

Legal Borders in the EU? Transposition of European Transport Directives in France, Germany, Greece, Italy and the United Kingdom

Michael Kaeding*

Abstract

Lately, Member States are seriously concerned about the increased transposition deficit in the European Union – its causes and consequences. New transposition data representing the full population of the EU transport acquis from 1957 to 2004 and the national implementing measures for France, Germany, Greece, Italy and the UK respectively, show that we indeed have a transposition problem in Europe. European directive specific and national legal instrument specific variables matter as well as the role played by interest groups and EU public support, but not always in the expected direction. The logistic model derived from the cross-national EU transport transposition data set confirms existing scholarly results, but also offer new findings.

A. European Transport Policy and the Transposition of EU Legislation

The main objective of the 2001 White Paper on Transport has been to reduce the negative effects of transport in the context of strong economic growth while ensuring a good level of service for all users. It is clear that the expected economic growth would worsen congestion and increase accidents, air pollution and CO₂ emissions from transport. The approach has been to break the link between the negative impact of transport and economic growth without restricting the mobility of people and goods. Therefore, the White Paper includes a programme of more than sixty measures: the most important ones concerns market opening of the modes, especially rail, investments in trans-European networks, introduction of charges for the use of the infrastructure and a tightening of safety and quality requirements.

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In the meantime, since 2001, several changes have taken place in the political environment: economic growth has faltered; oil prices are much higher than during the 1990s and the EU enlargement to new Member States is reality. The incidents in Madrid and London show that security in transport has become a sensitive issue. The Kyoto protocol is now in force which means that expectations to transport sector's contribution in the greenhouse gas abatement have increased rather than diminished.

The overall objectives of the Community Transport Policy relate very clearly to the Union's broad economic, security and social objectives, as it has been set out in particular in the Lisbon agenda. This calls on Member States to work together to ensure that the Union achieves a high rate of economic growth, while creating the framework for a sustainable future. But it is no use legislating if the new laws are not applied properly. In order to meet the recent challenges, to maintain the internal market, to guarantee legal certainty and to pursue European integration, successfully adopted legislation must be transposed. Hence, the transposition process of EU legislation as part of the EU policy cycle becomes crucial. Effective timely and correct transposition of internal market legislation is more important than ever not without reason compulsory according to Articles 10 and 249 EC which entails, on the one hand, the Member States to transpose a directive in 'time', as well as, on the other hand, in line with the 'contents' of the original directive and rulings by the European Court of Justice.

Speedy transposition of the internal market directives is one prerequisite for tomorrow's Europe's success story and therefore stands high on the capitals' agendas. Member States that demand a 'Europe of various speeds' or declare to be 'the driving force behind tomorrow's Europe' reveal particular interest in full transposition records. The idea of a 'core Europe', with France and Germany at the center moving quickly ahead with joint policies, while slower states bring up the rear, has been once seen as a spur to closer integration. On 15 April 2004 German chancellor Gerhard Schröder had spoken out for a Europe of various speeds after the EU enlarged on 1 May. The chancellor told that "in the areas where a continuation in integration is necessary, we should very pragmatically look for ways that would enable a group of Member States to progress."¹ Consequently, a federal government committee has been discussing the reform of the German federal legal system, including issues related to speeding up the processes of implementation of EC directives, as well as making the negotiations in Brussels more effective. French President Jacques Chirac, recently, spoke of a real willingness between France, Germany and the United Kingdom to be "the driving force behind tomorrow's Europe." "It would be a motor which would set an example," he said. "It will allow Europe to go faster, better."² At the same time the French Prime Minister Raffarin attempts to improve France's transposition performance by delivering this communication which is embedded in a well-established belief that France's performance should become better, as part of the notion that France should play an important but also exemplary role in Europe, which includes the transposition and implementation of the *acquis communautaire*.

¹ EUobserver, 2004.

² *Id.*

Recently, Dominique de Villepin even took the secretariat general for European affairs under Matignon's control to ensure better coordination. Member States, traditionally characterized as transposition laggards have also paid increasing attention to EU affairs and implementation issues in particular. From the mid 1980s, for example, there have been shifts in the Greek governmental priorities concerning the European affairs. Until 1995, the prime minister and the government did not have great interest in the European affairs, but with the inauguration of Simitis as prime minister, the cabinet has started to deal more often with EU affairs.³ Italy itself approved considerable reform packages including *legge Fabbri*, the *legge La Pergola* and the *leggi Bassanini* which have strengthened Italian participation and coordination in the EU policy-making process and the national actors involved including ministerial, regional and local administrations and parliamentary bodies and introduced a "kind of administrative federalization of the system."⁴ In reaction to the statements from Berlin and Paris, Italian Foreign Minister Franco Frattini, however, expressed his skepticism against the idea of a *directoire* running the EU. As he noted: "There cannot be a *directoire*, there cannot be a divisive nucleus which would run the risk of posing a threat to European integration."⁵

This article is structured as follows: First, it argues that delayed transposition implies that existing legal barriers between the Member States remain effective and frustrate European integration and the internal market by hampering competitive advantages in a globalized world. Next, the paper argues that without efficient transport services, economic growth will be put in jeopardy. Transport policy is an important sector of modern economy which contributes well over 5% of the EU's wealth creation and employs more than 10 million people in total. Third, I review the literature in the field, refer to problems arising from it and present a number of explanatory variables that explain the EU transposition problematic. Fourth, I sketch out the research design and, five, present and discuss the findings. Finally, I conclude with some remarks on the study's implications for tomorrow's Europe.

B. Policy Making and Transposition

The EU policy cycle has different components. Member States involved in preparing and making have to transpose and implement Community legislation and national institutions which include the legal transposition, monitoring and

³ D. Dimitrakopoulos, *Learning and Steering: Changing Implementation Patterns and the Greek Central Government*, 8 *Journal of European Public Policy* 604 (2001), D. Dimitrakopoulos, *The Transposition of EU Law: 'Post-decisional politics and institutional autonomy'*, 7 *European Law Journal* 442 (2001).

⁴ F. Gallo & B. Hanny, *Italy: Progress Behind Complexity*, in W. Wessels, A. Maurer & J. Mittag (Eds.), *Fifteen into One? The European Union and its Member States* 271, at 276 (2003).

⁵ *Supra* note 1.

evaluation process.⁶ Interestingly, each component of the policy cycle has caught different attention in the literature. Whereas the evaluation phase has caught hardly any attention,⁷ for a long time students of European integration mainly focused on the coming about of European integration.⁸ To the contrary, EU's influence on domestic institutions and policies has been underexposed for a long time.⁹

When the Council of Ministers has agreed on a new European law, however, this policy instrument has still a long way to go before it is finally implemented. After the adoption of a directive, legislation needs to be transposed in a national legal instrument, then, operationalised by rules and applied, later on, controlled and enforced and in cases of non-implementation, brought to court. It is the legal implementation stage which is indispensable for the later enforcement stage. Therefore, Zeff and Pirro¹⁰ identify transposition to be the most important step in the EU policy cycle because it is here where "the goal and objective of the EU result or fail to result in real change for European citizens."

Since the mid-1990s, then, there has been an upsurge in studies on the effect of European integration on the Member States.¹¹ This literature mainly deals with the adaptation to EU policies, or more specifically the national implementation of EU legislation.¹² Whereas the strength of the resulting frameworks is in their

⁶ H. Kassim, G. Peters & V. Wright, *The National Coordination of EU Policy: The Domestic Level* 15 (2000).

⁷ M. Smyrl, *The European Union: A Test-Bed for Models of Multi-level Policy Implementation*, paper presented at the ECPR 33rd Joint Sessions of Workshop in Granada, Spain (2005); G. Falkner *et al.*, *Complying with Europe? The Impact of EU Minimum Harmonisation and Soft Law in the Member States* (2005).

⁸ A. Moravcsik, *Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community*, 45 *International Organization* 19 (1991); O. Elgström *et al.* *Coalitions in European Union Negotiations*, 24 *Scandinavian Political Studies* 111 (2001); M. Kaeding & T. Selck, *Mapping out Political Europe: Coalition Patterns in EU Decision Making*, 26 *International Political Science Review* 271 (2005).

⁹ E. Mastenbroek, *EU Compliance: Still a 'black hole'?*, 12 *Journal of European Public Policy* 1103 (2005).

¹⁰ E. Zef & E. Piro, *The European Union and the Member States. Cooperation, Coordination and Compromise* 19 (2001).

¹¹ J. Olsen, *The Many Faces of Europeanization*, 40 *Journal of Common Market Studies* 921 (2002); K. Featherstone & C. Radaelli (Eds.), *The Politics of Europeanization* (2003) M. Vink, *What is Europeanization? And Other Questions on a New Research Agenda*, 3 *European Political Science* 63 (2003).

¹² C. Knill, & A. Lenschow, *Coping with Europe: The Impact of British and German Administrations on the Implementation of EU Environmental Policy*, 5 *Journal of European Public Policy* 595 (1998); M. Haverland, *National Adaptation to the European Union: The Importance of Institutional Veto Points*, 20 *Journal of Public Policy* 83 (2000); Dimitrakopoulos, *Transposition of EU Law*, *supra* note 3; T. A. Börzel & T. Risse, *Conceptualising the Domestic Impact of Europe*, in K. Featherstone & C. Radaelli (Eds.), *The Politics of Europeanization* 57 (2003); Falkner *et al.*, *supra* note 7; K. Featherstone & D. Papadimitriou, *Manipulating Rules, Contesting Solutions: Europeanisation and the Politics of restructuring Olympic Airways*, paper presented at the 33rd Joint Sessions of Workshop in Granda, Spain (2005).

empirical relevance, their weakness is that they are rather indeterminate, ad-hoc and lack in parsimony.¹³

Next to the case study oriented research, some of the more quantitative studies¹⁴ exclusively rely on the Commission's scoreboards and the ECJ's infringement data sets. As these figures illustrate transposition of the overall internal market legislation eventually takes place, *but* often delayed. Commission scoreboards, for example, show that some Member States such as Greece (EL), Luxembourg (LU), Germany (DE), France (FR) and Italy (IT) have a transposition deficit of more than 2.5%. Three of the founding members and those who have been at the forefront pushing for a 'core Europe' are the worst at transposing and implementing internal market law. By contrast, Denmark and UK, generally considered to be more eurosceptic, are at the top of the group.

Table 1: The transposition deficit per Member State on 31.12.2003

<i>Member State</i>	<i>Deficit</i>
DK	0.8
ES	0.9
FI	1.3
IR	1.5
UK	1.6
AU	1.8
PT	1.9
SE	1.9
NL	2.3
BE	2.4
IT	2.5
FR	2.6
DE	2.7
LU	2.8
EL	2.9

Source: European Commission scoreboard 2003.

¹³ E. Mastenbroek & M. Kaeding, *Europeanization Beyond the Goodness of Fit. Bringing Politics in the Forefront*, 4 *Comparative European Politics* 331 (2006).

¹⁴ H. A. D. Mbaye, *Why National States Comply with Supranational Law*, 2 *European Union Politics* 259 (2001); U. Sverdrup, *An Institutional Perspective on Treaty Reform: Contextualizing the Amsterdam and Nice Treaties*, 9 *Journal of European Public Policy* 120 (2002); U. Sverdrup, *Compliance and Conflict Resolution in the European Union – Nordic Exceptionalism*, 27 *Scandinavian Political Studies* 23 (2004); R. Lampinen & P. Uusikyla, *Implementation Deficit – Why Member States do not Comply with EU directives?*, 21 *Scandinavian Political Studies* 231 (1998).

However, scholars are concerned about the quality of the Commission data. They argue that these data depend entirely on the notification by the Member States. Second, the validity of the Commission's data is deceptive, i.e. the reported transposition rates are based to a great extent on old directives, which leads to a considerable 'upward bias'.¹⁵ Another often referred indicator for non-implementation of EU law is infringement data. But here, too, its validity and reliability is questioned.¹⁶ Hence, Börzel¹⁷ concludes that there are not existing data that allow us to draw any valid conclusion about whether the EU has an implementation problem.

C. Potential Causes of Delay

Whereas some still rely on the Commission scoreboards and ECJ's infringement data others have improved the quality of the data to different extent¹⁸ relying on different research designs. To structure scholarly findings systematically, this study draws from the rich and prospering implementation and transposition literature addressing the question of what may explain the different patterns of the implementation problematic and identifies three categories of variables that explain transposition delay which is the exclusive focus of this study: EU directive specific variables, national implementing measure specific variables and institutional and actor configurations.

I. Features of the European Directive

Three features of the European directive might cause transposition delay:

- Nature of the directive
- Type of directive
- The deadline set in the directive.

Hoppe and Otting¹⁹ argue that the character of the directives determines the speed of transposition. *The transposition delay is greater for new directives than for amendments.* The argument here is that amendments usually are technical in nature, whereas new directives introduce a new topic of legislation. Sometimes obligations arising from a directive are ambiguous which give rise to disputes between various actors with different interests like ministries, departments, civil servants. With regard to the *type of directive* the trend over the last decade has been directives to become more detailed to the point where they could be regulations. *The more detailed a directive, however, the more likely its transposition process*

¹⁵ E. Mastenbroek, *Surviving the Deadline: Transposition of EU Directives in the Netherlands*, 4 *European Union Politics* 371 (2003).

¹⁶ Mbaye, *supra* note 14.

¹⁷ T. Börzel, *Non-compliance in the European Union: Pathology or Statistical Artefact?*, 8 *Journal of European Public Policy* 803 (2001).

¹⁸ Mastenbroek, *supra* note 15; Falkner *et al.*, *supra* note 7.

¹⁹ O. Hoppe & W. Otting, *Verwaltungsvorschriften als ausreichende Umsetzung von rechtlichen und technischen Vorgaben der europäischen Union?*, 1988 NuR.

is delayed. Kaeding²⁰ argues that because of the definitions, specified conditions and specified services were extremely detailed and obviously intended to be applicable in their own terms in all Member States they were constrained to copy them out in the implementing legislation rather than try to interpret them and translate them in different terms which were likely to turn out to be wrong. Another determinant of transposition delay may be the time guaranteed for transposition by the directive.²¹ *The more time a Member State has to transpose a directive, the less likely it is a transposition delay.* Many costs can be minimized if sufficient time is allowed, e.g. changes to labeling requirements should allow sufficient time to use up existing stocks.

II. Characteristics of the National Implementing Measure

Mastenbroek²² identifies two potential features of national implementing measure that could cause delays in the transposition process: *type of the legal instrument and the number of legal instruments.* Member States transpose EU directives by using national implementing measures. The types of legal instruments, however, differ in the number of actors involved. *The least actors are involved in the making of a legal instrument, the faster the transposition process.* Mastenbroek²³ and Bekkers et al.²⁴ argue, for example, that a Dutch Ministerial Order is probably faster than statutes and Orders in Council, because consultation of advisory boards is very rare and nor the Council of State, nor Parliament needs to be heard. Another important variable which explains transposition delay is the number of legal instruments necessary for full transposition. *The more national implementing measures have to be transposed, the more likely transposition delays.* Transposition problems arise with increasing workload, i.e. if many implementing measures need to be transposed.²⁵

III. Institutional and Actors Configurations

A third group of explanatory variables is characterized by institutional and actors' configurations: *Goodness-of-fit, EU public support, role of interest groups, the Mediterranean syndrome and the nature of the legal system.*

Knill and Lenschow²⁶ have dealt extensively with the notion that the lower the fit between domestic-level and European-level processes, policies and institutions,

²⁰ M. Kaeding, *Determinants of Transposition Delay in the European Union. The Member State Perspective*, 26 *Journal of Public Policy* 229 (2006).

²¹ *Id.*

²² Mastenbroek, *supra* note 15.

²³ *Id.*

²⁴ V. Bekkers et al., *The Case of the Netherlands*, in S. A. Pappas (Ed.), *National Administrative Procedures for the Preparation and Implementation of Community Decisions* 397, at 412 (1995).

²⁵ G. Ciavarini Azzi, *The Slow March of European Legislation: The Implementation of Directives*, in K.-H. Neunreither & A. Wiener (Eds.), *European Integration after Amsterdam: Institutional Dynamics and Prospects for Democracy* 52, at 56 (2000).

²⁶ Knill & Lenschow, *supra* note 12, at 596.

the higher the costs of adaptation for the Member State. *Transposition speed may be a function of the costs of policy-makers, administrators and regulated parties.* The argument here is that the fewer the changes in the existing legal texts and in the administrative application procedures and the behavior of actors of the addressees, the fewer the difficulties there will be with a timely transposition.

Since politicians often make policy choices that secure their re-election, we can also assume that the attitude towards the EU may determine the transposition process in Member States. *The lower the overall mass support for the country's membership in the EU, the higher the probability that a Member State will face difficulties in transposing European directives.*²⁷

Another often discussed explanatory factor in the implementation literature is the role of interest groups which refers to the patterns of interest intermediation.²⁸ Neo-corporatism describes a cooperative relationship between government and interest groups, a constellation which is necessary for stability and predictability when EU law is transposed. *A high degree of corporatism slows down the transposition process.* The argument here is that corporatist arrangements increase the stability and degree of institutionalization of policy networks at the national level and set more rigid rules for interorganizational bargaining which may delay the transposition process.

Drawing on older literature on modernization scholars²⁹ attribute *transposition and implementation problems of the Southern Member States to specific endemic characteristics of their socio-political institutions by identifying deficiencies known as the Mediterranean syndrome.* The literature places countries as Italy, Spain, Portugal and Greece in a category of countries call the periphery, as opposed to the 'core' nations of north-western Europe. The argument is that the endemic characteristics are believed to account for the profound incapacity of the southern Member States to adjust to the internal logic and the specific requirements of European politics.

Last but not least, writers on comparative law often make the implicit assumption that the *legal systems matter in the legislative policy making process* which is characterized by its historical background and development; its predominant and characteristic mode of thought in legal matters; especially distinctive institutions; the kind of legal source it acknowledges and the way it handles them; and finally ideology.³⁰ The authors identify four groups of European

²⁷ Lampinen & Uusikyla, *supra* note 14, at 239; Mbaye, *supra* note 14.

²⁸ G. Falkner, *Policy Networks in a Multi-Level System: Convergence Towards Moderate Diversity?*, 23 *West European Politics* 94 (2000); M. Giuliani, *Europeanization in Comparative Perspective: Institutional Fit and National Adaptation*, in K. Featherstone & C. M. Radaelli (Eds.), *The Politics of Europeanization* 134 (2003).

²⁹ La Spina & G. Sciortino, *Common Agenda, Southern Rules: European Integration and Environmental Change in the Mediterranean States*, in J. D. Liefferink, P. D. Lowe & A. P. J. Moll (Eds.), *European Integration and Environmental Policy* 216 (1993); G. Pridham, *Environmental Policies and Problems of European Legislation in Southern Europe*, 1 *South European Society and Politics* 47 (1996); G. Pridham, & M. Cini, *Enforcing Environmental Standards in the European Union: Is there a Southern Problem?*, in M. Faure, J. Vervaele & A. Waele (Eds.), *Environmental Standards in the EU in an Interdisciplinary Framework* 251 (1994).

³⁰ K. Zweigert & H. Kötz, *Introduction to Comparative Law* (1998).

legal systems: Germanic legal family, Romanistic legal family, Anglo-American family, Nordic legal family. Hence, the transposition process could be different depending on the legal system in the Member State.³¹

The presented list of explanatory factors for legal implementation deficits is not exhaustive. It covers, however, the main arguments in the rich field. First, Member States have more difficulties to transpose ‘new’, detailed and complex directives without sufficient time for transposition. Second, the type of legal instrument determines the speed of the transposition process. The more actors involved and the higher the number of national legal instruments to be adopted, the slower the transposition of the EU directive. Last but not least, conflict prone Member States with a low degree of corporatism have difficulties with timely transposition of EU legislation. A skeptical public attitude towards the EU may hamper fast transposition such as a low fit between existing national legislation and the EU directive as well as Member States infected by the ‘Mediterranean syndrome’. In the end, we control for the characteristics Member State’s legal system.

D. Research Design

In order to test the above mentioned hypotheses to account for transposition delay, this study presents new data. Next to the operationalization of the dependent and independent variables, I introduce the *EU transport transposition data set* and devote a paragraph on the applied method to account for transposition delay.

I. Operationalization of the Variables

In order to provide more insights in Member States’ difficulties with transposition, not the number of directives yet to be transposed, but the transposition delay may prove helpful. Transposition delay is calculated by counting how many days passed between the transposition deadline set in the EU directive adopted in the Council of Ministers until the adoption of first national legal instrument.

II. European Directive Specific Features

Information on the character of the directives is extracted from the titles and texts of the directives that can be found in CELEX. To test for the detail of a directive I have a closer look at the recitals. Although they are not legally binding they, nevertheless, are crucial for the interpretation during the transposition process. Recitals are meant to state the purpose of the directive and describe each of the main provisions, but have been sometimes used by the Member States to insert provisions which they have failed to get into the text and by the Commission to

³¹ M. Kaeding, *Better regulation in the European Union: Lost in Translation or Full Steam Ahead? The transposition of EU transport directives across member states* (2007).

insert normative provisions which have not attracted agreement.³² The variable accounting for the transposition time set in the directive was calculated on the basis of the deadline set in the directive. Information was drawn from Celex, the EU's legal database and the directive texts.

III. National Implementing Measure Feature

Information on the legal instruments for all Member States is drawn from the list of measures notified to the Commission, Celex, and the national legal databases. I constructed a variable with four categories for all national implementing measures according to the number of actors involved. Information on the exact number of legal instruments is problematic to gather since you never know if still a national implementing measure is following. However, the information from Celex which is double-checked with the numbers of the national databases guarantees the best proxy to test for this intuitive hypothesis.

IV. Institutional and Actors Configurations

The goodness-of-fit argument is difficult to measure for a large n-sample (n=518). Drawing from Mastenbroek,³³ this study uses a proxy that distinguishes between two situations: transposition into a completely new national implementing measure versus transposition through modification of an existing national legal instrument. I assume amendments to display a higher fit with the national legislation, whereas in cases of a completely new legal instrument the fit is lower. To operationalise EU support in Member States, this study relies on 1974-2004 Eurobarometer data that reflects the overall satisfaction to the EU among citizens in the Member States.³⁴ This study uses one question of the core set asked since 1974 by independent polling agencies in the various EU Member States:³⁵ "Do you see your country's membership of the Union as a 'good thing'?" Missing values (3 in total) were calculated by taking the means of the numbers for the proceeding and following year. To measure the actual appearance of collective bargaining systems and the significance of interest organizations in society and in the political system, this study relies on work by Kenworthy³⁶ on quantitative indicators of corporatism. I take Armingeon's measure³⁷ for corporatism (1960-2000) which is partly

³² Kaeding, *supra* note 20.

³³ Mastenbroek, *supra* note 15.

³⁴ M. Gable, *Interests and Integration: Market Liberalization, Public Opinion, and the European Union* (1998); T. König & S. Hug, *In View of Ratification: Governmental Preferences and Domestic Constraints at the Amsterdam Intergovernmental Conference*, 56 *International Organization* 447 (2002).

³⁵ See Eurobarometer, http://www.europa.eu.int/comm/public_opinion/, 6 July 2004.

³⁶ L. Kenworthy, *Quantitative Indicators of Corporatism*, MPIfG paper Cologne, Germany (2003).

³⁷ K. Armingeon, *The Effects of Negotiation Democracy: A Comparative Analysis*, 41 *European Journal of Political Research* 81 (2002).

based on the data by Lijphart³⁸ and Siaroff.³⁹ To account for the ‘Mediterranean syndrome’ argument I control for two groups of countries: the ‘southern’ group comprises of Italy, Portugal, Belgium, Spain, Ireland and Greece; the ‘northern’ group comprises the Netherlands, Germany, France, Austria, Luxembourg, the UK, Finland, Denmark and Sweden. In order to measure more stable and more deeply held legal values, Gibson and Caldeira⁴⁰ distinguish among three sets of orientations:⁴¹ legal consciousness; legal cultural values; and more general cultural values.⁴² This leads them to three major clusters of countries within the EU. At one extreme we find Greece, Belgium, Luxembourg and Portugal. In these countries, regard for the rule of law is not strong, support for individual liberty is weak, and alienation from law is fairly common. Then, at the opposite end of the continuum lie Denmark, the Netherlands, Germany, and the United Kingdom. The peoples of these countries tend to value individual liberty, to support the rule of law, and to reject the proposition that law is an external repressive force. In the center, the cluster of Spain, Italy, France and Ireland, somewhat mixed views prevail. Table 2 summarizes the descriptive statistics of all variables included in the data set.

Table 2: Descriptive statistics

	<i>EU directive specific features</i>			<i>National implementing instrument specific features</i>	
	<i>New</i>	<i>Recitals</i>	<i>Transwel</i>	<i>Legalins</i>	<i>Instru</i>
Obs.	518	518	518	502	518
Mean	1.87	11.0	54.98	2.44	1.44
Min	1	1	0	1	0
Mx	3	50	183.63	4	14

	<i>Institutional and actors configurations</i>				
	<i>Public opinion</i>	<i>Goodness-of-fit</i>	<i>Corporatism</i>	<i>Culture</i>	<i>Mediterranean syndrom</i>
	<i>Euattitu</i>	<i>New1</i>	<i>Pluralis</i>	<i>Legal family</i>	<i>NorthSouth</i>

³⁸ A. Lijphart, *Patterns of Democracy: Government form and Performance in Thirty-six Countries* 313-314 (1999).

³⁹ A. Siaroff, *Corporatism in 24 Industrial Democracies: Meaning and Measurement*, 36 *European Journal of Political Research* 175 (1999).

⁴⁰ J. L. Gibson & G. A. Caldeira, *The Legal Cultures of Europe*, 30 *Law and Society Review* 55 (1996).

⁴¹ Their approach lies squarely within a prominent approach to studying legal culture focusing more directly on the values of the broader mass public. The trademark of this sort of study is the mass opinion survey. G. A. Almond & S. Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (1963); R. Inglehart, *The Renaissance of Political Culture*, 82 *American Political Science Review* 1203 (1988).

⁴² R. D. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (1993).

Obs.	518	302	518	518	518
Mean	50.68	1.56	2.98	2.16	0.45
Min	24	1	0	1	0
Mx	78	7	4	4	1

V. Case Selection: Member States

This study opted for five Member States: France, Greece, Germany, Italy and the UK. They were selected to cover most of the important dimensions of variation among the independent variables to test. Here institutional aspects of the political systems of the Member States play a role, since they are part of the explanatory factors identified in the next section. Member States with strong and weak interest groups, high and low public support for the EU, representing different legal families in comparative law, large and small Member States, founding members and non-founding members from the northern and the southern group of Member States. In addition we selected on the dependent variable accounting for leaders and laggards in the transposition process. Whereas the UK scores well in the overall transposition figures, Greece, for example, is notoriously the tailight.

VI. Case Selection: Policy Sector

Next to the societal relevance of the transport sector in the EU, the policy area selection was guided by three methodological considerations: First, does the policy area in question fit well into the dominant EU regulatory category?⁴³ Secondly, is there sufficient empirical research available on the European policy process in this area to analyze the research question of interest here? And third, to be able to produce empirical regularities for research on transposition of EU directives and to apply quantitative techniques to analyze the delay of transposition, we need to have areas with a sufficiently large number of cases and sufficient variety between the cases. On the basis of these three criteria, transport has been selected within the category of market-making policy. Whilst the examination of this policy area does not attempt to cover the entire and extended range of European policies, and is not based on a representative sample of European policy measures, it does identify and stress those systematic aspects of policy considered to be heuristically significant for the current analysis and simultaneously offers insights into an important area of European policy-making.

VII. EU Transport Transposition Data Set 1957-2004

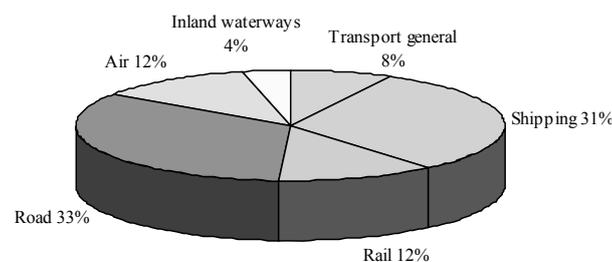
For the analysis, this study uses all transport directives agreed upon between 1958 and February 2004 (106 directives) which represents the full transposition

⁴³ T. J. Lowi, *American Business, Public Policy, Case Studies, and Political Theory*, 16 World Politics 677 (1964); G. Majone, *Regulating Europe* (1996).

acquis that had to be complied with by the new Member States before May 2005. Drawing from Mastenbroek⁴⁴ information on the directives are taken from the official legal database of the European Union – Celex (Communitatis Europaeae Lex) which covers all Community legislation, preparatory acts, references to national implementing measures, case-law of the ECJ and parliamentary questions.

Graph 1 shows that road and maritime directives count for almost two-third of the transport *acquis*, whereas air and rail represent 12% each, general framework directives 8% and inland waterway 4% respectively.

Graph 1: Composition of EU transport directives in percentage



Celex also provides data for the interaction between Community law and national law by providing publication references to Member States' national provisions enacting Community directives. Directives are not directly applicable as a result they have to be transposed into national law.

Almost 75% of all national implementing measures for France, Greece, Germany, the UK and Italy have been reported in Celex. However, the official legal database of the European Union is not the only accessible source to report national implementing measures. Each Member State has its internal database to control for timely and correct transposition of EU directives. These databases, though, are intended as means for national coordination and are normally not open to public. Nevertheless, they are regularly updated. Whenever an implementing measure of a directive is agreed upon and has passed all institutional hurdles it will be reported by the database. But Member States often fail to issue the required national legislation although already published in their legislative journals. The Commission, then, considers them to be delayed. In order to control for this day-to-day problematic, I contacted each Transport Ministry in the five Member States and got a full list from their national transposition databases. I compared

⁴⁴ Mastenbroek, *supra* note 15.

them with the information from Celex. Almost 70% of the data matched with the national data. And in only 30% of the cases I added additional information on the national implementing instrument.

This led to an average rate of completeness for all 518 national implementing measures of 68%. However, there is cross-national variation (see Table 3). Whereas all Member States score by far above 50%, the range between the United Kingdom (57%) and Germany (69%) is not significant.

Table 3. Completeness of data set (national transposing measures).

<i>Member State</i>	<i>Completeness</i>
Greece	55%
UK	57%
Italy	59%
France	59%
Germany	69%

VIII. Applied Method

For the purpose of this study, I opted for a logit analysis as the estimation technique. The dependent variable is ‘delayed transposition’, coded 0 (non-delayed) and 1 (delayed). The number of non-delayed national implementing measures is large enough, and differs hardly from the number of delayed instruments (approx 45 vs. 55). Thus, there are enough observations in each group to produce a reliable estimate of the probability of an observation. No problems of disproportionate sampling should therefore appear.

To get a better and more intuitive indication of the significance of findings, I also calculated the effects on the probabilities and the BIC measure. Moreover, this study also runs a multinomial logistic model in order to not prevent a loss of valuable information by collapsing the dependent variable to a dichotomous measure that merely indicates if the transposition was timely or not. Interview partners and scholars⁴⁵ dealing with transposition on a day-to-day basis agree that a psychological threshold lies with 6 months. Delays within this margin of 6 months occur regularly and the Commission normally does not take any formal infringement procedure. Consequently, the study identifies three unordered outcomes: *transposition in time*, *transposition delay less than 6 months*, *transposition delay more than six months*.

E. Brussels, We Have a Transposition Problem

Reflecting the EU transport *acquis* (1957-2004) and 518 corresponding national implementing measures for France, Germany, Greece, Italy and the United

⁴⁵ Falkner *et al.*, *supra* note 7.

Kingdom, the data show that only 45% of the 106 directives was transposed in time and 55% was too late. The average transposition time in the transport sector was at least 28 weeks (7 months) too late. In addition, these delays vary between just a few days to up to 359 weeks (6.8 years). Hence, the transport sector faces serious cases of non-transposition causing legal barriers in the EU, where Member States have refused to comply with EU laws for almost 7 years which confirms earlier work by Conant (2002) findings. She finds significant variation between both Member States and policy areas and delays of even more than 10 years.

The transport data set also reveals that despite the partly excellent records according to the Commission, for example, for the UK, transposition in the field of transport is problematic and varies considerably between Member States. Table 4 displays the national differences in transposition delays.

Table 4. National differences in transposition delays

<i>Member State</i>	<i>Average transposition delay in months (weeks)</i>
France	3.5 (14)
Germany	5 (24)
UK	8 (33)
Italy	10 (41)
Greece	15 (60)

Source: Own data.

Whereas France performs best with an average transposition delay of only 14 weeks, Italy's implementing instruments were on average 41 weeks delayed (approx. 10 months). Germany and the United Kingdom range between five to eight months. The UK's figure is twice as big as the French record. Greece lies far behind with an average of 60 weeks delay. Comparing the variation in the means with how much the observations vary within each of the groups the independent sample t-tests for the four Member States indicates that the countries differ significantly in their average level of the dependent variable.

These first results show that a specific policy perspective gives an additional picture of the transposition records of Member States in the EU illustrated in table 1. Whereas France and Germany perform rather badly in the overall transposition of the internal market directives according to the Commission's scoreboards, they *shine* in the transport sector. The self-declared members of *core Europe* convince with their performance.

F. What Causes Transposition Delay in the Transport Sector?

In the following, I present and discuss the results on what causes this transposition problematic. Table 5 displays the determinants of transposition delay for the complete transport *acquis* and sheds light on why Member States differ in their transposition records.

Characteristics of the EU directive and features of the national transposing instrument play a role. The more recitals, the longer the transposition process takes. The uploading of the recitals increases complexity, which, then, slows down the transposition process.⁴⁶ The type of legal instrument is a positive determinant (BIC = 3) and indicates that the fewer actors involved in the making of the legal instrument, the faster the transposition process.⁴⁷ Moreover, directives that only amend existing national legislation are faster to transpose.

Table 5. Determinants of transposition deficit, 1957-2004

VARIABLES	Predicted effects	LOGGED ODDS	BIC
<i>EU DIRECTIVE</i>			
Nature of directive (<i>NEW</i>)	New (-); Amendment (+)	-1.43 ** (0.57)	1 (weak)
Type of directive (<i>RECITALS</i>)	Number of recitals (-)	0.69 ** (0.03)	2 (positive)
Deadline (<i>TRANSWEI</i>)	more (+); less (-)	-0.01 (0.01)	
<i>NATIONAL IMPLEMENTING INSTRUMENT</i>			
Type of legal instrument (<i>LEGALINS</i>)	Law > Decree > Regulation > Circular	-1.45 ** (0.32)	3 (positive)
Number of legal instruments (<i>INSTRU</i>)	(-)	0.02 (0.01)	
<i>INSTITUTIONAL AND ACTORS CONFIGURATIONS</i>			
Attitude towards the EU (<i>EUATTITU</i>)	pro-European (-)	0.06 ** (0.02)	2 (positive)
Goodness of fit argument (<i>NEW1</i>)	high (+); low (-)	-0.09 (0.46)	
Corporatism (<i>PLURALIS</i>)	High degree (-)	-1.05 *** (0.29)	8 (strong)
North-South divide (<i>NORTHSOUTH</i>)		1.18 ** (0.53)	1 (weak)

⁴⁶ Kaeding, *supra* note 20.

⁴⁷ Mastenbroek, *supra* note 15.

Legal family (LEGALFAM)		0.16 (0.30)	
N= 299XXXX Prob>chi ² 0.000 Pseudo R ² = 0.1706 Correctly classified = 71.77% Log-likelihood = -116.02311			

Notes: * significant at the p< .05 level

** significant at the p< 0.01 level

*** significant at the p< 0.001 level. Standard errors in parentheses. (All two-sided).

Source: EU transport transposition data set 1957-2004.

Although Lampinen and Uusikyla⁴⁸ and Mbaye⁴⁹ show that mass opinion towards the EU does not have much to do with implementation behavior, the transport transposition data set tells a slightly different story. Here, public attitude towards the EU matters, it is a significant determinant (BIC = 2) for transposition delay – but in other direction. A more critical mass opinion towards the EU leads to swift transposition. An interesting finding for all those of us who have been thinking that public attitude towards the EU does not matter and if then the other way around. This finding might be related to the fact that those Member States with rather EU skeptic citizens bargain effectively in the EU legislation policy making, i.e. the working group and the Council of Ministers. Since politicians seek re-election, governments with EU skeptic voting public are even more interested in getting their share during the negotiations whereas Member States with merely pro-European public attitude accept higher levels of commitments as long as it is for the European idea. Clear is that scholarly work, so far, has not paid sufficient attention to the link between EU bargaining positions and the pre-bargaining in the transposition process.⁵⁰

Another attempt to rescue the goodness-of-fit notion⁵¹ in the Europeanisation literature fails. The new transposition data suggests that the effort of changes in existing legal texts and administrative application procedures and the behavior of actor or the addressees, are not of may help in explaining transposition delay. Although the operationalization of the goodness-of-fit argument for this large-n study is rather crude, this study, however, may indicate the lack of empirical strength of this often referred to notion. Part of the problem may be that the relationship between the status quo and the response to the EU is a spurious relationship, as both variables are contingent upon domestically held preferences or beliefs. Mastenbroek and Kaeding⁵² provide further examples embedded in small-n case studies.

⁴⁸ Lampinen & Uusikyla, *supra* note 14.

⁴⁹ Mbaye, *supra* note 14.

⁵⁰ C. Jonsson & J. Tallberg, *Compliance and Post-Agreement Bargaining*, 4 European Journal of International Relations 371 (1998).

⁵¹ Knill & Lenschow, *supra* note 12; Haverland, *supra* note 12; A. Héritier, *Policy-making and Diversity in Europe: Escape from Deadlock* (1999); Börzel & Risse, *supra* note 12.

⁵² Mastenbroek & Kaeding, *supra* note 13.

Another absorbing finding is the role played by interest groups. The data shows that a high degree of corporatism slows down the transposition process. It is a strong (BIC = 8) indicator, highly significant and indicates in the right direction. Member States traditionally labeled as corporatist perform worse than non-corporatist ones. The transport sector has traditionally been a policy area with powerful labor unions which could easily block certain European directives and thus have caused many problems in the transposition and implementation process. Hence, institutional isomorphism and consensual style do not facilitate,⁵³ but hamper the interaction between the national and the European level which is in line with Lampinen and Uusikyla⁵⁴ and Giuliani's⁵⁵ findings.

The 'Mediterranean syndrome' seems to matter. Insufficient economic, administrative, and political capacity and a civic culture inclined to individualism, clientalism, and corruption undermine the ability and willingness of southern states to transpose in time which confirms the findings by Kaklikatorious⁵⁶ on compliance with environmental law.

Last but not least, I controlled for one cluster of countries with Greece, Belgium, Luxembourg and Portugal where the rule of law is not strong, support for individual liberty is weak and alienation from law is fairly common. The figures indicate that legal cultures does not play a predominant role in the ways in which EC law gets implemented within each of the Member States. The interaction between law and culture might become all the more momentous within the context of an expanding EU, especially to the extent that formerly authoritarian systems and even Islamic states are accepted and considered for admission to the Union.

An additional refinement of the analysis is presented in Table 6. Here we explicitly distinguish between two different kinds of delays. In the first column, I look at the factors that predict delay within a margin of 6 months and in the 3 column, I focus on delay that has been longer than 6 months.

Table 6. Determinants of transposition delay: Multinomial Logit, 1957-2004

Variable	Outcomes	
	< 6 months delay	> 6 months delay
<i>EU LEVEL VARIABLES</i>		
<i>European directive</i>		
<i>Nature of directive</i>	-1.55 ** (0.65)	-1.39 ** (0.61)
<i>Level of detail:</i> Number of recitals	1.13 **** (0.026)	1.04 ** (0.02)

⁵³ W. Streek & P. C. Schmitter. *From National Corporatism to Transnational Pluralism: Organized Interests in the Single European Market*, 19 *Politics and Society* 133 (1991).

⁵⁴ Lampinen & Uusikyla, *supra* note 14.

⁵⁵ Giuliani, *supra* note 28.

⁵⁶ Kaklikatorious (2003), *supra* note 30.

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<i>Deadline</i>	-0.006 (0.005)	-0.01 ** (0.00)
<i>NATIONAL LEVEL VARIABLES</i>		
<i>National implementing measure</i>		
<i>Type of legal instrument</i>	-0.60 ** (0.24)	-0.60 ** (0.22)
<i>Number of legal instruments</i>	0.20 (0.17)	0.32 * (0.16)
<i>Goodness of fit argument</i>	0.98 (0.71)	0.69 (0.59)
<i>INSTITUTIONAL AND ACTOR CONFIGURATION</i>		
<i>Veto player</i>	-0.35 ** (0.16)	-0.53 **** (0.15)
<i>Corporatism</i>	0.99 ** (0.46)	1.37 ** (0.46)
<i>Voting rule</i>	-0.29 (0.98)	-2.24 * (0.90)
<i>Attitude towards the EU</i> North-South divide Legal family	-0.02 (0.03)	-0.02 (0.02)
N	302	
Prob>chi ²	0.0000	
Pseudo R ²	0.1611	
Log-likelihood	-151.42133	

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

The results of table 5 suggest that for the most part the factors constraining or enabling swift transposition are fairly similar. The results in table 6 do, however, hint at some potentially important differences between the factors that cause the three types of transposition. Some variables become significant in the second column. Transposition delay of more than 6 months was apparently more of a problem in the 80s and 90s than in recent transposition history. The more veto players involved in the transposition process seems to play stronger in explaining very long delays. The same holds for an increasing number of legal instruments needed for full transposition of one EU directive. On the other hand, we found indicators that matter more for shorter delays such as the question whether it is a Commission directive or a directive by the Council and the EP, the number of recitals or the level of corruption in the administration of a Member State.

G. Conclusions

This study started out with some citations made by the French president and the German chancellor demanding a Europe of various speeds; a core Europe – consisting of France, Germany and the UK – with a real willingness to be the driving force behind tomorrow's Europe. In order to maintain the internal market and to pursue European integration, however, the transposition of EU legislation has indeed to be a key political priority, as repeatedly declared on the EU summits, and adopted legislation has to be transposed successfully, i.e. fast and correct. The transport figures, however, show that there is a transposition problem despite the rhetoric – varying between Member States and modes of transport. Interestingly, however, the self-declared motors of EU integration perform well. In the European transport sector the idea of 'core Europe', with France and Germany at the center moving quickly ahead with joint policies in aviation, rail, road and inland waterway is opportune. Transposition records of these Member States in the field of transport show a 'real willingness' between France and Germany to be the driving force behind tomorrow's European infrastructure system. Whereas countries in the periphery like Italy and Greece are in arrears.

Although transport policy may differ in economic, numeric and organizational terms from other industrial sectors, it is, however, worthy of special attention, identifies and stresses those systematic aspects of policy considered to be heuristically significant for the current analysis and, moreover, crucial for the achievement of the ambitious Lisbon goals on economic competitiveness and employment. To this end, a modern infrastructure is an important competitiveness in many enterprise decisions, affecting the economic and social attractiveness of locations, i.e. timely transposition of EU directives is crucial to its success. Without efficient transport services, economic growth and social inclusion notably in peripheral regions will be put in jeopardy.

Last but not least, 2005 was an important year for the EU as a whole, which is clearly at a crossroad. The debates we can see throughout Europe show that it must be accountable for the policies and be able to demonstrate to citizens that the EU does work for them. In this respect, transport is certainly one of the most relevant policies if we consider its impact on our daily life as well as on the European competitiveness. Whereas new measures in the field are desirable, we see that policy making on the EU level is just one step in the overall policy cycle. Compared to the findings in the EU legislative decision making literature on relative policy success covering also the EU transport sector,⁵⁷ it appears that the relative policy success in EU policy making does not really say anything about later performance in the transposition process. Although Selck and Kaeding⁵⁸ report correlation coefficient 0.17 for France, one of the weakest, lagging behind Italy and the UK (0.33), France's overall transposition record is the best among the five Member States. The UK's average transposition delay is about twice as

⁵⁷ Selck, Torsten and Michael Kaeding (2004). Divergent Interests and different success rates : France, Germany, Italy and the United Kingdom in EU Legislative Negotiations. *French Politics* 2(1): 81-96.

⁵⁸ *Id.*

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much as the French one. Italy and Greece with 0.16, however, which appears to be relatively unsuccessful also perform badly in the follow-up stage. Good performance in EU policy negotiations in the Council of Ministers is one thing. Swift transposition and implementing of those adopted directives another.