AGGIS

Implementation and compliance of good governance in International Sport Federations

Utrecht University: Frank van Eekeren and Aline Bos
Loughborough University: Barrie Houlihan

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PART I: IMPLEMENTATION

1. Introduction

"Sports organizations and their members and events are often dependant on a mix of revenues including public and private subsidies. Therefore, it is in the clear interest of European tax payers, corporate companies and sports fans that sports organizations govern their affairs in an efficient, transparent, accountable and democratic manner.

(…)

To achieve better governance in sport, many sports organizations need to revise their internal and external mechanisms to cope with the on-going commercialization, professionalization and globalization of sport."

(Source: Play the Game (2011), Grant application form 2011, Project proposal 'Action for good governance in sport').

According to this quote, a number of actors and agents have the goal or objective to improve the current governance in international sport federations (IF's). One of the issues is: How can the desired situation (i.e. the adoption and compliance of good governance policy and code(s) in IF's) be realized? Or, in other words, how can the process between the establishment of a goal/ objective and the final elaboration in practice be achieved?

This issue is about policy implementation (O'Toole, 2000). Implementing policy seems simple: One sets political-administrative ambitions, translates these to concrete policy goals and measures, organizes the necessary resources, chooses the right role as policy maker, mobilizes stakeholders and achieves implementation. These are the standard ingredients of an attractive implementation strategy. But, actual implementation processes are often more stubborn.

This contribution focuses on existing implementation theory, in order to draw a picture of the unruly practice in general and that of IF's in particular. We will discuss possible implementation and control strategies for adoption of good governance in the specific contexts of IF's.

2. Investigating implementation

The implementation theory, which arose mainly from the 70s, is substantial. Inside this theory, there are different views about what implementation is or what it should be. Overall, three generations of implementation research can be distinguished (DeLeon & DeLeon, 2006; Fitz, 1994):

1. The first generation of implementation research is almost invariably associated with the authors Pressman & Wildavsky (1973) and their study of the Oakland project. These and other authors examine case studies in which they decompose the problems in the implementation processes. Ultimately, the researchers did not succeed in developing a generic theory, but their analysis remains limited to drawing lessons learned about actual policy implementation in the light of original goals (which are translated and deformed through execution).

2. In the late '70s, early '80s, academics mainly thought about implementation from the top-down perspective (see e.g. Sabatier & Mazmanian, 1979; Hoogerwerf 2003). The leading question is: how can one ensure that centrally developed plans can be implemented in practice as intended by its makers? One of the clearest illustrations of the dominant top-down model of implementation is that produced by Lewis Gunn (1978) who argued that, for effective policy implementation, the following ten criteria would have to be met. Table 2 summarises Gunn's ideal type of top-down implementation.

Table 1: An ideal model of perfect policy implementation

1 - Circumstances external to the implementing agency do not impose crippling constraint.
2 - Adequate time and sufficient resources are made available to the program.
3 - Not only are there no constraints in terms of overall resources but also that, at each stage in the implementation process, the required combination of resources is actually available.
4 - Policy implemented is based upon a valid theory of cause and effect.
5 - The relationship between cause and effect is direct and that there are few, if any, intervening links.
6 - There is a single implementing agency which need not depend upon other agencies for success or, if other agencies must be involved, that the dependency

relationships are minimal in number and importance.

7 - There is complete understanding of, and agreement upon, the objectives to be achieved; and that these conditions persist throughout the implementation process.

8 - In moving towards agreed objectives it is possible to specify, in complete detail and perfect sequence, the tasks to be performed by each participant.

9 - There is perfect communication among, and co-ordination of, the various elements or agencies involved in the program.

10 - Those in authority can demand and obtain perfect obedience.

Source: Gunn 1978

As an ideal type Gunn's list of criteria are valuable in understanding why policies such as good governance might not be implemented fully or indeed at all. For example, the fourth criterion (a valid theory of cause and effect) is open to much debate regarding the likely effect of 'good governance' on a range of stakeholder groups and whether those groups perceive the 'effect' as a desirable or beneficial one.

3. In the early 80s, simultaneously with this top-down approach, a strong focus on bottom-up processes arises (see e.g. Lipsky, 1980). So-called street level bureaucrats are seen as key to implementation; they are decisive for the successful or failed execution of policy. From this perspective, implementation cannot be separated from policy making; implementation is part of policy making, because the performer helps shape policy. Others, e.g. Yanow (1989) further encouraged this approach: policy especially is 'made', where it is executed. Within IFs those charged with responsibility for implementing good governance policy and practices will, it is argued, of necessity have to adapt policy to suit the particular circumstances of the federation (money, staff expertise, requirements of commercial partners, legal context etc.). While often 'street level bureaucrats are seen as conservatives resisting change on the basis of self-interest, a more sympathetic view is that they are simply pragmatists – doing their best to achieve implementation in accordance with constraining local circumstances. What they lack is not commitment but rather capacity.

Overall, existing literature on implementation roughly brings forward two basic dimensions, which are important to distinguish implementation types:

1. The extent to which implementation is a top-down (vertical) or bottom up (horizontal) phenomenon;

2. The extent to which implementation emanates from a 'design' or blueprint of a steering actor (schedule), or from an arena with several actors (interactions).

Table 2: Implementation and control

		Control via:	
		Schedule/design	Arena/actors
Primate of control:	Vertical	Control model Control by hierarchy	Decentralisation model Control by frameworks, conditions
	Horizontal	Participation model Co-operation, focused on plan making	Interaction model Evolution of policy and execution

(Based on, among others: Hoogerwerf, 2003; Smith, 1973; Sabatier & Mazmanian, 1979; Pressman & Wildasky, 1973; Hill & Hupe, 2002; DeLeon & DeLeon, 2002; Majone & Wildavsky, 1979)

DeLeon & DeLeon (2002) conclude, when they overlook the implementation theory up to now, that no single implementation strategy can be formulated. There is no 'one size fits all' strategy possible, the context is decisive for the success of a chosen implementation strategy. Thus, in some cases a bottom-up approach is suitable, but in other cases a top-down approach is appropriate.

Also, Matland (1995) indicates for example that the degree to which there is
- Ambiguity: discussion on the policy objectives, and
- Conflict: discussion of the means to achieve goals

determines the gradient of the implementation. Actors should adopt their implementation strategy accordingly.

Policy implementation is about the relationship (s) and coordination of policy in a specific context. This context is - to elaborate on the degree of ambiguity and conflict - by definition multi-level (different layers within the government and society are involved in policy), distributed (the various actors are spread and different), path dependent (previous decisions framing the possibilities for the future) and politicized.

3. Achieving implementation

The stakeholders that want to implement good governance in IFs face the following question: What implementation strategy is appropriate in the specific contexts of IFs?

We define implementation strategy as how implementation is formed by one of the actors involved in implementation, aimed at realizing and optimizing policy impact. In essence, an implementation strategy - within each type of relationship – is about the creation of some form of coordinated action. The way coordination (and thus the implementation strategy) is designed, can vary and depends partly on the relationship and the context in which policy should take place. There are several possible coordination mechanisms, both directly and indirectly more (freely derived from Mintzberg, 1983):

-   Approximation: for small projects involving close contact between the actors involved.
-   Direct supervision
-   Standardization of work, through rules, procedures
-   Standardization of results, focusing on output / performance
-   Standardization of knowledge and skills through professional development of workers in the field or be the implementers of policy

If we sell the coordination mechanisms at the different implementation strategies, we get the following diagram.

Table 3: Coordination alternatives per implementation type

		Control via:	
		Schedule/design	Arena/actors
Primate of control	Vertical	• Supervision • Standardization through rules	• Standardization of output
	Horizontal	• Intensive cooperation in planning phase • Creation of commitment	• Standardization of skills • Mutual, but non-participatory adaption

4. Strategies to implement good governance in IF's

The promotion of good governance in international sport federations differs from international conventions in three important ways: first, good governance is mainly a set of principles rather than a set of definite requirements; second, there is no single internationally agreed set of good governance principles against which the behaviour of IFs can be measured; and third, there is no generally recognised international organisation which is acknowledged as the 'guardian' of good governance.

In the case of IFs, it can be argued that the context for implementation of good governance is mainly characterized by a high degree of ambiguity about the policy objectives, both within and between the IFs and between IFs and a large number of stakeholders. The extent to which a coherent and publicly accepted model of good governance exists is low. There are also different views on how good governance can best be achieved.

Much of the debate about implementation of good governance policies and practices is underpinned by a top-down model of policy implementation. Within AGGIS, it is important to look at how control within IFs occurs or may occur, and to what extent a top-down approach is appropriate within the context of good governance and IFs. To control good governance is very complex and within IFs opposition may exist.

If we consider the total playing field, an interaction approach seems - according to the implementation theory - most appropriate in a context of various and inequitable actors, without clear hierarchy and power to control. This would argue for a strategy of standardization of skills and mutual, but non-participatory adoption.

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PART II: COMPLIANCE

1. Introduction

The study of compliance draws upon a number of related themes in academic research most notably the literature on policy change, policy implementation and the monitoring and assessment of compliance.

Questions such as 'What would encourage the adoption of good governance principles by IFs?' and 'Why do some IFs adopt principles of good governance while others do not?' can best be answered by reference to the rich research literature on policy stability and change. Table 1 summarises some of the main explanations of policy stability and change and makes clear the wide range of possible processes ranging from informal processes to legally imposed international agreements. Selected explanations/process are discussed below in a little more detail.

2. Investigating compliance

Policy learning, lesson-drawing and policy transfer
Implicit in much of the discussion of the development of public policy is the assumption that countries learn from each other and that a process of policy transfer is in operation: such assumptions can also be applied to non-governmental organisations. At a common sense level policy learning and policy transfer are attractive. All IFs are in competition with each other for scarce resources such as talented athletes, commercial sponsorship, broadcasting opportunities and access to major multi-sport events such as the Olympic and Paralympic Games. Some IFs are also in competition with commercial providers, for example triathlon and marathon, or player organised events (such as in golf and tennis).

Table 1: Good governance, international sport federations and selected mechanisms of policy change

Dimension	Policy learning	Policy transfer	Path dependency	Mimetic isomorphism	Engineered normative convergence	Imposition through policy regimes
Likely locus of initiative	International arena	International	International	International	International/ national governmental	International
Likely lead actor/ organisation	International federations, governments, interest groups	International federation	International federation	International federation or other ISO e.g. IOC	International sport organisations (IOC, CGF); governmental organisation (CoE, EU, UNESCO); and/or lobby organisations (Play the Game)	International policy regime
Basis of engagement	Voluntary	Voluntary	Constrained	Uncertainty	Voluntary, but also social pressure	Compulsion
Key relationships	Bi-lateral	Bi-lateral i.e. one IF transferring practices from an exemplar	None	Multi-lateral	Multi-lateral; role for weak (non-legal) policy regime	Multi-lateral/ policy regime lead agency, but can be bi-lateral
Nature of power (explicit, agenda setting, ideological)	Both overt and ideological	Ideological	Agenda control	Ideological	Normative, socialisation, ideological	Explicit, usually based on international law or quasi-legal agreement
Good governance	Pattern of regular contact through ASOIF, ANOC, AIOWF, IOC; decisions by CAS; meetings with domestic federations	Need to understand the pattern of relationships between IFs. Are there 'families' of IFs which tend to transfer 'lessons' between each other?	Acceptance of key aspects of good governance makes it difficult to avoid the extension of good governance practices in the IF	Adoption of many policies and management practices from major IFs or the IOC	Accumulation of pressure through engineering social expectations	World Anti-Doping Agency

Source: adapted from Houlihan 2009

The cluster of related concepts of 'policy learning', 'lesson-drawing' and 'policy transfer' has featured prominently in much recent analysis of policy change. Policy-learning is rooted in an Eastonian systems model of the policy process where the policy-making cycle is regularly energised by feedback on the impact of existing policy. While the process of policy learning within IFs can be largely confined to learning from its more innovative national members it is accepted that policy learning can, and increasingly does, involve analyses of policy and practice in similar organisations. More recent conceptualisations of governmental policy learning have emphasised the intentional aspect of the process which moves beyond feedback on existing policy and involves the systematic scanning of the environment for policy ideas (see Yamamoto 2008). While it is to be expected that IFs would engage in intentional scanning of the governance policies and practices of their competitors and also of the the governance expectations of their existing or potential partners (corporate sponsors, event organising bodies and host governments for example).

Policy transfer refers to the process by which the lessons learnt (see Rose 2005, for a fuller discussion of lesson-drawing) are transferred: how lessons are internalised, how lessons are recorded and described and how they are incorporated into a different organisational infrastructure and value system in the importing organisation. Bearing in mind that organisational policy can be variously conceptualised as aspiration, action (involving the commitment of resources) or inaction (Hogwood 1987, Jenkins 1978, Heclo 1972) Rose (2005, p. 16) defines policy transfer as 'action-oriented intentional activity'. An awareness of the extent to which the transfer mechanism facilitates or constrains transfer is crucial. For example, in many IFs the governing board may inhibit the transfer of good governance lessons (because they challenge the interests of board members) even though the lesson is clearly understood and the potential benefits to the federation are acknowledged. As should be clear the analysis of the transfer process is as important as an understanding of the process of policy learning and lesson drawing. Lessons may well be accurately learned but be imperfectly transferred or transferred to an unsupportive organisational infrastructure or an unsympathetic value system.

The attractiveness of the concepts of policy-learning and transfer are not without problems, the most obvious of which are the difficulty of explaining how policy makers learn (Oliver 1997), what constitutes learning (Bennett and Howlett 1992), how learning might be quantified (Pierson 1993) and what motivates

organisations to learn. This last point is especially relevant in relation to good governance as for many IFs the costs will be more apparent than the benefits. In addition there are substantial concerns relating to the process by which lessons are communicated and transferred policies are recreated in the receiving organisation. These concerns notwithstanding, it is clear that policy learning and transfer are well established practices within many organisations in the sport sub-sector.

International policy regimes: organisational power or the power of ideas?

Krasner defines regimes as 'sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations' (1983, p. 2). While Krasner was referring explicitly to governmental international policy regimes his definition can be easily applied to non-governmental regimes or to hybrid regimes (of which the nascent 'good governance' regime might be an example). In attempting to operationalize this concept it is argued that successful regimes possess some or all of the following characteristics: first, they exhibit a degree of stability in the pattern of relationships between actors and, by implication possess some process by which voices/interests can be acknowledged or ignored; second, regimes possess the organisational capacity to fulfil maintenance functions, such as agenda setting, policy monitoring and review, verification of compliance and, in some, the enforcement of compliance; and third, regimes actively defend and promote their values.

Many regimes therefore have an identifiable organisational capacity, such as a permanent secretariat, while others fulfil regime maintenance functions through the actions of one or more member states or organisations as, for example, does the United States in maintaining the regimes associated with the GATT agreement and WADA and CAS do in relation to the World Anti-Doping Code. The organisational significance of the non-governmental organisations such as IFs, the IOC and Play the Game in relation to good governance may be complemented, augmented or replaced by state organisations such as the Council of Europe, EU or individual governments. It has also been suggested that direction and organisational capacity can be provided by an epistemic community which Haas has described as 'a network of professionals with recognised expertise and competence in a particular … issue area' (1992, p. 3). Arguing that 'control over knowledge and information is an important dimension of power', Haas suggests that the potential of epistemic communities to exercise influence increases with

uncertainty and with inter-organisational resource dependence. Uncertainty and dependence are characteristics of aspects of governance relations.

The most common explanation for the formation of regimes and the mechanisms by which they exert influence is that they are the creatures, if not the products, of hegemonic self-interest, where 'stronger states [or organisations] in the policy sector will dominate the weaker ones and determine the rules of the game' (Keohane & Nye, p. 1977). It is possible to argue that the putative good governance regime fits this analysis as the policy could be interpreted as seeking to reform IFs in order to make them more suitable partners for corporate and governmental interests.

An alternative, and less state-centred, explanation for the formation of regimes assumes that ideas matter, first, in creating a predisposition to co-operate and comply, and second, in explaining the content of regime rules and how they evolve. According to Nadelmann, in his study of global prohibition regimes, 'moral and emotional factors related neither to political nor economic advantage but instead involving religious beliefs, humanitarian sentiments … conscience, paternalism, fear, prejudice and the compulsion to proselytise can and do play important roles in the creation and the evolution of international regimes' (1990, p. 480). Checkel (see also Risse et al 1999) also emphasises the importance of ideas as a source of influence and argues that international institutions are often effective in shaping policy due to a process of socialisation of key domestic policy actors in government such that 'sustained compliance [is] based on the internalisation of new norms' (2005, p. 804). Checkel argues that 'There is growing empirical evidence to suggest that what starts as strategic incentive-based cooperation within international institutions often leads at later points to preference shifts' (2005, p. 814).

Two examples of regimes are first, the promotion of Olympism generally and gender equity more specifically and second, the increasing concern with athletes' rights and particularly their post-competition careers prospects. Although there is considerable justifiable debate about the sincerity and significance of value systems such as Olympism it is arguable, at least, that they have had some influence on the policies of governments and IFs in areas such as the treatment of young athletes, gender equity and post-career support. Ascribing influence to international policy regimes is, however, rarely straightforward, as evidence of a high degree of actor compliance may only indicate an association rather than a

causal relationship. Furthermore, there is considerable disagreement whether regimes as international institutions are more than simply a camouflage for state power operating through the medium of IFs (for example China engineered IF rule changes in table tennis and badminton to protect its national advantage).

Path dependency

Underlying much of the discussion about policy learning is the assumption that policy change will be affected by both past experience and new information. As Greener notes, policy learning 'considers policy legacies to be one of the most significant elements in determining present and future policy' (2002: 162). As such, policy learning has much in common with the concept of path dependency which suggests that initial policy decisions can determine future policy choices: that 'the trajectory of change up to a certain point constrains the trajectory after that point' (Kay, 2005, p. 553). Path dependency is also connected to the broader policy analysis literature on the importance of institutions which, for Thelen and Steinmo, are seen as significant constraints and mediating factors in politics, which 'leave their own imprint' (1992, p. 8). Whether the emphasis is on institutions as organisations or as sets of values and beliefs (culture) there is a strong historical dimension which emphasises the "relative autonomy of political institutions from the society in which they exist; … and the unique patterns of historical development and the constraints they impose on future choices" (Howlett & Ramesh 1995, p. 27).

The relevance of institutionalism for the analysis of good governance in IFs is clear. Past decisions need to be seen as institutions in relation to current policy choices with path dependency capturing the insight that 'policy decisions accumulate over time; a process of accretion can occur in a policy area that restricts options for future policy-makers' (Kay 2005, p. 558). In a hard application of the concept of path dependency one would argue that early decisions in a policy area result in current policy being 'locked in' and also, perhaps, locked on to a particular policy trajectory. For example, early decisions about the composition of boards, the location of IF headquarters within particular domestic legal frameworks and the relationship between the board and the president may establish and progressively reinforce a culture of secrecy and oligarchic decision-making. In summary, it may be hypothesised that once an IF takes its initial decisions about governance it is locked on to a predictable policy path. For example, initial governance decisions, which might have been taken in

order to protect the sport from governmental interference, might well lead to increasing secrecy and the development of a self-perpetuating leadership clique.

3. Achieving compliance

Compliance rests, conceptually, between implementation and impact, and may be defined as the day to day, routine, behaviour of an organisation which conforms to the rules and expectations of an agreement, of the Code. As Jacobson and Weiss point out in relation to intergovernmental agreements 'Measuring compliance is more difficult than measuring implementation. It involves assessing the extent to which governments [or other policy actors] follow through on the steps they have taken to implement international accords' (1995: 123). One problem in relation to good governance is the uncertainty of what it is that is being implemented as there is no good governance formal agreement or convention: good governance is closer to a set of expectations of ethical behaviour.

The likelihood of achieving compliance depends in part on the structure of the particular problem and the strength of the incentives for individual international federations to defect. The incentives to defect are generally stronger in collaboration situations than co-operation situations. Collaboration situations, such as the classic prisoners' dilemma, are those where joint compliance is preferable to joint violation, but where individual parties to an agreement gain more from an agreement if they defect while others continue to comply. By contrast in co-ordination situations or co-operation games, such as the allocation of satellite orbits or short wave radio frequencies, the incentive is for individual actors to comply as long as a sufficient proportion of other parties to the agreement also comply. Within the literature of regime theory the dominant assumption is that most agreements exist in collaboration situations and that consequently compliance is best achieved through the adoption of a coercive strategy where resources are invested in extensive monitoring and where sanctions are applied to those in non-compliance. Good governance is closer to a collaboration problem, but is far from being a good fit insofar as it is not clear whether complying or not complying with the requirements of good governance provides any significant relative advantage between IFs.

In considering whether reliance on monitoring and sanctions are the optimal instruments for ensuring compliance it is useful to examine the reasons for

compliance and types of non-compliance, partly because compliance may have little to do with the design of an agreement or set of ethical guidelines and equally non-compliance may be due to factors beyond the scope of sanctions. The most obvious explanation of compliance is perceived self-interest either because the agreement on good governance will enshrine a beneficial balance of advantage or will protect existing gains from erosion. For example, the major IFs might see an agreement as reinforcing the security of their relationship with sponsors and broadcasters. Second, actors may also comply because the agreement requires no change in their existing policy and practice: compliance is simply coincidental. Consequently, the lower the thresholds, for example in relation to frequency of elections, maximum length of terms of office and reporting of meetings the easier it is to achieve a high level of compliance. It is easier for the Swiss to comply with the ban on whaling than it is for the Norwegians.

Just as compliance has multiple causes so too does non-compliance. As Table 3 indicates there are three primary causes of non-compliance – choice, inability, and inadvertence – and within each category there is a further sub-set of causes. The test of a sophisticated and successful policy regime is that it has a repertoire of instruments tailored to the range of sources of possible non-compliance in a particular policy area.

Table 2: Causes of non-compliance

Choice, for example due to: ▪ a desire to retain the benefits of the 'badge' of good governance, but avoid the obligations ▪ objective is partial/selective compliance ▪ free-rider strategy (benefit from the compliance of others, but avoid those costs themselves) ▪ resources needed for compliance have been knowingly diverted elsewhere ▪ benefits of compliance have low organisational salience Inability, due to: ▪ lack of necessary financial or administrative resources ▪ lack of expertise/knowledge Inadvertence, due to:

- inadequate, but sincere, attempt at implementation
- incompetence i.e. poor understanding of requirements

What conditions foster the actual compliance? Rule compliance in general (although empirical evidence is limited) and code compliance in particular turn out to be dependent on[1]:

Table 3: Conditions to encourage code compliance

1. Moral disapproval

   Overall, not the objective part, but the perception, the moral evaluation of norms and maintenance is crucial. For example, when it comes to general rule compliance, the subjective risk of being caught influences rule compliant behaviour. Compliance is best reached by responsive and context specific models (Huiman & Beukelman 2007). In other words: there is an external pressure and the fear of reputational damage (Wymeersch 2006). Judicial enforcement is not favored (Huisman & Beukelman 2007, Wymeersch 2006)

2. Inside-outside interaction

   Seidl (2007) argues that the interaction between the focal organization and external actors is a condition for the effectiveness of governance codes (Seidl 2007).Especially the interaction of an organizations' director stimulates the adoption of and compliance to corporate governance codes (Aguilera & Cuervo-Cazurra 2009).

3. External scrutiny

   In general, the extent of compliance is positively associated with company size. However, underlying principles are that larger companies - listed in the different stock market indices - get more attention and are more closely scrutinized by the media and the investor community (Akkermans et al. 2007, Talaulicar & Werder 2008, Werder et al. 2005).

4. Positive leadership behavior

   Code compliance is insured by a board of directors and management taking responsibility for applying the code, under the overall guidance of the shareholders (Wymeersch 2006). There is a need of an ethical tone at the top (Mintz 2005).

   Generally, an integral approach is needed, which is necessary for the implementation of high standards of ethical behaviour throughout the

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[1] Appendix 1 provides a literature overview of 'code compliance'.

organization (Bon & Fisher 2005). The practical implementation of a governance code cannot be realized by a compliance program alone and needs to be accompanied by relevance in everyday business, that is: by moral values of the company culture (Wieland 2005).

5. Realistic contents

   Another aspect of complying to codes is that internal norms and values do not deviate too much from the code to be adopted (Huiman & Beukelman 2007). The code ambitions have to be achievable.

6. Relatively low compliance costs

   The positive relation between company size and compliance is also based on relatively lower compliance costs (Talaulicar & Werder 2008).

4. Strategies to encourage good governance codes compliance in IF's

Organisations generally rely on a limited and often crude range of instruments to achieve compliance the most common of which are inducements, information and sanctions. Inducements and information are most effective when the causes of non-compliance arise from either inability or inadvertence and include educational efforts and financial transfers. Sanctions, the most common tool of implementation in most international policy regimes must be credible and potent if they are to be effective. Significantly, inducements, education and sanctions tend to be reactive tools, dealing with breaches of an agreement after they have occurred. The third approach to enhancing compliance attempts to be proactive by placing an emphasis on the design of the compliance system. It thus seeks to move away from explanations of compliance that rely solely on the calculation of interests or the exercise of power and to treat agreement design as an independent variable in compliance.

The focus on systems design is based on assumptions that are in marked contrast to those of the enforcement school. The central assumption is that there is a general propensity to comply among actors and that non-compliance is more often the result of ambiguity and resource limitations rather than choice (Haas, Keohane & Levy 1993; Chayes & Chayes 1995: Chayes, Chayes & Mitchell 1998). As a result 'non-compliance is best addressed through a problem solving strategy of capacity building, rule interpretation, and transparency, rather than through coercive enforcement' (Tallberg 2002: 613). Within this perspective a central

focus is on the capacity – administrative, economic and legal and – of organisations to ensure the compliance of other actors. Chayes and Chayes argue that if the assumption that non-compliance is primarily due to inadvertence or lack of capacity 'then coercive enforcement is as misguided as it is costly' (1995: 22). The energy of the supporters of an agreement would be better directed towards ensuring that the compliance system provides for the necessary capacity building, rule interpretation mechanisms and transparency rather than investing in elaborate sanctions infrastructures.

The attraction of designing a variety of means for achieving policy compliance needs to be balanced with the general view that, other things being equal, compliance increases with the greater specificity and transparency of rules. A high level of specificity and transparency enhances compliance because those predisposed to comply have clearer guidance about what they need to do and can be confident that their compliance is visible to others, and non-compliers are easily identified and find it more difficult to argue that their failure to comply is due to inadvertence. However, the cost of clarity of specification and transparency is often a loss of subtlety and depth which frequently shifts the focus away from policy impact to the less valuable monitoring of policy outputs.

The primary purpose of a compliance information system is to ensure maximum transparency, but also to ensure that the data collected is relevant and of high quality, and is analysed thoroughly and disseminated widely. As Mitchell notes 'To make the threat of a retaliatory violation – or linkage via sanctions or inducements – credible, the regulated actors must know that their choices will not go unnoticed' (1996: 19). An effective compliance monitoring systems is deemed essential.

The final element in the compliance system is the non-compliance response system. First there needs to be a structure which enables and facilitates compliance through the provision of advice, administrative support and possibly financial support. A supportive response to non-compliance is important when the applications of sanctions may be 'politically' difficult. The availability of an inducement-based response system might alter the cost-benefit calculation of potential non-compliers. However, inducements are normally more expensive than sanctions. The second requirement is that sanctions must have a clear source. Too many international regimes construct elaborate sanctions, but lack an

organisational focus for their application particularly as interested actors have little incentive to act independently to apply sanctions.

Starting points for change strategies

The compliance conditions are changes more easily than the preconditions for the adoption of codes. The six conditions as presented in Table 3 are taken as a starting point for building stones of a change strategy:

Building stone 1

The first condition shows the importance of moral disapproval. Reputational damage turns out to be more effective than judicial enforcement. The naming and shaming strategy can be applied (condition 1).

Building stone 2

Intense communication between the focal organizations and external actors, including the media and investors or members, can be fruitful. The discourse on good governance then should at first be focused on positive leadership behaviour (conditions 2, 3 and 4).

Building stone 3

Codes need to be sector specific, taking one step at a time. This lowers the compliance costs. Once codes are adopted, next steps will be taken more smoothly. A 'muddling through' strategy, making small progress each team, is recommended (conditions 5 and 6).

Appendix 1. Table code compliance

Source	General implementation theory or specific theory on code implementation	Definition of / approach to good governance	Triggers (+ or -; including type of trigger[2]) for successful implementation	Researched area (country/ type of org.)
Aguilera & Cuervo-Cazurra (2009) *Corporate Governance*	Code implementation. Mechanisms for code implementation mandatory of voluntary ('comply and explain').	A set of best practice recommendations regarding the behavior and structure of the board of directors	Literature review shows how academic research lags behind the spreading of codes of good governance. Voluntary codes, but improvement of governance. Code development, adoption, and compliance are directly related to issues surrounding the governance of the firm, and in particular to all the interactions that a director has inside and outside the firm. Codes are regulations that emerge from policy-making negotiations between multiple stakeholders, such as the state (via the stock market regulators) and the investors.	Codes of good governance worldwide, also about transnational organizations.
Akkermans et al. (2007) *Corporate Governance*	On acceptance and compliance.	Corporate governance codes are sets of business best practices, to enhance the quality and transparency of management, thereby improving company performance and restoring investors' confidence. Focus is on the Dutch Tabaksblat Code.	Compliance is generally high and the extent of compliance is positively associated with company size; the underlying argument can be that larger companies listed in the different stock market indices get more attention and are more closely scrutinized by the media and the investor community. Provisions related to the remuneration of board members, independence of supervisory board members, and requirements with respect to internal control systems stand out when it comes to non-compliance. The nature and content of the explanations of non-compliance is quite similar across companies. This may be an indicator of *symbolic adherence*.	The Netherlands Business
Bon & Fisher (2005) *Corporate Governance*	Integrated approach towards corporate governance and business ethics, drawn from strategic planning.	Corporate governance deals with the rights and responsibilities of an organization's board, its management, shareholders and other stakeholders (OECD, 2004). It requires balancing their interests with the economic goals of the organization as well as the interests of society as a whole: corporate social responsibility and business ethics.	The main problems with strategic planning were: (1) a bureaucratic and formalized approach, (2) lack of implementation and (3) lack of integration throughout the organization; similar problems occur with implementing corporate governance principles relating to ethical conduct. An integrated approach towards corporate governance and business ethics should help organizations to implement high standards of ethical behaviour throughout the organization.	Illustrated by the Australian situation.
Huisman & Beukelman (2007)	Focus op gedragsaspecten van regelnaleving/-overtreding van	n.v.t.	Regelnalevend gedrag afhankelijk van: • Regulering door de overheid = normen + handhaving. Empirie	n.v.t.

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[2] Cultural, political, legal, financial, organizational etc.

Source	General implementation theory or specific theory on code implementation	Definition of / approach to good governance	Triggers (+ or -; including type of trigger[2]) for successful implementation	Researched area (country/ type of org.)
Invloeden op regelnaleving door bedrijven.	bedrijven, o.b.v. literatuurstudie en enkele interviews. Kijkt naar motivationele en situationele factoren (niveaus van: individu, organisatie, omgeving bedrijf, branche, regulerende overheid). Stellen zich ten doel efficiency en effectiviteit van toezicht en handhaving *evidence based* te vergroten.		(zeer) beperkt, maar *command en and control* regelgeving minder draagvlak dan zelfregulering. Verder: subjectieve pakkans van belang. • Marktwerking. Beleidsinstrument om doelen te bereiken. Geen eenduidige conclusies te trekken. • Bedrijfsinterne besluitvorming. Rationele keuzemodel: kosten/baten afweging, keuze voor wel of niet naleven. Meer aandacht gekomen voor persoonlijke belangen. Nog geen heldere conclusies te trekken. • Bedrijfscultuur. Empirie beperkt over cultuur > naleving. Indicatie dat normen en waarden intern niet teveel moeten afwijken van die extern voor naleving. Algemeen: veel theorieën en modellen, weinig empirisch onderzoek. Wel vast te stellen: belang beleving normen (cognitief en normatief) en handhaving. Niet objectieve, maar perceptie, beleving, morele evaluatie van normen en handhaving van groot belang voor naleving. Dus: morele afkeuring als belangrijk element in succesvolle implementatie! *Naming* en *shaming*. Regelgeving en handhaving 'op maat' responsieve modellen nodig. Belang van inzicht in bedrijf/branche. Rol van adviseur, politicus en sanctieoplegger combineren.	
MacNeil & Li (2006) *Corporate Governance*	Focus on 'comply or explain' approach to corporate governance.	Focus on the UK's Combined Code on Corporate Governance	Study of the nature of the explanations by non-compliance. There turns out to be a link between share price performance and investors' tolerance of non-compliance with the governance code: financial performance can justify noncompliance. The benefits of flexibility generally associated with the self-regulatory status of the Combined Code are overstated; the code could be integrated into mainstream company law.	"Comply or explain" principle adopted by the UK's Combined Code on Corporate Governance
Mintz (2005) *Corporate Governance*	Focus on the differences in corporate governance systems that result from cultural variables and different methods of financing business operations (using agency theory, transaction cost theory and organizational theory).	Corporate governance is part of the vast field of business ethics that "addresses the entire scope of responsibilities that a company has to each of its stakeholders: those who have a vested interest in the decisions and actions of a company, like clients, employees, shareholders, suppliers and the community".	General conclusions based on other literature: Corporate governance systems develop as a result of cultural underpinnings, legal structures and different forms of financing business. Although enhanced governance mechanisms is a sound goal to pursue, the results may be meaningless unless internal controls are strengthened and top management and the board of directors establish an ethical tone at the top.	US, UK (both shareholder ownership patterns of financing and Germany (strong creditor financing)
Seidl (2007) *Organization*	Focus on the processes of standardization and functioning of code regimes.	A code of corporate governance is 'a nonbinding set of principles, standards [defined in a narrow	Analysis of the effectiveness of governance codes as a means of regulation and the parameters determining this effectiveness. + A precondition for the effectiveness of the code is that it is	

Source	General implementation theory or specific theory on code implementation	Definition of / approach to good governance	Triggers (+ or -; including type of trigger[2]) for successful implementation	Researched area (country/ type of org.)
	Observation-theoretical approach = constructionist: codes are conceptualized as schemas of observation structuring the mutual observations between the different actors involved	sense] or best practices, issued by a collective body and relating to the internal governance of corporations'.	captured in self activating cycles of mutual observations (interactions) between the focal companies and their external observers (actors), and amongst the external observers themselves. + Effectiveness depends on how codes relate to other observational schemas, that is: experts use the code as well or the use of the code has particular effects, e.g. share price reactions.	
Talaulicar & Werder (2008) *Corparate Governance*	Compliance; code conformity	Code of good corporate governance = principles and provisions on the system and practices by which companies are directed and controlled and aim to further enhance governance quality.	Research must not only consider the number of accepted or rejected code recommendations. Rather, the patterns of code compliance should be taken into account in order to better explain the chosen governance arrangements, their causes, and consequences. Eight groups of companies with distinct forms of code conformity are constructed (from code adherents to code deviators). A common predictor of code compliance is firm size (due to lower relative compliance costs and greater visibility). But: more variables have thus to be taken into account.	Germany (German Corporate Governance Code)
Werder et al. (2005) *Corparate Governance*		German Corporate Governance Code (GCGC) adopted to enhance the quality and transparency of corporate management in Germany.	Company size is positively associated with the extent of Code compliance, but there are many within-group differences. Thus, further research is necessary to hypothesise and test the reasons for different patterns of compliance.	Germany Listed companies at the Frankfurt Stock Exchange
Wieland (2005) *Business and Society*	Practical implementation/ compliance	Governance is defined as a company's resources and capabilities, including the moral resources, to take on responsibility for all its stakeholders.	Theoretically stated that practical implementation of a corporate governance code cannot be realized by a compliance program alone. Relevance in everyday business is determined by the moral values of a company culture.	Corporate governance codes of 21 European states.
Wymeersch (2006) Financial Law Institute Gent	Implementation of corporate governance codes.	Corporate governance in the narrow sense, dealing with the structure and functioning of the boards of directors, and their relationship to management.	Compliance is insured by internal mechanisms: + The board of directors and the management take responsibility for applying the code, under the overall guidance of the shareholders. + The market provides the environment in which developments will thrive; there is pressure and the fear of reputational damage. Outside monitoring - the auditor, the supervisor, the regulated market, a review panel – may also be envisaged. However, their remit is generally restricted to formal assessment: - Judicial enforcement is not generally favoured as seen by existing statutory governance rules.	Focused on Europe in general

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