Toward a better understanding of implementation performance in the EU multi-level system

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Abstract

The results of this collection allow for preliminary conclusions about the nuanced interplay between Europeanization and domestication forces in EU implementation, which await testing in different contexts. Some policies lend themselves more to a strategy allowing for extensive domestication than others; but to be effective, decentralized implementing actors need both power and capabilities. Europeanization dynamics strongly influence the direction of domestication of EU policy, but if EU requirements are incompatible with national political preferences domestication trumps Europeanization. Domestication equally prevails if the relationship between EU and national policy is ambiguous and frontline implementers have high discretion. The trend toward the Europeanization of direct EU enforcement challenges its legitimacy. This has implications for EU researchers and practitioners, and suggests methodological challenges and future research trajectories for a performance perspective on EU implementation. More comparative research is needed about the trade-offs between conformance, diversity, and performance in EU multilevel governance.

What have we learned?

The contributions to this collection present findings and ideas that advance our knowledge of three aspects. First, they illuminate diverse responses to centrally decided policies within the EU's multilevel structure (Héritier 1999; Thomann 2015). Second, they provide valuable insights in the mechanisms underlying the application and enforcement of EU policies in practice (Versluis 2007). Third, they help us understand the motivations and roles of individual actors implementing EU policy (Tyler 1990; Woll and Jacquot 2010). We first summarize the findings and how they mutually contribute to answering these questions (see Table 1). These results bear concrete implications for Europeanization scholars and EU practitioners. We then discuss their implications in light of the central hypothesis we have put forward (Thomann and Sager 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>): that the interplay of Europeanization and domestication dynamics is a central explanation for implementation performance in the EU (Bugdahn 2005). Indeed, the findings allow for a preliminary identification of conditions that matter in this interplay. These insights lead us to outline the promise and limitations of a more performance-oriented perspective on EU implementation to complement established compliance perspectives. We discuss methodological considerations and future research trajectories in the quest to gradually gain a fuller picture of the EU's problem-solving capacity in practice.

Responses to EU law beyond compliance

The findings presented by Thomann and Zhelyazkova (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) paint the first large-scale picture of the diverse legal interpretations of EU law by 27 member states across two policy areas. Their study empirically

shows how 'member states simultaneously strive to achieve compliance, and adapt EU policies to their local contexts. The resulting diversity in compliant transposition remains concealed when only looking at legal compliance' (Thomann and Zhelyazkova 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>: 19). The authors measure and describe the patterns and extent of customization in its different directions (Bauer and Knill 2014), conceptually (not necessarily empirically) independent of the compliance question. This in turn paves the way for studying the reasons and implications of this diversity (Héritier 1999; Majone 1999) in a systematic, cumulative fashion.

Substantively, Thomann and Zhelyazkova (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) provide evidence for two phenomena. First, the customization of EU provisions follows pronounced policy-specific logics, that is, the direction of flexibility indicated by EU rules. Conversely, contrary to previous case studies, their large-N approach does not offer evidence for distinct country-specific customization styles (Falkner *et al.* 2005; Thomann 2015; Thomson 2009; Toshkov 2007; Versluis 2007). Second, EU rules change along different dimensions that represent 'distinct aspects of state action and illuminate a differentiation of variation in national adaptation strategies that can be insightful' (Thomann and Zhelyazkova 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>: 7). The interplay of customized density and restrictiveness tells us about the problem-solving strategies of member states. For example, member states may differentiate EU rules in order to create exemptions, or they may do so in order to render EU rules more restrictive.

Thomann and Zhelyazkova (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) do not shed light on the actual legislative mechanisms causing customization patterns. Mastenbroek partly fills this gap. She finds that most Dutch legislative drafters

responsible for EU compliance try 'to integrate EU legal requirements with national policy demands' (Mastenbroek 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>: 4-5).

Similarly arguing that there is more to implementation than compliance, Heidbreder (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) asks which implementation strategies appear most promising for achieving effective implementation in a multilevel setting. Her first theoretical contribution lies in deriving a typology of implementation strategies in the EU that overcomes the often criticized top-down versus bottom-up dichotomy, by linking it with Hooghe and Mark's (2003) two types of multi-level governance. She argues that in the EU, top-down and bottom-up elements are constantly intertwined, while the different levels of its system can also be in more vertical or more horizontal relationships. Based on these considerations, she identifies four strategies – centralization, agency, convergence and networks – for policy implementation in the EU, each with its unique characteristics, creation mechanisms, implementation logics and policy decision traits. A second contribution of Heidbreder's (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) study lies in fleshing out expectations about the effectiveness of different implementation strategies based on Matland's (1995) two dimensions of ambiguity and conflict. By discussing several illustrations for her typology, Heidbreder (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) convincingly demonstrates how this heuristic helps us understand why certain implementation strategies are successful in some contexts but not in others.

Taken together, the findings allow for a substantive conclusion: that characteristics of policies, in interaction with domestic political contexts, determine the responses of member states to

EU policy – ultimately, the politics of implementation (Lowi 1972). Also in compliance research, patterns of EU implementation appear strongly policy- and country-specific (Mastenbroek 2005; Steunenberg 2007; Treib 2014). For researchers, this implies that diversity is inherent in EU implementation. A one-size-fits-all solution to effective policy implementation does not exist. While this may not be surprising, an important endeavor is still to gain a better understanding of the relevant properties of EU and domestic policies and institutions that trigger different implementation dynamics (see also Knill 2015). In the long term, such inquiries should be extended to include policy outcomes and impacts as the ultimate interest of a performance-oriented perspective (e.g., Skjærseth and Wettestadt 2008; Toshkov and de Haan 2013). Potentially relevant policy features include the direction of flexibility allowed by rules with different logics in contexts of positive or negative integration (Thomann and Zhelyazkova 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>), as well as the levels of ambiguity and conflict of a policy (Heidbreder 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>; Matland 1995).

These findings also provide insights for EU policymakers. First, legal compliance is simply one of many possible transposition outcomes, and far from 'the end of the story'. Thus, if the interest lies in joint solutions to shared policy problems, then we need to consider the dynamics of customization (Thomann 2015) and performance in practice (Bondarouk and Liefferink 2016; Bondarouk and Mastenbroek 2017). Second, EU steering matters, as national deviations from EU rules relatively consistently follow the direction of flexibility indicated by EU legislation (Thomann and Zhelyazkova 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>). This then also means that such adaptations (e.g., gold-plating) often do not require regulatory action from a conformance perspective. Third, there are appropriate

(and inappropriate) implementation strategies for different policies. Thus, it is worth considering the nature, ambiguity and regulatory logic of the policy under question, and the prevailing interest constellation on the ground. This should facilitate to identify appropriate venues for enabling discretionary adaptations, as well as situations in which more constraining steering instruments are more promising to ensure an effective Europeanization.

EU law 'in action'

In several respects, the comprehensive case study of all local air quality and action plans in Germany by Gollata and Newig (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) sheds light on hitherto unknown aspects of EU law in action (Falkner et al. 2005; Versluis 2007). First, it empirically tests the claim advanced by polycentric governance theory (Hooghe and Marks 2003) that multiple levels of governance are conducive to effective implementation. Second, the study looks at patterns of collaboration, coordination, and interaction between the municipal and state levels of governance. Their findings do not support the abovementioned assertion. While minimally complying with the EU requirement to establish air quality and action plans, municipalities continued to struggle to meet air quality targets – with significant variation between the German *Länder,* and some functionally more affected municipalities taking their implementation task more seriously than others.

The introduction of new functional governance layers and mandated planning (Newig and Koontz 2014) has not led to more effective implementation due to lacking support by the national government in the German case. Specifically, it proved ineffective to decentralize decision-making to the local level because local administrations lacked substantial enforcement capabilities and were unable to obligate higher levels. Furthermore, spatial

adaptation was scarce: planning remained largely tied to territorial jurisdictions, although some horizontal and vertical cooperation occurred. Finally, the process of air quality and action plan-making did involve non-state actors, but only on a voluntary and arbitrary basis. Overall, given the leeway conceded by the directives, the German Federal administration largely opted to keep with existing structures and procedures rather than engaging in the legal and institutional adaptation that would have been necessary for an actual rescaling of governance to the spatial level.

Dörrenbächer (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) then shifts the focus to the individual motivations of caseworkers to use EU immigration law or domestic law, respectively, to justify their decisions. Very little research has addressed how individuals implement EU policy (e.g., Gulbrandsen 2011; Versluis 2007). The study is an excellent example of how this micro-perspective helps us understand the mechanisms of putting EU policy into practice. Dörrenbächer argues that EU regulatory requirements put street-level bureaucrats at a 'second frontline' that can create considerable legal ambiguities: first, EU law often introduces fuzzy legal concepts. Second, the EU rules may have been transposed incorrectly or not at all. She finds that street-level implementers are aware of the multi-levelled nature of the legal framework they implement. Accordingly, they creatively and flexibly use legal tools from different origins. This leads to variation in implementation practices. Yet it also creates situations in which frontline implementers may correct for inadequate transposition.

While these two contributions illustrate the limits of Europeanization at the level of practical implementation, Scholten (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) points to an important trend toward more direct enforcement activities in 'Brussels'.

Accordingly, she asks what role is necessary for the EU to play in order to promote the implementation of EU policies. She provides original data to illustrate the growth of three intertwined strategies. First, in the past 15 years the number of EU enforcement authorities, with parallel, hierarchical or supportive relationships with their national counterparts, has grown from one to seven (e.g., the European Medicines Agency EMA). Second, the number of EU enforcement networks bringing together relevant national authorities has increased to at least 20 entities. These networks include the Commission who can then influence national enforcement through coordination and data. Finally, enforcement standards laid down in EU hard, soft and case law increasingly prescribe procedural and substantive requirements for direct national enforcement.

Adopting a functional spillover perspective, Scholten (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>, see also Scholten and Scholten 2016) explains this trend by the desire to ensure the implementation of EU policies in light of the limits of indirect enforcement. She further argues that direct enforcement by European Enforcement Authorities has the greatest potential to resolve the problem of non-compliance; networks make EU influence possible by fostering mutual learning and cooperation (also see Mavrot and Sager 2016); while direct enforcement through EU norms still face the well-known danger of incorrect or non-transposition, application and enforcement.

These results highlight the relationship between the implementation of EU law on paper and its subsequent implementation in practice. The study by Gollata and Newig is a striking illustration that conformance with EU requirements is often not enough to ensure appropriate policy performance (see also Versluis 2007; Zhelyazkova et al. 2016). So is Dörrenbächer's study, which points toward the potential of frontline implementation to correct for an

inadequate legal transposition of EU policies. Scholten's findings reveal significant 'underground' efforts of the EU to overcome the separation between the two implementation stages. In this sense, the conclusion to be drawn is ambiguous: clearly, multi-level governance poses – perhaps inherent – challenges both for a uniform and an effective implementation of EU policies. Simultaneously, however, many local implementers do seem to care about correctly implementing EU policies whenever they can. They also use opportunities to – alone or collaboratively – achieve optimal policy outcomes, if they are capable of effectively doing so. Finally, the EU seems to have more possibilities to enforce member state compliance than we have traditionally assumed.

For researchers studying the practical implementation of EU law, these findings imply that we should tackle the theoretical and empirical relationship, or a lack thereof, between legal and practical implementation in the EU (Zhelyazkova et al. 2016). Second, it might be necessary to shift the focus to implementation levels below the member states (local as well as individual), if the goal is to gain a full picture of EU implementation. Conversely, Scholten (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>: 18) 'invites both academics and policy makers at the EU and national levels to take a closer look at (…) the extent to which the EU's enforcement competences (direct and indirect) have been effective in promoting the implementation of EU law and policies (…) to determine what type of EU's enforcement competences should be desirable in specific circumstances'. Third, it seems warranted to address more systematically the conditions that lead implementers to refer to a correct and effective implementation of EU law in practice.

The results presented here suggest several relevant contextual features that affect these mechanisms – information that should also be useful for practitioners. First, Gollata and Newig

show that it is not sufficient to confer implementation competencies to decentralized governance levels for effective implementation. Rather, these actors also need to be functionally affected and possess capacities of enforcement and obliging superordinate actors. Second, Dörrenbächer shows that the ambiguity and leeway engrained in both EU and domestic rules matter. More binding and clearer EU rules might lead implementers to weigh EU policy higher than domestic interests, especially when national policies are unclear or otherwise 'insufficient'. Finally, the individual motivations of implementing agents play a decisive role for the degree to which they implement EU policy and prioritize it vis-à-vis domestic policies.

Roles and motivations of implementing agents

Europeanization research has a long tradition of assuming different logics of action that guide actors implementing EU law. Accordingly, most prominent theoretical frameworks assume that there can be rationalist or norm-based paths toward Europeanization (Börzel and Risse 2003; Falkner et al. 2005; Jupille et al. 2003; March and Olsen 1998; Mastenbroek and Kaeding 2006; Michelsen 2008). This distinction has primarily been applied at the level of member states, while neglecting the variety of actors with diverging motivations in EU implementation (Mastenbroek 2010) and 'the study of individual action and its role in the transformation of the European political system' (Woll and Jacquot 2010: 1; for a recent exception, see Bayram 2017). Two contributions in this collection address this gap, both at the level of legislative drafters involved in processes of legal compliance (Mastenbroek 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) and frontline implementers of EU policy (Dörrenbächer 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>). Parallel

to a broader behavioral turn in Public Administration and Public Policy (Grimmelikhuijsen et al. 2017; John 2016), this approach is motivated by the insight that 'individual politicians and civil servants involved in processes of Europeanization may vary in their propensity to comply with the law' (Mastenbroek 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>: 1). Fundamentally, 'street-level implementers at the 'frontline', between the laws in the books and actual practice crucially influence the final outcome of policies' (Dörrenbächer 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>: 1; Lipsky 1980/2010). Accordingly, both studies analyse the reasons why and situations in which implementing actors give different relative weigh to EU and national policies when using their discretion.

The study by Mastenbroek (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) illuminates the 'black box' of adaptation of national law to EU legislation. She criticizes rationalist accounts for neglecting the fact that individual administrators involved in compliance processes may differ in their propensity to comply with EU law (Mastenbroek 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>: 1). She illustrates three roles of legislative drafters: that of 'guardians of EU law' striving for the best interpretation of EU law; the 'translator' as a politically loyal civil servant prioritizing national political demands; and the 'integrating professional' who seeks to reconcile EU law and domestic political demands, but ultimately should prioritize the former over the latter. By analysing how legislative drafters balance these roles with each other, she shows to what extent legislative actors play a role in effectively guarding EU law in the face of conflicting domestic political preferences.

Based on qualitative interviews with legislative drafters in ten Dutch ministries, Mastenbroek (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) finds that her

respondents are aware of this dual allegiance. Dutch legislative drafters reinterpret EU law and explore its limits in order to connect and reconcile EU law with national political demands. Sometimes, however, they cannot credibly do so, while staying within the bounds of EU law. In this case, they tend to prioritize political demands over EU legal requirements and go beyond the limits set by EU law. They do so even though they have received extensive training in the constitutive principles of EU law. Thus, legislative drafters tend to look for 'reasonable arguments' instead of working from 'the best view' of EU law.

Dörrenbächer's (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) analysis additionally translates the idea of a logic of consequences and a logic of appropriateness into instrumental and normative motivations (Sunshine and Tyler 2003). Legal ambiguity for frontline workers prevails when either EU law grants more discretion than national law, national law stands in tension EU law, or national law is even less explicit than EU rules (see Dörrenbächer and Mastenbroek 2017). In these situations, she expects that instrumental motivations will lead frontline bureaucrats to prioritize their national political principals' preferences over EU law. Frontline implementers motivated by a sense of EU loyalty should use EU law to resolve ambiguities. Finally, substantive normative motivations (personal feelings of justice) should lead implementers to 'pick and choose' between EU and national law.

Her findings indicate that the main situation in which frontline implementers explicitly refer to EU law is when national regulations are unclear or EU law is not transposed. Conversely, they do not use EU law in ways that run counter to or go beyond national law. In this sense, they mostly give priority to national guidance in their decisions. Instrumental motivations lead implementers to consider it risky to refer to EU law. Conversely, substantive (but not

procedural) normative motivations can trigger an active use of EU law. In essence, ''double-hatted' street-level implementers (Egeberg and Trondal 2009) sometime use the different levels of law to bring about policy outcomes they personally consider as just' (Dörrenbächer 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>: 22). However, when national norms both conflict with EU norms and do not provide clear guidance, instrumental motivations lead frontline implementers to consider it risky *not* to rely on EU law.

From a strict conformance perspective, these findings may be rather sobering. However, they also provide extremely valuable lessons for EU researchers and practitioners. A first important insight is that individuals implementing EU policy are conscious of the content of these policies. They also make efforts to implement EU rules correctly. A factor consistently limiting these efforts is their loyalty to domestic policies and political principals, which they often prioritize over their EU loyalty. This suggests an important link between legal and practical implementation. A factor that can trigger their reference to EU rules, in turn, is their desire to bring about 'better' policy outcomes (Elmore 1979; Lipsky 1980/2010) – following normative, but sometimes also rationalist motivations. While the interplay between different logics of action has been subject to much dispute, these motivations do appear useful for studying Europeanization at the individual level. This then also implies that the behavioural components of EU policy implementation deserve further exploration, including possibilities to 'nudge' individual policy implementers (John 2016). Importantly, these findings considerably advance our understanding of patterns of and the interplay between Europeanization and domestication processes.

The interplay between Europeanization and domestication

Bugdahn (2005: 177-178) argues that 'the implementation of EU policies is best conceptualized as a blend of domestic choices of options in a policy area, only some of which have been determined by the EU'. In this vein, Europeanization – the EU influence over domestic policy choices in a given policy – is only one side of the coin. Simultaneously, 'member states can make choices of non-prescribed or non-recommended policy options that limit, mediate or accompany the Europeanization of the policy area in various forms' (Bugdahn 2005: 178). This complementary force of domestication poses a challenge for EU implementation research: 'instead of simply equating the implementation of EU policies with Europeanization scholars should develop and make use of concepts that (a) allow for the determination of the relative weight and importance of the EU in the national context and (b) capture the dual nature of the implementation process' (Bugdahn 2005: 179). The contributions of this collection allow for preliminary conclusions about the complex interplay of Europeanization and domestication dynamics, and factors affecting it at different stages of the implementation cycle.

Choice of implementation type. According to Heidbreder (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>), the levels of *conflict and ambiguity* of the policy under question determine which implementation strategies promise to be effective (Matland 1995). Some strategies are less constraining for domestication, some more. When the different political actors have strong shared interests, then strategies emphasizing Europeanization over domestication come into play. If the policy is relatively unambiguous, implementation can be centralized in a top-down manner. If ambiguity is high, delegation to an agency is a likely option. Conversely, when there are conflicting interests, implementation strategies

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should allow for a high degree of domestication. If ambiguity is low, bottom-up implementation strategies can lead to 'voluntary' convergence. If ambiguity is high, policy-specific networks are a flexible strategy.

Legal transposition. The results presented by Thomann and Zhelyazkova (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) illustrate that *Europeanization dynamics strongly influence the domestication of EU policy*. A large amount of domestication follows a direction that conforms to EU policy. Within this framework outlined by EU policy, the authors find evidence of a high diversity of domestication strategies, which they argue point to the importance of domestic politics. Mastenbroek (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) confirms these insights by showing that legislative drafters interpret EU policy in order to reconcile Europeanization with domestication. Yet *if a reconciliation of EU requirements with the preferences of national political principals is not possible, then domestication trumps Europeanization*.

Practical application. The findings provided by Gollata and Newig (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) suggest that *an implementation strategy aimed at capitalizing on domestication does not perform well in a context where decentralized implementing actors have discretion, but no power and capacity*. In such a situation, Europeanization may be limited to conformance, and domestication (here: non-adaptation) may not be conducive to performance. Dörrenbächer (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) suggests that *domestication beats Europeanization, if the relationship between EU and national policy is ambiguous and frontline implementers have discretion*.

Enforcement. Scholten (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>)

shows how the EU is in an ongoing process of countering the practical non-conformance with EU policy by *Europeanizing the enforcement of EU policy* – a domain which, with the exception of competition law, has traditionally been a central source of domestication (see also Jensen 2007; Kelemen 2012). Simultaneously, the institutional choices made allow member states to retain a certain amount of control over enforcement.

Scholten (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) further discusses how the balance between Europeanization and domestication challenges the legitimacy of the EU governance structure. Essentially, she argues that the domestication of EU enforcement serves the system's input legitimacy (Scharpf 1999). The Treaties do not foresee the shift of enforcement power to the EU. She also argues that accountabilities did not accommodate this power shift, since EU and national systems of judicial control over EU law enforcement remain strictly separated. This could result in blame avoidance (cf. Hinterleitner 2017; Hinterleitner and Sager 2016) and situations where member states cannot hold EU enforcement authorities accountable. In an EU with diverse legal cultures, shared enforcement also requires institutional, procedural and substantive adaptations that can pose their own legitimacy problems. Scholten concludes that the Europeanization of enforcement would have to be more effective in order to compensate for this lack of input legitimacy with increased output legitimacy. However, there is no empirical proof of this yet.

In a similar vein, Thomann and Zhelyazkova 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>: 20) highlight how bottom-up implementation theory assumes that discretion for implementers 'can facilitate context-sensitive solutions of the original policy problem at stake and increase the likelihood of effective and broadly accepted policy solutions at the point where the problem is most immediate. (…) European integration is increasingly

perceived as a loss of sovereignty over national policies. The customization phenomenon (…) illuminates how member states use transposition as an opportunity to modify EU law and regain control' (see also Zhelyazkova 2013).

These comments suggest that the 'optimal' balance between Europeanization and domestication fundamentally depends on the capacity of the configuration of these two forces to resolve joint policy problems effectively in the EU. In this respect, a performance-oriented perspective on EU implementation can make a viable contribution.

Directions for a performance perspective on EU implementation

Considerations of legitimacy and acceptance are not merely of academic interest. Rothstein (2014) argues that political science tends not to put enough focus on the state machinery and its performance or lack thereof. As Héritier (2016: 17) points out, 'this argument is particularly interesting in the light of empirical findings which indicate that in public opinion good governance of the state is a more important source of democratic legitimation than the correct and fair democratic procedures as such'. Prominent politicians like Martin Schulz have argued that the acceptance of EU decisions can be enhanced by bringing them closer to the citizens – by deciding globally, but decentralizing as much implementation power as possible to local actors who know how to best resolve the problem.[1] A crucial advantage of a performance perspective on EU implementation is that it complements a conformance

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[1] Martin Schulz, 2.7.2016, programme conference „Europe" of the German Social Democratic Party, Berlin.

approach to emphasize domestication dynamics in the analysis of Europeanization. Thereby, it allows for putting assertions as the ones above to empirical scrutiny.

A performance-oriented perspective on EU implementation can add significantly to our theoretical understanding of multi-level and particularly EU implementation, and move the latter forward in the direction of implementation as problem-solving (Elmore 1979). By shedding light on the complex interplay between Europeanization and domestication, such a perspective can reveal conditions under which this interplay can foster effective policy solutions (see also Knill and Tosun 2012; Richardson 2012; Richardson and Mazey 2015). Doing so is important to better understand the link between legal and practical implementation, and the situations in which conformance is or is not enough to achieve good policy performance (Keman 2000). This in turn should stimulate the further exploitation of synergies between differing analytic lenses. For example, analysing the process of interpretation of EU law by individual implementers helps understand the conditions under which compliance with EU law is improbable. Analytically, it helps us to conceptualize and operationalize the complex mechanisms and outcomes of multi-level implementation systems. Researchers may identify which properties of EU and domestic policies and institutions trigger different implementation dynamics, and accordingly, appropriate implementation strategies; or which enforcement strategies are warranted in specific circumstances.

Methodological considerations

An analytic focus on complexity, processes, individual interpretations and motivations, and policy outcomes also bears methodological challenges that have more broadly been associated with bottom-up implementation studies (e.g., Hupe and Hill 2016). The high

internal validity aspired by such research questions often implies an in-depth focus and considerable efforts of primary data collection and analysis, resulting in research designs that do not allow for representative and generalizable insights (Hartlapp and Falkner 2009; see scope conditions in Table 1). Such studies then sometimes have a descriptive character and often do not allow for disentangling parsimonious explanations from purely context-dependent (e.g., policy-specific) patterns (Goertz and Mahoney 2012; Treib 2014). However, Héritier (2016: 11) also rightly points out that the 'rigour versus relevance question is not a question of quantitative or qualitative research but rather a question of (…) opting for substantive problem oriented, methodologically stringent research in a limited-scope theoretical context'.

In this vein, several methodological strategies appear promising to obtain, in a cumulative manner, a more complete picture of policy implementation and effectiveness in the EU (see Toshkov 2016). First, qualitative implementation studies should explicitly formulate scope conditions for their findings, that is, the analytically relevant properties of their case(s) that influence what answers they find to their research question (Mahoney and Goertz 2004). Second, comparative Europeanization research needs systematic, theoretically grounded conceptualizations of core concepts that capture diversity and performance in EU implementation beyond compliance, which allow for their application in diverse research contexts while preserving the equivalence of concept meaning and measurement (Adcock and Collier 2001; for examples see Bondarouk and Liefferink 2016; Bondarouk and Mastenbroek 2017; Thomann and Zhelyazkova 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>, online appendix; Tummers et al. 2012). This way, the results of different studies can more directly speak to each other. Third, the best research arguably combines 'the best of

both worlds', for example, through mixed-methods research involving collaborations with colleagues with different methodological skills (Héritier 2016). Nested designs identify patterns across large sets of cases and then select analytically relevant cases for in-depth analyses of underlying mechanisms (Lieberman 2005; Schneider and Rohlfing 2013).

Finally, while ready-made databases on EU implementation are biased toward certain aspects of legal compliance (Hartlapp and Falkner 2009), alternative options for data collection and analysis in less 'optimal' data contexts do exist. For example, survey pools in bureaucracies or experimental designs are useful to analyse the motivations of policy implementers (Grimmelikhuijsen et al. 2017; Tummers et al. 2012). Innovative techniques of quantitative text analysis can systematically extract information from large amounts of EU conformity and evaluation reports (Grimmer et al. 2013; Klüver 2009). Finally, set-theoretic methods such as Qualitative Comparative Analysis (Rihoux and Ragin 2009; Schneider and Wagemann 2012) or explanatory typologies (Møller and Skaaning 2015) model several of the causal patterns identified in this collection. For example, they assume that 'many ways can lead to Rome', that configurations of factors matter, and that the same factor may not always have the same effect, depending on the context (Exadaktylos and Radaelli 2012; Thomann and Maggetti 2017; e.g., Cacciatore et al. 2015; Di Lucia et al. 2010; Maatsch 2014; Schmälter 2017; Sager and Thomann 2016; Thomann 2015).

Ways ahead

Given their limited generalizability, the findings of this collection call for more comparative research, channeling efforts and resources to go beyond the 'usual suspects' of countries and policies traditionally studied in EU implementation research. To conclude, we outline three

core features of a promising research agenda for testing the applicability of our conclusions about the interplay between Europeanization and domestication in other contexts.

First, more research is needed that addresses the practical effectiveness of EU policy, while accounting for context-specific patterns from a performance perspective (e.g., Skjærseth and Wettestadt 2008; Toshkov and de Haan 2013). In particular, the results of this collection encourage us to explore the relevant properties of policies and institutions creating different implementation dynamics, as well as the conditions under which implementers implement EU law correctly and effectively. As outlined above, such a comparative ambition has both conceptual and methodological implications. The question of actual performance also requires a more evaluative perspective, raising challenges regarding data availability and the quality of legislative ex-post evaluation in the EU (Mastenbroek et al. 2016).

In this vein, the contributions of this collection highlight many open research questions about the EU's practical problem-solving capacity. For instance, Heidbreder (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) calls for more research on the conditions under which particular implementation strategies prove effective, and the role of the factual and normative ambiguity of policies therein (Matland 1995; Schmidt 2008). Thomann and Zhelyazkova (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) suggest to strive for a more in-depth and improved coding of customization especially in the face of legal ambiguity. They propose to analyse its empirical relevance so as to systematically compare discretionary freedoms across different member states and issue areas. This paves the way for identifying the conditions under which national authorities increase or decrease the leeway of domestic implementing actors; how member states make use of different dimensions of customization to satisfy domestic interests during implementation; and to what

extent more or less restrictive interpretations of EU rules enhance the legitimacy and acceptance of EU law 'on the ground' (see Dörrenbächer and Mastenbroek 2017). Gollata and Newig (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) call for a more thorough analysis of rationales and institutional prerequisites that drive the choice of governance approaches, such as diverging 'governance cultures'. We must disentangle the effect of the governance model from that of contextual factors in order to assess the usefulness of policy implementation through multi-level governance.

Second, we need to gain a better understanding of the processes, mechanisms and motivations underlying patterns of compliance and diversity. To this end, it is crucial that Europeanization research focuses more explicitly on individuals implementing EU law, connecting the micro level with meso level and macro level variables. In this regard, EU implementation research can benefit from integrating recent theoretical and methodological developments in Behavioral Public Administration and Policy research (e.g., Grimmelikhuijsen et al. 2017; John 2016; Tummers et al. 2012) and drawing from the literature on social psychology and socialization processes (e.g., Bayram 2017; Beyers 2010; Sunshine and Tyler 2003; Tyler 1990). Such an approach facilitates a deeper understanding of the organizational and national structures, cultures and institutions involved in EU implementation. For example, it can lend empirical substance to recurring arguments such as Falkner et al.'s (2005) 'worlds of compliance', or Gibson and Caldeira's (1996) legal cultures of Europe.

Our collection points to several research gaps in this respect. Mastenbroek (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>), for example, proposes to carry out comparative large-N explanatory research on the roles chosen by EU-involved drafters or other civil servants (Bayram 2017; Egeberg 1999; Sager and Overeem 2015), taking into

account background variables such as age and seniority, but also more theoretically informed variables such as instrumental and normative considerations. Dörrenbächer (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) poses two crucial questions for future research: what role does EU law play for implementers who operate under less discretion (Trondal 2011; Wockelberg 2014) – and what is the relationship between normative and instrumental motivations and the use of EU law?

Third, a thorough understanding of the effects and acceptance of EU policies requires researchers to tackle the challenging task of linking different stages of the policy cycle in the EU multi-level system. For example, the present collection advances our knowledge of the relationship between the EU implementation on paper and in practice (Versluis 2007; Zhelyzkova et al. 2016). Beyond the implementation stage, more research should scrutinize how EU policy making interacts with implementation (e.g., Thomson 2010; Zhelyazkova 2013). Next to the question of how member states regain control over EU policies during implementation (Thomann and Zhelyazkova 2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>), we also know very little about how implementation decisions are reloaded into decision-making in order to optimize EU policies. In this regard, the interplay between implementation and legislative design deserves more attention. How do EU institutions try to 'stack the deck' of EU implementation by installing and stimulating checks and balances on non-compliance (Kelemen 2012)?

In this latter vein, Scholten (2017 <THIS ISSUE: PUBLISHER TO ADD /UPDATE DETAILS AT PROOF>) stresses the importance of investigating the extent to which different EU enforcement strategies have been effective in addressing certain non-implementation problems of EU law and policies, and subject to which conditions. As she notes, 'such studies

could contribute to building a model, which would also be useful for policy-makers, to determine what type of EU's enforcement competences should be desirable in specific circumstances (…) The findings on effectiveness could also inform researchers investigating the legitimacy of the EU and the 'underground' method of expanding power. (…) future studies also need to consider whether, in light of these challenges [in terms of legitimacy, accountability and the organization of shared enforcement], this 'solution' is indeed worthy' (Scholten 2017: 19).

This collection illustrates that research tackling such questions benefits from complementing a compliance perspective with a performance perspective. This implies a procedural view on EU implementation as an act of interpretation of EU policy by actors who operate within multiple (policy and domestic) contexts, characterized by a complex interplay between Europeanization and domestication dynamics (Bugdahn 2005). We argue that such research should strive for more cumulativeness and integrate insights from neighbouring literatures. More comparative approaches require systematic conceptualizations and innovative data collection strategies and methodologies. Jointly, such research efforts will increase our understanding of the inherent trade-offs between conformance, the diversity of member-state legislation, and efficient and effective problem-solving (Scharpf 1997) in the EU multilevel system.

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Tables

Table 1: Summary of results

Contri-bution	Thomann & Zhelyazkova	Mastenbroek	Gollata & Newig	Dörrenbächer	Scholten	Heidbreder
Stage	Transposition	Legal compliance	Practical application	Practical application	Enforcement	Choice of implementation type
Unit of analysis	EU rules transposed in Member states	Individuals in ministries	Programs implemented at local level	Decision-making by frontline implementers	EU direct enforcement strategies	Policies
Actors	Member states	Legislative drafters	Municipalities	Case workers	EU agencies & networks	Policy makers
Research interest	Customization: discretionary changes of EU policies during transposition • Conceptualization & measurement • Patterns across MS & policies • Relationship between customized density & restrictiveness	Frontline of EU compliance • Typology of dual roles: EU guardian vs. politically loyal civil servant • Propensity of double-hatted actors to be guardians of EU law in the face of conflicting domestic political preferences	Conduciveness of Multi-Level Governance to effective policy implementation • Decentralization, spatial fit & participation • Collaboration & coordination among municipalities • Interaction between municipal & state levels	Motivations of street-level implementers • 'second frontline' between domestic & EU regulation creates new legal ambiguities • Instrumental motivations should discourage, normative motivations should generate uses of EU law	Role of EU in directly enforcing EU policy • Three enforcement strategies • Conditions for effectiveness of these strategies • Challenges posed by direct EU enforcement	Derive implementation strategies beyond conceptually limited compliance perspective • Combine top-down/bottom-up and vertical / horizontal MLG dimensions • Functional expectations about strategic choices
Policy	21 Environment	Cross-sectoral	EU air quality policy	Migration policy	EU-wide	--

Contri-bution	Thomann & Zhelyazkova	Mastenbroek	Gollata & Newig	Dörrenbächer	Scholten	Heidbreder
area(s) / case(s)	Directives (N = 894) 10 Justice & Home Affairs Directives (N = 750) 27 MS	10 Dutch ministries	137 air quality and action plans in 16 German *Länder*	21 case workers of 10 *Ausländerbehörden* in North Rhine-Westphalia, Germany	EU enforcement authorities, networks and soft, hard and case law	
Methods	Manual coding of conformity reports Descriptive statistics	31 qualitative interviews	Quantitative & qualitative content analysis of documents Descriptive statistics	Qualitative interviews	Analysis of legal sources, official documents & multi-disciplinary literature	Literature review/ theory paper
Core findings	Considerable diversity of transposition beyond compliance Relationship between customized density & restrictiveness varies between policy areas Pronounced policy-specific logics	Legislative drafters recognize dual roles They employ interpretative techniques to bridge EU law with political preferences Political steering trumps EU requirements	Decentralization ineffective due to lacking substantial enforcement capabilities of local administrations Planning remained tied to territorial jurisdictions Participatory planning voluntary & arbitrary	Different levels of law used to produce' just' outcomes Instrumental motivations trigger limited use of EU law Substantive normative motivations trigger active use of EU law (procedural motivations are limited)	Proliferation of EU enforcement authorities and their direct enforcement powers Growing number of enforcement networks More hard, soft and case law regulating domestic enforcement	Four ideal-types of implementation: centralization, agencification, convergence, networking Only under certain conditions a particular strategy will lead to effective implementation
Europea-nization dynamics	EU policy matters: Customization often follows direction of flexibility allowed for by EU provisions	Attempts to integrate EU legal requirements with national policy objectives whenever possible (escalation ladder)	Minimal compliance given (but air quality targets not met) Learning & capacity building	Implementers complement national law with EU law when the former is unclear Some implementers correct for missing transposition	Trend of enforcement moving to Brussels Direct enforcement by EU entity has greatest problem-solving potential Partly lacking juridical accountability/ legitimacy of EEAs	More constraining implementation types effective when little conflict/ ambiguity

Contri-bution	Thomann & Zhelyazkova	Mastenbroek	Gollata & Newig	Dörrenbächer	Scholten	Heidbreder
Domest-ication dynamics	Domestic politics: Significant country differences in compliant customization	Role conflicts often lead to prioritization of national political preferences	Leeway led German administration to keep with existing structures & procedures	Most implementers prioritize national guidance in their decision making	Member states retain some control over enforcement thanks to institutional choices (agencies, networks)	Less constraining types effective when high conflict/ ambiguity
Scope conditions	Policies represent regulatory logics of both positive and negative integration Comprehensive sample of old and new MS	Most different systems identifies varieties of strategies Likely case for a sense of EU loyalty Strong rule of law	Under-researched policy Policy lacks spatial fit Full sample of implementation in Germany	Normatively laden & client-intensive policy is crucial case for motivations High discretion & legal ambiguity	Full sample	Strongly embedded in Europeanization & policy implementation literature
	Limitations: Incomplete information Expert evaluations under-represent full extent of compliant customization, especially for ambiguous rules	Limitations: Analytically representative but not statistically generalizable	Limitations: Contextually contingent	Limitations: No statistical generalization May not apply to technical policy fields	Limitations: Causes and empirical consequences of trend mostly unknown	Limitations: Empirical testing needed