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Lost in Translation or Full Steam Ahead

The Transposition of EU Transport Directives across Member States

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ABSTRACT

This study supplements extant literature on implementation in the European Union (EU). The quantitative analysis, which covers the EU transport *acquis*, reveals five main findings. First, the EU has a transposition deficit in this area, with almost 70% of all national legal instruments causing problems. Second, transposition delay is multifaceted. The results provide strong support for the assertion that distinguishing between the outcomes of the transposition process (on time, short delay or long delay) is a useful method of investigation. Third, factors specific to European directives (level of discretion and transposition deadline) and domestic-level factors (national transposition package and number of veto players) have different effects on the length of delay. Furthermore, the timing of general elections in member states as well as policy (sub)sector-related accidents influence the timeliness of national transposition processes.

KEY WORDS

- better regulation
- directive
- European Commission
- gold-plating
- transport
- transposition

Introduction

Although full implementation of EU legislation is enshrined in the treaties and is necessary to meet the Lisbon goals in 2010, most member states do not live up to this obligation fully. In 2006 more than 770 notifications were still pending and coincided with new European Court of Justice (ECJ) record fines.[1] The question is why some member states refuse to comply with EU law despite the image-marring effect in later EU negotiations and costly consequences in both pecuniary and legal terms. As if this were not puzzling enough, existing EU implementation studies have left the research community with some gloomy inconsistencies. A considerable number of studies lack empirical and conceptual strengths (Mastenbroek and Kaeding, 2006) and do not draw on earlier findings such as the implementation literature of the 1970s or recent scholarly efforts in the field to improve quantitative data.

This contribution aims to unravel the EU implementation puzzles while focusing on the time aspect of national transposition processes of European directives across member states, which represents a particularly salient form of non-compliance (Mastenbroek, 2003; Berglund et al., 2006). The paper's research questions are as follows: Why do member states miss deadlines when transposing EU internal market directives? What factors determine delays when transposing EU directives?

In the following, I argue that national transposition can be understood in terms of bargaining processes about *who* gets *what* and *when*. I see the national transposition outcome as a negotiation between bureaucratic and political transposition actors who must agree, within an allotted time frame, on a new national policy complying with EU law. Who ends the game and when depends on the players' expected payoff. The expected flows of payoffs to an actor equal the difference between benefits and costs. Moreover, the costs of the new policies are not equally distributed among the actors, who may then engage in a war of attrition as they attempt to redistribute or simply delay the realization of these costs (Alesina and Drazen, 1991). Eventually, three sets of explanatory factors for the timeliness of national transposition processes that influence the cost/benefit structure of the actors can be identified combining legal and administrative as well as political factors: factors specific to EU directives, factors related to the domestic level and crisis-related multipliers. Whereas the European-level indicators relate to the policy design (the directive's level of discretion and the transposition deadline), national factors stem from the process of implementation (national transposition package and number of veto players). Crisis-related factors (timing of general elections and policy (sub)sector-related accidents) stand on their own.

The paper is structured as follows. After providing the theoretical framework, I present a data set of basic variables that facilitate the systematic empirical analysis of the EU transposition performance of member states. Note here that the focus is on EU directives that are not immediately applicable at the national level, but have to be incorporated into national law first. Then I shall operationalize the independent variables and present the research method. Subsequently, I investigate whether there is a transposition deficit in the field of EU transport legislation. Comparing three groups of transposition outcomes, the analysis shows that features specific to the EU directive explain short delays, whereas national-level explanatory variables explain long delays. The statistical results strongly support the central argument that European-level, national-level and crisis-related factors *together* account for transposition delays. Finally, I synthesize and discuss the findings in relation to the existing EU implementation literature. I conclude with some comments on the article's implications for future research.

The puzzles

It is clear that the EU member states frequently breach EU law. At the same time, scholars have investigated the matter thoroughly. But it is the unsatisfactory state of the EU implementation literature more generally that leaves the interested scholar puzzled.

The empirical puzzle: 'Cannot see the forest for the numbers'

Although concerns about the quality of the European Commission's scoreboards (Börzel, 2001; Mbaye, 2001; Mastenbroek, 2003) remain, the various data reveal an implementation deficit. A further look at the EU data even amplifies these worries. The so-called 'fragmentation factor' has found its way into the implementation debate, indicating the percentage of outstanding directives that have not been implemented in at least one member state. In 2006, the fragmentation level was 9% (European Commission, 2006: 15), which indicates that 9% of the internal market directives had not achieved their full effect. In absolute terms, this means that 144 internal market directives had not been implemented in at least one member state and the European Commission was still waiting for 772 notifications of national transposition measures. The presence of an EU implementation problem, which is confirmed by a considerable number of scholars in the field, seems evident (Sverdrup, 2004; Börzel et al., 2005; König et al., 2005; Falkner et al., 2005; Steunenberg and Rhinard, 2005; Borghetto et al., 2006; Giuliani, 2006).

Non-transposition creates uncertainty and undermines the legitimacy of EU legislation. It forestalls further European integration involving the free movement of goods, persons, services and capital (EC Treaties Article 3(1)c). Furthermore, it jeopardizes market competitiveness, national growth and employment performances in Europe and beyond. In other words, it harms the successful achievement of the Lisbon agenda.

Indeed, after the devastating mid-term review of the Lisbon strategy by Kok (2004), the European Commission laid down a renewed work programme focusing exclusively on ensuring a simple and high-quality regulatory environment. Simplification within EU competitiveness policy entails legislation that carefully strikes the right balance between the cost and benefits of legislation ('better regulation'). Since effective and timely transposition of internal market legislation affects the costs and benefits of a new policy, it is the first action point under the Lisbon action plan adopted by the member states in early 2005. Ultimately, better regulation cannot be achieved without serious attention to transposition.

The theoretical puzzle: 'Plenty of room for improvement'

From a theoretical point of view, this paper argues that three areas of improvement to the EU implementation literature[2] are appropriate: greater empirical and conceptual strength; applying lessons learned from the implementation literature of the 1970s; and contributing to existing cumulative data.

Indeed, the first 'two waves' (Mastenbroek, 2005) of the EU implementation literature were either eclectic in nature or did not facilitate the ex post formulation of clear predictions. Only recent efforts of the 'third wave' have started to engage in more analytical research (Haverland, 2000; Héritier et al., 2001; Giuliani, 2003; Treib, 2003; Falkner et al., 2005; Steunenberg, 2006). They have introduced 'political variables', which may capture the overriding power of the substantive positions of domestic policy-makers. Furthermore, they have chosen to leave aside the chief legal or public administration explanations (Krislov et al., 1986; Siedentopf and Ziller, 1988; Pappas and Arpino, 1995) and the deterministic goodness-of-fit argument (Duina, 1997), where 'the relationship between the status quo and the response to the EU is spurious, as both variables are contingent upon the preferences or beliefs held by domestic political and administrative actors' (Mastenbroek and Kaeding, 2006: 331).

In addition, when theorizing the policy outcomes of the subsequent implementation phase, most existing EU implementation studies do not give attention to the adoption phase of the EU policy cycle. In other words, scholars have not taken on board Elmore's (1979) and Pressman and

Wildavsky's (1973) notion that 'implementation should be part of design', suggesting that policy theory is formulated 'with a view toward its execution' (Pressman and Wildavsky 1973: 189). Since we should consider 'the EU as a laboratory for testing and advancing theories and models of implementation in general' (Sverdrup, 2005: 5), implementation scholars may profit from supplementing their theoretical frameworks with factors that are related to both the policy design *and* the policy implementation. Although implementation is not just 'controlled from the top' (Elmore, 1979: 602), this study argues that features of the outcome of European negotiation have considerable influence on the outcome of the subsequent national implementation process.

And, last but not least, more attention may have to be given to improving the data quality of the burgeoning number of large-*n* studies in the field, which mainly consists of two groups. Whereas the first group of scholars (Börzel, 2003; Bursens, 2002; Giuliani, 2003; Sverdrup, 2004; Linos, 2007) rely exclusively on existing Commission scoreboards and infringement data, a second group (Mastenbroek, 2003; Berglund et al., 2006; Kaeding, 2006; Haverland and Romeijn, 2007) have started to improve the 'quality of the data by cross-checking and supplementing existing EU data with additional national sources.

In the following, these two puzzles will guide the analysis of this study and the theoretical argument in particular.

The theoretical framework

This study argues that national transposition processes involve bargaining between transposition actors, who are assumed to have conflicting preferences over certain issues. For simplification, assume that two outcomes are possible. Both actors would prefer coordination on either one of the two outcomes to non-cooperation, but they differ over the ranking of their preferred outcome. So, in bargaining over which of the two possible deals they will implement, the players decide simultaneously what to do out of two options: either they each reiterate their previous demand and wait for their opponent to lower their demand, or they each lower their own demand. Eventually, the aim of the game is to find a player who ends the game at a specific date of agreement. So the players' strategies are concerned with the moment *when* they decide to stop the game. To determine the bargaining outcome (when the game ends and who ends it) it is necessary to determine the players' expected payoffs.

Generally speaking, the expected payoff for both players depends on three factors: the benefit induced by the new policy, the rent-seeking costs –

the cost of the battle in the pursuit of these benefits – and the total length of time the player can expect to wait during the encounter. Since the benefits of a new policy tend to be relatively concentrated whereas the costs are diffuse (Börzel and Risse, 2003), actors have the incentive to bear the costs of bringing the new policy about. So, actors engage in a war of attrition (Alesina and Drazen, 1991) as they attempt to shift or simply delay the realization of these costs.

More specifically, both actors choose to hold out for the reward in question (here, the better cooperative deal). They wait in the hope that the other will accept a larger share of the costs associated with the new policy first (back down). In other words, the first player to quit the contest cedes the reward to the other side. Increasing the rent proportion increases the benefits and the risk of waiting. The point of waiting is to let someone else volunteer first, but waiting can be costly. Raising the cost determinant increases the cost side of the difference and decreases the likelihood of a complex and time-consuming negotiation process. Increasing the waiting time of the player boosts the waiting costs with every additional unit of time while reducing the benefit. In this respect, discounting the future plays an important role. The closer to 1 the discount rate is, the less the player discounts future payoffs and the more are future cost/benefit payoffs perceived as being similar in value to the current ones. On the other hand, a discount rate close to 0 implies that the cost/benefits are almost negligible.

What makes national transposition processes timely? Six hypotheses

The implementation of a directive requires 'the adoption of general measures of a legislative nature' (Prechal, 1995: 5), which normally induces policy change at the national, member state level through national transposition actors, who must come to an agreement about how to implement policy in a manner complying with EU legislation. This study argues that these transposition actors are administrators *and* politicians. Whereas ministers sign the ministerial orders and political appointees control the interpretation as regards the content of the directive, it is the ministry's administration that provides the technical and juridical know-how in the legal transposition stage. In the following, I refer to the national transposition process as a war of attrition between these actors. Examining the *timeliness of national transposition processes across member states*, the following six hypotheses can be derived.

Number of actors

Given the theoretical framework outlined above, it is understandable that bargaining outcomes are dependent on the number of actors involved in setting a new policy. In line with Shepsle and Boncheck (1997), I argue that the addition of a player increases coordination problems. *N*-games, so to speak, are more complicated to resolve owing to problems common to group interaction (Raiffa et al., 2002: 390). In short, it can be said that a bargaining deal between two players is less complex than a deal involving four players because the number of possible combinations is much greater in the latter situation. Complexity can delay the process considerably. So, countries with greater political fragmentation adopt policy change later (Haverland, 2000; Giuliani, 2003; Linos, 2007). The fewer the actors involved in the making of a legal instrument, *ceteris paribus*, the less likely is the transposition process to be delayed (Hypothesis 1).

Margin of discretion

However, actors who are engaged in the national transposition cannot modify the policy in ways that are substantially different from the draft adopted by the Council of Ministers. Otherwise, their action could be subject to infringement procedures (EC Treaties Article 223) and, ultimately, to a Court's judgment of a failure to comply with treaty obligations, including penalty payments. Next to non-notification incidents, however, the Commission challenges only adopted national implementing measures that exceed the margins of discretion assigned to member states by the directive. Hence, if already existing national measures lie within the margins of discretion, then no new national transposing instrument has to be agreed upon (Steunenberg, 2006). Although most transposition processes require new national implementing measures, the new European policy determines each member state's ability to interpret a directive's provisions.

But transposition often deals with more than two issues and hence points on which actors may disagree. If we consider, for example, Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, six issues with considerable leeway for interpretation can be identified. If we apply just a dichotomous interpretation, they already stand for 240 different policy combinations that have to be addressed one by one, which is very time consuming and cost-intense in terms of rent seeking. Thus, in my view, there is a positive relationship between member states' discretion and the timeliness of national transposition processes. The greater the amount of discretion,

ceteris paribus, the more difficult it is to settle an agreement on time (Hypothesis 2).

Lengths of the transposition period set in the European directive

After EU directives are adopted at the European level, national actors must transpose them within the allotted time frame set in the texts. This fixed deadline (Ponsati, 1995) yields a discontinuity in the payoffs that actors can enjoy over time by leaving the assumed cost constant but allowing costs to shoot up with the expiry of the deadline. After the deadline has expired, the status quo can prove very costly for the government. Lawsuits at the national or European level become a real threat – representing additional costs to the already existing rent-seeking costs of the players (Koutalakis, 2004). So with the expiry of the transposition deadline the pattern changes: additional costs of non-cooperation occur, reflecting the potential threat of a likely infringement procedure that is cumbersome, time consuming, image damaging, distracting and possibly linked to a costly outcome. This study argues that introducing a deadline allows the rent-seeking costs to rise exponentially.

Consequently, the length of the transposition bargaining period defined by the EU directive has an impact on the date of agreement (Mastenbroek, 2003; Berglund et al., 2006; Kaeding, 2006; Haverland and Romeijn, 2007). The more time a member state has to transpose a directive, *ceteris paribus*, the swifter is the national transposition process (Hypothesis 3).

Effects of national transposition packages

National transposition actors in fact often use one national legal instrument to transpose several EU directives simultaneously. This is known as the *national transposition package approach*. These national transposition packages can include two or more EU directives whose full transposition is, quite often, not due in the same year (for Italy, see Giuliani and Piattoni, 2006; Kaeding, 2007). They are applied to reduce the costs of coordination within the ministries since they allow the transposition of a couple of directives with only one national legal instrument.

Owing to its endogenous character, a national transposition package should affect the transposition speed only positively, assuming that member states always try to meet the deadlines. However, the extent to which the package approach accounts for the timeliness of the national transposition process is contingent on *when* it occurs (timing). Since a transposition settlement will be reached as soon as the costs of non-transposition exceed the benefits of the existing policy, the package approach will trigger policy change at different rates by increasing the costs of non-transposition steadily.

Depending on the position of the EU directive within the national transposition package, the costs may remain below the costs forcing policy change for a longer period. However, a break-even point will occur when the costs of maintaining the status quo exceed the rent-seeking costs of implementing the new policy. Hence, the usual time margins of transposition are set by the deadlines in the first and last directives in the package. Depending on those deadlines and following the previously mentioned logic of an additional 'infringement threat' cost component, the accumulated costs may increase considerably for the first EU directive after the deadlines but remain relatively low for the last directive, whose allotted time frame is longer. A national package approach increases the probability of a delayed settlement of the first European directive in the package, whereas, in turn, it accelerates a settlement of the last European directive (Hypothesis 4).

Effects of general elections

National elections are the usual mechanism by which modern democracies fill offices in the legislature. They are set and postponed by presidents and heads of state, and they vary in frequency and the time needed for execution. Because general elections attract a lot of attention from voters and office seekers, they have an impact on the national policy-making procedures. Although elections can cause political crises, as in the Ukraine general elections in 2004 or the Italian general elections in 2006, elections are often characterized as destabilizing and disequilibrating factors in a country's policy-making system. They unbalance the regular heartbeat of day-to-day politics and directly affect the size of actors' rent-seeking costs.

For analytical reasons, this study distinguishes between general elections falling at two points during a national transposition bargaining process: either at the beginning or at the end. Depending on the timing of a general election, it can have either a delaying or an accelerating effect – for a variety of reasons.

Although elections reduce rent-seeking costs in general, elections that fall at the end of a national transposition bargaining process increase the cost of waiting dramatically, for both politicians and administrators. First, national general elections reduce the rent-seeking efforts of government officials by channelling all their attention away from day-to-day policy-making toward the electoral campaign. National implementation procedures that have not been finalized by the end of the parliamentary term often expire and must be re-tabled in the new legislative term. however, if they are not adopted before the end of the legislative term they automatically extend the duration of a national transposition process considerably. Any legislative project that the institutions have not passed by the 'legislative deadline' must be reconsidered from scratch, which is a time-consuming and costly endeavour. Furthermore,

the public administration then faces the potential threat of infringement costs, which coincide with the 'legislative deadline'. Future payoffs 'shadow', so to speak, the national transposition process.

In contrast, general elections that coincide with the beginning of a national transposition bargaining process do not encounter infringement costs in the short run. Politicians still have the whole of the legislative term ahead and will probably prioritize election pledges. On the other hand, administrators have less incentive to maximize their influence at the beginning compared with the end of a legislative term. Generally speaking, they attach low priority to EU law, not least because they associate it with an increased workload from Brussels. Whereas a general election falling at the beginning of the transposition procedure decreases the probability of a problem-free settlement, a general election at the end of a transposition process accelerates the adoption of new national legislation (Hypothesis 5).

Effects of external shocks

Exogenous shocks may increase the cost of not adopting reforms or may make them outdated or irrelevant but will eventually prompt a solution to a bargaining problem (Drazen and Grilli, 1990). Regardless of the kind of crisis, considerable influence is exerted on the timeliness of the transposition process by such upsets. In the context of transposition, a crisis adds additional expenses to the constant rent-seeking costs. A crisis that immediately increases overall costs will raise the cost of non-transposition more generally and lower the equilibrium level, thereby increasing the probability of a quick settlement. So the costs induced by an external shock reduce the benefits and settle bargaining issues. A crisis thus increases the probability of a timely transposition process (Hypothesis 6).

Summary of predictions

Table 1 summarizes the three groups of factors that affect the timeliness of national transposition bargaining processes across member states. For the European-level factors it shows that the directive's level of discretion may have a delaying effect on transposition timeliness. In contrast, the more transposition time is provided for in the directive, the more rapid and problem free the national transposition process is expected to be. At the national level, national forms and methods of transposition play an important role, as does the timing of general elections. When more veto players are involved, the transposition process is slower. The national transposition package approach also affects the pace of policy change by affecting the distribution of the adjustment costs of a new European policy. General elections may have either a

delaying or an accelerating effect on transposition, depending on the time of their occurrence in the transposition process. Last but not least, external shocks increase the cost component in the cost/benefit equation considerably. Crises may impel rapid implementation of the content of the new EU directive.

EU 1995–2004 transport transposition data set

To test the six hypotheses, this study follows recent data-collecting efforts in the field and presents a new data set that covers almost two-thirds of the full population of the EU transport *acquis* from 1995 to 2004. Before I operationalize and then test the hypotheses, I shall deal with the methodological issues. First, I address the selection of the policy field, of the member states in the sample and of the time period of investigation. Then, I present my information sources and briefly assess the completeness and quality of the data set.

Policy field selection

Although my research focus is to understand the reasons and mechanisms behind member states' delay in transposing EU internal market legislation, it is difficult to analyse all the European policy fields in which directives are issued within the context of the proposed study.[3] The selection of the *transport* sector for this study was therefore guided by four considerations. First, because the study's focus is on the timeliness of national transposition processes, I did not consider areas in which the EU primarily issues regulations. Second, I focused on a core policy area of the Union established by the Treaty of Rome (Franchino, 2005b). In order to facilitate the generalization of my findings at a later point, the third consideration was whether the policy area in question fitted well into the dominant EU regulatory category (Majone, 1996), which comprises technical, regulatory and harmonizing directives. I also controlled indirectly for different subsections (Kaeding, 2007) – maritime, rail, road, air and inland waterway – that made the transport case adequate to test the hypotheses. And fourthly, to be able to produce empirical reliability for research on the transposition of EU directives, I needed an area with a sufficiently large number of cases and enough variety on the dependent variable between the cases (for a concise overview of EU legislative output, see Alesina et al., 2005).

Selection of member states

For analytical reasons, I opted for nine member states: France, Germany, Greece, Italy, Ireland, Spain, Sweden, the Netherlands and the UK. First, this

Table 1 Effects on transposition timeliness

		Effect on transposition speed	
		Delaying	*Accelerating*
Factors related to the EU directive	1. The level of discretion guaranteed by the directive	The more discretion given in the text, the more difficult is timely transposition	
	2. The transposition deadline in the directive		The longer the transposition time set in the directive, the more problem-free is the transposition
Form and method of national transposition process	3. The number of veto players	The greater the number of veto players, the more delayed is the transposition process	
	4. The occurrence of a national transposition package	*First* European directive in the national transposition package	*Last* European directive in the national transposition package
	5. General elections	General elections scheduled at the *beginning* of the transposition process	General elections scheduled at the *end* of the transposition process
Change in the internal and external situation	6. Shocks		Shocks *during* the transposition period

group of member states comprises implementation 'leaders' as well as 'laggards'. Whereas Greece and Italy notoriously are among those ranking bottom on the European Commission's scoreboards, Germany, France, Ireland and the Netherlands attain medium scores, and Spain, the UK and Sweden perform rather well. In addition, these states were selected to cover most of the important dimensions of variation in the national-level independent variables: centralized states (France and Greece) versus decentralized states (Germany, Spain and Italy), old versus new member states, variation in legal traditions and practices in terms of typical regulatory patterns (France versus the UK), and variation in the number of players across member states and transport subsectors. Here, institutional aspects of the member states' political systems play a role, since they are part of the explanatory factors. For example, some governments tend to be more stable than others (Germany versus Italy). I also include member states with clear preferences for a limited number of transport subsectors, such as the Netherlands for inland waterways, Ireland for air transport and Greece for maritime issues. In contrast, Germany, Italy, the UK and France consider all five modes of transport equally important. Finally, I took account of a group of states on which little EU implementation research work has been done to date: Greece, Sweden and Ireland.

Time period: 1995–2004

Mainly for reasons of availability, I opted to focus on only recent cases of EU national implementation instruments in the area of transport, covering a period of almost 10 years (1995–2004).

Sources of information

Information on the EU transport directives is taken from the official legal database of the European Union – Celex (*Communitatis Europeae Lex*) – which covers all Community legislation, preparatory acts, case law of the European Court of Justice (ECJ) and parliamentary questions. Celex also provides publication references regarding member states' national provisions for enacting Community directives. Almost 70% of all national implementing measures for the selected member states were reported in Celex and other Commission sources. However, the official legal databases of the European Union are not the only accessible source to report national implementing measures (for an overview, see Hudson, 2005).

To compare and control for the quality of Celex, I also asked the transport ministry of each of the nine member states for a full list from the national transposition databases dating back to the very first directive of the transport

acquis.[4] Interestingly, 80% of the data – which are often referred to as 'unreliable' (Börzel, 2001; Mbaye, 2001; Mastenbroek, 2003) – matched the national data. In only 20% of the cases did I add further information on the national implementing instrument derived from the national databases. There was no biased lack of information across the nine member states or transport subsectors worth mentioning. Incomplete data on the EU directives or the national implementing measures seem unrelated to member states or transport subsectors. Since these missing values are 'random noise' they are not expected to affect the findings in a systematic manner.

In terms of completeness, member states sometimes translate EU legislation by using more than one national transposing instrument. For the purpose of this study, three primary considerations indicate the first national legal instrument to be the prudent choice (see also Berglund et al., 2006). The first instrument normally represents a key legislative measure in the national transposition process, and it is with this instrument that the 'clock starts ticking'. In fact the first measure might not indicate whether the national transposition process is complete. However, by using the first measure we can confidently ascertain whether there has been a delay while diminishing the possibility of exaggerating delays. From a practical point of view, too, recording the first national instrument makes sense because the European Commission considers the first legal instrument notified to be sufficient.

Data set

The EU transport transposition data set covers the period from 1995 to 2004 and includes information on the first 367 national implementing measures in nine member states. It covers 67 EU transport directives and represents 63% of the total transposition *acquis* that member states had to transpose before the enlargement round in 2004. To increase the quality of the Celex data (and thereby to contribute to recent efforts in the field), I controlled for and added national data sources and tidied up the data set for analytical purposes.

Operationalization

Features specific to the EU directive

Transposition deadline set in directive

The length of the transposition period granted, i.e. the time set in the EU directive for notification of the national implementing measure to the Commission, is calculated by subtracting the deadline set in the directive from

the date of publication of the EU directive in the Council of Ministers. Celex provides the full texts of the directives, in which the last but one article always includes the reference to the deadline, phrased as follows: 'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by . . .'. The transposition deadlines set in the directives vary between 0 and 3.5 years (with a median of 9 months).

Amount of discretion

To test the discretion hypothesis, I rely on the *discretion ratio*, which is defined as the number of major provisions in a legislative act that grant discretionary executive powers to member states, divided by the total number of major provisions in the act. Following the example of Franchino (2004, 2005a) and Thomson et al. (2005), who also identify the number of major provisions of each legislative act that grant discretionary executive power, I rely on the information provided by Celex and Eurlex. In line with the Epstein and O'Halloran (1999: 275–6) coding rules, I coded every provision according to whether member states may be left with some sort of discretion. The discretion ratio varies in principle on a scale from 0 (no discretion) to 1 (full discretion). The ratio for the 67 transport directives, including all articles except the first (purpose) and the last (addresses), ranges between 0 and 0.7.

National-level features

Number of veto players

The number of national actors bargaining the new policy is contingent on the chosen type of transposing instrument, which differs across member states. Questions about how many ministries are involved and how many national legal instruments are needed may depend on strategic calculations or may be preconditioned by national trajectories. Predicated mostly on administrative and ministerial traditions, one legal instrument may be preferred over another. Scholarly work (Steunenberg and Voermans, 2005; Kaeding, 2007) shows that the number of transposition actors varies considerably and often is more than two. Information on the national legal instruments for all member states is drawn from the list of measures notified to the Commission, Celex and the national legal databases. Table 2 summarizes the hierarchical ordering of national legal instruments for every member state under investigation according to four categories.

Since member states typically transpose EU legislation via non-legislative measures[5] (in which the parliament is not involved), my study goes one step further than the normal veto player indexes (Tsebelis, 2001) to assess the formal influence of transposition actors. In line with Steunenberg and

Table 2 Categorization of national legal instruments in nine member states

	Legislative act	*Government decree*	*Ministerial order*	*Circular*
Germany	Gesetz	–	Verordnung	Verwaltungsvorschrift
UK	Act of Parliament	Order in Council	Ministerial Order	–
France	Loi, dispositions d'adaptation au droit communautaire (DDAC), Ordonnance	Décret	Arrêté ministériel	Circulaire
Italy	Legge, legge communitaria, decreto legge, decreto legislativo	–	Decreto ministeriale	–
Spain	Ley ordinaria, real decreto-ley, real decreto-legislativo	Real decreto	Orden	Resolución, Instrucción, Circular
The Netherlands	Wet	Algemene Maatregel van Bestuur	Ministeriële regeling	–
Greece	Νόμος (Nomos)	Προεδρικό Διάταγμα (Proädriko diatarma)	Κοινή Υπουργική Απόφαση (Kini ipurgiki apofasi)	Εγκύκλιος (Egiklios)
Ireland	Act of Parliament	–	Order	–
Sweden	Lag	–	Förordning	Föreskrift

Source: Steunenberg and Voermans (2005) supplemented with additional information.

Rhinard (2005: 15), I build my own veto player index, which varies for each directive and member state respectively. If transposition requires a ministerial order, the number of ministries involved is counted, on the assumption that they may have different agendas, including varying importance assigned to the particular transposition process. If there is an additional junior minister who represents a different party group from the minister (Müller and Strom, 2004), this junior minister is added to the number.[6] If transposition is decided by the national government, a score based on the autonomy of the prime minister is added to the index (Strom et al., 2003). Finally, if transposition is handled by adopting a bill, the simple version of the national legislative veto player index by Tsebelis (2001) is added.[7] I acknowledge that this veto player index does not include any ideological distances in party politics; it is nevertheless adequate to account for potential veto players in non-legislative national transposition processes, such as ministerial orders, and also differentiates among legislative acts. The scale for this variable ranges from 0 to 16.

National transposition package

A national transposition package groups together a number of EU directives for transposition purposes, often because they cover similar policy issues. Despite the similar range of topics in such packages, a number of directives with varying deadlines are transposed simultaneously. Controlling for decelerating and accelerating effects, I introduce dummies for those EU directives that are the first or last in a national transposition package. In fact, member states differ in applying national transposition packages. The information on 82 packages of the 367 notified national implementing measures, which represents 23% of all cases, was derived from Celex and the national databases.

Timing of national general elections

An overview of all national parliamentary elections can be accessed through Wolfram Nordsieck's website on parties and elections in Europe.[8] I coded the occurrence of a general election as 1, otherwise 0. Of the 367 national transposition processes, 51% (189) were affected by general elections during the national transposition process. Only a few transposition processes experienced general elections both at the beginning and at the end of the transposition process (2%).

Transport-related accidents

In line with Stevens (2004), who shows that EU policy-makers have adopted new European transport subsector legislation as a result of addressing the

reasons for often devastating ecological disasters, Kaeding (2007) provides a summary of transport-related accidents across Europe between 1995 and 2004. Accounting for all five transport subsectors, I eventually assigned '1' to the occurrence of an accident that attracts press notice across all EU member states and will affect national policy-making, and 0 for no accident in the period of the national transposition process. In 25% of the cases (94 out of 367), mode-specific accidents were recorded.

Results and discussion

A serious EU transposition deficit

Calculating the difference between the transposition deadline set in the EU directive and the date of adoption of the first national transposing instrument, these data show that the EU faces a serious transposition deficit in the transport sector. During 1995–2004, the nine member states under investigation notified only 53% of the national instruments on time. Thus, 47% were transposed late, varying from just a few days overdue to 251 weeks (almost five years) – the delay on Greece's national transposing measure for the EU directive on the harmonization of boatmasters' certificates (index No. 11). In fact, 70% of measures had delays of more than six months.

Furthermore, the mean (6 months) and median (0 months) transposition delays across member states indicate that 'delay' is not a simple but, rather, a complex entity. I identify three main groups of outcome: the first group (53% of cases) comprises national instruments notified on time; a second group of measures had a transposition delay of less than 6 months (15% of cases); and a third group of national measures was transposed more than 6 months late (35% of cases).

Yet it is not just the commonness of tardy transposition that raises major concerns about efficient and effective policy-making. Early transposition, too is problematic ('gold-plating'). The data reveal that 20% of the national implementing measures went into force more than 6 months before their deadline. However, this required national businesses to adapt to new legislation before their European counterparts, an action that may lead to a competitive disadvantage in the Single Market. Indeed, we find cases that were transposed up to 2.4 years earlier than demanded by the directive.

Variation across member states and policy areas

In line with Conant's (2002) findings, which reveal delays of over 10 years, this study also brings to light a significant variation between both member

states and policy sub-fields. The nine member states can be clustered into three groups. Sweden and the UK perform best, having an average transposition delay of less than 2 months. The performance of Germany, France, Spain and Ireland ranges up to 30 weeks' delay. The Netherlands, Greece and Italy perform worst among the nine member states, with an average transposition delay of over 35 weeks (the median is 22 weeks).

Furthermore, transposition varies across the five different transport subsectors of maritime, road, rail, air and inland waterways. Whereas maritime and general transport directives perform best, with an average delay of 20 weeks or less, air directives are delayed by an average of 1 year. The delay for road and rail directives is between 8 and 9 months. Inland waterways directives take the most time: the average transposition delay is 27 months (2.25 years).[9] Rail and inland waterways seem to be the transport subsectors with the most prominent transposition delays (32–98 weeks) across all member states.

Determinants of transposition delay

Proceeding from the finding that the EU faces a serious transposition deficit and that 'delay' is not a simple 'construct' but can be sorted into three distinct outcomes, I ran an ordered multinomial logistic regression to identify the determinants of the timeliness of national transposition processes. This model was run in order not to lose a lot of information by collapsing the dependent variable into a dichotomous measure that merely indicates whether the transposition was timely or not – a very legalistic concept of delay. Furthermore, interview partners and scholars (Falkner et al., 2005) dealing with transposition on a day-to-day basis hint at the necessity of accounting for different groups of transposition outcomes.

The results of the analysis are presented in Table 3.[10] The first column displays the coefficients for timely transposition, which also represent the baseline model. In the second column, I look at the factors that predict a delay of less than 6 months. In the third column, I focus on the more serious delays – those of more than 6 months. The multinomial coefficients must be interpreted in the context of the base category (timely transposition) and of the other coefficients for that variable as well.

The model fit of the ordered multinomial logit regression, with an R^2 of .35, is relatively satisfactory. All the coefficients are in the predicted direction. Furthermore, the results in Table 3 suggest that there are some potentially important differences between the three types of transposition delay. Transposition delays of more than 6 months are apparently more of a problem in national transposition settings with numerous veto players. On the other hand, there are certain indicators that matter more for shorter delays, such as

Table 3 Determinants of transposition delay: Ordered multinominal logit, 1995–2004

	Outcomes		
Variable	*On time*	*< 6 months delay*	*> 6 months delay*
EU-level variables			
Discretion ratio	–1.83*	3.58**	2.11
	(1.39)	(1.21)	(1.37)
Transposition deadline	0.02*	–0.02**	–0.02
	(0.00)	(0.00)	(0.00)
National-level variables			
Number of veto players	–0.27***	–0.05	0.27***
	(0.06)	(0.07)	(0.06)
Occurrence of national transposition package			
First directive in transposition package	–1.50*	1.79*	1.53*
	(0.72)	(0.71)	(0.72)
Last directive in transposition package	2.24**	–2.56*	–2.15**
	(0.80)	(1.03)	(0.79)
General elections			
At the beginning of transposition process	–4.67***	1.39***	4.07***
	(0.83)	(0.39)	(0.84)
At the end of the transposition process	2.88***	–0.85*	–2.92***
	(0.41)	(0.40)	(0.41)
Transport-related accidents	1.46***	–0.11	–1.41***
	(0.41)	(0.33)	(0.40)
N		361	
Prob > chi^2		.0000	
Pseudo-R^2		.35	

Notes: Multinomial logistic regression. Figures and coefficients with standard errors in parentheses. Timely transposition is the comparison group.
* $p < .10$, ** $p < .05$, *** $p < .01$, **** $p < .001$
Source: EU transport transposition data set 1957–2004.

the discretion ratio and the transposition time guaranteed in the directive (European level). The strongest predictors of transposition performance are the timing of general elections and the indicator related to external shocks. Whereas transport-related accidents are the most highly significant in explaining longer delays, it is the timing of general elections that can either slow or accelerate national transposition processes significantly (depending on whether national general elections fall at the beginning or the end of a national transposition process).

EU directive characteristics causing short delays (< 6 months)

At the European level we find explanatory factors for short transposition delays. The statistical findings reveal that a short transposition deadline set in the directive itself decreases national transposition performance in general, and accounts significantly for short delays. Consequently, sufficient transposition time is important, especially as the number of directives increases. Recent figures, though, indicate that the guaranteed transposition time set in the directives has diminished over the years. Despite the growing number of directives to be transposed (+84%), the mean transposition time agreed upon in the Council has decreased by 24% (Kaeding, 2006). Thus, in periods of high legislative output, short-term transposition delays seem inevitable.

Furthermore, the amount of discretion provided by the EU directive is a significant determinant of short transposition delays. The more discretion, the more likely there is delay. It seems that the specific technical features of European directives account for short delays, suggesting that 'implementation should be part of the design' and new European policies should be formulated 'with a view toward execution' (Pressman and Wildavsky, 1973: 189).

National-level factors causing long delays (> 6 months)

At the national level we find explanatory factors for long transposition delays. The veto player coefficient indicates that the fewer the number of influential actors involved in the making of the legal measure, the faster is the transposition process (Haverland, 2000; Giuliani, 2003; Franchino, 2004; Steunenberg, 2006). To a large extent, the number of actors involved in the transposition process depends on the selected type of transposition instrument. In the Netherlands, for example, directives often fall within the jurisdiction of more than one ministry, resulting in communication and coordination problems, conflicts of interests and competence issues that may cause problems (Mastenbroek, 2003).

Furthermore, the occurrence of a national transposition package approach may also have a considerable delaying effect on the first EU directive in the transposition package to be transposed. Different institutions decide which national legal instrument to use and whether the use of a transposition package is called for. It is worth noting that both these decisions affect the timeliness of national transposition processes. Moreover, this is similar to the findings regarding omnibus legislation in other implementation studies of Italy (Giuliani and Piattoni, 2006). Interestingly, such problems are home-grown and can therefore be resolved only at the national level.

Timing of general elections

Election timing is a strong indicator for the timeliness of national transposition processes. In line with Smith and Stam (2004), who argue that election timing affects both the outcome of elections and the government's subsequent performance, I find a relationship between the timing of general elections and the transposition performance of member states. Depending on whether an election falls at the beginning or the end of the fixed transposition period, the national transposition process is either delayed or accelerated.

Transport-related accidents

Transport-related accidents are another strong determinant of transposition delay in general and of longer delays in particular. Although transport policy itself is a crisis-driven EU policy area, transport-related accidents accelerate national transposition processes significantly. Consequently, crises and emergencies affect the decision-making situation, leading to a different equilibrium. Continuous bargaining conflicts imply that a member state has settled into a Pareto-inferior equilibrium, and radical changes are often needed to break the stalemate and put the existing national policy on a welfare-superior path. Extreme welfare losses (from devastating ecological disasters and numerous fatalities in car, train and aircraft accidents) change the salience of a particular policy (Versluis, 2004) and dwarf the costs associated with a major policy change.

Conclusion

This paper represents one of the most recent efforts to further develop the vast quantity of untapped but collectable EU data. It has attempted to address some shortcomings of the existing EU implementation literature and to supplement the growing knowledge in the field.

First, these data demonstrate that the EU has a serious problem in the transposition sector. Almost 70% of all national implementing instruments transposing the 2004 transport *acquis* cause problems, either because they are transposed too late, risking the opening of infringement proceedings, or because they are too early ('gold-plating'), risking distorting effects on the regulatory environment for business and citizens in the EU alike.

More specifically, the study provides strong support for the assertion that distinguishing between the outcomes of the transposition process (on time, short delay or long delay) is a useful method of investigation. Factors specific to the directive and to the domestic level have different effects on the length

of the delay: some sets of variables explain shorter delays better than longer delays, and vice versa. The specific characteristics of the EU directive explain short delays, and national-level explanatory variables best account for delays of more than 6 months. Very long transposition delays of up to almost five years may be ascribed to two factors: the choice of transposing legal instrument, and the decision to use a national transposition package.

In addition, we can conclude that it is the characteristics of the negotiation outcome (features of the European directive), and not the member states' positions when negotiating a directive in the Council, that matter for transposition time (Falkner et al., 2004). On the other hand, both sets of determinants overshadow each other. If we want national transposition delays to be a thing of the past, EU policy-making needs to be formulated 'with a view toward its execution' (Pressman and Wildavsky, 1973; Elmore, 1979).

To what extent can these findings be generalized to other EU policies? Transport policy may differ in economic, numerical and organizational terms from other industrial sectors, but it is worthy of special attention and is crucial for the achievement of the ambitious Lisbon goals on economic competitiveness and employment. In the past, implementation studies have almost exclusively focused on environmental and social policy. Although transport policy is a somewhat under-researched area (Knill and Lehmkuhl, 2000; Héritier et al., 2001; Héritier, 2002), it reflects the dominant regulatory nature of EU policies more generally. Furthermore, there is nothing exceptional about the transport case that would make the study's findings non-generalizable to other policy areas. The variables that are specific to European directives and to national legal instruments all hold for the different domains of EU policy-making involving a considerable number of directives. In terms of the crisis component, most policy areas are confronted with changes in internal or external situations. Monetary and fiscal policy are vulnerable to financial market crises, and crises in the field of environmental and consumer' protection (BSE and SARS for example) are very much present in people's' mind.

All in all, this study emphasizes that it is time to go full steam ahead again to respond to the challenges of EU law instead of getting lost in translation in order to face the challenges of an ever more globalized world. Scholars have shown that adapting to EU law will remain an EU-wide ambition (Hille and Knill, 2006), both at the level of the statute books, but also in the new member states after the 2004 and 2007 enlargements, where EU legislation transposition remains a dead letter instead of becoming living rights (Falkner et al., 2006). Eventually, future studies could profit by acknowledging that transposition deficit delay is not simply delay and that 'gold-plating' occurs widely; that explanatory factors related to both policy design

and policy implementation matter; and that these factors are inherently administrative, legally *and* politically.

Notes

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1 So far the ECJ has imposed fines on Greece, Spain and France. In 2000, Greece became the first member state to be adjudicated with a daily fine of €20,000. Greece took 6 months to comply and ended up paying a total of €4.7 million. In November 2003, Spain became the first member state to be fined twice for the same infringement. Its penalty was modest, only €625,000 per year (Nicolaides and Oberg, 2006). In July 2005, France suffered the largest penalty in EU history: a lump sum of €20 million and an additional biannual sum of €57.7 million if it continued to ignore EU legislation relating to fishing – amounting to a daily fine of €321,000.

2 In line with Giuliani (2005: 1), I argue that the concept of compliance 'goes well beyond the process of transposition of legal provisions'. Implementation is defined as 'the process by which national law is modified in accordance with Community law' (Eijlander and Voermans, 2000: 257). In the remainder of the text, I will refer to transposition only as the term that denotes the 'process of transforming directives into provisions of national law by the competent national legislative body or bodies' (Prechal, 1995: 5).

3 Whereas the amount of 'legislation in force' in general more than doubled, from 4566 legal acts in 1983 to 9767 in 1998 (Wessels et al., 2003), the occurrence of EU directives in particular was 2285 in 1998 and 2674 on 8 March 2006 (European Commission, 2006).

4 See (accessed 1 Jan. 2004) http://www.boe.es/g/es (Spain); http://www.gazzette.comune.jesi.an.it/ (Italy); http://www.jura.uni-sb.de/BGB1/suche.html (Germany); http://www.legifrance.gouv.fr (France); http://www.online-law.co.uk/lawsearch/lawsearch/html (UK); http://www.opmaat.sdu.nl (The Netherlands); http://www.swedengov.se/sb/d/3288, http://www.infotorg.sema.se and http://www.rixlex.riksdagen.se/ntbin/thw?%24% (Sweden).

5 Spain 80%, the Netherlands 69%, France 60% and Denmark 28% (Steunenberg and Rhinard, 2005; Steunenberg and Voermans, 2005).

6 In Germany, for example, the most important actors at the federal level in transport are the Minister of Transport and the Minister of Economic Affairs. The two ministries, however, hold diverging views of sectoral regulations. Whereas the Ministry of Transport has often taken a pro-regulatory stand,

the head of the transport division in the Ministry of Economic Affairs has defined its role by ensuring that liberal views on transport counterbalance those of the Ministry of Transport (Teutsch, 2001: 139).

7 For the missing data on Greece, I am grateful to Frank Häge, who provided me with the necessary figures.

8 See http://www.parties-and-elections.de/.

9 Testing the similarity of means for the differences in transposition delays between transport subsectors, similar conclusions can be drawn. Only the inland waterways sector does not differ systematically from the average means of the other modes of transport, despite its extreme value of an average transposition delay of 27 months.

10 The study identifies three ordered outcomes: non-delayed transposition (50%), a delay of less than 6 months (15%), a delay of more than six months (35%). Long (1997) and Long and Freese (2003) provide the reference points for nominal data with multiple outcomes and the interpretation of multinomial coefficients. Before calculating a statistical model for transposition delay, I conducted three tests to assess collinearity. First, I visually inspected the matrix of correlations amongst the independent variables. Then I checked both the tolerance and the variance inflation factors – the second of which relates to the amount that the standard error of the variable has increased because of collinearity – but found no evidence of major concern.

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