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# Financial Regulation and the Implementation of EU directives in the European Union member states

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# 1. Introduction

## Problem statement

- »» Financial crisis of 2007-2008
- »» European Union
  - › Important player in the governance of global finance due to legally binding legislation
  - › Since 2008: ten regulations and nine directives to regulate the financial markets and banking
- »» Multi-level-governance perspective:
  - › European level: decision making
  - › National level: Implementation and application of EU law
  - › Directives need to be transposed in the national legal order and provide the member states leeway in terms of specific policy options

# 1. Introduction

## State of the art

- » EU implementation research
  - » Research mainly concentrated on the timeliness and correctness of member state transposition; the reasons/determinants of (non-) compliance
  - » Research disregarded the use of legal leeway provided by EU directives (except for: Jans et al. 2002; Voermans 2011; Morris 2011; Thomann 2015)
- » Research on the regulation of financial markets and banking
  - » Noteworthy body of literature with regard to the EU's role in the regulation of financial markets
  - » Research disregarded the implementation of EU directives on the regulation of finance and banking within the member states

How were the EU directives on the regulation of finance and banking implemented by the member states and did the member states use the directive's leeway?

## 2. Theoretical background

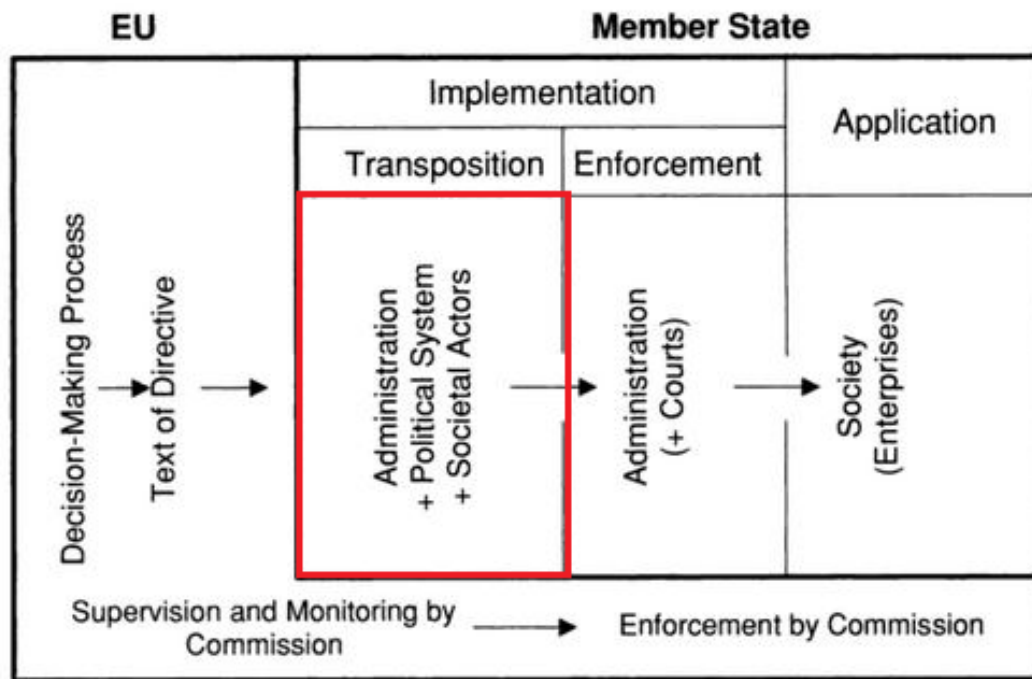


Figure 1: Directives in the European multi-level-system (Falkner et al.: 2005:6)

- » Decisive steps of the EU directives' transposition process take place within the ministerial departments
- » Previous research reveals the importance of administrative explanations for the implementation of EU law
  - » Capacity, experience, organization structures
  - » Routines/standard operating procedures

How does the transposition process within ministerial departments look like and how do administrative factors affect the implementation of EU directives?

### 3. Empirical example

#### Mortgage Credit Directive (MCD) (Directive 2014/17/EU)

- » Transposition deadline: 21.03.2016
- » The MCD on credit agreements for consumers relating to residential immovable property aims to create a Union-wide mortgage credit market with a high level of consumer protection
- » Main provisions (amongst others):
  - › Consumer information requirements
  - › Consumer creditworthiness assessment obligation
  - › Foreign currency loans
- » The MCD was designed as a preventive measure to avoid irresponsible lending and borrowing behavior by market participants, leading to a real estate bubble

### 3. Empirical example

#### The Implementation of the MCD in Germany

- » „Gesetz zur Umsetzung der Wohnimmobilienkreditrichtlinie und zur Änderung handelsrechtlicher Vorschriften“
- » Responsible ministry: Federal Ministry of Justice and Consumer Protection
- » Criticism by various Germany stakeholders:
  - › New rules have led to a more restrictive lending policy of German banks for home loans
  - › Main reason:
    - German legislator did not literally transpose the directive and did not take advantage of exemption clauses
    - German legislation went beyond the MCD directive's minimum requirements that are necessary to comply

### 3. Empirical example

#### The Implementation of the MCD in Germany

- » German legislator used the directive's leeway and chose a non-minimalistics-transposition approach
  - » „customization“ in terms of regulatory stringency and density (Thomann 2015)
  - » „Gold-plating“
- » Empirical case of continuing national heterogeneity despite common EU law, since other EU members transposed the directive literally or took advantage of exemption clauses
- » Meanwhile the German government decided to amend the law that transposed the directive into national legislation



### 3. Empirical example

#### The Implementation of the MCD in Germany

- » An analysis of governmental documents (legislative proposals), committee minutes and written statements by stakeholders, reveals several findings:
    - › the Federal Ministry of Justice and Consumer Protection followed a non-minimalistic-transposition approach since the first draft of the legislative proposal (despite a „no gold-plating policy“ in Germany)
    - › the MCD itself was rated positively by most stakeholders
    - › the legislative proposal by the Federal Ministry of Justice and Consumer Protection was criticized due to the non-literal transposition approach and non-use of exemption clauses
- Findings raise several questions about the administrative practices leading to the transposition of directives within the „black box“ ministerial departments during the pre-parliamentary process in general?

## 4. Research Questions

- » Objective 1: Administrative practices leading to the transposition of EU directives
  - » What does the national transposition process look like? Organizational structures and practices? Differences between ministerial departments in terms of transposition procedures?
- » Objective 2: Administrative practices contributing to the recognition of leeway provided by EU directives
  - » How do ministerial departments/staff achieve an appropriate understanding of the directives content/implications within ministerial departments? Organizational structures and practices?
- » Objective 3: Implementation of directives on the regulation of finance and banking by the EU member states
  - » Did EU member states identify the directive's leeway? Why did the member states (not) use the leeway? If yes, how?

## 5. Outlook

### PhD thesis

- » Factor-centric research design
- » Unit of analysis
  - › Primary: Organizational process within ministerial departments during the transposition of EU directives
  - › Secondary: EU directives on finance and banking regulation
- » Population: ministerial departments in the national administrations of the 28 EU member states responsible for the national transposition of EU law
- » Small-N case study research design
- » Method: semi-structured expert interviews and document analysis