

**DO MEMBER STATES MAKE EUROPEAN POLICIES WORK?
*ANALYSING THE EU TRANSPOSITION DEFICIT***

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Abstract

This paper seeks to systematically describe and explain variation in European Union policy implementation performance across member states and directives. The analyses rely on a new and original data set comprising comparable information about transposition delay for practically all EU social directives in Germany, Greece, the Netherlands, Spain, and the United Kingdom. On the basis of nearly 300 observations we could establish that only in 42.7 per cent of our cases member states transposed in time; 17.5 per cent exceeded the deadline by more than two years. The analysis reveals modest variation between social policy areas, more profound cross-country differences and strong cross-area variations within some countries. The need for inter-ministerial coordination and administrative inefficiency are strongly associated with transposition delay. Whether a directive is new or merely an amendment is unrelated to transposition delay. The same holds for the directive's complexity and parliamentary involvement in the transposition process. The irrelevance of the latter factors may suggest that member states anticipate some potential challenges to transposition performance and act to mitigate them. Whether and why this is the case merits further research.

1. Introduction

Thwarting European Union (EU) policy's effectiveness, member states recurrently neglect their legal obligation to fully and timely transpose directives into their national legal systems.¹ Yet, we lack systematic knowledge of the degree and contour of the implementation deficit. Drawing on a new data set the paper has a twofold goal. First, it aims at a systematic description of the European Union implementation routine by analysing the transposition of all social policy directives enacted between 1975 and 1999 in five countries: Germany, Greece, the Netherlands, Spain, United Kingdom.² Secondly, it seeks to explain variations in transposition performance by testing hypotheses informed by two well-known theoretical perspectives: implementation theories stemming from the discipline of public administration, and compliance research originating from international relations and EU studies.

Since its establishment in the late 1950s, European Communities' law production has gradually increased in scope and depth. Social and labor policy is no

exception. Directives have been frequently used to reduce disparities in occupational health and safety conditions, to approximate national laws in the field of equal treatment, working time organization, and other areas that bear on the protection and right of the European labor force. As a result over a hundred social policy directives have been enacted between 1957 and 2004.

Unlike the direct obligatory effect of European Union regulations and decisions, a directive provides member states with some leeway concerning form and method. Yet, they have to make sure that directives come to full effect (Siedentopf and Hauschild 1988; Prechal 1995).

As we have learned from studies on implementation of national policies, implementation is not merely an automatic or technical process; it is prone to many problems that seriously endanger the effectiveness of the policies (Pressman and Wildavsky 1973; Scharpf *et al.* 1976; Mayntz 1980, 1983). This holds as well for European Union policies. Starting off with the seminal study by Siedentopf and Ziller (1988), to which the title of this paper alludes, numerous studies have been focused on the implementation deficits of the EU (for a review see Sverdrup 2006). Examples from the field of social policy include studies on equal treatment (Ostner and Lewis 1995; Duina 1999; Van der Vleuten 2001; Caporaso and Jupille 2001), health and safety at work (Gier 1991; Eichener 1995), and European work councils (Geyer and Springer 1998).

Typical of implementation studies is their focus on a few cases, elaborating on one or a few directives and one or a few member states. A notable exception is the study performed by the research team headed by Falkner, whose analyses concern the implementation of six directives in 15 member states (Treib 2003; Falkner *et al.* 2004). A small-N focus allows for an intensive analysis, permits a theoretically meaningful operationalization of concepts, and enables detection of causal processes through which the hypothesized factors generate their effects (George and Bennett 2005). Accordingly, we learn a lot about factors that either facilitate or impede proper implementation in these particular cases. These studies have also informed further theory development by suggesting and preliminary testing a number of hypotheses. Case studies do not conclusively reveal, though, whether the patterns identified are intrinsic to their cases or hold across all directives. Hence, we do not know much about the overall magnitude

and patterns of the EU implementation deficit and the relative importance of the various factors associated with it. We therefore seek to complement the case study method by a quantitative approach covering an entire policy field.

A study of this sort requires implementation indicators that are meaningful across countries, policy issues and time periods. The few scholars who employed a quantitative approach focused in particular on compliance, using data with regard to the frequency member states are confronted with the different stages of the Commission's infringement proceeding (e.g. Mbaye 2001; Tallberg 2002). If a member state fails to fulfill an EU Treaty obligation, and if this failure has been noticed by the Commission, the Commission may start a legal procedure that ultimately results in a decision by the Court of Justice (Article 226 – ex. Art. 169, CTEC). Yet, the drawback of this approach is that it depends on the Commission's capacity to act as guardian of the treaty, which has been reported to be rather weak, though there are some indications that it may have improved over time (Mendrinou 1996; Azzi 2000; Tallberg 2002). Commission data are inconsistent and incomplete. They do not amount to a reliable indicator for the actual level of compliance (Mendrinou 1996, p.2; Börzel 2001, p. 808).

Other authors based their analyses on combined infringement- and transposition data found in the official Commission statistics (e.g. Lampinen and Uusikylä 1998; Bursens 2002; Giuliani 2003). However, official transposition scoreboards of the European Union merely refer to member states' notification record at the time of monitoring. While this provides information about the backlog, they fail to depict member states' individual transposition records at the time of the respective transposition deadline. They therefore systematically underestimate the magnitude of the transposition deficit. Typically, these official statistics report overall backlog or transposition deficits of less than 10 per cent (see Börzel 2001; European Commission 2005). Yet, Mastenbroek, looking at the transposition of all 224 directives, adopted between 1995-1998 in the Netherlands and taking the respective deadlines as a reference point, reports that in only 42 per cent of the cases was the first transposition instrument adopted on time (Mastenbroek 2003).

In this paper we choose transposition as an empirical focus of implementation and follow Mastenbroek in measuring the transposition deficit as delay with regard to the directive's deadline. We selected the Netherlands, Germany, the United Kingdom,

Spain and Greece, because these countries vary independently on our two domestic macro-level variables: degree of administrative efficiency, and unitarism versus federalism (see tables 4.4 and 4.5). We look at all social policy directives adopted between 1975 and 1999. Social policy has been chosen because it belongs to the policy areas where a substantial amount of directives have been adopted making it amenable to quantitative research.

Transposition refers to the first stage of implementation: incorporation of the directive's provisions into national laws and regulations. Member states are granted a period ranging from some months to several years to transpose directives.

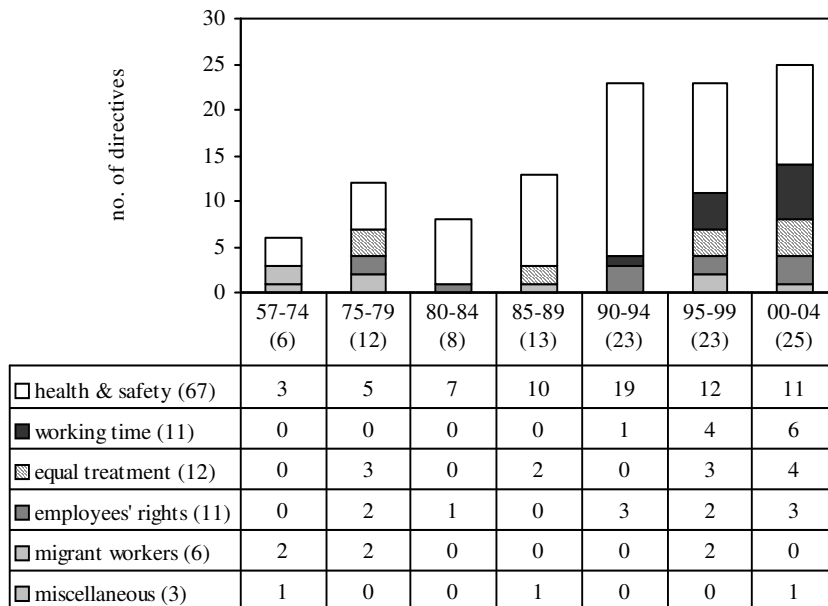
To be sure, transposition is just a first step towards implementation. Subsequent to transposition, (sub-national) implementation agencies need to become familiar with their monitoring and supervising tasks, the target groups of the policies must be informed about their rights and obligations, their behavior needs to be monitored, and in cases of non-compliance, sanctioned. But transposition predetermines the subsequent moves in implementation. Accordingly, the European Court of Justice considers timely transposition, that is, within the period prescribed by the directive, as an extremely rigorous obligation. It has argued in its case law that non-simultaneous implementation within all member states hinders the elimination of inequalities before the law and jeopardizes the uniform application of European Union law (Prechal 1995). Delays in transposition may thus at least temporarily deprive European workers of their rights to equal treatment, their access to domestic social security systems, minimum health and safety standards, and reasonable working times. Besides, cross-national differences put companies on unequal footing, and weaken the competitive position of those who are forced to obey sometimes costly policies. Moreover, reluctance in transposing European obligations by some member states undermines the legitimacy of common policies and may have an impact on the European integration process at large (Bursens 2002).

The degree to which member states transpose directives on time is a straightforward and unambiguous quantitative measure of implementation performance. Moreover, it is meaningful across countries, sub-policies and time. This operationalization has the additional advantage that it helps to tackle two weak spots in implementation research in general; the lack of cross-national studies and the lack of quantitative research (see for instance O'Toole 2004).

This paper consists of three empirical parts. As background information, section 2 presents the development of EU social policies. We then examine the transposition records within our selected countries. What is the magnitude of the transposition deficit? Do systematic variations exist in cross country performance or across sub-policies (Section 3)? After describing where the problems lie and the extent to which they persist over time, we turn to explanation by testing hypotheses derived from implementation theories originating from public administration and European studies and compliance literature stemming from international relations scholarship. These hypotheses relate to EU-level variables, such as the degree of complexity of the directive, as well as to national-level variables, such as the overall efficiency of the member state or the number of ministries involved in the transposition process (Section 4). The conclusion summarizes the main results and suggests avenues for further research (Section 5).

2. EU social policy directives - main characteristics and developments

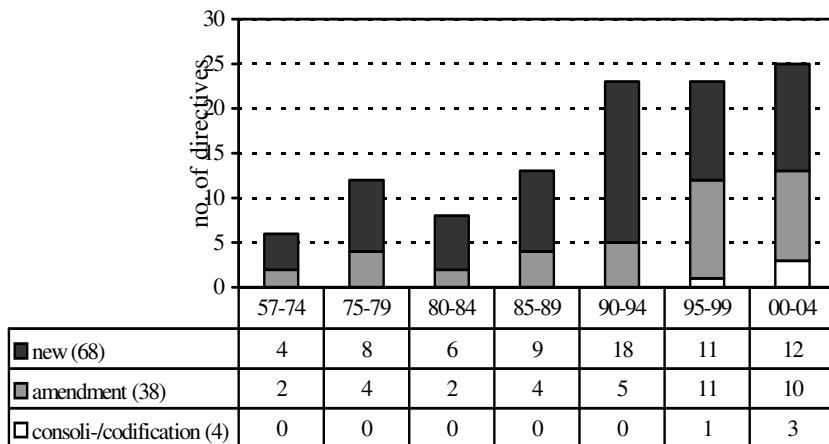
Figure 2.1: EU social policy development



European social policy directives are mainly concerned with work-place related issues. This focus is reflected in their distribution across various sub-policies. Since the establishment of the European Communities, 110 directives have been adopted.³

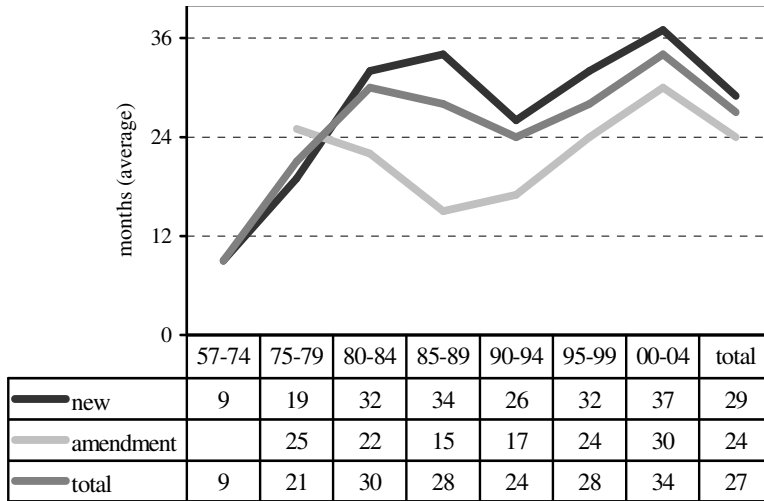
Early in the European Union’s history, much emphasis was laid on workers’ health and safety conditions, accounting for over half (67 directives) of all directives (see figure 2.1). In addition, migrant workers provisions (6 directives), of which the majority is classified under freedom of movement for workers, also received attention in these early years. Newer EU initiatives include equal treatment (gender equality and anti-discrimination) standards (12 directives), and other aspects of employees’ rights (in the event of transfers, collective redundancies, and insolvency), and working relations (11 directives). In contrast, the introduction of working time directives (11 in total) occurred in the nineties.

Figure 2.2: Development by directive type



In the last decade amendments rather than new directives were increasingly introduced (figure 2.2). Among the 110 directives that have been adopted, 68 directives (62 per cent) were completely new, while 38 directives (35 per cent) merely introduced amendments to earlier legislation. Such amendments were launched in all social policy areas but most (30 out of 38) concerned health and safety measures. A third category, labeled consolidations/codifications refers to four directives that do not introduce substantive changes and do not require transposition.

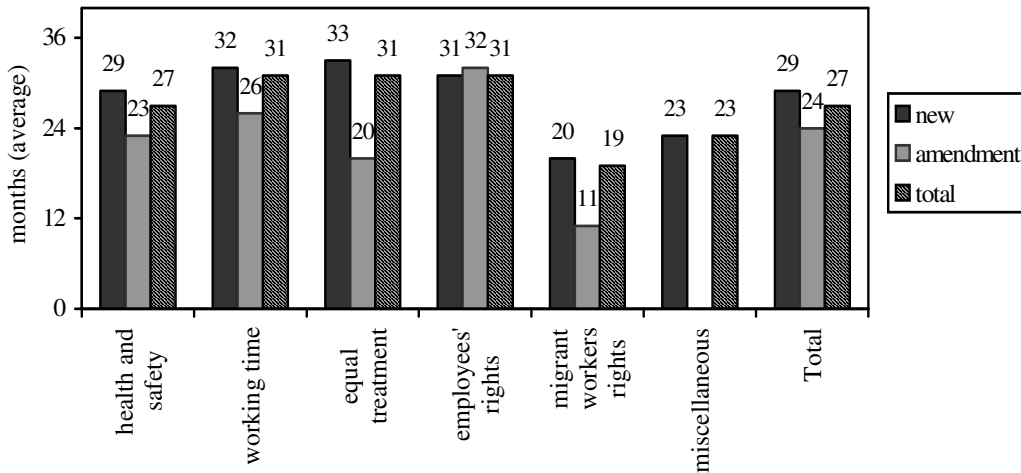
Figure 2.3: Available transposition time, by directive type



For understanding transposition processes it is crucial to know whether there is variation in the time granted for incorporating the directive’s provisions into national law and regulation (figure 2.3). In average, member states had 27 months to transpose the directives that were enacted between 1957 and 2004. More time has been granted to transpose new directives (29 months) than amendments (24 months).

The transposition time provided for in the directives⁴ has noticeable increased, resulting in averages of 37 months for new directives, and 30 months for the transposition of amending directives in the most recent years.

Figure 2.4: Time granted for transposition, by policy topic



Aside from directives concerning migrant workers' provisions, the average time member states have for the transposition of *new* directives does not vary between social policy areas. Variation among the *amending* directives is somewhat stronger. In particular amending directives in the field of employees' rights were considered to require a longer transposition period, even longer on average than new directives in this field (figure 2.4).

3. Description of transposition deficit

3.1 Introduction

The previous section presented information on all social directives adopted before 1 January 2005. For our analysis of the national transposition deficits we did not look at the transposition of all of these directives for all countries.⁵ A major reason for this is data availability. Celex being our primary data source is far from complete. We therefore needed to consult additional sources. Nevertheless, for the few directives that have been adopted before 1975, we have identified national transposing instruments for less than 50 per cent of all potential cases. Note that a case (or observation) denotes the first national instrument that transposes a directive into national law and regulations. We chose the first measure as this instrument reflects the starting date of transposition. All findings would be driven by the national transposition performance regarding two directives. We therefore excluded six directives adopted prior to 1975. The same holds for nine directives that have been adopted after 1999. With regard to this period, the problem of missing data is particularly pronounced as it may imply a selection bias (King, Keohane and Verba 1994). Analysing the cases we have for this period would draw too benign a picture, because it is quite likely that the large majority of missing cases are actually instances of non-transposition at the time of our monitoring. As time passes, more cases related to these directives will be reported and would fill the delay categories, hence substantially worsening the overall transposition record for this period.

For different reasons, we excluded ten directives adopted by the Commission. These directives are based on delegated competencies and tackle issues of relatively minor importance in the area of health and safety. Finally, we had to deal with the

problem that Greece and Spain joined the EU after the adoption and deadlines of a number of directives we study. We decided to exclude all ten Greek transposition measures that concern directives adopted before 1981. Likewise we excluded all fifteen Spanish transposition measures referring to directives adopted before 1986.

Due to these selection criteria our analysis deals with 67 directives and 310 cases, rather than the universe of 110 directives and 480 cases. We were able to collect sufficient data on 286 cases, which imply a completion rate of 92.3 per cent. If missing cases are not randomly distributed, sample bias is still very limited. Note in that context that probably most of the 24 missing cases are actually transposed but data are just not available.

In order to measure transposition performance we constructed an ordinal variable 'delay' consisting of three categories. Delay is measured by deducting the date on which the national measure is enforced from the official deadline for enforcement. The first category 'on time' consists of all cases that have been enforced up to one day after the official deadline. The second category 'modest delay' is made up of all cases that have been enforced between two days and two years (730 days) after the deadline. The third category 'serious delay' is filled with all cases with a delay of more than two years. This categorization captures the most common notion on compliance with directives. From a legal perspective it is emphasized that directives need to be transposed on time. Nonetheless, it is sensible to distinguish rather modest delays from more serious delays. The member states themselves agreed at the Barcelona European Council of March 2002 on 'zero tolerance' for directives whose transposition is 2 years or more overdue (European Council 2002, 6). Therefore, we decided to split the category of delay into more modest and more serious delay, using the dividing date of two years.

We use contingency tables to elaborate the variables associated with transposition records. Comparing frequencies across rows and columns is an easy and straightforward way to identify associations among nominal and (categorized) ordinal variables. In order to calculate a measure of association that is more precise and facilitates comparisons across different cross-tables, we calculated Cramer's V. Cramer's V ranges between 0 and 1, 0 indicating no association and 1 indicating perfect associations. (Blaikie 2003, pp.100-1).

3.2 Overall magnitude and variation across sub-policies

Our analysis reveals that there is indeed a transposition problem in the European Union and that its magnitude is much larger than the official EU scoreboards suggest. Overall, in more than 57 per cent of all cases, transposition has been delayed and in 17.5 per cent of all cases the delay exceeded two years.

This deficit is even larger than the 42 per cent deficit identified by Mastenbroek's study on the Netherlands for all directives in the period 1995-1998 (2003).

Table 3.1 Overall transposition records and variation across sub-policies

	<i>Health and safety</i>	<i>Working time</i>	<i>Equal treatment</i>	<i>Employee's rights</i>	<i>Migrant workers'</i>	<i>Total</i>
On time	42,6%	43,5%	51,6%	34,6%	30,8%	42,7%
Modest delay	39,9%	39,1%	32,3%	53,8%	38,5%	39,9%
Serious delay	17,6%	17,4%	16,1%	11,5 %	30,8%	17,5%
N	188	23	31	26	13	286

Cramer's V: 0.10

Comparing member states' performance across sub-policies reveals some variation. If we just focus on the *proportion transposed on time*, equal treatment proceeded fairly smoothly with more than half of all cases transposed in time. Health and safety and working time directives were transposed according to the general average and directives dealing with rights for employees and migrant workers perform comparatively poorly. Here, only in one-third of the cases timely transposition was achieved. Looking explicitly at the *delayed cases* it shows that member states catch up with regard to employee rights within two years after the deadline. As a result only about 10 per cent of the cases in this area are seriously delayed. The largest problems occur in the area of rights of migrant workers where one third of the cases show serious delay; yet, in absolute terms this area concerns only a few cases. One rather banal reason for the relatively bad performance in this policy area might be the comparatively limited time granted for transposition. As Figure 2.4 reveals, these directives are granted on average more than one and a half year less time for transposition than the other directives.

Overall the range of variation remains relatively small. Therefore generally the transposition performance is only weakly associated with the type of sub-policy involved (Cramer's V: 0.10).

3.3 Cross-national variation

The basic interest of European and national policy makers and academics alike, besides the overall performance, is the extent to which transposition records vary across member states. Member states are responsible for proper transposition and are the recipient of pressure and approbation in cases of weak performance. Our analysis reveals that all countries suffer from a substantial transposition deficit. The best performer, the UK, complies only in 60 per cent of all cases with the legal obligation to transpose in time. 10 per cent of the cases concerning the UK are transposed more than 2 years after the deadline. The worst performer is Greece. Only one quarter of all directives are transposed on time. Note, however, that Greece is able to transpose another 50 per cent of all directives within two years after the deadline. The other countries perform roughly similar to one another. Spain transposes almost half of the cases on time (47.1 per cent), which is better than Germany (41.3 per cent) and the Netherlands (39.4) per cent. Yet, The Netherlands transposes almost half of the cases within two years after the deadline, so that only 12 per cent of the cases are seriously delayed, unlike Germany and Spain: here some one-fifth of the cases are seriously delayed.

Table 3.2 Cross-national variation

	Netherlands (NL)	Germany (D)	United Kingdom (UK)	Spain (E)	Greece (EL)	Total
On time	39,4%	41,3%	60,0%	47,1%	25,5%	42,7%
Modest delay	48,5%	39,7%	29,1%	31,4%	49,0%	39,9%
Serious delay	12,1%	19,0%	10,9%	21,6%	25,5%	17,5%
N	66	63	55	51	51	286

Cramer's V 0.18

The difference between the UK and Greece in particular is pronounced, but the overall association is moderate, given the fact that the three other countries perform quite similarly (Cramer's V 0.18). This still implies however that there is more cross-national variation than variation across sub-policies.

It is possible, however, that the transposition records within countries vary across sub-policies. This is important to know, in particular as health and safety measures make up about two third of our cases, and the performance in this respect might overshadow the performance with regard to other sub-policies. Since we have relatively few observations for sub-policies in the five case countries, we collapsed all categories other than health and safety measures into a category 'other social provisions'.

Comparing health and safety cases with other cases, there is only a negligible difference within Greece (Cramer's V 0.06). In the Netherlands, problems are less marked in health and safety policies than in other areas (V 0.17). Both Germany and the UK cope with the same order of problems, though their patterns are more pronounced. While the UK manages to transpose two-thirds of all health and safety measures in time and 97 per cent (34 of 35) ultimately two years after the deadline, it only transposes 50 per cent of the other provisions on time, and 25 per cent of the cases show serious delay (V 0.34). In Germany, more than half of the health and safety measures are transposed on time, but less than 20 per cent of the other measures. Serious delays are also more associated with measures other than health and safety (26.1 per cent vs. 15 per cent, V 0.37). Spain shows the opposite pattern, and this pattern is quite strong (V 0.46). In Spain, compliance problems are strongly associated with health and safety measures. Only one third of these measures are transposed on time, and one third is more than two years late, whereas more than three-quarters of the other measures are transposed on time, and all of them within two years after the deadline. These results reveal that there are distinctive transposition profiles across-sub policies within member states.

Table 3.3 Cross-sub policy variation within member states

	<i>Health & Safety</i>				<i>Other social provisions (OSP)</i>				<i>Cramer's V (Area more delays)</i>	
	on time	modest delay	serious delay		on time	modest delay	serious delay			
	<i>N</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>%</i>	<i>^%</i>		
NL	42	33.3	52.4	14.3	24	50.0	41.7	8.3	0,17	(H&S)
D	40	55.0	30.0	15.0	23	17.4	56.5	26.1	0,37	(OSP)
UK	35	65.7	31.4	2.9	20	50.0	25.0	25.0	0,34	(OSP)
E	34	32.4	35.3	32.4	17	76.5	23.5	0.0	0,46	(H&S)
EL	37	27.0	48.6	24.3	14	21.4	50.0	28.6	0,06	negligible
Total	188	42.6	39.9	17.6	98	42.9	39.8	17.3		

3.4 Variation over time

Whether the transposition deficit is decreasing over time is another issue of theoretical and also practical relevance. Official scoreboards focusing on the backlog suggest an improving performance; the proportion of non-transposed cases appears to have been decreasing (Börzel 2001; European Commission 2005). But does this also hold when looking at delays and taking the respective deadlines as point of reference? Comparing transposition records across five-year intervals indeed suggests that over the years, the transposition deficit has decreased. In particular in the first three intervals, covering 1975-1989, a steady downward trend in serious delays can be observed: 38.5 per cent, 25.5 per cent, 10.5 per cent, and the most recent period studied, 1995-1999, shows the lowest proportion of serious delays (8 per cent).

We are, however, sceptical about the claim that the transposition deficit is decreasing. This is for three reasons:

First, delays in the first period are related to relatively short official transposition periods (see previous section). Second, the period between 1990 and 1994 does not fit with the expected trend. It again witnessed a serious delay rate of 20 per cent, ending in a more or less similar level as 1980-84. Accordingly, there is a moderate overall association between time period and transposition performance (Cramer's V 0.19)

reflecting not a continuous improvement but differences between the periods of 75-79, 80-84, 90-94 vis-à-vis the periods 85-89, 95-99. Thirdly, it might be the case that the selection bias we expected for the period 2000 to 2004 and which resulted in the removal of this period from our analysis, also reaches into the period 95-99. We have 11 missing cases for this period, while we have much fewer for the prior periods. As there is no reason to assume that data availability has decreased in more recent times, it is save to assume that many of these cases are missing cases because the directives concerned have not yet been transposed. As time passes, these missing cases will fill the category of serious delays lifting the proportion of serious delays well above 10 per cent. Therefore the transposition problems of the more recent periods are most probably underestimated.

Table 3.4 Variation over time

	<i>75-79</i>	<i>80-84</i>	<i>85-89</i>	<i>90-94</i>	<i>95-99</i>	<i>Total</i>
On time	30,8%	31,3%	50,9%	35,4%	54,7%	42,7%
Modest delay	30,8%	43,8%	38,6%	43,8%	37,3%	39,9%
Serious delay	38,5%	25,0%	10,5%	20,8%	8,0%	17,5%
N	26	32	57	96	75	286
Missing cases	4	3	3	3	11	24
Total	30	35	60	99	86	310

Cramer's V 0.19

4. Towards an explanation of the EU transposition deficits

4.1. Introduction

Section 3 described the overall magnitude of the transposition deficit and variation across sub-policies, member states and time. Though this information might be of practical importance because it demonstrates where the problem lies and whether it is still relevant, associations across these 'variables' do not suggest theoretical explanations by themselves. This section therefore investigates whether the transposition record is systematically associated with variables suggested by the theoretical literature. Our theoretical framework distinguishes variables concerning

directive-level explanations (new directives vs. amending directives, directive complexity, and member state preferences at the decision making stage), and domestic explanations (administrative efficiency, federalism vs. unitarism, inter-ministerial coordination, and parliamentary involvement). As we are now moving from description to explanation, we used a statistical measure that better reflects the purpose of explanation. Since all variables tested are either dichotomies or on the ordinal level of measurement we chose Goodman and Kruskals Gamma (Gamma, see Blaikie 2003, pp. 120-5; Healey 2003, pp. 340-50).

The associations found describe real relationships in our large population of more than 280 transposition measures related to all social policy directives adopted between 1975 and 1999 in five countries and are therefore of interest of themselves. However, as social policy follows the typical EU mode of *regulatory* policy making and captures a broad range of substantive issues, and as the five member states cover the diversity of the larger EU, we also regard these cases as a sample of all directives of all member states. Therefore we run tests of statistical significance, indicating whether we have sufficient confidence that the associations found in our sample can also be found in this broader population.

4.2.1 New vs. amendment

Directives can be divided into new directives and amending directives.

Hoppe and Otting argue that *amendments* usually are technical in nature, whereas *new* directives introduce a new topic of legislation (Kaeding 2005). The required domestic change is relatively low and uncontroversial. They therefore expect amendments to be transposed more speedily (see also Mastenbroek 2003, 376).

Table 4.1 New directives - amendments

	New	Amendments	Total
On time	41.3%	47.5%	42.7%
Modest delay	41.3%	34.4%	39.9%
Serious delay	17.3%	18.0%	17.5%
N	225	61	286

Gamma – 0.075 (0.548); P value in parenthesis

The empirical evidence does not support this expectation (see Table 4.1). Though the proportion of directives transposed in time is slightly higher for amendments, this difference disappears when looking at serious delay. The value for gamma is low (-0.075) and not significant. One could think of three reasons for this result. First, the Council and other participants in the decision making process already anticipate the specific character of amendments and therefore grant less time for transposition. In fact, as shown in section 2, amendments are granted less time on average, although the difference of five months is not very large. The second reason could be that amendments may demand more significant changes than is commonly assumed. The third reason is that member states' administrations anticipate that new directives require more attention and resources and act accordingly.

4.2.2 Member state preferences

Many scholars argue that transposition performance is a choice that depends on the interests of member state governments. This voluntaristic view is held for instance by the enforcement approach in international relations that is informed by the realist tradition (Fearon 1998; Haas 1998; Tallberg 2002). In line with this argument it has been claimed that directives adopted under the unanimity rule in the Council of the European Union are transposed more swiftly than decisions under the qualified majority rule (see for instance Mbaye 2001, p. 263). Under unanimity rule self-interested strategic member states can veto any proposal that does not satisfy their preference. As a result, the decision-making outcome represents the least common denominator. Member states have no incentive to delay the implementation of the decisions. Under qualified majority voting, member states will not be able to veto a decision that is not in accordance with their preferences. For that reason some member states will be outvoted and have an incentive to delay implementation (Falkner *et al.* 2004). We should not expect a very strong association, however, as our five countries probably will be most of the time part of the qualified majority, but there may be always one or a few of them that are part of the minority.

Yet we do not find any empirical support for this argument. Transposing measures of directives that have been decided by QMV are not more problematic than transposing

measures based on unanimity. The association is negligible and not significant. This suggests that member state preferences are not important, or at least that member states preferences revealed in the EU decision-making do not cast a shadow on the subsequent domestic transposition process.

Table 4.2 Decision making rule EU directive

	Unanimity	QMV	Total
On time	40,4%	43,7%	42,7%
Modest delay	41,6%	39,1%	39,9%
Serious delay	18,0%	17,3%	17,5%
N	89	197	286

Gamma -0.049 (0.653); P value in parenthesis

4.2.3 Complexity of directive

While the previous argument is based on the idea that implementation problems in general and the transposition deficit in particular is the result of a voluntary act by those in charge, it has also been argued that such problems are caused involuntarily, for instance by the ambiguity and complexity of the task at hand. This view is held by the management school in international relations (Chayes and Chayes 1995), but is also widespread in general and EU related public administration literature (e.g. Bekkers and Bonnes 1993; Azzi 2000, p. 56; Bursens 2002; Falkner *et al.* 2004, p.463).

A particular meaningful measure for the complexity of a directive has been introduced by Kaeding based on his participatory observation of Council decision-making processes (2005). He focuses on the number of detailed explanatory notes (recitals) that precede the section of articles of a directive.

Since the recitals seek to clarify the purpose of the directive and describe its major provisions, their number is a valid indicator for the complexity of a directive. The complexity of a directive has been established by counting the number of recitals preceding the directives' sections of articles and by dichotomizing the variable by taking the mean, which lies between 11 and 12 recitals, as the cut off point.

Again, as is the case with the other EU-level explanations, we do not find empirical support. The transposition record for more complex directives is not worse than the record for less complex directives. The association is not significant and even points in the opposite direction. One reason for the lacking relationship might be that, similar to new vs. amending directives, national administrations anticipate the degree of complexity of directives and devote relatively more attention and resources to those directives.

Table 4.3 Complexity of directive

	1-11 recitals	12 and more recitals	Total
On time	40,2%	46,7%	42,7%
Modest delay	39,1%	41,1%	39,9%
Serious delay	20,7 %	12,1%	17,5%
N	179	107	286

Gamma – 0.164 (0.108); P value in parenthesis

4.3 Domestic explanations

In section 3, we compared the performances of different countries and saw that the transposition performance to some extent varies between them. Comparing countries does not tell us, however, which factors more specifically account for variations, in other words, stating that Greece is a laggard does not tell us why it is so. Classifying countries and investigating them according to their shared theoretically relevant characteristics might bring forward macro-political factors that are more specifically associated with the transposition performance. Here we focus on administrative efficiency and the territorial organization of the state, that is unitarian states vs. federal states. In addition to these general features of member states, domestic explanations can also refer to the organization of national transposition processes. Here we concentrate on the need for inter-ministerial coordination and the involvement of parliament as factors affecting the transposition performance.

4.3.1 Administrative efficiency

The management school in international relations and public administration literature emphasizes that involuntary transposition deficits are not only related to the complexity of the policy, that is the directive, but also the administrative efficiency and capacity of the member state concerned (Chayes and Chayes 1995). Some countries may lack an efficient administrative machinery to transpose directives in time. In this context and particularly referring to environmental policies, some have argued that there is a Southern problem (Pridham 1996), that is, countries like Spain and Greece lack the capacity to implement policies correctly. Administrative efficiency is notoriously difficult to measure. We follow Mbaye (2001) who uses an additive index of administrative efficiency based upon 3 structural factors. These factors are a proxy for administrative efficiency based on the assumption that efficiency is closely related with the incentive structure and recruitment criteria for civil servants. Administrations are assumed to be efficient if (1) performance related pay exists, (2) positions are not-tenured and (3) vacancies are publicly announced. Based on empirical information provided by the cross-national study of Auer *et al.* (1996), the UK scores high (3 points), Germany and the Netherlands averagely (2 points), and Spain and Greece low (1 point).

Grouping the countries with regard to efficiency reveals a quite substantial and significant relationship between the countries' administrative efficiency and their transposition performance (Gamma 0.240, $p < 0.01$). Spain and Greece are both the least efficient countries and Greece is the worst performer with regard to transposition, and Spain ranks fourth, though the difference with Germany (rank 3) is not that large. In this sense there might be to some extent a Southern problem, though this is only in relative terms. The Netherlands and Germany hold a medium position in respect to efficiency and transposition performance.

Table 4.4 Administrative efficiency

	High (UK)	Medium (NL/D)	Low (E, EL)	Total
On time	60.0%	40.3%	36.3%	42.7%
Modest delay	29.1%	44.2%	40.2%	39.9%
Serious delay	10.9%	15.5%	23.5%	17.5%
N	55	129	102	286

Gamma 0.240 (0.005); P value in parenthesis

4.3.2 Federalism vs. unitarism

For the implementation of European policies, some member states are dependent on relatively autonomous sub-national entities such as the German Länder or the Spanish regions. That the need to coordinate implementation efforts among relatively autonomous actors causes implementation problems has already been strongly argued by early implementation studies (e.g. Pressman and Wildavsky 1973; Hanf and Scharpf 1978; Rogers and Whetton 1982). Whether implementation records vary in particular between federalist and unitarian states has also been the focus of implementation research in general, and with regard to EU policies (e.g. Hanf and Toonen 1985; Siedentopf and Ziller 1988; Haverland 2000; Bursens 2002; Mbaye 2001).

The argument is that the dependence on sub-national actors complicates the transposition process. The sometimes conflicting positions of relatively autonomous sub-national actors have to be taken into account and compromises have to be found. Accordingly, timely transposition is less likely in federal countries than in unitary countries. With regard to the five countries of our study, Germany is clearly a federal state. In addition, we also grouped Spain as a federalist country, although Spain is not federal in a strict legal sense. Still, the large degree of sub-national independence of the Spanish regions, make the country a quasi-federal one (see Börzel 1999; Marks and Hooghe 2001). Table 3.2 indicates that though Spain and Germany do not perform very well, Greece, a unitary country, performs worst. Thus, the overall association when grouping these countries according to their territorial political structure is negligible and statistically not significant. Removing Greece, arguing that this case is an outlier given

its overall very weak administrative and economic capacities (see OECD 2001), does strengthen the association, but does not make it statistically significant (Table 4.5b). Note, however that the unitary countries UK and the Netherlands have considerable less cases of serious delays than federal Germany and Spain. This may indicate that under certain circumstances, that is, for instance, if sub-national entities strongly oppose the directive, serious delays will follow.

Table 4.5a Federalism - unitarism

	Unitary (UK, NL, EL)	Federal (D, E)	Total
On time	41,9%	43,9%	42,7%
Modest delay	42,4%	36,0%	39,9%
Serious delay	15,7%	20,2%	17,5%
N	172	114	286

Gamma 0.015 (0.888); P value in parenthesis

Table 4.5b Federalism – unitarism (excluding Greece)

	Unitary (UK, NL)	Federal (D, E)	Total
On time	48,8%	43,9%	46,4%
Modest delay	39,7%	36,0%	37,9%
Serious delay	11,6%	20,2%	15,7%
N	121	114	235

Gamma 0.141 (0.205); P value in parenthesis

4.3.3 Inter-ministerial coordination

The need for coordination not only concerns different territorial levels of government but also different ministries at the central government level. The pressure of inter-ministerial coordination as a cause of implementation problems has been emphasized by the general public administration literature (see for instance Hanf and Scharpf 1978) and EU related studies (Siedentopf and Hauschild 1988; Mastenbroek 2003).⁶ Note that there is variation within countries as regards the number of ministries formally

involved, although in the UK and Spain - at least formally - in most cases only one ministry is involved and in Greece, on the contrary, often more than one ministry is formally involved. Accordingly, we have not grouped countries here but reviewed each specific case. We have operationalized the number of ministries formally involved, by counting the number of signatures of the national instrument in question. Our analysis reveals a solid empirical support for the argument that the more ministries are involved the worse the transposition performance is. About half of the national transposition measures where only one ministry is formally involved are transposed on time, as against 28 per cent of those where two or more ministries are involved. The overall association is quite strong (Gamma 0.346) and statistically highly significant ($p = 0.001$).

Table 4.6 Number of ministries (signatories)

	1 signatory	2 or more signatories	Total
On time	50.9%	28.4%	42.3%
Modest delay	34.4%	50.0%	40.4%
Serious delay	14.7%	21.6%	17.4%
N	163	102	265

Gamma 0.346 (0.001); P value in parenthesis

4.3.4 National parliament involvement

Member states may employ different legal instruments to transpose EU policies. Formal laws typically require the involvement and even assent of national parliaments while lower level instruments such as orders in councils or ministerial regulations do not. It has been argued that national parliaments provide a hurdle in the national transposition process and result into delayed transposition (Siedentopf and Ziller 1988; Mastenbroek 2003, pp. 377-378). We did not find evidence for this. The overall association is negligible and not statistically significant. Moreover, in our sample the proportion of serious delays is considerably lower with regard to laws. One reason for our results might be that the need for a formal law gives those measures a high priority attracting time and resources to the issue.

Table 4.7 National parliament involvement

	Strong parliament involvement (Law)	Low/no parliament involvement (Lower instruments)	Total
On time	41,0%	43,3%	42,7%
Modest delay	46,2%	37,5%	39,9%
Serious delay	12,8%	19,2%	17,5%
N	78	208	286

Gamma 0.029 (0.790); P value in parenthesis

5. Conclusion

This paper firstly sought to bring light to the hitherto scarce and patchy information available on the EU transposition deficit. Its contribution to the implementation research in general, and to studies on EU policies in particular, is its long-term quantitative and comparative approach to the implementation deficit, resulting in concise analyses of its overall magnitude, contour, and variations. On the basis of nearly 300 observations we found that the transposition deficit is substantial . Only 42.7 per cent of all directives are transposed on-time; 17.5 per cent exceeded the deadline by more than two years. There is only weak variation across sub-policies but moderate variation between member states. Relatively speaking, the United Kingdom is the best performer, the Netherlands, Germany, and Spain perform roughly similar and Greece is the worst performer. We also found rather strong differences within member states between sub-policy areas. Each member state has a distinctive profile of variation. Germany, for instance, transposes half of the health and safety measures on time, but less than 20 per cent of the other measures. Conversely, Spain only transposes about 30 per cent of health and safety measures and three-quarter of other social policies on time. Although the magnitude of the transposition deficit seems to have decreased over the years, we argue that this might be to some extent the result of selection bias; missing cases from the most recent period disproportionately denote cases that have not (yet) been transposed.

In terms of explanations, our second goal, we found that the directive-level variables – new vs. amendments; member state preferences; complexity of directive – are not associated with transposition performance. With regard to domestic variables the results are mixed. The organisation of the territorial structure of the state – federalism vs. unitarism – is only associated if Greece is excluded, and if the emphasis is on serious delays. These results are not statistically significant, however. The involvement of parliament does not delay the transposition process. Administrative inefficiency and the pressure resulting from inter-ministerial coordination are both significantly associated with transposition delays.

The lack of association with the directive-level variables suggests a number of hypotheses that should be explored further. It may be that member states administration believes that the Commission and other actors monitor directives that are new more closely than amendments; complex rather than simple and are not in line with member state preferences. Therefore, member state administrations draw more attention and resources to those directives. Similar mechanisms may be at work with regard to the domestic variable parliamentary involvement. These directives may be also more salient for national administrations. It should be promising to look at national administration in a European and domestic political context to establish whether and why these mechanisms are at work. Case study analysis would be a fruitful avenue to do so.

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Other endnotes

² Note that we follow the widespread convention to use the term European Union, even though strictly legally speaking the term European Community would be more correct, as all measures discussed belong to the first pillar of the European Union.

³ These data rely on information found in the European Commission's Eur-lex database and Europmaat. Eur-Lex, the official database of the European Union, gives access to the directory of Community legislation in force (<http://europa.eu.int/eur-lex>). Europmaat is a Dutch database run by the Asser legal research institute and covers in addition Community legislation that is no longer in force (<http://europmaat.sdu.nl>). We completed our data collection on 22 June 2005.

⁴ The available transposition time has been calculated by deducting the date of publication from the directive's transposition deadline. Due to their extreme high values, three directives were excluded from figure 2.3, and figure 2.4. This concerns a health and safety directive, adopted in 1959, that was granted 95 months, and two equal treatment directives (1978, 72 months; 2000, 61 months).

⁵ The European Commission Celex online database (since 1. January 2005 Eur-lex), looked after by the EC Office for Official Publications, is our first source of inquiry for data on national transposition

measures (<http://europa.eu.int/celex>; <http://europa.eu.int/eur-lex>). Celex is supposed to summarize all legal transposition instruments that have been notified to the Commission. Celex is far from complete, however. Additional transposition data were gathered from the EU Commission's Employment & Social Affairs Directorate General, national-level authorities (governmental and ministerial websites) and research institutes.