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Session 1: Governance in the European Union (dr. R. Holzhacker and dr. M. Haverland)

Description of PhD research project:
Transposition of EU Transport policy directives. Why so much diversity?

This Ph.D. project has two main aims. First, it seeks to contribute to the overall NWO financed research program '*Analyzing European Union policies: the transposition of directives*' by providing information on a specific sector of European Union policy making. By doing this, it enables the cross-sectoral comparison envisaged in the overall program. The second aim is to provide a systematic, theoretically informed cross-national and cross-subsectional comparison of the transposition of EU transport directives. Existing explanations about the *speed* and *content* of transposition of European transport directives are largely *ad hoc* and not grounded in the major current theories of political science and public administration.

In the following I outline my project addressing the scientific relevance. Then I elaborate on the case selection of policy area on the one hand, and member states on the other hand. Then, I make the value-added of my proposal explicit, outline the methods used and conclude with its societal relevance.

Scientific relevance: research question

The steps from directive to 'law in action' consist of the transposition in national legislation, the operationalization of the rules and their application (often by the implementing agency or the administration), control and enforcement, and, in cases of non-implementation, infringement

procedures. This process is spread over different levels of governance, e.g. national, sub-national governments and agencies.

In this project I focus on the *transposition* of EU directives in national law. According to Articles 10 and 249 EC, however, transposition of EU directives is compulsory. This obligation entails, on the one hand, the member states to transpose a directive in *time*, as well as, on the other hand, in line with the *contents* of the original directive and rulings by the European Court of Justice (ECJ). Non-compliance may entail infringement procedures.

As the European Commission regularly shows, however, the speed with which member states transpose directives differs substantially (European Commission 2000, 2001a). Some member states, such as Greece (EL), France (F) and Portugal (P), have a transposition deficit of more than 4%, which indicates that a substantial number of directives have not yet been put into national legislation. Others, like Denmark (DK), Sweden (S) and Finland (FIN), have a smaller deficit (see Table 1). Furthermore, the contents of transposed directives sometimes substantially differ from the original intentions, as infringement proceedings show (European Commission, 2001b). Transposition is an area in which the outcomes of decision making are the result of a complex interplay between the Union and the domestic and administrative forces, which is typical for the functioning of the EU (Steunenberg, 2000).

Table 1: The transposition deficit in the EU and per member state in November 2000

	EU wide	DK	S	FIN	E	NL	UK	A	B	D	L	I	IRL	P	F	EL
deficit: # directives	186	16	17	19	23	36	39	43	43	45	47	47	52	64	66	95
deficit: % of total	*12.8*	*1.1*	*1.2*	*1.3*	*1.6*	*2.5*	*2.7*	*2.9*	*2.9*	*3.1*	*3.2*	*3.2*	*3.6*	*4.4*	*4.5*	*6.5*

*   This table is based on 1422 to 1459 directives, which have to be transposed by the member states.

Source: European Commission (2000: 6).

The ways in which domestic and administrative factors affect transposition are still a puzzle. Preliminary evidence suggests that current theories of political decision making may not account for some of the observed variations in the speed and the outcome of transposition. At first sight, both sociological and rational choice institutionalists appear to have difficulty in explaining these processes. Therefore I test systematically these institutional theories. By focusing on the differences between these theories and comparing their explanatory power, the projects provides for more satisfactory answers to the question *why do the member states in the Union differ with regard to the speed and outcomes of transposition in the field of transport?* The speed refers to the well-known problems of slow transposition, while the outcome of transposition concerns possible deviations in the national legislation from the contents of the original directive.

Case selection: transport area

Nowadays, transport policy remains a sector in which strong national and domestic interests prevail, which have affected the making of a European transport policy over many years. Several factors make it different in economic, numeric and organizational terms from other industrial sectors and thus worthy of special attention.

First, transport plays a key role in people's everyday lives and is a major factor in economic competitiveness and employment. It is used as an instrument of state economic policy. Transport is a major industry by whatever criteria it is measured: investment, employment, etc. The capital investment is huge, and a high percentage of workers are employed in transport services, accounting for 7% of the Community's GNP, 7% of total employment, 40% of Member States investment and 30% of Community energy consumption. Demand, particularly in intra-Community traffic, has grown more or less constantly for the last 20 years, by 2.3% a year for

goods and 3.1% for passengers (European Commission, 2004). National transport policies and general national economic policies go hand in hand.

Second, it is an indispensable ancillary activity to other industrial sectors.

Third, transport covers several modes - road, railway, inland waterway, sea and air - most of them competing with each other.

Fourth, transport is an industry with public service obligations, where governments often intervene by obliging certain services to be provided but also by controlling the tariffs. Railways in particular are used as an instrument of economic policy where public financing of the infrastructure is very common. In Italy, for example, the creation of cheap transport regardless of viability is one of the methods of promoting the industrialization of the underdeveloped south. As far as road transport is concerned, the building of roads often depends on the state, but once the roads are built and open to traffic many different types of users take advantage of their existence. To a certain extent the same applies to inland waterways.

Fifth, for some Member States, such as the Netherlands, preservation of the maximum freedom of international transport services is an essential factor in the country's preeminence in European trade. On the other hand Germany and Greece have a long history of state intervention in the transport industry and prefer regulation.

Sixth, from a methodological point of view, transport policy is selected as a policy area since it has a relatively large number of directives that have been adopted recently. [1] This allows to move beyond case study research by testing later on competing explanations for the transposition delay.

Table 1: The transposition deficit for EU directives on transport per member state in November 2000

	EU wide	DK	E	D	UK	F	S	P	L	NL	B	I	A	FIN	EL	IRL	Sum
deficit: # directives	30	1	1	1	3	3	4	4	5	6	6	6	7	7	10	15	79
deficit: % of total*	*41%*	*1%*	*1%*	*1%*	*4%*	*4%*	*6%*	*6%*	*7%*	*8%*	*8%*	*8%*	*10%*	*10%*	*14%*	*21%*	-

* Total number of directives in this policy area is 73.

Source: European Commission (2000: 8).

Last but not least, the choice of transport policy is based on the fact that some variation exists in the transposition of directives in this area. Data from the European Commission (see Table 1) indicates that by November 2000 30 out of 73 directives are not transposed in all countries. In other words, the Union has a transposition deficit for this policy area of 41%, which is one of the highest (see Table 2 in the program application). While Greece (EL) and Ireland (IRL) have not yet transposed 10 to 15 directives, Denmark (DK), Spain (E), and Germany (D) have still to transpose one directive. The figures of Table 1 are a first hint that variation in transposition is significant.

Methods and techniques of research

In order to address this project's main research question, the empirical analysis is divided into two parts. This study tests several competing hypotheses on factors that could explain the difference in transposition in different EU member states in the political setting of the transport sector.

To analyze the *speed* of transposition, we, in the program, use *quantitative research* techniques in order to identify the factors that affect the speed of transposition. The decision making process on a directive in one member state will be taken as the unit of analysis. We

include information on the official deadline for transposition and the actual date of the national government's notification, information about the country's role in the Union's legislative process leading to the directive, the legal basis for transposition as well as other formal-legal aspects of the transposition process, and key institutional features. The technique used in this part of the empirical analysis is *survival analysis* (Kleinbaum, 1996), since it allows us to include transposed as well as not (yet) transposed directives in the analysis of delays.

The second part consists of *case-studies* in which a limited number of transposition processes are analyzed further in order to explain delays and potential deviations from the contents of the original directive. The selection of cases will be primarily based on those directives for which we could not fully explain the speed of transposition. Substantial unexplained variances in the quantitative analysis suggest that some of the institutional or political factors as measured there, may not account for differences in the speed of transposition. In these cases, more detailed analysis using the adapted institutionalist approach suggested in the main program, may provide the explanation.

Societal relevance

The transposition of EU directives is important for at least three reasons: First, it is crucial for the *even* application of EU law to its citizens. Second, ever since the establishment of the internal market in 1992, the transposition of legislation has been a key political priority in the EU. In order to maintain the internal market and to pursue European integration, legislation must be transposed. Non-compliant behavior implies that existing barriers between the member states remain effective and frustrate further European integration and the internal market. Moreover, it is urgent to comply with EU law because EU enlargement offers unprecedented opportunities for both existing and new member states, but it is not without risks. The internal market is

perpetually vulnerable to fragmentation and enlargement is a moment of heightened vulnerability. Not to forget that transposition is a necessary, but not a sufficient condition for the implementation of European policies. It is part of the policy cycle (Kassim et al. 2000), which besides policy formation and legal transposition also requires the actual implementation and enforcement. However, without a proper transposition, a European directive cannot be fully implemented in the national legislation. Consequently, implementing agencies might not be fully informed about the new European legislation and could get trapped in contradicting requirements of these rules and national law.

First results and next steps:

As part of the project, a database based on Commission and national information has been constructed to establish the actual delays in transition for all transport directives for the five countries under investigation. First results were presented recently at a international conference on compliance and transposition at Oud Poelgeest, Leiden (June 2004). Data shows that we have a considerable transposition deficit in the transport sector.

The study presents a new data set on transport directives to evaluate the transposition record of member states in the transport sector covering 1958 to 2004. It starts with a short overview of the major developments in European transport policy. Then, it illustrates that, on the one hand, the average transposition time set in the transport directives by the EU legislative actors has decreased over the last decades. On the other hand, this study yields the result that there is a considerable transposition problem in the common transport sector. The data set also shows that non-transposition has not always been a problem in the transport sector and has definitely not grown steadily over time. Moreover, the empirical information indicates that the

groups differ in their average level of the dependent variable significantly. Last but not least, the study concludes with preliminary explanations.

Next, I will test systematically explanatory factors and their operationalization covered by the compliance and transposition literature.

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