

The delegation of transposition powers in the member states of the EC: Between parliament and the administrative state

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Abstract

This article investigates the conditions for the choice between parliamentary and executive transposition measures for the implementation of EC directives in the various contexts of EU member states. Applying a transaction cost-approach we ask whether this choice is influenced by either domestic or EU-related factors and examine several reasons which explain the prominence of the administrative state in the implementation of EC directives. Our comprehensive dataset on all notified transposition measures in 15 member states for EC directives initiated by the Commission between 1986 and 2002 allows us to evaluate several hypotheses on these choices in various contexts showing that the prominence of the administrative state results from the ineffectiveness of the EU decision making process, while ineffective coalition government promotes parliamentary involvement. However, we also find some variation across a few countries and sectors suggesting that executive transposition is not the only choice for the transposition of EC directives.

The choice between parliamentary and executive measures

This article examines the conditions of transposition choices in different contexts of EU member states in which governmental majorities decide between the in- and exclusion of their parliaments when they implement EC directives. For the analysis of these parliamentary-executive relations in the separation of powers systems of the EU member states, we ask why do governmental majorities increasingly prefer using executive instruments and only sometimes include their parliaments in the transposition of EC directives – are they primarily interested in bureaucratic expertise about the implementation of EC directives, or, are they less concerned about ministerial drift when they delegate powers to executive agencies? We argue that both modes of implementation have their strengths and weaknesses, and governmental actors in all EU member states often face a trade-off between gathering expertise and risking drift when they decide about the delegation of powers to specialized agencies which frequently implement the goals of EC directives. However, when this preference of governmental majorities for the administrative state is motivated by the level of uncertainty about implementation, the type and the complexity of an EC directive may also influence the delegation of powers in the national arenas. In this sense, the effectiveness of EU legislative decision making would impact the separation of powers in different contexts of EU member states in a similar direction which promotes the administrative state and a weaker role of domestic parliaments in policy making: the more uncertainty about implementation, the higher the need for bureaucratic expertise and the lower the likelihood for parliamentary inclusion in domestic policy making.

In principal, member state governments 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. For a governmental majority, there probably exists no “ideal” transposition mode because parliamentary committees rarely have special information on the

implementation process of EC directives, while agencies may have this information but also use their discretionary power and enact policies different from the preferences of the governmental majority (Epstein and O'Halloran 1999, Huber and Shipan 2002, Franchino 2007). In particular, when uncertainty about the implementation effects of an EC directive is high and a (coalition) government has to fear ministerial drift due to divergent interests of the coalitional partners, the governmental majority must decide whether it prefers to gather specialized bureaucratic information about the implementation process and to risk biased ministerial policy making. This suggests that the choice of the transposition measure is also related to the effective domestic management of the inherent delegation problem of (coalition) government by political parties which share the common interest in building government but may still pursue their own interests in policy making at the expense of the others (Martin and Vanberg 2004). In contrast to an ineffective EU decision-making process which promotes an administrative state by producing uncertainty, ineffective coalition government with a high risk of ministerial drift would enhance parliamentary inclusion and countervail the trend towards an administrative state.

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 choice of the transposition measure to the governments of the member states. Compared to the directly binding nature of EC regulations and decisions, the transposition provision for EC directives has raised concerns about the extent and relevance of (non-)compliance in the EU literature, which identified several factors and criteria of implementation failure (Krislov et al. 1986; Siedentopf and Ziller 1988; Knill and Lenschow 1998; Lampinen and Uusikylä 1998; Börzel 2001; Mbaye 2001; Tallberg 2002; Börzel 2003; Börzel and Risse 2003; Mastenbroek 2003; Falkner et. al 2005; Steunenbergh 2005, 2007;

Kaeding 2007; Falkner 2007; Thomson 2007; Thomson et al. 2007; Toshkov 2007; Versluis 2007). Compared to the rich insights into (non-)compliance, little attention has been devoted to the second part of this definition, namely the choice of the transposition instrument, leaving open the question on the reasons for the delegation of powers in the transposition process of EC directives.

This deficit in research on the choice of the transposition instrument is surprising because there is an ongoing discussion about the role of domestic parliaments in EU policy making and of the administrative state in both the EU and the member states – which has also become a prominent issue during the referendum campaigns on the constitutional project in the Netherlands and France (Vreese and Semetko 2004, Hug and Schulz 2007). While the domestic executive-parliamentary relations have also changed over time in member states with transfer of authority and power to the executive in several policy areas, there has been much variation across these countries in the past. Compared to this variation, the crucial question in the course of the implementation of EC directives is whether the conditions for delegation promote a powerful administrative state independent from the country-specific contexts. When the member states decide to achieve important policy goals of EU integration by EC directives and must implement their decisions, the power of domestic parliaments can generally shrink and the role of the administrative state commonly increase with the number of executive measures, which governments use to transpose EC directives into national law.

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 laws including parliaments varies among the member states as well as across policy areas. However, executive measures seem

to dominate the transposition processes in almost all member states and policy areas. 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

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 areas of Energy/Environment and Common rules than in Agriculture and Internal Market. This variation suggests policy-or domain-specific reasons for governments' choice of the transposition instrument, which can hardly be explained by general arguments on ministerial drift or country-specific features. One reason for this trend towards an administrative state might be the domain-specific high value of bureaucratic expertise, which is particularly valuable in the event of high uncertainty about implementation effects, but it is also possible that there is consensus among domestic 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. Hence, collective action problems do not exist for overturning an agency's regulation in a policy domain (Epstein and O'Halloran 1999: 25). Because several rivalry explanations exist for the prominence of the administrative state, we take a closer look at the theoretical foundation of the conditions for the delegation of powers before presenting our empirical analysis.

Governmental majorities, ministers, executive agencies and the EU

For answering the question on the prominence of the administrative state in the implementation process of EC directives, we propose using a model originally developed by Epstein and O'Halloran (1999) for the analysis of the U.S. federal system which 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 government(al majority) will delegate authority to executive agencies when the parliamentary process is considered as less beneficial than bureaucratic implementation due to the relative costs of principal agent-problems and informational deficits on policy-specific implementation. The pull-factor for parliamentary transposition is ministerial drift, while bureaucratic expertise pushes delegation to an 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 government will principally favour delegation in order to reduce implementation uncertainty. Similarly, when ministerial drift does not exist, bureaucratic expertise promotes delegation.

Applied to the EU context, the game for the transposition process of EC directives includes four relevant types of actors in each country: a governmental majority, 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 governmental majorities can use 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 governmental majority, and the stage where the final policy outcome is implemented. At the end of the first stage of legislative choice, a specific directive is adopted on the EU level. 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. During the legislative process each government can collect information about the directive regarding the value of uncertainty on the directive's implementation effects. This information remains however incomplete, while domestic agencies can (better) identify the exact value of uncertainty in the implementation stage. At this stage, domestic agencies have an informational advantage which can be justified by their greater resources, their closeness to the problems on site, or simply because some time has elapsed between the passing of a directive and transposition, providing the agency with new information revealed in that period. After receiving the respective directive, the government(al majority) makes the key decision based on the information about the directive, whether to transpose without executive input through the means of parliamentary vote or to delegate substantive transposition powers to their responsible executive agencies.

At the second stage of policy making, the directive is transposed into domestic law. In case of parliamentary inclusion, the transposition is enacted by the government(al majority) in parliament. When delegating the transposition to the executive branch, the governmental majority sets a baseline policy (negotiated between the coalition partners) and gives the minister and his executive agency some discretion to move the policy away from the baseline. Here, it is assumed that the minister fixes the ideal point of the agency and gathers information about the constraints in order to cope with the limits of agency discretion. Note that due to the informational advantage, the agency is able to reduce uncertainty to a minimum in the domestic arena. At the final stage, the outcome of the transposition process will be realised via implementation. In case of parliamentary inclusion, the final outcome is determined by two elements, the policy of the governmental 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 government, the policy set by the agency and realization of the directive's goals in the true implementation world.

According to this model, the transposition choice of governments is determined by three factors and their interactions, namely the amount of relevant information which a governmental majority is able to gather during the EU legislative process, the level of risk of ministerial drift, and the level of uncertainty associated with each directive. Regarding the amount of information, the likelihood of parliamentary inclusion increases with the availability of relevant information derived from the EU legislative process. When the EU legislative process provides effective information about the implementation of a directive, there is no need to delegate any transposition authority to an executive agency which might pursue own goals when implementing the directive. But when a government receives little valuable information about the implementation effects of a directive during the EU legislative process, it will be forced to delegate transposition power to executive agencies, which are able to provide the required information under the risk of biased implementation. These considerations lead to following hypothesis:

H1: The less relevant information a governmental majority is able to gather on a directive during the EU legislative process, the less likely it will choose parliamentary transposition.

In addition to the amount of information, the (coalitional) principal agent-problem between a governmental majority and the respective minister responsible for the implementation is another relevant factor for the delegation choice. In particular for coalition governments, there exists an inherent principal agent-problem because the members of the governmental majority may share the common interest in government, but they can still differ in their interests in policy making and must nominate and delegate ministers into the cabinet who are responsible for drafting governmental policy proposals which may allow them to pursue their own interests at the expense of others (Martin and Vanberg 2004). According to Huber and Shipan (2002:183-185), cabinet ministers can dominate both the parliamentary and the executive process. In parliamentary legislation, the minister is responsible for preparing the initial draft of a bill. However, at this stage, a minister is often constrained by other members of the

cabinet because the draft is usually discussed in cabinet and requires approval before sending it to the floor. Compared to the parliamentary process, ministers are less controlled in executive matters. They are the head of department and define the guidelines of how policy should be implemented by an agency. In the EU member states, 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 power during implementation to shape policy outcomes. This suggests that a governmental majority is more likely to include parliament when there is a high principal agent-risk in the implementation process, although the agency can identify the exact level of uncertainty and is able to adjust the respective policy to reach the preferred policy outcome. The second hypothesis is:

H2: The higher the risk of ministerial drift, the more likely EC directives will be transposed through parliamentary instruments.

Finally, the model suggests that the implementation uncertainty associated with a directive influences the transposition choice of the governmental majority. This is perhaps one of the most cited reasons in the (non)compliance literature which is either attributed to domestic fit (Duina 1997, Knill and Lenschow 1998, Héritier et al. 2001, Green Cowles et al. 2001; Börzel 2003) or bureaucratic efficiency (Mbaye 2001, Borghetto et al. 2006, Franchino 2007). For any fixed amount of information and any fixed level of risk of ministerial drift, the governmental majority is more likely to delegate transposition authority to the executive agency when the level of uncertainty increases. The reason is that governments prefer gathering bureaucratic expertise about the implementation of EC laws in order to reduce uncertainty. This leads to our third and final hypothesis:

H3: The more uncertainty is associated with a specific directive, the more likely a government will delegate transposition authority to its executive agency, respectively the less likely EC directives will be transposed by parliament.

In our view, this model directs the attention to the conditions of the transposition choice of governments, which can be tested by these three hypotheses. Governments respectively their majorities are simultaneously faced with two problems when looking at the implementation problem of EC directives, the uncertainty of the directive and the principal agent-problem between their (coalitional) and the ministerial position of their executive agencies. When uncertainty about implementation effects is low and ministerial drift exists, we expect that governmental majorities will prefer parliamentary transposition, but when uncertainty is high and/or the principal agent-problem is low, it will favour delegation to the agency. Obviously, these two elements establish a trade-off when both the principal agent-problem and uncertainty are high. In such a situation, the governmental majority must decide to what extent it needs specialized information in relation to the danger 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 and to identify the conditions for governments' delegation choices in various contexts, we have gathered information about 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).¹ Because the new members, which acceded the EU in 2004 respectively 2007, do not yet have a comparable transpositions record, we rely on the EU-15 respectively EU-12 (Austria, Finland and Sweden acceded in 1995). Compared to more selective analyses, the consideration of various governments in 15 countries, which decide on the transpositions in several policy sectors over a period of more than 16 years, allows us to test our delegation approach for a number of

¹These data have been collected within the context of a four-year interdisciplinary research project funded by the German Research Foundation (DFG).

different contexts. Moreover, our dataset covers all measures which are notified by the member states across all sectors and over a period of more than 15 years.²

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. To control for policy effects, we also classified these into four broad policy areas, namely Agriculture, Energy/Environment, Trade, and Common Rules. This sectoral specification combines the core policy areas of EU legislative policy making with country-specific indicators on ministerial drift.

Table 1 about here

Our original dataset includes the key characteristics of 1.592 EC directives and the respective national transposition measures. This information exists for 21.270 cases (directives * countries) for the time period between 1986 and 2002. In a first step, we excluded 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 areas (36 cases). We also excluded directives from our analysis for which the member states failed to notify any transposition measure (4.224 cases).³ This rate of transposition notification failure varies

² 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).

³ 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

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.⁴ 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 choice, 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

last couple of years several studies raised questions concerning the comprehensiveness of the provided CELEX data (Page and Wouters 1995; Bovens and Yesilkagit 2004; Kaeding 2005; Steunenberg 2005; Thomson et al. 2007; Hartlapp and Falkner 2007). 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 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.

⁴ 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.

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 process 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

According to our theoretical argument, derived from the delegation model, we examine three factors which influence the choice of the national transposition measure for the implementation of EC directives. These three factors relate to the amount of relevant information which a governmental majority is able to receive from the EU legislative process, the risk of ministerial drift, and the level of implementation uncertainty associated with a directive.

According to our first hypothesis the level of relevant information should significantly influence a member state’s transposition choice. In order to account for the amount of information, 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. We assume that the longer the EU legislative process lasts, the more information can be retrieved from it.⁵ 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

⁵ 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.

European Parliament. All of these activities are time-consuming and increase the informational level of the participants. Therefore, we expect that the length of the legislative process has a positive influence on the likelihood of parliamentary inclusion. 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 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 less complex, compared to directives which included several institutional actors and mostly propose new legislation. In addition, Commission directives are mostly concerned with very technical matters requiring sophisticated transposition solution. We accordingly expect that Commission directives are more likely to be transposed by executive instruments than any other type of directive.

To test our second hypothesis on ministerial drift we are looking for an estimator measuring the distance between the governmental majority and the respective minister. 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 must nominate and select ministers in order to translate their common interest in government into policies. But when a minister comes from a coalition partner and has important policy-making powers, she might be tempted to pursue own interests at the expense of others (Martin and Vanberg 2004). Unlike the number and cohesiveness of veto players, such ministerial drift relates to the internal configuration in

governmental coalitions which usually varies over policy areas. To operationalize this area 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 area-specific ideological distance between the governmental partners using the Manifesto research data. We identify the governmental positions in each area 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 minister and the governmental mean as a proxy for their coalitional solution in each area, the higher the risk of ministerial drift (see appendix). Furthermore we include a second, rather indirect measure for coalitional conflict, namely the distinction between single-party majority governments and minority and coalition governments by a dummy variable. Under the assumption of party policy-homogeneity and discipline, single party majority governments should have only a very low level of such conflict. In contrast to that, the policy conflict within coalition and minority governments should be considerable higher. From a comparative perspective, we also consider that the executive power of ministers differs across countries. To account for the executive power in each country, we include an additive index of autonomy (Woldendorp et al. 2000:35) of local or regional power of non-central governmental units as a third indicator for possible bureaucratic drift and dividedness: The higher the autonomy of these units is the higher should be a government's incentive to control the transposition process by parliamentary measures.

Finally, we are looking for an indicator of uncertainty which discriminates between each directive. According to our transaction approach, governmental majorities would prefer parliamentary transposition measures, which allow controlling policy outcomes respectively receiving concessions, when uncertainty about the implementation effects is low respectively about the domestic constraints is high. To measure uncertainty, we propose using the complexity of an EC directive by the characteristics of the content. For this purpose, we use

the number of topics covered by the directive and assume that the larger the number of topics covered by an EC directive is, the higher is the demand on policy expertise for the implementation and the higher is the uncertainty about the domestic requirements of transposition. Secondly, we include a variable which distinguishes between new and amending legislation. Amending directives should generally be associated with less implementation uncertainty because the governments already know the implemented effects of the existing directive. While the general level of uncertainty should be lower, amending directive also reduce the discretionary power of the executive and the likelihood for ministerial drift. Governmental majorities already know the reference point and adopt measures to improve the implementation effects, which promotes executive transposition.

We also include two control variables, which might influence the governments' transposition choices. First, we consider factors which might affect the ability of a government to pass parliamentary measures for the transposition of EC directives. Apart from political consideration, such as cabinet instability respectively the strength of the opposition, the ability of a government to enact parliamentary measures is also constrained by time (Huber and Shipan 2002:188). Generally, it is assumed that parliamentary transposition is more time-consuming because they involve more actors, such as parliamentary committee(s), the cabinet and the parliament, while executive measure often only fall under the jurisdiction of the respective minister. In order to account for time-restrictions, we propose using the specified deadline of each directive: If the deadline grants only a little amount of time to enact transposition measures, governments are less able to include their parliaments in the transposition process. The included 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. In addition, we control for another factor which might influence the transposition choice of member state governments. We include a dummy variable for the time period between the 1st of July 1987 and the 1st of November 1993, the time period

between the adoption of the Single European Act and the coming into force of the Maastricht treaty respectively the period of effective completion of the internal market. In this time period a lot of political important EC directives were adopted suggesting parliamentary inclusion for their transpositions.

Testing factors on the choice of the transposition measure

In our empirical analysis we assess the effects of independent variables on our binary dependent variable by applying a logistic regression model. In order to control for country- and policy-area effects we also include several dummy variables. Formally, we define the probability of the response equal to one as $p_i = \Pr(y_i = 1)$ and let p_i be modelled using a logit link function with the assumption that y_i has a Bernoulli distribution. The model can be written as:

$$\log[p_i / (1 - p_i)] = \beta_0 + X_i \beta_i$$

Alternatively, we control for policy-area and country-specific effects by using a multilevel model. Here, the data for the analysis reflect three levels – the individual, the policy area and the country level. The advantage of this multilevel structure is to avoid biases in parameter estimates as well as in their standard errors. In general, the risk of biased estimates increases with the correlations between the observations within the different level (Guo and Zhao 2000:444). In order to cope with this problem, we employ a multilevel logistic regression model with random intercepts for policy area and country level. Multilevel modelling corrects for the biases in parameter estimates and provides correct standard errors and thus correct confidence intervals and significant tests. From this perspective, we observe y_{ijk} , a binary variable of whether the respective directive i is transposed by national law in a policy area j in a member state k and X_{ijk} a matrix of explanatory variables. The three-level logistic model can be written as

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

where u_{0jk} is the random effect at level 2 (policy area) and v_{0k} is the random effect of level 3 (member state). 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. Alternatively, we can think of our data as having a non-nested structure, where the included policy areas are not nested within the member states. In principle, non-nested data structure arises when the individuals, in our case the directives, are characterized by overlapping categories of attributes, in our case four different policy areas and fifteen member states. Formally, a multilevel logistic model with non-nested random effects can be written as

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

This is a non-nested model because neither the policy area-categories j nor the member states k are subsets of the other. Before applying these multilevel models, it is recommended to test for systematic differences between the groups by a chi-square-test. The test for our nested model, policy areas 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. Furthermore, the test for our non-nested model also yields a significant chi-square value of 591 with 3 degrees of freedom for our four policy area. Accordingly, there is evidence of heterogeneity between the member states, between the policy areas in the member states, and between the policy areas.

Table 3 about here

Table 3 lists the regression coefficients and error terms of our estimated models with some tests of robustness. It also includes the results of the corresponding empty models of our two multilevel models. The empty models are the baseline model, containing only the intercept and the variance components of the included levels and indicate the amount of variation

induced by the different levels. In order to interpret the regression coefficients of our explanatory variables in a meaningful way, we transform them to odds ratios⁶ and present the results in Table 4. Table 4 also includes the 95% confidence interval for the calculated odds ratios. If the confidence interval is not 1.0, the coefficient is statistically significant (using a α level of 0.05) in traditional null hypothesis testing frameworks.

Table 4 about here

The most striking result of our empirical analysis is that we find always the same effects of our independent variables regardless which specific logistic regression model we apply. On closer inspection of the results, we find considerable support for the applied transaction cost theory. Regarding our first hypothesis on the informational level of EC directives, the coefficient of the duration of the EU legislative process is highly significant. Confirming the implications from the transaction cost theory, it indicates that EC directives with a relative high information level, i.e. EC directive with a relatively long legislative duration period, are significantly 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 accordance with our expectations 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 three models.

Regarding our second hypothesis about effect of the risk of ministerial drift, the included measure of ideological distance between the respective coalition partners is not statistically significant and does not show the expected positive sign. In contrast to our theoretical expectation the ideological distance between coalition partners has no effect on the

⁶An odd is defined as the chance of an event to occur divided by the likelihood of the event not to occur. Thus an odd ratio is the ratio of the odds for two different set of circumstances. Similar to the interpretation of regression coefficients odds ratios can be interpreted as the ratio of the odds of an event to occur after one-unit change in the independent variable, holding constant the other independent variables of the model.

choice of national transposition measures. However, the coefficients of both other used indicators of ministerial drift are highly statistically significant and confirm the theoretical expectations: The governmental majority in cases of single party majority governments are significantly more likely to delegate their transposition authority to the executive than in cases of 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. In accordance with our expectation we find that the higher the degree of autonomy, the more likely national governmental majorities do include parliaments because they have a higher incentive to control the policy outcome through parliamentary measures when the respective subordinate units enjoy a relatively high level of autonomy.

Regarding our third hypothesis, our results confirm our expectations regarding the level of uncertainty which is related to each directive. When the number of policy topics included in a directive increases, the likelihood of parliamentary transposition decreases. Consistent with our hypothesis, transposition authority is delegated to executive agencies in cases of higher uncertainty. The more complex a directive is, the more uncertainty is related to its implementation, which reduces the likelihood for parliamentary inclusions. This effect is considerably large and statistically significant in all three logistic regression models. Finally, the coefficient of amended 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.

Additionally to the factors derived from the transaction approach, our results also indicate that the included control variables have a substantial effect on the choice of the transposition measure. The length of the time span granted to the member states for the transposition for each directive also 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. Finally, directives enacted between the between the 1st of July 1987 and the 1st of November 1993 have a higher likelihood of being transposed through law than directive enacted after this period.

Discussion: From implementation to the administrative state

The analysis of the choice of the transposition instrument reveals high and significant similarities among the member states. Our statistical findings suggest that governmental majorities prefer to delegate power to domestic agencies when information can hardly be derived from the EU legislative process. The longer the process and the more they are involved in this process, the less pronounced is the trend towards the administrative state. Almost independent from the context in the various member states, the complexity of a directive and the kind of new or amending legislation also promotes this effect. On closer inspection of these contexts, figures 2 and 3 display the estimated probabilities of the multilevel model with non-nested random effects for each member state (see appendix, figures 4 and 5 showing the nested random effects).

Figure 2 about here

In figure 2, 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.

Regarding uncertainty produced by the complexity of each directive and new directives, figure 3 displays the estimated probabilities of parliamentary inclusion as a function of the number of policy topics included in a directive and the kind of new and

amending legislation. Accordingly, the number of included policy topics has a negative effect on the probability of parliamentary inclusion in most of the member states. Only for Greece, Ireland, Italy, Portugal and the United Kingdom we hardly find an impact of the directive's complexity and the kind of directive for the choice of the transposition mode.

Figure 3 about here

In conclusion, the prominence of the administrative state is significantly explained by the information provided by the EU legislative process in terms of the type of EC directive and the length of the EU legislative process (H1) as well as the complexity and kind of directive (H3). . Regarding our second hypothesis (H2), our results provide a more mixed picture: the risk of ministerial drift significantly determines the transposition choices 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. These indicators confirm our second 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 measure does not reflect the size of ministerial drift because the conflictual 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 the administrative state in the member states by the governmental transposition choices. Governments 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. In Portugal and However, this does not mean that these countries completely ignore their parliaments. 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 the administrative state 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: EU member states' response to 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 area	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
<i>Transaction cost theory</i>					
H1: Level of information	Duration of legislative process (years centred)	positive	-1,3	20,0	0,0
	Type of directive (Commission vs. other)	negative	0	1	0,4
H2: Risk of drift	Single party majority government	negative	0	1	0,2
	Distance between the coalition partners and minister	positive	1	5	1,3
	Autonomy of sub-governmental units	positive	1	6	2,9
H3: Uncertainty	Number of policy topics included	negative	1	5	1,3
	Amending legislation	negative	0	1	0,6
<i>Control variable</i>					
Time span for the implementation	Time period between the date of adoption and deadline (years centred)	positive	-7,1	8,2	0,0
Time period between 1987 and 1993	Time period dummy	positive	0	1	0,38

Figure 1: Percentage of EC directives transposed by national law across the policy areas of Agriculture, Energy/Environment, Internal Market, and Common Rules between 1986 and 2002.

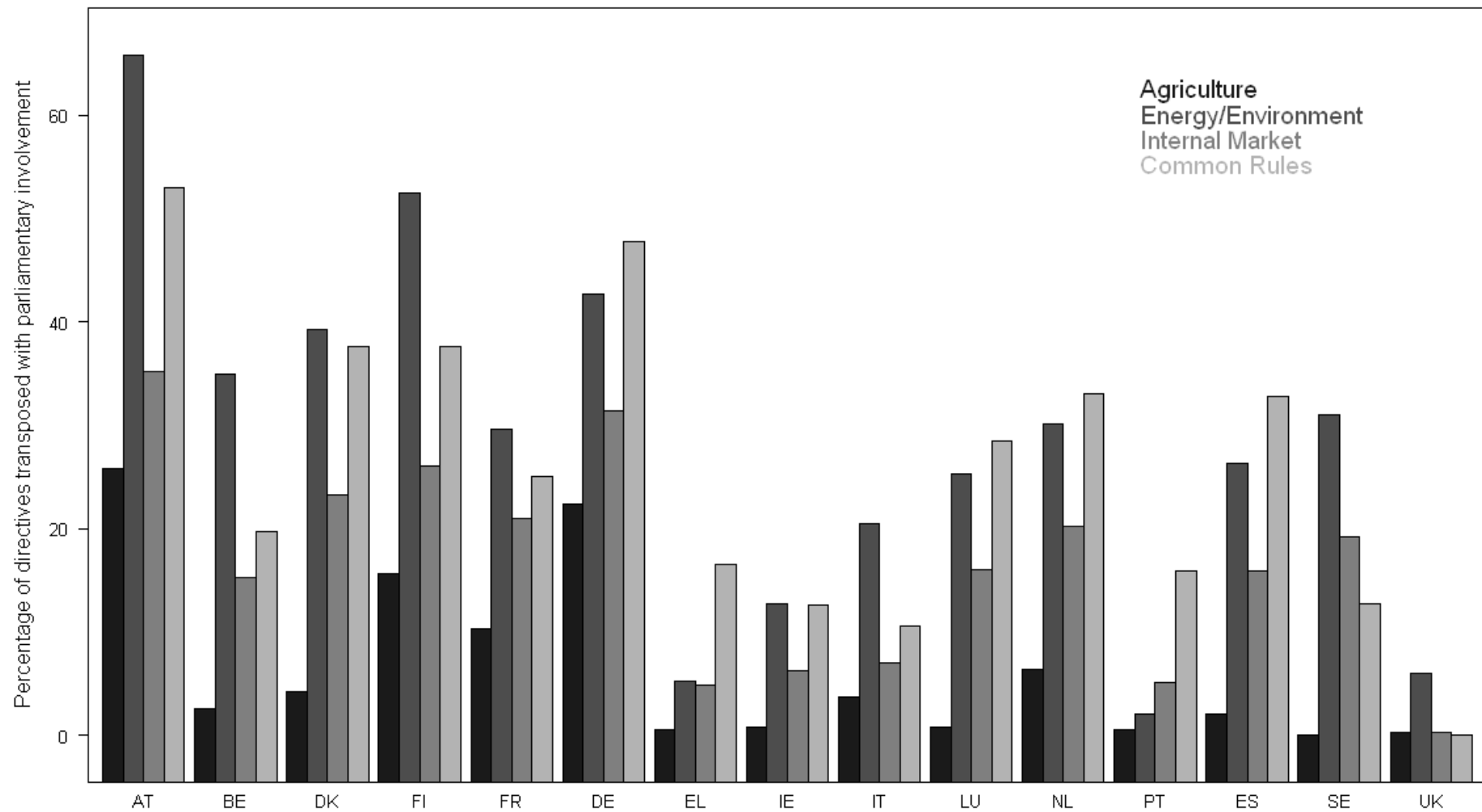


Table 3: Results

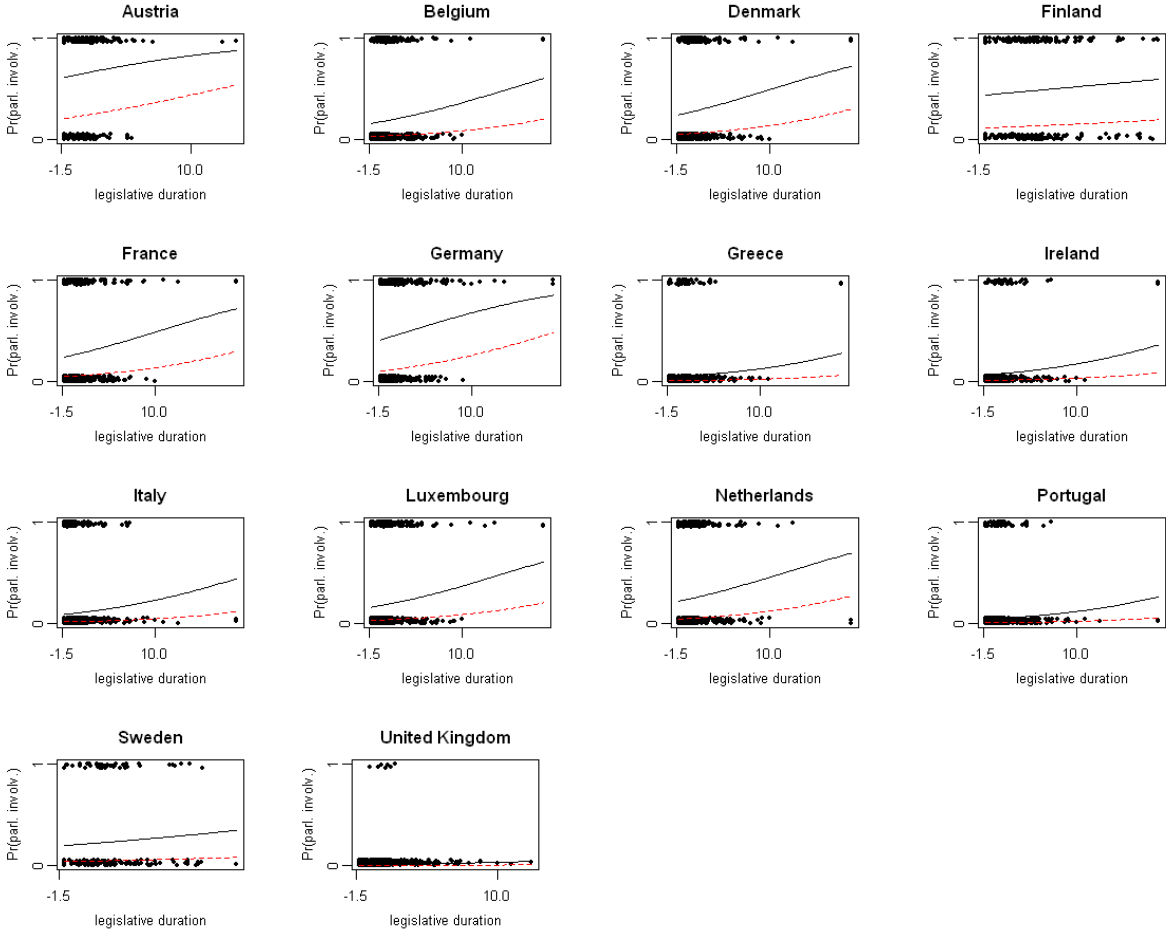
Explanatory variables	Logistic Regression with dummy variable		Empty Model with nested random effects*		Multilevel Model with nested random effects*		Empty Model with non-nested random effects*		Multilevel Model with non-nested random effects*	
	Estimate	Pr(> z)	Estimate	Pr(> z)	Estimate	Pr(> z)	Estimate	Pr(> z)	Estimate	Pr(> z)
Constant	-19,933	0,000	-2,002	0,000	-2,690	0,000	1,880	0,000	-2,522	0,000
H1: Information										
Duration (years)	0,097	0,000			0,100	0,000			0,098	0,000
Type of directive	-1,792	0,000			-1,802	0,000			-1,792	0,000
H2: Risk of drift										
Single party majority government	-0,372	0,014			-0,459	0,003			-0,440	0,003
Distance (Minister - Government)	-0,054	0,144			-0,035	0,390			-0,050	0,177
Autonomy	4,991	0,000			0,470	0,006			0,448	0,008
H3: Uncertainty										
Number of policy topics	-0,134	0,008			-0,135	0,008			-0,133	0,008
Amending legislation	-0,540	0,000			-0,546	0,000			-0,539	0,000
Control										
Timespan (years)	0,212	0,000			0,222	0,000			0,212	0,000
Time periode dummy (SEA)	0,161	0,012			0,158	0,014			0,159	0,013
Fixed effects (dummy variables)										
Policy area	Yes									
Country	Yes									
Random effects (variance components)										
Policy area nested in country			1,330		0,820					
Policy area							0,578		0,364	
Country			0,963		0,687		1,131		0,872	
Goodness of fit										
N	13779		13779		13779		13779		13779	
R2	0,27		0,26		0,42		0,25		0,41	
AIC	8081		9428		8120		9431		8148	
BIC			9451		8210		9454		8239	
Deviance	8029		9422		8096		9425		8124	
Likelihood ratio test					1326	0,000			1301	0,000

*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.

Table 4: Odds-ratios

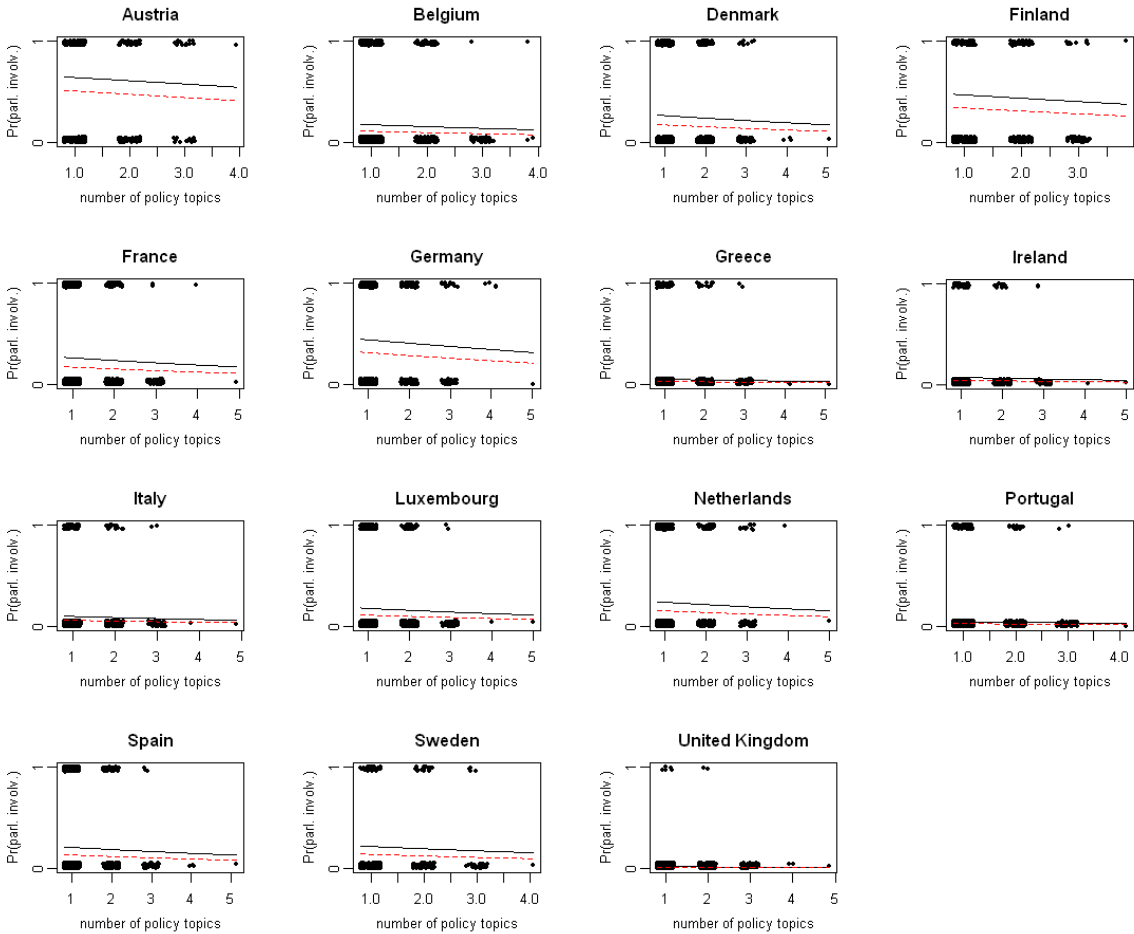
	Logistic Regression with dummy variable				Multilevel Model with nested random effects				Multilevel Model with non-nested random effects			
	Estimate	Odds-ratio	95% Lower limit	95% Upper limit	Estimate	Odds-ratio	95% Lower limit	95% Upper limit	Estimate	Odds-ratio	95% Lower limit	95% Upper limit
H1: Information												
Duration (years)	0,097	1,102	1,072	1,134	0,100	1,105	1,074	1,136	0,098	1,102	1,072	1,134
Type of directive	-1,792	0,167	0,137	0,203	-1,802	0,165	0,135	0,201	-1,792	0,167	0,137	0,203
H2: Risk of drift												
Single party majority government	-0,372	0,689	0,512	0,928	-0,459	0,632	0,467	0,855		1,000	1,000	1,000
Distance (Minister - Government)	-0,054	0,948	1,164	1,311	-0,035	0,966	1,176	1,325	-0,050	0,952	1,165	1,311
Autonomy	4,991	147,010	0,882	1,019	0,470	1,600	0,892	1,046	0,448	1,565	0,886	1,023
H3: Uncertainty												
Number of policy topics	-0,134	0,874	63,189	342,020	-0,135	0,874	1,141	2,244	-0,133	0,875	1,122	2,183
Amending legislation	-0,540	0,583	0,792	0,965	-0,546	0,579	0,792	0,965	-0,539	0,584	0,793	0,966
Control												
Timespan (years)	0,212	1,236	0,792	0,965	0,222	1,248	0,792	0,965	0,212	1,236	0,793	0,966
Time period dummy (SEA)	0,161	1,174	1,037	1,331	0,158	1,171	1,033	1,328	0,159	1,172	1,035	1,328

Figure 2: Estimated probability for parliamentary inclusion as a function of the informational level (EU legislative duration and type of directive)



Multilevel regression curves with non-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.

Figure 3: Estimated probability for parliamentary inclusion as a function of the directives' uncertainty (Number of policy topics included and amending legislation)



Multilevel regression curves with non-nested random effects for country and policy sector, displayed for all member states. Estimated probabilities for parliamentary inclusion as a function of the number of policy topics included (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 amending directives and the solid curves show the estimates for new directives.

Appendix A

Coding of Domestic and European Sector Specific Conflict as Based on Party Manifesto Data

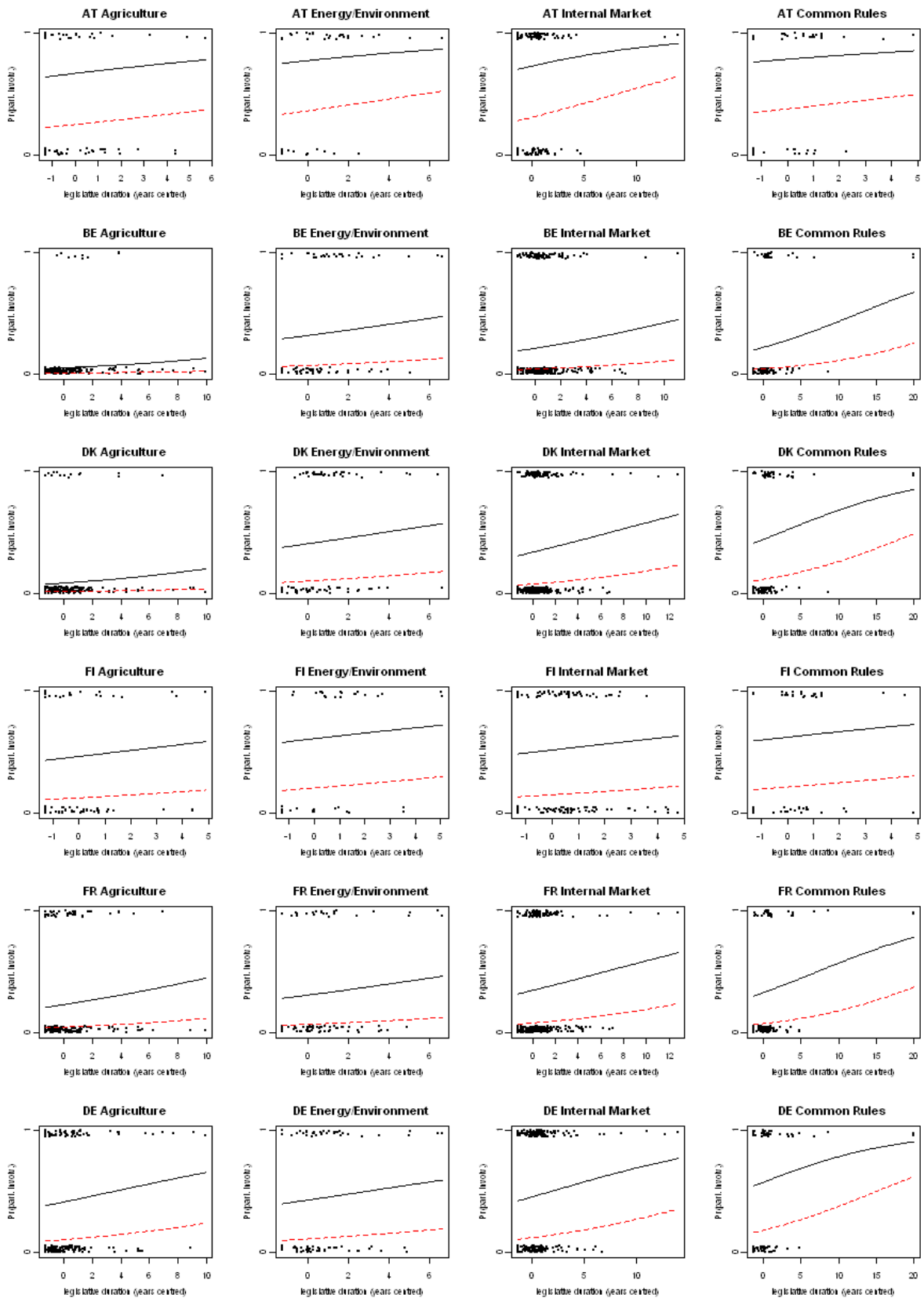
The data on party preferences stem from the Manifesto Research Group and are documented in Budge et al. (2001). We have grouped selected items into four major policy areas and calculate core estimates across these policy areas as described in König (2005). Because of different document lengths, the number 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.

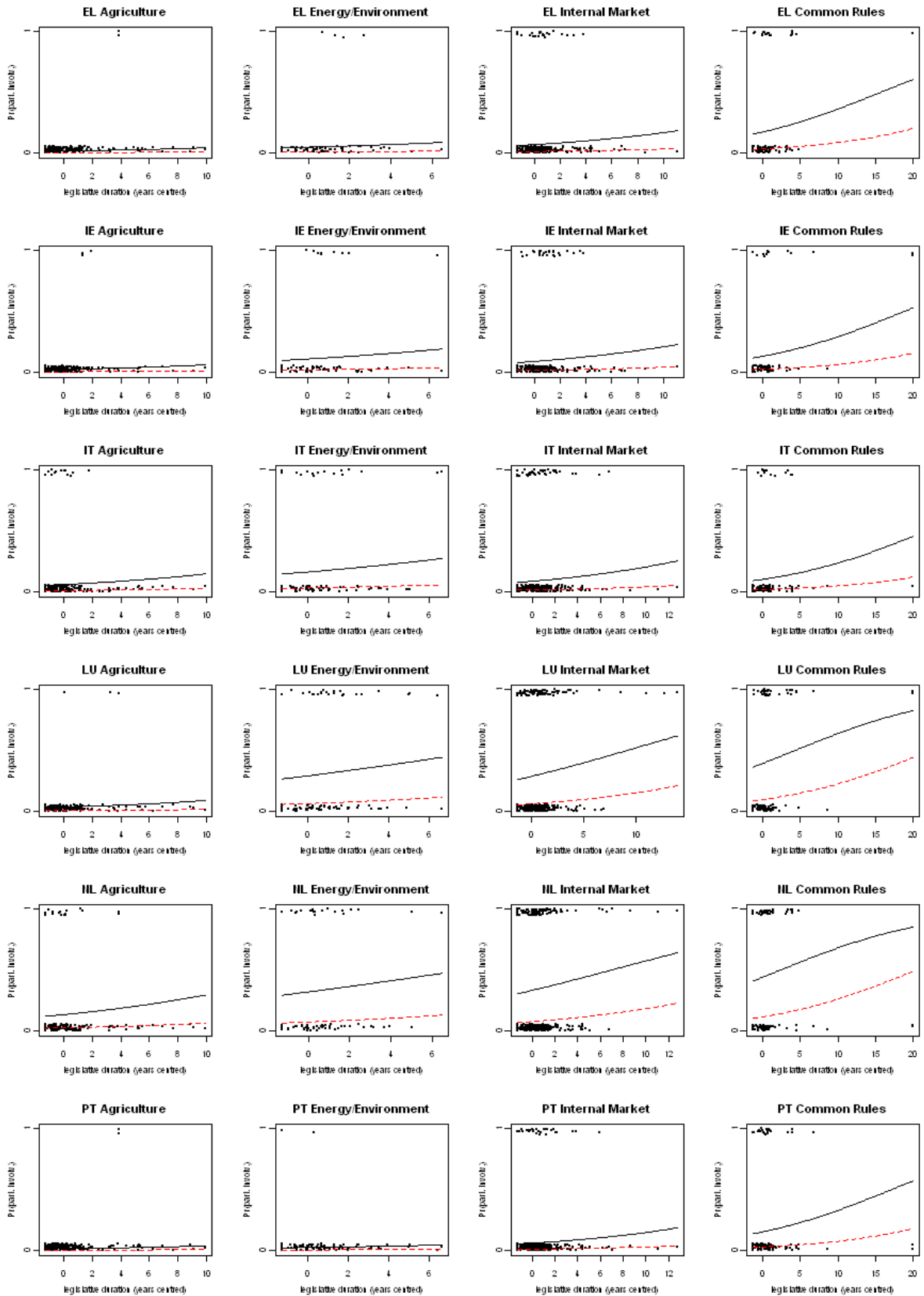
Policy Areas	Items	
Internal Market	Positive	<p>(201) Freedom and Human Rights: Favourable mentions of importance of personal freedom and civil rights; freedom from bureaucratic control; freedom of speech; freedom from coercion in the political and economic spheres; individualism in the manifesto country and in other countries.</p> <p>(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.</p> <p>(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.</p> <p>(402) Incentives: Need for wage and tax policies to induce enterprise; encouragement to start enterprises; need for financial and other incentives such as subsidies.</p> <p>(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.</p> <p>(404) Economic Planning: Favourable mentions of long-standing economic planning of a consultative or indicative nature, need for government to create such a plan.</p> <p>(407) Protectionism: Negative: Support for the concept of free trade; otherwise as 406, but negative.</p> <p>(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.</p> <p>(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.</p>

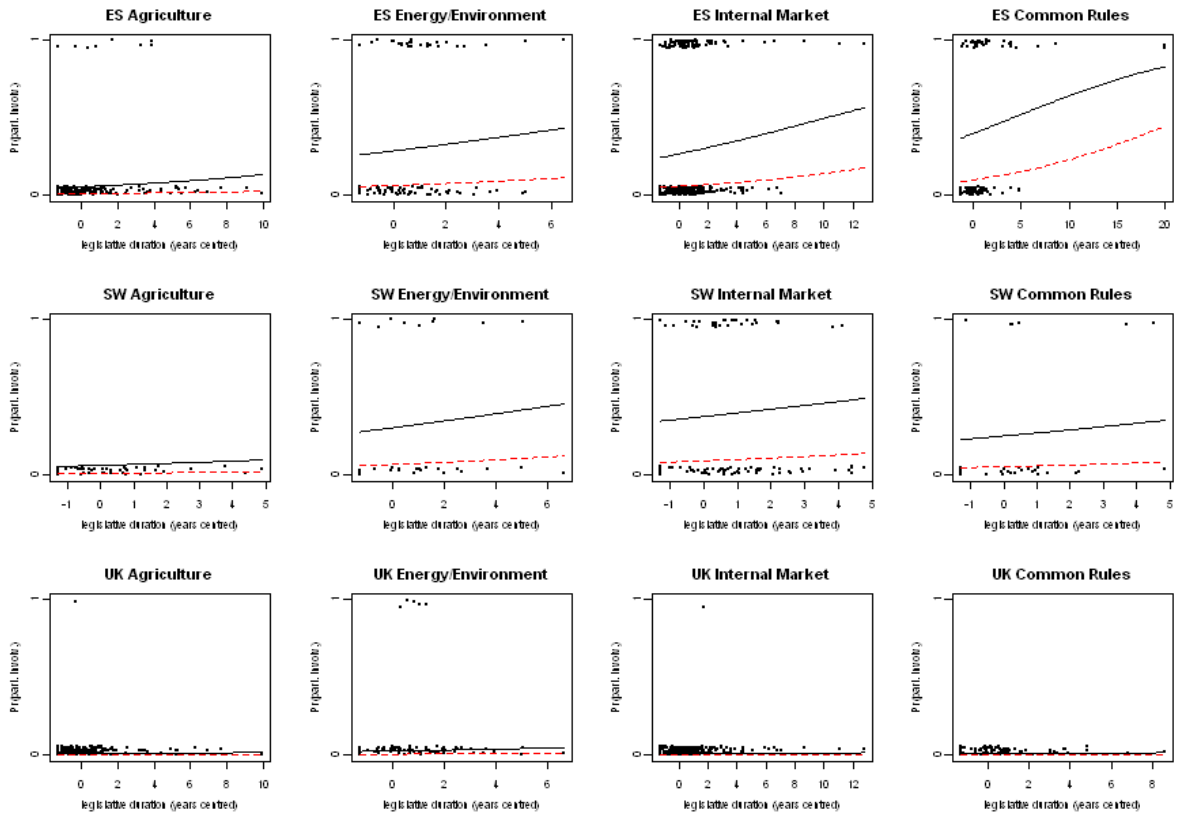
	Negative	<p>(406) Protectionism: Positive: Favourable mentions of extension or maintenance of tariffs to protect internal markets; other domestic economic protectionism such as quota restrictions.</p> <p>(413) Nationalization: Favourable mentions of government ownership, partial or complete, including government ownership of land.</p> <p>(416) Anti-Growth Economy: Favourable mentions of anti-growth politics and steady state economy; ecologism; "Green politics"; sustainable development.</p>
Energy/ Environment	Positive	<p>(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.</p> <p>(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.</p>
	Negative	<p>(505) Welfare State Limitation: Limiting expenditure on social services or social security; otherwise as 504 but negative.</p>
Common Rules	Positive	<p>(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.</p> <p>(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.</p> <p>(305) Political Authority: Favourable mentions to strong governments, including government stability.</p>
	Negative	<p>(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.</p> <p>(304) Political Corruption: Need to eliminate corruption, and associated abuse, in political and public life.</p>
Agricultural Politics	Positive	<p>(412) Controlled Economy: General need for direct government control of economy; control over prices, wages, rents, etc; state intervention into the economic system.</p> <p>(703) Agriculture and Farmers: Support for agriculture and farmers; any policy aimed specifically at benefiting these.</p>
	Negative	

Appendix B

Figure 4: Estimated probability for parliamentary inclusion as a function of the informational level (EU legislative duration and type of directive) over four policy areas

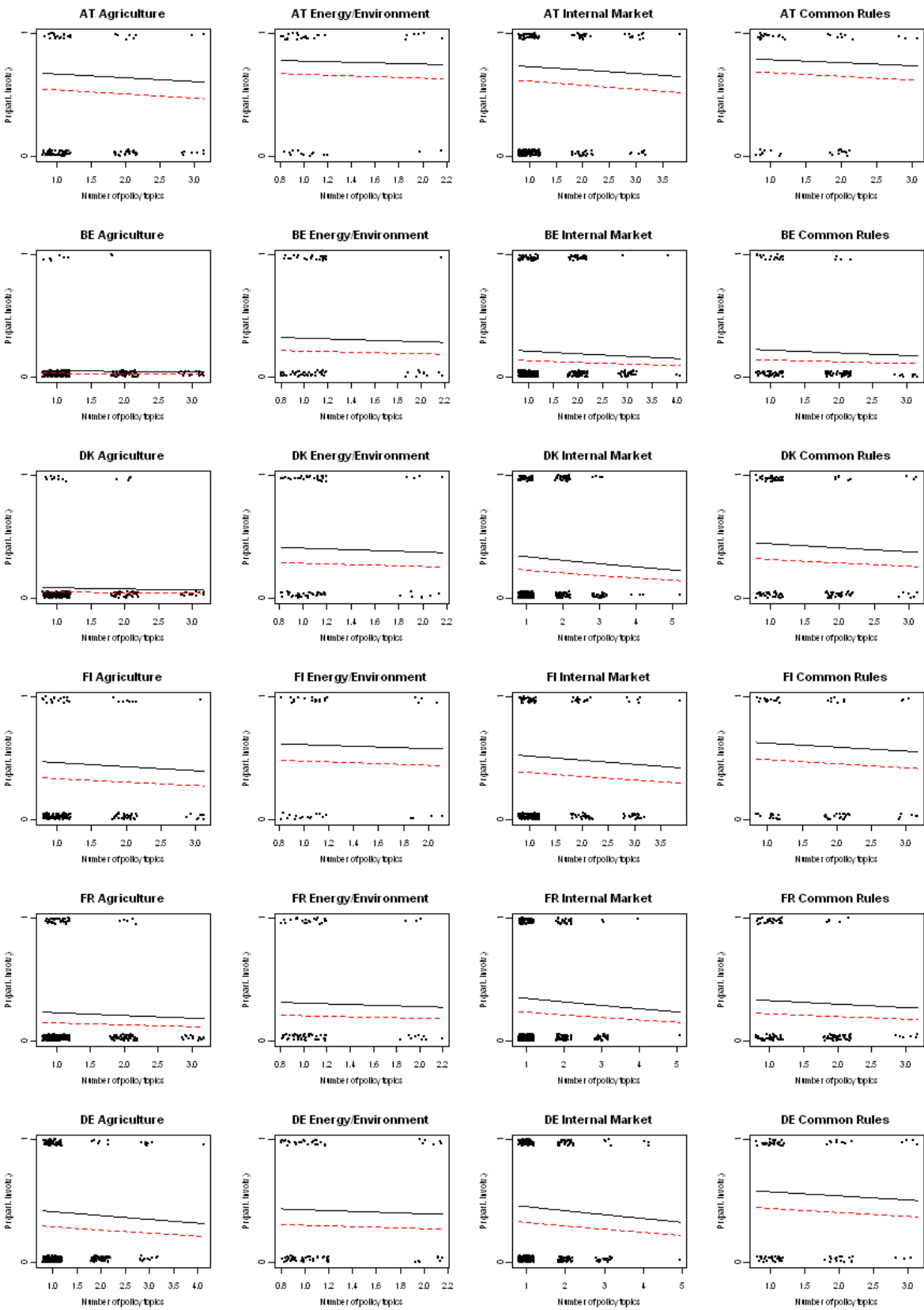


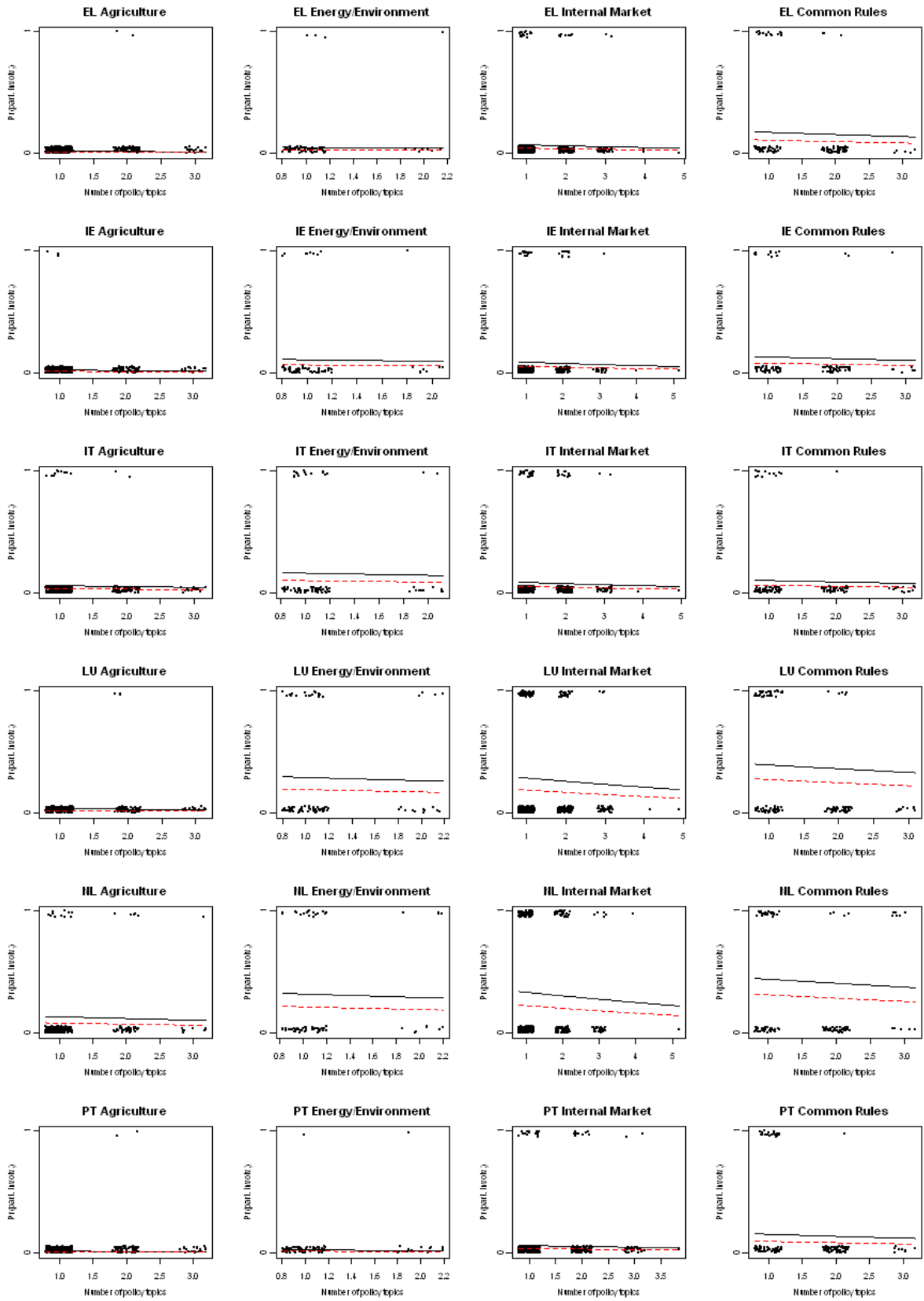


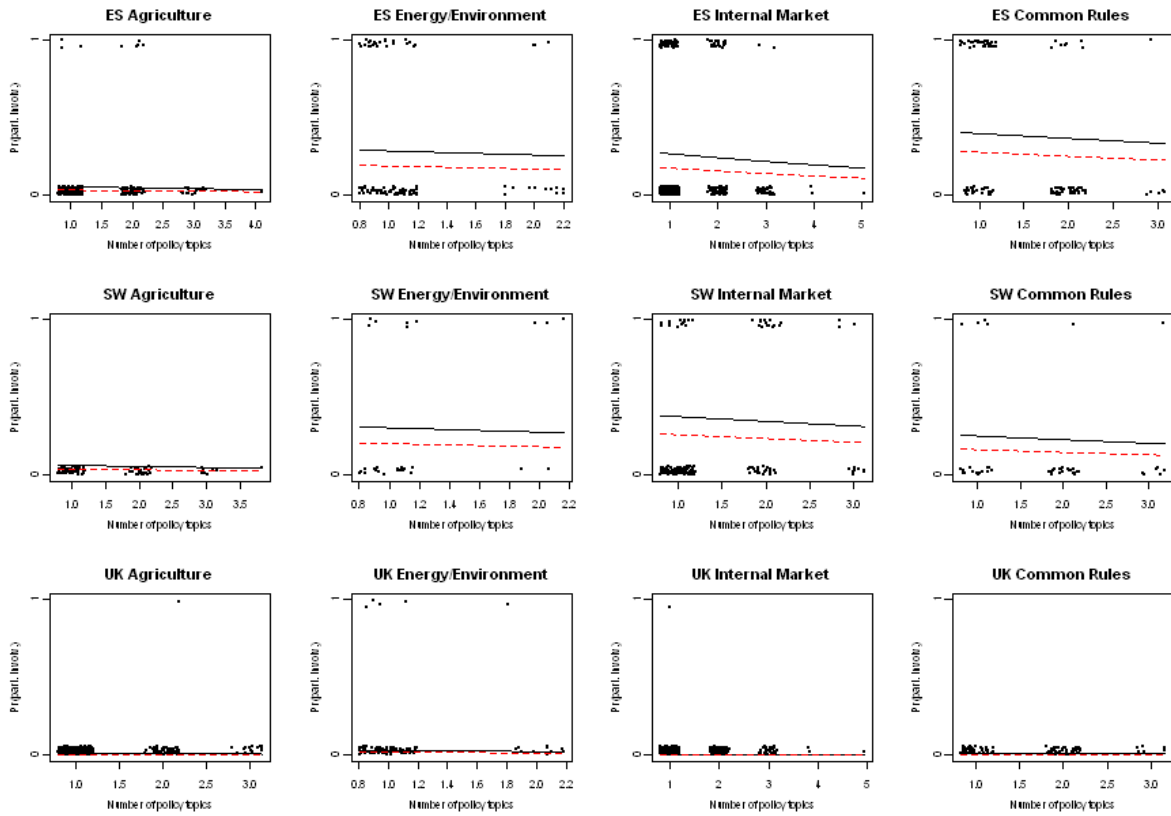


Multilevel regression curves with nested random effects for country and policy sector, displayed for all member states. Estimated probabilities for parliamentary inclusion as a function of the length of the European legislative process (all other independent variables are set to their mean). Dots show 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.

Figure 5: Estimated probability for parliamentary inclusion as a function of the uncertainty associated with each directive (Number of policy topics included per directive and amending legislation) over the four policy areas







Multilevel regression curves with nested random effects for country and policy sector, displayed for all member states and policy sectors. Estimated probabilities for parliamentary inclusion as a function of the uncertainty associated with each directive (number of policy topics included, all other independent variables are set equal to their mean). Dots show the data (y-jitter for visibility only), while the dashed curves show the estimates for amending directives and the solid curves show the estimates for new directives.