

National Parliaments and Transposition of EU Law: A Matter of Coalition Conflict?

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Pre-print version. Last revision: 15-01-2015

Abstract

This article analyzes to what extent the mechanism of the coalition conflict model of executive-legislative relations (Martin & Vanberg, 2004, 2005, 2011, 2014) can account for the extent and policy direction of parliamentary control over domestic transposition, focusing on EU migration law. Our empirical approach is based on an in-depth cross-country comparison of the transposition of the Returns Directive in Austria, Germany, France, and the Netherlands. We find that in all four countries the legislatures left their marks on the final laws, and the policy direction of amendments was largely in line with the predictions of the model. Yet, the policy adjustments were not always triggered by coalition partners correcting ministerial drift, but also by factions within the ministerial party, and opposition parties.

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Introduction

National parliaments in Europe have been profoundly affected by the European integration process (Auel & Benz, 2005; Maurer & Wessels, 2001). They were long considered the ‘losers’ of integration due to the transfer of legislative authority to the European Union (EU), and the dominance of executives over the legislative branch in supranational law-making. Yet, as highlighted by the reparliamentarization thesis (Goetz & Meyer-Sahling, 2008), national parliaments have various instruments to influence EU law-making. First, they can control EU decision-making *ex-ante*, by influencing national negotiation positions in the Council of Ministers (Karlás, 2011; Winzen, 2012) or using the Early Warning Mechanism for direct scrutiny of EU legislative proposals (De Ruiter, 2013). Alternatively, parliaments can shape final policy outcomes *ex-post*, during domestic transposition of supranational legislation.⁴

Surprisingly, the empirical knowledge of parliamentary involvement during transposition is still scant (but Sprungk, 2013). The literature on executive-legislative relations in Europe has primarily focused on national parliamentary involvement during policy formulation (Goetz & Meyer-Sahling; 2008, Raunio, 2009; Winzen, 2010) and, more recently, on the *direct ex-ante* scrutiny of proposals (De Ruiter, 2013). Whereas the scholarship on EU transposition (see Toshkov, 2011) has studied the impact of parliamentary involvement on domestic transposition outcomes, this has mostly been done indirectly by reference to factors like general institutional capacity or transposition instrument choice (e.g. Franchino & Høyland, 2009).

Two opposed expectations about the effects of parliamentary involvement during transposition can be derived from the literature. First, research on *ex-ante* scrutiny has shown that national parliaments hardly use their powers to control governments’ negotiation positions (Auel, 2006; Pollak & Slominski, 2003; Damgaard & Jensen, 2005). Auel (2007, 492) argues that coalition parties are reluctant to use their new powers because: ‘The result would be similar to a defeat of a governmental bill, namely a public and therefore humiliating opposition,’ which would lower their credibility and empower opposition parties.

Crucially, if this ‘office-seeking’ perspective (Strøm, 1990) of parliamentary behaviour were correct, we would not expect to see many *ex-post* influence attempts either. Yet, research on transposition has identified parliaments as a source of severe transposition

⁴ Admittedly, the latter can only be exercised with regard to *directives*, which demand transposition into national law.

problems (König & Luetgert, 2008; Mastenbroek, 2003; Steunenberg & Kaeding, 2009), partly due to parliamentary opposition (Falkner et al. 2004; Martinsen, 2007).

Parliamentary involvement during law-making more generally is commonly explained on the basis of policy-seeking motives (Strøm, 1990). Specifically, the well-established Martin-Vanberg model of executive-legislative relations explains parliamentary involvement with reference to the *level of coalition conflict* (Martin & Vanberg, 2004, 2005, 2011, 2014). Whereas evidence of such oversight by coalition partners has been provided for ex-ante scrutiny (Finke & Dannwolf, 2013; Holzacker, 2005), the relevance of this model for parliamentary involvement during transposition has not been studied.⁵

In this article we apply the Martin-Vanberg model to the context of parliamentary involvement during transposition. We test the implications of the adapted Martin-Vanberg model to study the extent and policy direction of parliamentary control over transposition. We do so using an in-depth comparative study of a controversial piece of EU immigration legislation, the 2008 Returns Directive. The countries we study include two coalition governments with a different degree of policy distance between coalition partners (Germany and Austria), one minority government (the Netherlands), and one single-party majority government (France), while keeping EU experience and similar procedural rules for making amendments.

Our findings are partially in line with the Martin-Vanberg model. As expected, when legislatures engage in EU transposition, they tend to pull the policy outcome towards the coalition median (as in Austria and Germany) or towards the median of the parties supporting the law (the Dutch minority government). The drafting minister can also anticipate the coalition partner's positions (as in the Netherlands). However, surprisingly, policy adjustment during parliamentary discussions can also originate from within the party of the responsible minister, as the German case demonstrates. We even observe policy adjustments in the French case, although the party of the responsible minister commanded a majority in the lower house. Overall, the extent and policy direction of substantive influence of parliamentary involvement does not seem to be linearly related to the extent of coalition conflict. At best, coalition conflict appears to be a *sufficient*, but not a *necessary* condition for parliamentary policy adjustment of salient draft transposition laws.

⁵Franchino & Høyland (2009) make the connection between coalition conflict and transposition but they investigate parliamentary involvement during, rather than control over, transposition (see also König & Luig 2013).

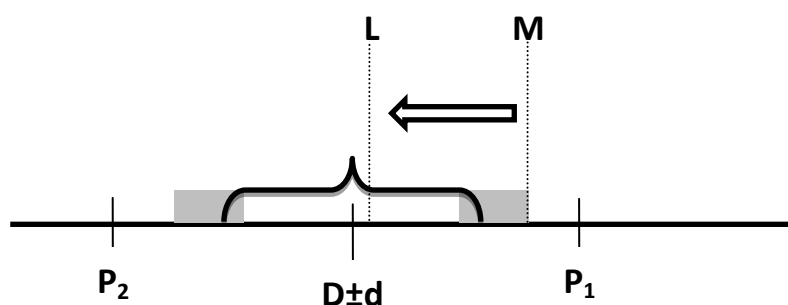
The role of national parliaments in transposition: theoretical expectations

In order to understand parliamentary control over transposition, we connect with a powerful analytic tradition that views parliamentary control as a solution to principal-agent problems (Martin, 2000; Strøm et al, 2003). The central assumption of this literature is that, given the need for specialization and practical constraints, legislatures delegate policy-making authority to ministers (Strøm et al., 2003). Ministers, if unchecked may propose policies that are closer to their own policy preferences than those of their coalition partners (Laver & Shepsle, 2008). Under this view, multiparty executives face greater delegation problems than single-party executives (Thies, 2000, 582; Saalfeld, 2000, 354), as ministers in a coalition government are likely to have divergent preferences (but see Müller, 2000, 320).

To correct possible ministerial drift, parliaments hold powers to monitor, review, scrutinize, amend, and overturn the actions of their agents. Martin & Vanberg, (2004, 17) argue that parliamentary scrutiny is primarily a device for monitoring intra-coalition bargains. They find that the scope of parliamentary scrutiny is linearly related to the scale of coalition conflict. Even if much of what is debated and finally agreed upon on in parliament may have been foreshadowed by other attempts of coalition partners to bring in their position, some coalition conflict is likely to remain in the parliamentary phase (Andeweg, 2000). For example intra-cabinet negotiation might reduce coalition conflict before a minister bill reaches parliament, but through differences in position at the parliamentary stage ministers and coalition partners can signal to the public their party's commitment to a particular policy. In this paper we bracket the potential of intra-cabinet co-ordination. We take the minister draft bill as a starting point for legislative scrutiny and trace how parties in parliament dealt with any remaining differences of opinion.

While the Martin-Vanberg model has been developed in the context of national parliamentary government, there are reasons to believe that it is also relevant for EU transposition. First, the *sectoral* nature of EU decision-making harbours the risk of 'ministerial drift' during transposition. Because ministers in the Council are only responsible for a specific sector, they are likely to be preference outliers vis-à-vis their national cabinet (Franchino & Rahming, 2003). Second, ministers possess informational advantages concerning EU legislation over other ministers and MPs. Because the small size of national Council delegations, national ministers often have private information about EU-level negotiations, which they can use strategically during transposition. Third, EU policy issues are seldom part of coalition agreements (Auel, 2007, 492).

Figure 1 Adapted Martin-Vanberg model: parliamentary involvement during transposition



It may be argued that transposition is more technical than national law-making, with less room for meaningful policy choices, reducing applicability of the model. Yet, many EU directives provide ample discretion to national implementers (Franchino, 2007). Thus, the logic of the MV model is likely to be observed for directives containing discretion, while being politically highly salient. Even if discretion is limited, transposition actors may forge discretion by reinterpreting EU requirements to enable their political preferences (Tholen & Mastenbroek, 2014).

We adapt the Martin-Vanberg model to the EU setting in the following way. First, an EU directive is adopted, which implies a particular (multi-dimensional) policy position **D** and an associated discretion interval around it ($\pm d$).⁶ Second, a national minister proposes a domestic transposition measure, **M**, which is (softly) constrained by the discretion allowed by the directive. Third, the ministerial draft is sent to the legislature where the party fractions can propose amendments. Lastly, the amended law **L** becomes the national policy if approved by a majority in the legislature.

If we assume political parties to be unitary and purely policy-motivated actors, in a single-party majority government the ministerial draft is expected to be approved without major substantive alteration, since the minister and the parliamentary majority share the same position. In a coalition government, however, the ministerial draft needs the approval of at least one more party. As shown in figure 1 below, the coalition parties hold ideal points in a one-dimensional policy space (**P₁** and **P₂**). If coalition member **P₂** chooses to look into the draft **M**, from the minister supported by parliamentary party group **P₁**, it can force amendments that bring it towards a coalition compromise position. If coalition Party 2 does not amend the proposal, **M** becomes the national policy. If it does, the final policy, **L** is located between the ideal points of the two parties. The exact location of the compromise

⁶ The boundaries of policy discretion may not be perfectly well-defined; due to different understandings of what constitutes acceptable interpretations (grey area around $\pm d$).

depends on assumptions about intra-coalition bargaining. The same logic applies to a minority government, with the difference that any party can play *ad hoc* the role of a coalition partner.⁷

The discussion above leads to the following expectations:

- 1) Parliamentary scrutiny of national transposition acts leads to more substantive amendments of the transposition bill under coalition and minority rather than under single-party majority governments.
- 2) The larger the coalition conflict (defined as the policy distance between the coalition partners on the relevant policy dimension and saliency devoted to the dimension by the coalition partner), the greater the substantive changes proposed.
- 3) If adopted, substantive parliamentary amendments serve to bring the policy closer towards the coalition compromise position.

Research design

Our empirical research is designed to *test* the implications of the Martin-Vanberg model, paying special attention to the causal mechanisms on which the model relies. We do so by a set of in-depth case studies, using *process-tracing* methods to uncover the underlying causal mechanisms linking coalition conflict to parliamentary control over transposition, as recommended by Pedersen & Beach (2013). The downside of this approach is that inferences based on a small sample might have lower external validity than large-n correlation studies. However, this small-n comparative approach has also its advantages over the large-n correlational studies used to test the MV model so far. Existing studies show strong correlations between coalition conflict and the number of proposed amendments. However, because Martin & Vanberg, (2014, 17) have not measured the policy content and substance of bills, they have not been able to ascertain to what extent parliamentary amendments pushed draft bills into the expected policy direction.

By contrast, our approach based on the in-depth studies of a small number of cases can shed light on the *process* of parliamentary involvement, and thus serves to uncover the mechanisms of parliamentary influence. To sum up, the aim of our study is not to provide a full-fledged explanatory analysis of general parliamentary control, but to test the mechanisms hypothesized by the most prominent model of legislative control.

We study transposition in four countries, using a most-similar system design. The four cases are similar with regard to a host of potentially important factors, while varying on the

⁷ This situation may also occur when a particular topic is not covered by a coalition agreement, in which case a floating coalition may be formed (Holzhacker, 2002).

type of government, and thus the potential for coalition conflict. During the period of analysis, Austria and Germany had coalitions with partners with varying degrees of policy distance and saliency devoted to the policy dimension, the Netherlands went through a period of minority government, and France was governed by a single-party majority. The potential for coalition conflict leading to actual scrutiny is further increased in the Netherlands, where parliament has higher policy-making control than in the other three countries (Sieberer, 2011, 747). Concurrently, the legislatures in the four countries have similar parliamentary procedural rules to propose changes to ministerial draft bills⁸, and experience with EU affairs. The four countries also have strong parliamentary committee systems (Mattson & Strøm, 1995) and similar systems of parliamentary government (semi-presidential France being an exception).

We analyze the transposition of the same directive in all four countries. Directive selection was grounded in an important scope condition for our theoretical argument, namely that the directive is salient enough as to attract the interest of parliamentarians (Sprungk, 2013; De Ruiter, 2013). Thus, we selected a controversial piece of legislation: Directive 2008/115/EC on Return of illegal third-country nationals. It belongs to the contested domain of EU migration policy where national parliamentary involvement is common (Franchino & Høyland, 2009). The directive provides considerable discretion so that transposition involves meaningful policy choices and ensures favourable conditions for observing the impact of coalition conflict on parliamentary involvement.

In order to test whether the observed processes among variables match those predicted by the MV model, we use *theory testing process-tracing* (Pedersen & Beach, 2013) or *process verification* (Mahoney & Goertz, 2005). We use mainly parliamentary documents such as legal drafts, committee and floor amendments and motions, protocols of parliamentary and committee debates, consultations and meetings with external stakeholders, and other documental sources⁹ to reconstruct the causal mechanism of parliamentary control in the four transposition processes with parliamentary involvement. This data is better-suited to obtain reliable and objective information than for example interview data, which often subjectively evaluate parliamentary and coalition influence. However, where necessary, our document data was complemented by e-mail correspondence with experts involved in the parliamentary discussions.

⁸No countries are completely alike concerning all details of the formal review procedures (Martin & Vanberg, 2005). In France, Germany and Austria a bill may be altered by a majority of committee members *before* it is sent to the floor. In the Netherlands, committee members can only offer amendments to bills in their deliberations, which are then subject to a majority vote of all legislators at the plenary stage.

⁹ A full list of documents is provided as an appendix to this paper. The codes ODAU#, ODGER#, ODNL#, and ODFR# refer to the particular official documents used, as listed in this appendix.

Table 1 Comparison of parliamentary involvement during transposition of the Returns Directive

		Germany	Austria	France	the Netherlands
Coalition conflict	Governing parties	CDU/CSU & FDP	SPÖ & ÖVP	UMP/Progr.	VVD&CDA (+PVV)
	Party of responsible minister	CSU	ÖVP	Progressive (supporting UMP)	CDA
	Coalition partner's policy position vis-à-vis minister	FDP more liberal	SPÖ more liberal	N.A.	VVD more, PVV extremely restrictive
	Policy salience for minister's party	High/medium	High/medium	High	High/Medium
	Policy salience for coalition partner	Low	High/medium	N.A.	High (esp. PVV)
Expectation 1	Nr. of subst. amendments proposed (adopted)	7(7)	19(19)	>100 (> 35)**	12(0)
Expectation 2	Source of changes	CDU/CSU	SPÖ	UMP & Socialists in Senate	Opposition (but not adopted) change triggered through minister
Expectation 3	Policy direction after parliamentary scrutiny	More liberal	More liberal	More liberal	More restrictive
Extent of parliamentary control	Extent of influence on policy substance	Medium	Medium	Medium	High

** Both chambers proposed many substantive amendments in different readings and the Joint Committee. The amendments partly amended other amendments or reversed former amendments, making the final number difficult to establish exactly.

The main explanatory variable of our study is '**coalition conflict**', conceptualized as the **policy distance** between the coalition parties on the relevant policy dimension weighted by **the salience** of the dimension for the parties. Policy distance between coalition parties was

measured using data from Benoit & Laver (2005) and the Manifesto Project party scores on the issue of migration. In order to check if ministers were outliers in their parties, media coverage and minister communications to the parliament were consulted. To measure low, medium and high policy salience of the migration dimension for the relevant parties we also relied on Benoit & Laver (2005), who scored the saliency of the migration dimension for all parties relevant for this study.

The outcome variable is **parliamentary control**, conceptualized as the substantive policy direction and policy-changing scope of the proposed and accepted parliamentary amendments. We tracked the mechanism of parliamentary control by first identifying **the policy position of the minister draft**. Secondly we identify the **substantive policy changing amendments** proposed in parliament (Expectation 1). Third, in order to trace if coalition partners were indeed the driving force behind policy changing amendments we identified the **source of the amendments** and the expressed support and opposition within the legislature (Expectation 2). Finally, we evaluated the **extent and policy direction of parliamentary control** through a content analysis of the accepted amendments and the changes between the original minister proposal and the final legal act (Expectation 3). Table 1 provides an overview of the specifics of each case.

Transposition of the Returns Directive

The Returns Directive (RD) was adopted on 16 December 2008. It introduced common rules concerning return, removal, detention and re-entry of illegal migrants in the EU (Baldaccini, 2010). Contentious points during the negotiation were the duration of deportation custody and legal aid for lodging appeals (Council Documents 8812/08, 9829/08, 6541/08, 7774/08). The directive leaves wide discretion to the member states, for example with regard to the scope of application (Art 2) and return decisions (Art 6).

Austria

In Austria, a grand coalition of ÖVP (Peoples Party) and SPÖ (Socialist Party) negotiated the RD. The same coalition, with clear majority in the Nationalrat and the Bundesrat, was in charge of transposition. Both parties are centrist mass parties that do not represent extreme poles of the Austrian migration policy dimension. However, ÖVP represents more migration critical views than SPÖ. The migration aspect is rather important to both parties.

Transposition was the responsibility of Minister Fekter (ÖVP) of the Ministry of Home Affairs. Fekter introduced her transposition draft on 23 February 2011 to the parliament. The plenary of the *Nationalrat* accepted the revised version of the draft on 29 April 2011 and the *Bundesrat* agreed upon the bill on 12 May 2011 (ODAU1). In July 2011 the bill entered after three months of parliamentary scrutiny into force. Transposition of the RD was only one aspect amongst others in this large reform package (ODAU2).

In terms of policy substance, scrutiny of the bill was effective. A content analysis of the ministerial draft reveals that, in line with the theoretical expectations and the ÖVP's ideological position, the proposal provided restrictive migration rules. Concerning the RD, the proposal maximized detention periods at ten months, a restrictive interpretation of Art 15.6 RD, which limits the maximum detention period to six months. The draft also held that, in case of an unlawful stay of a third-country national, the aliens' police issue a return decision accompanied by an entry ban for a minimum of 18 months and the bill did not grant exceptions for special groups as required by the RD. Additionally, rules for unaccompanied minors became more restrictive and detention of minors was no measure of last resort as demanded by EU law. Thus, the minister clearly used her autonomy to position the Austrian transposition draft close to her own party's position, by going beyond the directive's margins of discretion. Following the adapted MV model, one would expect that the more liberal coalition partner SPÖ, in response to this restrictive draft, would use legislative review to pull the draft closer to its ideal position. Indeed, this is what can be observed when examining the review phase.

In the *Nationalrat*, legal review was the province of the Home Affairs Committee. The committee organized an expert hearing on the draft proposal (ODAU3). However, the RD was not the most important aspect for parliamentary scrutiny as the expert hearing indicates. It consisted mainly of economic actors concerned with aspects beyond the realm of the directive who mainly took issue with the complexity and illegibility of the legal package (ODAU3).

Concerning the RD, a debate about detention of minors and families ensued. Additionally, migrant affiliated experts remarked that the bill was not in line with Art 7RD concerning voluntary return. The draft allowed that criminal asylum seekers could be deported faster, whereas the directive only allowed faster deportation in case of serious threat to national security. Following the hearing, the committee agreed to modify the law and presented its final report, carrying 79 amendments and two motions. 19 of the suggested amendments had policy-changing characteristics (ODAU4). All amendments were agreed upon by both chambers (ODAU5).

The Austrian case fits the theoretical expectations well. Even though only a few amendments had policy-changing effects, they moved the draft bill closer to coalition partner's ideal position. Compared to the original ministerial draft, Parliament imposed more lenient detention rules, as well as a more autonomous design of the legal advice procedure in the asylum procedure. Furthermore, the amendments streamlined Austrian law with the European Convention on Human Rights, and the RD (ODAU6).

Examining the plenary debate on the legal package, one observes that the competent ÖVP minister proudly claimed that her legal draft had “a clear ÖVP imprint” (ODAU6). ÖVP backbenchers agreed and expressed their satisfaction with the proposal, without suggesting further change. MPs of the coalition partner SPÖ were less enthusiastic, defending the law mainly on the ground that the law had originally been a lot worse. SPÖ MPs stressed that SPÖ's influence had been decisive in making the law acceptable (ODAU6). Thus, as expected by the MV model, the coalition partner used the legislative review phase to pull a hostile minister's legal draft, closer to their ideal position. Notwithstanding, parliamentary involvement did not significantly alter the restrictive character of the legal package: most critical points remained. Entry ban periods are still questionable in light of the RD, attendance of asylum seekers in the reception facilities is still compulsory, and detention of minors is still possible. In areas of the minister draft unrelated to the RD SPÖ left more crucial policy-changing marks. Still, the Austrian case is in line with the expectations. For both coalition partners the migration issue was high on the agenda and both parties were large enough and equally legitimated to challenge each other openly in parliament.

Germany

In Germany, a coalition of CDU-CSU (Christian Democrats) and the smaller coalition partner FDP (Free Democrats) was in charge of transposing the RD. During transposition the two parties held a majority in the *Bundestag* and a slight majority in the *Bundesrat*. CDU-CSU has comparatively restrictive positions on immigration, while the FDP takes a more liberal stance. Migration is salient to CDU, and particularly to the more restrictive sister party CSU, whereas FDP takes relatively less interest in the issue.

The ministry in charge of transposition was Home Affairs, led by Minister Friedrich (CSU). The Minister submitted the transposing bill to Parliament on 6 June 2011, six months *after* the deadline for transposition, and after a letter of formal notice for infringement (ODGER1). The *Bundestag* and *Bundesrat* swiftly adopted the bill (ODGER2, ODGER3). The transposing law entered into force on 26 November 2011.

In line with the theoretical expectations the draft constituted a rather restrictive interpretation of the directive, reflecting the ideological position of the minister's party. The Directive stipulates that detainees generally have to be accommodated separately from prisoners except if in a Member State no special detention facilities exist (Art 16RD). The minister draft allowed the *Bundesländer* to use both forms of accommodation. The directive also demands special arrangements for vulnerable people. The bill hardly touched upon this requirement. Contrary to Art 8.6RD, the bill provides neither an independent monitoring system of the return procedure, or rights to access NGOs, only facilitating the access. Hence, the minister used the discretion of the EU law, and perhaps more, to move the national measure towards the restrictive end of the migration spectrum. On the basis of the adapted Martin-Vanberg model, we would expect the draft to be pulled moderately in the opposite direction during parliamentary review given FDP's more liberal position on migration but lower saliency of the issue. This is exactly what happened, although the mechanism through which it occurred was not the one assumed by the model.

In the Bundestag, the Committee of Home Affairs received the ministerial draft (ODGER4). On 26 June 2011 the committee organized a public consultation of experts to advise the parliamentary committee on its review task. In July the Committee produced a report containing 15 amendments to the minister's draft proposal, seven of which had substantive policy implications (ODGER5).

During the committee hearing the experts questioned the adequacy of the proposal (ODGER6). Representatives of the Protestant Church criticized the missing monitoring system demanded by the RD. The German Institute for Human Rights added that the proposal failed to provide special rules for victims of trafficking as required in Art 11.3RD. Furthermore, the Jesuit Refugee Service criticized the proposal for misinterpreting the obligation to strictly separate detainees and regular prisoners in detention facilities. The Bavarian state minister (CSU) defended the bill by arguing that the German language version of Art 16RD could be interpreted in such a way that the exception to accommodate prisoners and detainees together applies to overflow in individual *Bundesländer*. This interpretation was questionable in view of the English and French versions of the directive. Additionally, many experts criticized the proposal for granting detainees insufficient access to NGOs and legal help as required by Art 16. 4RD.

Following the hearing, the Committee made seven amendments to the ministerial draft that had important substantive policy implications. The amendments were approved in both chambers. Although they did not change most critical elements of the bill, they moved it into

a slightly more liberal direction. Parliament changed the deadline for voluntary departure for victims of human trafficking from one to three months, and provided for better access to NGOs for detained migrants (ODGER5). Thus, in line with our theoretical expectations, parliamentary involvement indeed led to an outcome closer to the coalition compromise position.

Yet, policy adjustment was not initiated by the coalition partner FDP. During the expert hearing, FDP parliamentarians were least active (ODGER6). Furthermore, in the final committee report and plenary debates, FDP noted that it was very content with the bill, as a “one-to-one transposition measure” (ODGER5, 16). This may be explained by the relatively low salience of migration issues for the FDP. FDP would have let the minister transpose the rather restrictive interpretation of the directive.

By contrast, CDU-CSU parliamentarians were active and responsive to the expert hearing. In the final report of the committee, CDU-CSU claimed that they considered the amendments to the draft bill necessary to reflect opinions of humanitarian and religious social organizations (ODGER5). Thus, MPs of the minister’s own (sister-) party were attentive to the experts in the hearing. This might be explained by the fact that the CSU to which the minister belonged is in migration issues more restrictive than its sister party CDU. Additionally, CDU-CSU is a mass party with wings that are particularly attentive to concerns by church-related organizations. Contrary to theoretical expectations, not the more liberal coalition partner triggered the change but backbenchers of the minister’s own party responded to expert demands, reflecting a quasi coalition conflict between the sister-parties CDU and CSU

The German case thus challenges the assumption of parties as unitary actors inherent to the Martin-Vanberg model, and much of the theoretical literature on executive-legislative relations. Just like coalition parties, MPs within a party (and its sister party) sometimes use parliamentary oversight to control ministers.

The Netherlands

At the time of adoption of the RD, a coalition of CDA (Christian Democrats), PvdA (Labour Party) and CU (Christian Union) had been in power in the Netherlands. After parliamentary elections in June 2010, a minority government of VVD (Peoples Party for Freedom and Democracy) and CDA as minor partner was installed. PVV (Freedom Party) was not officially part of the coalition but agreed to support the minority government on a range of

issues agreed upon in a separate agreement (ODNL1). Transposition was started by the former government and finally concluded by the latter.

While the former government consisted of centrist parties on the migration dimension, the policy distance on the migration issue between CDA-VVD and the supporting PVV was relatively large. Nevertheless, all three parties favour restrictive migration policies. CDA stands more to the centre than VVD and the supporting party PVV stands at the extreme restrictive end of the Dutch migration policy spectrum. The migration issue was a relevant topic for all parties but for PVV it had the highest saliency.

The first steps to transpose the directive were taken by the CDA-PvdA-CU government, under the responsibility of Minister of Justice Hirsch Ballin (CDA). On 23 June 2010 the *Tweede Kamer* received the draft together with the advisory opinion of the *Raad van State* (ODNL2-3). The bill was discussed in the *Tweede Kamer*, but before a vote took place, the new government was formed. Government formation entailed the dismissal of Hirsch Ballin; the new ministry in charge was the newly-formed Immigration and Asylum Ministry headed by Minister Leers (CDA).

On 8 December 2011 Minister Leers took up the work started by his predecessor to transpose the RD, by modifying the pending proposal (ODNL4). In December 2011 the *Eerste Kamer* accepted the bill, which finally entered into force on 31 December 2011(ODNL5-6).

The legislator left no marks on the minister proposal. This is surprising because based on the Martin-Vanberg model and due to characteristics of a minority government and the high policy distance between the parties, we would expect many amendments. Contrary to the other cases, the Dutch transposition draft aimed solely at transposing the RD. The first CDA proposal contained only small revisions of Dutch regulations. However, the later amendments by Minister Leers made the draft more restrictive. For example, the amendments extended the entry ban period from five to up to ten years in special circumstances- clearly exceeding the five-year maximum of Art 11RD. The most controversial change was the introduction of sanctions for entry bans, meaning that illegal stay could be punished under criminal law. While this is not regulated within the directive it gold-plated the RD in a restrictive way. Thus, even though both ministers responsible for transposition came from the same party, their stance towards the directive differed significantly.

Based on the Martin & Vanberg model we expect the second draft, which needed the acceptance of VVD and PVV, to be pushed into an even more restrictive direction during legislative review. If no compromise with PVV could be found, due to the characteristic of a

minority government the opposition would succeed to push the draft towards the parliamentary median of a more liberal migration position. However, this expectation is not met. In the *Tweede Kamer*, the Committee of Migration and Asylum was responsible to review the second minister draft. On 28 January 2011 the Committee submitted its questions to Minister Leers's new draft (ODNL7). Contrary to the expectations of the coalition model, VVD and PVV were not active in trying to influence the transposition process but opposition parties harshly criticized the introduction of sanctions for illegal stay by referring to many formal letters from NGOs. In March the Minister answered the Committee by justifying his draft pointing at the discretion granted by Art 11RD concerning national regulations of entry bans (ODNL8) and the advice of the *Raad van State* which, following his interpretation, advised such transposition.

Opposition MPs then carried a successful motion to ask official clarification by the *Raad* on the issue (ODNL10). The Council implicitly stated that the RD did not necessarily prevent states from introducing criminal law sanctions against illegal stay (ODNL9). Several opposition MPs proposed amendments to the law and the Greenleft in the *Eerste Kamer* issued a motion to revise the law. The opposition attempts failed in the plenary vote of the respective chambers. Coalition partners VVD and the supporting PVV suggested no amendments. They were not even present with speakers in the plenary on the issue.

Nevertheless, the coalition parties were no powerless actors in the transposition process. In contrast to the expectations of Laver & Shepsle's (2008) ministerial discretion model, assuming that individual ministers draft bills independently from the coalition partner; Minister Leers adjusted the transposition draft considerably after the change in coalition. The coalition agreement between VVD and CDA and the *Gedoogakkoord* with PVV explicitly mentions that the RD would be transposed by introducing criminal law sanctions against illegal immigrants. Thus, while two CDA ministers oversaw the transposition the proposals changed considerable with the change of coalition partners but without the use of legislative review.

France

During the transposition of the RD President Sarkozy and his UMP (Gaullist Party) government under Premier Minister Fillon (UMP) had a majority¹⁰ in the *Assemblée*

¹⁰ UMP majority also comprised various small parties but these coalitions are less institutionalized than in the coalitions discussed so far.

Nationale but no clear majority in the Senate. Centrist party UMP holds restrictive views on migration and migration had high salience for UMP.

Transposition was the responsibility of Migration Minister Bresson. On 31 March 2010, he proposed a bill that included the transposition act to parliament. The two parliamentary chambers had a hard time agreeing on the bill. A Joint Committee had to be established to prevent a continuous referral back and forth between the chambers. On 4 May 2011 the Joint Committee reached a compromise (ODFR1-2) but opposition MPs referred the bill to the Constitutional Council, which decided in June 2011 that the bill was constitutional (ODFR3).

The legislature left various marks on the bill which aimed at transposing three EU migration directives (ODFR4). Minister Bresson used the transposition of the RD to introduce further restrictions to French migration law, going beyond the goals of the directive.

Concerning the RD, the proposal took a narrow scope. Cases where French courts decide on the removal of migrants as a consequence of criminal sanctioning were assumed to fall outside the RD. More importantly, the ministerial proposal excluded illegal migrants kept in so-called waiting zones and the bill even extended the options for new ad-hoc waiting zones, which opened ways to circumvent the RD. Furthermore, it extended custody for undocumented migrants from 32 to 45 days, while the directive requires making the period as short as possible. Considering that the government was backed by an UMP majority, the MV model would expect that parliament would have no major influence on the final legal outcome. However, this is not what we observe.

The standing Committee for Constitutional Matters was in charge of legislative review. It proposed 46 amendments related to the RD. Of these, five amendments were substantive in nature (ODFR11). The National Assembly clarified the rules on entry bans. The RD obliges states to combine a return decision with an entry ban when the period of voluntary return is over (Art 11). The original bill made entry bans optional, which the Parliamentary Committee corrected by making them obligatory. Additionally, the committee changed Art 34 of the bill by adding that administrative courts have priority in detention cases. In sum, the amendments by the Assembly did not challenge the policy direction of the proposal but moved the bill even closer to the restrictive Minister positions.

The National Assembly adopted the proposal with all changes proposed by the Committee. Next, the bill was referred to the Senate where a 60% supermajority was required to pass the bill. The Socialist opposition, almost equal in strength to UMP in the Senate, challenged the legal draft by proposing around 30 amendments with substantive implications

(ODFR5). Most of these were unrelated to the RD. Amendments related to the RD, rendered the legal proceedings concerning detentions more independent and transparent. The Senate also criticized the proposal for not considering detention as a measure of last resort as required by the RD. Furthermore, the upper chamber reversed the Assembly amendment concerning obligations to issue entry bans and reduced the ad-hoc waiting zones (ODFR6).

However, the two chambers failed even after a second reading to agree on the legal text (ODFR7-9). Thus, a Joint Committee of the chambers was installed which worked out a conciliatory version. In this version the overall restrictive nature of the bill favoured by the minister and the UMP majority of the Assembly prevailed. Only some of Senate's suggestions were reflected in the final bill. Maximum waiting periods in ad-hoc waiting zones were reduced from 30 to 26 days. Furthermore, the compromise held that entry bans should depend on the individual situation of the illegal migrant. The Senate had limited influence on the extended waiting periods and the reduction of the period for voluntary return. Furthermore, detention is still no measure of last resort and there are no explicit exceptions concerning entry bans in case of vulnerable people and victims of human trafficking.

Generally, the ministerial draft used the transposition measures mainly as an instrument to introduce new national migration rules which received the highest degree of parliamentary attention. However, both chambers were surprisingly active in amending and revising the draft, which runs counter to our expectations. Crucially, parliamentary influence was a matter of inter-chamber, rather than intra-coalition conflict, a dynamic the coalition model has so far overlooked.

Conclusion

In this article we tested to what extent the coalition mechanism proposed by the Martin-Vanberg model can account for the extent and policy direction of parliamentary control over EU legislation. Our *process-tracing* analyses partially support this theoretical perspective.

The Austrian case comes closest to the expectations of the model. Parliament attenuated a migration-restrictive draft towards a more liberal position of the coalition partner. A similar outcome was achieved in Germany, but the underlying dynamic of policy adaptation was driven by intra-party instead of inter-party conflict: MPs *within* the party of the minister amended the ministerial draft. In France, backbenchers of the ruling party were quite active in reviewing the ministerial draft as well. In short, the German and French cases challenge a fundamental assumption that parties are unitary actors.

The Dutch case exhibited how the ministerial transposition draft anticipated reactions by (unofficial) coalition partners of a minority government. Anticipation is not necessarily contradictory to the logic of the theoretical model, especially when the issue at stake is salient (Martin & Vanberg, 2004, 14), but it had not yet been investigated in detail. The process of parliamentary scrutiny in the Netherlands provided opposition parties with opportunities to put the bill to trial, although unsuccessfully. This reminds us that legislative review also provides tools to opposition parties.

The opposition played a more important role in the French transposition process. Although theoretically the influence of the parliament under single-party majority should have been minimal, in reality it had substantial effects because the government lacked the necessary votes for the required supermajority in the upper chamber. Whereas this dynamic may be accommodated by the Martin-Vanberg model, it serves as a warning that formal government status is not always a good proxy for the control of parties over a particular issue.

In sum, potential coalition conflict appears to be a sufficient but not a necessary condition for parliamentary influence, while the extent of policy adjustment is not linearly related to the scale of coalition conflict. The study showed that parliamentary scrutiny is attractive to parliaments wanting to change the course of implementation of salient EU policies, a finding in line with earlier work by Sprungk (2012) and Mastenbroek et al. (2014).

Whereas coalition conflict seems an important explanatory variable for parliamentary control over transposition to occur, a follow-up explanatory follow-up study testing the effect of other explanatory variables is called for. This study has identified various other variables that should be taken into account. Beyond saliency, party size and intra-party dissensus should be incorporated in future studies, just like the presence of strong opposition parties, in combination with the occurrence of ‘floating coalitions’ (Holzhacker, 2002).

The external validity of our findings remains to some extent an open question. It should be remembered, first, that we deliberately selected an important and controversial directive offering meaningful discretion. It is likely that coalition conflict is not sufficient for parliamentary control when we factor in the salience of the EU law to be transposed. This said testing relevance of the framework for other salient directives and parliaments seems desirable. In doing so, it should be noted that much of what we learned about parliamentary control over transposition in the four cases could not have been captured by formal quantitative indicators. The total number of parliamentary amendments proved to be a poor measure of their actual imprints on the draft ministerial bills. Instead it was crucial to trace the

origin of these amendments and their substantial policy direction to explore to what extent the mechanism of the coalition model which is expected in several quantitative studies, applies.

Turning to the big picture, parliamentary scrutiny was important for the final outcomes in all cases. The influence of parliaments during transposition is greater than one would expect on the basis of the widespread argument in the ex-ante scrutiny literature that coalition parties in parliament are reluctant to use their powers, because they would not want to defeat a governmental bill. Crucially, all four legislatures amended the initial drafts substantively, although the influence was exercised through different channels and spurred by different actors. In conclusion, transposition provides parliaments with an important channel to affect the final outcomes of EU law-making, thus forming a crucial element of the role of parliaments in the EU's multi-level system of governance.

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