

Implementation of EU Social Policy in Poland: Is there a Different “Eastern World of Compliance”?

by

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Work in progress, comments welcome!

1 Introduction

The question of whether rules adopted by the European Union (EU) are effectively implemented in the member states, and which factors facilitate or impede compliance with EU law has increasingly attracted scholars' attention since the mid 1980s.¹ Even potentially adequate EU policy solutions remain ineffective if they suffer from serious implementation deficits. Therefore, this topic is important for the discussion on the problem-solving capacity of supranational governance (cf. e.g. Scharpf 1998; 1999; Grande/Jachtenfuchs 2000). So far, the main research focus has been on (selected) members of the EU-15 (for an encompassing overview, cf. Falkner 2005). Existing studies vary as regards their measurement and judgement of the degree of non-compliance in the European Union. While some authors perceive the EU's implementation deficit as even smaller than that of domestic or other international law (Neyer/Zürn 2001: 6), others consider it a "serious threat" (Lampinen/Uusikylä 1998: 249) and "systemic" problem (Mendrinou 1996: 1).² Despite this rather disparate picture, I argue that the evidence of deficient or delayed implementation displayed by the variety of existing studies justifies the problem being seriously addressed. For the social policy field, e.g., research – based on a broad qualitative comparison of six Directives in the EU-15 – has shown that *in more than two thirds* of 90 cases, the adaptation requirements experienced a delay of two years or (often much) more before they were fully met (Falkner et al. 2005).

These findings lead to the question: What about the new member states? Will the Eastern enlargement contribute to a further widening of the EU compliance gap? Some authors already claimed to have detected a "Southern Problem" in compliance (La Spina/Sciortino 1993; Pridham/Cini 1994)³, will there be an "Eastern problem", too? Predictions made so far tend to foresee changes for the worse, in particular if not only the stage of the legal transposition (e.g. of EU Directives) but also the actual application and enforcement of the rules is taken into account (cf. Iankowa/Katzenstein 2003: 286; Schimmelfennig/Sedelmeier 2005a). Yet, a unique process of pre-accession monitoring and conditionality distinguishes the

¹ I am grateful to Maciej Duszczuk, Gerda Falkner, Miriam Hartlapp, Armin Schäfer, Vivien Schmidt, and Aleksandra Worobiej for their helpful comments on earlier drafts of this paper.

² To a certain extent these different assessments can be explained by a lack of comparable and solid data. Many quantitative approaches have to rely on European Commission infringement data. These figures, however, only depict the "tip of the iceberg" and may be biased (for details see section 2). Qualitative studies in contrast often concentrate on few cases based on varying, non-comparable measurement criteria for non-compliance.

³ For a partly contrary, more differentiated position on the issue cf. Börzel (2000c; 2003b).

Eastern enlargement from earlier extensions of the European Union.⁴ Did this impede non-compliance already at an early stage? What are the reasons for a possible implementation failure in the accession countries? Are these similar to the factors elaborated by research on the EU-15?

So far, questions of compliance with EU rules in Central and Eastern Europe (CEE) have mainly been addressed from the somewhat broader perspective of the “Europeanization of Central and Eastern Europe” (Schimmelfennig/Sedelmeier 2005b; see also Grabbe 2003; Glenn 2003; for the field of social policy and social dialogue cf. Sissenich 2003).⁵ Few studies, however, have yet taken into account the more recent developments of the “final spurt” towards 1 May 2004,⁶ and a systematic comparison between the old and the new member states is rarely, or only implicitly provided. This paper contributes to this discussion by directly comparing the implementation of six selected EU social policy Directives in Poland to implementation (problems) of the same Directives in the EU-15.⁷ Two questions will be analyzed: (1) How does Poland perform, (2) and which factors impeded implementation compared to the EU 15?

Thus, on the one hand the paper aims at enriching the theoretical debate on compliance with supranational rules. On the other hand, by choosing this field, implications of “Social Europe” for Poland shall be discussed as well. Which adaptation requirements have been necessary in Poland compared to the EU-15? Were the existing national standards already close to or even above European standards, or was it necessary to carry out far-reaching changes? When did adaptations take place (e.g. anticipatory or rather at short notice before accession), and what is the role of EU social policy in Poland regarding the prevention of “social dumping” within the EU?

⁴ In a strict sense the expression „European Communities” would be more accurate at certain points. Nevertheless, I will use ”European Union” throughout the paper, because it has become a common term in everyday usage.

⁵ Questions of “Europeanization” and “compliance” (with EU law) are closely related, but not identical, for further details on terminology see section 2.

⁶ E.g. the cut-off date for the empirical analysis of Beate Sissenich (2003: 12) comparing rule adaptation to the EU Social Acquis in Poland and Hungary is 2001, while this paper includes all developments until 1 May 2004.

⁷ The paper is, firstly, based on results of a collaborative project together with Gerda Falkner, Miriam Hartlapp, and Oliver Treib on the implementation of the main EU social policy Directives of the 1990’s in the EU-15 at the Max Planck Institute for the Study of Societies in Cologne (for further information please consult <http://www.mpi-fg-koeln.mpg.de/socialeurope>). Secondly, the research on Poland was funded by a scholarship programme of the Volkswagen Foundation called “Welfare state transformation: bridging the gap between academia and practice”. I am very grateful for this support. Many thanks also to the Office of the Committee for European Integration of the Polish government (UKIE), which in the frame of this programme for six months provided my workplace as well as other important research support.

In contrast to existing expectations, this paper will show striking *similarities* between Poland and the EU-15 with regards to the implementation requirements and resulting outcomes in this field. After giving an overview of the state of the art in compliance research “West” (section 2), the paper will analyze the effects of the six Directives in Poland at the stages of accession negotiation, formal transposition, as well as (to a more limited degree) application and enforcement (section 3). The comparison to the EU-15 is drawn within each section summary. Finally, section 4 sums up and discusses the results with an outlook on the European Union after 1 May 2004.

2 The State of the Art on “Compliance West”: Farewell to Parsimony

What do we know about compliance in the EU-15? There have already been several waves of EU related research on implementation and compliance since the mid 1980s.⁸ According to the *first group* of EU studies, the implementation of EU law was basically perceived as an *apolitical process* in which successful implementation above all depends on effective administrative and legislative procedures as well as the clear formulation and coherence of rules (Ciavarini Azzi 1985; Siedentopf/Ziller 1988a; 1988b; Schwarze et al. 1990; Schwarze et al. 1991; 1993a; 1993b; more recently, see also Demmke 1994; Van den Bossche 1996; Ciavarini Azzi 2000). Stressing the importance of efficient and hierarchically structured organizational procedures, but also the need to thoroughly incorporate relevant actors (e.g.: interest groups, parliaments, or subnational authorities) into the decision-making process, these studies drew on the results of both the so called “top-down school” and the “bottom-up school” of (national) implementation theory (cf. e.g. Ciavarini Azzi 1988: 196-198; Kooiman et al. 1988: 601-602; Pag/Wessels 1988: 172-173).⁹

⁸ For the purpose of this paper *compliance* is understood as “rule-consistent behaviour for those actors, to whom a rule is formally addressed and whose behaviour is targeted by the rule“ (Börzel et al. 2003: 13). Compliance with EU Directives in overall terms encompasses several elements: 1) *transposition*, i.e. legal incorporation into national law; 2) *enforcement*, meaning all measures of state and non-state actors ensuring that the rules are not only formally laid down, but also reach the addressees; 3) *application*, by which I refer to rule adherence by the targeted actors (in case of the issues studied in this paper mainly enterprises, or the state as an employer in the public service). The notion of *implementation* goes beyond mere legal transposition, and also includes the enforcement measures in order to ensure actual application.

⁹ The “bottom-up school” (Majone/Wildavsky 1978; Lipsky 1980; Hjern/Porter 1981; Elmore 1982; Ham/Hill 1984; Peters 1993) evolved as a critical counter movement to the “top-down school” (Pressman/Wildavsky 1973; Sabatier/Mazmanian 1979b; 1979a; Mazmanian/Sabatier 1983; Mayntz 1983) of implementation research. Most decisive from the bottom-up point of view is not hierarchical control from the top, but decentralized problem-solving adequate for the addressees.

At the end of the 1990s, a *second group* of what may be called “misfit-centred” studies evolved. At that time, European integration research started to focus on the domestic effects of Europeanization.¹⁰ In this context, not only the implications for national parliaments, regional structures, interest groups, national administrations, or party systems were studied (cf. e.g. Maurer/Wessels 2001; Scholl/Hansen 2002; Börzel 2002; Morlino 2002; Börzel 2000a; Lehmkuhl 1999; 2000; Schmidt 1996; Green Cowles 2001; Beyers 2002; Knill/Lehmkuhl 2002; Wessels/Rometsch 1996; Mair 2001), but also the impact on domestic policies, e.g. via the implementation of EU Directives. A number of analyses, mainly stemming from the field of environmental policy, have pointed to the *degree of fit or misfit* between European rules and existing institutional and regulatory traditions as the decisive factor determining implementation success (Knill 2001; Knill/Lenschow 2000; 2001; Börzel 2000c; 2000b; 2003b; Héritier et al. 1996; Duina 1997; 1999; Risse et al. 2001b).

In the meantime, the misfit approach has been refined by several authors. In these studies misfit is still considered a “necessary condition“ (Börzel/Risse 2000: 5) for domestic change; however, in order to explain national adaptations, additional “mediating factors“ have to be taken into account – like e.g. the low number of veto points,¹¹ the decision making culture, pressure by supportive interest groups, or processes of elite learning (cf. e.g. Risse et al. 2001b).¹²

A *third strand* of compliance research tests competing hypotheses on compliance behaviour of the member states derived from national implementation and/or international relations theory (cf. e.g. Lampinen/Uusikylä 1998; Mbaye 2001; Sverdrup 2002a; Börzel et al. 2003; Linos 2004). These studies are mainly based on quantitative assessments of EU infringement procedures and country rankings. What is measured by this data, however, is not actual non-compliance, but only the EU reaction to assumed non-compliance. These statistics merely represent the part of non-compliance the EU Commission can see, wants to pursue, and wants to publicize. Thus, a certain bias towards specific countries, sectors, or stages of non-

¹⁰ The notion of *Europeanization* in recent EU research refers to varying phenomena. While at times it is used to describe the EU-level development of policies and/or policy networks (cf. e.g. Risse et al. 2001a), others understand the term as reaction in domestic systems to top-down influences from the EU level (cf. e.g. Ladrech 1994). Thirdly, Europeanization is also used to point out changes at the national level induced by transnational influences (Kohler-Koch 2000). Finally, some authors take a very broad view and include the sum of all of these notions/levels in their understanding of Europeanization (cf. e.g. Börzel 1999; Falkner 2000; 2001). For the purpose of this paper, I will adopt the top-down perspective as referred to by Robert Ladrech.

¹¹ On the importance of veto points for effective implementation, see also Haverland (2000).

¹² For a critical evaluation of the extended misfit centred approach, cf. e.g. Radaelli (2003: 44-46) and Goetz (2002).

compliance cannot be ruled out (for further details see Hartlapp 2005). Nevertheless, what becomes obvious in these studies (see e.g. the conclusions of Börzel et al. 2003: 26-27) as well as in recent qualitative work is *the need to move away from overly parsimonious explanations*; rather than relying on one main factor only like administrative issues, the number of veto points, or the degree of misfit, research should focus on more complex explanatory models.

Such a broader approach was applied to the comparative research project that provides the background for the analysis in this paper (as explained in footnote 7). Using a pluri-theoretical approach, the relevance of a broad range of factors discussed in the literature was tested in 90 qualitative case studies (six EU social policy Directives in 15 member states). This research demonstrated the relevance of domestic politics, national preferences and ideology for the implementation success. In general, country specific domestic factors played a more important role than EU-related variables, as for example the precision of rule formulation. However, there was “not a single overriding factor which determines the compliance performance of member states and could thus serve as a safe anchor for predicting the success or failure of future implementation cases”. What emerged was “an untidy overall picture“, and none of the causal chains elaborated by existing theories was either necessary or sufficient to explain the implementation results. The same holds for important explanatory variables of the comparative welfare state literature. Thus, no significant correlation between social expenses and implementation performance could be found. Instead, in the empirical field of EU social policy three “worlds of compliance” (i.e. clusters of countries) were detected, each depicting a specific ideal-typical pattern of reacting to EU-induced adaptation requirements: a “world of law observance”, a „world of domestic politics“, and a „world of neglect“ (Falkner et al. 2005, chapter 15). It is important to stress that these three types do not refer to implementation outcomes, but to typical modes of dealing with implementation responsibilities.¹³ The *national culture of digesting adaptation requirements* was identified as a major reference point for explaining the national implementation records.

Very briefly, the “world of law observance” consists of Denmark, Sweden, Finland, where supported by their national “compliance culture”¹⁴ the importance of compliance with EU law

¹³ This means, that e.g. implementation results in countries belonging to the “world of domestic politics or neglect” do not always have to be worse than in the “world of law observance”.

¹⁴ For details on this self-reinforcing socio-political mechanism cf. Falkner et al. (2005, chapter 15). For elaborating on the issue of a particular “Nordic model” of good compliance culture see also Sverdrup (2002b).

is a very highly valued goal, typically overriding domestic obstacles and concerns. Therefore, even in cases of conflicting national interest, transposition typically takes place timely and correctly, enforcement and application can be considered sufficient. In the “world of domestic politics”, compliance with EU law is only one goal among others. In the respective countries – Austria, Belgium, Germany, the Netherlands, Spain and the UK – successful implementation can be expected as long as the requirements are not in conflict with national preferences of the government and/or major interest groups. In the “world of neglect” which includes Ireland, Italy, France, Greece, Luxembourg, and Portugal compliance with EU law is not a goal per se, which means that even without any major national obstacles or conflicts, non-compliance is rather the rule than an exception and implementation typically takes place late and only formally. Among these six countries three subgroups with different “features of neglect” can be distinguished: In Portugal and Greece neglect can be shown at the stages of legal transposition as well as enforcement and application. On the contrary, Italy and Ireland share characteristics of the “world of domestic politics” during transposition, but their performance in enforcement and application is rather weak and characterized by neglect. The systems in France and Luxembourg do not seem as weak regarding enforcement and application as in the other countries of this group. However, effective enforcement and application cannot “make up” for failed transposition of EU rules.

The empirical section will now seek to demonstrate whether Poland falls into one of the “three worlds”, or whether we find an entirely new “world of compliance East”.¹⁵

3 The Implementation of Six EU Social Policy Directives in Poland

In this part the implementation of six EU social policy Directives in Poland will be analyzed: the Directives on employment contract information (91/533/EEC), protection of pregnant workers (92/85/EEC), working time (93/104/EC), protection of young workers (94/34/EC), parental leave (96/34/EC), and part-time work (97/81/EC). These are the main labour law

¹⁵ Klaus Goetz (2002) already pointed to the strikingly high degree of “regional patterning of the Europeanization experience” (emphasis removed), and along geographical lines identified “Four Worlds of Europeanization”, one of them being the “CEE World”. The results of the EU social policy research project presented above, however, point to the fact that the three “worlds of compliance” only to a certain degree overlap with regional divisions between the North, the South and the (North-)West. Especially the Southern European member states cannot be equally classified according to the same category. The question, if this is also true for the Central and Eastern European enlargement countries as a group, or in how far the particularities of the so far unique enlargement process might have produced greater regional similarities in compliance behaviour, is still to be analyzed empirically. By looking at the implementation of EU social policy in Poland – in direct comparison to the EU-15 – this paper may serve as a useful starting point.

Directives of the 1990s, whose selection is owed to the design of the collaborative project outlined above.¹⁶ In order to provide direct comparability, the implementation of the same Directives in Poland is studied in this paper.¹⁷

The analysis is based on an evaluation of European and national legal documents, journals, and newspapers as well as on qualitative expert interviews relying on a semi-structured questionnaire. Interviews were above all conducted with experts from the national ministerial department of social affairs and employment. In order to control the answers given by those experts, also labour unions, employers associations, the labour inspectorates, and scientific country specialists were interviewed. By including actors with differing self-interest a realistic overall picture of a country's performance should have been achieved.¹⁸

As outlined above, several stages are of importance when looking at the overall compliance with EU law: the negotiation of the rules, legal transposition, enforcement and application. Along these stages I will now explain how the six Directives have been implemented in Poland, and what differences occurred in comparison to the EU-15.

3.1 The Negotiation Stage: Social Policy as a Minor Matter of the Polish Accession Negotiations

The accession negotiations between the EU and Poland (together with other candidate countries of the at that time first group¹⁹) were officially opened in Brussels on 31 March 1998. They involved the following five, overlapping stages:

- April 1998 – November 1999: *Screening* (review of the conformity between the Polish legislation and the *acquis communautaire*)

¹⁶ The Directives on European works councils (94/45/EC) and posted workers (96/71/EC) were not included because they deal with genuinely transnational issues while the project focused on adaptation pressures on prior national labour law standards. The fixed-term work Directive (99/70/EC) also had to be left aside, because the implementation deadline had not yet expired when the project's evaluation phase started.

¹⁷ During the stay in Poland the implementation of the EU social *acquis* was studied more broadly. The paper, thus, also refers to one other – outstanding – transposition process highlighted during the interviews: the transposition of the fixed-term-work Directive (99/70/EC), see the excursion in section 3.

¹⁸ In Poland altogether 18 expert interviews were carried out. In order to preserve the anonymity I will refer to them as “interview PL 1”, “interview PL 2” etc.

¹⁹ Cyprus, Czech Republic, Hungary, Estonia, and Slovenia belonged to this group. Negotiations with Bulgaria, Latvia, Lithuania, Romania, and Slovakia were opened on 14 February 2000.

- September 1998 – December 1999: *Preparation of negotiation positions* (the Polish negotiation team prepared, and the Council of Ministers adopted position papers in all negotiations fields²⁰)
- November 1998 – December 2002: *Negotiations on the basis of the position papers* (explanatory and expert meetings, exchange of written information on the progress of acquis adoption, clarification of negotiation positions and interpretation problems)
- December 2002 – April 2003: *Settlement of the accession treaty* (bargaining on the most difficult issues and establishment of a final negotiation package, including transitory periods)
- April 2003 – Mai 2004: *Signing and Ratification of the accession treaty*.

While the formal process started in 1998, “real negotiations” (going beyond an exchange of documents) took place only after the Treaty of Nice had been adopted, paving the way for the integration of ten new member states. Accession negotiations above all meant “achieving transition periods as many and as long as possible in the most costly fields” (interview PL 4) against the backdrop of the steadily rising unemployment in Poland during that time. Asked for the important issues of the negotiation process from the Polish point of view, direct payments for farmers, Poland’s contributions to the EU budget, the free movement of workers, the right of foreigners to buy land in Poland, the environmental field, and tobacco taxes were frequently mentioned by the interviewees (interviews PL 4, PL 6, PL 17). In contrast, the field of social and employment policy (negotiation chapter 13) was not politicized at all and did not attract much attention during the negotiation phase, neither in the public nor among unions’ and employers’ organizations.²¹

The social policy acquis may be divided into five main areas: health and safety at the workplace, labour law (including equal treatment of men and women), European social fund, European employment strategy (in the frame of the so called Open Method of Co-ordination), and social dialogue.²² During the accession negotiations, only the field of health and safety at

²⁰ English versions of the Polish positions on the 29 negotiation chapters are available at <http://www.negocjacje.gov.pl/neg.nsf/xml/stne2>.

²¹ The issue of the free movement of workers, which was strongly politicised, was dealt with in a separate negotiation chapter (chapter two), for further details in this matter cf. Duszczuk (2002).

²² As this paper is interested in the topic of compliance with “hard” legal requirements, it is basically restricted to the area of EU minimum Directives. For the impact of the EU on Poland by „soft“ means, in particular in the field social dialogue cf. Sissenich (2003; 2005). For Poland’s involvement in the European employment strategy, see also Walewski (2003).

the workplace played a certain role, only in this area (few) transition periods were requested at all. In labour law, the adaptation requirements to the acquis were also not irrelevant, in some fields they even included changes of the national regulatory philosophy (further details see below). Nevertheless, during the negotiations issues such as regulatory philosophies did not matter at all. Poland did not contest on the way EU rules were constructed. The only approach used towards the acquis was to prevent those issues where major costs were anticipated by so called impact assessments (interview PL 4). For the social policy field this above all concerned Directive 89/655/EEC for the use of work equipment by workers at work, Directive 89/656/EEC on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace, as well as Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work. In its official negotiation position of December 1999 for the first two Directives, Poland requested a transition period until 31 December 2005, for the third Directive it reserved the right to do so. The reason for that was the potential cost burden of these Directives for small and medium-sized enterprises (SMEs) (for details on the cost evaluation of the EU social acquis in Poland, see Anioł 2003: 183). By the end of the negotiations, however, the request for one transition period was taken back and the Polish government decided not to ask for transition rules for the biological agents Directive. For Directive 89/655/EEC the transition period until 31 December 2005 was included into the accession treaty. When asked why Poland did not insist on all three transitory periods, government officials stated that after a re-evaluation of the costs in the course of the negotiations, the effects of the two Directives turned out not to be so costly after all (interview PL 4). However, there is also considerable EU pressure visible in the negotiation documents with the EU Commission constantly asking for further explanation and justification of the transitory periods. In addition, there were certain controversies between the former labour and the finance ministry as regards the social acquis. While the finance ministry rather considered it a threat to Polish competitiveness, the labour ministry welcomed the improvement of standards and eventually seems to have prevailed (interview PL 2).

Interest groups, in particular the unions' and employers' representatives, were also involved, they were consulted during the negotiation stage of the social acquis by the Polish government. Neither side, however, has taken overwhelming initiative in the social policy field. This was mainly due to a lack of capacities (including, e.g. computer equipment and language skills) on the part of the interest organizations combined at times with too short preparation terms for the consultative meetings. Against the backdrop of a shortage of time

and means, the main social partner initiatives focused on few selected issues, none of them linked to single labour law Directives in question here. For the employers above all the fields of environmental policy, pharmaceuticals, as well as tobacco taxes and packaging were of major importance, health and safety at the workplace attracted some attention, labour law none at all (interview PL 11). A government official even stated that for the health and safety field the employers had been pushed by the government for statements against costly rules, because it wanted to use them as justification for the transitory periods (interview PL 4). Also on the part of the trade unions – Solidarity and OPZZ –there was not much more than a general approval of “Social Europe” and the demand to weight social issues equal to economic considerations during the accession process. While much activity, in particular of Solidarity, was concentrated on the free movement of workers, labour law was basically ignored (interviews PL 8, PL 14).

Overall, it may be concluded that the negotiation of the social and employment policy chapter has not been a salient and politicized issue in Poland (apart from the free movement of workers, which had been treated separately, see also Sissenich 2003: 116-120). Only very few transitory periods were requested in social policy, none of them in the field of labour law. Thus, in this area Poland has rather been a taker than a shaper of the EU rules,²³ accession negotiations cannot be considered an equivalent alternative to participation in the EU legislative procedures. From the perspective of the above mentioned “bottom-up school” of implementation theory, actors not involved in the creation of rules may not be willing to bear the implementation burden. The next section will show whether this has had any negative influence on implementation processes in Poland.

3.2 The Transposition Stage: Far Reaching Legal Transposition “Last Minute” before Accession

When looking at the implementation of the EU labour law acquis, Poland did not have to start from scratch. The main legal basis of labour law regulation is the Polish Labour Code from 1974, which since then has undergone several reforms. In particular since the beginning of the 1990s, constant modifications have taken place.²⁴ Four major reform steps were carried out

²³ On the issue of „shaping and taking EU policies“ related to member states capacities of influencing EU negotiations, see Börzel (2003a).

²⁴ While between 1945 and 1989 there have been altogether 10 legal amendments in the labour law field, alone between 1990 and 2002 there have been 20 (Gardawski 2002a).

since the downfall of the communist system. However, they were accompanied by a large number of smaller reforms, which makes it quite difficult to differentiate between main reforms and amendments. Roughly, the following reform waves can be distinguished:²⁵

Table 1: Main Labour Law Reforms in Poland since 1989

Time	Contents	Overall direction of reforms	Main driving force
1989	first steps towards adaptation to market economy	“pro-employee”	mainly driven by national debates
1996	encompassing reform in order to conclude adaptation to market economy	“pro-employee”	mainly driven by national debates, but important steps towards the EU acquis
2002	“counter-movement” to 1996: flexibilization of labour law	“pro-employer”	mainly driven by national debate
2004	(last) adaptations to EU acquis	“pro-employee”	mainly EU driven

Thus, until the mid 1990s reforms mainly concerned adaptations to the realities of a market economy, adaptations to the EU rules became increasingly important from the mid 1990s onwards. Nevertheless, it is not possible to draw a clear line at what point of time EU issues started to matter. Already at a very early stage of transformation to a market economy e.g. EU and ILO insolvency and collective redundancy rules served as an important orientation for the Polish legal reforms, although EU accession was not yet in sight. However, at the earlier stages *exact adaptation* to the EU rules was not yet of major importance. At times, it was even purposely postponed (as I will also show below), in order to save adaptation costs until the actual accession date (interview PL12). In order to more precisely assess the timing and size of adaptation requirements to EU law this paper analyzes the legal transposition of EU labour law in Poland in six case studies.²⁶

²⁵ For a more detailed description of labour law reforms, see e.g. Czarzasty (2002a; 2003).

²⁶ Besides the expert interviews, the following sections are based on an evaluation of legal documents, negotiation statements, governmental reports on the state of accession preparations, and comparative compliance tables prepared e.g. to the European Commission, which thanks to the UKIE I was able to analyze during my stay in Poland.

The Employment Contract Information Directive

The employment contract information Directive basically entitles employees to written information on essential aspects of the working relationship. This also includes expatriate employees posted to work in a foreign country. Even before Poland started its preparations for EU accession, the Polish Labour Code (Art. 29) included a rule prescribing that contracts of employment have to be concluded in writing. However, some smaller adaptations to the Directive were still necessary. They particularly concerned the list of aspects to be covered by employment contracts, respectively the information on the employment relationship (Art. 2 of the Directive). Due to the EU Directive certain additional information had to be added, like the length of the employee's normal working day or week, the amount of paid leave to which the employee is entitled, the length of the periods of notice, as well as the currency of payment and duration of posting for expatriate workers.

Another slight change was caused by the Directive's Art. 3. While earlier Art. 29 of the Polish Labour Code defined "[i]f the contract of employment has not been concluded in writing, the employer should immediately, that is *not later than within 7 days* following commencement of work, confirm to the employee in writing the nature and the conditions of the contract" (my emphasis). This rule was changed the way that in the future the information will already have to be provided "on the day of commencement of work". Finally, a rule had to be newly introduced prescribing that any changes in the terms and conditions of an employment contract must be made in writing (Art. 5 of the Directive). Altogether, thus, the misfit between the EU and the national rules was rather small, because the main general principle of the Directives had already been fulfilled earlier. The changes did not cause major costs (interview PL 9).²⁷ During the implementation process, this issue did not cause any political conflicts, and also the social partners – who were consulted during the transposition stage²⁸ – did not pay major attention. During the accession negotiations Poland informed the EU that all necessary legal adaptations would be completed by 1 January 2000 (negotiation document Conf-PL 47/99 of 5 November 1999: 6). Despite of that, it was not until shortly before

²⁷ The classifications of misfit in terms of small, medium, or high used in this paper are based on a detailed operationalisation – including the degree of policy misfit, the degree of politics/polity misfit, and the costs – which has already been applied to the same Directives in the EU-15. Thus, the comparability of the data is extremely high. For an encompassing description, see Falkner (2003) and Falkner et al. (2005).

²⁸ Generally, in this policy field the respective ministry in Poland is obliged to formally consult the main interest representations of labour and management before a draft law is prepared. The organisations have 30 days to hand in their comments. The very same procedure also applied to the legal transposition of the EU acquis (interviews PL 8, PL 9).

accession (1 January 2004) that the last changes in the scope of this Directive were adopted and came into force – however, the very final deadline – 1 May 2004 – was kept.

When compared to the EU 15, some member states performed much worse. Despite the comparatively small misfit the Directive caused (for details see Falkner et al. 2005 see also table 3 below), the *average delay* until its essentially correct transposition²⁹ (cut-off date for the EU 15 was 30 April 2003) was *more than two years*. In individual cases it lasted up to more than nine years.

The Pregnant Workers Directive

Prior to the EU accession, Poland already had a very well established system of pregnant workers protection. The rules have several times been subject to changes during the 1990s. During the conservative AWS government of Prime Minister Jerzy Buzek, maternity leave was even extended up to 26 weeks (the EU Directive provides for 14 weeks only). After the change of government in 2001, these changes were taken back by the post-communist SLD government due to a national debate on the employability of women (interviews PL 12, PL 18). All these changes, however, took place far above the EU minimum standard and were not related to the EU Directive. Female employees in Poland are now entitled to 16 weeks of maternity leave for the first birth, 18 weeks for subsequent births, and 26 weeks in case of multiple births (Art. 180 of the Labour Code). The maternity benefit can be equivalent to 100 percent of the last salary.

In addition, it was also possible to take time off for ante-natal medical examinations without loss of pay even before the Directive was implemented, and the protection of pregnant workers against health risks at the workplace was far developed. However, despite this high protection level some details of the Polish rules were not in line with the European regulation. This concerned the inclusion of breast-feeding workers into the protection and the possibility to provide paid protection leave for pregnant or breastfeeding workers if a transfer to another job would be necessary, but is technically or otherwise not possible (see also Kwiatkowska et

²⁹ This category was chosen to avoid a distorted picture of a countries' performance based on very small implementation deficiencies. In contrast to "completely correct transposition", which refers to full compliance with all adaptation requirements in the transposition stage and notification of the relevant laws to the European Commission, "essentially correct transposition", means an essentially successful fulfilment of most requirements. This includes a qualitative consideration of how good adaptation was and whether it captured the essential parts of the Directive and, simultaneously, of the most central requirements of any Directive. This also contains two quantitative considerations: how many requirements are fulfilled and how many of these are crucial in terms of the Directive's aim. For a detailed description of the operationalization, see Falkner et al. (2005).

al. 2003: 139). These adaptations were carried out in 2002. Two other EU rules “collided” with the existing Polish system as well: individual risk assessments and the prohibition of night work for pregnant women. Interestingly, exactly like in several EU-15 member states (Italy, Austria, France, and Luxembourg) these problems were due to a different regulatory philosophy characterizing the national compared to the European rules.

In Poland (as in the other member states mentioned) the protection of pregnant women was originally based on a system of “complete prohibitions”, as opposed to a system of “individual risk assessments”, which is foreseen by the Directive. This primarily concerned night work and certain types of occupations considered dangerous for pregnant workers’ health and safety. Night work for pregnant women had been forbidden in Poland ever since.³⁰ Art. 176 of the Labour Code prescribes the Polish Council of Ministers to specify by regulation a list of works particularly onerous and harmful to the health and which pregnant women are not allowed to carry out.

Already during the accession preparations, these rules were criticized by the EU. In March 2000 the European Union Common Position on the Polish EU Accession (negotiation document CONF-PL 11/00 of 15 March 2000: 4) requested Poland in respect of Directive 95/85/EC “to confirm that Polish rules do not constitute a source of discrimination”.³¹ The European Commission, on the basis of ECJ equal treatment case law, interprets the Directive in the manner that women’s equal labour market participation has to be protected as far as possible. Therefore, general work prohibitions for (pregnant) women are considered not in line with the Directive; protection has to be based on individual risk assessments. The Commission has already initiated infringement procedures in several EU 15 member states for the same reason. In Poland, due to the intensive monitoring during the pre-accession stage, the EU claimed a correction of the non-corresponding rules already at an early stage (four years before accession). However, until now Poland has kept its – from the EU’s point of view – overprotective system. In 2002 an Ordinance of the Minister of Labour and Social Policy was introduced, adapting the existing Polish rules concerning the conditions of work that are

³⁰ Earlier, in particular sectors night work had even been forbidden for all women, but this was adapted due to the EU equal opportunity legislation (interview PL 12).

³¹ The draft version of this document of 26 January 2000 illustrates even more clearly, what was considered problematic on the part of the EU: “Poland needs to ensure ... that Polish rules are not so overprotective as to constitute a source of discrimination. Article 178 of the Act on the protection of women bans women from night work in general without an assessment of the specific risks. This might – pending the European Court’s of Justice Case law – be considered to go beyond the needs of maternity protection. Also, it needs to be confirmed whether the list of jobs laid down in the regulation of 10/9/1996 is in conformity which the Directive. The EU does not have the list of jobs excluded, by Poland, for pregnant women.”

considered harmful to pregnant women. Despite the EU remarks described above, this reform adhered to the principle of complete prohibitions, and only the scope of potential dangers and risks was enlarged (for details of the reform see Czarzasty 2002b). The prohibition of night work has also not been abolished yet, and (very similar to Italy and Austria) the Polish government does not accept the need to change the rules, which are not considered contradictory to equal opportunity provisions, but a superior way to ensure protection (interviews PL 9, PL 12).

In sum, the misfit between the EU and the Polish rules in this case can be classified medium at the most (high pre-existing protection level, but certain adaptation requirements regarding the individual risk assessments, health and safety protection leave, breast feeding, and night work). The transposition was not politicized, conflicts between political parties or the social partners did not occur. The last legislative adaptations in the scope of the Directive before accession came into force on 1 January 2004. However, despite early claims on the part of the EU during the pre-accession stage, certain rules were by 1 May 2004 not yet in line, because the Polish government insisted on the national protection system. When looking at the infringement policy of the EU Commission in the EU 15 on this issue, it seems very likely, that Poland sooner or later will have to face an infringement proceeding as well, if the rules remain unchanged.

The Working Time Directive

The normal working week has been reduced progressively in Poland, from 42 hours in 2000 to 40 hours in 2003, while a normal working day should not exceed eight hours. These rules can be averaged along a reference period of up to (in certain sectors and under certain conditions) six months (Towalski 2003). The EU Directive thus did not cause more than medium sized misfit. It above all required Poland to introduce changes regarding the daily and weekly rest periods, the length of vacation, and the night work rules (see also Kwiatkowska et al. 2003: 140). As regards the night work, a limit of eight hours had to be introduced for jobs which are particularly dangerous or which involve a great amount of physical or mental effort. The length of annual leave provided by the Directive (four weeks, i.e. 20 days) had not been fulfilled for all types of workers in Poland. The previous regulations included 18 days of annual leave after one year of work, 20 days after six years, and 26 days after 10 years of work. This rule was changed as of 1.1.2004. Now employees are entitled to 20 days of leave for less than five years of work, 23 days after five years, and 26 days after 10 years of work

(Czarzasty 2003). Interestingly, already during the reform of the Labour Code in 1996 it was discussed to adapt the rules to the EU standards. However, at that time the government argued that the costs were too high. Thus, the adaptation was postponed until shortly before EU accession (interview PL 12).

Another important change concerned the rest periods. Due to the Directive a minimum of 35 hours weekly rest and 11 hours uninterrupted daily rest was introduced. In particular the 11 hours uninterrupted daily rest caused significant difficulties in Poland. This was related to a rule, which had only been introduced in 2002, when the Labour code was flexibilized. It allowed employers to introduce an interrupted daily working time, with a break of up to five hours which is not calculated as working time. As such, the 11 hours daily rest were not problematic for Poland, since 12 hours were already the existing minimum standard. However, against the backdrop of the reform in 2002, the fact that the rest has to be *uninterrupted* was considered a hard and costly burden by many employers. This is also the area where serious application problems were stated by representatives of the Ministry of Economy, Labour, and Social Affairs as well as of the National Labour Inspection/*Państwo Inspekcja Pracy* (interviews PL 9, PL 15, PL 16). Besides the 11 hours rule, which was fiercely criticized by employers' representatives, discussions in parliament and between the social partners mainly focussed on other issues linked to the latest Labour Code reforms in 2002 and 2004, like e.g. the payment of overtime work, and the regulation of fixed term employment (for details see Czarzasty 2003; 2002a).³² As in the cases before, the changes were carried out only short term before accession.

Excursion – EU labour law and fixed term contracts in Poland

Although not in the selected sample of Directives, the regulation of fixed-term contracts in Poland is an interesting example, illustrating that EU minimum standards may serve as a “safety-net” against competitive deregulation in the labour law field. While originally an ongoing employment relationship had to be turned into an open-end contract after three fixed

³² In 2003 the payment of overtime was lowered due to constant pressures from the employers' side and against the backdrop of a prolonged economic recession and growing unemployment. It may be argued that this lowering of the standards was not related to the working time Directive, because the EU rules do not touch upon the issue of overtime payment. Interestingly, however, the opposition of the trade unions (on the negotiation of the reforms in the Polish tripartite commission see Czarzasty 2002a; Gardawski 2002b) could only be moderated by arguing that in EU comparison the Polish overtime payments were extremely high. The trade unions – according to a Polish labour law expert – in the end only turned in, because they did not know the EU rules well enough and thus thought such a lowering would be required by EU law (interview PL 12).

term-contracts, since the Labour Code reform of 2003 the Polish rules have allowed the employment of workers on a fixed-term basis *without any limits*. This rule, however, was introduced in a particular way: knowing, that such a regulation was against the fixed-term work Directive (99/70/EC), these rules were only to be in force until EU accession, after that the former rules regained validity (interviews PL 8, PL 12, PL 15, see also Czarzasty 2002a).³³

To conclude, the working time Directive caused at least certain “painful” changes for employers,³⁴ therefore, serious application problems are expected. The Directive was transposed in time (although at very short notice before EU accession), and again the transposition timing in the EU 15 looks much worse (see table 3 below). The postponement of the annual leave adaptations as well as the fixed-term case showed that EU minimum standards are not as insignificant as often perceived. In the latter example the EU standards clearly served as a “safety-net” against a lowering and flexibilization of the labour law driven by the national political discussion.

The Young Workers Directive

The young workers Directive basically required Poland to introduce for young people a total weekly maximum of 40 working hours, to eliminate restrictions on counting the education time of young employees into their working time, the introduction of a break after 4,5 hours of work, as well as of a special definition of night work, compatible with protections relating to young people at work. Also in this field the previous protection level was well developed, thus these rules did not have to be introduced from scratch. As opposed to the working time Directive, none of the changes caused opposition either by the political parties or the social

³³ At the end of the survey phase for this paper, it was not yet exactly clear, in which way the former rules exactly would be re-established. There are plans by the government, the employers, and the union OPZZ to leave room for certain exceptions: If the contract is not longer than 12 months, unlimited extension of fixed-term relationships might nevertheless still be possible. If this becomes true, the union Solidarity intends to take the case to the ECJ, because it is considered a violation of the fixed-term work Directive (interviews PL 8, PL 15).

³⁴ What is yet to be discussed, are the consequences on Poland of such ECJ judgements as the SIMAP (C-303/98) and Jaeger (C-151/02) cases, dealing with on-call duty and compensatory rest related to working time. So far, it is not clear, if these judgements will come to bear at all, because there are intentions at EU level to adapt the working time Directive in reaction to these judgments. This is at the same time linked to the abolishment of the individual opt-out of clause for the 48 hour weekly working time (Art 18.1 of the Directive), which had been introduced due to British pressure. It remains to be seen, which reform coalitions will be found in the EU 25. In Poland such an individual opt-out is not (yet) used.

partners, they were more or less technical adjustments to the EU rules. Already before, protection of young workers was regulated in Poland rather strictly, e.g. it was generally banned to employ a person under the age of 16, besides very few exceptions (Art. 190, 191 of the Labour Code). Also the rules concerning medical examinations for minors at work were well advanced (Art. 201 and 204 of the Labour Code). In sum, the EU Directive caused only small misfit. The changes were transposed already in 2002 by amendments to the Labour Code and by a Regulation of the Minister of Labour and Social Policy – i.e. about two years before EU accession.

The Parental Leave Directive

The parental leave Directive entitles all male and female employees to an individual right of at least three months of (unpaid) parental leave, which also applies to adopted children. After the end of the leave, the parents are guaranteed to return to the same, or – if not otherwise possible – an equivalent job. Finally, workers are granted the right to take time off from work on grounds of ‘force majeure’ for urgent family reasons. Similar to the pregnant workers case, parental leave was not an unknown phenomenon in Poland before EU accession. Nevertheless, some minor changes were necessary to ensure an exact transposition. Since 1996, male and female employees have been entitled to up to three years of parental leave until the child is four years old.³⁵ During this period the employee has the right to claim health benefits and may acquire pension rights. The leave is not paid. Yet, it was necessary to adapt the right to return to the same job. The earlier rules only included a guarantee of the same or higher remuneration to the returning parent (Kwiatkowska et al. 2003: 138). The new legislation now explicitly states that offering an equivalent or similar job will only be permitted if a return to the same job is not possible.

Furthermore, Poland introduced the right for both parents to take parental leave *at the same time* during three months. This was due to the Directives claim for an “individual right” to parental leave (see clause 2). This clearly indicates that these labour law Directives are far from clear cut. The notion of an “individual ... and, in principle, non-transferable“ right to parental leave has caused interpretation problems in the EU 15 as well, like e.g. in Austria (for details see Leiber 2005, chapter 4.3.3). Poland has understood this in the manner that both parents have to be able to take the leave at the same time, and therefore introduced a new

³⁵ Council of Ministers decree of 28th May 1996 regarding childrearing leave and benefits, *Journal of laws* no 60, item 277.

clause – interestingly, referring not to the full leave period, but exactly to the minimum standard of the Directive (three months). However, this adaptation was not necessarily required, and a prohibition of parallel leave for both parents exists in several EU-15 member states, like e.g. Austria or Spain. In short, also in this case the obligatory adaptation requirements were small (they only concerned the right to return to the same job). Although it was originally announced during the accession negotiations to implement the rules until 1.1.2003 (negotiation document CONF-PL 35/99 of 23 September 1999), it was not before 1.1.2004 that they came into force. This, however, was not related to any particular political conflicts and the final implementation deadline was kept.

The Part-time Work Directive

A very similar pattern was depicted in the case of the part-time work Directive. Besides several non-binding recommendations aiming at the abolishment of barriers for part-time work, the only compulsory part of this Directive is the introduction of a non-discrimination principle for part-time compared to full-time workers. This non-discrimination clause was newly introduced into Art. 29 of the Polish Labour Code due to EU accession, coming into force on 1 January 2004. This can be considered as a new qualitative legal principle, thus, the misfit in this case is classified on a medium level. In the same reform, Poland also took into account one of the Directives' recommendations (see clause 5) by introducing a kind of recommendation into the Labour Code as well: "The employer should, *where possible*, grant the employee's request to change the work-time basis stipulated in the employment contract" (Art. 29², § 1, my emphasis). Generally, however, part-time work in Poland is not very popular, among other things due to the low wage level. These legal changes thus did not attract much political attention. Although it was positively acknowledged by the government that part-time workers were now protected from discrimination, neither the ministries nor the unions or employers expected that part-time work would increase due to the reforms (interview PL 12).

Table 2: The Implementation of EU Social Policy in Poland

	91/533 Employment contract	92/85 Pregnant workers	93/104 Working time	94/33 Young workers	96/34 Parental leave	97/81 Part-time work
size of misfit	small	medium	medium	small	small	medium
transposition instrument	legislation	legislation and ordinances	legislation	legislation and ordinances	legislation and decree	legislation
date of essentially correct transposition (months before accession)	in force 1 Jan 2004 (4)	not yet reached	in force 1 Jan 2004 (4)	in force 1 Jan 2002 (28)	in force 1 Jan 2004 (4)	in force 1 Jan 2004 (4)
lowering of national standards?	no	no	no	no	no	no
particular application problems known?	no	no	yes	no	no	no

Summing up the six Polish cases against the backdrop of the results on the implementation of the same Directives in the EU 15, the following conclusions can be drawn. The *size of misfit* caused by the EU labour law Directives in Poland was well in the middle of the member states of the EU 15. It was not overwhelming, but also not completely insignificant. When calculating 0 points for each Directive without misfit, 1 point for each Directive with small misfit, 2 points for each Directive with medium sized misfit, and 3 points for each Directive with high misfit, Poland ends up with a sum of 9 points, and an average misfit score of 1.5. Along the same scheme, among the EU-15 there were altogether seven member states with a higher score than Poland (average misfit scores between 1.7 and 2.3), three with the same score, and five with a lower value (1.0 to 1.3) of points (Falkner et al. 2005, chapter 13)

As table 3 indicates, the delays until essentially correct transposition are not directly comparable, because the time which has passed since the transposition deadline in Poland (1 May 2004) is too small. Nevertheless, it is obvious that *Poland's transposition performance is rather good* (only one out of six Directives has not been transposed until the accession deadline). While the figures on the EU-15 show that this is not self-evident. The reason for the transposition failure in one case was the unwillingness of the Polish government to disavow the national protection system, which was considered superior.

Table 3: Total Delay Until Essentially Correct Transposition (Months after Deadline³⁶) – PL Compared to EU 15

	91/533 Employment contract information	92/85 Pregnant workers	93/104 Working time	94/33 Young workers	96/34 Parental leave	97/81 Part-time work
average delay EU 15	27,83	64,63	47,77	35,03	20,57	8,17
EU 15 highest delay of individual countries	118 (1 country)	102,5 (6 countries)	78 (3 countries)	82,5 (2 countries)	57 (2 countries)	39,5 (1 country)
EU 15 lowest delay of individual countries	0 (4 countries)	0 (2 countries)	0 (1 country)	0 (2 countries)	0 (5 countries)	0 (5 countries)
delay Poland	0	+	0	0	0	0

+ deadline not kept (too early to provide figure)

0 cases where the transposition has been completed before the end of the deadline are counted 0 as well (no negative values)

Finally, the data shows that most of *the adaptations* (five out of six cases) *in Poland have been completed at the latest possible moment* before accession, and the case studies revealed that at times they were even purposely postponed in order to save adaptation costs. A lowering of previously higher national standards which was directly induced by an EU Directive did not take place in any of the cases selected. On the contrary, at times the EU Directive served as a “safety net” against nationally driven deregulation pressures.

3.3 Preliminary Remarks on Application and Enforcement

Against the backdrop of such a punctual, but very fast and last minute legal transposition the question arises about consequences for the application. Several authors claim that the implementation in the CEE accession countries might be rather formal and pro forma, with significant failures at the application and enforcement stages (cf. e.g. Sissenich 2003;

³⁶ As transposition deadline for Poland I refer to 1 May 2004, for the EU 15 to the respective term foreseen in the Directive (or – this only concerns the employment contract information Directive in the Northern enlargement countries Sweden, Finland, and Austria – to the date of their accession to the European Economic Area, 1 January 1994). The cut-off date for the EU 15 data is 30 April 2003. In some cases essentially correct transposition still had not been reached by then, i.e. the delay will probably increase even further. For Poland the cut-off date for the data is 1. May 2004. The figures, thus, are not directly comparable as regards the length of delay, they are, however, as regards the timely fulfilment of the required deadlines.

Iankowa/Katzenstein 2003). In addition, it is expected that “[r]ules ... adopted through social learning processes and lesson drawing should facilitate sustained compliance by creating domestic stakeholders. Rule adoption motivated by external incentives and bargaining are more likely to cause domestic resistance and poor implementation” (Schimmelfennig/Sedelmeier 2005a: 16).³⁷ Without any doubt, the rule adaptation in the six Polish cases described above was caused by external incentive – the EU acquis.³⁸

Generally, there is the problem that for a systematic analysis of application, all-encompassing micro-level evaluation in enterprises would be required. Expert interviews as well as a look at the national enforcement system³⁹ may, nevertheless, serve as a first approximation to the topic. Apart from this, as shown above, many of the EU rules in Poland have only been in force since the beginning of 2004. It is, thus, a very early point of time for an assessment, and further research will be needed to address this question.

The first information gathered so far certainly gives reason for scepticism about the proper application and enforcement of rules in Poland – at least in a mid-term perspective. The main Polish authorities responsible for enforcement in the labour law field are on one the one hand the courts, on the other hand the national labour inspectorate together with its 16 district departments. While the scope of issues controlled by the labour inspectorate in Poland is comparatively broad (covering not only the field of health and safety at the workplace, but also labour law issues, e.g. the regulation of working time), the capacities with only about 1500 inspectors are rather low, and such issues as computer equipment are only just about to improve (interview PL 16). In addition, even if non-application is detected by labour inspectorates, in particular in the field of labour law (excluding health and safety), the sanctions are very low. This makes the labour inspectorate rather helpless in the face of employers who prefer the payment of a low fine to the proper application of costly rules (interview PL 5). Finally, it was clearly indicated as a problem that so many new EU rules have been adopted at the same time, and that the Polish courts are not prepared to make use of them immediately (interview PL2).

³⁷ For further details on different theoretical models of rule adoption, either based on external incentives, social learning, or lesson drawing, see Schimmelfennig/Sedelmeier (2005c).

³⁸ It should, however, be taken into account that the actors involved in the phase of transposition (rule adoption) do not necessarily have to be the same actors responsible for proper enforcement and application. Even if processes of social learning or lesson drawing might have played a role during transposition, e.g. on the level of the political elites, this does not mean that they are also obeyed by the addressees – in this field mainly enterprises – in particular if high costs are involved.

³⁹ Member states’ enforcement policies may be considered one of several (necessary, but not sufficient) conditions for proper application of rules (Falkner et al. 2005, chapter 2.5).

4 Conclusion and Future Prospects

This paper compared the implementation of six EU social policy Directives in Poland to the EU-15. It analyzed the size of adaptation requirements of EU social policy for Poland, as well as the Polish compliance performance. The analysis demonstrated that the misfit in Poland was smaller than in a number of EU-15 member states. On the level of the legal transposition Poland performed extremely well. As regards the sound application of the rules there are reasons for a more sceptical view, at least in a mid-term perspective. What does this mean in terms of the compliance literature and the “three worlds of compliance”?

At first, it has to be considered that the conditions under which (non-)compliance could be observed in the accession countries before 1 May 2004 differ from those in the EU-15. An important difference is that the EU rules had to be taken on by the accession countries before actual membership, i.e. they have not been involved during the negotiations at EU-level: They have only been takers but not shapers of the EU rules.⁴⁰ As shown above, the accession negotiations cannot be considered an equivalent alternative, because they mainly deal with transitory periods, which is not the same as shaping policies in the framework of the EU’s legislative procedures. Nevertheless, the transposition performance of Poland has been very good. The interrelation between the shaping and the taking stages, thus, does not seem that strong after all.

The most crucial difference between the accession countries and member states, however, is what in the literature has been discussed as accession conditionality. From this perspective, the latest enlargement was pursued under the conditions of a power asymmetry between the EU and the candidates, and the pre-conditions for accession have never been as far-reaching (Copenhagen criteria⁴¹) and as closely monitored before (cf. e.g. Grabbe 2001; 2003). Just how far was the EU able to ensure far-reaching implementation of the EU acquis already at the pre-accession stage with the help of gate-keeping to different stages of the accession process and conditionality? Was the EU Commission able to make use of this situation as a kind of “additional early stage enforcement power”?

⁴⁰ Of course, to a certain degree this was also true for earlier enlargements, but the size of the acquis, especially in EU social policy, in the meantime has increased considerably.

⁴¹ In 1993 the Copenhagen European Council established three criteria that have to be fulfilled by EU accession candidate countries, among them the candidates’ obligation to implement the so called *acquis communautaire*. The other criteria, which this paper does not focus on, are the stability of institutions guaranteeing democracy and the existence of a functioning market economy.

The results for the Directives studied here are rather ambiguous. On the one hand, the example of the pregnant workers Directive underlines that against an unwilling Polish government the EU Commission has not been too successful in that. Although already during a very early stage of the accession negotiations the deficient transposition of the Directive was claimed, a correction could not be achieved by 1 May 2004. The instrument of accession conditionality, thus, may be considered too crude to enforce the implementation of individual policy measures.⁴² Nevertheless, the extensive EU monitoring has contributed to the timely adaptation of the other measures. Many of the legal measures have been very hectically pressed through the parliamentary procedures and adopted only at short notice before accession in order to keep the deadline observed by the regular EU reports.

How can we then classify Poland with regard to the three “worlds of compliance”? After having found that the particular pre-accession situation was relevant – not for each individual legal act, but from an overall perspective – this question is not easy to answer, yet. My results so far show that in terms of misfit and implementation success Poland is more similar to the EU-15 than one might have expected. In addition, there were no particular signs why a fourth category or “world” should be needed in order to cover Polish particularities. In some cases even exactly the same implementation problems occurred, e.g. concerning the opposition against the introduction of night work for pregnant workers. Which one of the “three worlds” Poland will belong to in the long run is not yet possible to say. So far, the high priority for the implementation of EU rules to a great degree can be attributed to the close EU monitoring, where situations of “neglect” would not have been easily possible. If this will sustain after 1 May 2004 remains to be seen. It also goes without saying, that the CEE EU members are far from being a uniform group and that the Polish case can be considered representative for them only to a limited degree. Nevertheless, they share a number of common features as regards the implementation of the EU social acquis (like e.g. certain legacies of the communist welfare regime, the great number and high pace of adaptation requirements), which makes the Polish case a fruitful starting point for further analysis.

From the perspective of “social dumping” within the EU, the rather low degree of misfit discovered compared to the EU-15 may give some comfort to those who fear an increase of

⁴² This may be in particular the case in a policy field with such a low salience as EU social policy. Beate Sissenichs interviews revealed that a candidate’s poor performance in social Policy would not be reason enough for the EU Commission to impede its accession (Sissenich 2003: 124). For scepticism as regards far reaching relevance of conditionality for specific policy impacts (in contrast to the broad impact of the Copenhagen criteria on democratic and economic reforms), see also Hughes/Sasse/Gordon (2003). Their study looks at EU regional policy.

competitive deregulation after the latest enlargement. Nevertheless, most importantly the fixed term example, but also the political debates around the other implementation processes have shown that (against the backdrop of high unemployment) there is a growing pressure arising to relax labour law standards, also in Poland. This makes EU minimum labour law standards a valuable and necessary “safety net” for the EU-25. However, this only concerns labour law standards and other fields like wages or taxes, where the competitive pressure on the “old” EU member states presumably is even higher, are not covered by EU policy.

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