer societies, etc.

European Monetary Union and the Schengen agreement are two potential examples. This kind of goods/policies should not experience the same free-riding problems experienced by the preceding category, also because an (autonomous or forced) exit is actually a feasible strategy²⁵ and not the “nuclear option” represented by the abandoning of the Union. Here, compliance simply means observance of the technical terms and long-term aims of the agreement – e.g. establishing a reliable electronic system for exchanging information on citizens, or respecting the measures of the (reformed) stability pact and their interpretation. Since member states can decide whether to be part of these sectoral agreements or not, within the logic of variable geometry, their motivation should be instrumental: be it a question of self-interest or the value of external constraint. As a consequence, EU institutions should rely more on instrumental reasons than on normative appropriateness. Political will should be at the basis of the decision to adhere to this intra-EU agreement, but the logic of two-level games, unexpected consequences or exogenous factors can prevent member states from observing it and thus from complying with its standards. Recognizing the potential positive returns associated with this form of stricter integration may encourage member states to emulate the experience of other countries already cooperating, thus triggering a sort of neo-functional spill-over mechanism. At the same time, modifying the range and extension of the policy may require some fine-tuning of the conditions governing the agreement itself, with the introduction of certain elements of flexibility in order to remain attractive and useful even to those member states experiencing contingent problems of compliance²⁶.

Finally, the most complex, and probably the most hotly-debated, category is that of *positional goods*: we have slightly stretched its original meaning in order to account for the fact that these goods are not simply private resources, nor are they imperative rules with no exit or inside/outside agreements between leader countries in specific policy sectors. Actually, the concept has more to do with the positional feature of solutions than of problems: each national arrangement can function as a benchmark in the argumentative arena envisaged by the Lisbon method for open coordination, but not all national models (of labour policy, employment strategy, pension reform, etc.) can aspire to this “position”. For these policies, compliance means sincerely engaging in the process itself, which is non-binding with regard to short-term joint objectives, but at the same time, has scheduled surveillance and peer-review procedures for the spread of best practices [see Zeitlin and Pochet 2005, and Case and Gould 2005, for a critical appraisal]. The ideal arena is an epistemic community engaged in exploring the possibilities of comparative benchmarking strategies in sectors that are beyond the powers of the EU: principals have little to do, and coordination and institutional learning lies at the core of this new mode of governance. The absence of an EU model limits the applicability of notions such as misfit or adaptational pressure, and the potential drawbacks of compliance lie in the well-known limits of policy transfer and change: i.e. - path-dependency and a reluctant national advocacy coalition. Soft-laws imply a soft notion of sovereignty and a

²⁵ Remember, for example, what happened with preceding systems for coordinating EU currencies, such as the “Monetary Snake”.

²⁶ It could be argued that the rigid rules underlying the stability pact during the first years of the Euro had an internal logic, but that they then required some sort of fine-tuning once their potential shortcomings had emerged. A more “realist” interpretation of the introduced amendments is clearly possible, but this would not undermine the hypothesis that compliance problems with collective goods are of a different nature and may require different solutions than in the case of public or private goods.

disposition towards changing internal policy paradigms which, as well as being hard to realize, can easily be contested by organized policy-takers.

6. Conclusions?

Given the overall structure of the paper, the conclusions may appear rather inconclusive. We certainly do not claim of having put forward a theory of compliance. For this reason, instead of real conclusions, we would like to indicate, once again, a list of open, interconnected questions.

Should the concept of compliance – for the sake of its general understanding and usefulness – remain limited to the issue of correctly transposing and applying directives, or should we abide by a wider (and semantically justified) use of the term?

If we do think that compliance issues cover more than hierarchic mechanisms, and stretch to cover all sorts of EU policy instrument and strategy, can we then formulate some kind of theory embracing this intrinsic variety?

If, once again, the answer to the preceding question is positive, then what discriminating factors help us understand the varying meanings of compliance processes, mechanisms and outcomes from this wider point of view?

Can the structure of the problem, or the type of policy, become such a discriminating factor (also using classifications different from the one proposed here)?

Does the overlap with already existing theories, such as compliance in IR, implementation and Europeanization, deny us the possibility of suggesting further theoretical developments in the field?

Our own impression is that the first four questions merit a positive answer, while the last one ought to be answered in the negative. The raw material may be the same, but the point of view may differ. The expression “old wine in new bottles” is the standard way of criticising an approach for not being entirely “new”. A part from the fact that is always better to “build on the shoulder of giants” than setting out each time from scrap. But the same “wine metaphors” could be bowed to our aims: in fact, everyone knows that turning grapes into wine requires several operations during the fermentation process. Putting the must in different barrels and casks improves the final quality, and if one produces champagne, turning the bottles regularly is standard practice. *Mutatis mutandis*, the same could be said of the relationship between a compliance theory and its neighbours: turning the elements around and looking at them from a different perspective can contribute immeasurably to the final result.

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