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Ministerial Transposition of EU Directives: Can Oversight Improve Performance?

Radoslaw Zubek*

Katarina Staronova**

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Institute for European Integration Research

eif

Strohgasse 45/DG
1030 Vienna/Austria

Phone: +43-1-51581-7565

Fax: +43-1-51581-7566

Email: eif@oeaw.ac.at

Web: www.eif.oeaw.ac.at

Abstract

This paper argues that the extent to which national administrations transpose EU directives in a timely fashion may be related to how transposition is coordinated inside national ministries. Focusing on transposition through secondary legislation in Estonia, Poland and Slovenia, the paper finds initial evidence that oversight can contribute to better transposition performance. Ministries with strong internal oversight tend to be better at timely transposition, while ministries with no or weak oversight perform worse. The results tend to hold if one controls for country effects, party preferences and transposition workload.

General note:

*Opinions expressed in this paper are those of the author
and not necessarily those of the Institute.*

**Radoslaw Zubek is a University Lecturer in European Politics and Fellow in Politics, Hertford College, University of Oxford. [radoslaw.zubek@politics.ox.ac.uk]*

***Katarina Staronova is a Lecturer in Public Policy at the Institute of Public Policy, Comenius University, Slovakia. [staronova@governance.sk]*

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1. INTRODUCTION¹

Many EU implementation studies have shown that the effectiveness of national administrations critically determines the extent to which member states comply with European Union laws (see Mbaye 2001; Kaeding 2006; Hille and Knill 2006; Haverland and Romeijn 2007; Toshkov 2007, 2008). This is an important finding which provides support for the ‘management school’ in EU compliance research (Tallberg 2002). According to this approach, member states fail to implement EU laws not as matter of preference but because of their limited capacities to achieve compliance. However, in exploring the role of administrative factors, the existing research rarely links performance to specific institutional configurations (but see Jensen 2007; Zubek 2005; 2008; Dimitrova and Toshkov 2009). Most scholars typically resort to statistical analyses using aggregate perception-based indicators of bureaucratic efficiency. Relatively little is thus known about what types of administrative structures lead to better transposition performance and whether such effects hold across EU member states.

This paper examines the impact of different oversight practices inside national ministries on the timeliness of transposition through secondary legislation. Two institutional models are identified: (i) centralized systems that presuppose the existence of powerful monitors inside ministries with competences to oversee the work of individual directorates; (ii) decentralized systems in which oversight is limited or absent and where individual directorates enjoy relative autonomy in handling transposition tasks. In classifying oversight practices, the paper draws on a qualitative assessment of rules-in-use that govern the transposition process. The key question considered is that of whether different configurations of oversight lead to systematic differences in performance of individual ministries. Drawing on delegation theory, the paper hypothesizes that – all else equal – centralized systems should ensure more timely transposition than the decentralized systems. This expectation is tested against empirical

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evidence on transposition through secondary legislation from 21 ministries in Estonia, Poland and Slovenia for the period from 1 January 2005 to 31 December 2008.

The rest of the article proceeds as follows. The next section briefly reviews the research on the impact of administrative factors on compliance with EU law. It then formulates theoretical expectations regarding the effect of internal oversight as well as identifies other explanatory factors that may affect transposition performance. Section 3 presents a comprehensive scheme for classifying oversight practices and discusses the operationalization of key variables. The following two sections provide an overview of oversight procedures established in 21 ministries in Estonia, Poland and Slovenia and subsequently check the impact of differences in institutional configurations on transposition performance. The concluding section assesses the relevance of the results for the study of EU compliance.

2. BUREAUCRATIC EFFICIENCY AND EU LAW TRANSPOSITION

2.1. Literature Review

There are many studies that show that bureaucratic capacities shape transposition performance. In a path-breaking analysis of the implementation of seventeen directives in all EU member states, Siedentopf and Ziller (1988) argue that the quality of governmental coordination is a key determinant of successful transposition. Richardson (1996) links transposition performance to administrative styles prevalent in the national polity. More recently, many quantitative studies have found that the efficiency of national bureaucracies has a strong impact on transposition performance. Mbay (2001) shows that the structure of the civil service has a strong effect on the number of infringements initiated against a member state (see also Börzel et al. 2007; Haverland and Romeijn 2007). Falkner et. al (2005, 2008) find that the level of available administrative resources affects the success of transposition. Many scholars also show that the general measures of bureaucratic strength are positive predictors of transposition record (Berglund et al. 2006; Hille and Knill 2006; Toshkov 2007, 2008; but see Steunenberg and Toshkov 2009).

Most of the recent research resorts to using aggregate indicators of bureaucratic efficiency and relatively few studies attempt to link specific administrative factors to transposition performance. There are, however, exceptions. Dimitrakopoulos (2001, 2008) establishes that implementation of EU laws depends on the presence of robust central and sectoral coordination at national level. Jensen (2007) shows how the type of oversight that central governments use to monitor compliance by agencies influences how quickly member states resolve infringement proceedings. More specifically, he argues that ‘police-patrol’ oversight is more effective than ‘fire-alarm’ mechanisms. Zubek (2005, 2008) demonstrates how the strength of core executive oversight over ministerial departments affects the extent to which the latter comply with transposition commitments. The argument is that higher centralization of authority inside national cabinets facilitates timely adaptation to EU laws. More recently, Dimitrova and Toshkov (2009) explore the relationship between EU co-ordination structures

and problems with EU implementation. They show that, while stronger coordination leads to more timely transposition, this effect is conditioned by the salience of transposition measures.

2.2. Conceptual Framework

It is a conventional wisdom that transposition of EU directives is in the hands of national ministries. Ministries are responsible for initiating the process and – in many cases – are also the final decision-makers. What is less well recognized is that ministries are not unitary actors (but see Steunenberg 2006). At the very least, ministerial departments house two types of actors: political appointees (ministers and deputy ministers) and bureaucrats (directorates and units). It is often assumed that ministers act as principals who formulate policy, while bureaucrats are agents who implement it (Huber 2000; Strom 2000). In practice, and in EU transposition in particular, the picture is more complex. The extent to which political appointees control policy-making varies across different settings and it is not unusual for civil servants to take active part in both policy formulation and implementation. What is crucial, however, is that inside ministerial departments there normally exist some individual or collective actors who make policy commitments (ministerial principals) and lower-level actors who implement such commitments (ministerial agents).

Any delegation of authority creates the risk that agents either will not perform the delegated task or will do so in a way contrary to the interests of the principal (Pratt and Zeckhauser 1985; Kiewiet and McCubbins 1991). This is especially the case if the principals do not know the true preferences of the agents and cannot observe their actions. Such ‘shirking’ can be deliberate – when agents have private interests that diverge from those of their principal. It can also be non-deliberate – when agents lack the necessary resources or fail to perform due to problems of communication or occurrence of random events. In the area of EU transposition, the ministerial agents responsible for transposition may be influenced by special interests that oppose national compliance. They may also lack the necessary time and personnel to effectively carry out EU-related legal implementation tasks. As a result, complete and correct transposition of EU directives may be blocked or delayed at ministry level.

Such agency losses can be mitigated by oversight. The literature identifies four main types of mechanisms: contract design, screening and selection, monitoring and reporting, institutional checks (Kiewiet and McCubbins 1991: 27-34). The first two make it possible to safeguard against agency losses before delegation (*ex ante* mechanisms), while the other two after delegation (*ex-post* mechanisms). Oversight may also be reinforced through the presence of an enforcer or supervisor – a special type of agent whose role is to monitor and report on the actions of other agents (Alchian and Demsetz 1972; Tallberg 2003). Research on the national coordination of EU transposition indeed demonstrates that many domestic ministries establish internal oversight mechanisms to control the way in which directorates and other units discharge transposition tasks (cf. Kaeding 2007; Dimitrakopoulos 2008; Zubek 2008; 2010 forthcoming).

This discussion makes it possible to formulate the following hypothesis:

Hypothesis 1: The presence of strong departmental oversight increases the probability of timely transposition.

It must, however, be recognized that the full support of ministerial principals for the policy commitments they enter into cannot be assumed in all settings. This is particularly true for transposition of EU directives. National ministries transpose policies that have been agreed jointly with other member states, Commission officials and the European Parliament. Since EU laws are decided collectively by many national and supranational actors, often through majority voting, any national actor has a restricted influence over the final outcome. It is thus possible that while the ministerial principals formally endorse the transposition of a directive, they have a strong preference for delaying or blocking the actual implementation. This may have significant implications for the effectiveness of internal oversight. Regardless of how diligent ministerial agents are in discharging transposition tasks and how effective the internal oversight is, the principals are likely to be reluctant to approve the new domestic measures. In short, the effect of internal oversight can be expected to be conditional on the preferences of the ministerial actors who enter into transposition commitments.

Hypothesis 2: The effect of internal oversight will decline if ministerial principals contest the contents of the directive.

Departmental oversight is only one of many factors that affect transposition performance and the list of potential predictors is long and complex (see Toshkov 2010 for a recent review). The present analysis controls for the impact of two key factors: (i) transposition workload, and (ii) country effects. With regard to the former, national ministries that have few transposition commitments may exhibit systematically different patterns of performance from ministries with many transposition tasks. Research has so far paid limited attention to ministerial workloads as an explanatory factor. It has, however, been shown that some types of directives are easier to transpose than others (Mastenbroek 2003; Luetgert and Dannwolf 2009). Moreover, other studies have found evidence that the higher the complexity and political sensitivity of the EU provisions, the more likely that transposition will be delayed (Kaeding 2006; Steunenberg and Kaeding 2009). In line with these arguments, one can formulate the following expectation:

Hypothesis 3: Transposition performance of a national ministry will be lower if a ministry has a heavy transposition workload.

National ministries may find EU transposition more or less difficult depending on country-specific circumstances. Two opposing propositions can be formulated. On the one hand, much research finds that large countries are in a better position to delay or resist legal adaptation (see e.g. Sverdrup 2004; Jensen 2007). This may be related to the Commission's reluctance to refer cases against such states to the ECJ. On the other hand, it has also been suggested that large countries with high voting power at the EU level may be able to shape Community legislation in such a way as to minimize the substantive misfit with domestic circumstances (Mbay 2001). Arguably, such state power arguments may have less relevance to new EU member states that have had limited experience of EU decision-making. In any case, this discussion leads one to expect that:

Hypothesis 4: National ministries in small countries will exhibit a different pattern of transposition performance from ministries in large countries.

3. DATA AND OPERATIONALIZATION

The above theoretical expectations are tested against empirical data on oversight practices in 21 ministries in Estonia, Poland and Slovenia. Small-n comparisons do not, of course, allow for advanced tests of theories, yet they are useful as a first stage of research before a more detailed analysis is undertaken (cf. Lijphart 1971). The selection of ministries from three new EU member states allows one to keep constant factors such as democratic experience and the length of EU membership. All states are relatively new parliamentary democracies and all started accession negotiations in 1998 and joined the EU in 2004. The focus on new EU member states may, of course, limit the generalizability of the findings for all of the EU-27, an issue that is addressed in the concluding part of the article. The remainder of this section discusses the operationalization of individual variables and methods of data collection.

3.1. Departmental Oversight

To map the strength of oversight, this article examines the rules-in-use governing the processes of transposition inside ministries, and in particular the role of two types of coordinating units: (i) horizontal legislative services and (ii) specialized EU coordination units. Rules are defined as shared understandings regarding what action is required, prohibited or permitted. The constellation of rules-in-use is examined in three dimensions: transposition planning, legal review and monitoring of deadlines (see Table 1).

Table 1: Analytical Framework: Internal Departmental Oversight

| Oversight Mechanism | Monitor's Powers |
|----------------------------|---|
| Transposition Planning | |
| ▪ Draft positions | checks if draft positions identify transposing measures (1) |
| ▪ Transposition plans | assigns responsibility for transposition (0.33); verifies line directorate plans (0.33); requests intermediate deadlines (0.33) |
| ▪ Cabinet plans | checks if general government legislative plans contain all transposing measures (1) |
| Legal Review | |
| ▪ Substantive check | ▪ verifies all transposing drafts against the text of directives (1) |
| ▪ Horizontal measures | ▪ drafts horizontal measures (1) |
| ▪ Drafting assistance | ▪ assigns lawyer/expert to substantive directorate to jointly work on drafting measures (1) |
| Deadline Monitoring | |
| ▪ Central timetable | ▪ maintains a centralized list of all transposition obligations of its ministry (1) |
| ▪ Reports & reminders | ▪ reports regularly to senior management (0.5); sends individual reminders to directorates (0.5) |
| ▪ Sanctions | ▪ sanctions (name/shame, alerts, etc) if delays are identified (1) |

Source: own compilation (weights assigned to institutional features in parentheses).

With regard to planning, the key question is whether there exists an institutional monitor with responsibility for coordinating transposition programming. Three issues are of particular relevance. First, the monitor may have the right to check if ministerial positions for EU decision-making identify transposition implications. Ensuring that legal problems are identified early in the legislative process is likely to have a positive impact on implementation. The second issue is the monitor's role in coordinating transposition planning: does the monitor have the power to allocate responsibility for transposition; verify plans drawn up by line units; and negotiate intermediate deadlines? A strong control over the planning process at directorate level is likely to prevent non-deliberate and deliberate gaps in transposition. The final question is whether the monitor checks if annual work plans of the cabinet contain all required EU-related items. The capacity to integrate parallel planning processes can ensure that transposition commitments are not overlooked.

In legal review, the key issue is whether there exists a monitor that facilitates the drafting work once the need for transposition has been established. Three types of oversight can benefit the transposition process. First, the monitor may screen all EU-related legislation prepared by line directorates. This may involve the right to verify all transposing draft legislation against the text of directives for correct and full transposition. Second, the monitor may have the authority to draft horizontal measures on its own. This is likely to facilitate the transposition of directives which cut across the traditional organizational boundaries. Third, the monitor may be in a position to provide active drafting assistance by seconding experts to work jointly with line directorates. This is likely to assist in avoiding delays in cases of insufficient expertise or manpower.

As regards the monitoring of transposition deadlines, the crucial question is whether there exists a monitor that checks transposition progress. Three kinds of oversight capacities are important. First, the monitor may maintain a centralized list of transposition commitments. The presence of such timetabling instruments is helpful in preventing non-deliberate omissions. Second, it is crucial that the monitor have the right to report on progress regularly to the senior management and to send reminders to line directorates regarding upcoming

deadlines. This type of monitoring mobilizes line directorates behind the transposition tasks and penalizes deliberate or non-deliberate shirking. Finally, the monitor may have the authority to take remedial action or impose some form of sanctions if delays are identified. The monitor may, for example, regularly 'name and shame' line directorates that are in persistent delay.

The data on the rules governing transposition processes inside 21 ministries in Estonia, Poland and Slovenia come from around 70 semi-structured interviews conducted in Tallinn, Ljubljana and Warsaw in 2009-2010. The interviewees were top civil servants from legal and EU coordinating units and some line directorates. Transposition practices were also studied based on internal documents provided by the ministries and other written sources. The interviews and the documentary analysis focused on establishing the typical configuration of oversight in the period from 2005 to 2008. The collected data was used to arrive at aggregate scores ranging from 0 (limited oversight) to 9 (extensive oversight) for each ministry based on a uniform scoring system. Where the pattern of oversight changed during the examined period, the scores were weighted accordingly. A broad range of ministries has been surveyed covering all the main policy sectors².

²The study covered the following ministries in Poland: Agriculture and Rural Development; Economy (inc. Economics & Labour until 2005); Environment; Finance; Health; Infrastructure (inc. Transport & Construction Ministry 2005-6 and Transport Ministry 2006-7); Labour and Social Affairs. In Slovenia, these were: Agriculture, Forestry and Food; Economy; Environment and Spatial Planning; Finance; Health; Interior; Labour, Family and Social Affairs; Transport. In Estonia, these were: Agriculture, Economy, Environment, Finance, Interior, Social Affairs.

3.2. Transposition Performance

In measuring transposition performance, this article focuses on the extent to which the national governments notified the transposition of EU directives in a timely manner. This choice of operationalization is, of course, not without problems (see Hartlapp and Falkner 2009 for a recent critique). Yet, in contrast to much existing research, rather than using the Eur-Lex data, the analysis relies on original data on the notification of domestic implementing measures obtained from member state governments: the State Chancellery in Estonia, the Office of the Committee for European Integration in Poland, and the Government Office for Legislation in Slovenia. These data contain more detailed information than the Eur-Lex database including otherwise unavailable information regarding lead ministries responsible for transposition, precise dates of notifications, the extent to which transposition is judged to be complete, and whether national authorities considered transposition necessary.

The dataset for analysis was constructed as follows. First, a list of all directives with transposition deadlines between 1 January 2005 and 31 December 2008 was drawn up using the annual Commission reports on monitoring the application of Community law. There were 426 such directives in Estonia, 432 in Poland and 423 in Slovenia. In the second step, some directives were excluded from analysis. These were: (i) directives whose transposition was not considered necessary by member states³ and (ii) directives within the competence of ministries not covered by the empirical survey⁴. Ten directives were excluded because they had two or more transposition deadlines one of which was later than 31 December 2008⁵.

³ It is by no means straight-forward to establish whether transposition is considered necessary in a member state. For present purposes it was assumed that such measures fall into two categories: (i) directives that formally apply to a member state, but for some objective reasons are not relevant (e.g. the member state has no inland waterways which are regulated by a directive); (ii) directives that are relevant to the situation of a member state, but the existing domestic legislation requires no changes. The information on type (i) directives was obtained from member state governments, while the data on type (ii) directives was extracted from the Eur-lex database selecting directives for which transposition was considered complete but all implementing measures were adopted before the date of adoption of the directive (or before 01/01/1999 in the case of directives adopted before accession).

⁴The high number of excluded directives in Poland (see Table 2) is due to the fact that the transposition of many health-related directives was within the competence of a specialized agency, the General Sanitary Inspectorate.

⁵If directives had two or more transposition deadlines, the later deadline was used as a reference point for assessing transposition performance.

Perhaps most importantly, directives for the transposition of which a parliamentary law was required were also excluded from the dataset⁶. This was done because the key explanatory variable – departmental oversight – can be assumed to have a limited impact on the parliamentary stage of the transposition process. See Table 2.

Table 2: EU Directives in the Sample

| Directives | Estonia | Poland | Slovenia |
|---|---------|--------|----------|
| Directives with transposition deadlines between 01/01/2005 and 31/12/2008 | 426 | 432 | 423 |
| Transposition not necessary | 88 | 32 | 69 |
| Other ministries in charge | 12 | 110 | 11 |
| At least one deadline outside 2005-8 | 1 | 1 | 8 |
| Parliamentary law required | 147 | 161 | 106* |
| Final sample selection | 178 | 128 | 229 |

*including one directive for which information is missing.

The final dataset contained 178 directives from Estonia, 128 from Poland, 229 from Slovenia. The transposition record for each directive was calculated using three types of information: the transposition deadline, the date of notification of the last measure to the European Commission, and the member state assessment of whether the transposition was full or partial (as at 31 July 2009). All directives for which the last notification occurred before deadline⁷ and where the member state considered transposition complete were coded as transposed on time. The remaining directives were identified as delayed. In total, 91 out of 178 directives were transposed on time in Estonia; 62 out of 128 in Poland; and 99 out of 226 in Slovenia. These figures show that the transposition of 40-50 per cent of the EU directives in the sample was

⁶This was done based on the analysis of implementing measures for each directive using the Eur-lex database or the information obtained from national administrations in the case of directives for which transposition was incomplete at the end of July 2009. In the former case, only parliamentary laws adopted after the date of adoption of the directive were considered. For directives adopted before accession, only parliamentary laws adopted after 01/01/1999 (effective start of accession negotiations) were considered.

⁷It was assumed that directives transposed within +/- 7 days after deadline were transposed before the deadline. This was to make allowances for transposition deadlines falling on a weekend or public holiday. The results reported in the remaining part of the article do not change substantively when performance is calculated strictly.

considered to be complete before the transposition deadline. This indicates a rather low degree of transposition timeliness, especially that the sample contained only the directives whose transposition did not require parliamentary action.

3.3. Operationalization of Other Variables

With regard to the preferences of ministerial principals, one would ideally need to examine the preferences of senior management for each directive and the extent to which the final compromise at the EU level reflected these interests (see e.g. Thomson et al. 2007). This paper resorts to a simpler and, arguably, less precise measure. It examines the preferences of the parties that appointed ministers to each of the 21 ministries. In particular, it focuses on support for EU integration using the evidence from the 2006 Chapel Hill expert survey (Hooghe et al. 2008). These data provide useful assessments of different parties' strength of support for the EU in 2006 on a scale of 1 (strongly opposed) to 7 (strongly in favour). The scores for the individual ministries were calculated by, first, allocating the 'EU preference' score to each directive in the dataset according to the party of the minister in office at the date of the transposition deadline. In the second step, the mean value for each ministry was calculated and transformed into a dummy variable coded 0 if the mean was 5 or less and 1 otherwise (the score of 5 denotes a survey response of 'somewhat in favour' of EU integration).

As regards transposition workload, this analysis uses two proxies. The first is the number of directives to be transposed by a given ministry in the period from 1 January 2005 to 31 December 2008. This figure can be calculated either as the number of all directives to be transposed regardless of the type of domestic legislation required for full transposition, or as the number of all directives to be transposed through delegated legislation. For present purposes the latter figure is used as one more closely corresponding to the measurement of transposition performance. The use of nominal workload as an indicator is not without its problems, not least because all directives are treated as having equal weight. To address this issue, the analysis introduces a second proxy – the total number of words contained in the

directives to be transposed by a given ministry. This measure better captures the differences in workloads across ministries. Total wordcounts can be measured either including or excluding the technical annexes attached to directives. The latter version is preferred here as one reflecting more truly the distinction between substantive and technical legislation.

4. DEPARTMENTAL OVERSIGHT IN 21 MINISTRIES

This section discusses the oversight procedures in 21 ministries in Estonia, Poland and Slovenia, with a focus on the role of legal services and EU coordination units in the area of transposition planning, legal review and deadline monitoring (see Figure 1 for a summary of assessments).

4.1. Estonia

The six Estonian ministries surveyed for this project had varying capacities for internal oversight. The Ministries of Agriculture and Social Affairs had the most extensive mechanisms. In the area of transposition planning, the coordinators in both ministries performed regular checks of whether legal implications were identified in draft positions during EU-level decision-making. In the Social Affairs Ministry, the EU and legal services exercised a firm grip over planning at the line directorate level. They assigned responsibility for the transposition of new directives and checked if line directorates' plans were realistic. Both ministries had strong internal capacities for legal assistance. The coordinating units provided regular drafting assistance and, in some cases, drafted cross-cutting implementing measures themselves. Both ministries had fairly well-developed mechanisms for monitoring transposition progress, although neither maintained its own database of transposition commitments. The EU units provided quarterly or half-yearly reports to senior management. Regular reminders were sent to line directorates and laggards were 'named and shamed' during meetings with the minister.

The other four ministries – Economics, Finance, Interior and Environment – had, by and large, weak oversight arrangements. Ministerial coordinators made sure that draft positions identify legal implications, but they had no or limited role in controlling the planning of transposition. In the area of legal review, the legal services in the Economics Ministry performed a regular in-depth verification of the correctness of transposition, but such checks were not performed in the other three ministries. Central drafting assistance was generally available, except in the Environment Ministry where there was no whole-ministry legal

service. Some reporting of transposition progress was undertaken, but was either infrequent or ad hoc. None of the four ministries maintained a specialized database of transposition commitments.

4.2. Poland

The analysis of seven Polish ministries reveals that, in 2005-2008, the strength of oversight varied from weak to medium. The most developed mechanisms existed in the Agriculture Ministry and the Labour and Social Policy Ministry. In the area of transposition planning, departmental coordinators in both ministries performed ad hoc checks of draft positions, exercised some control over planning at directorate level and, from time to time, made sure that EU commitments were integrated into general government plans. Both ministries had rather weak oversight capacities for legal review, but excelled at monitoring. The Agriculture Ministry maintained its own database of transposition commitments. A similar, although slightly less detailed, database was also maintained by the Ministry for Labour and Social Affairs. In both ministries, the senior management received regular reports on transposition progress. The coordinators reminded line directorates of upcoming transposition commitments on a regular basis.

Some oversight mechanisms were also present in the Ministries of Infrastructure, Health and Finance, in particular in the field of planning and legal review. Yet, compared to the Agriculture Ministry and Labour and Social Policy Ministry, the capacities for monitoring transposition progress were more limited. In the Finance Ministry, half-yearly reports were prepared for the senior management. In the other ministries, information was only available on request to the deputy minister responsible for EU affairs. The coordinating units reminded line directorates of upcoming deadlines on an ad hoc basis. The remaining two ministries – Economy and Environment – had limited oversight arrangements. There was no central control over transposition planning at directorate level in the Economy Ministry, and weak capacities for such oversight in the Environment Ministry. Legal review was limited or ad hoc.

Neither ministry maintained a central database of transposition commitments or made provisions for regular reporting to the senior management.

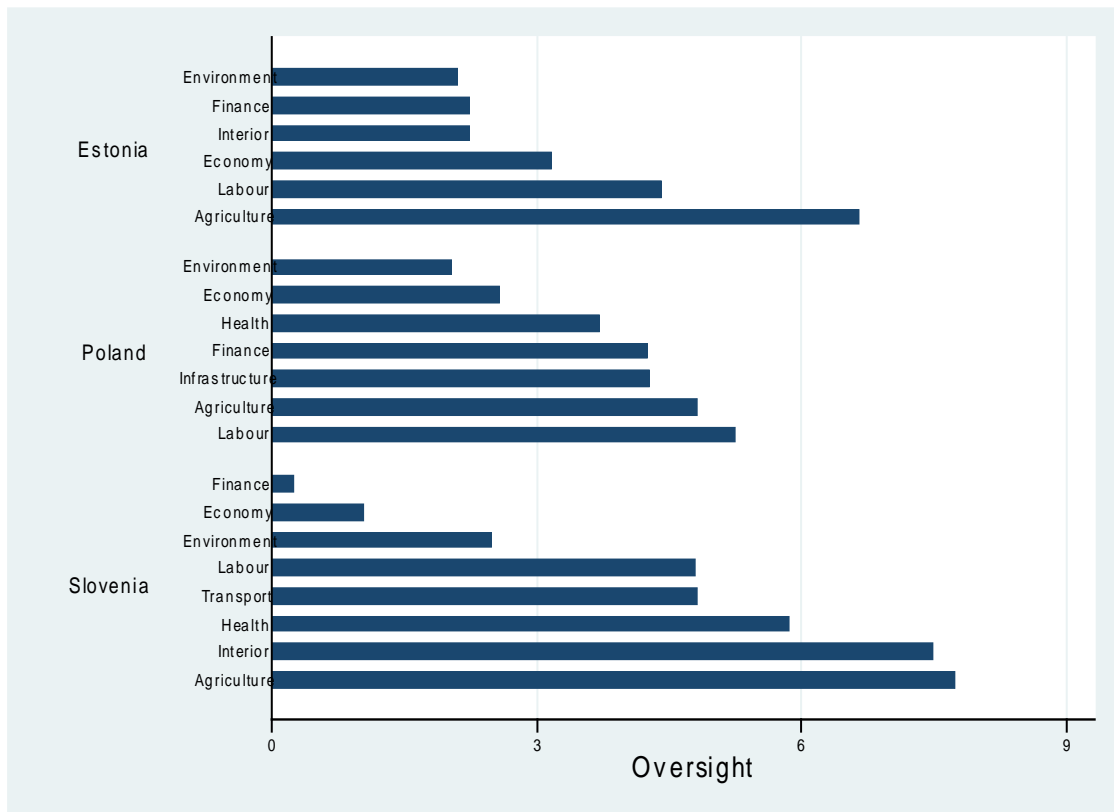
4.3. Slovenia

The survey of eight Slovenian ministries reveals much variation in the use of oversight at ministry level. Two ministries stand out in terms of the strength of oversight in 2005-2008 – Interior and Agriculture. The coordinators in both these ministries checked draft positions to ensure that legal implications were identified. They were also actively controlling the planning process: assigning responsibility and agreeing key working deadlines with line directorates. In both ministries, the coordinating departments were often involved in the actual drafting and reviewing of transposition legislation. In addition, the coordinating departments verified the correctness and completeness of implementing measures against the text of the EU directives. In monitoring and reporting, both ministries developed a rigorous system for information flows: individual reminders were sent directly to responsible officials and there was regular reporting to the management. In the Ministry of Interior, the legal service regularly ‘named and shamed’ line directorates that were found in delay. The coordinators in both ministries maintained a centralized list of all transposition tasks, updated it regularly and circulated it to all directorates every second month.

Three ministries in Slovenia had a medium strength of internal oversight: Health, Labour and Transport. The EU services in the Ministries of Labour and Health had fairly strong roles in transposition planning, while the coordinating service in the Ministry of Transport had a weaker role. The EU unit in the Ministry of Labour was not involved in legal review, while legal review was undertaken in the Ministries of Health and Transport. In terms of transposition monitoring, there was regular reporting to the ministerial management in all three ministries. In the three remaining ministries - Economy, Finance and Environment – oversight was limited. The coordinating units had no or limited role in supporting transposition planning. In legal review, legal departments reviewed draft legislation (including transposition measures) for national legal compliance, but they did not perform any

additional tasks such as reviewing correctness of transposition. The services did not draft horizontal legislation and did not assign lawyers to assist substantive departments. There were no special reporting and monitoring requirements beyond the general monitoring of the annual cabinet work plan.

Figure 1: Departmental Oversight in Estonia, Poland and Slovenia



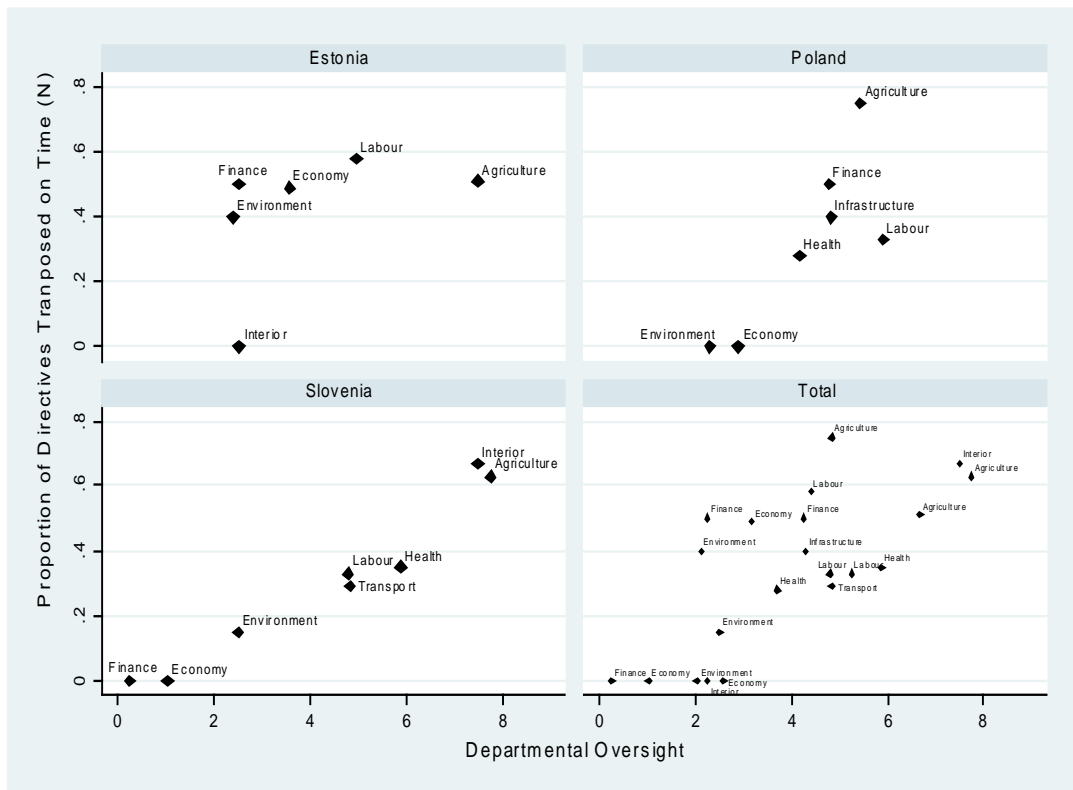
5. OVERSIGHT AND TRANSPOSITION PERFORMANCE

This section checks if departmental oversight affected transposition performance of ministries in Estonia, Poland and Slovenia. Before presenting the results, a few words are in order about constructing a reliable indicator of performance. First, the number of directives transposed on time can be divided by the total number of directives that each ministry had to transpose in 2005-8. This seems to be the most straight-forward way of comparing performance across ministries. Its weakness, however, is that it weighs all directives equally regardless of substantive complexity, which creates a risk of inflating performance by giving disproportionate weight to timely transposition of minor directives. This problem is particularly pronounced when the transposition workloads vary across ministries. The analysis thus introduces a second indicator of performance calculated by dividing the total wordcount of the directives transposed on time by total wordcount of all directives to be transposed in 2005-8. Although wordcount is a crude measure, it is often used as a proxy for complexity of legislation, and hence can be useful in constructing a measure of performance that is sensitive to variation in the nature of EU directives.

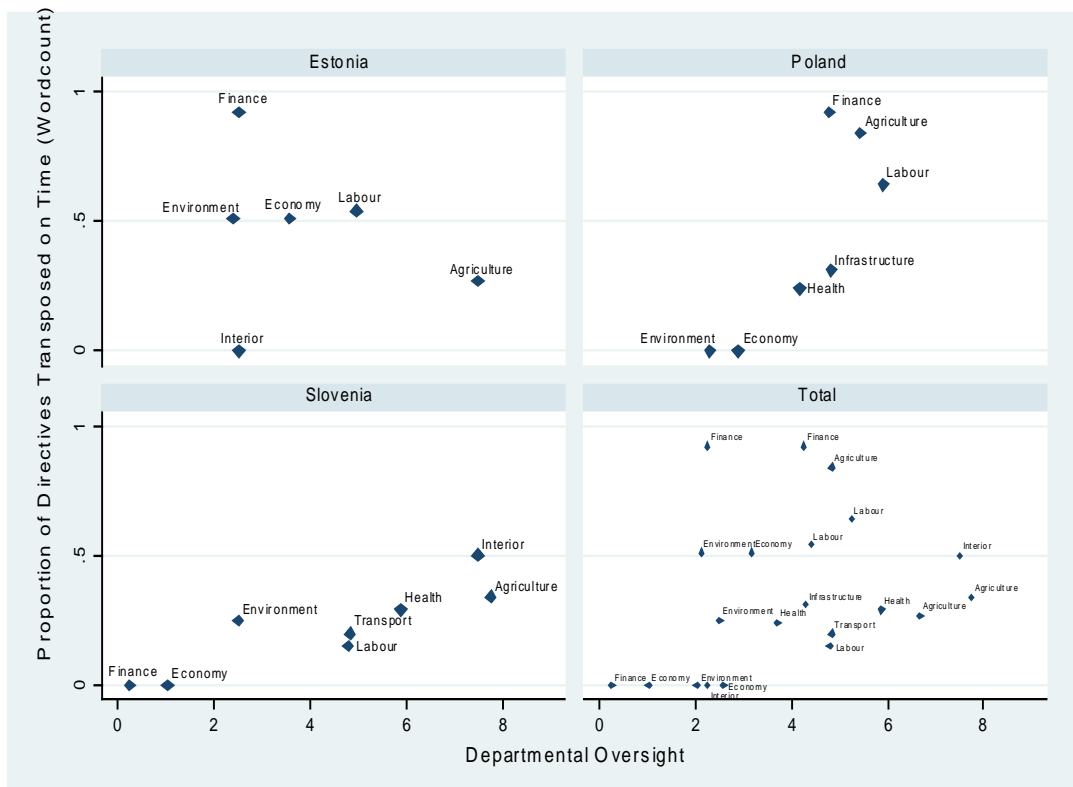
Figures 2(a) and 2(b) present the relationship between the degree of departmental oversight and transposition performance in each of the three countries and across all of the surveyed ministries. In Figure 2(a) the proportion of directives transposed on time is used as a measure of performance. The graph reveals a strong positive relationship between the two variables. The association is pronounced in Poland and Slovenia and slightly less so in Estonia. Ministries with a higher degree of internal oversight tend to achieve higher transposition performance than those with more limited oversight arrangements. Figure 2(b) shows the association between the two variables using the wordcount-based indicator of performance. The plots for Poland and Slovenia are almost the same as in Figure 1(a), but the data for Estonia show virtually no association. A closer examination reveals that the latter result is driven mainly by a depressed score for the Agriculture Ministry and an elevated score for the Finance Ministry. In the graph for all ministries, the positive relationship is still visible, but there are many outliers, chiefly ministries with low oversight but high performance scores.

Figure 2: Relationship between Oversight and Performance

2(a)



2(b)



What happens to the relationship between oversight and performance when other factors are taken into account? Table 3 presents the results from a series of ordinal logistic regression models. OLS regression is not appropriate for the analysis of proportions because such data are not normally distributed and are also bounded between 0 and 1. To use ordinal logistic regression, the measures of performance were rescaled as follows: scores between 0 and 0.20 were coded as 1, 0.21-0.40 as 2, 0.41-0.60 as 3, 0.61-0.80 as 4, and 0.81-1.00 as 5. Models 1 to 3 were estimated using the proportion of directives transposed on time, while models 4 to 6 using the wordcount-based indicator of performance. The first thing to note is that in all models including predictors into the analysis significantly improves our ability to predict the level of transposition performance. The goodness of fit is moderate with Pseudo R ranging between 0.23 to 0.43.

Table 3: Ordinal Logistic Regression Results

| DV: Transposition Performance | DV = N on time / total N | | | DV = wordcount on time / total wordcount | | |
|--|--------------------------|---------------------|--------------------|--|---------------------|---------------------|
| | Model 1 | Model 2 | Model 3 | Model 4 | Model 5 | Model 6 |
| Oversight (0 = low, 9 = high) | 1.743*** (0.573) | 1.743*** (0.573) | 1.865** (0.758) | 0.873** (0.380) | 0.873** (0.380) | 1.890*** (0.698) |
| Country | | | | | | |
| Estonia | 1.357 (1.307) | - | 1.299 (1.333) | 0.299 (1.242) | - | 0.0110 (1.324) |
| Slovenia | -2.974 (1.780) | -4.331** (1.829) | -2.943* (1.731) | -4.146 (1.949)** | -4.445** (1.787) | -3.912** (1.789) |
| Poland | - | -1.357 (1.307) | - | - | -0.299 (1.242) | - |
| Workload | | | | | | |
| Number of directives | -0.008 (0.023) | -0.008 (0.023) | -0.009 (0.023) | | | |
| Total wordcount | | | | -0.032 (0.025) | -0.032 (0.025) | -0.048* (0.027) |
| Support for EU (0 = low, 1 = high) | 2.211* (1.256) | 2.211* (1.256) | 2.947 (3.196) | 2.384* (1.321) | 2.384* (1.321) | 7.795** (3.246) |
| Support for EU * Oversight | | | -0.174 (0.694) | | | -1.267* (0.676) |
| Model Chi square | 24.13*** | 24.13*** | 24.20*** | 13.93** | 13.93** | 17.90*** |
| Pseudo R² | 0.43 | 0.43 | 0.43 | 0.23 | 0.23 | 0.29 |

N= 21. *** p<0.01, ** p<0.05, * p<0.1.

The results show that the effect of oversight on performance tends to hold well if one controls for country effects, party preferences and transposition workload. In all models the B coefficient is positive and statistically significant at least at 0.05 level. Ministries with higher degree of departmental oversight on average tend to perform better than ministries with more limited oversight arrangements. The size of this effect varies, but a conservative estimate from Models 4 and 5 show that a one-unit increase in departmental oversight boosts the odds of a national ministry being in any higher category of transposition performance by almost two and a half times ($\exp(0.873) = 2.394$). In contrast to what could be expected, the impact of oversight seems to decrease (rather than increase) if the minister has a positive attitude towards EU integration. But this effect is significant (at the 0.1 level) only if the wordcount-based indicator of transposition performance is used.

The results for other explanatory factors are mixed. The country size argument does not seem to work with the present data. Ministries in Poland tend to perform less well than ministries in Estonia but better than ministries in Slovenia, although statistical significance of this effect varies. The analysis also shows that ministries in Estonia tend to achieve better performance than those in Slovenia, and this result is significant at 0.05 level. Regarding the impact of workload, the direction of the coefficients is in line with expectations, but the size of the effect is small and it is significant only in model 6 (at 0.1 level). Finally, as expected, ministries headed by ministers from political parties supportive of the EU tend to have better transposition records than those led by eurosceptic parties. The size of this effect is substantial – the odds of ministries with EU-friendly ministers being in a higher category of performance are between nine to eleven times higher than those of the other ministries.

The robustness of the results has been verified, first, by checking for the presence of influential cases. Since obtaining residuals for ordinal logistic regression is not possible in standard statistical packages, all models were re-estimated by dropping each case in turn, but there was no substantive change of the results. In the second step, collinearity checks were performed. The diagnostics flagged two potential problems for the present analysis. First, ministerial support for the EU integration is highly country-specific. It is high in Slovenia, moderate in

Estonia, and low in Poland. The high correlation between country and ministerial stance on the EU implies that it may be difficult to disentangle the effects of these factors on transposition performance. Furthermore, the moderating effect of EU support on the impact of oversight may be driven mainly by country-specific characteristics. As shown in Figure 2(a,b), oversight has a slightly less strong effect in Slovenia than in Poland, and EU support is generally higher in the former than in the latter.

Second, and perhaps more importantly, oversight tends to be strongly associated with transposition workload when it is measured by the total number of directives to be transposed (but not in the case of the other indicator). Pearson's coefficient of correlation between the two variables stands at 0.62 (significant at the 0.01 level). Ministries with many directives to transpose are likely to develop extensive oversight capacities and vice-a-versa. Indeed, if one conducts a mediation analysis it becomes clear that oversight may almost completely mediate the relationship between the number of directives and transposition performance. The number of the directives to be transposed is – on its own – a significant predictor of performance and is also a significant predictor of departmental oversight. It fails, however, to be a significant predictor of performance in models 1 to 3 when one controls for oversight. This problem is not present if one uses the proportion of wordcounts as an indicator for performance which suggests that more confidence should be placed in the results from models 4, 5 and 6.

6. CONCLUSION

This article provides initial evidence that ministries with strong internal oversight tend to perform better in terms of their transposition record than ministries with limited or no internal oversight. This effect holds if one controls for other factors and introduces different specifications of the dependent variable. This said, the analysis has clear limitations, not least because of the small number of cases and the issues of collinearity identified above. Moreover, a focus on transposition via secondary legislation leaves the more ‘political’ instances of transposition out of the picture and it is thus an open question if oversight can improve performance in such cases. Research by Toshkov and Dimitrova (2009) implies, for example, that central coordination is rather ineffective where transposition becomes politicized.

A further issue is whether the findings can be generalized to all EU member states. Much research shows that the transfer of EU rules to East Central Europe is greatly influenced by state weakness and lack of administrative capacities (Falkner et al. 2008; Dimitrova 2010). If this is true, it could be argued, for example, that departmental oversight may be an important predictor of transposition performance in states with weak administrative capacity, but it will have limited impact in states where bureaucracies are strong. In the latter case, civil servants can be simply expected to have sufficient resources and *esprit de corps* to ensure timely EU implementation as a matter of course. This is an interesting possibility which must be explored in future research, in particular by comparing patterns of oversight and performance across new and old EU member states.

Notwithstanding its limitations, the analysis resonates well with recent studies that have linked the extent to which EU member states comply with EU law with the strength of ministerial coordination and oversight. The findings support, for example, the contention by Berglund et al. (2006) that transposition performance depends on whether there exist departments that specialize in transposition and whether they have had the time to develop relevant bureaucratic routines. They further confirm the finding by Jensen (2007) that oversight of the centralized ‘police-patrol’ type contributes to better compliance than that of the decentralized ‘fire-alarm’ variety. Finally, they chime with the work by Dimitrakopoulos

(2001, 2008) who shows that central and sector-specific coordination is the backbone for effective national compliance with policy commitments made in Brussels.

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