

## Transposition of EU food safety directives

### Description of research project

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My research is concerned with the transposition of the EU food directives into national laws of the member states. This project is a part of a larger program on transposition of directives.

#### *What is transposition and why is it interesting to study?*

Transposition of directives is a first step in implementing the EU policies. It is a process when administrations of the member states incorporate the EU directives into their national law. This process starts when a directive has been adopted at European level. It ends with the notification of national measures to the Commission.

The aim of transposition is to create a uniform body of legislation equally applicable all over Europe. When failing in proper transposition, the member states create or maintain barriers for trade in the European internal market. They also endanger the credibility of the EU (EC) law in general, and the creation of the internal market in specific.

The deficit implementation became important during the creation of the internal market in late 80s and early 90s. The member states had agreed to complete the internal market by 1992. Therefore, the European institutions adopted approximately 300 legal measures most of which were directives. All these directives had to be transposed into national legislation. This caused a lot of problems for the member states (Pelkmans 1991). In 1991, for example, the transposition deficit was around 35 % in the twelve member states. According to the Commission, the transposition deficit had been decreasing over time. In last years it has been rising again from the average of 1.8 % in 2002 to 2,2 % in 2004. It is, however, questionable whether it is indeed the case. When calculating the deficit, the Commission

refers to all directives adopted so far, including those from the 50s and the 60s. The number of European legislative acts from which the deficit is calculated, is increasing each year. Thus, the proportion of old directives that have been transposed, increases, and therefore, the existing deficit seem to decrease over time.

Some studies have showed that the Commission's data is indeed unreliable (Bürzel 2001; Mastenbroek 2003). Mastenbroek (2003) demonstrated that although the transposition rate (directives transposed) in the Netherlands turned out to be larger than the Commission reported: 99% instead of 96%, when looking at the timeliness of transposition, only 58 percent of directives were transposed on time.

The delayed transposition is only one side of the coin. The other problem is the deviations in content. Directives are meant to be flexible and therefore often contain broad /vague provisions leaving a room of manoeuvre for the member states. Countries often exploit this room for their own profit and push the border further than it was originally intended, thus establishing additional requirements. Although the deviations in content occur, they are extremely difficult and time consuming to detect. The Commission relies on the parties affected by the directive that they will report inconsistencies and deviations ('fire alarms'). Then the Commission will investigate the case and if the complaint is valid, it will begin negotiations with the country in breach.

Case studies on implementation of directives often focus on this transposition aspect. The empirical material has demonstrated that the member states approach the transposition differently and that one can find differences in how they deal with the discretion.

### *Research question*

Now that we know that the transposition deficit and deviations in content exist, a question arises: how comes that member states fail to comply with directives they have agreed upon? My aim is to find out which factors influence delayed and/ or deviated transposition. The main research question is: "Which factors account for differences in transposition of the European Union food safety directives?" In order to find an answer to this problem, I will answer the following broad sub – questions:

- What is transposition and what are the criteria for transposition (timeliness and correctness)?
- Do delays occur in transposition? Do member states differ with regard to the delays in transposition?
- Do member states differ with regard to the content of transposed directives? Do deviations from a directive in content of national measures occur?
- What explanations for delayed and / or deviated transposition can be found in the new institutionalist approaches? To what extent they explain the phenomena.

- What alternative explanations exist?

These sub-questions are further elaborated.

There are a number of studies concerned with the implementation of European directives. Most of them are case studies – how a directive (or two) was transposed, applied, enforced in one or two member states. The cases usually are selected from the European environmental or social policy (Borzal 2000; Dimitrakopoulos 2001; Dotan and Waarden 2002; Duina 1997; Haig and Lavoux 1986; Haverland 2003; Knill 1997; Knill and Lenschow 1998; Pridham and Cini 1994; Siedentopf and Ziller 1988).

There are a few quantitative studies that analyse the implementation deficit in the member states (Bursens 2002; Ciavarini Azzi 2000; Giuliani 2003; Lampinen and Uusikylä 1998; Mastenbroek 2003). They tend to focus on the implementation problem during certain period (mostly 3-5 years) using the Commission's data on transposition percentage or / and infringement procedures.

The vast majority of these studies turned to the new institutionalism approaches to find explanations for the observed phenomena. I will do the same. In order to explain the diversity in the transposition record of the member states, I will consult the new institutionalism approaches. Within the new rational choice and sociological institutionalism, I will search for the explanations for delayed and deviated transposition.

This research together with other three researches will contribute to the science by extending the data collection on decision making to more cases previously researched. It will be the first time when such huge amount of data on processes regarding the transposition in the EU will be studied and compared. In my research, I will combine the quantitative and qualitative methods of data analysis and, therefore, contribute to the previous policy analysis by adding not only quantitative but also qualitative data.

### *Research design*

#### *Quantitative part*

For the quantitative part I will look at the delays in transposition. Delays occur when a member state has exceeded transposition deadline stated in a directive, i.e. when a member state has not adopted a national legal act transposing the directive until the deadline. As this is a rather common phenomenon<sup>1</sup>, it is interesting to find out whether it can be associated with a certain period, member state, or policy sub field, or whether they are constantly present. In this part, I will measure the delay and discover variation in it.

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<sup>1</sup> As mentioned earlier, Mastenbroek (2003) demonstrated that Dutch were late with transposition in over 50 percent of cases.

For the large data set, I selected all European food safety directives ever adopted (1962 - 2004). These include those in force as well no longer in force, new as well as amendments. I ended up with 224 food safety directives covering the following issues: additives, hygiene, control, labelling, foods for special purposes (baby, dietary foods), contact materials (e.g. packaging), and product specific directives on chocolate, cacao, coffee, sugar, honey, jams, jellies, marmalades, chestnut puree, and dehydrated preserved milk.

For the selected directives, I had to find information on national measure that Germany, UK, Netherlands, Greece and Spain – countries of focus in my research – adopted when transposing directives. First, I consulted the Commission's data in its online database CELEX. Then I received identical data from the Commission's DG Sanco that is responsible for the creation and monitoring of European food safety policy. The CELEX contained approximately 60% of information required. To fill the gaps, I turned to the national sources. For each country, I consulted available online databases and web pages, national ministries, authorities, and the permanent representations in Brussels. This is still an ongoing process.

I measured delays in transposition by calculating how many days passed from the deadline of transposition (directive) until the first national transposition measure was adopted. There are two reasons for using the first national transposition instrument for the analysis. Firstly, it has to do with the completeness of transposition. It is difficult for quantitative analysis to consider when transposition is finished. If several national instruments are reported to the Commission, one could assume that according to the member state the first instrument was not enough to comply with the directive. Often this is true, indeed. The other possibility would be to use for the analysis the last instrument adopted, implying that at that point transposition should be complete. However, such an assumption would not be correct either, as it is possible to find out only the last instrument at a *certain point in time* and not in general. Moreover, some countries might choose not to report additional measures, in this way introducing bias in data. Therefore, I decided to use the first instrument only as every member state should notify at least one national legal instrument.

Second, I believe that the first instrument adopted by a member state introduces the largest changes to the existing national policy. Therefore, it faces the possible unwillingness from the actors' side to change the status quo. For measuring delays, the first legal act would be an appropriate indicator of transposition problems.

The preliminary descriptive statistics reveals that the delays in transposition<sup>2</sup> do exist, and in general, they tend to decrease over time (Table 1). There are also differences in the size of delays

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<sup>2</sup> The delays in transposition were calculated by counting how many days passed from the deadline of transposition until the first national transposition measure was adopted.

between the countries. Table 2 shows that at the beginning of this millennium Dutch managed to transpose all food safety directives before the deadline expired (delay value is zero). Greece, on the other hand, had a mean transposition delay of roughly half a year. Also Germany had problems with being on time with transposition in this period. Its mean value for delay was 166 days.

### *Case studies*

The other part of my research will consist of case studies. The aim of case studies is to look closer at the delays in transposition and to detect the deviations in content from the original text of directive. Here again the purpose is to find explanations for delays and deviations and in addition to disclose the causal mechanisms that underlie them.

I will select one or two directives and look at how they had been transposed in the five countries. I will do so by tracing the process of adoption of national transposition measures. I will analyse the different legal texts (European as well as national), correspondence and other documents, search for media records, interview national and European experts, representatives of industry, non – governmental and interest organisations and other parties concerned by the directive.

### *Concluding remarks*

Currently I am working on completing the quantitative database. It is important in order to discover the variation in the dependent variable – delay.

Next to it, I also develop the theoretical framework of my research. My main challenge is to find hypotheses that would fit with the phenomenon ‘transposition’, explain the variation over time and among the countries, and preferably would be possible to operationalise for the quantitative analysis.

## ANNEX

### Statistical tables

Table 1 Mean value of transposition delays in days

|                                   |           | Mean | N   |
|-----------------------------------|-----------|------|-----|
| Year when a directive was adopted | 1965-1969 | 385  | 5   |
|                                   | 1970-1974 | 467  | 17  |
|                                   | 1975-1979 | 369  | 76  |
|                                   | 1980-1984 | 324  | 55  |
|                                   | 1985-1989 | 384  | 90  |
|                                   | 1990-1994 | 242  | 105 |
|                                   | 1995-1999 | 189  | 133 |
|                                   | 2000-2004 | 127  | 117 |

Table 2 Mean values of transposition delays in days per country

| Year when a directive was adopted | Country in which transposed |    |         |    |          |    |        |    |         |    |
|-----------------------------------|-----------------------------|----|---------|----|----------|----|--------|----|---------|----|
|                                   | Netherlands                 |    | Germany |    | England* |    | Spain* |    | Greece* |    |
|                                   | Mean                        | N  | Mean    | N  | Mean     | N  | Mean   | N  | Mean    | N  |
| 1965-1969                         | 385                         | 5  | 0**     | 0  | 0        | 0  | 0      | 0  | 0       | 0  |
| 1970-1974                         | 608                         | 6  | 428     | 5  | 394      | 6  | 0      | 0  | 0       | 0  |
| 1975-1979                         | 372                         | 26 | 421     | 25 | 318      | 25 | 0      | 0  | 0       | 0  |
| 1980-1984                         | 326                         | 17 | 342     | 18 | 276      | 10 | 0      | 0  | 343     | 10 |
| 1985-1989                         | 335                         | 21 | 531     | 19 | 453      | 18 | 342    | 13 | 232     | 19 |
| 1990-1994                         | 189                         | 24 | 288     | 18 | 351      | 21 | 178    | 22 | 177     | 20 |
| 1995-1999                         | 117                         | 32 | 265     | 16 | 332      | 30 | 173    | 29 | 143     | 26 |
| 2000-2004                         | 0                           | 30 | 166     | 21 | 69       | 22 | 87     | 26 | 186     | 18 |

\* For these countries data begins on a year of its accession to the EC: England – 1972; Spain – 1986; Greece – 1981.

\*\* For directives adopted between 1965-1969 there is no data for Germany. The 0 value in this case does not mean that Germany was on time with transposition.

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