Who let the dogs out? The Effect of Parliamentary Scrutiny on the Implementation of EU law.

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Who let the dogs out?

The Effect of Parliamentary Scrutiny on the Compliance with EU law.

Abstract

Recently, it has been argued that the scrutiny of European law proposal by national parliaments contributes to speeding up the implementation of EU law. To test this argument, we study the effect of parliamentary scrutiny on Germany's compliance with all directives adopted between 1999 and 2012.

The results are mixed: On the one hand, parliamentary scrutiny successfully transfers necessary deliberations from the implementation stage to the policymaking stage. As a consequence, we observe faster implementation of complex and controversial policies. On the other hand, parliamentary scrutiny carries the risk of triggering conflict and of forcing early commitments by actors who might otherwise have remained passive observers. As a consequence, parliamentary scrutiny may even delay implementation of EU law by waking the proverbial "sleeping dogs".

Over the last ten years a quickly growing number of cross-national studies have increased our understanding of the factors that determine compliance with EU law. Especially, quantitative studies have focused on the timeliness of transposition of directives, which is a relevant dimension of non-compliance as is documented not only by empirical findings (Haverland et al. 2011, König/Luetgert 2009) but also by the importance the European Commission attributes to achieving transposition of directives. In contrast to other types of European laws, directives need to be transposed by national legislation to become effective. Recent summaries of the compliance literature include Angelova et al. (2012) as well as Toshkov (2010).

Here, we focus on the effect of parliamentary scrutiny on three wide-spread explanations for transposition delay. First, compliance with EU law depends on the governments' "decision-making capacity". In other words, domestic hurdles introduced by a higher number of veto players in general (Kaeding 2008, Steunenberg/Kaeding 2009), institutions such as federalism (König/Luetgert 2009) or coalition governments (Steunenberg 2006) delay the transposition of European directives. Such delays are intensified when relevant actors have diverging preferences (König/Luetgert 2009). Second, a number of studies focus on the goodness of fit between directives and the national status quo in terms of institutions, regulatory structures or policy content (Angelova et al. 2012: 1275). We follow the call by Mastenbroek and Kaeding (2006) to focus more on actors' preference-induced incentives to delay rather than on the pure match of policies (e.g., Steunenberg 2006, Treib 2003, König/Mäder 2013). Our discussion of the effect of scrutiny illustrate that the goodness of fit argument and preferential accounts are sometimes difficult to separate analytically. Specifically, we focus on the effect of ex-ante scrutiny on information provision which may enhance a government's ability to upload domestic policies (Heritier 1995) and thereby ease transposition (Sprungk 2011: 326) but also cause the EU policy to be more in line with its preferences (Finke/Dannwolf 2013). Third, it has been argued that complex and multi-dimensional law proposals require an extensive, inter-ministerial coordination process. Accordingly, compliance decreases as the "complexity" of the EU law increases.

Meanwhile, national parliaments have been granted a greater say in EU lawmaking. These developments have been nourishing the hope that parliamentary scrutiny would improve member states' compliance record (e.g. Sprungk 2011; Linos 2007). However, so far research on the effect of ex-ante parliamentary scrutiny prior to adoption on the European level on the timeliness of transposition has been rare. Bergman (2000) finds early on that the existence of a European Affair committee (EAC) and thus greater parliamentary involvement is correlated with a better compliance record. Assuming that early involvement of parliaments strengthens states' capacity to comply, Linos (2007: 558) finds that states that foresee a higher involvement of their EACs are significantly less likely to experience delay in the implementation of social policy directives. However, these quantitative studies did not investigate the mechanism behind parliamentary scrutiny because they focused on cross-country differences in institutions. Sprungk (2011) provides case study evidence that scrutiny may enhance the parliament's capacities unless the directive violates the interests of relevant actors (Sprungk 2011: 328, 338).

We study the effect of ex ante parliamentary scrutiny at the level of individual law proposals in a large N context. We argue that scrutiny can overcome institutionally-induced political stalemates during the compliance stage. As pointed out by Sprungk (2011) and Finke and Dannwolf (2013) ex-ante scrutiny may have the effect that a directive is more in line with the preferences of national actors. In addition, an earlier involvement of political and administrative actors might not only improve the fit with preferences of relevant domestic actors but also lead to a better compatibility with existing national regulatory styles

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and institutions, which have been identified to be a hindrance to compliance (e.g. Knill/Lenschow 1998). For these reasons, ex ante parliamentary scrutiny might speed-up transposition in spite of policy incompatibility. Finally, effective scrutiny promotes a dialogue between different ministries and committees early on in the law-making process, thereby reducing the necessity for extensive inter-ministerial negotiations at the implementation stage. In general, management theories in compliance research would lead us to expect that scrutiny enhances the decision-making capacity of parliaments to deal with the transposition of complex directives by ensuring a flow of information and expertise from one policy-making stage to the other, especially when the same actors are involved (Sprungk 2011: 336).

To test our arguments we study the transposition of EU directives adopted over four electoral periods (1999 – 2012) in Germany. Studying parliamentary transposition in a single country allows us to learn more about the mechanisms for a possible negative effect of parliamentary involvement identified by König and Luetgert (2009). As a federalist and bicameral state that has a regularly changing composition of the second chamber as well as coalition governments, the German case allows us to more closely investigate the mechanisms that lead to a delay in transposition (see also Sprungk 2011). We collected unique proposal-stage data on the scrutiny activities of both German chambers (Bundestag and Bundesrat).

Our findings are mixed. On the one hand, parliamentary scrutiny successfully transfers necessary deliberations from the implementation stage to the policymaking stage. As a consequence, we observe faster implementation of complex and controversial policies, even during times when the government has no majority in the Bundesrat. On the other hand, parliamentary scrutiny carries the risk of triggering conflict and of forcing early commitments by actors who might otherwise have remained passive observers. As a consequence, parliamentary scrutiny may even delay implementation of EU law by waking the proverbial "sleeping dogs".

This paper continues with a discussion of compliance problems from an incomplete information perspective, which offers theoretical explanations for the effects of parliamentary scrutiny on compliance. Finally, we turn to the empirical analysis and a discussion of our results with a view to generalization beyond the German case.

PARLIAMENTARY SCRUTINY, COMPLIANCE, AND INCOMPLETE INFORMATION

The standard approach to parliamentary scrutiny activities suggests that the opposition engages in questions and hearings to monitor the government. At the domestic level, the parties in the opposition have an incentive to use parliamentary scrutiny procedures if (i.) the policy is salient and (ii.) the government's policy stands in conflict with their interests. Martin and Vanberg (2004) added an alternative explanation which conceives of parliamentary scrutiny as a tool that allows the coalition partner to exert control over the policy proposal pursued by the leading minister. In both cases, parliamentary scrutiny is understood as a tool that enables MPs to obtain information from the government which, subsequently, can be used to influence the government's policies.

The argument gets slightly more complicated once we leave the realm of domestic politics. On the one hand, the nexus between the European policy outcome and domestic government is more complicated. On the other hand, EU policymaking is characterized by a significantly higher level of information asymmetries. That is, domestic actors cannot easily observe the policy proceedings in Brussels. Similarly,

the government finds it hard to evaluate the domestic constraints of their international negotiation partners. Elaborating on earlier case study work by Holzacker (2002) as well as Auel and Benz (2005), Finke and Dannwolf (2013) find that governments initiate parliamentary scrutiny to strengthen their bargaining position in the Council of Ministers. Overall, scrutiny is either used by the opposition parties in order to lay open information about international negotiations and the government's strategy. Alternatively, the government initiates scrutiny processes in order to present the international level with information about its domestic constraints. Both flows of information can affect the implementation process.

Over the last decade, parliaments and parliamentary committees have gained more scrutiny rights at early stages of the decision-making process, and the European Commission has the standard policy to send proposals to national parliaments for consideration (Finke & Dannwolf 2013; Auel & Benz 2005). Yet, although numerous studies have shown that compliance is more likely when the policy proposal is more in line with the preferences of national governments (e.g. König/Luetgert 2009, Luetgert/Dannwolf 2009) possibly due to a higher likelihood of Commission enforcement (Thomson et al. 2007, König/Mäder 2013), they do not theoretically link the two stages and especially do not consider the role of parliamentary involvement prior to the adoption of the directive. Sprungk (2011) develops hypotheses on the effect of ex-ante scrutiny along the lines of enforcement, management and legitimacy approaches. Shortly summarized, all three approaches would assume a positive effect of ex-ante parliamentary scrutiny on the timeliness of transposition provided that the same actors are involved in both processes. The underlying mechanisms differ, though. Legitimacy approaches assume an increase in the perception of the fairness of the procedural rules, enforcement approaches highlight that the costs of compliance are reduced by a better preference fit, and management theories emphasize that an improved flow of information improves a parliament's capacity by reducing the ambiguity of norms (Sprungk 2011: 329). In general, we can thus expect that directives with ex-ante parliamentary scrutiny are transposed faster. In what follows we develop more concrete hypotheses on the effect of scrutiny with respect to decision-making capacity, complexity and preference fit.

Compliance and Incomplete Information

Many explanations for (non-)compliance explain delays as the result of the time necessary to deliberate and negotiate the implementation measure in question; these presume incomplete information on behalf of the ministries, parties, and stakeholders involved in the domestic implementation process. Especially the "complexity"-explanation brought forward by management theories would be superfluous in a world of complete information. Furthermore, in a world of complete information the number of veto players should have no impact on the timeliness of adopting domestic implementation measures, since all relevant actors should agree on the equilibrium policy at once.

As outlined above, parliamentary scrutiny is often motivated to reduce such information asymmetries. On the one hand, national administrations know best whether or not an implementation instrument will have the desired effect. National governments hold private information about their domestic constraints, such as the preference distributions in parliament or the interests of powerful stakeholders. On the other hand, the European Commission may hold better information about procedural aspects of EU law-making. Therefore, parliamentary scrutiny undermines many of the popular factors causing transposition delay such as the complexity, the decision-making capacity, and the political incentives to delay.

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In accordance with management theories, research has shown that countries with more efficient administration have fewer implementation problems (Borghetto et al. 2006; Berglund et al. 2006) and are less likely to have severe infringement cases (Börzel et al. 2010). In a similar vein, more complex directives have been found to require more time to be transposed. Complexity has been operationalized by either the length of the directive or by the number of recitals (Kaeding 2006; Toshkov 2008). Parliamentary scrutiny triggers an involvement of administrative experts early on in the process, thereby transferring the necessary exchange of information from the implementation to the policy making stage and should therefore weaken the effect of complexity.

Hypothesis 1 (Complexity): The time necessary to transpose a directive increases in its complexity. This effect will be weaker in case the proposal for this directive has been subject to parliamentary scrutiny.

In a similar vein Rassmussen and Toshkov (2013) study the nexus between political saliency and legislative duration. Policy proposals which trigger a high level of political awareness and partisan activities such as speeches or amendments, are often characterized by higher levels of political importance and partisan conflict in the European Parliament (see also Sprungk 2013: 311). On the national level, MPs are also more likely to attach importance to such salient directives, which might lead to an increase in the time needed for transposition e.g. because new issues might be introduced in parliamentary debates. For example, the transposition of the GMO directive in Germany, which can be considered to be a salient issue, was delayed because the opposition introduced amendments and finally vetoed it in the Bundesrat (Sprungk 2013: 311). In this respect, parliamentary scrutiny can be considered as a tool which transfers such domestic negotiation and deliberation processes from the implementation to the policy making stage.

Hypothesis 2 (Saliency): The time necessary to transpose a directive increases in its political saliency. This effect will be weaker in case the proposal for this directive has been subject to parliamentary scrutiny.

One of the most established findings in compliance research is that a state's decision-making capacity has a positive effect on compliance (see Angelova et al. 2012; Toshkov 2010). According to veto player theory, coalition governments, bicameralism as well as federalism may influence a country's ability to change existing legislation depending on institutional rules and party position. In a comprehensive cross-national study on transposition, König and Luetgert (2009) find that federalist states are more likely to transpose late. In two case studies Sprungk (2012: 312) identifies bicameralism as a possible cause of delay rather than parliamentary involvement by itself. Germany is a clear case of a federalist and bicameral state, which makes it interesting as a case for a single country study. Both chambers, the Bundestag and the Bundesrat, share the responsibility for federal legislation.

However, institutional veto players are irrelevant during times when they are governed by the same political party (Tsebelis 1999). Most prominently, a negative effect of bicameralism on the level of compliance presumes diverging interests between both chambers' pivotal parties. The argument is that the time necessary to negotiate a bicameral conflict increases in the conflict between the two parties. In spatial models of politics, the distance between the two pivots (aka the bicameral core) has been used to measure the degree of bicameral conflict (Schulz & König 2001). A simpler measure, which resembles the "divided government" argument used in the US literature, distinguishes between times during which the federal government holds a majority of votes in the Bundesrat and times during which the federal government has to collaborate with opposition parties to gain a majority in the Bundesrat.

Parliamentary scrutiny may be seen as a tool which shifts the bicameral negotiations to a time prior to the adoption of the EU law.

Hypothesis 3 (Bicameralism): The time necessary to transpose a directive increases during times of "divided government". This effect will be weaker in case the directive has been subject to parliamentary scrutiny.

Preference based approaches theorize that non-compliance can be a kind of "opposition through the backdoor" (Falkner and Treib 2008). Thus, when national governments did not agree on a directive on the European level, they take the national stage as their second opportunity to impose an implicit veto and do not transpose (Falkner and Treib 2008). In addition, higher levels of conflict in the Council of Ministers lead to political compromises even if implementation may become administratively and politically difficult. Hence, the higher a state's incentive to deviate, the higher the likelihood of delay (Thomson et al. 2007: 689). However, findings are mixed. Investigating the correctness of transposition of social policy directives, Falkner et al. (2005: 278-279) and Thomson (2009) find no or only weak evidence for this hypothesis. Results based on the DEU sample (Thomson et al. 2007), are not in line with this assumption and find that conflict in the Council of Ministers speeds up transposition after some time (Zhelayazkova & Torenvlied 2009: 53), which may be caused by more pressure of the European Commission as suggested by Thomson et al. (2007: 700). However, their finding is in contrast to the result of König and Luetgert (2009: 188) who identify a negative effect of diverging preferences in the Council of Ministers on the likelihood of notifying implementation analyzing the transposition of all directives that were adopted between 1986 and 2002 in the EU 15. Arguably, however, the incentive to deviate is not only contingent on the outcome of the directive but also on the preferences of the minister responsible for transposition (Sprungk 2011).

Overall, we also expect a better "fit" between EU policies and governmental preferences in case the national position is supported by a broad based majority in the Council of Ministers. Following Finke and Dannwolf (2013) large countries can successfully use parliamentary scrutiny to regain influence over the policy outcome despite being in a minority position. In addition, it transfers domestic deliberations and negotiations over disagreeable EU law from the implementation to the policy making stage.

Hypothesis 4 (minister's incentive to delay): The time necessary for transposing a directive increases with the political disagreement between the leading minister and the Council majority. This effect will be weaker in case the proposal for this directive has been subject to parliamentary scrutiny.

Our final hypothesis starts with two observations: First, many EU directives are relevant beyond the realm of the leading ministry. For example, the minister for transport will most certainly take the lead on any directive on EU transportation and infrastructure projects. Yet, most likely such a directive will be of interest to the minister of economics and the minister of environmental protection, too. In case of coalition governments, chances are that at least one of these ministries is in the hands of the coalition partner. Second, the minister prefers to avoid conflict with his coalition partner. Accordingly, he prefers the implementation to be supported by his coalition partner. Therefore, the minister's incentives and ability to delay depend on the position of his coalition partner.

Specifically, we expect that a coalition partner who is, from the perspective of the EU policy outcome, located beyond the party of the leading minister (i.e. coalition partner (c) < leading minister (m) < EU policy outcome (o)) is going to reinforce delay. In other words, the coalition partner is even more dissatisfied with the EU policy than the leading minister. If, on the other hand, the coalition partner is

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welcoming the new directive (m < c < o) or deviates in the opposite direction (m < o < c) delay is less likely. The argument becomes clearer once we think about the status quo policy, i.e. the policy in place prior to implementation. Most likely, this policy is either in the discretion of the leading minister or some compromise struck among the coalition partners. In both cases, and assuming that m <= o, the leading minister's ability to delay transposition increases in m – c. According to Martin and Vanberg (2004) parliamentary scrutiny is an important means for the coalition partner to avoid ministerial drift. Hence, the question is whether these control activities take place during the implementation or during the policy making stage.

Hypothesis 5 (coalition's incentive to deviate): If m<o the time necessary for transposing a directive increases in m-c . This effect will be weaker in case the proposal for this directive has been subject to parliamentary scrutiny.

In the remainder we present an empirical test of all five arguments. We start by describing the data set and the operationalization, before turning to the results of a series of survival models.

EMPIRICAL ANALYSIS

Compared to existing quantitative, cross-country studies of transposition (e.g. König/Luetgert 2009, Luetgert/Dannwolf 2009), studying single countries provides more analytical leverage to closely test hypotheses on the actual mechanisms leading to the identified findings on decision-making capacity as has been shown by the studies of Mastenbroek (2003) for the Netherlands and Borghetto et al. (2006) for Italy. We include all 462 directives adopted under either the Co-decision (346) or the Consultation (116) procedure between 1999 and 2012 which, according to the corresponding Eurlex notifications, had to be transposed into German federal law. The dependent variable is the duration after the directive has been adopted at the EU level until the transposition by German federal law as officially notified to the European Commission. Subsequently, we deploy the stpm2 module in Stata which enables flexible parametric models for survival analysis (Lambert/Royston 2009). Please note that our substantial results are identical to the standard Cox model. Stpm2 combines the analytical advantages of a parametric approach with a flexible approach to modeling the baseline hazard function. Specifically, we find a steep increase in the implementation hazard during the first two years after adoption. The corresponding decrease during the following years is less steep and flattens out after five years at which point approximately 88 per cent of the directives in our data set have been implemented into German law.

OPERATIONALIZATION

Scrutiny: We follow Finke and Dannwolf (2012) in arguing that a necessary condition for scrutiny is the discussion of an EU policy proposal in any of the committees of either Bundestag or Bundesrat. Following both chambers' rules of procedure the committee chairs set the agenda for each meeting. Nevertheless, in both chambers political parties possess powerful instruments that allow them to influence the committee's meeting agenda. Formally, such a move requires the support of 30 per cent of the deputies in the Bundestag. Furthermore, party groups hold the right to propose resolutions, amendments and bills. Moreover, the Bundestag grants weekly questioning time to the opposition parties during which they can broach any issue of their choice. As a result, party group influence on a committee's agenda has been institutionalised by meetings of all party group coordinators prior to each committee meeting.

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Finally, each party group chairs at least one committee in which it could initiate scrutiny measures. In the Bundesrat, all major parties are represented in at least one state government which can request scrutiny. In other words, we assume that the decision to initiate scrutiny in the Bundesrat mainly follows the logic of party interests rather than regional interests (Beichelt 2009: 182). Accordingly, we argue that every political party is able to initiate scrutiny in the Bundestag and Bundesrat.

For the Bundestag we construct our scrutiny variable by resorting to the officially published list of committee referrals ("Sammelübersichten nach §95 BTGO"). These lists are published in approximately monthly intervals after the referral of EU law proposal to the committees. During our period of observation approx. 70 % of all proposals for an EC directive have been referred to at least one committee. By contrast, the Bundesrat does not publish similar documents, but maintains a document-based, online information system. We have been able to track all proposals for directives in this system and our data indicates that almost 36% of all proposals in our data set have been scrutinized by a committee in the Bundesrat. Roughly 32% of all proposals in our data set have been subject to scrutiny in both chambers.

Complexity: Following Rasmussen and Toshkov (2013) we operationalize the complexity of an EU law proposal by the number of recitals. In our data set, the number of recitals ranges from 0 to 105 with a median equal to 18.Given the skewed distribution, we use the natural log of this count variable.

Saliency: Finke and Dannwolf (2013) find that the number of EP amendments is the strongest predictor for scrutiny in national parliaments. Moreover, they find that the number of EP amendments is highly correlated (r>0.8) to the length of the legislative report produced by the leading committee in the EP. Here, we resort to the length of the report as a proxy of political saliency. Again, given its skewness we use the natural log of this count variable.

Bicameralism: German bicameralism offers two legislative procedures. First, "Zustimmungsgesetze" require the support of a majority in the Bundesrat, i.e. 35 of the 69 available seats. Second, in case a proposal is handled under "Einspruchsverfahren" a majority in the Bundesrat enjoys a suspensive veto. It can invoke a conciliation committee and, if conciliation fails, it can reject a law proposal which implies that the Bundestag can only adopt the proposal by an absolute majority. In the Bundesrat Länder hold between 3 and 7 votes which, however, cannot be split. Since many Länder are governed by coalition governments this rule implies an ex ante coordination of voting in the Bundesrat. Here, we are counting only those votes which originate from undivided Länder governments. As a result we find that the German government has been in a minority position during most of the time covered by our data (see Web Appendix).

Minister's incentive to deviate: The operationalization of hypotheses H4 and H5 requires a measure of party positions on meaningful and relevant issue dimensions, to obtain a proxy for the position of the EU policy outcome as well as that of the national minister responsible for transposition. Our approach differs from that suggested by Thomson et al. (2007: 697) in that we take the distance between the policy outcome and the party position of the leading minister during the transposition stage rather than the position of the Commission proposal and the minister's position during the negotiations. This is in line with the finding of Sprungk who suggests that the current situation at time of transposition is important rather than the conflict during negotiations in the Council of Ministers. The data provided by the Comparative Manifestos Project (Volkens et al. 2012) covers all major parties in the European Union and varies across electoral periods. Here, we rely on the scaling approach suggested by Lowe et al.

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(2012). Specifically, we use party positions on eleven of the issue dimensions presented in their data set. For each directive our data contains information on the leading Committee in the EP. We use this information to assign each directive to any of the eleven issue dimension of the Lowe et al. (2012) data set (see Web Appendix). Our approximation of the policy outcome is the weighted average (Council voting weights) of all parties represented in the Council at the date of adoption. In case a member state has been governed by a coalition government, we first calculate the weighted average (relative seat share) across all coalition parties which, following Achen (2006), approximates the Nash Bargaining Solution. Accordingly, our proxy for the EU policy outcome on each of the eleven issue dimension changes after each general election in any EU member state. Finally, we make an additional effort to identify the party of the leading minister in Germany. Specifically, we use information on the leading EP Committee and on the responsible Council to identify the minister who should have been in charge. Accordingly, our operationalization for the incentive to deviate is the distance between the EU policy outcome (using party positions at the date of adoption) and the party position of the leading minister which may change over the course of the transposition period.

Coalition's Incentive to deviate: First, we turn all scales such that the party position of the leading minister is smaller than our proxy of the EU policy outcome, i.e. the condition $m<o$ is always fulfilled. Fortunately, German coalition governments comprise no more than two parties. Accordingly, we subtract the party position of the coalition partner from the party position of the leading minister ($m-c$). This measure may change over the course of the transposition period.

Controls: Here, we control for information efficiency, agenda effects and policy characteristics such as political importance and conflict level. First, it has been argued that elections delay implementation and that legislative discontinuity reduces efficiency for administrative reasons (Mastenbroek et al. 2014). Moreover, discontinuity increases the risk that the minister who negotiated the directive on the European level differs from the one responsible for transposition. Following Sprungk (2001) discontinuity may also undermine the effect of scrutiny on the transposition time. Accordingly, we add a variable indicating the number of legislative terms during which the directive has been pending for implementation. This variables ranges from zero (no discontinuity) to three (directive has been under risk during all four electoral periods). Second, we add a dummy for each of the four electoral periods (Schröder I + II; Merkel I + II) and for each of the thirteen policy areas (i.e. leading EP committees). Third, the Duration of EU law making indicates the time elapsed between date of Commission proposal and date of adoption (in days). Fourth, we control for whether or not the legislative proposal has been politically solved prior to reaching the ministerial level by resorting to information on the Council Agenda (A/B-points). Fifth, we add a dummy variable which indicates the applicable EU legislative procedure (equal to 1 if Co-decision). Finally, and for obvious reasons, we split the sample in a time prior and after the official implementation deadline (Post Deadline). Importantly, we expect that some proposals are, due to exogenous factors such as for example seasonal effects or crisis response, inherently more urgent than others. We expect that the effect of those variables capturing such urgency will be time dependent. For example, a fast law making procedure at the EU level may indicate an urgency that carries over to the first few months of the implementation stage. Thereafter, it may be "too late anyway" and, accordingly, the effect of "duration of EU law making" changes over the course the transposition period. In order to capture this idea of urgency, we model "duration of EU law making", "saliency" and "Council agenda" as time dependent effects throughout.

Table 1 offers a summary of our variables, including information as to whether or not they vary over time.

[Table 1 about here]

RESULTS

We estimate a series of six survival models, i.e. one to test each of the five hypotheses plus a baseline model and a full model. The results are shown in Table 2 and the hazard ratios are plotted in Figure 1. Model 1 includes all variables but those capturing the political conflict and bicameral distribution of power. Our key explanatory variable, parliamentary scrutiny, increases the transposition hazard. Specifically, the transposition hazard is twice as high for proposals being subjected to scrutiny in both chambers if compared to proposals which go unchecked (figure 1). Moreover, Model 1 reveals a significant effect of discontinuity. In case transposition stretches over two electoral periods the transposition hazard decreases by a factor 0.5, if it stretches over three periods it decreases by a factor 0.33 and if transposition stretches over all four periods the hazard decreases by a factor 0.1. As expected, passing the deadline increases the transposition hazard significantly by a factor 2.9. By contrast, the type of legislative procedure (Co decision vs. Consultation) has no effect on the implementation hazard. Finally, all our variables capturing the time-dependent effect of political urgency turn out significant, although the effect of salience in European Parliament turns out relatively weak. Specifically, transposition has been significantly slower for those directives which could not be solved at the level of permanent representatives (B-points). This effect becomes insignificant approximately eighteen months after adoption. Moreover, transposition is significantly faster for those directives which passed quickly through the EU decision making process (250 days) if compared to directives which took relatively long from Commission proposal to adoption (1200 days). However, this effect disappears after approximately six to seven months after adoption and it turns negative approximately two years after adoption.

[Figures 1 about here]

Model 2 tests our expectation that scrutiny can successfully ameliorate the delaying effect of complexity (H1). Accordingly, we add an interaction term between scrutiny and complexity. Figure 1 depicts the results: In cases without scrutiny, complex directives (35 recitals) reveal a significantly lower implementation hazard if compared to less complex directives (5 recitals). However, the effect of complexity disappears completely for those approx. 30 % of cases which have been subject to parliamentary scrutiny in Bundestag and Bundesrat prior to adoption. This finding supports our hypothesis H1 which posits that scrutiny can successfully overcome delay caused by complexity.

Model 3 tests our expectation that scrutiny can successfully attenuate the effect of saliency (H2). We add an interaction term between scrutiny and saliency. Against the background of our baseline model and to facilitate interpretation, we do not model the effect of saliency as being time dependent in this specification. As explained above, we consider saliency to be a possible proxy for political urgency and, therefore, model its effect as being time dependent. Contrary to our expectations, our findings indicate a positive, but barely significant positive effect for cases without scrutiny. This effect disappears entirely for cases which have been subjected to scrutiny in both Bundestag and Bundesrat.

Model 4 tests our expectation that scrutiny can successfully overcome transposition delay caused by bicameralism (H3). Accordingly, we add an interaction term between scrutiny (in both chambers) and our variable "unified government" which indicates periods during which the federal government holds at least 35 votes in the Bundesrat. Figure 2 reveals that during times of "unified government" the transposition hazard is twice as high as during times of "divided government". However, this effect dissolves for directives which have been subject to parliamentary scrutiny prior to adoption at the EU level. Accordingly, we can accept H3 which expects that scrutiny helps to overcome delays caused by bicameralism.

Model 5 tests our expectation that scrutiny can successfully overcome delay introduced by the leading minister's incentive to deviate. Here, our results are rather surprising: Figure 2 reveals that the minister's incentive to deviate has no significant effect on the transposition hazard. However, we find that directives which do not fit the preferences of the leading minister reveal a significantly lower transposition hazard if they have been subject to scrutiny in both chambers prior to adoption. In other words, scrutiny does not attenuate an existing effect but causes the "incentive to deviate" argument to turn out statistically significant in the first place. This finding is robust against any changes in model specification.

Model 6 tests our argument according to which the minister's incentive to deviate can be either amplified or attenuated by his coalition partner. The results support our argument. For cases without scrutiny we find that a delay increases in m-c, i.e. in the coalition partner being even more dissatisfied with the new EU policy outcome than the minister. Surprisingly, scrutiny does not only attenuate this effect, but swaps its sign such that the likelihood for delay increases if the coalition partner is friendlier towards the new EU policy than the leading minister. Following Finke and Dannwolf (2013) German ministers use scrutiny to credibly signal that they are constrained by coalition partner who is even less willing to compromise. This could explain our counterintuitive finding since such a bargaining strategy may affect the government's bargaining success and, accordingly, its incentives for delaying implementation in the first place.

When comparing the log likelihood of all seven models it becomes apparent that the "divided government" (H3) and the "coalition's incentive to delay" (H5) improve the model's explanatory power the most.

[Table 2 about here]

CONCLUSION

The existing empirical literature on compliance with EU law has taken an international comparative approach. This literature agrees that timely transposition is threatened by (i.) weak political administrations facing highly complex rules, by (ii.) the lacking decision-making capacity among relevant institutions, and by (iii.) a preference-based incentives for delay on behalf of the relevant domestic actors (Angelova et al. 2013; Toshkov 2010). At the same time, the more recent literature has nourished the empowerment of national parliaments may help overcome these negative effects.

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Our theoretical analysis supports this perspective in arguing that transposition delays are often rooted in existing information asymmetries. In case these asymmetries have not been successfully flattened before an EU directive is adopted, they must be flattened afterwards, that is, through extensive deliberations and negotiations during the implementation phase. Parliamentary scrutiny can be seen as a tool to shift the necessary exchange of information to an earlier stage of the law-making process. In order to test our arguments, we diverge from the existing literature by focusing on proposal-level information on the causes of transposition delay in Germany. While this choice of research design allows us to use better proposal-level indicators, our results are not easily generalized to other EU member states. Generalizations beyond the German case may be possible with respect to our findings on the effects of complexity and saliency. However, generalizations are precarious for all those arguments, which refer to country-specific, political decision-making procedures. Finally, generalizations are very dangerous with respect to the strategic use of parliamentary scrutiny by the German government, which, after all, is significantly more powerful than the governments of most other EU member states.

Our empirical analysis provides a different approach to the three established explanations for transposition delays which point towards a proposal's complexity, a political system's decision-making capacity and domestic actors' policy preferences. Firstly, we find that parliamentary scrutiny mitigates the negative effects of complexity and saliency on timely transposition. Parliamentary scrutiny activities shift the involvement of the relevant political administration and its experts from the implementation stage to the policymaking stage. Secondly, parliamentary scrutiny can successfully overcome delay caused by deviating partisan majorities in the German Bundestag and Bundesrat. In particular, parliamentary scrutiny fosters cross-party agreements at an early stage of the policymaking process.

So far, the effects of early parliamentary scrutiny appear to be clearly positive. However, thirdly, parliamentary scrutiny has a mixed effect with respect to the transposition of highly salient proposals. Without scrutiny salient proposals have a lower transposition hazard during the first year after adoption. This negative effect of saliency disappears in case domestic actors had the chance to deliberate on the subject matter in parliament prior to the adoption of the directive at the EU level. However, without scrutiny the transposition of salient proposals is less likely to drag on for more than one-and-a-half year. Unfortunately, once scrutiny plays a part this positive effect of saliency disappears. Apparently, parliamentary scrutiny of highly salient proposals potentially wakes the proverbial "sleeping dogs" whose involvement and expectations can make cross-party agreement during the implementation stage more complicated. This effect is, in all likelihood, supported by an escalation of the scrutiny instruments beyond the committee deliberations behind closed doors. Specifically, hearings of the government, plenary debates, as well as parliamentary resolutions force the adversary parties to publicly commit themselves at an early stage of the negotiations. As a result, parties may find it hard to depart from such commitments during the implementation stage without loss of credibility.

Fourthly, we considered the minister's incentive to delay transposition. Here, the effect of parliamentary scrutiny on the timeliness of transposition in clearly negative. Without scrutiny, the minister's incentive to delay appears to be irrelevant for the timeliness of transposition. Yet this differs for proposals which have been subjected to parliamentary scrutiny for which the minister's incentive to delay slows down the transposition process. This finding conforms to the "sleeping dog" argument where scrutiny draws attention to the subject matter and governing parties are forced to make an early commitment.

Finally, we test the coalition's incentive to delay transposition. We find that parliamentary scrutiny causes transposition to be slower when the coalition partner is favorable of transposition as compared

to the case when the coalition partner is less favorable. This result can be explained by a literature that suggests German parties deploy parliamentary scrutiny strategically to improve the government's bargaining position in the Council of Ministers (Holzacker 2002, Finke/ Dannwolf 2012). If this reinforcement of domestic constraints is successful, the government's incentives to deviate are reduced. If, however, parliamentary scrutiny reveals domestic weaknesses, our results conform to the "sleeping dog" argument above. Under this scenario, parliamentary scrutiny activates partisan conflict without improving the minister's bargaining position in Brussels.

Overall, our results indicate that parliamentary scrutiny has mixed effects which cannot be understood without considering the different parties' motives for initiating scrutiny activities in the first place. On the one hand, when analysing the national implementation of EU policy, parliamentary scrutiny should be considered as a tool which successfully transfers necessary deliberations and negotiations from the implementation stage to the policymaking stage. As a consequence, we observe faster implementation of complex policies and a smoother agreement between the German states (Länder) and the federal government. On the other hand, parliamentary scrutiny carries the risk of triggering conflict among adversarial actors and of forcing early commitments by actors who might otherwise have remained passive observers. As a consequence, we observe slower implementation of salient policies, even if these are policies, which are actually more agreeable to the coalition partner than to the minister who has already signed the deal in Brussels.

REFERENCES

Achen, C.H. (2006). Evaluating Political Decision Making Models. In: *The European Union Decides. The Empirical Relevance of Policy Making Models.*, R. Thomson, F.N. Stokman, C.H. Achen, and T. König, eds. Cambridge: Cambridge University Press: 264–298.

Angelova, M., Dannwolf, T. & König, T. (2012). How Robust are Compliance Findings? A Research Synthesis. *Journal of European Public Policy* 19(8): 1269-1291.

Auel, K. & Benz, A. (2005). The politics of adaptation: The europeanisation of national parliamentary systems. *Journal of Legislative Studies* 11(3-4)**:** 372-393.

Beichelt, T. (2009). *Deutschland und Europa. Die Europäisierung des politischen Systems.* Wiesbaden: VS Verlag für Sozialwissenschaften.

Berglund, S., Gange, I. & Waarden, F. v. (2006). Mass Production of Law. Routinization in Transposition of European Directives. A Sociological-Institutionalist Account. *Journal of European Public Policy.* 13 (5): 692-716.

Bergman, Torbjörn (2000). „The European Union as the next step of delegation and accountability". *European Journal of Political Research* 37 (3): 415–29.

Borghetto, E., Franchino, F. & Giannetti, D. (2006). Complying with the transposition deadlines of EU directives. Evidence from Italy. *Rivista Italiana di Politiche Pubbliche* 1(1): 7–38.

Börzel, Tanja A., Tobias Hofmann, Diana Panke, & Carina Sprungk. 2010. „Obstinate and Inefficient: Why Member States Do Not Comply With European Law". *Comparative Political Studies* 43 (11): 1363–90.

Falkner, G., Hartlapp, M., Treib, O. & Leiber, S. (2005). *Complying with Europe? The Impact of EU Minimum Harmonisation and Soft Law in the Member States*. Cambridge: Cambridge University Press.

Falkner, G. & Treib, O. (2008). Three worlds of compliance or four? The EU-15 compared to new member states. *Journal of Common Market Studies* 46(2): 293–313.

Finke, D., and Dannwolf, T. (2013). Domestic scrutiny of European Union politics: Between whistle blowing and opposition control. *European Journal of Political Research 52*, 715–746.

Haverland, Markus, Bernard Steunenberg, und Frans Van Waarden (2011). „Sectors at Different Speeds: Analysing Transposition Deficits in the European Union*". *JCMS: Journal of Common Market Studies* 49(2) : 265–91.

Héritier, A. 1995. „'Leaders' and 'Laggards' in European Clean Air Policy". In *Convergence or Diversity? Internationalization and economic policy Response*, ed. by F van Waarden & B Unger. Lanham: Rowman and Littlefield: 278-305.

Holzhacker, R. (2002). National parliamentary scrutiny over EU issues: Comparing the goals and methods of governing and opposition parties. *European Union Politics* 3(4)**:** 459-479.

Kaeding, Michael (2008) „Lost in Translation or Full Steam Ahead The Transposition of EU Transport Directives across Member States". *European Union Politics* 9 (1): 115–43.

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König, T., and Luetgert, B. (2009). Troubles with Transposition? Explaining Trends in Member-State Notification and the Delayed Transposition of EU Directives. *British Journal of Political Science 39*, 163–194.

König, Thomas & Lars Mäder (2013). „Non-Conformable, Partial and Conformable Transposition: A Competing Risk Analysis of the Transposition Process of Directives in the EU15". *European Union Politics* 14 (1): 46–69.

Lambert and Royston (2009). Further development of flexible parametric models for survival analysis. *The Stata Journal.* 9(2): 265-290.

Linos, K. (2007). How Can International Organizations Shape National Welfare States? Evidence From Compliance With European Union Directives. *Comparative Political Studies* 40 (5): 547-570.

Lowe, W., Benoit, K., Mikhaylov, S., and Laver, M. (2012). Scaling Policy Preferences from Coded Political Texts. *Legislative Studies Quarterly* 36, 123–155.

Luetgert, B., and Dannwolf, T. (2009). Mixing Methods A Nested Analysis of EU Member State Transposition Patterns. *European Union Politics* 10, 307–334.

Martin, L. W. & Vanberg, G. (2004). Policing the bargain: Coalition government and parliamentary scrutiny. *American Journal of Political Science* 48(1)**:** 13-27.

Mastenbroek, E. (2003). Surviving the deadline: the transportation of EU directives in the Netherlands. *European Union Politics* 4(4): 371-395.

Mastenbroek, Ellen & Kaeding, Michael (2006). „Europeanization Beyond the Goodness of Fit: Domestic Politics in the Forefront 1". *Comparative European Politics* 4 (4): 331–54.

Rasmussen, A., & Toshkov, D. (2013). The effect of stakeholder involvement on legislative duration: Consultation of external actors and legislative duration in the European Union. *European Union Politics 14*, 366–387.

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Sprungk, Carina. 2013. „Legislative Transposition of Directives: Exploring the Other Role of National Parliaments in the European Unin". *JCMS: Journal of Common Market Studies* 51 (2): 298–315.

Sprungk, Carina. (2011). „How Policy-Shaping Might (Not) Affect Policy-Taking: The Case Of National Parliaments in the European Union". *Journal of European Integration* 33 (3): 323–40.

Steunenberg, Bernard. (2006) „Turning Swift Policy-making into Deadlock and Delay National Policy Coordination and the Transposition of EU Directives". *European Union Politics* 7(3): 293–319.

Steunenberg, Bernard & Michael Kaeding (2009) „'As time goes by': Explaining the transposition of maritime directives". *European Journal of Political Research* 48 (3): 432–54.

Thomson, R. (2009). Same effects in different worlds: the transposition of EU directives. *Journal of European Public Policy* 16(1): 1-18.

Thomson, R., Torenvield, R. & Arregui, J. (2007) The Paradox of Compliance: Infringements and Delays in Transposing European Union Directives. *British Journal of Political Science (*37): 685-709.

Thomson, R. et al. (2006). *The European Union Decides. The Empirical Relevance of Policy Making Models.* Cambridge: Cambridge University Press.

Toshkov, D. (2008). Embracing European law: compliance with EU directives in Central and Eastern Europe. *European Union Politics* 9(3): 379-402.

Toshkov, D. (2010). Taking stock: a review of quantitative studies of transposition and implementation of EU law. Vienna Institute for European Integration Research Working Paper Series.

Treib, Oliver (2003). „Die Umsetzung von EU-Richtlinien im Zeichen der Parteipolitik: Eine akteurszentrierte Antwort auf die Misfit-These". *Politische Vierteljahresschrift* 44 (4): 506–28.

Treib, Oliver (2008). Implementing and complying with EU governance outputs. Living Reviews in European Governance 3(5), available at http://europeangovernance. livingreviews.org/Articles/lreg-2008-5/.

Volkens, A., Lacewell, O., Regel, S., Schultze, H. & Werner, A. (2010). *The manifesto data collection. Manifesto project (mrg/cmp/marpor).* Berlin: Wissenschaftszentrum Berlin für Sozialforschung (WZB).

Zhelayazkova, A. & Torenvlied, R. (2009). The time-dependent effect of conflict in the Council on delays in the transposition of EU directives. *European Union Politics* 10(1): 35-62.

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Figure 1: Effect of Scrutiny in both chambers on the Hazard Ratio (90% CIs).
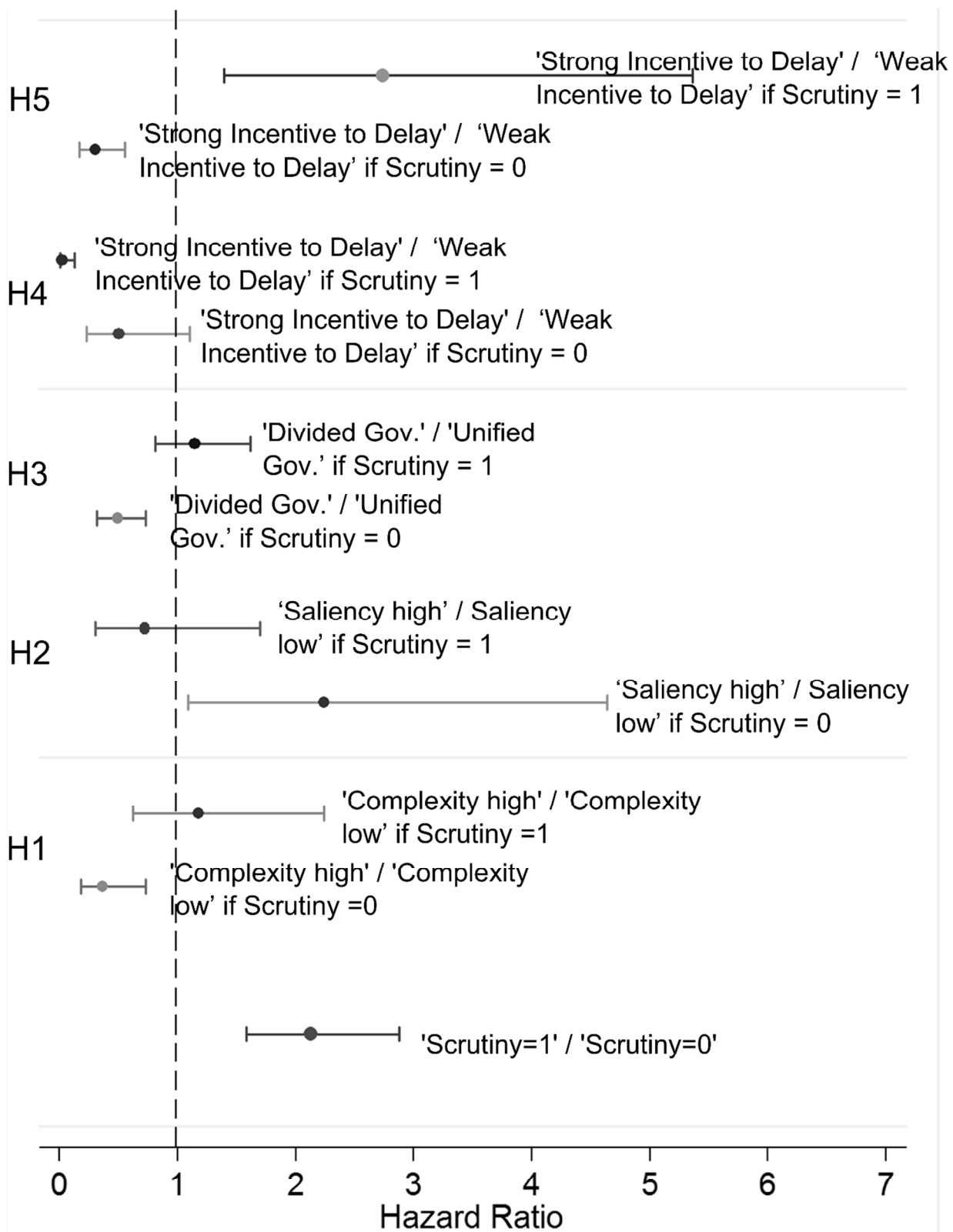
Table 1 Results of Survival Models (using the smtp2 module in Stata)

Variable	Mean	SD	TVC?
ScrutinyBR	0.317	0.462	
ScrutinyBT	0.615	0.486	
Scrutiny(both)	0.255	0.435	
Complexity	2.750	0.797	
Codecision	0.751	0.432	
Discontinuity	0.610	0.811	x
PostDeadline	0.386	0.481	x
DurationEUProcess	794.571	639.61	
CouncilAgenda	0.599	0.490	
SalienceEP	8.049	2.389	
Schröder1	0.027	0.083	x
Schröder2	0.123	0.329	x
Merkel1	0.372	0.479	x
Merkel2	0,478	0.412	x
DividedGovernment	0.648	0.436	x
Incentive to Deviate: Minister	1.421	1.347	x
Incentive to Deviate: Coalition	-0.574	1.481	x

Table 2 Results of Survival Models on the Duration of Transposition.

N=3970	Model1	Model2	Model3	Model4	Model5	Model6
'ScrutinyBT'x'ScrutinyBR'	0.314***	0.210*	0.0283*	0.508	0.337***	0.315***
	(0.0892)	(0.168)	(0.0594)	(0.278)	(0.102)	(0.0931)
ScrutinyBT	2.071***	1.132	1.059	1.630*	2.028***	2.179***
	(0.324)	(0.515)	(0.504)	(0.438)	(0.334)	(0.384)
ScrutinyBR	3.275***	3.710**	197.8***	1.496	3.420***	4.176***
	(0.917)	(2.347)	(387.0)	(0.771)	(1.007)	(1.234)
Complexity	0.902	0.756**	0.907	0.726***	0.919	0.936
	(0.0609)	(0.106)	(0.0629)	(0.0605)	(0.0615)	(0.0643)
Codecision	1.088	1.119	1.122	1.170	1.081	1.060
	(0.149)	(0.151)	(0.151)	(0.159)	(0.150)	(0.148)
Discontinuity	0.535***	0.540***	0.524***	0.513***	0.527***	0.546***
	(0.0644)	(0.0640)	(0.0624)	(0.0651)	(0.0630)	(0.0667)
PostDeadline	2.966***	2.959***	3.006***	2.768***	2.926***	2.969***
	(0.380)	(0.371)	(0.376)	(0.349)	(0.368)	(0.383)
DurationEUProcess	1.000**	1.000**	1.000***	1.000**	1.000***	1.000**
	(0.000168)	(0.000164)	(0.000165)	(0.000161)	(0.000168)	(0.000174)
CouncilAgenda	0.660***	0.627***	0.625***	0.693**	0.637***	0.651***
	(0.0999)	(0.0945)	(0.0946)	(0.105)	(0.0951)	(0.0984)
SalienceEP	1.043	1.045	1.073	1.093***	1.050	1.042
	(0.0365)	(0.0362)	(0.0471)	(0.0317)	(0.0361)	(0.0370)
Schröder1	0.181***	0.177***	0.188***	0.341**	0.175***	0.184***
	(0.0679)	(0.0665)	(0.0713)	(0.156)	(0.0654)	(0.0686)
Schröder2	0.903	0.906	0.753	0.841	0.917	0.826
	(0.174)	(0.174)	(0.146)	(0.163)	(0.176)	(0.163)
Merkel1	0.639***	0.655***	0.682**	0.466***	0.658***	0.641***
	(0.0991)	(0.0983)	(0.102)	(0.120)	(0.0999)	(0.103)
Merkel2	0.973	0.993	1.059	1.138	0.930	0.869
	(0.150)	(0.148)	(0.157)	(0.227)	(0.143)	(0.143)
RCS1	1.972***	2.004***	3.112***	1.765***	1.923***	1.894***
	(0.415)	(0.407)	(0.395)	(0.319)	(0.399)	(0.404)
RCS2	1.312***	1.322***	1.322***	1.359***	1.270***	1.266***
	(0.104)	(0.102)	(0.106)	(0.110)	(0.100)	(0.102)
CouncilAgenda(TVC)	1.670***	1.683***	1.823***	1.585***	1.665***	1.633***
	(0.222)	(0.221)	(0.240)	(0.214)	(0.223)	(0.222)
DurationEUProcess(TVC)	1.001***	1.001***	1.001***	1.000***	1.001***	1.001***
	(0.000154)	(0.000150)	(0.000149)	(0.000149)	(0.000152)	(0.000160)
SalienceEP(TVC)	1.063**	1.062**		1.060**	1.070***	1.069**
	(0.0279)	(0.0266)		(0.0286)	(0.0275)	(0.0290)
Complexity'x'ScrutinyBT		1.266				
		(0.219)				
Complexity'x'ScrutinyBR		0.972				
		(0.208)				
Complexity'x'ScrutinyBT'x'ScrutinyBR'		1.109				
		(0.299)				
Salience'x'ScrutinyBT'			1.094			
			(0.0654)			
Salience'x'ScrutinyBR'			0.650**			
			(0.137)			
Salience'x'ScrutinyBT' x'ScrutinyBR'			1.265			
			(0.285)			

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DividedGovernment				0.492**		
				(0.154)		
DividedGovernment'x ScrutinyBT'				1.223		
				(0.375)		
DividedGovernment'x ScrutinyBR'				2.666*		
				(1.525)		
DividedGovernment'x ScrutinyBT' x ScrutinyBR'				0.715		
				(0.446)		
Minister's Incentive to Delay					1.249**	
					(0.122)	
Minister's Incentive to Delay x ScrutinyBT'					0.869	
					(0.104)	
Minister's Incentive to Delay x ScrutinyBR'					0.742	
					(0.147)	
Minister's Incentive to Delay x ScrutinyBT' x ScrutinyBR'					1.054	
					(0.235)	
Coalition's Incentive to Delay						0.804***
						(0.0619)
Coalition's Incentive to Delay x ScrutinyBT'						1.145
						(0.100)
Coalition's Incentive to Delay x ScrutinyBR'						1.385**
						(0.220)
Coalition's Incentive to Delay x ScrutinyBT' x ScrutinyBR'						0.941
						(0.172)
Constant	0.583	0.919	0.497*	0.996	0.539	0.415**
	(0.221)	(0.435)	(0.210)	(0.419)	(0.204)	(0.168)

Note: We deploy the smtp2 model by Lambert and Royston (2009). $p<0.1$*; $p<0.05$**; $p<0.01$***

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