Cabinets and the transposition of EC directives

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Abstract

This article investigates the delegation of policymaking to executive agencies in the course of the legal transposition of EC directives by cabinets in 15 member states of the EU from 1986 to 2002. Most of these cabinets consist of coalition partners deciding to transpose EC directives either through parliament or by delegation to an executive agency under the responsibility of a minister. Using the delegation model of Epstein and O'Halloran (1999) we investigate this decision on the implementation of EC directives as a cabinet's choice on risking ministerial drift for gathering bureaucratic expertise, which is a typical policymaking trade-off in parliamentary legislatures. Although the 15 member states widely differ in their relationship between the parliamentary and executive branches, our empirical findings show that ministerial delegation dominates the transposition mode of EC directives in all countries. We find that this executive dominance mainly results from the informational demand for effective implementation of EC directives: When EU decision making hardly reduces uncertainty about effective implementation and when the complexity of a directive increases the informational demand of cabinets, only a significant risk of ministerial drift promotes parliamentary inclusion in the domestic arena of the member states.

The transposition mode: Parliamentary and executive measures

This article examines cabinets' delegation of policymaking to executive agencies in the implementation process of EC directives. We conceptualize this delegation as a decision of cabinets to exclude their parliaments, which is related to several discussions in the comparative and EU literature, such as the parliamentary strength in EU legislative affairs (Majone 1998, Moravcsik 2002, Follesdal and Hix 2006), the discretionary power of the member states granted by EC directives (Franchino 2004, Thomson et al. 2007), the Europeanization of domestic institutions (Goetz and Hix 2001, Börzel 2001, Knill 2001), the transposition of EC directives (Dimitrova and Steunenberg 2000, Mastenbroek 2003, Kaeding 2008), the comparative evaluation of the administrative state (Epstein and O'Halloran 1999, Huber and Shipan 2002) and the relevance of ministerial drift for legislative policymaking (Martin and Vanberg 2004, 2005, Franchino and Hoyland 2008). Although the implementation of EC directives provides an ideal case for the comparative study of the executive-parliamentary relations in the member states and the influence of Europeanization on domestic institutions, , relatively little systematic information exists about the transposition mode of EC directives. Transposition studies mainly focus on transposition duration or failure, while little is known about the decision on the transposition instrument, i.e. whether cabinets prefer delegating transposition to the executive or implementation by parliament.

This article investigates a causal mechanism for the delegation of policymaking in the transposition stage of EC directives from a principal agent-perspective that has originally been developed by Epstein and O'Halloran (1999) for explaining the decision of U.S. Congress to delegate policymaking to executive agencies. Our comparative analysis asks why do the cabinets of 15 countries – given variation in their power relationship between the executive and parliament, their composition of coalition partners and their interests in European integration – increasingly prefer using executive instruments and only sometimes include parliaments in the transposition of EC directives? Are they primarily interested in bureaucratic expertise about effective implementation of EC directives, or, are they less concerned about the risk of ministerial drift when they delegate powers to executive agencies in the transposition stage of EC directives? For scholars interested in the effects if

Europeanization, another question is how EU decision making influences delegation on the domestic level – can EU decision making reduce uncertainty about effective implementation and/or do complex directives promote the need for bureaucratic expertise?

The answer to these questions might be important for scholars interested in the comparative evaluation of the implementation path in the member states, the ongoing debate on the parliamentary/democratic deficit in EU affairs and our understanding of the interaction between EU decision-making processes and their consequences for the implementation process in the domestic arena. From a comparative perspective, the "experiment" that all member states must transpose the same EC directives but vary in their domestic legal, administrative, political and institutional tradition of policymaking may represent an ideal case for the study of cabinet decisions on the delegation of policymaking powers in parliamentary systems. Under the consideration of 15 countries – their different governmental powers and party positions in various policy domains over a period of about 20 years of transposition history with more than 1.500 EC directives –, we examine the principal agent-relationship between coalition partners and ministers in cabinets by separating the information supply side of the EU decision making process from the demand for information due to complexity of EC directives. Both factors may influence the amount of expertise necessary for effective implementation and thus affect the principal agent relationship between coalition partners and ministers.

For the identification of the principal agent-relationship between coalition partners and ministers, we provide a novel measurement approach on the specification of actors' interests, which we believe is decisive for an accurate test of decision-making and delegation models. Due to the lack of sector-specific indicators, previous studies had often to reduce this principal agent relationship to a very crude pattern of interest conflict, such as their distances on a left right-dimension (Martin and Vanberg 2005, Franchino and Hoyland 2008). However, while coalition-building may follow this traditional conflict of interest, the delegation of powers to cabinet members is following a portfolio principle with sector-specific interests and competences (Laver and Shepsle 1998). Moreover, European integration is also following a sector-specific pattern with exclusive policymaking competencies in selected

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policy areas, Using the manifesto items related to the areas of EU policymaking, we identify the sector-specific positions of the governmental political parties and the party affiliation of the responsible minister in each country. We use the distances between their sector- and country-specific positions for measuring the risk of ministerial drift in the transposition stage of EC directives: the larger the sector-specific distance between a minister and the mean of the coalition partners, the higher the risk of ministerial drift, and the less likely is the delegation to the bureaucracy. Our model also considers the level of uncertainty about implementation effectiveness for testing the informational asymmetry between agents (ministers) and principals (cabinets): the higher uncertainty through EU decision making or complexity of EC directives, the higher the need of expertise for effective implementation, and the lower the likelihood for parliamentary inclusion in domestic policy making.

Testing our theoretical arguments on a comprehensive dataset which contains all notified transposition measures in 15 member states for about 1.500 EC directives initiated by the Commission between 1986 and 2002, we show that delegation can be explained by the informational demand for the implementation process. Complex directives, ineffective EU decision making and the resulting implementation uncertainty promote executive dominance, while only a significant risk of ministerial drift increases the likelihood of parliamentary inclusion. Our statistical findings suggest a multi-level approach which considers country- and sector-effects. These models reveal that single party majority governments are significantly more likely to delegate their transposition authority to the executive than coalition or single minority governments, in particular when the level of autonomy of non-central government units and thus of ministerial drift is high. Amending directives are consequently begging a lower risk of ministerial drift and delegation of transposition authority becomes more likely. The need for information about effective implementation of EC directives is suggested by the delegation of Commission directives with long decision-making duration and high complexity. This effect is also confirmed by the length of the time span granted to the member states for transposition.

The delegation of policymaking and the transposition process in the member states

Outside the transposition process of EC directives, the study on the delegation of policymaking from parliaments to the bureaucracy has received notable attention in the U.S. and comparative literature (Epstein and O'Halloran 1999, Strom 2000, Müller and Strom 2000, Huber and Shipan 2002). A major insight from this literature on the so-called *administrative state* is that principal agent-problems do not sufficiently explain delegation from parliament to the bureaucracy. The risk of ministerial drift, which is typical for coalition governments in parliamentary democracies, only promotes parliamentary policymaking but parliaments are conventionally demanding information for implementation effectiveness which can be supplied by bureaucratic expertise. Hence, when there is no risk of ministerial drift, bureaucratic expertise always promotes delegation in parliamentary systems. When both modes of policy making raise equivalent costs, i.e. parliamentary policy making due to a lack of implementation expertise and delegation by ministerial drift, a risk-averse government will usually favour delegation in order to reduce uncertainty about implementation effectiveness (Epstein and O'Halloran 1999).

In the literature on the transposition of EC directives, this delegation problem has received little attention, although there are intense scholarly discussions about parliamentary involvement in EU legislative affairs, the "regulatory" nature of EU policymaking and the implementation of EC directives, including both the transposition of and compliance with EC directives (with the notable exception of a recent contribution in a forum section by Mastenbroek and Veen 2008).[1] The current discussion on parliamentary involvement in EU

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[1] Most recently, Franchino and Hoyland (2008) use the legislative scrutiny model of Martin and Vanberg (2005) for the analysis of transposition of EC directives, which considers a game between a minister and the challenging coalition partner who must burden opportunity costs in the event of a ministerial challenge. Applied to the transposition of EC directives, their model excludes EU decision making and rests on the assumption that a minister can present her ideal position when setting the agenda for the transposition of a directive. Moreover, their measurement of actors' interests does not account for EU policy sectors and assumes that the transposition of each directive is located on a domestic left-right conflict between coalition partners. Under these conditions, their findings confirm the results of previous

legislative affairs is mainly focusing on the inclusion of the European Parliament and little systematic evidence is available for the role of domestic parliaments in EU policymaking, in particular during the implementation stage of EC directives. This is somehow surprising because research on transposition and compliance is emphasizing the impact of domestic actors for implementation effectiveness. However, a major challenge in the analysis of domestic actors concerns the specification of their interests and the identification of the domestic transpositions measures in the policymaking of EC directives.

In principal, the cabinets of the member states have three alternatives to transpose EC directives, namely through parliament and the passage of domestic legislation, through delegation of authority to executive agencies and the passage of executive measures, or, through a mixture of both. According to Article 249 EC-Treaty "[a] directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods." Following this definition, member states only comply with EC law when they explicitly implement EC directives into national law, while leaving the mode of transposition to the governments of the member states. Figure 1 illustrates the percentage of EC directives transposed by domestic parliaments for each member state and four important sectors which cover about 65 per cent of our initial sample (13779 cases resulting from a maximum of 1592 directives * 15 member states) in the period of our study from 1986 and 2002. Only few cases have missing values and later membership of Austria, Finland and Sweden in 1995 explains their shorter transposition track. We see that the number of domestic cases including parliaments varies among the member states as well as across policy sectors. However, executive measures seem to dominate the transposition processes in almost all member states and policy sectors. At first sight, these numbers suggest two explanations: i) governments rarely fear ministerial drift, ii) governments are extremely interested in specialized information about implementation.

Figure 1 about here

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comparative studies on national policymaking which reveal the importance of parliamentary powers for an effective control of ministerial drift.

On closer inspect of figure 1, Austria, Finland and Germany use more often parliamentary measures to transpose EC directives, while parliamentary transposition can be rarely observed in Portugal, Ireland and the United Kingdom. Furthermore, the numbers also indicate that the percentage of parliamentary transposition is higher in the policy sectors of Energy/Environment and Common Rules than in Agriculture and Internal Market. This variation suggests policy-or sector-specific reasons for cabinets' preference for a particular transposition instrument, which can hardly be explained by general arguments on ministerial drift or country-specific features, such as a dominant left right-dimension. One reason for this trend towards using executive measures might be the sector-specific high value of bureaucratic expertise, which is particularly valuable in the event of high uncertainty about implementation effects. Another explanation is that there is consensus among coalition partners about this policy (or set of policies in a domain) which means that there is no risk of ministerial drift promoting parliamentary transposition. Because several rivalry views exist for the prominence of delegation, we take a closer look at the theoretical foundation of the conditions for the delegation of powers before presenting our empirical analysis.

Cabinets, ministers, executive agencies and the EU

For explaining the trend towards using executive measures in the implementation process of EC directives, we introduce a model originally developed by Epstein and O'Halloran (1999) for the analysis of the U.S. federal system. This model basically assumes that a policy (directive) will be enacted in the politically most efficient manner. In the more elaborate rendering of this delegation game, the cabinet delegates authority to executive agencies when the parliamentary process promises beneficial outcomes than bureaucratic implementation due to the relative costs of principal agent-problems and informational deficits on effective implementation. Thus, the pull-factor for parliamentary transposition would be ministerial drift, while bureaucratic expertise pushes delegation to an executive agency. When both modes raise equivalent costs, i.e. parliamentary transposition due to a lack of implementation expertise and delegation by ministerial drift, a risk-averse cabinet will

usually favour delegation in order to reduce implementation uncertainty. Similarly, when ministerial drift does not exist, bureaucratic expertise promotes delegation.

Applied to the study on the transposition mode of EC directives, the game includes four relevant types of actors in each country: a cabinet, a responsible minister, an executive branch agency, and the EU as the set of all member states. Each of these actors have a most preferred policy, prefer outcomes that are closer to their own most preferred policy and are risk-averse, meaning that they dislike uncertainty over outcomes. Due to risk-aversion actors may accept some policy bias in return to more certainty about outcomes (Epstein and O'Halloran 1999: 54). Given some initial uncertainty about implementation, the EU and the domestic agency can provide information about the policy effects of a directive, which cabinets consider when passing the directive to parliament or issuing executive regulation for its transposition.

Under these conditions, the transposition game can be divided into three relevant stages, a stage of legislative choice at the EU level, a policy making stage by the cabinet, and the stage where the final policy outcome is implemented. At the end of the first stage of legislative choice, the member states adopt a common solution. During this stage, the Commission holds hearings, gathers information, deliberates, writes reports, and drafts a legislative proposal which is sent to the Council. The Council – sometimes together with the European Parliament – scrutinizes this proposal and makes the final decision on the adoption of the directive and passes it to the member states which are addressed. This means that actors can collect information about the directive regarding the value of uncertainty on the directive's implementation effects during the legislative stage. However, this information often remains incomplete and domestic agencies can provide further information which helps to identify the exact value of uncertainty in the implementation stage. Compared to parliament, these agencies usually have an informational advantage due to their greater administrative resources, their closeness to the often technical problems on site, or simply because some time is elapsing between the passing of a directive and implementation, providing the agency with new information revealed in that period. At the second stage of policy making, the directive is transposed into domestic law. Under the conditions of the

legislative stage, the cabinet makes the key decision, whether to transpose without executive input through the means of parliamentary vote or to delegate substantive transposition powers to the responsible executive agencies. In case of parliamentary inclusion, the transposition is enacted by the majority in parliament. When delegating the transposition to the executive branch, the cabinet sets a baseline policy (based on the solution of the coalition partners) and gives the executive agency under the responsibility of a minister some discretion to move the policy away from the baseline. Here, we assume that the responsible minister fixes the ideal point of the agency and gathers information about the constraints in order to cope with the limits of agency discretion.

At the final stage, the outcome of the transposition process will be realised via implementation. Note that due to the informational advantage, the agency is able to reduce implementation uncertainty to a minimum in the domestic arena. In case of parliamentary inclusion, the final outcome is determined by two elements, the policy of the parliamentary majority and realization of the directive's goals in the true implementation world. In case of parliamentary exclusion, the outcome results from the baseline policy of the cabinet, the policy set by the agency of the respective minister and realization of the directive's goals in the true implementation world.

According to this model, the transposition mode is determined by three factors and their possible interactions, namely the level of risk of ministerial drift, the amount of relevant information which a cabinet is able to gather during the EU legislative process, and the level of uncertainty associated with each directive. Hereby, the principal agent-problem between a governmental (coalition) majority and the respective minister responsible for the implementation is a crucial element of the delegation mode. In particular for cabinets with strong coalition partners, there exists an inherent principal agent-problem because the partners may share the common interest in government, but they can still differ in their interests in policymaking. They must nominate and delegate ministers into the cabinet who are responsible for drafting governmental proposals. These ministers may pursue their own office-seeking interests at the expense of others which stimulates legislative scrutiny of their proposals in parliament (Martin and Vanberg 2004, 2005).

In our view, there is a difference between legislative scrutiny of office-seeking ministerial proposals and the transposition of EC directives. According to Huber and Shipan (2002:183-185), cabinet ministers can dominate both the parliamentary and the executive because the minister is also responsible for preparing the initial draft of a governmental proposal in parliamentary legislation. In the transposition of EC directives, however, this draft comes from the EU legislative process in which the Commission, the member states and sometimes the European Parliament have negotiated the outcome. Since the directive has been adopted by the EU, ministers neither claim their responsibility for policymaking by the transposition of directives nor will their coalition partner challenge ministerial transposition for office-seeking purposes. For the transposition of EC directives, ministers have the authority to draft executive measures, such as regulations, circulaires and orders etc.. In this world, ministers are not directly constrained by their colleagues and can use their portfolio power for shaping policy outcomes. This suggests that a cabinet is more likely to accept some level of uncertainty about implementation effectiveness and to include parliament when there is a high principal agent-risk. These considerations lead to the following hypothesis:

H1: The higher the risk of ministerial drift, the more likely is parliamentary transposition.

In addition to the risk of ministerial drift, the model emphasizes the need of information and expertise for effective implementation, while the legislative scrutiny-model of Martin and Vanberg (2005) stresses the opportunity costs of a challenging coalition partner. In principal, a bureaucracy can generally provide expertise but in the two-level lawmaking system of the EU, uncertainty about implementation effectiveness can also be reduced through information which is supplied by the EU decision making process. The Commission usually provides information and attempts to reduce uncertainty by preparing the proposal which is negotiated in a lengthy process of EU decision making, in which the member states and sometimes the political parties of the European Parliament reveal their interests and expertise about the implementation constraints of directives. In some cases, the member states even delegate this process to the Commission suggesting a lower level of uncertainty about

implementation effectiveness. When the EU legislative process is able to provide certainty about effective implementation of a directive, there is no need to risk ministerial drift and to delegate transposition authority to an executive agency. But when a cabinet remains uncertain about the implementation effects of a directive, it is more likely to delegate transposition power to executive agencies even under the risk of biased implementation. The second hypothesis is:

H2: The more uncertainty about effective implementation is reduced by the EU legislative process, the more likely is parliamentary transposition.

Finally, the model suggests that the information demand for effective implementation is associated with the characteristics of each directive. This informational demand is perhaps one of the most cited reasons for non-compliance which is either attributed to a low domestic fit (Duina 1997, Knill and Lenschow 1998, Héritier et al. 2001, Green Cowles et al. 2001; Börzel 2003) or bureaucratic inefficiency (Mbaye 2001, Borghetto et al. 2006, Franchino 2007). This fit should be particular high in the event of amending legislation because the member states already know the implementation effects of the existing directive. Likewise, the complexity of a directive should also affect the information demand for implementation effectiveness and hence influence the transposition mode. For any fixed amount of information and any fixed level of risk of ministerial drift, the cabinet is more likely to delegate transposition authority to the executive agency when the level of information demand increases. The reason is that cabinets prefer gathering bureaucratic expertise about the implementation of EC directives. This leads to our third and final hypothesis:

H3: The less information is required for the implementation of a directive, the more likely is parliamentary transposition.

In our view, this model directs the attention to the specific conditions of the transposition mode of EC directives, which can be tested by these three hypotheses. Cabinets are

simultaneously faced with two problems when looking at the implementation problem of EC directives, the uncertainty about implementation effectiveness and ministerial drift. When uncertainty about implementation effectiveness is low and a risk for ministerial drift exists, we expect that cabinets will prefer parliamentary transposition, but when uncertainty is higher and/or the principal agent-problem is lower, it will favour delegation to the agency. Obviously, these two elements establish a trade-off for cabinets when both the principal agent-problem and uncertainty are high. In such a situation, the cabinet must decide to what extent it needs specialized information in relation to the risk of ministerial drift in order to implement a policy in the most preferred version.

Transpositions characteristics across sectors and countries

In order to test these claims on a broad empirical basis under consideration of various institutional and political contexts, we have gathered data on all notified national transposition measures in the 15 "old" member states for all EC directives initiated by the Commission between 1986 and 2002 (following the accession of Portugal and Spain and prior to the coming into force of the Nice treaty in 2002).[2] Because the new members, which acceded the EU in 2004 respectively in 2007, do not yet have a comparable transposition record, we rely on the EU-15 respectively EU-12 (Austria, Finland and Sweden acceded in 1995). Moreover, our dataset covers all measures which are notified by the member states across all sectors.[3]

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[2]These data have been collected within the context of a four-year interdisciplinary research project funded by the German Research Foundation (DFG).

[3] Other studies on transposition records rely on shorter periods and/or selected policy areas raising questions about selection bias (Luetgert and Dannwolf 2008). A few attempts have been made to cross-validate the CELEX information by accounting for information of national bureaucracies on their implementation efforts. However, in particular for testing the proposed delegation framework, it is questionable whether and to what extent this cross-validated data are contaminated by strategic purposes of the domestic bureaucracy and/or whether and to what extent the variation is due to country-specific administrative efficiency (Perkins and Neumayer 2007).

We used the CELEX database which contains all sorts of legislative documents (directives, regulations, decisions) and has a high rate of reliability compared to other legislative databases such as PreLex in the period under study. In our view, a major challenge for testing the model concerns the specification of the risk for ministerial drift which can vary not only over countries but also across policy sectors within a country. Coalition partners might share the view on agricultural politics, while they differ in energy or environmental issues. To control for these sectoral policy effects, we classified EU policymaking into four broad policy sectors, namely Agriculture, Energy/Environment, Trade, and Common Rules. This sectoral specification combines the core policy sectors of EU legislative activities with country-specific indicators on the party positions of the actors involved.

Table 1 about here

Our original dataset includes the key characteristics of 1.592 EC directives and the respective national transposition measures. This information maps into 21.270 cases (directives * countries) for the time period between 1986 and 2002. Besides the exclusion of cases for which the member states failed to notify any measure (4.224 cases), we had to exclude those directives that did not explicitly require any transposition (43 cases), those that were pending at the time when the data were downloaded in November 2006 (270 cases), and those directives which could not be classified into our four broad policy sectors (36 cases).[4] This rate

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[4] If a member state did not notify any national transposition measure to the Commission, the entry 'No Reference Available' is displayed in the national implementing measures field of the CELEX database. Over the last couple of years several studies raised questions concerning the comprehensiveness of the provided CELEX data (Page and Wouters 1995; Bovens and Yesilkagit 2004; Steunenberg 2005; Thomson et al. 2007; Hartlapp and Falkner 2007; Kaeding 2008). While some studies indicate (Page and Wouters 1995:804) that the CELEX data omits a substantial number of national transposition measures, especially for those directives that amend, apply, or are a consequence of national rules that implement previous European legislation, other studies, however, regard the mistakes of the CELEX data as being of minor importance (Thomson et al. 2007). In a study on EU compliance in five member states Kaeding (2005:8) finds that the CELEX database contains almost 80 percent of all relevant national transposition

of transposition notification failure varies significantly across the member states: Germany and the Netherlands appear to be leaders in notification failure with respectively 399 and 395 non-transposed EC directives. At the other extreme, Austria and Sweden (136) and Finland (96) have a relatively good notification record.[5] Furthermore, we dropped those directives for which no transposition deadline was available (969 cases). And finally, we excluded those directives for which the respective notified transposition measure was adopted before the respective directive was decided or for which no transposition date was available (1.949 cases) because we are only interested in member states' responses to the transposition requirement of EC directives. This sample procedure creates a dataset with 13.779 cases, which is displayed in the last column of Table 1.

In addition to reliability of the notified data, a major challenge in this research concerns the classification of the various measures for the specific transposition modes. For our comparative analysis of the transposition mode, we used legal expertise for coding each notified national measure as either parliamentary or executive. This is not a trivial task because some executive measures include parliamentary participation and several regional measures provide for additional parliamentary participation. Following this coding procedure, we define our dependent variable as a dichotomous variable for each directive. We coded the national transposition mode with "1" when the respective member state used a parliamentary measure and "0" when only executive measures were used in the national transposition process. Table 2 provides a summary of the dependent and independent variables along with their expected effects on the parliamentary in- respectively exclusion from the national transposition process of EC directives.

Table 2 about here

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measures. Furthermore, in their comprehensive study of EU compliance including all member states König and Luetgert (forthcoming) find that the EurLex data do not have a systemic bias across the member states and/or across time.

[5] This result also corresponds to the Commission's scoreboards where Sweden and Finland have the lead in effective implementation, while Germany and Italy lag behind.

According to our theoretical argument derived from the delegation model, we examine three factors which influence the national transposition mode for the implementation of EC directives. These three factors relate to the risk of ministerial drift, the amount of relevant information which a cabinet is able to receive from the EU legislative process, and the level of implementation uncertainty associated with a directive. For estimating ministerial drift we are looking for an indicator measuring the sectoral distance between the cabinet and the respective minister in the domestic arena. Recent research on compliance used several veto player or veto point indices with mixed results: Mbaye (2001), Jensen (2007) and Kaeding (2008) find no effect of veto players on implementation, while Guilliani (2003) and Perkins and Neumayer (2007) report a negative relationship. However, while this literature is concerned about the number and cohesiveness of veto players in the implementation process, we are interested in the inherent delegation problem of coalition governments, which can vary over policy sectors. To operationalize this sector-specific configuration, we propose using three indicators and expect that conflict between the coalition partners is associated with both ministerial drift raising delegation costs and the government's dividedness.

To measure coalitional conflict we calculate the sector-specific ideological distance between the governmental coalition partners using the Manifesto research data. We identify their positions in each sector by the mean value of coalition partners and calculate the distance to the political party of the respective ministers: The larger the distance between the ministerial party and the mean of the coalition partners' positions as a proxy for the cabinet's solution in each sector, the higher the risk of ministerial drift (see appendix). Furthermore we include a second measure for coalitional conflict, namely the distinction between single-party majority governments and minority and coalition governments by a dummy variable. Compared to coalition and minority governments, single party majority governments should have a lower level of cabinet conflict. From a comparative perspective, we also consider that the executive power of ministers differs across countries by an additive index of autonomy of local or regional power of non-central governmental units (Woldendorp et al. 2000:35): The higher the autonomy of these units is, the higher should be a cabinet's incentive

to control the transposition process by parliamentary measures. Furthermore, we include amending legislation as a variable that should reduce the risk of ministerial drift because cabinets already know the reference point of an amending directive, which should promote executive transposition.

In order to test our second hypotheses on the level of uncertainty reduced by the EU legislative process, we propose using two indicators, the duration of the EU legislative process, defined as the time lag between a Commission proposal and a Council decision as well as the type of Commission directive.[6] Formally, the length of the EU legislative process has no time restriction and member states can meet for several hearings, invite the Commission to inform them about the purpose of the directive, amend the directive by unanimity – sometimes followed by an amendment or a conciliation process with the European Parliament. All of these activities are time-consuming and should reduce the uncertainty of the participants.

Furthermore, we distinguish between directives, in which only the Commission is involved and those where the Commission, the Council and sometimes the European Parliament is included. Commission directives are part of the tertiary legislation of the Community, which usually concerns moderate technical amendments to existing Community legislation. These amendments are prepared and issued only by the Commission and pass through an extensive preparatory process (i.e. in Green and White papers). This suggests that Commission directives are more technical and less complex, compared to directives which included several institutional actors and mostly propose new legislation. We accordingly expect that Commission directives are more likely to be transposed by executive instruments than any other type of directive.

Finally, we are looking for a directive-specific indicator for informational demand of a cabinet for effective implementation. According to our approach, cabinets generally prefer parliamentary transposition when they hardly need information about the implementation

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[6] In order to prevent missing values in our dataset we set the proposal-decision time lag of Commission directives to zero, since these directives are prepared and issued by the Commission and need no approval by the Council.

effects of a directive. To measure this directive-specific demand, we propose using the complexity of a directive measured by the number of topics covered: the higher the number of topics, the more expertise is demanded for implementation. Secondly, we include the length of the time span granted to the member states for implementation. Because parliamentary transposition is more time-consuming involving more actors, such as parliamentary committee(s), the cabinet and the parliament, cabinets are less able to include their parliaments in the transposition process when the time restriction is high. In order to account for time-restrictions, we propose using the specified deadline of each directive: This variable measures how many years a directive assigns for transposition to the member states, and we expect that this variable has a positive effect on parliamentary involvement.

Testing factors on the choice of the transposition measure

For testing our hypotheses on the delegation of policymaking in the transposition process of EC directives in 15 countries and four policy sectors, we apply a multilevel model with random intercepts accounting for country and policy sectors. The advantage of multi-level modelling is that we can simultaneously control for three levels – the individual level of the directive, the sector- and the country-level – in order to avoid biases in parameter estimates and their standard errors.[7] In our comparative framework, the risk of biased estimates increases with the correlations between the observations within the different levels (Guo and Zhao 2000:444). The multilevel logistic regression model with random intercepts for both sector- and country-level is defined by y_{ijk} as a binary variable of whether the directive i is transposed in a policy sector j of a member state k and X_{ijk} a matrix of explanatory variables. The three-level logistic model can be written as

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[7] Multilevel modelling corrects for the biases in parameter estimates and provides correct standard errors and thus correct confidence intervals and significant tests..

$$\log[p_{ijk}/(1-p_{ijk})] = \beta_0 + X_{ijk}\beta_i + v_{0k} + u_{0jk} \text{ }^8$$

where u_{0jk} is the random effect at level 2 (sector), and v_{0k} is the random effect of level 3 (member state).[9] Both random effects are assumed to be normally distributed, with the expected value of zero and the variances of σ_{u0}^2 and σ_{v0}^2 respectively. From the discussion of our delegation model follows that interaction effects between the risk of ministerial drift could be associated with the level of informational demand and uncertainty for the implementation of directives. Table 3 lists the coefficients and error terms of our estimated models with some tests of robustness.

Table 3 about here

The most striking result of our empirical analysis is that we find the same effects of our independent variables regardless which statistical model we apply. On closer inspection of the results, we find considerable support for our delegation hypotheses. Most coefficients are highly significant and confirm our expectation: Single party majority governments are significantly more likely to delegate their transposition authority to the executive than coalition or single minority governments. Furthermore, the level of autonomy of non-central government units does have a significant positive effect on the likelihood of parliamentary inclusion. Confirming our hypothesis (H1) we find that the higher the degree of autonomy, the more likely are parliaments included. The reason is that parliaments have higher control incentives when the subordinate local or regional units enjoy a relatively high level of

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[8] In general one could also think of a non-nested structure, where the sectors are not nested within the member states. However, in our case these estimated non-nested models perform worse in regard to model fit.

[9] The chi-square-test shows that there is heterogeneity between the member states, the sectors, and the sectors in the member states. The test for our nested model, sectors nested in the member states (60 groups), yields a chi-square value of 1701 with 59 degrees of freedom, which is highly significant. For the groups of the 15 member states, the test also reveals a highly significant chi-square value of 961 with 14 degrees of freedom.

autonomy. Finally, the coefficient of amending legislation also shows a significant negative effect meaning that the probability of parliamentary inclusion is significantly lower for amending than for new directives. Accordingly, amending directives beg a lower risk of ministerial drift and delegation of transposition authority becomes more likely. Only the sector-specific measure of ideological distance between the respective coalition partners is neither statistically significant nor shows the expected positive sign.

With respect to our second hypothesis (H2) on the uncertainty of EC directives, the coefficient of the duration of the EU legislative process is highly significant. Confirming our expectation directives with a relatively long legislative duration period are more likely to be transposed through parliamentary measures than EC directives for which a lower level of information is provided, i.e. EC directives with a short legislative duration period. In addition and in support of our model, the likelihood of a Commission directive being transposed by parliamentary measure is considerably lower than that of any other type of directive. This effect is highly significant in all models.

Regarding our third hypothesis (H3), the results confirm that the likelihood of parliamentary transposition decreases with the number of policy topics included in a directive. Consistent with our model, transposition authority is delegated to executive agencies in cases of higher informational demand: The more complex a directive is, the more information is needed for effective implementation, which reduces the likelihood for parliamentary inclusion. This effect is considerably large and statistically significant. Also the length of the time span granted to the member states for transposition has a significantly positive effect on the likelihood of parliamentary inclusion. As expected, directives including a relatively long transposition period are more likely to be transposed through parliament than directives with a relatively short transposition period.

The second column of Table 3 displays the regression coefficients which control for interaction effects between the risk of ministerial drift and information demand as well as uncertainty. The findings confirm our previous results but do not provide further insights. Since the marginal effects of the variables included in the interaction effects depend on the values of the respective conditional variable, the interpretation of these coefficients is not

straightforward. In fact, these coefficients can only be interpreted as condition effects depending on the specific value of the other variable. On closer inspection of the marginal effect of EU legislative duration on the likelihood of parliamentary inclusion, the length of the EU legislative decision making process has a weak positive influence when the member states level of autonomy is zero. Figure 2 illustrates that this weak effect remains almost completely constant as the level of autonomy increases. The figure shows that the marginal effect and the 95%-confidence interval of EU legislative duration across the observed ranges of autonomy levels within our sample. Accordingly, EU legislative duration and the autonomy level do not strongly interact with each other.

Figure 2 about here

Furthermore, Commission directives, in contrast to directives which include the Council and the Council and the European Parliament, have a significantly lower likelihood of parliamentary transposition when the autonomy level of the member states is zero. According to figure 3 and in line with our theoretical argument, this negative effect of Commission directives considerably decreases as the level of risk for ministerial drift increases, i.e. the higher the level of autonomy.

Figure 3 about here

On closer inspection of the interaction effects between ministerial drift and uncertainty on implementation effectiveness, we present two interaction terms, between the level of autonomy and the number of policy topics included in each directive as well as the time span granted for transposition. According to figure 4, the negative effect of the number of included policy topics decreases as the risk for ministerial drift increases. This finding also confirms that implementation uncertainty promotes executive transposition when the risk for ministerial drift is moderate, while it has less influence when this risk is high.

Figure 4 about here

Finally, figure 5 illustrates the marginal effect of the time span granted for implementation across the level of autonomy. According to table 5, the positive effect of the time span granted for implementation decreases when the risk for ministerial drift increases. This relationship, however, is not very powerful.

Figure 5 about here

In sum, while concerns about ministerial drift increase the chance of parliamentary inclusion, the informational demand and uncertainty on the implementation effectiveness promote the executive transposition mode. The interaction model also reveal the expected relationship between our independent variables, although the detected interaction effects are not very powerful predictors and the overall fit of the model, compared to the fit of the separated model, is slightly lower.

Discussion: From implementation (in)effectiveness to the administrative state

The analysis of the transposition mode in 15 countries reveals high and significant similarities among the member states. Our statistical findings suggest that cabinets prefer to delegate power to domestic agencies when uncertainty can hardly be reduced by the EU legislative process. The longer the process and the more they are involved in this process, the less pronounced is the trend towards delegation. On closer inspection of the contexts in the member states, figures 6 displays the estimated probabilities of the multilevel model with nested random effects for each of the 15 countries and each of the four policy sectors.

Figure 6 about here

In figure 6, the dashed curves represent the estimated probabilities of Commission directives and the solid curves the estimated probabilities for the other two types of directives. Except of

the United Kingdom where parliament is hardly involved, the probability of parliamentary inclusion significantly increases with the length of the EU legislative process. Furthermore, the probability of parliamentary inclusion is considerably lower for Commission directives than for directives adopted by the Council or by the Council together with the EP. This result confirms scholars demanding for a more politicised policymaking of the EU's legislative process (Follesdal and Hix 2006).

In conclusion, the prominence of the executive transposition mode in the so-called administrative state (Epstein and O'Halloran 1999) is significantly explained by the level of certainty about implementation effectiveness that is provided by the EU legislative process in terms of the type of EC directive and the length of this process (H2) as well as the informational demand by the complexity of a directive (H3). Regarding our first hypothesis (H1), the results provide a more mixed picture: the risk of ministerial drift significantly determines the transposition mode of coalition and minority governments, in particular when the level of autonomy of sub-governmental units is high: coalition and minority governments delegate less powers to their agencies than single party majority governments do. Autonomy also contributes to this effect: the more autonomous the executive respectively sub-governmental actors are, the more like is parliamentary inclusion. In addition, amended directives have significant lower likelihood of parliamentary inclusion, since for these directives the problem of ministerial drift is generally less severe.

These indicators confirm our hypothesis on ministerial drift, while our distance-related measure is insignificant and the coefficient has the wrong sign. One explanation for this result is that ministerial drift is a dichotomous phenomenon which can hardly be expressed in terms of policy distances. In coalition governments and in systems with more autonomy of sub-governmental agencies, this drift always matters for the choice of the transposition instrument. A second reason might be that our estimator does not accurately reflect the size of ministerial drift because the content of directives is poorly measured by our domestic coding procedure of party manifestos.

While this possibility is challenging our empirical instrument of policy measures, our overall findings reveal several factors explaining the prominence of executive transposition of

EC directives in the member states. Cabinets need bureaucratic expertise in order to reduce implementation uncertainty, which is associated with both ineffective EU legislative decision making and effective coalition government. Only in the United Kingdom where ministerial drift hardly exists transposition is exclusively delegated to agencies. Furthermore, the effects found in the nested models reveal that transposition of agricultural directives hardly knows parliamentary participation, although the EU is still spending a significant amount of the budget to this sector. Compared to agriculture, the sectors of energy and environment as well as common rules experience a less prominent role of delegation in the member states. This variation across a few countries and some sectors suggests that executive transposition is neither the only nor a necessary condition for the transposition of EC directives.

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Table 1: Member states' Transposition of EC directives between 1986 and 2002

Member States	Total number of EC directives (transposition not required)	Directives pending on 1 Nov 2004	Directives with undefined policy sector	No notified transposition measure	No available transposition deadline	Adoption date of transposition measure before directive or not available	Final dataset
Austria*	722(3)	18	0	136	33	103	429
Belgium	1.592(4)	18	3	354	68	99	1.046
Denmark	1.592(4)	18	3	329	71	213	954
Finland*	722(1)	18	0	96	25	94	488
France	1.592(3)	18	3	339	66	73	1.090
Germany	1.592(4)	18	3	399	68	239	861
Greece	1.592(3)	18	3	328	78	100	1.062
Ireland	1.592(3)	18	3	347	68	170	983
Italy	1.592(4)	18	3	303	85	78	1.101
Luxembourg	1.592(0)	18	3	300	76	63	1.132
Netherlands	1.592(4)	18	3	395	62	168	942
Portugal	1.592(1)	18	3	219	100	41	1.210
Spain	1.592(2)	18	3	204	91	107	1.167
Sweden*	722(4)	18	0	136	18	212	334
United Kingdom	1.592(3)	18	3	339	60	189	980
Total	21.270(43)	270	36	4.224	969	1.949	13.779

Source: Original Data extrapolated from CELEX Sector 7 (downloaded on 01.11.2004) The shaded region indicated the sample under study.

*For Austria, Finland and Sweden our data only includes directives enacted during the period of their membership, 1995-2002

**Table 2: Explanatory variables and expected effect on parliamentary inclusion**

Factors	Operationalization	Expected effect on parliamentary inclusion	Min	Max	Mean
Transaction cost theory					
H1: Risk of drift	Single party majority government	negative	0	1	0,2
	Ideological distance between the coalition partners	positive	1	5	1,3
	Amending legislation	positive	0	1	0,5
	Autonomy of sub-governmental units	positive	1	6	2,9
H2: Level of information	Duration of legislation process (years centred)	positive	-1,3	20,0	0,0
	Type of directive (Commission vs. Other)	negative	0	1	0,4
H3: Uncertainty	Number of policy topics included	negative	1	5	1,3
	Time period between the date of adoption and deadline (years centred)	positive	-7,1	8,2	0,0

| Table 3: Results	Multilevel model	Multilevel interaction model
Constant	-2,568***	-2,288***
	(0,593)	(0,608)
H1: Risk of drift		
Single party majority government	-0,443***	-0,438***
	(0,154)	(0,154)
Distance (Minister - Government)	-0,046	-0,040
	(0,040)	(0,040)
Amending legislation	-0,565***	-0,564***
	(0,063)	(0,063)
Autonomy	0,465***	0,380**
	(0,172)	(0,177)
H2: Information		
Duration (years)	0,098***	0,088***
	(0,014)	(0,032)
Type of directive	-1,832***	-2,183***
	(0,100)	(0,294)
H3: Uncertainty		
Number of policy topics	-0,149***	-0,352***
	(0,050)	(0,134)
Timespan (years)	0,210***	0,212***
	(0,030)	(0,075)
Interaction effects		
Autonomy × Duration		0,003
		(0,010)
Autonomy × Type of directive		0,095
		(0,074)
Autonomy × Number of policy topics		0,058
		(0,035)
Autonomy × Time span		-0,001
		(0,021)
Control (random effects variance components)		
Policy sectors nested in member states	0,825	0,830
Member states	0,683	0,662
Goodness of fit		
N	13779	13779
AIC	8124	8128

Significant code: *p < 0,1; **p < 0,05; ***p < 0,01
*For our multilevel analysis we use the Laplace approximation method as proposed by Raudenbush et al. (2000).
Compared to the standard estimation method of penalized quasi-likelihood (PQL), this method usually better determines the deviance and helps to compare different model results.

Figure 1: Percentage of EC directives transposed by national law across the policy sectors of Agriculture, Energy/Environment, Internal Market, and Common Rules between 1986 and 2002.
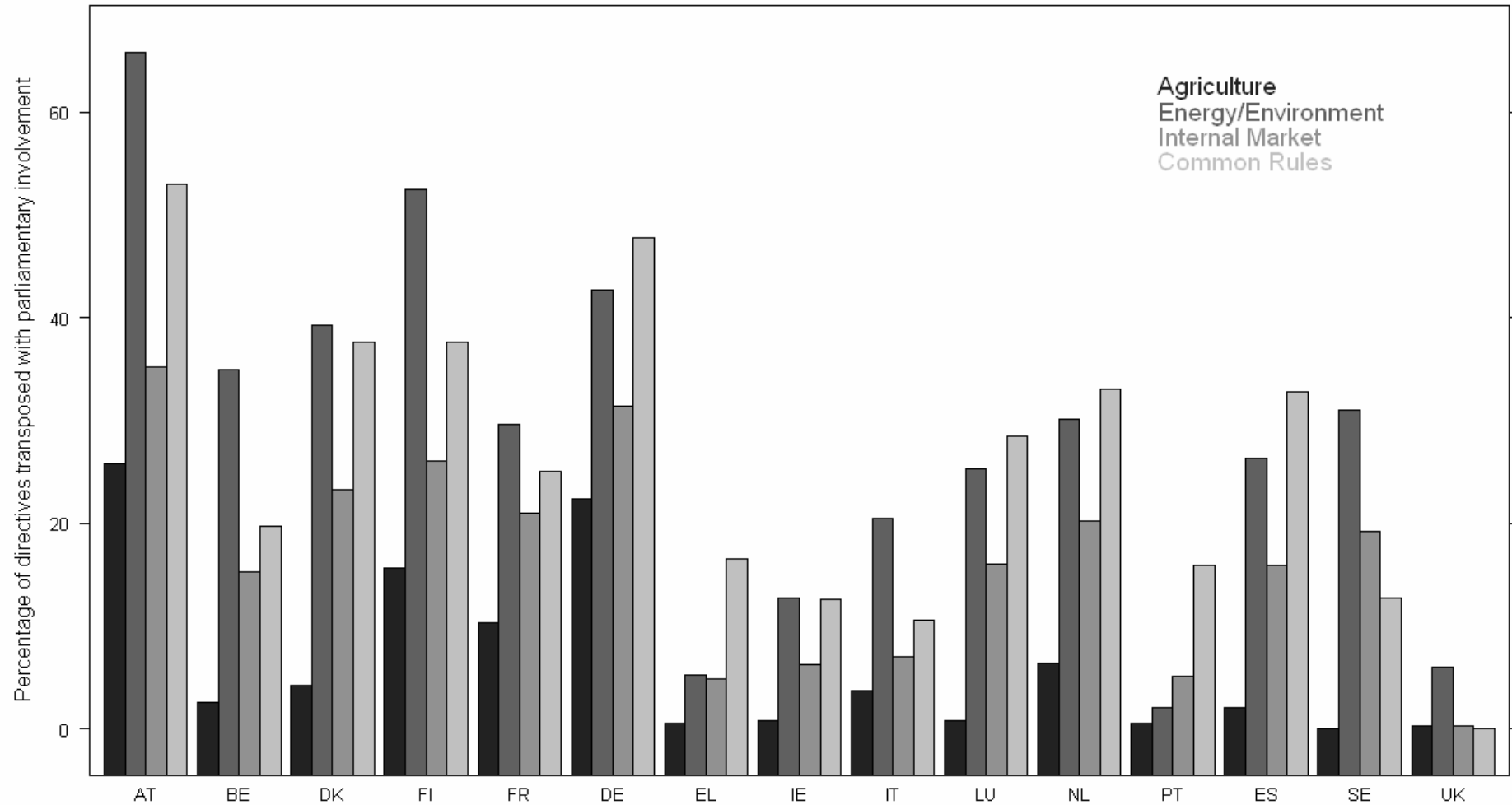
Figure 2: Marginal Effect of EU Legislative Duration on Parliamentary inclusion as Autonomy Changes
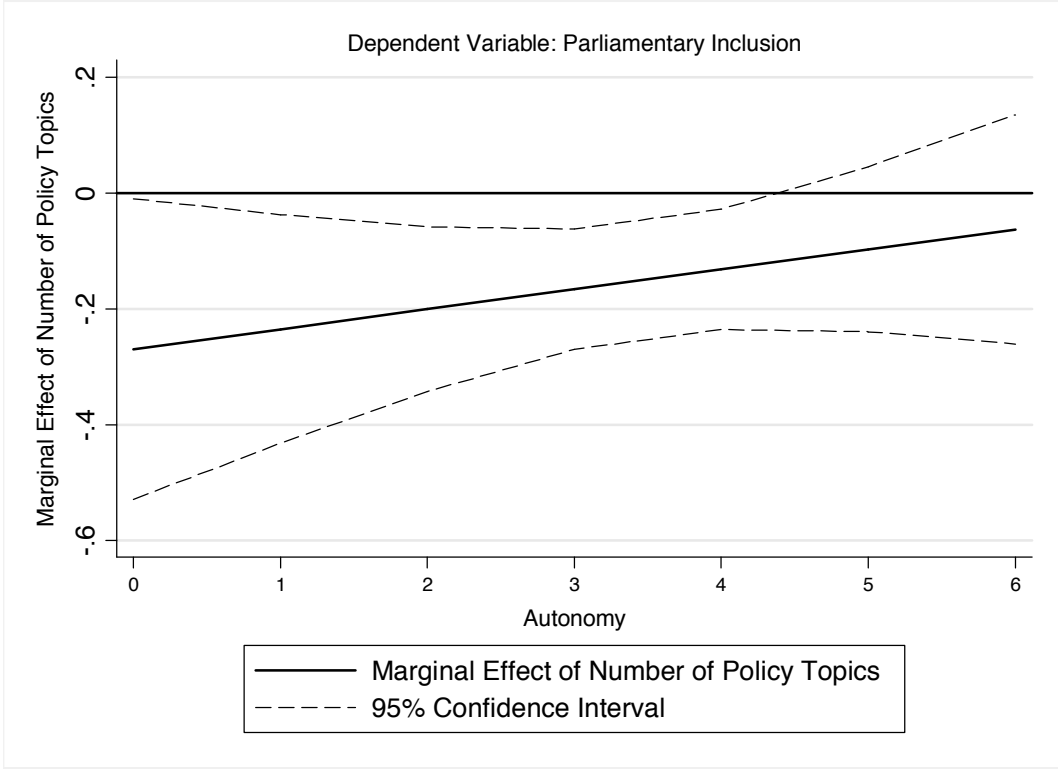

Dependent Variable: Parliamentary Inclusion
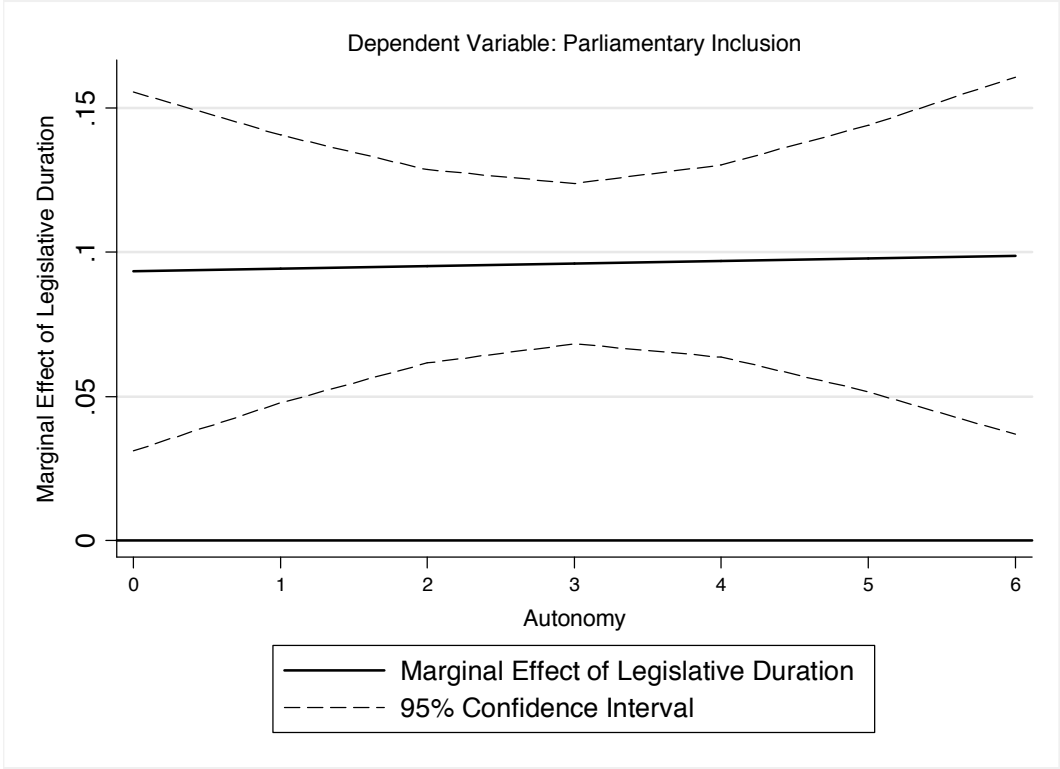
Figure 3: Marginal Effect of Commission Directives on Parliamentary inclusion as Autonomy Changes

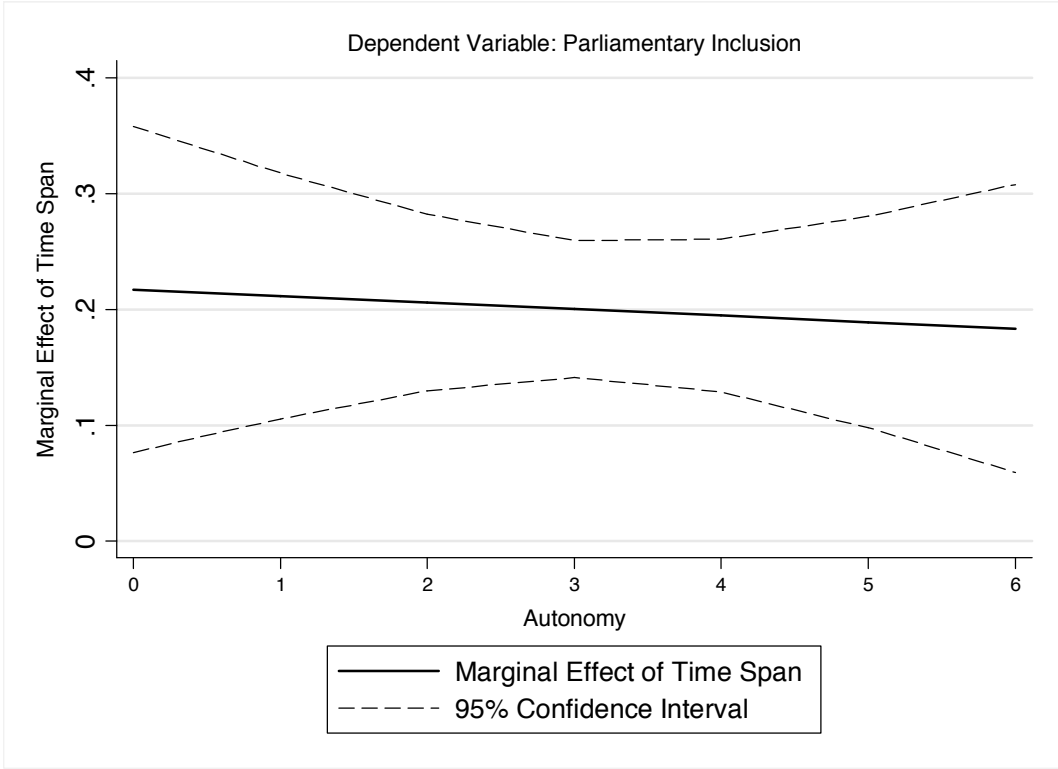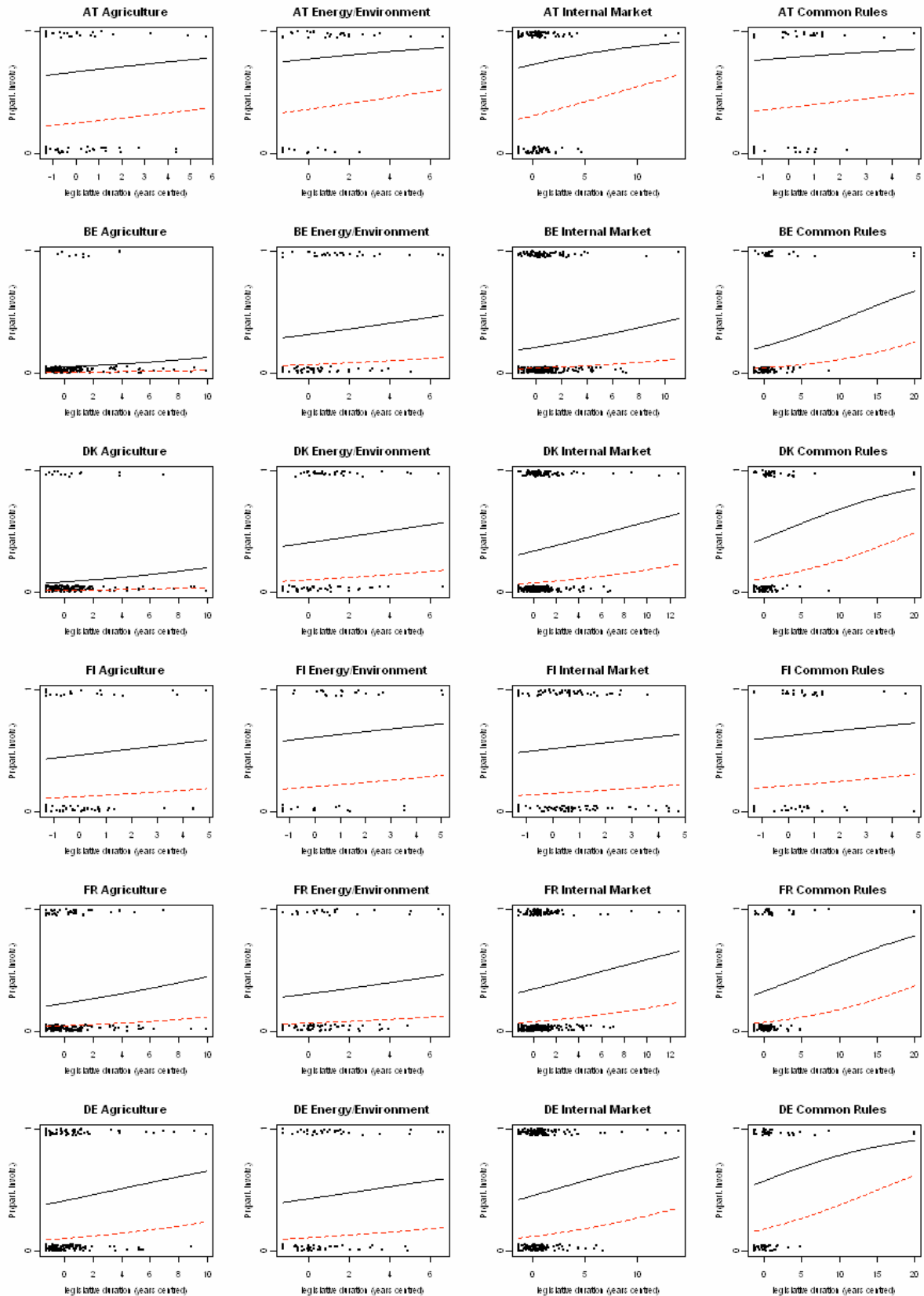Dependent Variable: Parliamentary Inclusion
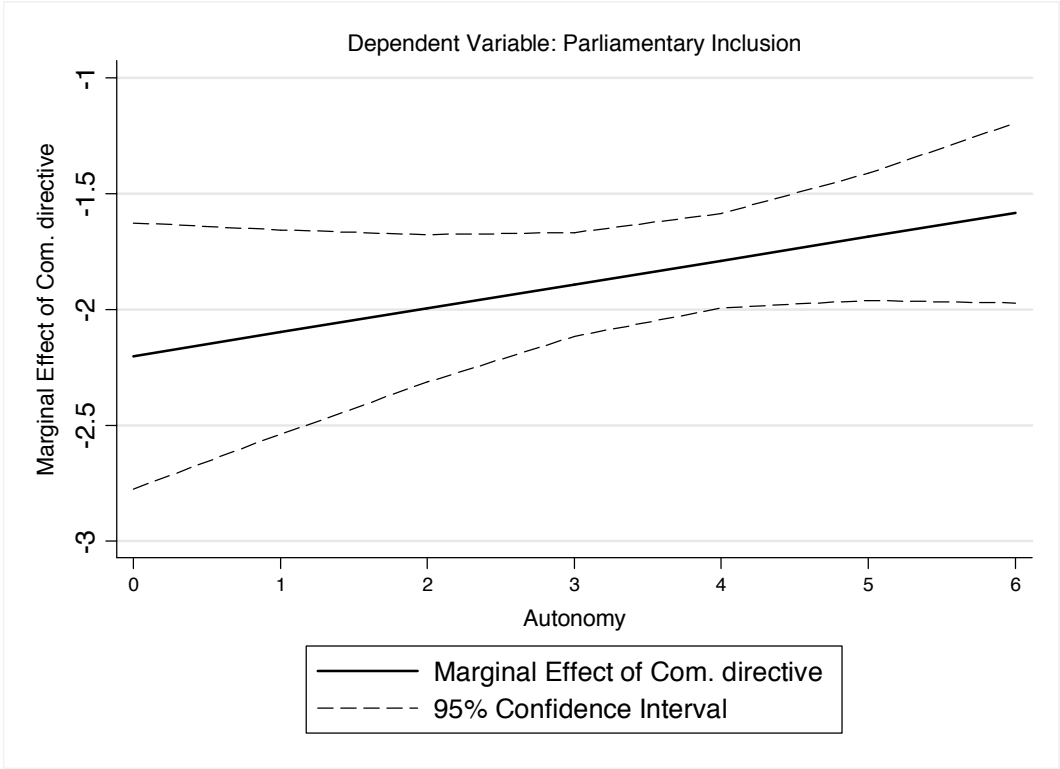
Figure 4: Marginal Effect of Commission Directives on Parliamentary inclusion as Autonomy Changes
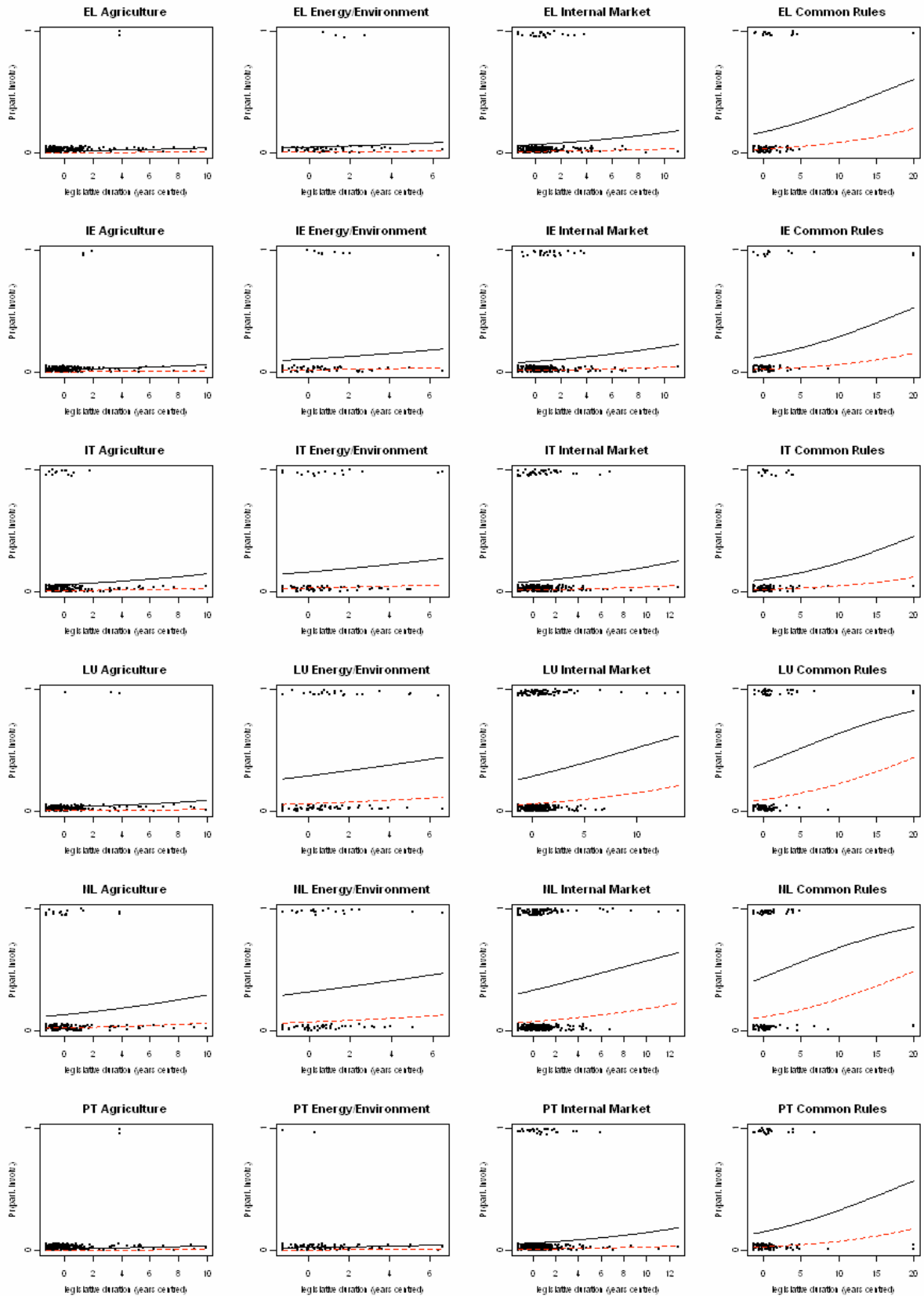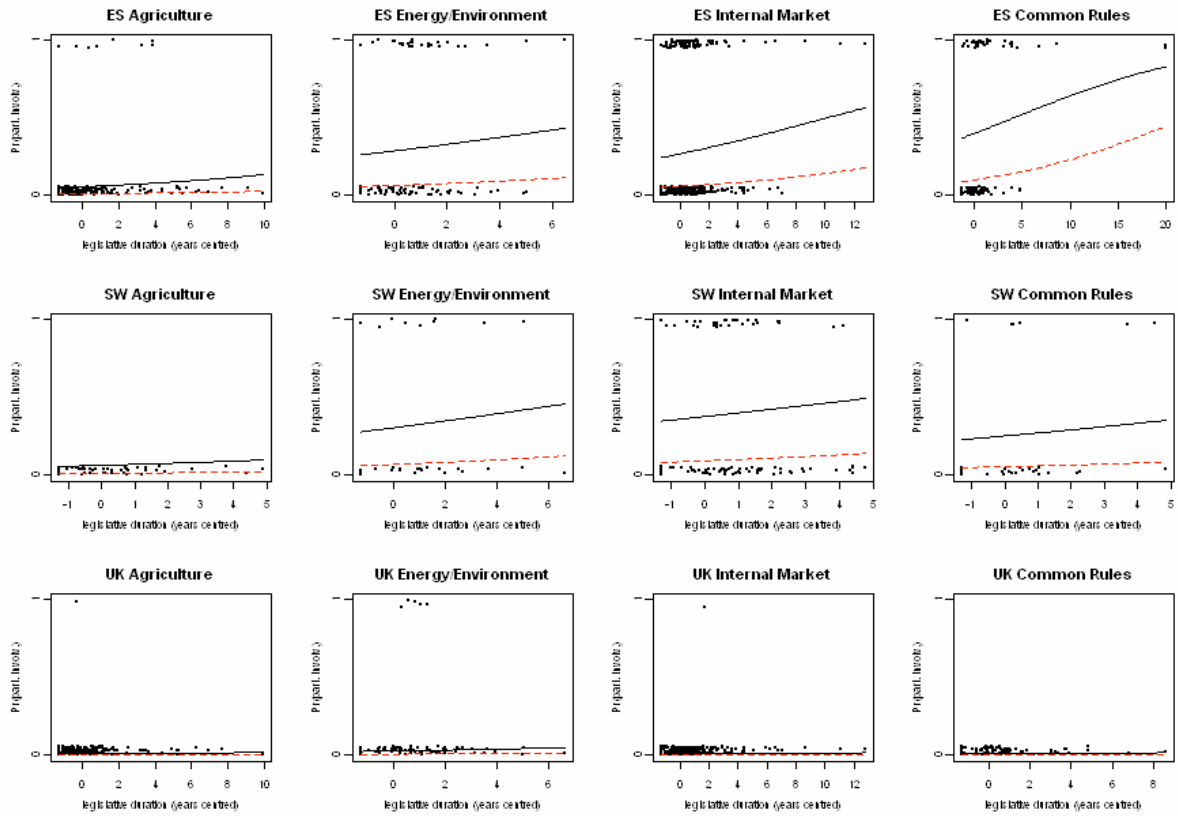

Figure 5: Marginal Effect of Time Span on Parliamentary inclusion as Autonomy Changes

Figure 6: Estimated probability for parliamentary inclusion as a function of the informational level (EU legislative duration and type of directive) over four policy sectors

EL Agriculture   EL Energy/Environment   EL Internal Market   EL Common Rules

IE Agriculture   IE Energy/Environment   IE Internal Market   IE Common Rules

IT Agriculture   IT Energy/Environment   IT Internal Market   IT Common Rules

LU Agriculture   LU Energy/Environment   LU Internal Market   LU Common Rules

NL Agriculture   NL Energy/Environment   NL Internal Market   NL Common Rules

PT Agriculture   PT Energy/Environment   PT Internal Market   PT Common Rules

Multilevel regression curves with nested random effects for country and policy sector, displayed for all member states. Estimated probabilities for parliamentary inclusion as a function of the length of the European legislative process (all other independent variables are set to their mean). Dots show the data (y-jitter for visibility only), while the dashed curves show the estimates for Commission directives and the solid curves show the estimates for the two other types of directives.

Appendix A
Coding of EU sector-specific conflict based on Party Manifesto Data
The data on party preferences stem from the Manifesto Research Group and are documented in Budge et al. (2001). We have grouped selected items into four major policy sectors and calculate core estimates across these policy sectors as described in König (2005). Because of different document lengths, the number of (quasi-) sentences in each category is standardized taking the total number of (quasi-) sentences in the respective documents as a base. In the data set each of these categories is a variable that represents the percentage.

Policy Sectors	Items	
Internal Market	Positive	*(201) Freedom and Human Rights:* Favourable mentions of importance of personal freedom and civil rights; freedom from bureaucratic control; freedom of speech; freedom from coercion in the political and economic spheres; individualism in the manifesto country and in other countries.
		(301) Decentralization: Support for federalism or devolution; more regional autonomy for policy or economy; support for keeping up local and regional customs and symbols; favourable mentions of special consideration for local areas; deference to local expertise.
		(401) Free Enterprise: Favourable mentions of free enterprise capitalism; superiority of individual enterprise over state and control systems; favourable mentions of private property rights, personal enterprise and initiative; need for unhampered individual enterprises.
		(402) Incentives: Need for wage and tax policies to induce enterprise; encouragement to start enterprises; need for financial and other incentives such as subsidies.
		(403) Market Regulation: Need for regulations designed to make private enterprises work better; actions against monopolies and trusts, and in defence of consumer and small business; encouraging economic competition; social market economy.
		(404) Economic Planning: Favourable mentions of long-standing economic planning of a consultative or indicative nature, need for government to create such a plan.
		(407) Protectionism: Negative: Support for the concept of free trade; otherwise as 406, but negative.
		(410) Productivity: Need to encourage or facilitate greater production; need to take measures to aid this; appeal for greater production and importance of productivity to the economy; increasing foreign trade; the paradigm of growth.
		(411) Technology and Infrastructure: Importance of modernization of industry and methods of transport and communication; importance of science and technological developments in industry; need for training and research. This does not imply education in general.

	Negative	*(406) Protectionism: Positive:* Favourable mentions of extension or maintenance of tariffs to protect internal markets; other domestic economic protectionism such as quota restrictions. *(413) Nationalization:* Favourable mentions of government ownership, partial or complete, including government ownership of land. *(416) Anti-Growth Economy:* Favourable mentions of anti-growth politics and steady state economy; ecologism; "Green politics"; sustainable development.
Energy/ Environment	Positive	*(501) Environmental Protection:* Preservation of countryside, forests, etc.; general preservation of natural resources against selfish interests; proper use of national parks; soil banks, et; environmental improvement. *(504) Welfare State Expansion:* Favourable mentions of need to introduce, maintain or expand any social service or social security scheme; support for social services such as health service or social housing.
	Negative	*(505) Welfare State Limitation:* Limiting expenditure on social services or social security; otherwise as 504 but negative.
Common Rules	Positive	*(302) Centralization:* Opposition to political decision making at lower political levels; support for more centralization in political and administrative procedures; otherwise as Decentralization, but negative. *(303) Governmental and Administrative Efficiency:* Need for efficiency and economy in government and administration; cutting down civil service; improving governmental procedures; general appeal to make the process of government and administration cheaper and more effective. *(305) Political Authority:* Favourable mentions to strong governments, including government stability.
	Negative	*(301) Decentralization:* Support for federalism or devolution; more regional autonomy for policy or economy; support for keeping up local and regional customs and symbols; favourable mentions of special consideration for local areas; deference to local expertise. *(304) Political Corruption:* Need to eliminate corruption, and associated abuse, in political and public life.
Agricultural Politics	Positive	*(412) Controlled Economy:* General need for direct government control of economy; control over prices, wages, rents, etc; state intervention into the economic system. *(703) Agriculture and Farmers:* Support for agriculture and farmers; any policy aimed specifically at benefiting these.
	Negative	