

Living in Parallel Universes?

The implementation of EU rules on movable cultural heritage in Bulgaria¹

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(Draft: 4 November 2009)

Abstract. This paper proposes an analytical model of implementation, which we use to examine the implementation of the European Union's policy on movable cultural heritage. In the first part we define a rational choice, game theoretical model that explains implementation as a three stage game with key roles for an enforcer, domestic policy makers and implementing actors. We apply this model to the case of transposition and implementation of the EU rules regarding movable cultural heritage in Bulgaria. We find different implementation outcomes stemming from one and the same formal policy. To explain the variation of implementation outcomes, we apply our model of domestic implementation and find that, given the high levels of polarization between political decision makers, the implementing actors have broad discretion to apply different informal policies. In depth analysis of implementation also suggests that under these conditions different implementing players have followed their normative orientations and applied completely different informal policies. Different implementing actors apply different policies and, thus, as it were, they live in parallel universes where different implementation practices exist.

¹ We would like to thank the experts and officials who generously provided us with insights and information to help us understand the complications of the policy on movable cultural heritage in Bulgaria. In the Netherlands, we would especially like to thank Maria van Heese, Renger Afman and Riemer Knoop. We also thank Dave Lowery and Dimiter Toshkov for their helpful comments and suggestions.

1. Introduction

Scholars of implementation have long known that changes in legislative rules do not necessarily lead to changed policies and practices on the ground. In the context of the European Union (EU), implementation of rules adopted at European level starts with the formal transposition of directives, but real implementation, defined as changed policies and changed practices on the ground, is a different story. Brunsson and Olsen's (1997) research on organizational reform has shown that organizations faced with external reform demands can create two parallel sets of structures of formal and informal rules. At a second stage of implementation of reform, organizations sometimes isolate the changed rules and keep them only for symbolic compliance with external requirements, while in practice continuing to operate according to different informal rules. In the European Union context, Lang's (2003) research of implementation of the EU's structural funds rules, which departs from Brunsson and Olsen's findings, finds several stages of implementation, which range from at first, isolating the changed rules, to, at a second stage, either merging of the parallel structures or reinforced isolation of the formal rules from the actual policy practice. These are main questions of the implementation literature, which have so far received less attention than transposition and should be examined at the next stages of implementation and Europeanization research. The theoretical puzzle defining the focus of this paper is the existence of different outcomes from the adoption of one and the same formal European policy – sometimes the adoption of formal policy leads to changes also in the informal policy which is applied in practice, whereas in other cases, changes in formal policy remain just 'law on the books' and different informal policy is applied. Due to various aspects of the post communist legacy, where the gap between formal and informal rules may have been particularly large, this puzzle is particularly interesting and relevant in the case of the new member states of the EU. Before we discuss further our case selection, we define key terms such as formal policy and informal policy.

If we broadly define a policy as a set of (formal and informal) rules and practices aiming to achieve a certain objective with regard to a particular issue or a sector, then the formal policy is defined by (primary

and secondary) legislation and is enforceable by third parties. The informal policy consists of the rules that are used in practice and the way actors actually apply them.² We define implementation of EU policies as a process with several stages, the first of which, in the case of directives, is transposition – the adoption of a directive in national legislation. We define implementation proper as a second stage whereby policies are adjusted (if necessary) so that the informal policy or practices fit the adopted formal policies. Implementation, in this definition, involves a set of activities by administrative actors to ensure application of the policies formally agreed to (see also Siedentopf and Ziller, 1988). Further enforcement in the form of sanctions is a possible third stage, which may or may not follow, depending on how well the states have complied with the new legislation.³

The situation of the new(er)⁴ EU member states from Central and Eastern Europe (CEE), however, presents a new version of the age old problem of the gap between formal policy and actual implementation. For European Union member states from Central and Eastern Europe the process of acceding to the Union was a vehicle for much needed reforms, ranging from consolidating their democratic polities to economic restructuring, and a broad set of new policies. The European Union, in its turn, had set the most stringent criteria for accession ever⁵ and in the process of accession negotiations developed an extensive system of accession conditionality and accession monitoring. Driven by conditionality, the candidates from CEE and Cyprus and Malta adopted the body of EU rules and regulations quite successfully, demonstrating, in some cases already before accession, a lower deficit of adoption of EU directives than many of the older member states. A major question, however, remains, namely ‘How are EU rules implemented in practice in the new member states’? This question follows

² In this paper, we use the terms informal policy and policy practice interchangeably.

³ We use a division similar to Versluis (2007: 59) in defining these stages, however that we take a slightly different interpretation of implementation by stressing the adjustment of informal rules in a policy area to fit the adopted formal rules. We use the term compliance synonymously with implementation.

⁴ As the 2004-2007 eastern enlargement of the EU is now in the past, member states from Central and Eastern Europe rightly object to the label, ‘new member states’ which is used here only for convenience.

⁵ The well known Copenhagen criteria, specifying demands for the existence of market economy, democracy and the rule of law and adoption of the EU acquis.

from the ongoing debates of researchers and practitioners on the ‘real’ extent to which new member states from Central and Eastern Europe have adapted their policies to comply fully with the *acquis communautaire*. Research into compliance by CEE member states is still limited to a few significant forays into the terra incognita of post communist politics and policy by a relatively small group of scholars (Toshkov, 2008, 2009; Falkner and Treib, 2008). Nevertheless, the actual state of implementation of EU policies by the new member states has been, for some time, the subject of intense interest by practitioners and commentators.

This paper aims to shed some light on the topic of implementation in CEE states by first, proposing a general model of implementation as an interplay of formal and informal policy rules and second, applying this model to the case of the transposition and implementation of a directive on the return of cultural goods⁶ and a regulation on the export of cultural goods⁷ in Bulgaria. We follow transposition and implementation⁸ in Bulgaria in the period 2005-2008, just before and after accession to the EU. We have selected to study implementation in Bulgaria as the country represents a crucial case, which offers, in methodological terms, a valuable test as it is expected to strongly confirm or disconfirm prior hypotheses (McKeown, 2004: 141). In our case, Bulgaria’s implementation can serve to confirm or disconfirm the hypothesis⁹ that high levels of formal compliance go hand in hand with actual disregard of

⁶ Directive 93/7/EEC of the Council of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (OJ No L 74 of 27.3.1993), modified by Directive No 96/100/EC of 17.2.1996 (OJ No L 60 of 1.3.1996) and by Directive No 2001/38 of 5.6.2001 (OJ No L 187 of 10.7.2001).

⁷ Regulation (EEC) No 3911/92 of the Council of 9 December 1992 on the export of cultural goods (OJ No L 395 of 31.12.1992), modified by Regulation (EC) No 2469/96 of 16 December 1996 (OJ No L 335 of 24.12.1996), by Regulation (EC) No 974/2001 of 14 May 2001 (OJ No L 137 of 19.5.2001), and by Regulation (EC) No 806/2003 of 14 April 2003 (OJ No L 122, 16.5.2003). Recently, this regulation and its amendments are codified by Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (OJ No L 39 of 10.2.2009). For its implementation, Commission Regulation No 752/93 of 9 December 1992 applies (OJ No L 77 of 31.3.1993), modified by Regulation (EC) No 1526/98 of 16 July 1998 (OJ No L 201 of 17.7.1998) and Regulation (EC) No 656/2004 of 7 April 2004 (OJ No L 104 of 8.4.2004).

⁸ EC regulations have vertical and horizontal direct effect, however, since Bulgaria was still a candidate member in 2004/5, the export of cultural goods regulation needed to be incorporated in Bulgarian law.

⁹ For a discussion of the possibility that new EU rules remain empty shells, see Dimitrova (2010).

implementation and enforcement in CEE states, resulting in a world of ‘dead letters’ (Falkner and Treib, 2008). Bulgaria is a crucial case as its short record as EU member state contains evidence of a high level of adoption of formal EU rules with bad application of EU rules in certain areas. On the one hand, in mid-2008, Bulgaria was declared by the EU Commission, based on Bulgarian notification data, to have zero transposition deficit, in other words to have transferred all of the EU’s existing directives into national law. On the other hand, only a few weeks later, the country received one of the most critical monitoring reports in EU history, in which the European Commission invoked clauses allowing a freezing or stopping of funding on a number of pre-accession and post accession financing programmes due to suspicions of corruption, fraud and illegal practices.¹⁰

The choice of movable cultural heritage policy has been guided by other considerations. We selected this policy area as it has relatively few legislative measures and thus allows us to eliminate the possibility that other factors, such as issue linkages with other policies would make it more difficult to apply our model. In the process of researching the case study, we have nevertheless found that, for domestic policy makers, movable cultural heritage policy and its implications are much broader than the European policy. Although we have become well aware of the complexity of this area, we have found that most other issues in the Bulgarian policy debate can be disregarded when studying the implementation of the EU instruments, while keeping the essential elements of the process in the picture.

The paper proceeds as follows. In the next part we present a rational choice spatial model of implementation explaining variation of informal policies with the choices of implementing actors. After presenting our theoretical model, in the second part of the paper we analyze the transposition and implementation of the return of cultural goods directive and cultural goods export regulation. For this in-

¹⁰ Serious problems with EU rules have been discovered in areas with distributive consequences, under the SAPARD and ISPA programmes and operational programmes on transport and regional development. An OLAF report from 2008 revealed cases of abuse of EU rules under SAPARD by a wide network of Bulgarian and other EU citizens, which led to the conviction of some of the persons involved by a German court. The Bulgarian members of the same group, which has been accused of abusing SAPARD funds are still under investigation but have not yet been convicted.

depth implementation case study we combine interviews with documentary evidence, legislative sources and media reports, and with testing out the informal rules ‘on the ground’. This ‘active’ form of participant observation adds a new dimension to process tracing in methodological terms as it allows us to compare interview and documentary data with the actual workings of the policy for those for whom it is intended. In the next section, we trace transposition and implementation and highlight different outcomes in policy implementation and show how the mechanisms suggested in the theoretical framework account for this outcome. We also draw some tentative conclusions as to the theoretical and practical implications of our analysis.

2. Implementation of European policy

The ever-growing body of literature on EU legislation and the member states is rich with a variety of explanations why a country may be delayed in transposing EU legislation. Implementation proper, however, has rarely been studied, mostly because it does not lend itself to large-scale comparative research. Ziller, co-author of one of the earliest studies of transposition and implementation in the EU (Siedentopf and Ziller, 1988), has rightly noted that recent research in compliance in the EU has been biased towards transposition research and little work has been done on actual implementation. Mastenbroek (2005) has provided a thoughtful overview of this literature, which confirms this assessment with exceptions being few and far between, such as the study by Versluis (2007). This paper aims to address this gap and has therefore focused on a single case, which is being explored in depth in the second part of the paper. Despite this narrow focus, we first aim to present a model and an explanation that are both theoretically driven and rooted in existing insights from transposition and implementation research. In the following paragraphs, we examine some of the most relevant studies and suggest how our proposed framework builds on their findings.

Implementation studies in a broader sense have tended to choose between two kinds of theoretical explanations, those rooted in political factors and those focusing on administrative issues and capacity. Tallberg’s (2002) much cited article on paths to compliance has defined this division of the compliance

literature and summarized the main elements of the two main approaches. He suggests that the international relations literature dealing with compliance by states is broadly divided between enforcement and compliance approaches. The variables central for the enforcement approach are described by Tallberg as incentives and sanctions, both determining whether states would shirk or comply with already signed international agreements (2002: 612). By contrast, the management approach suggests that states do wish to comply with agreements they have signed, but are hindered by rule ambiguity and capacity limitations (2002: 613). Capacity limitations, in the context of the EU, are defined by Tallberg as first, executive inability to adapt national law to EU directives [...] because of constitutionally determined characteristics of the process of legal implementation' and second, administrative capacity problems of staffing and coordination (2002: 630-631).

Making the connection with research into EU rule adoption by CEE states during the pre-accession period, we can immediately see that the 'enforcement' model is the closest relative of the 'external incentives model', which was quite successful in explaining compliance of CEE states with EU formal rules (Schimmelfennig and Sedelmeier, 2005). At the same time, a large chunk of the public administration literature which aimed to diagnose the deficiencies of the political and administrative systems of the post communist countries from Central and Eastern Europe focused, explicitly or implicitly, on capacity issues (see, for instance, Verheijen, 2000). It was, in fact, an approach adopted also by the European Commission, which focused on administrative capacity as one of the key areas to be improved if the candidates were to become well functioning members of the EU. Throughout the years of pre-accession preparation, this concern with administrative capacity was translated in institutional investment in developing systems for coordinating EU policy making within the CEE administrations (Dimitrova and Toshkov, 2007).

In a similar vein, a large scale analysis of pre-accession compliance of CEE states by Hille and Knill (2006) came to the conclusion that the quality of the administrations of CEE states was the main factor for their progress towards fulfilling pre-accession criteria. In-depth research of Poland's enlargement

preparations by Zubek (2005, 2008), on the other hand, stressed both institutional capacity and political coordination were crucial for good transposition.

Two important recent comparative studies of implementation in CEE also highlighted the interplay of administrative and political factors for successful transposition. The work by Toshkov (2008, 2009) combines large-scale transposition research with case studies looking into transposition in a number of the new member states. He showed the importance of both political factors and administrative capacity for the successful transposition of EU directives. The study of social policy directives by Falkner and Treib (2008) includes both transposition and implementation. Based on their findings in the social policy field, Falkner and Treib suggest that CEE states belong to a ‘world of dead letters’ characterized by a ‘pattern of politicized transposition and shortcomings in enforcement and application’ (2008: 308). Their findings (2008: 304-5) also underlined the importance of enforcement bodies and their administrative capacity.

That both administrative and political factors will matter for implementation is in itself an important, although not a surprising conclusion. But what kind of interplay and hierarchy can we expect between political and administrative actors in the process of implementing EU policies? After all, it is quite logical to expect that different actors would matter at the transposition and implementation stages of the overall process of implementation. The framework we propose below addresses this question.

3. The framework

Building on previous work (Dimitrova and Steunenberg 2000), we propose an actor oriented model, which starts from the choices of key players such as an enforcer and domestic veto players. We suggest the process of transposition and implementation is defined in turn, that is, in three different stages, by both political and administrative actors as well as by the highest level of the EU’s multi level system of governance – the European Commission.

In our model implementation can take different routes depending on the outcomes of transposition and how close or how far they are from the preferences of key political actors. If the European policy is far

away from domestic preferences of key actors, as we have predicted in the past, transposition would be swift (Dimitrova and Steunenberg, 2000). Our interest is, however, now focused on the informal policy that will emerge on the ground and the role of the implementing actors – administrative actors which shape the practices on the ground. These are mid-level state officials and civil servants who, similarly to veto players, are in an organizational position which makes them key figures for the implementation of a policy.¹¹ It is also important to note that as Dimitrova (2010) has argued, in the post communist context, some veto players may exist that may not have a formal position in the political system but play a role in decision making. We take such informal veto players into account.

Our proposed framework includes the Commission as an enforcer - an external agency with a certain capacity to impose the European policy on the domestic actors.¹² In enforcing a European policy, the external agency faces transaction costs. These costs are a function of possible ambiguities in the interpretation of European law, information asymmetries, or capacity limitations. As a consequence, the enforcer will not challenge every deviation from a European policy, but only those deviations that go beyond the limits set by these costs. We label the enforcer's costs induced upper (right-most) and lower (left-most) limits t_r and t_l respectively. These values define, as discussed in an earlier paper (Dimitrova and Steunenberg 2000: 216), a set of sustainable proposals, that is, policies that will not be challenged by the enforcer. Furthermore, we assume that the enforcer aims to 'protect' the European legislative status quo and therefore has an ideal position that equals the policy embedded in European law (which we denote as q).¹³

¹¹ We do not include in this analysis Lipsky's street level bureaucrats, although clearly they also have discretion in implementation.

¹² At the enforcement stage, the Commission may involve other actors such as the European Court of Justice, to achieve compliance. These interactions can be analyzed further (for instance, Steunenberg 2009), but since we focus here on the domestic implementation process, we disregard them.

¹³ Of course, this assumption can be relaxed, as Steunenberg (2009) has done in another paper leading to conjectures about how the enforcer re-interprets European policy. In this paper we do not want to focus too much on the enforcer, but to disentangle the domestic interactions leading to implementation.

Based on the enforcer's response the domestic policy makers decide on policy. As discussed above, we make a distinction between the legal or formal policy and the actually implemented or informal policy. This distinction is also relevant with regard to the role of the enforcer. The European Commission is often quite well informed about the legal transposition of a directive from the obligatory member state notifications of domestic legislative measures or expert reports. Much less is known about the actual implementation of policy. We assume in this paper that enforcer only notes the formal policy, which is set during transposition, but remains unaware of the informal, implementing policy.

The decision making process is modeled as a game with three stages. In the first stage, domestic policymakers decide on a legal or formal policy, which transposes a European directive into the national legal order (transposition stage). In making this decision, each player needs to approve the policy. This is represented by the veto power of each of the participants. Furthermore, the behavior of the domestic policy makers is 'nested' in a broader, European compliance game.¹⁴ The overseeing role of the enforcing player is taken as a constraint on the domestic players' behavior limiting their possibilities to set a formal policy, which is noted by the enforcer.

In the second stage, an implementing player ('implementor') decides how the formal policy will be implemented (implementation stage). This player (for example, a high administrative official) is not necessarily among the group of relevant domestic players in the first stage. Since the implementing player may have rather different views on policy, he/she may change the policy during implementation. This difference between the legal or formal policy and the implemented or informal policy is known in the literature as 'bureaucratic drift'. Furthermore, since the actual implementation is not within the sight of the enforcer, the implementing actors are less concerning with and often less aware of European enforcement.

In the last stage, the domestic policymakers review the implemented policy and decide whether to reverse it (evaluation stage). This could be done by issuing more specific domestic legislation, replacing

¹⁴ See on 'nested' games, for instance, Tsebelis (1990).

the leadership of the implementing organization, or changing the institutional arrangement under which the implementing organization makes its decisions (for instance, by incorporating an overseeing board with stakeholders).

Each player in the game—a policymaker or an implementing authority—has a most preferred position on policy, which is called an ideal point. These ideal points are labeled V_i for the domestic policy makers and I for the implementing player. The left-most and right-most veto players will be labeled as l and r , respectively. Moreover, a player's preference for an alternative policy depends on the distance from their ideal point. The farther away an alternative policy is from a player's ideal point, the less preferred this policy. Finally, we model the policy area as a one-dimensional outcome space, representing its key feature of sectoral/issue orientation. Based on their preferences, each player holds a point of indifference to the status quo, which will be denoted as $q(i)$ for player i .

We assume that in the second stage, the implementing player can apply an informal policy that differs from the formal one. While the domestic policy makers need to take account of the enforcer's wishes, the implementing player only needs to avoid reversal by the domestic players. A consequence of these different constraints is that domestic policy makers may have to select a less preferred formal policy, due to EU enforcement, but may not mind if the implementing player uses his/her discretion to bring into practice a slightly different informal policy. In addition, the implementing player has broad discretion when the domestic players cannot agree on changing the implemented policy.

Figure 1 illustrates several situations in which the implementing player cannot be stopped by the domestic policy makers. The formal policy, denoted as p_F , is in this figure set equal to the European policy, q , due to strict European enforcement. Furthermore, the European policy as well as the formal policy may be located outside (in case of a non-centric formal policy) or inside (in case of a centric formal policy) the domestic players' unanimity set. The main difference between these configurations is that in case of a centric policy the implementing player is not able to formulate a better informal policy to the domestic players. For a non-centric policy this option exists if the informal policy p_I is located in

interval 3 (see Figure 1-a). The policy, therefore, will not be reversed. A second possibility is that domestic players are in deadlock and cannot unanimously decide on a different policy than the informal one. This occurs when the informal policy is found in the policy makers' blocking set, that is, in interval 2. Finally, and only if the implementing player opts for a rather extreme implementing policy, that is, one in the intervals 1a or 1b, an informal policy will be reversed.

[Figure 1 about here]

Discretion of the implementing player is equal to the points in the interval 2 and, if available, interval 3. Starting from a non-centric formal policy and moving this policy closer to the domestic veto players limits the implementing player's discretion by reducing the number of instances in which the informal policy beats the formal one. This feature of our model, which suggests that administrative actors have more discretion if political players have found themselves far away from the European policy, corresponds with findings from studies on political systems in deadlock.¹⁵

4. Hypotheses

The domestic implementation model has several equilibriums depending on the preferences of the players. The outcomes based on these equilibriums are summarized in Table 1, while the formal details are included in Appendix 1. The preference configurations critical for different outcomes are the following:

1. *The preference of the domestic implementing player versus the preference of the enforcing player at the European level* (which is equal to the location of the European policy as specified by a directive):

As indicated in the first row of Table 1, the implementing player's ideal position may coincide with the European policy, which is a rather specific case. More generally, the implementor's ideal position

¹⁵ For example, Crozier's (1964) 'administrative model of action' according to which when political change is blocked (as has been often in the case of France), the bureaucracy acquires a determining role in initiating and shaping policy decisions. Note that we do not extrapolate this 'stalemate society' thesis further, but stress the argument that political deadlock may create more administrative discretion (for more of this discussion, see Crozier, 1964; Fomerand, 1975; Kesselman, 1970).

can be found in or outside the enforcer's indifference set. Inside this set, the enforcer will not challenge such a policy and allows the domestic players to continue implementing it.

2. *The preference of the implementing player versus the domestic policy makers, which adopt the formal policy:* As indicated in the second row of Table 1, the location of the implementor versus the domestic policy makers matters. To summarize the preferences of the domestic policy makers we use the concept of the unanimity set, which are all points the domestic players cannot change by unanimity. The points that are elements of this set are located between the extreme members of these groups, that is, the left-most and right-most domestic veto players. If the implementor selects an informal policy within the unanimity set, the domestic policy makers are unable to change it.
3. *The location of the European policy versus the domestic policy makers:* These preferences are indicated in the lower part of the first column in Table 1. If the European policy is not in the domestic unanimity set, the domestic policy makers have an incentive to change the policy as specified in the directive towards their own preferences. In the transposition stage they will opt for a non-literal interpretation of the policy adding national priorities (Steunenberg 2007). In our domestic implementation game, the domestic policy makers will also take account of the implementation stage and set a policy that will limit the discretion to the implementing player as much as possible. If the European policy divides the domestic policy makers, which occurs when this policy is found in the domestic unanimity set, the domestic players opt for a literal transposition of the directive, which translates into a formal policy that equals the European one (i.e. the status quo in our game). In that case, and depending on its preferences, the implementor may shift the informal policy away from the formal one depending on the constraints set by the critical domestic player. The latter is the domestic policy maker who will, against the wishes of the other domestic players, support the implementor's informal policy so that it cannot be reversed.

Based on these different preference configurations and the strategic interaction between the domestic policy makers and the implementing player, we identify four different main types of domestic responses.

These responses vary between full acceptance and the implementation of domestic priorities as part of an informal policy while symbolically adhering to a European formal policy.

[Table 1 about here]

Our first finding based on this framework, is that an undisputed and straightforward implementation of the European policy will only occur under rather strict and specific assumptions. Only when the implementor likes the European policy and this policy falls in the domestic unanimity set, it will be implemented. This result, which coincides with case 3 in Table 1, is expressed as our first hypothesis on implementation:

Hypothesis 1 (incidental compliance): There will be no implementation gap between the European and domestic policy, formally or informally, when the European policy coincides with the domestic implementor's preferences and is located in the domestic unanimity set.

This specific result also indicates that in most instances one cannot expect that the European policy will be implemented very precisely at the informal level. The corollary of this hypothesis is that if the implementor's ideal position is not equal to the European policy or the European policy is not in the domestic unanimity set, there will be an implementation gap between the European and the domestic policy. In other words, based on our model, differences between the policy-as-agreed and the policy-as-implemented are more likely than full compliance.

Differences between the European policy and the domestic one can have two possible causes: domestic adaptation or inertia. We turn to domestic adaptation first. When the European policy is not in the domestic unanimity set, the domestic players would be able to shift the European policy closer to their preferences. The scale of shift partly depends on the enforcer's indifference set, since the domestic policy makers do not want to be challenged by the Commission. Furthermore, the implementor mostly prefers the European policy (and thus has an ideal position outside the domestic unanimity set), so that this player hardly affects the domestic response. Our main result, which includes cases 1a, 1b and 1c, is:

Hypothesis 2 (domestic adaptation): Implementation will be based on a formal policy that equals the informal one, or at least as closely as possible, if the domestic policy makers are able to adjust the European policy to their preferences.

The response based on this hypothesis is the best possible one to the domestic policy makers and leads to a formal policy that equals the informal one. There are a few exceptions, which are described by the following two, additional hypotheses.

[Figure 2 about here]

The first minor deviation involves a favorable implementor who uses its discretion (case 1b). This situation occurs when this player is located in the unanimity set and closely to the decisive (right-most) veto player. See, for example, the implementor with an ideal point I in Figure 2, who is just to the left of the right-most domestic policy maker V_r . The European policy, q , is right of the right-most domestic player, while the European enforcer accepts domestic policies up to point t_e . In that case, the domestic policy makers adapt their response to the fact that they cannot prevent the implementor from selecting his/her most preferred policy. Since this policy is preferred to the European policy by all domestic policy makers and the implementor, the formal domestic policy is reversed to the informal one:

Hypothesis 2.1 (domestic adaptive reversal): The European policy will be reversed back to the domestic informal policy if all domestic players prefer it and European enforcement is weak.

[Figure 3 about here]

A second deviation occurs when the domestic policy makers are constrained by the enforcer (case 1c), while trying to shift the formal policy closer to the unanimity set. This situation is illustrated in Figure 3 in which the European enforcer only accepts domestic up to t_e , which is just to the left of q . The domestic policy makers with preferences between V_l and V_r prefer a much bigger change to the left, which is not feasible. Since the implementor's ideal position is closer to the domestic players than the European policy, they allow an informal policy that is more favorable than the formal one. Although the informal policy differs from the formal one, the underlying mechanism of this configuration is that domestic players' wish to adapt the domestic policy as closely as possible to domestic wishes.

Hypothesis 2.2 (domestic constrained adaptation): The European policy will be partially adjusted close to the domestic informal policy if all domestic players prefer it and under the pressure of European enforcement.

Finally, the outcome of the domestic implementation game can be affected by inertia, leading to a difference between the formal and informal domestic policy. This occurs when the domestic policy makers are divided (case 4). This can also occur when opposing demands in terms of acceptable policy exist between the European enforcer and the domestic implementor (case 2). In both instances, the domestic policy makers are unable to stop the implementation of an informal policy that deviates from the formally adopted one.

Hypothesis 3 (parallel policies): The formal domestic policy will differ from the informal one when domestic policy makers are constrained in adapting the formal policy to domestic needs, or when domestic policy makers disagree on the contents of the formal policy.

The main consequences of the configurations supporting Hypothesis 3 is, is that parallel realities develop in which the domestic policy makers may claim that the European policy is properly transposed and legally implemented, while the domestic implementor, following its own preferences, works on the basis of a different informal policy led by different ideas. These could be the domestic status quo ex ante, which was replaced by the European policy, or existing policy ideas from the policy sector, which were not incorporated in the European policy.

To establish how well this model can explain actual cases of implementation, in the second part of this paper, we will apply this model to an in-depth study of the transposition and implementation of EU rules regarding movable cultural heritage in Bulgaria. The following two sections provide an overview of transposition and implementation measures and the character of the resulting policy and an analysis of these empirical findings in the light of the model.

5. The case of movable cultural heritage in Bulgaria: multiple implementation practices

As mentioned above, the case of Bulgaria is critical for testing explanations of the relationship between formal and informal policy implementation due to the discrepancies between the country's excellent record in transposition and existing evidence of deviation in informal policy practices. In order to establish the formal rules and informal practices of implementation, this part of the paper provides an

overview of the transposition and implementation of the two EU measures and discusses the informal policy practice.

In the course of Bulgaria's negotiations for accession to the European Union and especially the Customs Union chapter, commitments needed to be made to adapt the existing law on cultural monuments to the EU acquis in the area of moveable cultural heritage. First, Bulgaria had to bring its policy in line with the Union's cultural goods export regulation¹⁶, which sets rules on the export of 'cultural goods'¹⁷ to countries outside the EU. According to the regulation, depending on the age and monetary value of a specific type of cultural good, export is only possible with a community license. An example of such a good is a painting of more than 50 years old with a value of more than 150.000 Euro. Second, and based on the return of cultural goods directive, member states need to guarantee the return of goods that may have been unlawfully taken from the territory of another member state. This policy concerns national treasures that fit within the categories defined in the preceding regulation.¹⁸ In order to implement this policy, Bulgaria had to determine which goods can be defined as national treasures and to register these so that in case of unlawful removal a request of return could be made. In both pieces of legislation, the European policy explicitly allows member states to make their own definition which objects constitute national treasures and, if they wish, to implement a more restrictive export regime also for categories that are not part of European law.

¹⁶ It is also worth noting that as part of the EU assistance in implementing the acquis in the area of movable cultural heritage, a Dutch Bulgarian project was set up to assist the ministry of culture and stimulate debate on the nature of the policy (*Strengthening the institutions and administrative capacity of the Bulgarian Ministry of Culture and Tourism for full application of the acquis communautaire related to cultural heritage*). This can be seen as an informal channel of Europeanisation that aimed to support lesson drawing from other EU member states and societal debate. The most important incentive for policy change, however, seems to have been, as always, EU conditionality.

¹⁷ In the context of Regulation 3911/92 the term 'cultural object' or 'good' refers to an object fitting to one of the categories listed in the Annex of this regulation.

¹⁸ Directive 93/7/EEC focuses on a more narrowly defined set of cultural goods, since it defines a 'cultural object' or 'good' as "...national treasures possessing artistic, historic or archaeological value and belongs to one of the categories listed in the Annex or does not belong to one of these categories but forms an integral part of ...public collections ...or the inventories of ecclesiastical institutions" (see Article 1).

Examining the implementation of EC law requires a quick look back at the policy status quo before Bulgaria started harmonizing its legislation with the Union as a result of the accession negotiations.¹⁹ The legislation which shaped the policy status quo dates back to the communist period. In the past, Bulgaria has had a rather restrictive regime requiring a license for the export of cultural goods. This situation did not change much when Bulgaria started accession negotiations. The initial adaptation of the old policy did not change the policy's restrictive character and was quite minimal and incremental.

The first legal changes necessary for the transposition of the directive and the implementation of the regulation were introduced with an amendment of the Law on Cultural Monuments and Musea from 1969²⁰ and two decrees. One decree specifies a procedure for valuation of declared cultural goods²¹, while the other specifies the procedures for the export and temporary export of cultural goods.²² This could be described as 'quick and dirty' transposition as the original law on Cultural Monuments and Musea dated from 1969 and reflected completely different societal relations and the notions of private property typical for the communist state. Even simply due to its age, the law was outdated and had already undergone a very high number of amendments, seventeen from the time of adoption till 2005 when an amendment was made with the aim to transpose the European directive.

Bulgaria was somewhat delayed in complying with the obligations to comply with EU legislation in the movable cultural heritage field undertaken in the Customs Union negotiation chapter. The Commission had already launched formal infringement proceedings against Bulgaria which were

¹⁹ For a timeline of events and most important legislation, please see Appendix 2.

²⁰ This law was initially passed in 1969 (State Gazette no 29, 11 April 1969). The Bulgarian translation uses the term 'cultural monuments', which seems to equal to 'national treasures' in the European terminology. In this paper we prefer the latter term as it is used in the EU documents.

²¹ Decree No. 1 of 28 January 2005 on the procedure for the evaluation of declared cultural goods owned by legal entities and individuals issued by the Ministry of Culture, published in the State Gazette no 13 of 8 February 2005, amended, State Gazette, no 33, of 15 April 2005 (Original title: "Naredba no 1 ot 28 january 2005 za reda za izvorshvane na ocenka na deklarirani dvizhimi pametnici na kulturata, sobstvenost na juridicheski I fizicheski lica").

²² Decree on the export and temporary export of cultural goods issued by the Ministry of Culture, published in the State Gazette, no 96, of 24 October 2004, amended State Gazette no 51, 21 June 2005 (Original title: "Naredba za iznos I vremenen iznos na dvizhimi pametnici na kulturata").

discontinued when an amendment in 2005 was passed.²³ The motivation attached to the 2005 amendment mentions specifically the necessity to comply with the export regulation 3911/92 (Motives, 2005). The motivation of the amendment stated that the implementation of the regulation was in accordance with the obligations undertaken by the Bulgarian government in the EU accession negotiations under negotiation Chapter 25, Customs Union. One of the main tasks of the amendment was to introduce the categories of cultural goods requiring a community *license* as prescribed by the export regulation. The categories of goods as well as their value thresholds for this permission regime were defined in an annex of this law. For other cultural goods that were not defined as national treasures and did not fall under one of these categories, the law allowed export but only with a *certificate* issued by the Director of the National Centre for Museums, Galleries and Fine Arts. The 2005 amendment also proposed a single unified register of national treasures to facilitate their return to Bulgaria if they have been unlawfully exported to another EU member state.

As for the character of the policy under the amended legislation, it still put an emphasis on identifying one kind of cultural good, ‘national treasures’. More specifically, ‘national treasures’ were defined in Bulgarian law as goods of “... scientific and /or cultural value” that have “public importance”.²⁴ Based on our interviews, we have the impression that this definition provides little guidance to the implementors of Bulgaria’s movable cultural heritage policy, leading to various interpretations. A rather dominant view which still exists among the expert community, for example, would identify any object part of an existing museum collection as a ‘national treasure’ resulting in a situation where thousands of objects fall under a very restrictive export regime. Moreover, this view seems to inform the assessments of privately owned objects. Goods which are defined and registered as ‘national treasures’ cannot be permanently exported.

²³ The third Commission report (2009: 4) on the application of Directive 93/7/EEC notes that Malta, Poland, Slovakia and Bulgaria were late with transposing the directive before the deadline set in their accession negotiations and therefore infringement proceedings were launched.

²⁴ See Article 3 of the Law on Cultural Monuments and Museums.

The specific position of Bulgaria as a country that was not yet member of the EU but was preparing for accession was reflected in the introduction of a pre-accession transitional period. The Decree no 1 and the annex to the amended 1969 law divided the period between 2005, the time of amendment adoption and the expected date of full EU membership of Bulgaria, 2007, into three stages: in 2005, in 2006 and after Bulgaria's accession to the EU, thus introducing a form of transitional arrangement. The three stages allowed the export of cultural goods with different, progressively rising values: The values of objects permitted for export were, for example: paintings and drawings could be exported if their value is less than 100,000 BGL²⁵ in 2005, in 2006 they could be exported if they were valued lower than 200,000 BGL and after full membership this threshold was raised to 300,000 BGL.

This transitional arrangement was meant to achieve full compliance with the values specified in the cultural goods export regulation by the time of accession. Thus, after 2007 the values of cultural goods subject to export restrictions would become considerably higher than previously defined. It must be noted that already in 2005, the implementation of these provisions could have been foreseen as problematic, due to the underdeveloped market in Bulgaria for cultural goods and the very restrictive provisions of the original 1969 law. The decree and the amendment of the law, however, can be said to formally transpose the EU measures in the area of movable cultural heritage in a reasonably correct way. Following this legal change, however, the discussion of the amendment of this old legislation triggered, only a few months later, a second stage of bargaining between relevant actors as a result of which, some years later, in 2009, a completely new law has been adopted.

The analysis of the implementing measures so far shows that the Bulgarian government and the Minister of Culture had taken sufficient measures to live up to the obligations under negotiation chapter 25, Customs Union and introduce the provisions regulating the export and temporary export of cultural

²⁵ BGL is Bulgarian Leva. At the time of writing, 1 euro equals approximately 1,95 BGL. The annex of the Regulation defines this value as 150,000 euro, thus the amounts are roughly the same in the Decree and the European regulation.

goods. The next question, however, is whether the actual policies on the ground were affected by the formal change of legislation.

The main implementing bodies were committees of experts appointed by the general Museums Directorate. A specific expert evaluation committee is appointed by the director of a national or regional museum. Several different expert committees may be appointed depending on the type of artifacts citizens formally need to register and may want to export – e.g. paintings, archaeological artifacts, ethnographical artifacts and others. These committees have the task to register and assess the quality of objects, even if these objects are later rejected as ‘cultural’ goods. Based on a legally defined form, their conclusion is limited to four categories: an object can be (1) a national treasure, (2) a cultural good belonging to one of the categories defined by the export regulation, (3) a cultural good that does not belong to these categories, or (4) has no qualities of a cultural good. Based on the committee’s assessment, objects classified as national treasures should be included in a nation-wide register.²⁶ The classification affects the possibilities for export. Objects in categories (4) and (3) can be exported, although goods of category (3) require an export certificate.²⁷ Goods in category (2) are subject to permission and require a community license, while national treasures (1) may only be temporarily exported.

When the implementation of the policy was tested by the researchers in January 2008, a year after Bulgaria’s accession to the European Union, it was discovered that one of the main expert committees attached to the National Gallery of Fine Arts was proceeding with its work in the exact same way as they did before the 2005 amendment. The previously existing informal policy, reinforcing and complementing the provisions of the law of 1969, guided the expert committee(s) to value paintings according to their author, using an extensive list of major artists in Bulgaria for the last couple of centuries. All works of

²⁶ It is not clear to us whether, at the time of writing, such a register has been created.

²⁷ The Decree on the export and temporary export of cultural goods links the export of goods to their registration, since it requires the expert evaluation as part of the registration procedure as one of the documents for the application of an export license or certificate.

these authors were automatically considered as national treasures and thus their export was not allowed.²⁸ Works of other authors that were not on this list were evaluated as having ‘no qualities as a cultural good’ and could be exported. This policy empowered the museum expert evaluation committee to determine whether or not an object could be seen as belonging to the national cultural heritage and whether it was, in the meaning of the 1969 law, of legitimate public interest. Furthermore, this informal policy, which was, before 2005, complementing the previous formal policy enshrined in the 1969 legislation, bore all the marks of a political system in which private property in general and property and trade in cultural goods in particular, could not officially exist.

It is clear that up to 2005 when the 1969 law was amended to take into account European policy, there could not be much of an open market in cultural artifacts in and outside Bulgaria due to this law and the informal policy attached to it. At the same time, numerous media articles testify to the fact that in the late 1990s a thriving black market trading in ancient (for example Roman, Greek, Thracian) artifacts developed which was meant mostly for export of such goods from Bulgaria to collectors abroad. This was a situation typical of the transition period when old legislation was not enforced due by the weak post communist state. It also illustrated the fact that the restrictive law and policy were no barrier for illegal exports and a variety of informal practices which contravened official policy.

The implementation of the European directive and regulation was thus made more difficult in practice, due to the fact that the official market was quite underdeveloped. Market values would depend on the internal trade of only a few auction houses and galleries and would not be obvious to the experts. Thus, when confronted with the specific threshold amounts determining whether a community license or a certificate is required, the implementing actors such as the above mentioned committee of experts were at a loss. For example, in the category of 19-20 century paintings, the market value, in 2005-2007 of very few, if any works of art would exceed the amounts specified the export regulation. Therefore, a more

²⁸ According to one interviewed expert, this so-called restrictive list system was a product of the power relations between communist officials and artists under the previous regime, the latter acting as patrons for the former and allowing them to sell or export their work only under very restrictive conditions.

differentiated approach in which only some outstanding work of a given author would be classified as ‘national heritage’ while other, less significant works would be labeled as cultural goods might have resulted in an easy export of the latter based on a certificate that has to be granted by the minister based on the opinion of the evaluating committee.

The expert committee under the National Gallery for Fine Arts, however, did not make any references to the threshold amounts specified in the new legislation. The committee restricted itself to deciding on the one question, namely whether an object would be considered a ‘national treasure’ or whether it had no qualities as a cultural good at all (categories 1 and 4). Another expert committee convened under the same legislation, by the same Museum directorate, dealing with ethnographic objects and artifacts, followed a similar path of limiting its evaluation on whether or not an object is a cultural good. If so, the object would be labeled as a ‘national treasure’. The main difference with the previous committee on fine arts was that the committee did not use a well-specified ‘list’ that would classify some categories of objects automatically as ‘not exportable’. In that respect, the informal policy that was more in line with the new formal policy. Still, the idea that cultural goods exist which are not national treasures, seems to be highly problematic in the Bulgaria context. As a consequence, the protection provided by the European policy may not yet be fully effective, since the inability to discriminate between important and unimportant national cultural objects slows down their registration and thus their possible return in case of unlawful export.

The story of transposition and implementation of these two, rather small EU measures could have ended here, but in fact, the changes of legislation were considered insufficient by Bulgarian political elites. There were elements in the amended law which opened up broad political and societal debate and triggered a new, extensive round of law amendment and law making about the exact shape of the movable cultural heritage policy.²⁹ Clearly, the amending legislation of 2005 touched upon several areas of very high political salience for Bulgaria and possibly for most post communist states: the acquisition and

²⁹ For some of these discussions, see the contributions to Afman and Knoop (2008).

ownership of cultural artifacts, the definition of national cultural heritage, and the definition of private property. In the period 2005-2008, a vigorous debate followed and there was not one, but several attempts to adopt brand new legislation in this area which would also affect the policies covered in the EU legislation. In 2008 the government presented a new draft in parliament, which it was forced to withdraw after a few months.³⁰ Immediately after being passed the law was challenged in front of the Constitutional Court by the Ombudsman, who claimed that several articles and key concepts were potentially incompatible with the Constitutional guarantee of private property. Thus the process of adapting to EU policies, although formally completed, provided an opening for a new round of bargaining on a completely new draft law on cultural heritage.

After prolonged and polarized debates in the National Assembly and in especially in the Standing Committee for Culture that prepared the drafts, finally a new law was adopted in March 2009 and came into force in April 2009.³¹ The new law includes stricter registration requirements and the need to demonstrate proof of legal ownership of objects. Moreover, for national treasures/specific cultural goods the law introduces the concept of 'holder' that replaces private ownership.

Interviews with experts after the publication of the law, revealed, however, that it was considered impossible to apply and unworkable for stake holders.³² All societal actors were affected by this uncertainty and the market was blocked. Auction houses stopped their auctions in fear of confiscation of paintings under the unclear and restrictive provisions of the new law.³³ According to an interviewed

³⁰ The government press release suggested the draft was withdrawn for further work and elaboration in view of problems with cultural objects which had been exported unlawfully but were not included in the law's definitions (www.today.bg, consulted at 30 June 2008).

³¹ Law on the Cultural Heritage, adopted on 26 February 2009, State Gazette no 19 of 13 March 2009, in force 10 April 2009, with the exception of Art 114, para 2 and art 126, which come into force from April 2010.

³² Among the cited problems were the very short period (3 months) in which everyone who possessed any cultural goods/ objects would need to register them with the musea, the very broad definition of such goods and objects that would include everything from a carved wooden spoon to ancient Greek coins or prehistoric finds.

³³ For example, the Victoria Auction House, which organized regular auctions of 19-20th century art, cancelled its planned auctions as soon as the law was in force.

museum expert, the musea had no capacity to register and evaluate all cultural goods that would potentially be subject to registration according to the new law of 2009.³⁴ Thus, from the perspective of this paper, the new formal policy was put in place in 2009, but the informal policy was in complete deadlock. In this period, some museum committees, such as the fine arts one mentioned above, continued to act according to the old informal rules and apply restrictive regime for exports based on the same practices and formal policy of 1969. Other committees tried to apply the new law, but they suffered from a complete lack of clarity in its application and the delay in the issuing of secondary legislation such as decrees to flesh out the new provisions. Practically all stakeholders were highly dissatisfied. Thus it was no surprise that after the change of government in Bulgaria following the July 2009 elections³⁵, in August 2009, a working group of experts was convened to start working on changes in the newly adopted law.

6. Implementation in the light of the model

Explaining our case in terms of the model developed in this paper we need to establish the preference configuration and the location of the status quo. This includes the preferences of the domestic policy makers versus the European cultural policy and the implementing player.

Preferences of the domestic policy makers. Discussions on Bulgaria's movable cultural heritage policy started during the accession negotiations period. Before 2005, the domestic policy makers had not formally transposed/implemented the EU policy as evidenced by the Commission's infringement proceedings letter. With the 2005 amendment of the law, the Bulgarian legal framework was sufficiently adapted to the European rules, so that the Commission stopped its proceedings. Still, the new formal policy provoked tremendous reaction from political parties and key stakeholders such as collectors of

³⁴ Since each item needs to be described, it may take at least 10 minutes to evaluate one item and register it. A medium-size shop with 2,500 items requires then about 52 working days, or one expert working for 10 weeks. In addition, the shopkeeper needs to pay a fee of 3 BGL per item adding to a total of BGL 7,500 (or about 3,850 euro).

³⁵ The July 2009 elections led to the fall of the triple coalition led by the Bulgarian Socialists that had passed the 2005 and 2009 laws. The elections were won by the GERB formation (Citizens for European development of Bulgaria), a new political party defining itself as center right, which formed a minority government with the support of small parties on the right.

antiques, as well as from the media, NGOs and the broad public. The statements made in these discussions, as recorded in the minutes of parliamentary debates, interviews in the media and our interviews, provide evidence of the preferences of key actors. The preferences, based on our analysis, are summarized in Table 2.

[Table 2 about here]

As this table shows, domestic players have rather different views on what Bulgarian national policy on movable cultural heritage should be. Some have a more liberal view aiming to stop illegal market in cultural goods by facilitating registration of cultural objects and accepting already existing collections, while others follow a more restrictive route which requires registration based on official document provided by the state of all cultural objects and counting a wide range of objects as ‘national treasures’. As a consequence, the domestic unanimity set is quite broad, especially if we take into account that NGOs linked to state actors can act as informal veto players (Dimitrova, 2010). The experts cited here as the ones whose views have been included in the deliberations of the Standing Committee on Culture or public consultations on the 2005 and 2009 laws. The most active and visible NGOs most likely represent the so called ‘big collectors’³⁶ linked with the Socialists or are new oligarchs. Several NGOs have been prominent in public debate and even developed their own website dedicated to lobbying against restrictive legislation.³⁷

Not only is the *domestic unanimity set* very broad due to the huge polarization in the domestic players’ preferences, but it is also clear that key NGOs have played a role in making certain options impossible for policy makers. Moreover, this set includes the European policy, which coincides, to some extent, with a more selective view in which national treasures are well documented and protected by a system of export licenses and restitution.

³⁶ Including, for example, the former chief of Department Six of the former Political Police Service Dimiter Ivanov, now chairing Foundation ‘Arete Fol’ (media sources 3.2).

³⁷ Archea, at: <http://archaeology.zonebg.com/index.htm>.

Preferences of the implementor. The preferences of implementing actors have been established directly by us in the process of trying out the policy as participant observers. There have been ample statements from both committees as to what the right policy is according to them. They reflect some of the preferences and discourses of political actors but also expert opinions cited in the broader debate in the media which distinguishes one very powerful domestic discourse and a much less prominent, slightly more liberal one.

The one discourse, prominent in the statements of one of the committees, which we can label ‘the patriots’, asserted that the new law did not make sense as market values could not be established for such valuable works and that working according to the amounts specified in the EC Regulation would mean valuable works would be exported abroad, or ‘lost’. Works of authors on ‘the list’ are declared as ‘national treasures’ irrespectively of their quality.

That this view is the dominant view among the broader public becomes clear from a representative public opinion poll by *Alfa Research* taken in September and October 2009. To the question how movable monuments of culture should be kept, 54% of respondents answer, only in state museums. That owners may hold such goods but not sell them is the opinion of 11% of respondents. The option that anyone may own such movable artifacts is only supported by 3% while 32% have no opinion (B. Dimitrova, 2009).

The other group of implementors whom we can label ‘the new internationalists’ according to their dominant discourse, saw it as their task to subscribe to a new European policy which according to them was more adjusted to existing realities and fitted to a forward looking museum policy. They tried to implement the European regulation by classifying goods according to value and argued for a more modern approach harmonized with other EU states. This implementor, the committee under the auspices of the Ethnographic museum, has on the whole a more nuanced view and aims to implement the 2005 law and corresponding secondary legislation by evaluating the quality of each object. However, this committee does not work with other categories of cultural goods than ‘national

treasures' either. Clearly, these different implementing actors, each responsible for a specific subfield, have different preferences with regard to the formal national policy. Compared to the European policy, both committees seem to share the policy notion that all 'publicly interesting' artifacts are cultural goods and therefore should be regarded as 'national treasures'.

Predicted versus actual policy. Given the fact that the European policy is within the domestic unanimity set, our model predicts, first of all, that domestic policy makers adopt a formal domestic policy that reflects the European policy in a literal way. Due to the strong polarization of preferences, which especially concerns issues like how to define and detect national heritage in relation to property rights, the domestic players disagree on further elaborations of the European policy. As expected, the 2005 amendment of the Bulgarian law precisely incorporates the regime of the European export regulation, while setting up a register of national treasures. The informal policy, however, may be a rather different one depending on the implementing player's preferences. For both expert committees discussed in this paper, we expected a state of domestic inertia leading to parallel policies (hypothesis 3).

As we found in our research, the committee of the National Gallery of Fine Arts indeed informally has been applying the older policy and disregarding the formal policy. Thus our hypothesis is confirmed. Objects presented to this committee are evaluated either as 'national treasures' or not, without reference to the alternative categories for cultural goods offered by Bulgarian law in view of the European export regulation. Furthermore, by declaring the whole oeuvre of some authors to be 'national treasure', this informal policy, not only coincides with a previous communist tradition, but also resonates with one of the most powerful sentiments expressed in public discussions on cultural policy, the perceived need to keep cultural objects in Bulgaria and to keep them as much as possible in the hands of the state.

The other implementor, the committee under the auspices of the Ethnographic museum, took a rather different stance by making substantive assessments of objects in view of the 2005 law and corresponding secondary legislation. In addition, this committee has been asking the Ministry of Culture for instructions on the implementation of the formal policy as embedded in Bulgarian law, including the 2009

amendment. Still, this committee has been unable to apply a distinction between ‘national treasures’ and other cultural goods, including those defined by the European export regulation. Although having a different view than the expert committee on fine arts, the expert committee on ethnographic objects also applies an informal policy that deviates from the formal one, which is in line with our hypothesis.

Thus, the two European measures were respectively transposed and implemented formally, but at the level of informal policy there was variation. We found that two different, parallel sets of rules exist, which corroborate our expectations based on the model (see Table 1): when domestic policy makers are in deadlock, the implementing policy is mainly shaped by the implementing actors.

7. Conclusions: following the path of implementation

This paper developed a model explaining the various outcomes of the implementation of a formal EU policy and applied this model to the implementation of movable cultural heritage policy in Bulgaria. By applying a structured analytical approach to an in-depth case study of the way the new EU rules are translated into formal and informal policies in the area of movable cultural heritage, we have gained a better understanding of the relationship between formal compliance with EU rules and policies and practices on the ground.

The framework developed in this paper explains the differences between formal (adopted) and informal (implemented) national policy with the existence of different preferences between, on the one hand, European and national policy makers and on the other, national policymakers and the national implementing actors. Based on this framework, we also establish that national policymakers can informally allow a reversal of European policy to an earlier national policy if the EU policy is not located in the domestic unanimity set. Differences in views, information asymmetries and transactions costs shape the actual policy outcome.

Another contribution of the paper is that, based on our model, we can define a whole set of specific outcomes with regard to formal and informal domestic policies. One of these outcomes, domestic inertia, allows parallel informal and formal policies to co-exist.

Further, by means of an extensive, in depth case study with elements of participant observation, we were able to establish the formal and informal policies for one case of EU policy adaptation. We found that implementing actors exist in parallel policy universes and are able to apply different policies because of the divergence of the positions of domestic veto players that results in a very broad domestic unanimity set. In other words, domestic polarization on the issue of cultural heritage in Bulgaria has created broad bureaucratic discretion for informal policies to be applied. With a law that reflects a very broad set of political preferences, implementing actors have a free hand to follow their own preferences.

We note that the model does not explain (nor does it aim to do so) where the different implementors' positions come from. Our close empirical observation of this case, however, allows us to draw some conclusions which echo the insights of scholars who have noted that under conditions of uncertainty, players use ideas and norms as roadmaps to define their actions (Keohane and Goldstein, 1993). Members of both committees (our implementors) have expressed strong normative views on the formal legal arrangements. The patriots' discourse which we have commented upon earlier is highly dominant in Bulgarian media and policy circles. Many actors, from the broad public to the constitutional court have expressed their own notions what can be considered appropriate when it comes to cultural heritage. The EU regulations provided, in a sense, just an opening for this debate to unfold.

This brings us to our final insights from this implementation study. We have found that the kind of Europeanisation that follows transposition and implementation is not a simple process of adapting, or not to EU requirements. This second wave of Europeanisation is a mobilization of domestic actors that attempt to renegotiate policy and change the status quo – a conclusions that echoes the findings of the second wave of Europeanisation literature (for example, Héritier *et al*, 2001). In this respect, implementation and Europeanisation East are not much different from Europeanisation in the European Union before the last enlargement.

Appendix 1: The domestic implementation game

Notation and definitions

A policy is represented by a one dimensional outcome space R , $x, y \in R$. Let q be the European policy. Let e be the European enforcing player with an ideal position q . Enforcement involves fixed transactions costs of an amount σ . Define the enforcer's *costs induced indifference set* as $T = \{x | u_e(x) - u_e(q) \leq \sigma\}$, with lower and upper boundaries t_l and t_r .

Let i be a domestic policy maker that participates in the political process determining the domestic formal policy. The preferences of this player satisfy the single-crossing property and can be represented with an ideal position L_i , $i \in \{1, 2, \dots, n\}$; V_r and V_l are the ideal points of the right-most and left-most domestic players.

Define each player's *preference set* with regard to a point y as $P_i(y) = \{x | u_i(x) > u_i(y)\}$, so that the *domestic players win set* (set of jointly preferred policies) is $W(y) = \cap P_i(y)$. Let these players' *unanimity set* be $U = \{x | W(x) = \emptyset\}$; these players' *blocking set* for some policy y is $B(y) = \{x | W(y) = \emptyset\}$. When domestic players prefer a change away from y , only new stable legal policies exist in $W(y) \cap U$.

Domestic implementation game

The domestic implementation game has three stages: first, the domestic players decide on a formal policy; second, based on this policy, the implementing player selects an implementing policy; in the last stage, the domestic players review the implementor's policy and decide whether or not to reverse this policy. The decision to impose this policy on the implementor is represented with $c = \{\text{Yes, No}\}$. We assume, without any loss of generality, that $q \geq V_l$ (and, consequently, $p_F \geq V_l$). In addition, we represent the enforcer's behavior as a constraint on the domestic policy makers since we assume that the enforcer has no information on the preferences and choices made by the implementor.

The domestic players' decision to challenge the domestic players in the last stage is:

$$c^* = \begin{cases} \text{'No'} & \text{if } p_i \in W(p_F) \text{ or } W(p_F) = \emptyset, \text{ or} \\ \text{'Yes'} & \text{else (i.e. } i \notin W(p_F)). \end{cases}$$

When challenging the domestic players will impose p_F on the implementor. Knowing this response, the implementing player selects an informal, implementing policy that is domestically sustainable, which equals:

$$p_I^* = \begin{cases} \max(p_F, p_F(V_r)) & \text{if } I > \max(p_F, p_F(V_r)), \\ I & \text{if } p_F(V_l) \leq I \leq \max(p_F, p_F(V_r)), \text{ or} \\ p_F(V_l) & \text{if } I < p_F(V_l). \end{cases}$$

Knowing this, the domestic players select a formal policy that is also sustainable at the European level. This policy is:

$$p_F^{*=} \begin{cases} a & \text{if } q > V_r, \text{ or} \\ q & \text{if } q \leq V_r, \end{cases}$$

with:

$$a = \begin{cases} \max(V_r, t_i) & \text{if } I > V_r, \\ \max(I, q(V_r), t_i) & \text{if } V_l \leq I \leq V_r, \text{ or} \\ \max(V_l, t_i) & \text{if } I < V_l. \end{cases}$$

The results can be summarized with the cases mentioned in Table A-1.

Table A-1

Location of the European policy:	European equivalence ($q=I$)	Non-equivalence ($q \neq I$)			
Location of the enforcer's indifference set:		$I \in T^\dagger$		$I \notin T$	
The implementor's preferences:		outside domestic unanimity set $I > \max(V_r, t_i)$	inside domestic unanimity set $I < V_r$ $I > \max(t_i, q(V_r))$	outside domestic unanimity set $I > V_r$ $I < t_i$ $t_i > V_r$	inside domestic unanimity set $I < V_r$ $I < \max(t_i, q(V_r))$
European policy not in the domestic unanimity set ($q > V_r$)	1a <i>domestic adaptation</i> $p_F = p_I = \max(V_r, t_i)$	1b <i>domestic reversal</i> $p_F = p_I = I$	1c <i>constrained adaptation</i> $p_F = t_i$, $p_I = I$	2 <i>opposing demands</i> $p_F = \max(t_i, q(V_r))$, $p_I = I$ if $I \geq q(V_l)$, $p_I = q(V_l)$ if $I < q(V_l)$	
European policy in the domestic unanimity set ($q \leq V_r$)	3 <i>incidental compliance</i> $p_F = p_I = q = I$	4 <i>domestic inertia</i> $p_F = q$, $p_I = I$ if $q(V_l) \leq I \leq q(V_r)$, $p_I = q(V_l)$ if $I < q(V_l)$, or $p_I = q(V_r)$ if $I > q(V_r)$			

\dagger or, if possible, $I > t_r$

Appendix 2: Timeline of the changes in Bulgarian cultural heritage policy linked to the implementation and transposition of Directive 93/7/EEC of the Council of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State and Regulation (EEC) No 3911/92 of the Council of 9 December 1992 on the export of cultural goods (OJ No L 395 of 31.12.1992).

1969	Law on Cultural Monuments and Musea adopted
	Numerous amendments
2004	Decree of the Minister of Culture on the export and temporary export of cultural goods, State Gazette no 96, amended 2005, State Gazette no 52, June 2005
2005	Adoption of amendment of the Law on Cultural Monuments and Musea containing references to the EU legislation, 1 st measure for the transposition of Directive 93/7 EEC 'Decree no 1 of 28 January 2005 of the Minister of Culture on the procedure for the evaluation of declared cultural goods owned by legal entities or individuals'
2007	Debates in the Parliamentary Standing Committee on culture start on a draft law on Cultural heritage
2008	A new draft law on cultural monuments submitted to parliament and then withdrawn
2009	
February	Law on Cultural Heritage adopted, published State Gazette no. 19 of 13 March 2009.
April	Law on Cultural Heritage in force
July 29	Ombudsman submits Law for review to the Constitutional Court, asks about provisions of art 113, al. 1,2,3 and para 5, al 2 and 3 of the concluding provisions and their compatibility with the Constitution
August	A working group of experts is convened by the Ministry of Culture to discuss broad and substantial amendments to the new law.
August 30	Amendment to two specific provisions of the Law on Cultural heritage submitted to Parliament by two GERB members of Parliament (Pavel Dimitrov and Daniela Petrova).
September 29	The Constitutional Court decides: rejects the claim that the provisions of article 113 are incompatible with articles 17, al 1 and 3 of the Bulgarian Constitution and declares the provisions of para 5, al 2 and 3 of the transitional and concluding provisions to be indeed incompatible with the Constitution.

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Mr. Renger Afman, AO Consultants for Development, projectdirecteur Matraprogramma met Bulgarije, 24 June 2008

Mr. Riemer Knoop, Gordion Cultureel Advies, Netherlands 'Matra' Project, 24 June 2008.

Bulgarian Ministry of Culture Official, 10 July 2008 and 6 March 2009

Bulgarian Museum Expert, 19 August 2008, 11 August 2009, 23 October 2009

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Figure 1: Possibilities for informal policy choice

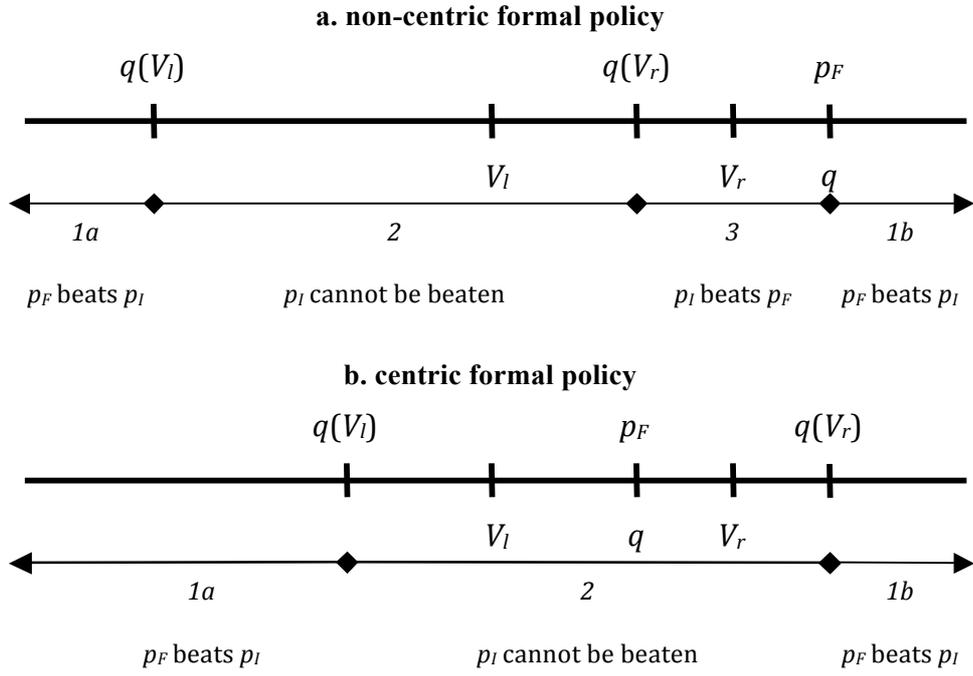


Figure 2: An example of domestic reversal

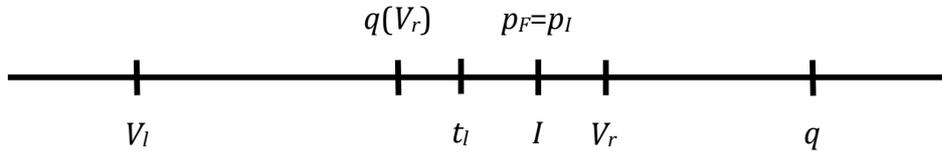


Figure 3: An example of constrained adaptation

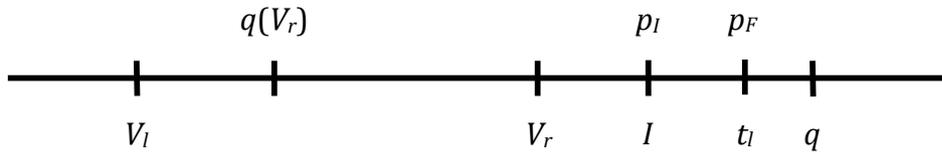


Table 1: Outcomes of the model

The implementor versus the enforcer:	Implementor's ideal point EQUALS European policy	Implementor's ideal point is IN the enforcer's indifference set		Implementor's ideal point is NOT in the enforcer's indifference set	
The implementor versus domestic policymakers:		outside domestic unanimity set	inside domestic unanimity set	outside domestic unanimity set	inside domestic unanimity set
European policy NOT in the domestic unanimity set	1a <i>domestic adaptation</i> $p_F = p_I$		1b <i>domestic reversal</i> $p_F = p_I$	1c <i>constrained adaptation</i> $p_F \neq p_I$	2 <i>opposing demands</i> $p_F \neq p_I$
European policy IN the domestic unanimity set	3 <i>incidental compliance</i> $p_F = p_I$	4 <i>domestic inertia</i> $p_F \neq p_I$			

Table 2: Preferences of key actors

Preferences of actors:	In favor of the old style restrictive policy, all cultural goods are national treasures	In favor of a new policy, transposing EU law, but also essentially restrictive	More liberal approach, supports market for cultural goods
Coalition parties in power 2005-2009: Socialists (KZB, Coalition for Bulgaria)	Yes, mostly, all movable and immovable goods are national treasures ³⁸ but some were in favor of new policy ³⁹		
NDSV (National Movement for Simeon II)		Yes, for a new law to respond to new realities and also EU requirements (sponsored the law); required official documents of ownership for all cultural goods ⁴⁰	
DPS (Movement for Rights and Freedoms)		Declared support for the 2005 law but split ⁴¹	
Parties in opposition: UDF (Union of Democratic Forces)		For new, but restrictive law ⁴²	
Main party in government from 2009: GERB			For a more liberal interpretation ⁴³
Other stakeholders: Experts	Divided: new legislation recommended, but some argue for more restrictive laws, others argue for a more liberal approach which aims to give some space for market and private initiative ⁴⁴		
Other stakeholders: NGOs linked to government (informal veto players)			Argued for open market, more liberal policy, against specific parts of the new law which restrict ownership without proof
Other stakeholders: The Orthodox Church			Argued for a less restrictive regime of registration of cultural objects and no official proof of origin

³⁸ Based on press statements of member of parliament Merdzhanov from the Socialist party in internet press sources 3.1.

³⁹ The socialists have been split as evidenced by the fact that many MPs refused to vote for the new law (see sources 3.2).

⁴⁰ Based on official statement of the NDSV political council reported in the press source 2.4.

⁴¹ Based on statement of Member of Parliament Chetin Kazak in the press, source 2.5.

⁴² Based on statements during the public consultations on the 2009 law, documented in internet and press sources 2.1.

⁴³ Based on press statements of the Minister of Culture Rashidov, media sources 2.2 and 3.1.

⁴⁴ According to statements in mediapool.bg by archaeologists working at musea from Sofia University (sources 2.3).