

Between Structure and Incident.

A Sociological-Institutionalist Approach to the Riddle of Transposition Delays of European Food Safety Directives

Ieva Gange and Frans van Waarden

Utrecht University

I.Gange@fss.uu.nl; F.vanwaarden@fss.uu.nl

Paper to be presented at the bi-annual conference of the European Union Studies Association in Austin, Texas, March 31 - April 3, 2005

This paper is an outcome of a larger project on the Transposition of European Directives, jointly undertaken by researchers from the University of Leyden, the Free University of Amsterdam, the Radboud University of Nijmegen, and Utrecht University, all in the Netherlands. This project is funded by Social Sciences Research Council NWO-MAGW, project nr. 403-01-502. We would like to thank all the other participants in this research group for the inspiring discussions we have had in the group, and which contributed to the ideas developed in this paper. They are: Antoinetta Dimitrova, Markus Haverland, Michael Keading, Ellen Mastenbroek, Mark Rhinard, Bernard Steunenberg (all Leyden University), Kees van Kersbergen (Free University of Amsterdam), Marleen Romeijn (Radboud University Nijmegen), and Sara Berglund (Utrecht University).

Table of Contents

1. Introduction

- 1.1. Self-imposed Policy Constraints
- 1.2. Unity via Diversity
- 1.3. Solving the Riddle
- 1.4. Our Dataset on Food Safety Directives

2. Performance: Country Differences in Delay

3. Explaining the Delay: The Literature on Transposition

- 3.1. Explanations
- 3.2. Shortcomings

4. The Role of Source of Directive and Chosen Instrument

5. Towards a Model : Between Structure and Incident

- 5.1. Sociological Institutionalism
- 5.2. Structure. The Institutional Context, as Defined by the Instrument Chosen
- 5.3. Discretion
- 5.4. Political Interests, Resistance, Conflict
- 5.5. Regulatory Styles
- 5.6. Task and Role Perceptions
- 5.7. Inter- and Intra-organizational coordination
- 5.8. Incidents, Accidents, Chance. Limited rationality

6. Policy Learning, New Routines

7. Conclusion

Bibliography

1. Introduction

1.1. Self-imposed Policy Constraints

The Dutch cannot expand their highway system as they like, because that gets them in conflict with European air quality standards; strictly enforcing the latter could also deal a death blow to the huge Dutch chicken industry; Germany has to change its returnable can system, as it de facto discriminates against foreign beer producers; France can no longer resist liberalizing its energy markets; and the Greek government can no longer demand that baby food can only be sold in pharmacies. Increasingly national policymakers 'hit' against the constraints 'imposed' on them by the EU. The costs can be high. An, in European eyes, illegal detail of the Dutch corporate tax cost the tax office an annual one billion euros in income; the European habitat directive prevents the Dutch from drilling for natural gas.

European directives, that are largely responsible for such constraints, have - in order to become such constraints - to be transposed in national law in the Member-States, on their way from laws-in-the-books to laws-in-social-action. Transposition is a necessary prerequisite for the subsequent stages of administration, enforcement, and sanctioning. That is, transposition is an important form of 'Europeanization', of the influence of 'Europe' on its Member-States.

The European constraints on national policy making are in the end of course self-imposed: by the decision to join the EU, to accept the supremacy of European law, to agree on specific directives in Brussels; and by transposing them, as required, in national law. However, the hindrances they form for national policy making could increasingly become an incentive for resistance. The phase of transposition could offer some opportunities. Will and do Member States try to frustrate and delay transposition? And if so, do they do so for political reasons? Or is any delay more the result of cumbersome and time consuming bureaucratic and political procedures, or perhaps even of lack of attention and priority, or just plain inefficiency and sloppiness. Transposition is probably mostly a legal and administrative task. However, occasionally there could be a temptation to weave in political desires. Notably when transposition hinders national policymaking or when it will not make policymakers popular with the general - or a specific, but powerful - public.

1.2. Unity via Diversity?

Transposition of directives in national law is a special form of national law-making. It follows the decision making processes in the various national political-administrative arenas. What is special about this legislative process is that there is very limited room for manoeuvre for the MS. The content of regulation is to a greater or smaller extent prescribed. For all Member-States the input is the same: the directive. So is the required output: a national regulation that is in agreement with the directive. What can differ is the throughput: the process and form by which the input, the directive, gets translated in output, national legislation.

That makes the transposition of directives an interesting subject for comparison. All Member-States have to transform the same input in more or less similar output. Will the throughput differ? The duration and character of the process, and the legal form? If so, this should reflect - and hence point the attention to the importance of - differences in national political and administrative institutions, such as the legal system, and law making procedures; and behind that general, political, legal, and administrative cultures.

Delays there are indeed. Many Member-States don't succeed to have directives transposed within the deadline set by the directive itself. They are over time. In section 2 of this paper we present an overview of the scores of five countries - Spain, Greece, the UK, Germany, and the Netherlands - as regards the transposition of European directives on food quality regulation.

1.3. Solving the Riddle

What can explain these delays, and the differences between directives, countries, and over time? In section 3 we canvass the already existing literature on transposition for explanations. We will find that the variables thus far investigated cannot really do much of the explaining. Most of these approaches, and the variables they have chosen to study, have serious shortcomings.

In section 5 we will offer some alternatives, and here we are being inspired by sociological institutionalism. On the one hand we want to focus much more on the process of transposition, the required legal procedure as dictated by the national legal instrument chosen for transposition, and look only to variables that directly impinge upon this procedure. The formal legal procedure is the institutional framework for decision making. Within this framework, social actors work on transposition, and in that process they are influenced by political interests, but also by role perceptions and informal norms.

Furthermore, sociological institutionalism, especially the work of Jim March on decision making, has also pointed to the importance of incidental and less rational factors, such as the influence of custom and convention as sources of resistance to change, the cycles of political priorities, the scarcity of attention, the role of scandals, individual preoccupations of central actors, and other incidental factors. That is, we will pay attention to the role of structure as against incident in history; and path dependent developments that can and have been set off by certain incidents.

That brings us to the last topic that we will address: changes over time (section 6). Transposition has been a regularly occurring task, and that could have led, one might expect, to the development of certain new routines or standard operating procedures to facilitate transposition. Is it that countries have learned from past mistakes? Is there a learning curve to be perceived? And if so, has this also been influenced by specific incidents in history, that set out specific paths? Has this new routinization perhaps also affected the regular procedures for policy and law making in the Member-State? I.e. have the formal legal rules of the game been changed in the process?

1.4. Our Dataset on Food Safety Directives

Most studies on the implementation of European Union directives use data provided by the European Commission. There are two major data types used in the studies, depending on how 'implementation' is operationalized. One category of studies focuses on the infringement procedures initiated by the Commission for non-compliance as the measurement of implementation problems concerning implementation of EU law. Other researchers use the Commission's data on transposition progress that uncover the percentage of the directives not yet transposed by the member states. (Haas 1998; Lampinen and Uusikyla 1998; Duina 1999; Bursens 2002) This type of data reveals the state of affairs of transposition in countries and in policy sectors, but it is silent on the occurrence and length of delays that often happen during

the transposition process, at least for a while disturbing the proper functioning of the Internal Market.¹

So far, there is only one dataset that provides information on the length of transposition process, and only for the Netherlands. Mastebroek (2003) created a database with information about the deadline of the directive and the date of adoption, publication and entering into force of all known national instruments adopted for transposition in the Netherlands. With this data Mastebroek is able to measure the length of transposition process, as well as the occurrence and the length of delays.

We have also developed a dataset, that among others includes similar information as in Mastebroek's database. This dataset covers all food safety directives ever adopted by the European institutions – directives currently in force and no longer in force - with a deadline before February 1 2004. The total number of directives is 181. The number of directives to be transposed differs between the member states, since the selected member states joined the European Communities at different times. The Netherlands and Germany had to transpose 181 directives each, the United Kingdom 171, Greece 127, and Spain 106 directives. The total number of cases (transposition of a directive in a member state) is 766. (Annex I, table 8.)

Information on national measures by which directives had been transposed was found in three stages. First, the Commission's database Celex was consulted. This database is usually used for finding references to national transposition instruments in member states. This database is incomplete and contains sometimes wrong information. In the case of food safety directives for the five selected member states, Celex provided references to 74.4 percent of the national transposition measures. In 4 percent of the cases, the reference was incomplete and therefore the national measure could not be found using only Celex. In 21.5 percent of the cases, Celex provided no information about the national transposition instruments. (Annex 1, Table 9.) The comment in these cases was 'no information available', without further explanation whether that meant that the member state did not need to transpose that directive, or whether it was required to do so but had not done it. When comparing the missing Celex cases with data found in Commission's reports or other sources, it turned out that in many cases countries had transposed the directives, it was just not recorded. Since Celex contains only reference to the national transposition instruments, it was necessary to look these up in the libraries or online sources.

The second step in the data collection was to consult these reports and other literature sources as far as possible. In the food sector, such reports are for our purpose of limited value, because they are mostly concerned with practical implementation, instead of transposition.

Finally, the national legal databases were consulted and the responsible ministries were contacted. For the Netherlands², Spain³ and the UK⁴ it was possible to find legal databases. Of course, they have drawbacks as well, the most common being that the information available is limited to a certain period. When we contacted the national ministry responsible for transposition, we received in all cases, except for Germany, information about the missing implementation measures. This information was not complete either, since the ministries normally do not keep records of transposition measures for directives no longer in force. In total, information about national transposition instruments was found for 78.4

¹ Mastebroek (2003) revealed that 42 percent of the directives in period of 1995-1998 were transposed late in the Netherlands.

² Opmaat and Europmaat.

³ Iberlex

⁴ HMSO online and Westlaw.

percent of the 874 required transposition cases. For remainder of cases no information could be found or the reference was too vague to find the corresponding instrument. (See Annex I, table 10)

Delays in transposition are calculated by counting how many days passed since the deadline of the directive until the first national transposition instrument was adopted. There are two reasons for using the first national transposition instrument in analysis. The first is that it is difficult to consider when the transposition is completed. If there are several national instruments reported to the Commission, one could assume that according to the member state the first instrument was not enough in order to comply with a directive. Often this is true, indeed. Then the possibility would be to use the last instrument adopted in a country, implying that at that point transposition should be complete. However, such an assumption would not be correct, as it is possible to find out only the last instrument at a *certain point in time* and not in general. Thus, it is not possible to know when transposition is complete by looking at references in Celex or other sources. It is possible that later new measures will be adopted, but for calculating delays, the first measure adopted is sufficient. In this way, the delays will not be overestimated; the ‘minimum delay’ will be calculated. Second, we think it is plausible to assume that the first instrument adopted by a member state introduced the largest changes to existing national policy. Therefore, it has faced possible unwillingness from the opposition’s side to change the status quo.

In cases where only already existing older national instruments were reported, i.e. national instruments adopted *before* the publication of a directive, a note was made in the database. Our dataset comprises only 26 such cases (3%). These cases will not be used in the analysis.

2. Performance: Country-Differences in Delay

The data on our dependent variable ‘delay’ is not normally distributed. Therefore, before doing any descriptive analysis, we removed the extreme outlying cases. This is accounted for in Annex 2. Thus the following analyses were done with data that excludes the outliers.

Delays are calculated as the date of adoption of the first national instrument minus the deadline of the directive. Delays were found in a little more than a half of the cases (54.9%) (table 1). One directive was transposed exactly on time, and 33% of the directives were transposed before the deadline. On the rest of the cases, 12%, information was lacking.

Table 1. Transposition on or over time*

		Frequency	Percent	Valid Percent
	Delayed	392	54,9	62,3
	On time	1	,1	,2
	Too early	236	33,1	37,5
	Total	629	88,1	100,0
Missing	System**	85	11,9	
Total		714	100,0	

Source: Own data

* Analysis with outliers included is in Annex 2 table 13

** Information missing on the deadline of a directive and/or on the national transposition measure.

The average delay is 123 days (about 4 months) and the longest delay excluding outliers was 961 days (almost 3 years) (Annex 2, table 11). Thus, the delays in transposition of food directives are rather common and they can be long.

Delays differ between the member states. The Netherlands has the best transposition record and its mean delay is 56 days (less than 2 months). It is followed by Greece with an average delay of 90 days (3 months). The next best transposition record belongs to Spain average delay being 132 days (about 4.5 months). The average transposition delay in the UK is 155 days (about 5 months). Germany has the worst transposition record – 193 days delay on average (about 6.5 months). An interesting thing to note is that although Greece and Spain have rather good transposition records concerning the average length of delays, table 2 reveals that they have the largest percentage of delayed transposition cases. On the other hand, Germany, the laggard, does ‘rather well’ if we look at the percentage of delayed directives. Thus, it seems, that although Spain and Greece have relatively short transposition delays, they happen more often than, for example in Germany, which has less, but longer ones.

Table 2. Differences in delays between the member states*

	Mean delay in days	Total number of directives that needed to be transposed in the country	% of them transposed too late
Netherlands	56	170	42.9
Greece	90	117	63.2
Spain	132	103	72.8
UK	155	163	46.0
Germany	193	161	59.0
Average/ Total	123	714	56.8

Source: Own data

* After correcting for outlying cases (see Annex 2)

3. Explaining the Delay: The Literature on Transposition

3.1. Hypotheses in the Literature

What could explain these differences in time needed for transposition? Why do some countries take much more time than others? And why do some get even in trouble with the European Commission in the sense that the latter starts an infringement procedure against them for failure to notify transposition, for non-conformity or incorrect application?

This question has already concerned quite a few researchers, such as Mbaye 2001 and 2003, Lampinen and Uusikyla 1998, Guiliani 2003 and 2004, Mastenbroek 2003, Boerzel et al 2004, Sverdrup 2004, Heritier 1996, Knill 1998, Knill and Lenschow 1998, Risse et al 2001, Falkner et al 2002 and 2005. These authors have tried to link quite a variety of variables to transposition deficiencies or infringement procedures. They include political attitudes (political unwillingness, domestic opposition or domestic conflict over the directive), popular attitudes to the EU, political institutions (power of the state, involvement of parliament, stability of government, number of veto-players, consensualism, policy style, corporatism), legal and administrative factors (respect for the rule of law, administrative capacity, administrative and political culture), and policy content (goodness of fit between goals and instruments of directive and national law).

We have taken those studies that used a quantitative approach and identified their independent variables, hypotheses, and whether or not they found a significant correlation. This overview can be found in Annex III. Table 3 below summarises the results of the hypotheses tested by Mbaye (2001), Lampinen and Uusikyla (1998), Giuliani (2003), Giuliani (2004), Borzel et al. (2004), Sverdrup (2004), and Mastebroek (2003).

Table 3. Summary of hypotheses tested to explain transposition deficiencies and/or infringement procedures

Hypotheses	Frequency	Percentage
Confirmed	14	45.2%
Confirmed, but small explanatory power or weak relationship	6	19.3%
Not confirmed	11	35.5%
<i>Total</i>	<i>31</i>	<i>100%</i>

The table shows that in a majority of cases the independent variables had no significant influence on transposition performance. Some authors have use similar variables but operationalized them differently. They got quite different results, sometimes even opposite ones for the same variable. For example, Giuliani (2003), Mbaye (2001), and Borzel et al. (2004) all test how the presence of veto players in a decision making procedure influence compliance with European directives. All authors predict that the more veto players are involved, the more problematic is compliance. The hypothesis was confirmed only by one study (that of Giuliani).

Even when authors find a positive correlation, their variables explain only a minor part of the variation. Giuliani (2003) could, with a model that included five variables (year of joining the EU, veto players, effective nr. of parties, Shapley index (power index) and agenda-setting power) only explain about 30 percent of the variance ($R^2=0.295$). In a more recent and as yet unpublished study Keading (2005) found that 10 of such variables taken together could only explain 0.26 of the variance. And, as Steunenber (in a discussion of the Keading paper) noted, some of the independent variables are not quite independent observations, i.e. the correlations found are even exaggerated. Anyway, it makes one wonder what explains the remaining 0.74 of the variance.

3.2. Shortcomings

Although commendable, most of the studies cited suffer from one or more of the following problems:

a- The variables are often too broad and not enough focused on the transposition processes. Furthermore the authors have been constrained in finding appropriate proxies. The proxies for which enough data on all countries could be found - indeed the measurement problems can be considerable - are often quite far removed from the variables that they should represent. Thus the degree of unionization as a proxy for corporatism is not quite the one that would be relevant for the legislative process of transposition. Administrative capacity may be important for transposition, but are proxies such as used by Mbaye (tax income as pct GDP, performance-related pay of civil servants, general corruption score) not too much a characterization of the government as a whole, and less of those (sometimes small) parts involved in transposition? What about the number of veto-players as measured by the parties

belonging to the government coalition (Guiliani), in case most transpositions are done through ministerial decrees of only one minister? Mbaye (2001) and Treib (2003) operationalize national veto-players as the number of parties in parliament, but in many transposition procedures parliaments are not involved at all. And what could the influence be of political culture, as measured a.o. by 'public satisfaction with democracy' or 'post materialist values' (Lampinen and Uusikyla 1998)? What would be here the logic behind the hypothesis? Transposition is in most cases a legal-administrative procedure (see below) and most of these variables do not - at least not directly - touch upon this world.

b- Many variables can indeed work both ways. There are both arguments why they could facilitate or frustrate speedy transposition.

Corporatism can - as in any case of policymaking - imply that broad consensus has to be build, and that could mean slow, cumbersome and viscous decision making with strong interest associations being veto-players. However, it could also mean cooperative and consensual relations between major political and administrative actors, which facilitates broad based but nevertheless speedy decisionmaking.

'Administrative capacity' can mean that a government has the organizational infrastructure to aid it in speedy transposition. However, it can also mean that public administrations are well-developed bureaucracies with a preference for legal precision and lengthy formal procedures which satisfy all demands for legal soundness, and which also have already detailed legislation in place where the new 'foreign' legal transplant has to be fitted in

c- Most researchers seems to be in search for the 'holy grail', the one variable that does all, or most, of the explaining. Is it political resistance? Is it the power of the member state? Or is it administrative impotence, or even incompetence? However, the low variance explanation scores indicate that there must be quite a plurality of variables involved. Then it becomes a challenge not only to identify these, but to try to disentangle how they are logically related.

d- Furthermore, directives come in many varieties - just like national laws. National legislative proposals can experience all kinds of resistance and delay: policy makers may oppose for political reasons, administrative lawyers for lack of legal soundness. Variables that explain one case, may be irrelevant in another one. Depending on the nature of the directive member states may choose different legal instruments for transposition. But that has immediately consequences for the political and administrative variables that affect transposition.

e- Researchers have been searching for rational explanations. But, as March (1988, 1994) - a leading author in sociological institutionalism - emphasized: decision making is often less rational than it should be. Decisions often just 'happen', rather than that they are 'made'. Thus also less rational explanations have to be taken in consideration. Perhaps we should also leave room for accident and incident.

A more refined and detailed approach is needed, which can build upon the work already done. This approach should break open the black boxes between the dependent and independent variables. Administrative capacity, yes, but what is that precisely? And how can it affect transposition? In order to analyze that, we may have to identify more specific sub-variables under the heading of 'administrative capacity'. Rather than working with general political culture as measured by attitudes of the general public, we should focus on specific

cultures, on norms and values of actors involved in transposition, norms and values they may have derived from the profession in which they were trained, the tasks they have been given, or the administrative organization in which they work.

In order to do so it would be useful for students of European integration and compliance of Member States to borrow from existing literatures that have only rarely been linked to European studies. Europeanists have received most of their theoretical input from international relations and comparative political economy. These literatures tend to take macro-perspectives on European integration, and often even consider a member state as a single actor, without looking into the - huge - black boxes that these member states form. Relevant literatures are, apart from the obvious choices European law and comparative law, those of comparative public administration, sociology of law, policy making and regulatory styles, socio-economic studies, organization studies, the behavioral theory of decision making, and sociological theory more in general.

Drawing upon these literatures we will in section 5 develop a theoretical model for analysis that allows us to look into the 'black box' of the legislative decision making process that forms the throughput between the input: the directive, and the output: the transposed national instrument. Before we do so we present some more findings from our dataset, which among others point to the importance of the chosen instrument. This we will take up in section 5 as a starting point for our model.

4. The Role of Source of Directive and Chosen Instrument

We tested some quantitative variables with our own dataset. First of all, we investigated whether the *source of the directive* made a difference. By this we mean whether the directive was decided by the European Commission, the European Council, or the Council and Parliament under the co-decision procedure. Arguments are conceivable both for quick and slow transposition of Commission directives.

Quick transposition could be due to Commission directives usually being of a more technical nature and hence being less controversial and less politicized. Therefore, less political resistance should be expected, transposition should be more a technical matter for administrators, allowing often for lower-level instruments to be used, and hence easier and quicker. However, there is also a logical argument why Commission directives could take more time. Member states have not - at least explicitly and directly - been involved in deciding them, hence they could be easier considered a 'foreign' element, being imposed upon the member states. That could produce resistance. By contrast, member states have been involved in decision making of Council and Council-Parliament directives. This involvement could have increased legitimacy of the directive and commitment of member states to transpose them.

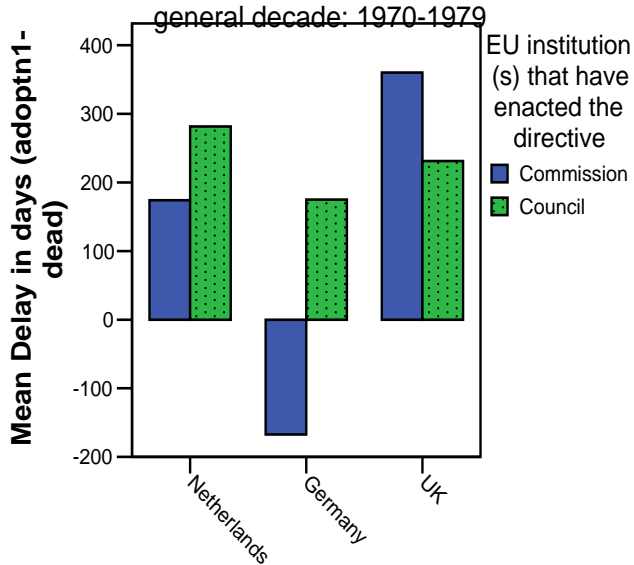
Table 4 seems first to confirm the first hypothesis: Commission directives experience much less delay in transposition, at least for all five countries over the whole period. However, joint Council and Parliament directives are transposed even faster, which seems to confirm also the second hypothesis: if there is a broad basis of democratic legitimation, transposition goes even faster. However, the latter finding may be mediated by the fact that the European Parliament got only in recent decades involved in deciding upon directives. Hence the 'good performance' of Council+Parliament Directives may be also caused by the fact that these are more recent, and as we will see, transposition is going faster in the more recent decades (see section 6 of this paper).

Table 4. Mean delays in days depending on the EU institutions that adopted the directive

	Mean delay in days
Commission	78
Council	233
Council and Parliament	-3

Source: Own data

Figure 1. Mean delay in days in a country/ EU institution that adopted a directive between 1970-1979



Source: Own data

Figure 2. Mean delay in days in a country/ EU institution that adopted a directive between 1980-1989

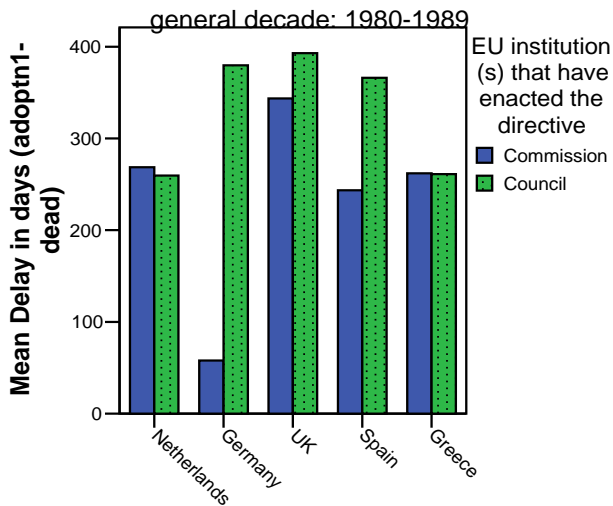
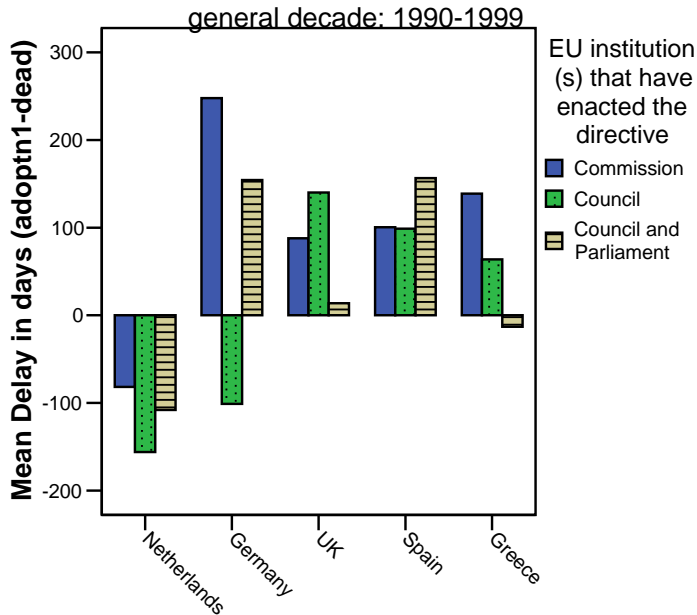
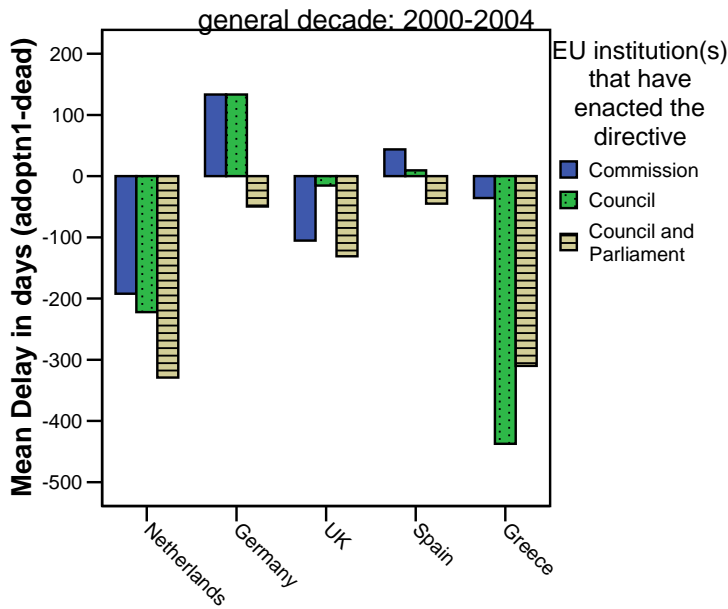


Figure 3. Mean delay in days in a country/ EU institution that adopted a directive between 1990-1999



Source: Own data

Figure 4. Mean delay in days in a country/ EU institution that adopted a directive between 2000-2004



As figures 1 to 4 show, the importance of Commission versus Council(+Parliament) changes around 1990. Before that period, Council directives took longer to transpose, except in 70-79 in the UK. After 1990 Commission directives needed more time, but again the UK

was the exception. The UK went hence in the opposite direction of the other member states.

Furthermore, we investigated whether it made a difference if a directive was completely new, or whether it was an amendment of an earlier directive. One would expect an amendment to be easier and quicker to transpose, because it could most likely be also an amendment of earlier national legislation. This is on the whole indeed the case, as table 4 shows. However, the table shows also a curious north-south divide. In the northern European countries Germany, the Netherlands, and the UK an amendment is indeed quicker transposed than a completely new directive. In the southern European countries Spain and Greece the opposite is the case. There amendments take longer. As southern countries, especially Spain, have been known to use European integration to modernize their societies, it could very well be that new directives - which bring newness and hence modernization - attract more attention from policy makers than later amendments, which may be given less priority.

Table 5. Mean delay by country and whether the directive was new or an amendment*

	New directive or amendment of earlier one			
	completely new		amendment	
	Mean	N	Mean	N
Netherlands	100	85	6	85
Germany	205	83	180	78
UK	210	84	96	79
Spain	119	53	146	50
Greece	59	57	121	60
Average/ Total	139	362	110	352

Source: Own data

* With outliers excluded

Finally, did the legal instrument the member states selected for transposition matter for the length of the delay? The following categories of instruments were used by the various member states:

a- Statutory law, involving the administration, the government, and parliament (NL: wet; D: Gesetz; UK: Act of Parliament;)

b- Orders in Council or Presidential or Royal Decrees, which involve the government as a whole (NL: Algemene Maatregel van Bestuur, E: Real Decreto, GR: **AD@ *D46) 4J" (: "**)

c- Ministerial Decisions or Decrees, which are enacted by an individual cabinet minister (NL: Ministeriele regeling; D: Verordnung; UK: Regulation, Ordinance, or Statutory instrument; E: Orden; GR: **KB@D(4Z " B` N" FO**)

d- other lower-level administrative decisions, such as Orders of Statutory Trade Associations (NL), Mitteilungen and Bekanntmachungen (D), or Circulars (UK)

Table 5 shows that the type of instrument does indeed make a difference. Ministerial decisions are on average 90 days over time, but statutes 275 days and Orders in Council 268 days.

The value of these numbers are however quite limited, as statutory laws were only rarely used for transposition in the policy area of food safety regulation. Altogether that happened only in 6 out of 630 cases. This is probably because food regulation is an old policy field, where already a substantial body of statutory law has been created in the course of time, including framework laws that allow the government to use lower-level instruments to transpose European directives. The importance of the type of instrument for delays in transposition becomes more clear when we compare this policy area with another, that of

utility regulation. This is a relatively new policy field: privatization and liberalization of energy and telecom markets. Here new basic legislation has yet to be created. Hence laws are much more frequently used to transpose directives, as a parallel study by a colleague of us (Berglund 2005) shows.

Table 6. Mean delay by country and by type of national transposition measure*

	type of legal instrument used for transposition							
	Statute		Presidential/ royal decree		Ministerial decision		Other**	
	Mean	N	Mean	N	Mean	N	Mean	N
Netherlands	222	1	191	73	-44	67	-181	14
Germany	604	3	.		180	118	326	3
UK	-1	2	.		157	140	.	1
Spain	.		143	84	75	17	.	
Greece	.		470	3	80	106	.	
Average/ Total	275	6	268	160	90	446	72.5	18

Source: Own data

* With outliers excluded (see Annex 2)

* **Category 'other' includes the following measures: NL – beschikking, verordening van produktschappen, and bekendmaking; D – Mitteilung and Bekanntmachung; UK - Circular

5. Towards a Model : Between Structure and Incident

5.1. Sociological Institutionalism

In this paper we try to understand transposition from the theoretical perspective of sociological institutionalism. As most political scientists are not so familiar with sociological thinking it may be useful to elaborate a bit on this. A basic assumption of this approach is that social actors are embedded in sets of institutions that structure their social action, their behavioral choices. Institutions can be defined as formal and informal sets of *mutual expectations* between people, that have become more or less *enduring*, and that have crystallized in *rule systems*.

These rules define roles and identities of social actors, and the criteria for actors to take up such roles. The role-definitions are situation specific. They define what is expected of oneself and others in specific situations. The same person may meet other expectations (and sometimes even different ones from different people) in the classroom, in the street, in a singles bar, in church, at a reception with the queen, or on the battlefield. Actors are like judges: When they come in new situations they try to identify which rules apply to their situation and their own and others' roles. What is the appropriate behavior here? (C.f. March and Olsen 1989 on the logic of appropriateness). What do others expect from them, and what can they expect from others? Examples are rules that define social distance (how should one address others), but also physical distance in public space (when and where do we queue), that define the authority of actors, including the authority to take decisions on behalf of the community. Many of these informal rules we follow automatically and unconsciously, once we have been socialized in that specific community. We just do things that way, we do not think about it. Actually, it would be an enormous burden if we would have to identify all these rules consciously and decide whether we want to abide by them or not.

Ideal-typical rule systems are religion, cultural conventions, language, and law. Law is actually a formal codification of such mutual expectations as to one another's behavior, developed over a long period of time out of conventions, case law, and formally agreed rules (statutory law) and specific for a certain community, society, or country.

Rules systems are social facts, in Durkheim's terminology. They are created by social actors in the past, but have acquired a life of their own and govern subsequent generations in the same society. They influence our choices, our behavior, but they do not determine them completely. Social actors give meaning to their action, and continually interpret and reinterpret the rules, in the process changing them, usually gradually and evolutionary, but occasionally radically and revolutionary. Language illustrates this well. It is a social product, but it cannot be traced back to specific inventors, and has acquired a life of its own. We get socialized in it, live by it, use it, interpret and reinterpret it in use, and gradually change it. Revolutionary change is rare, even slight formal changes meet often resistance.

Unlike 'natural facts' (physical objects like buildings, trees) social facts exist only as long as they are *socially accepted*, as long as a collectivity of people defines them to exist and acts on the basis of that: a piece of paper defined and accepted as money ('trusted'); a statue or piece of bread (consecrated wafer) defined as the body of Christ; a sound defined and accepted as a word; a rule defined and accepted/observed (difference 'rule-in-the-books' and 'rule-in-action'). Social actors get also socially defined: their role, duties and rights; their trustworthiness, reputation, through naming and shaming. Social facts are related to what sociologists call the '*Thomas theorem*': 'If people define something as real, it is real in its consequences'

Political institutions distribute authority, power, duties, and obligations over roles and situations. They regulate access to the political arena, of people, issues, problems, and solutions; they distribute resources and legitimacy among participants; they construct the physical, cognitive and moral conditions for political action; they influence perceptions of political actors of the reality in which they find them, their environment, their tasks; and they build a symbolic order for groups, for identification, for meaning.

Different social communities have defined different social facts; and often owe their identity and cohesion to them: language, religion, myths, symbols, money, codes of honor, food standards, more in general culture. There are also differences as regards obedience to and sanctioning of norms, trust, etc. Hence there are differences in social action, social choice between different cultures. Actors in decisionmaking arenas may form part of different communities (regional, national, European, political or administrative, professional/epistemic) and may hence be under the influence of conflicting social definitions. This tends to produce cognitive dissonance; learning, mutual persuasion, and change in their social definitions, perceptions, norms and values. Subsequently, they may become mediators in discourse, communication, negotiation between other actors, from different policy communities.

Summarizing, sociological institutionalism emphasizes:

- the social embeddedness of preferences and choice
- norm- or social frame-guided behavior as alternative to preference or interest guided behavior
- social frames and 'etiquette' as filters for the rational pursuit and choice of action to satisfy preferences
- and it also focuses the attention to the limits of rationality and the importance of chance and incidence, as socially defined (limited capacity, scarcity of attention, socially defined priorities).

This holds also for the communities from which actors come that are involved in the

transposition process: the various nation-states, the political arena, different government ministries and their departments, the sectors of society that they govern, the professions in which the policy- and decision makers have been socialized, etc.

5.2. Structure. The Institutional Context, as Defined by the Instrument Chosen

Let us now apply this sociological understanding of institutions and social action to the topic of transposition. We found in section 4 that ‘chosen instrument’ makes quite a difference for the amount of delay. That is not surprising. The chosen instrument prescribes the legislative procedure that has to be followed to produce it. Most political decision making is highly stylized and framed in law, that prescribes the process that has to be followed. This is often overlooked or downplayed by political scientists. However, those interested in the role of institutions in public decision making cannot avoid paying attention to the legal rules of the game. With defining the legislative procedure to be followed, the chosen instrument also identifies which actors get involved in the process and when, what their authority is and capacity for intervention, what they can, but also what they cannot do, and sometimes also whether there is a time limit within which they have to intervene.

Thus the chosen instrument defines also the decision making community: specific civil servants, various ministerial departments, advisory councils, ministers, the cabinet, the queen, parliament, political parties. The legislative procedure fixes in a quite formalized manner the mutual expectations between the members of this decision making community. They know what each one’s authority is, when they have to be heard or asked for a decision, how long one may have to wait for them, etc. They know the different decision making rights of the various players: the right to determine the agenda, to be heard, to draft proposals, to decide, to approve, to engage in oversight.

Some of them can be considered ‘veto players’ - though the term ‘frustration players’ would be more apt, as in the end the final veto player here is the European Commission and the European Court of Justice, which have the formal authority to overrule the veto’s of the domestic players in infringement procedures.

The legislative framework does not only define the actors and their rights, but also the patterns of interaction: coordination, consultation, cooperation, conflict resolution, decision making. Here the formal legal procedural rules are augmented by less formal institutions of political and administrative custom and tradition, supported by norms and values generally described as political and administrative culture.

As the number of actors involved increases, so does the likelihood that the decision process will take more time. And by fixing terms that certain actors have within which they should act the instrument also directly influences the time needed for transposition.

Thus, typically laws require the involvement of (several levels of) civil servants who write drafts, the minister, the government as a whole, all chambers of parliament, and the head of state (king, queen, president). In some countries advice has also be sought from a Council of State (Spain, Netherlands), which performs a kind of ex-ante judicial review, i.e. it checks on the legal soundness and the consistency with other laws; and advice may be asked from organizations of civil society, sometimes through formal advisory bodies such as the Dutch Socio-Economic Council.

This road is clearly a longer one than that for Orders in Council or Royal Decrees, where Parliament does not have to get involved (or only marginally), but usually a Council of State does. Ministerial Decisions can be handled by an individual minister and his civil servants, but they may have - or want - to consult other ministries and advisory bodies of the

interests concerned. In Spain the Council of State has to be asked for an opinion on all instruments.

Countries differ not only in who gets a say at what stage, but also in how frequently the different bodies have a chance to do so. Thus a Dutch law will pass the Cabinet at least twice, before and after the Council of State has been heard. And Parliament will have a first and second reading, a committee stage, a report stage, possibly a third reading, consideration of amendments, and final vote on the bill.

The nature of involvement may also differ. In some countries and for some instruments the Cabinet, Parliament, or Council of State will also be actively involved; in others the bill will be deposited with them, and they will have the opportunity to intervene if they desire to do so. Thus in Britain, a statutory instrument such as an Order in Council (of the Crown, the government) or a Ministerial Regulation, has to be laid before both Houses of Parliament. There are two forms in which this can be done, the positive or negative resolution procedure. If the first one is chosen by the government - according to custom when the statutory instrument amends an Act of Parliament - then a draft text is given and this has to be debated and approved, before it becomes effective. The second, negative form, implies that the government can choose to lay a ready-made statutory instrument in Parliament, and both Houses can decide to intervene and annul it. They cannot amend but only veto it. The instruments presented are considered by different committees. For general matters there is the Parliamentary Scrutiny Committee, and for the substance by Standing Committees on Delegated Legislation (Vervloet 2000: 15).

In some countries and procedures a time limit is specified in the rules of the game within which the various bodies have to act. Thus the Spanish Council of State has three months to react, the Dutch Council of State is however not bound by any time limit. It can take up to six months to react, though there is a possibility for an accelerated procedure in emergency cases. In Spain, societal interests have at least two weeks to lobby, in practice this term extends to two months. Getting a statutory instrument through the British parliament usually takes only a few weeks. In the negative parliamentary scrutiny procedure, it has forty days to 'pray against it'.

The British Parliament has given itself a constraint to ensure speedy decision making. A Bill - a draft text for a law - has to get accepted and acquire 'Royal Assent' (the signature of the queen, elevating a Bill to an Act of Parliament) in the same Parliamentary session in which it got its first reading. That is, Parliament has less than a year to discuss, modify, and accept a draft. Otherwise it has to start all over again (Vervloet 2000: 16). This is a general legislative institution of the country, but it applies also to transposition, when that has to be done through an Act of Parliament.

Relations between the various actors involved will also affect transposition speed. In countries with a strong dualist system, disagreement between government and parliament can be a delaying factor. In Germany, the institutionalized rivalry between the two chambers of parliament, the Bundestag (usually a government majority) and the Bundesrat, in which the Laender are represented and which is often dominated by the party that is in opposition at the federal level, can be a source of blockage and delay.

Obviously, all these such rules of the game can and will affect the time a country needs for transposition.

As regards other rules of the game it is not always directly clear whether they speed up or delay decision making. Thus parliamentary scrutiny can work both ways. It can be a veto-player which delays, but also a monitoring agent, which chases the government, reminds it of its duty to transpose directives timely (as the opposition likes to use scandals to criticize the government). Whenever some report emerged showing a poor transposition record of the

Dutch government, the opposition asked immediately questions and insisted on streamlining of the procedures (except in so far as that would mean a reduction of the role of parliament).

Typical for the British procedure is the early involvement of both Houses of Parliament, still during the negotiations in Brussels. Both the House of Commons and the House of Lords have committees (the Select Committee on European Legislation in the Commons and the European Union Committee in the House of Lords) that consider any EU-document still in the drafting stage, such as draft proposals submitted to the European Council of the Council of Ministers, or a draft text for a Commission directive, and form an opinion about its consequences for British policy and law. They can forward it for further investigation to one of three European Standing Committees. These can draft a resolution regarding the European document which then are voted on on the House floor. Furthermore, the Commons in 1990 and the Lords in 1999 issued resolutions forbidding the government to agree on any proposal in the Council in Brussels before their European Committees had been able to form an opinion on the issue. (Vervloet 2000: 16-17) Thus Parliament de facto binds the hands of the negotiating British minister in the Council, limiting his room for maneuver considerably. This can be seen as an expression of the great distrust of the Brits as against Brussels and its legislative activity, and as an attempt to maintain the British supremacy of parliament. The counter side is that once a directive has been enacted in Brussels, the British parliament is not only well informed about the directive and its consequences for British law and policy, but has been also committed to the result, thus facilitating swift transposition even more.

Thus while Boerzel, Hoffman et al 2004 investigated whether support of EU-membership among the general population (as measured by the Eurobarometer) played a role in compliance, implying that more distrust would mean more delay, the actual relation between distrust and delay is more complicated, more mediated. In the British case distrust leads to early involvement of Parliament and a limited negotiating mandate for the British minister, i.e. possible obstruction in the decision making phase of the directive, but quick transposition of an enacted directive. This only becomes apparent if one delves into the details of the legislative procedure.

It should be pointed out that the choice for an instrument is usually not a free or arbitrary one, but is in turn dictated by other, higher level, institutions: the principle of the rule of law, that in one way or another governs political and administrative choice in all our countries. This prescribes that government action should have a base in law, that is, in a rule that has been decided according to rules of democratic decision making and that should include an organization that has democratic legitimacy owing to periodic popular elections, namely a parliament.

If the subject of the directive is not yet regulated by any law, and if the government has not been given the authority by parliament to do so, transposition will require the enactment of a new law. This is likely to be the case in new policy areas, where a country has not yet much statute law, such as the privatization, liberalization, and renewed regulation of formerly public utilities such as public transport, telecommunications, and energy. And indeed, in new policy areas such as utility regulation we see that governments need to use more often statute law as the instrument of transposition, and on the whole this takes more time - even if the issue is not politicized and controversial, which it however often is. Furthermore, constitutional law, or the enabling law, does usually also formulate under which conditions transposition can be done through lower-level instruments or when statute law is required. The latter is usually the case if new criminal offences are created, new taxes are imposed, or powers are further delegated (o.a. in the UK and NL).

However, there can also be already statute law that authorizes the government to

legislate in greater detail using lower-level instruments which do not (necessarily or explicitly) require the involvement of the 'legislative power', namely parliament. This is more likely to be the case in old policy areas, such as food safety regulation. And indeed, countries like the Netherlands, Germany, and the UK have already old framework legislation in place in this policy area (NL: the Warenwet or Commodities Act of 1919; Germany: Gesetz über den Verkehr mit Lebensmitteln, Tabakerzeugnissen, kosmetischen Mitteln und sonstigen Bedarfsgegenständen of 1974; UK: Food Act of 1984 (Scotland Food and Drugs Act of 1956)). In these cases various lower-levels can decide on the transposition text: the Cabinet (royal decree), the minister (ministerial decision), semi-private independent regulatory agencies (like in the Netherlands the statutory trade associations) or even enforcement agencies (implementation stipulations). Thus parliament may have enacted in a general framework law that 'food should be safe' and leave it to the minister (and his scientific advisors) to regulate in ministerial decisions what that means in terms of detailed maximum concentrations of certain additives - e.g. preservatives, coloring and flavoring substances, vitamins - allowed in food; and the latter may subsequently have delegated authority to actual enforcement agencies to specify the precise sampling and analyzing methods to be followed during inspection in order to determine whether the subjects of regulation have observed the law. In case a directive specifies detailed maximum concentrations and sampling methods, regulations at these various levels have to be modified (which could take time), but that can usually be done using lower level instruments (which take less time).

In this respect the UK is a curious case. The British Parliament has enacted a broad European Communities Act (orig. 1972, amended 1993, 1998), authorizing the government to transpose European directives by using lower-level instruments such as Orders in Council or Ministerial Regulations (Vervloet 2000: 15). Such 'statutory instruments' can even be used to modify existing Acts of Parliaments if this is necessary for transposition, which, in the British case is usually a one-to-one literal transposition. As a result, Britain transposes usually using lower-level instruments, which tend to take less time.

This case points to the importance of a yet higher level of political institutions: the constitutional structure of the state. The willingness of the British parliament to give these broad powers to the government is likely to be related to the absence of dualism between the executive and legislative state powers in the UK. Britain has the 'supremacy of parliament', but de facto is power concentrated in the majority party, and its leader, who is not only a member of parliament but also prime minister and as such head of the government. Parliament keeps hence an indirect influence, notwithstanding the framework law, as it (or its majority) also forms the government. The typical British political institutions of weakness if not absence of checks and balances and strong centralization of power (backed by public trust in the state) increase the decisiveness of public authorities and the governability of the country, and contribute to relatively quick transposition - and that notwithstanding the general distrust and even dislike of the British as regards everything that comes from Brussels.

Another higher level institution, the 'Supremacy of Parliament' doctrine has been behind the early involvement of the British parliament in the negotiation stage in Brussels. It was one way to regain some of this doctrine, once Britain joined the EU, and Parliament was de facto no longer supreme.

Such mechanisms fill the 'black box' between a general explanatory variable 'dualism' or 'checks and balances' and transposition performance.

Summarizing: The differences in delay between countries can partially be explained by the different instrument choices - and, as argued, these are determined by legislative

history, policy area, and traditions and by constitutional law. Some countries can and do choose more often ministerial decisions, others have to use statute law or royal/presidential decrees.

However, even if we keep this variable constant and compare the transposition performance on the same instrument category, we will still find differences between countries. These can be accounted for by differences in:

- a- concrete legislative procedures linked to the same instrument in the various countries
- b- differences in discretion and room for maneuver of actors within the institutional framework
- c- political interests and resistance, using the institutional framework
- d- regulatory styles of law makers
- e- task and role perceptions of actors involved and differences in identity-definitions
- f- patterns of organizational differentiation and coordination within and between organizations (such as ministries) involved in transposition
- g- finally, also differences in the occurrence of incidents, and the paths created by significant incidents.

Let us now elaborate a bit on these factors.

5.3. Discretion

In determining the legislative procedure to be followed, the instrument *defines the institutional context in which the actors involved in the process are embedded*. And the same instrument category usually specifies different procedures, actors, authorities, tasks, and patterns of interaction.

Within this framework, actors usually do not only have some choice to influence the substance of the decision making, but they have also some *discretionary authority* to influence the time needed for decision making. Within limits they can try to speed it up or stretch and delay it. However, it is to be expected that the degree of discretion may differ by country, policy area, and ministry. The formal legislative procedures may allow for more or less. Thus e.g. fixed terms for reaction of a particular actor may be set. Some formal decision making rules allow

Furthermore, how, in which way, and to what end they will use this discretion will depend on their interests, regulatory styles, task perceptions, identities, their professional socialization, the organizational structures within which they function, and the networks and epistemic communities they form part of and from which they derive their norms and values, which are guidelines for their actors.

5.4. Political Interests, Resistance, Conflict

Legislation is always subject to political conflict. That is why we as political scientists are of course interested in it. Within the framework of the formal legislative process actors try to realize their interests, against the resistance of others. This should not be different with transposition as a legislative process. Or should it? Perhaps it should. Transposition is namely a rather special kind of law making: the input and output are already given. The substantial room for maneuver is limited. The issues have namely already been decided. Therefore, we would expect political conflict over the content of the transposed text to be relatively limited; and political resistance should not be a main reason for delay - notwithstanding what we said

in the introduction to this paper. In the end, it is rather senseless. Incomplete or wrongful transposition will eventually result in an infringement procedure for the ECJ.

Indeed, the indications are that delay is only rarely caused by political resistance. Political conflict manifests itself usually in the pre-directive phase, in the negotiations over the texts. And these conflicts can be fierce and long. Hence some directives are long in the making, five to six years are no exception. Political resistance as a source for delay is likely to be found only under one or more of the following conditions:

a- the directive touches upon some deeply felt beliefs in the nation, such as with the biotech directive in Austria and some other countries; the biotech patent issue (Directive 98/44/EG) in the Netherlands; the liberalization of the gas- and electricity markets (infringement procedure against France in 2001); the services-liberalization or 'Bolkestein directive' perhaps in the future; or where the directive has enormous negative economic or financial consequences, as with the nitrate-directive. We do not find it often in the field of food safety regulation, notwithstanding the fact that food safety is a highly contested issue, closely related to deeply felt cultural beliefs (Van Waarden, forthcoming). For that, most food safety directives are too technical, or merely elaborations of earlier regulations. Wherever there is political conflict over transposition, it is usually for other than food safety reasons (as with the chocolate directive).

b- where the national parliament was little or not involved in the negotiations over the directive, where it hence is felt that this lacks democratic legitimacy in the country concerned, and where parliament now tries to get in on the discussion, insufficiently realizing that it is too late.

c- where the national government tries to add additional elements of its own to the instruments of transposition, which are subsequently resisted by parliament. Thus recently, the Dutch First Chamber of Parliament unanimously vetoed a transposed text on the regulation of financial products, because it did not agree with a little item that the Dutch government had added above what was required by the European directive.

This implies that the chance of delay is smallest, where transposition is a literal one-on-one transposition of the text of the directive. The good performance of the British as regards transposition is considered in large part to be caused by its policy to transpose literally as much as possible. For that reason, the Dutch government has recently ruled that transposition should preferably be done one-on-one. However, as one civil servant remarked, that is a bit cumbersome when the directive concerns a policy that the country is newly developing, as with the liberalization of energy markets. It could imply that one enacts a law that shortly thereafter has to be changed again.

The conclusion: political resistance is one explanation, but its importance is probably exaggerated, as politicized cases get publicity and others not.

5.5. Regulatory Styles

Whether and how actors involved will use their discretionary authority will be influenced by the *regulatory style* they have developed in the course of time, and these can be specific for a certain country, a policy field, or an individual organization. There is a substantial literature on regulatory styles (e.g. Atkinson and Coleman (1989), Badaracco

1985, Brickman, Jasanoff and Ilgen 1985, Kelman 1981, Lundqvist 1980, Richardson 1982, Vogel 1986, Wilson 1985, Van Waarden 1995, 1999, Windhoff-Heritier 1989) that could fruitfully be applied to the topic of transposition. Two main dimensions of regulatory styles that have emerged from this literature are the contrast pro-active versus reactive regulatory style; and consensual versus adversarial style.

States known for a pro-active regulatory style could be expected to take active and early initiatives to satisfy their obligation to transpose European directives. And indeed, studies confirm that countries that do have such a style are relatively quick with transposition. The UK is a case in point. In the country, known for its quick transposition procedures, civil servants start the procedure already before the official proposal from the Commission (UK Transposition guide). Recently, the Netherlands has followed this example. Here the primary responsible Dutch Ministry forms a small committee of civil servants with the task to prepare transposition, the moment a Common Position on a draft directive has been agreed to in Brussels.

As to the dimension consensualism versus adversarialism: Holland is also known for a consensual policy making style. It has a long historical tradition with this, going back to the days of the Dutch Republic. This is done in the interest of effective, efficient, and quick administrative implementation and enforcement. Experience has shown that if a broad support base has been created in drafting legislation, less resistance is to be expected in the enforcement stage. Thus, though decision making - here transposition - may be a bit slower, actual enforcement may be quicker.

By contrast, an adversarial, impositional and authoritative style may be characterized by the opposite trade-off: relatively quick and easy decision making - read transposition - but at the cost of ineffective, inefficient, and slow administration and enforcement. Northern European administrators (such as the civil servants we interviewed) often argue that that is the case in Southern European countries: a more authoritarian and impositional style, resulting in quick transposition on paper, but a slow and ineffective enforcement and/or many appeals procedures against enforcement decisions. The expectation of weak enforcement among the economic subjects concerned may also reduce their resistance to paper-transposition, thus facilitating transposition even more. To determine whether these suspicions are not mere 'theory' but also empirical reality is obviously beyond the scope of this study. It would require that we study and compare the whole trajectory from law-in-the-Brussels-books to the law-in-action in the streets and shops all over the five countries that we study.

A third style dimension of regulatory styles is the continuum between pragmatism and legalism. Is there a preference for informal procedures versus for the use of detailed formal procedures? Is problem solving pragmatic, or does it follow rigid principles, or is it even ideologically inspired? Legalistic styles are characterized by formalism, detailed regulation, rigid rule application, active prosecution, centralization and low discretion for lower administrators, while pragmatic styles are informal, flexible, and with an importance of means (e.g. considerations of practicality) in relation to ends, both in rule formulation and implementation.

British civil servants are according to the literature flexible in rule formulation and application. So are the Dutch, as can be deduced from their policy of 'gedogen' (tolerating a lesser evil in order to more effectively fight a greater evil). By contrast, German authorities value universal and equal rule application. Therefore, the state tends to limit the discretionary powers of its civil servants as regards rule interpretation. And the German legal system requires a strict, legalist style of policy implementation.

Regulatory styles will affect transposition in two ways or on two levels. First of all, they will already have *influenced the institutional framework*, the legislative procedures and instruments that a country has developed and is now applying to transposition. Thus British pragmatism has found expression e.g. in:

- the Parliamentary rule that a Bill introduced in Parliament has to get Royal Assent in the same parliamentary session - putting pressure on parliamentary decisionmaking;
- the agreement on a broad enabling act (European Communities Act), giving the government broad powers to transpose by using lower-level instruments. If one cannot change the law in the transposition phase any more, why bother discussing it at length in Parliament; it makes more sense to do so when the result can still be influenced, i.e. in the negotiating phase in Brussels prior to enactment of the directive.

German legalism forces civil servants to observe procedures more closely, to write detailed legislation, and hence to fit new elements, such as directives, into a plurality of already existing measures. Therefore, they often have to transpose a directive with a relatively large number of different legal instruments, including both Gesetze and Verordnungen. (Asser Institute 2004: 14, 20). The importance of precision produces also often lengthier texts than in usual in other member states.

Dutch consensualism has produced legislative procedures that include a phase of semi-official consultation of the economic interests affected by transposition; In food safety the Ministry of Health has institutionalized this by creating a formal advisory body of the industry and consumers, the 'Regulier Overleg Warenwet' (Regular Consultation Commodity Law), and by giving this a place in the formal legislative procedure.

Secondly, regulatory styles will affect transposition, because they will *influence the social action and choices of the politicians and civil servants involved*. How will they apply the institutional rules, how they will interpret them, and how and to what ends they will use the discretionary powers they have? Thus, Dutch pragmatism (and a sense of crisis, see below) may induce ministers and responsible civil servants to 'chase' the Council of State to come quickly with an opinion on the text of an instrument transposing a specific directive. As said, the Council has to be involved, but it is not bound to react within a certain time limit.

5.6. Task and Role Perceptions

Different actors have different tasks and responsibilities, and that will determine their priorities, and the (sub-)goals they will try to realize with transposition. Will they wholeheartedly stand behind the goal and means of the European directive and try speed up its transposition, or will they try to modify it to make it 'a better piece of law'?

Differences in task perceptions are found first of all between Ministries as a whole. Thus the health minister is obviously responsible for public health and food safety, whereas the economics ministry is concerned about sufficient competition in the food markets and economic well-being of food producers. The justice ministry has the task to ensure the legal soundness of legislative products. These interests can be contradictory, causing delay. Thus the transposition of the chocolate directive (Directive 2000/36/EC from the Council and Parliament of June 23, 2000) was affected in the Netherlands by disagreement between the Health Ministry and the Foreign ministry. The first was merely concerned with food safety, and neutral to the controversial issue whether chocolate could also contain vegetable fats other than derived from cacao. The Foreign ministry, notably its Directorate-General for International Cooperation, wanted (as other member states like France with historical links to African cacao producing countries) to protect the interests of developing countries by

stipulating that only cacao-fat could be used. However, this led only to a conflict in the phase of drafting the directive in Brussels, and no longer in the transposition phase (as the minister had been replaced by then, see below) (see on the chocolate directive Steunenberg 2004).

Different interests and task perceptions can also be found within one ministry, between departments, and even between individual civil servants with different tasks. An interesting distinction that we found in our interviews is the distinction the practitioners involved in transposition themselves make between ‘policy lawyers’ (‘beleidsjuristen’) and ‘legislation lawyers’ (‘wetgevingsjuristen’). They have different perspectives on their tasks, on priorities, and this induces them to make different choices when they are confronted with trade-offs such as between ‘quickness’ and ‘precision’ or ‘carefulness’, or between ‘solving problems’ and ‘enacting sound legislation, consistent with the rest of national law’.

The policy lawyers work in ‘policy departments’ close to the minister and identify with the goals and tasks of the ministry. For them, legislation is an instrument of policy making, of problem solving. If the goal is food safety, they will phrase and evaluate transposition texts from this perspective. If the goal is quick transposition, they will give that priority, and accept possible legal deficiencies or ‘shortcuts’ with democracy in the interest of speed. By contrast, ‘legislative lawyers’ work in departments called ‘Legislation and Legal Affairs’ and see themselves as the guardians of the soundness, clarity, consistency, democratic legitimacy and otherwise quality of legislation. These interests will induce them to sacrifice speed, if need be.

From this we learn that the tasks and role perceptions are also influenced by - and can be manipulated through - the organizational pattern of differentiation, specialization, and coordination both between and within government ministries. The typical strategy to give a specific task priority is to create a sub-organization with that goal - and to provide it of course with the necessary resources, in terms of finance, personnel, information, and political access and standing.

Finally, the role perception of civil servants and politicians involved in the process is also influenced by the profession in which they have been trained and socialized and the professional networks or epistemic communities which they are part of. That differs between countries, and in some countries also between ministries/policy fields (e.g. Armstrong 1973). Typically, German civil servants have a legal training (passing legal exams is a precondition for higher positions in the civil service); French leading civil servants are trained in the Grandes Ecoles, most of which have an engineering tradition (Ecole des Mines, Ecole Polytechnique, ENA); British higher civil servants are trained as generalists in the liberal arts at Oxbridge; while the Netherlands lacks a central recruitment system and each Ministry recruits its own civil servants, leading to different traditions in various Ministries. This will influence their role perceptions as prescribed by the legislative framework within which they have to act. Those actors who spend many years getting socialized into legal thinking (in school, and on the job) will be more responsive to the need to remain within the boundaries set by the law, legalistic approach - if only because they know the legislative framework better. While those socialized in an engineering tradition are likely to make choices similar to the Dutch ‘policy lawyers’ mentioned above.

5.7. Inter- and Intra-organizational Coordination

Different actors may harbor different interests, work traditionally according to different styles, and have different task and role perceptions.

Of course, transposition would go faster, the smaller the variety of interests and role perceptions involved, i.e. the smaller the number of actors. Typically, in the Netherlands,

‘policy lawyers’ are involved in the negotiations leading up to a directive, while subsequently different civil servants, ‘legislative lawyers’, become responsible for transposition. This is e.g. the case in the Economics ministry. This increases the number of actors involved, and the variation of perspectives. Furthermore, the ‘legislative lawyers’ new to the directive, have to familiarize themselves with the issue and what is precisely meant by the directive (in case the wording is a bit vague or ambiguous, as is often the complaint), while this knowledge was already present in the heads of those that did the negotiations. Where negotiation and transposition is done by the same persons, transposition could be faster, if only because it saves time. This is the case with the transposition of food safety directives by the Dutch Health ministry; and is also a general characteristic of British transposition. Here the basic rule is that transposition is done by the same civil servants that also did the negotiations in Brussels.

Where several actors are involved, transposition will be facilitated, if a) one actor/ministry is given the primary responsibility and the task to initiate, lead, and monitor progress; and b) if there is some coordinating committee, where all concerned participate, that organization, that regularly meets, checks progress, and where potentially a ‘culture of transposition’ could develop that values quick, efficient, and complete transposition. Indeed, most member-states have such forms of organization created, the Dutch e.g. the Inter-departmental Committee European Regulations (ICER) that meets weekly. Such measures can be considered a concretization of the rather general variable ‘administrative capacity’; though of course more general interpretations of this (presence of professional bureaucracy ,etc.) will be behind the creation of such more concrete forms of ‘administrative capacity’.

5.8. Incidents, Accidents, Chance. Limited Rationality

Most social scientific researchers have a nomothetic ambition. They are primarily interested in identifying regularities, in finding structural causes for phenomena, in coming up with generalizable statements, perhaps even ‘laws’ of social science. Thus transposition researchers have tried to explain compliance of member states by looking for correlations with structural variables. An underlying assumption thereby is that decision making is a rational phenomenon, that there is a logical, causal connection between some independent variable and compliance.

However, transposition is a form of history. And in history both structure and incident play a role. Historical processes are one the one hand driven by structural causes that exert long-term effects. On the other hand, within this structural context, incidents happen that can affect the ‘course of history’, in our case the speed of transposition.

Structural causes of decision making imply some form of rationality. However, from March’s (1988, 1994) behavioral theory of decision making we have learned that policy and law making are in actual practice often much less rational and systematic as it is often portrayed to be and as both citizens and policy makers would like to see it.

One constraint that March mentions is the scarcity of attention of policy makers. This is typically a ‘private good’: excludable and rival. Those in influential positions in legislative processes have many responsibilities, busy schedules, and are confronted by many demands from a plurality of other actors. Because of time and resource constraints they have to make choices where to devote their attention to, and this may shift quickly, as they are continually confronted by new demands on their time.

For political leaders, transposition is in general not a very sexy topic to devote attention to. Not much credit can be earned with it. It is not important for political success or

survival. Most issues with which European directives are concerned are often rather technical, and do not speak to the imagination of the public and the media. If there is political interest, such as in the case of biotech, biotech patenting, liberalization of the service-industries, it is usually critical of the directive, and a motive for delay. Apart from such cases, the public interest in European issues is very low. The focus is on national politics. And where the interest of the public and the media is, there is also the interest of politicians and their advising civil servants.

Specialized administrators may have more time to devote attention to transposition, but if their political supervisors do not give it priority the latter will keep the responsible departments short on resources, including manpower, leading to work overload and scarcity of attention also on the part of administrators. That is one specific interpretation of ‘administrative capacity’, a variable mentioned in the transposition literature. Curiously enough, some Dutch transposition measures explicitly mention in the explanatory memorandum (‘Memorie van Toelichting’) accompanying the Order in Council that ‘the deadline could not be met for reasons of lack of administrative manpower’ (e.g. Warenwetbesluit Koffie- en cichorei-extracten 2001: 5).

However, certain events or incidents can change the priorities. These can be temporary, merely producing cycles of attention and inattention; but they can also become ‘critical junctures’, causing more permanent changes. Some such incidents can and have been:

a- Scandals and crises.

Regulatory activity has frequently been intensified in reaction to crises and scandals, which either heightened distrust in the market, or in the government. The history of social and economic regulation, in particular in food safety and quality, is full of them: the US Food and Drug Administration was formed after 12 people died from a certain medicine; the Dutch dairy scandals around 1890 led to the first introduction of modern day quality controls; the economic crisis of the 1930s sparked the development of the French system of *Appellation d’Origine Controlée* (from 1935 on); the 1963 thalodamide scandal set the stage for the world-wide regulation of the admission of pharmaceuticals to the market; the 1980s Austrian scandal of mixing ‘anti-freeze’ in their wine (to sweeten it) and the Dutch shrimp scandal (a dozen senior citizens dying from eating peeled shrimp) led to an overhaul of consumer protection regulation. The recent various animal epidemics (BSE, foot and mouth disease, pig and chicken pests) led to a tightening of veterinary inspections, animal feed standards and more in general food regulation. Similarly, crises and scandals can also increase attention to transposition.

An example is the so-called ‘Securitel’ case in the Netherlands. This was not a problem of transposition *per se*, but one of implementation and enforcement of a transposed directive. One directive required member states to notify the European Commission of technical standards that the national standardization bodies create in order that the EC would be able to evaluate their consequences for free trade. The directive was transposed, but actual implementation remained lax. One standard case - Securitel - came before the ECJ and it ruled that because this standard had not been notified, it was void. Societal actors could not be bound by it. In searching its files the government found that over 400 standards had not been notified, and an avalanche of liability suits threatened. It was important in that it focused legal, public, and political attention on the legal responsibilities the Dutch government had towards the Union, and the serious (financial) consequences of default.

b- Temporary extra responsibility and visibility. The attention to European issues experiences a boom shortly before and during a country’s six months Presidency of the EU. Presidents

have the responsibility and inclination to blame and shame other member states as regards compliance, but of course they can only do so legitimately when they themselves cannot be reproached anything. They have to set the good example. Thus we see frantic transposition activity in countries shortly before they assume the Presidency. Ireland reduced its backlog in transposition in half, shortly before it took over the presidency in 2004. Our interviewees in the civil service all mentioned the importance of this event. It led to a positive cycle of attention and attempts to eliminate transposition backlogs, in the Netherlands in 1990, and again in 1997 and 2004.

c- The role of individual personalities in history, and their incidental coming and going in decision making arenas

That the 'accidental presence' of certain personalities at certain times in certain locations - and their disappearance e.g. murder at the 'right time' - influences the course of history is beyond doubt. The classic examples are 'the great leaders': Caesar, Alexander the Great, Hitler, Churchill, Thatcher, Watt, Edison, Ford. But also many lesser known ones: the judges that decided landmark cases, the inventor of the wheel, the few voters in Florida that helped George Bush get a majority. March (1994) has pointed out that the 'accidental' presence of certain individuals can influence decision making, and that their arbitrary entering and leaving of the decision making arenas contributes to the cycles of attention and the unpredictability and irrationality of decision making. Social scientists on the whole do not like such explanations by the presence of certain individuals, but it cannot be denied that such events do affect the course of history.

This factor also influences attention to transposition requirements in member states. Currently, the Dutch have a minister of economic affairs with a long history in European law and politics, Brinkhorst. He was formerly a professor of European law, a Dutch under-minister of foreign affairs, a Director-General at the European Commission, and a Member of the European Parliament. Having this background, he is very much concerned with European integration, a common integrated market, and timely transposition of directives. Already in 1978 he questioned, as a member of the Dutch parliament, the government about its transposition record after a study of two social scientists, Maas and Bentvelsen (19...) showed that the country did not perform as well as it thought it did.

Having this personal historical background, Brinkhorst has given high priority to transposition - also from his responsibility as economics minister for optimal competition. He has written several memos to parliament, managed the current government to give top priority to transposition - it now takes formally precedence over domestic legislative initiatives - and he is attempting to streamline the legislative procedure, trying to reduce the position of parliament in the transposition phase, following the British example. As yet it is uncertain whether he will succeed; and ... how long he still will be minister. His entry, or rather, that of his small party of left-liberals D'66, into the government is somewhat of an accident; and so could his disappearance be. His party is small, and dwindling.

Brinkhorst is a case of influence of individuals on the process of transposition in general; other 'personal accidents' may affect specific directives. March (1994) has made the curious observation that, as specific actors come and go in decision making arenas, they may fiercely lobby for or against a decision, but once it is taken they lose interest in its actual implementation and enforcement. These and similar observations form the basis of his 'garbage can model' of decision making.

Such incidents can also be found around transposition decisions. The Dutch ministry of Foreign Affairs (its development aid department) resisted at first quite fiercely the draft chocolate directive, but eventually acquiesced in the decision, and showed no interest

whatsoever any more in the transposition phase. The reason: From 1994-98 the leftist socialist Jan Pronk, with a long-time history of involvement in (UN) development issues, was minister of development aid, and wanted to protect the interests of the cacao-producing African countries. He intervened repeatedly and made the Dutch government side with France, Belgium and Luxemburg in resisting allowing other vegetable fats in the chocolate preparation process. By the time the directive was enacted, in 2000, he had however left (though the same coalition was still governing) and taken up a new job with a UN organization (Steunenberg 2004).

d- Just as the accidental entry and exit of certain individuals with a specific history affects delays in transposition, so does the entry and exit of governments. The accidental change of government - twice within a period 90 days - delayed the Dutch transposition of the chocolate directive. Political uncertainty hence does not only affect the continuity of domestic policy, but also of the transposition of European directives.

Of course, there is a relation - one could speak of a *dialectic - between structure and incident*. If less rational factors affecting transposition would be purely incidental, one would expect them to be randomly distributed across countries, and hence in the long run not to affect transposition. However, such is obviously not the case. This points to the fact that the occurrence, and importance, of specific events is influenced by structural factors: a parliamentary political system with a proportional representation electoral system, making coalition governments necessary, produces less stable governments, so that the entry and exit of governments and individual ministers will exert more influence on transposition; and a legalistic culture, and a structural importance of lawyers in the public administration, can make a government more sensitive to scandals such as Securitel.

Conversely, incidents and accidents can be critical junctures, which induce change, e.g. a modification of the legislative procedures, that is, the institutional framework for transposition. Even if the change is minimal, its long-term effects can be significant. The event can cause a change the path of development, spark a minor change that can subsequently structure further choices in a different direction. The creation of the American FDA following a drug scandal, was originally a minor change. But once an organization was created for this task, it set a new train in motion: a train of internal organizational development, amplified by further additions of tasks and resources by external actors. The current FDA is incomparable to the original one. It is a bit as with chaos theory: the proverbial butterfly in that causes a storm on the other side of the globe. Crises can cause hypes, complaints about poor transposition can get parroted in the media and among policy makers, and before one knows it, they induce institutional change.

6. Policy Learning

Thus incidents and accidents, that give transposition temporary priority, can give rise to policy learning. This seems to be indeed the case. The legislative procedures for transposition have been modified over time in different countries, new actors have been created with the responsibility to monitor transposition progress, procedures have been streamlined, gradually routines are developed and modified. As transposition become more of a routine activity - and this increases with the amount of directives to be transposed - it goes quicker, resulting in a decline of delays.

That is what our data indeed show, a learning and routinization effect. The average delay has gradually decreased over the years. In the 1960's and 1970's the average delay was 221 days, whereas in the period 2000 until 2004 on average there are no delays; transposition happens even 2 months before the deadline. (Table 7)

Table 7. Delays over time*

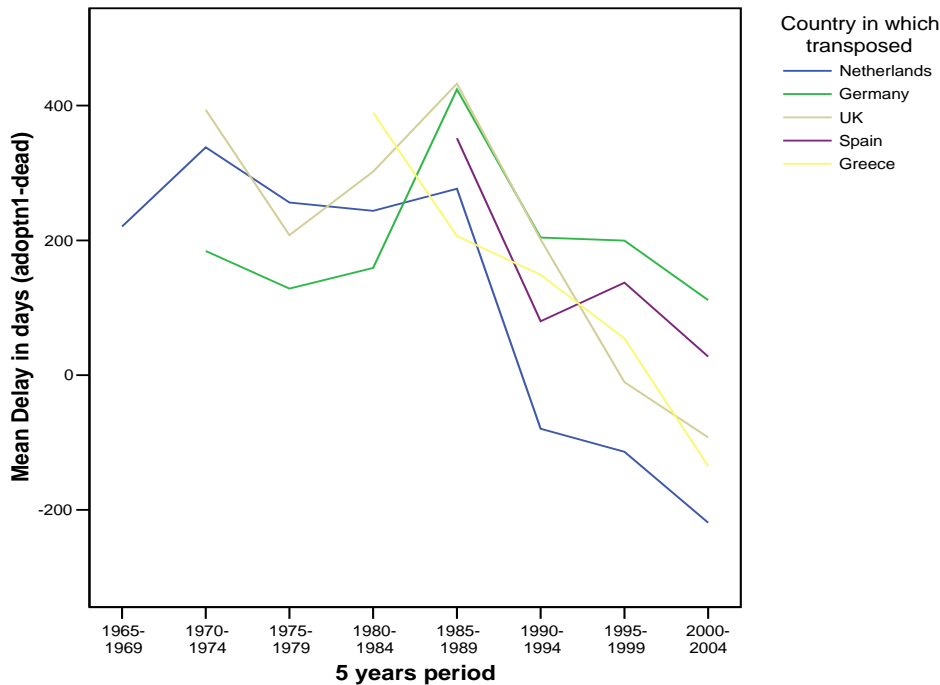
	Mean delay in days	N
1960-1969	221	7
1970-1979	221	102
1980-1989	303	180
1990-1999	68	286
2000-2004	-59	139
Average / Total	151	714

Source: Own data

* After correcting for outlying cases (See Annex 2)

This positive development can be observed in all five countries under investigation. However, there are differences in the extent of the improvements. The Netherlands, the UK and Greece have moved from average delays of about a year at the beginning of their membership to the average transposition happening well in advance before the deadline (Figure 5). Spain has also improved its transposition speed, but the mean delay remains in positive numbers: 28 days. Germany does not really show an improvement concerning the transposition delays. In 1970's its average delay was 138 days and in this millennium it is still 111 days.

Figure 5. Mean delay in days over time in the member states*



Source: Own data

* After correcting for outlying cases (See Annex 2, Figure 6)

Of course, the European Commission can and has tried to influence the attention member states give to transposition, and to make them develop more efficient routines. It does so by regularly publishing the scoreboard - which is a benchmarking instrument for the member states - and by initiating infringement procedures against them when they fail to comply. Furthermore, learning is of course a result of the increase in the frequency of need for transposition. However, domestic incidents like scandals and personalities have also affected the streamlining of legislative processes and the development of new standard operating procedures. In doing so it even tends to affect the normal domestic legislative procedures. Indeed, quite a special case of 'Europeanization' of national institutions.

Two cases of learning and streamlining of procedures: NL and Britain ... NL: new institutions, procedural rules created: the *Aanwijzingen voor de Regelgeving (Ar)*. ...Learning from others: DK, UK; negatively, from France ...

7. Conclusion:

In this paper we have presented some data on transposition delays, and have developed a model for explaining the differences in delay between member states. Many factors contribute to transposition delays. Method-purists will probably object that this model leads to an enormous over-determination. That may be so, but that it is in the nature of the reality of transposition. It does not help or do justice to the subject to try to find one holy grail, one variable that explains all, because it does not exist. All attempts to far show that quantitative correlations can only explain a very minor part of the variance. This calls for a need to really *understand* the processes involved in transposition, to get into the black box of transposition decision making.

We have done so by considering transposition as a special kind of national legislation: where the input and expected output is the same for all member states, but where the throughput can differ, resulting in temporal output differences, namely delays beyond the deadline of the directive. This special kind of national legislative decision is, like all legislation, influenced by the formal institutional framework, the legislative procedures specified for certain legislative instruments. We see this framework from the perspective of sociological institutionalism: Actors function according to, in and interpret and modify this institutional framework. They may have more or less discretion for interpretation, and where they do, their interests, and task and role perceptions will affect the process. We have also focused on the less rational elements in these decision making processes: scarcity of attention, cycles in priorities, and the influence of incidents and accidents. In the end, a dialectic between structure and event also influences transposition - like any form of history. But in this dialectic, actors learn, and new routines or standard operating procedures emerge, that contribute to a reduction of transposition delays over time.

Bibliography

- Armstrong, John A. (1973) *The European Administrative Elite*, Princeton: Princeton University Press
- Asser Instituut (T.M.C.) (2004) *Implementatie EG richtlijnen vergeleken: Een onderzoek naar de implementatiepraktijk in een aantal EU-lidstaten in het bijzonder op het terrein van het maritiem vervoer*, research report, commissioned by the Dutch Ministry of Transport and Hydraulics
- Atkinson, Michael M., and William D. Coleman (1989) 'Strong states and weak states: Sectoral policy networks in advanced capitalist economies', *British Journal of Political Science*, vol. 19
- Azzi, G.C. (2000) The slow march of European legislation: The implementation of directives. In: K. Neunreither and A. Wiener (eds) *European integration after Amsterdam: Institutional dynamics and prospects for democracy*. Oxford: Oxford University Press. 52-66
- Badaracco, Joseph L. (1985) *Loading the Dice. A Five-Country Study of Vinyl Chloride Regulation*, Harvard Business School Press, Cambridge
- Bekkers, V., J. Bonnes, A. de Moor-Van Vugt, P. Schoneveld, and W. Voermans (1995) The case of the Netherlands. In: S.A. Pappas (ed.) *National administrative procedures for the preparation and implementation of community decisions*. Maastricht: European Institute of Public Administration. 397-440.
- Berglund, Sara (2005) 'Explaining Delays in the Transposition of Utility Directives: A Sociological Institutional Account', paper prepared for the EUSA Conference, 31 March - 2 April 2005, Austin Texas
- Börzel, T.A. (2001) Non-compliance in the European Union: Pathology or statistical artifact? *Journal of European Public Policy* 8: 803-24.
- Börzel, T.A. (2003) Guarding the Treaty: The compliance strategies of the European Commission. In: T.A. Börzel and R.A. Cichowski (eds) *The state of the European Union: Law, politics and society (Volume 6)*. Oxford: Oxford University Press. 197-220.
- Börzel, T.A. and T. Risse (2000) When Europe hits home: Europeanization and domestic change. *European integration online papers (EIoP)* 4: 25. <http://eiop.or.at/eiop/texte/2000-015a.htm>.
- Börzel, T.A., T. Hofmann, C. Sprungk (2004) 'Why do States not Obey the Law?', paper for the Workshop on Transposition and Compliance in the European Union, Oud-Poelgeest, Leyden
- Brickman, Ronald, Sheila Jasanoff, and Thomas Ilgen (1985) *Controlling Chemicals: The Politics of Regulation in Europe and the United States*, Cornell University Press, Ithaca
- Bursens, P. (2002). "Why Denmark and Belgium Have Different Implementation Records: On Transposition Laggards and Leaders in the EU." *Scandinavian Political Studies* 25(2): 173-195.
- Dimitrakopoulos, D.G. (2001) The transposition of EU law: 'Post-decisional politics' and institutional autonomy, *European Law Review* 7: 442-58.
- Dimitrova, A.L. and B. Steunenberg (2000) The search for convergence of national policies in the European Union: An impossible quest? *European Union Politics* 1: 201-26.
- Duina, F. (1997) "Explaining Legal Implementation in the European Union", *International Journal of the Sociology of Law*, 25: 155-179
- Duina, F. (1999). *Harmonizing Europe: Nation - States within the Common Market*. New York, State University of New York Press.

Falkner, G., M. Hartlapp, S. Leiber, and O. Treib (2002) Transforming social policy in Europe? The EC's parental leave directive and misfit in the 15 member states. Köln: Max Planck Institute for the Study of Societies (Working Paper 02/11).

Falkner, G., M. Hartlapp, S. Leiber, and O. Treib (2004) Non-compliance with EU directives in the member states: opposition through the backdoor? *West European Politics* 27: 452-73.

Falkner, G., O. Treib, M. Hartlapp, and S. Leiber (2005) *Complying with Europe? The impact of EU minimum harmonization and soft law in the member states*. Cambridge: Cambridge University Press.

Giuliani, M. (2003) Europeanization in comparative perspective: Institutional fit and national adaptation. In: K. Featherstone and C. Radaelli (eds) *The politics of Europeanization*. Oxford: Oxford University Press. 134-55.

Giuliani, M. (2004) 'EU Compliance: Macro, Meso, or No Institution at All?', URGE Working Paper 6/2004

Haas, P. M. (1998). "Compliance with EU directives: insights from international relations and comparative politics." *Journal of European Public Policy* 5(1): 17-37.

Hall, Peter A., and Taylor, R. (1996) 'Political science and the three institutionalisms', *Political Studies* 44: 936-57.

Haverland, M. (2000) National adaptation to the European Union: The importance of institutional veto points. *Journal of Public Policy* 20: 83-103.

Haverland, M. (2003) The impact of the European Union on national environmental policies. In: K. Featherstone and C. Radaelli (eds) *The politics of Europeanisation*. Oxford: Oxford University Press. 203-21.

Héritier, A. (1995) 'Leaders' and 'laggards' in European clean air policy. In: B. Unger and F. van Waarden (eds) *Convergence or diversity: Internationalization and economic policy response*. Aldershot: Avebury, 278-306.

Héritier, A. (1999) *Policy-making and diversity in Europe: Escape from deadlock*. Cambridge: Cambridge University Press.

Héritier, A., D. Kerwer, C. Knill, D. Lehmhuhl, M. Teutsch, and A.-C. Douillet (2001) *Differential Europe: The European Union impact on national policymaking*. Lanham, MA: Rowman and Littlefield.

Kapteyn, P.J.G. and P. Verloren van Themaat (1998) *Introduction to the law of the European Communities: From Maastricht to Amsterdam*. London, The Hague, Boston: Kluwer (third edition).

Kassim, H. (2003) 'Meeting the Demands of EU Membership: The Europeanization of National Administrative Systems', in K. Featherstone and C.M. Radaelli (eds) *The Politics of Europeanization*, Oxford: Oxford UP, pp. 83-111

Kassim, H., B. Guy Peters, et al (eds) (2000) *The National Coordination of EU Policy. The Domestic Level*, Oxford: Oxford UP

Keating, Michael (2005) ... paper ...

Kelman, Steven (1981) *Regulating America, Regulating Sweden: A Comparative Study of Occupational Safety and Health Policy*, MIT-Press, Cambridge

Knill, C. (1998) European policies: The impact of national administrative traditions on European policy making. *Journal of Public Policy* 18: 1-28.

Knill, C., and A. Lenschow (1998) Coping with Europe: the impact of British and German administrations on the implementation of EU environmental policy. *Journal of European Public Policy* 5: 595-615.

Knill, C. and A. Lenschow (eds) (2000) *Implementing EU environmental policy*. Manchester: Manchester University Press.

- Knill, C., and D. Lehmkuhl (1999) How Europe matters: different mechanisms of Europeanization. *European integration online papers* (EIoP), 3: 7.
- Lampinen, R. and P. Uusikyla (1998). "Implementation Deficit - Why Member States do not Comply with EU directives?" *Scandinavian Political Studies* 21(3): 231-251.
- Lampinen, R. and P. Uusikylä (1998) Implementation deficit: Why member states do not comply with EU directives? *Scandinavian Political Studies* 21: 231-51.
- Lundqvist, L. (1980) *The Hare and the Tortoise: Clean Air Policies in the United States and Sweden*, Ann Arbor
- March, J. G. and J. P. Olsen (1989) *Rediscovering institutions: The organizational basis of politics*, New York: The Free Press
- March, J. G. and J. P. Olsen (1984) 'The New Institutionalism: organizational factors in political life', in *The American Political Science Review* 78(3): 734-49.
- March, J. G. and J. P. Olsen (1996) 'Institutional perspectives on political institutions', in *Governance* 9(3): 245-64.
- March, James G. (1988) *Decisions and Organizations*, Oxford: Blackwell
- March, James G. (1994) *A Primer on Decisionmaking. How Decisions Happen*, New York: Free Press
- Mastenbroek, E. (2003) 'Surviving the deadline: The transposition of EU directives in the Netherlands', in *European Union Politics* 4: 371-95.
- Mbaye, H. (2001) Why national states comply with supranational law: Explaining implementation infringements in the European Union 1972-1993. *European Union Politics* 2: 259-81.
- Mbaye, H. (2003) Compliance in the European Union: Administrative and judicial phase policy implementation barriers, 1960 to 1999. Paper presented at the ECPR General Conference, 18-20 September 2003, Marburg, Germany.
- Ostrom, E. (1986) An agenda for the study of institutions. *Public Choice* 48: 3-25.
- Page, E.C. and L. Wouters (1995) The Europeanization of the national bureaucracies? In: J. Pierre (ed.) *Bureaucracy in the modern state*. Aldershot: Edward Elgar. 185-204.
- Pierson, Paul (2000) 'Increasing Returns, Path Dependence, and the Study of Politics', in *American Political Science Review* 94: 251-67
- Richardson, Jeremy (ed.) (1982) *Policy Styles in Western Europe*, Allen & Unwin, London
- Risse, T., M.G. Cowles, J. Caporaso (2001) Europeanization and domestic change: Introduction. In: M.G. Cowles, J. Caporaso and T. Risse (eds) *Transforming Europe: Europeanization and domestic change*. Ithaca/London: Cornell University Press. 1-20.
- Scharpf, Fritz (2001) 'What Have We Learned? Problem-Solving Capacity of the Multilevel European Polity', Working Paper, Max Planck Institute for the Study of Societies (MPIfG), Cologne, paper 01/4, July
- Sprungk, C. (2004) '(Non-) Compliance with European Law in France: The Impact of Parliamentary Scrutiny', paper for the Workshop on Transposition and Compliance in the European Union, Oud-Poelgeest, Leyden
- Steunenberg, B. (2004) 'Turning Swift Policymaking into Deadlock and Delay: National Policy Coordination and the Transposition of EU-Directives', paper, prepared for ..., Leyden University
- Sverdrup, U. (2004) 'Compliance: a matter of ability? The role of government capacity in EU compliance', paper for the Workshop on Transposition and Compliance in the European Union, Oud-Poelgeest, Leyden
- Tallberg, J. (2002) Paths to compliance: Enforcement, management, and the European Union. *International Organization* 56: 609-43.

Teubner, Guenther (2001) 'Legal Irritants: How Unifying Law Ends up in New Divergences', in Peter Hall and David Soskice (eds) *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage*, Oxford: Oxford University Press, pp. 417-441

Thelen, Kathleen (1999) 'Historical Institutionalism in Comparative Politics', in *Annual Reviews of Political Science*, Volume 2. Palo Alto: Annual Reviews. 369-404

Treib, O. (2003) EU governance, misfit, and the partisan logic of domestic adaptation: An actor-centered perspective on the transposition of EU directives. Paper presented at the EUSA 8th international biennial conference, Nashville, Tennessee, 27-29 March 2003.

UK Cabinet Office *Transposition Guide*
(<http://www.cabinetoffice.gov.uk/regulation/docs/europe/pdf/tpguide.pdf>)

Unger, B. and F. van Waarden (eds) (1995) *Convergence or Diversity: Internationalization and Economic Policy Response*. Aldershot: Avebury.

Vervloet, K.A.E. (2000) *Transposition of EC Directives in the United Kingdom and in the Netherlands*, thesis, Utrecht University Law Department

Vogel, David (1986) *National Styles of Regulation. Environmental Policy in Great Britain and the United States*, Cornell University Press, Ithaca and London

Waarden, Frans van (1995) Persistence of National Policy Styles: A Study of their Institutional Foundations. In: Brigitte Unger and Frans van Waarden (eds) *Convergence or Diversity? Internationalization and Economic Policy Response*, Aldershot: Avebury, p. 333-372

Waarden, Frans van (1999) 'European Harmonization of National Regulatory Styles?', in John A.E. Vervaele et al (eds) *Compliance and Enforcement of European Community Law*, Deventer (Kluwer Law), pp. 95-124

Waarden, Frans van (forthcoming) 'A Treatise on Taste, Traditions, Transactions, Trust, and ... Tragedies?. The Prospects for Public and Private Food Regulation: A Booming Business', in Christopher Ansell and David Vogel (eds) 'Why the Beef? The Contested Governance of European Food Safety', Cambridge: MIT Press

Wilson, Graham K. (1985b) *The Politics of Safety and Health*, Clarendon Press, Oxford

Windhoff-Héritier, Adrienne (1989) *Verwaltungen im Widerstreit mit Klientelinteressen*, Deutscher Universitäts Verlag, Opladen

APPENDIX I. INFORMATION ON THE DATA

Table 8. Number of Directives that needed to be transposed before 01.02.2004

Country		N
Netherlands	Yes	181
	Unknown*	28
Germany	Yes	181
	Unknown*	28
UK	Yes	171
	Unknown*	21
Spain	Yes	106
	Unknown*	12
Greece	Yes	127
	Unknown*	19
Total	Yes	766
	Unknown	108
	Total	874

Source: Own data

*Unknown – the deadline for these directives is unknown. No such information is stated in the directive, or in the CELEX, Commission documents or literature.

Table 9. Completeness of the information on national transposition measures in Celex

	N	Percent
Complete	570	74,4
Incomplete	31	4,0
No reference	165	21,5
Total	766	100,0

Source: Own data

Table 10. Completeness of Reference. National instrument in our possession

	N	Percent
Complete reference + possession	685	78.4
Complete reference +not possession	41	4.7
Incomplete reference	17	1.9
National measure adopted after 1.2.2004	4	.5
No reference	127	14.5
Total	874	100.0

Source: Own data

**ANNEX II. DISTRIBUTION AND OUTLIERS OF DEPENDENT VARIABLE
‘DELAY’**

The dependent variable ‘delays in transposition’ is not normally distributed. It is positively kurtosed (Table 10).

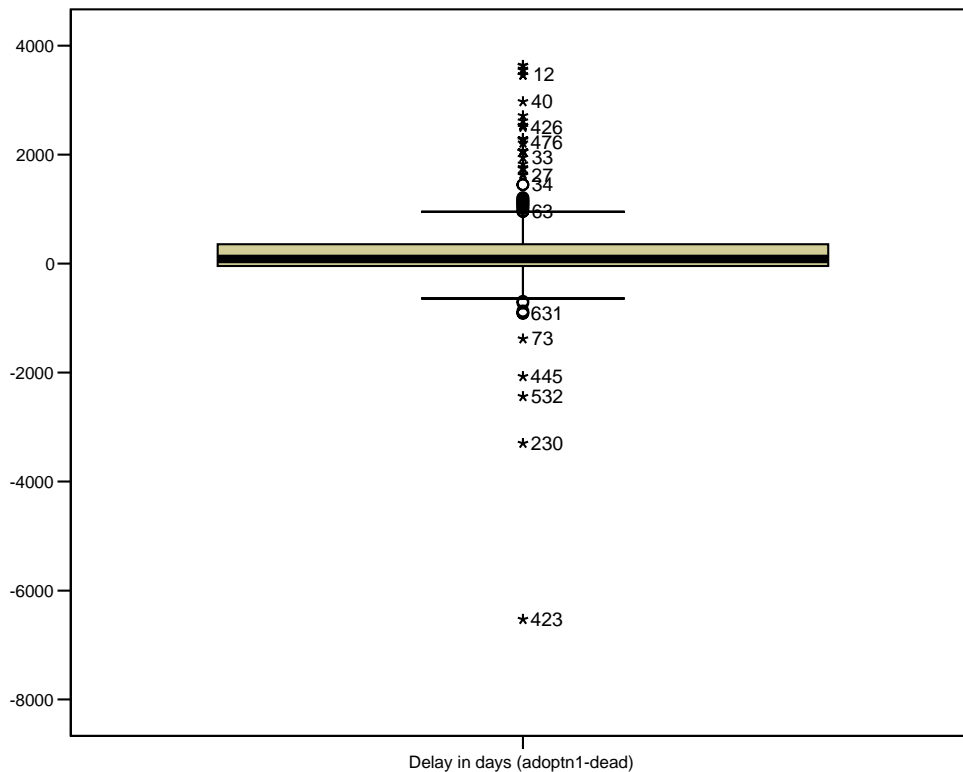
Table 11. Distribution of variable ‘delay’

	Data including outliers	Data excluding outliers
Mean	207,47	123,27
Std. Deviation	668,963	307,082
Minimum	-6528	-639
Maximum	3641	961
Skewness	,088	,607
Kurtosis	22,589	,310

Source: Own data

A number of extreme outliers cause this problem. One of the ways of dealing with correctly measured outliers is to exclude them from the analysis (Figure 5). In order to see the effect of the excluded cases, the following analysis will be done twice – once with the outliers and other without.

Figure 6. Outliers



The first outlier above zero is case number 63 that has a value of 1008 days. Thus, all cases having delay of 1008 or more are removed. The first outlier under zero is case number 631 that has a value of -691 days (a national instrument was adopted 691 before the deadline). All cases having this value or more are removed. Interesting to note is that 80 percent of outliers concern directives adopted before 1990.

Table 12 shows the outlier distribution per country. Germany has the highest number of outliers – 20 forming 38.5 percent of all outliers. The Netherlands has 11 outlying cases and Greece -10, UK – 8, and Spain only 3 outlying cases.

Table 12. Outliers per country

	N	Percent
Netherlands	11	21,2
Germany	20	38,5
UK	8	15,4
Spain	3	5,8
Greece	10	19,2
Total	52	100,0

Source: Own data

Now that the outliers are removed, the average delay has changed. Table 11. above demonstrates that it has decreased from 207.47 to 123.27 days. The range now is 1600 days instead of 10169 days, and kurtosis has obtained an acceptable value. If we would have included the outliers in the tables presented in the paper text the results would have been a bit different. In table 13 we include by way of example what table 1 would have looked like with outliers included.

Table 13. Transposition on or over time (Outliers included)

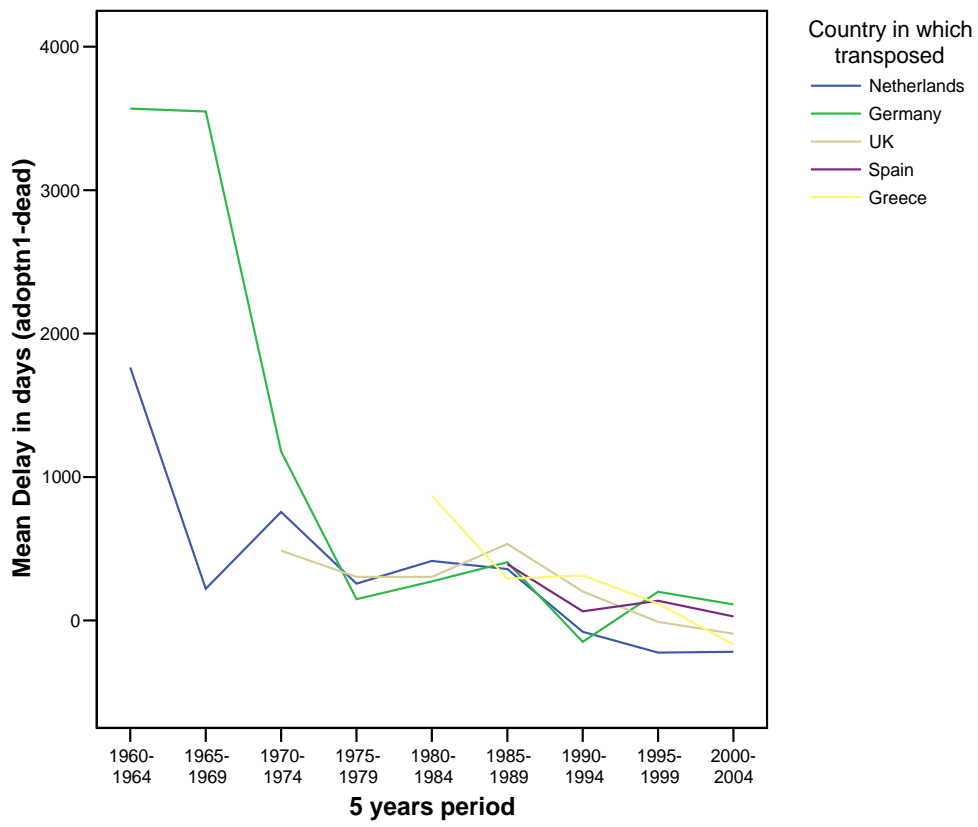
	N	Percent
Delayed	434	56,7
Precisely on time	1	,1
Too early	246	32,1
Total	681	88,9
Missing System*	85	11,1
Total	766	100,0

Source: Own data

* Information missing on whether the deadline of a directive or on the national transposition measure.

Figure 7 shows that the extreme outliers are located in the early years of transposition.

Figure 7. Mean delays in days in a country over time (outliers included)



Source: Own data

APPENDIX III. Hypotheses and their results in quantitative studies on transposition, implementation, or compliance with EU law

<i>I- Confirmed</i>				
	Hypothesis	Operationalisation	Expected result on compliance	Authors
1	Comparative economic power	Percentage of the raw total of GNP of all EU partners for each country for each year	Positive	(Mbaye 2001)
2	Regional autonomy	Regional autonomy index (Hooghe and Marks 2000)	Negative	(Mbaye 2001)
3	Administrative capacity/ government effectiveness	Administrative constraints (capacity): 1. Current receipts of the government for each year as a percentage of GDP (Cusack 1991) 2. Scale that tracks the professionalism of the bureaucracy, using the statutory construction of the civil service (performance-related pay (+), permanent tenure (-), public announcement of vacancies (+)) (Auer et al 1996 (Does not vary over time)) 3. Corruption index (Center for Corruption Research 2001)	Positive	(Mbaye 2001)
		<i>financial resources</i> →GDP per capita, share of tax revenue in GDP, (GDP per capita →World Bank's 'World Development Indicator'); <i>human resources</i> : quantitative: share of public spending on civil servants in GDP, share of civil servants on working population; qualitative: higher education of civil servants in years: average length of higher education of the population over the age of 20 in years of a country, bureaucratic efficiency (spending on civil servants →Cusack, education level →Barro and Lee, bureaucracy effectiveness and professionalism →Mbaye)	Positive	(Borzel, Hofmann et al. 2004)
		Government ability: the government effectiveness indicators developed by Kaufman, Klaay and Mastruzzi, published by the World Bank	Positive	(Sverdrup 2004)
4	Stable and efficient political institutions	<i>Preconditions of efficacy</i> : Type of parliamentary chambers, position of the head of state, type of government coalition, institutional autonomy of regions; <i>Government efficacy</i> : number of parties in parliament, number of parties in government, effective number of parties score, government support in parliament, party government efficacy score; <i>Stability of government</i> : polarisation, volatility of voter support; irregular changes of the government; government durability. Source: indexes, comparative literature.	Positive	(Lampinen and Uusikylä 1998)
5	Political culture in the member states	<i>Legitimation</i> : electoral participation, satisfaction with democracy; <i>Social cleavages</i> : social fragmentation, protest score; <i>Individual values and autonomy</i> : post-material values, individual autonomy, trust by other EU citizens. Source – indexes and comparative literature.	Positive	(Lampinen and Uusikylä 1998)

6	Rule of law	Opinion pool data by James L. Gibson	Positive	(Borzel, Hofmann et al. 2004)
		'Rule of law' index by Kaufman, Klaay and Mastruzzi, published by the World Bank	Positive	(Sverdrup 2004)
7	Type of national legal measure used	Statutes, orders in council, ministerial regulations – from national instrument	Statutes take more time than Orders in Council and Ministerial regulations	(Mastenbroek 2003)
8	Quality (1) and politicisation (2) of a directive	Commission directives vs. Council directives that are assumed to have less quality and are more politicised.	1-Positive/ 2-negative	(Mastenbroek 2003)
9	Length of deadline	Calculated from information in Celex and texts of directives	Negative	(Mastenbroek 2003)
10	Goodness of fit between EU and national policies	New national instrument= low level of fit, amendment= good fit	Positive	(Mastenbroek 2003)
11	Organisation of the executive	Ad hoc ministry yes, no, mixed; actual role of the Foreign Office in the organisation of EU affairs (central, mediated); executive organization (Kassim, Peters et al. 2000)	Positive, if organisationally the EU issues has achieved sufficient autonomy from transitional foreign policy	(Giuliani 2004)
12	Involvement of parliament in EU affairs	Parliament's rights concerning: - information - meetings - impact on policy ECPRD (2002); Katz and Wessels (1999)	Positive	(Giuliani 2004)
13	National coordination capacity	National coordination: low, middle, high depending on ambitions and style adopted by the MS in coordinating all the policy-actors at the national level (Kassim, Peters et al. 2000; Kassim 2003)	Positive	(Giuliani 2004)
14	Coordination at the EU level	Coordination capacity recorded at Brussels level 1-low, 2-medium; 3-high (Kassim, Peters et al. 2000)	Positive	(Giuliani 2004)

II- Confirmed, but weak explanatory power or variable explains very small part of variation

	Hypothesis	Operationalisation	Expected result on compliance	Authors
1	Number of national veto players*	Parties belonging to the government coalition (in the case of Germany also the Bundesrat when ruled by a different majority from that supporting the executive) – according to rules proposed by Tsebelis.	Negative	(Giuliani 2003)
2	Political and economic power of state	Power: gross domestic product, total population, size of the armed forces, proportion of votes in the Council, contributions to the EU budget	Negative	(Borzel, Hofmann et al. 2004)
3	Support of EU	Support of institutions: support of the membership of one's own country in the EU, + confidence in the European institutions - data from Eurobarometer surveys. No annual data available.	Positive	(Borzel, Hofmann et al. 2004)
4	Organisational differences between involved national ministries		Negative	(Mastenbroek 2003)
5	Inter-ministerial coordination problems		Negative	(Mastenbroek 2003)
6	Policy style exhibited by a member state (anticipatory vs. reactive)	Kassim et al (2001); Kassim (2003); Van Waarden (1999)	Positive. Performance is better if a member state exhibits anticipatory policy style	(Giuliani 2004)

III- Not confirmed

	Hypothesis	Operationalisation	Expected result on compliance	Authors
1	Number of national veto players*	veto players → institutional and partisan- veto player index by Beck et al. (2001)	Negative	(Borzel, Hofmann et al. 2004)
		The number of governments, the number of coalition partners in a government, ideological score of each coalition partner etc. Tsebelis website	Negative	(Mbaye 2001)

2	Level of corporatism	<i>Preconditions</i> : degree of unionisation, moderate left support; <i>Degree of corporatism</i> : consociationalism, corporatism	Positive	(Lampinen and Uusikylä 1998)
		The economy's level of integration (functional roles of social partners, not relying on structural factors) - Siaroff 1999 (per year for all countries)	Positive	(Mbaye 2001)
3	Bargaining power in the Council**	Weighted votes of member states in the Council - Hayes-Renshaw and Wallace 1997	Positive	(Mbaye 2001)
4	Degree of consensual democracy	Effective number of parties (Laakso and Taagepera index), the percentage of time during which one-party or minimum-winnig governments have ruled, the duration of the executives, the electoral disproportionality (Gallagher index), the degree of pluralism in the representation of interests (Siaroff 1999), the indexes of federalism, bicameralism, constitutional rigidity, judicial review, and central banks' independence (Lijphart 1999)	Positive	(Giuliani 2003)
5	Citizens' support for the EU***	<i>Confidence in the EU</i> : trust on the future of the EU, abolition of inner borders; confidence in the EU Council, European Parliament, and the Commission; <i>satisfaction with the EU</i> : EU membership, democracy in the EU, national benefits have been gained, national influence, citizens' say on EU matters, citizens' attachment to the EU	Positive	(Lampinen and Uusikylä 1998)
		Eurobarometer data	Positive	(Mbaye 2001)
6	Approval of democracy	Eurobarometer data	Positive	(Mbaye 2001)
7	Number of instruments used for transposition	Data from Quarterly of the Ministry of Foreign Affairs, the list of measures notified to the Commission, the Asser Institute's list, and Opmaat.	Negative	(Mastenbroek 2003)
8	New directive (as opposed to amendments)	Text of directive	Negative	(Mastenbroek 2003)
9	Use of QMV	Dichotomous variable (unanimous voting norm, before 1986, thereafter QMV)	Negative	(Mbaye 2001)
10	Dimension and organisation of national PR in Brussels	Composition of PR in numerical terms - IDEA Database; Vachers (2000); Eurostat	Positive	(Giuliani 2004)
11	Length of membership	Natural log of each state's length of membership)	Negative/positive	(Mbaye 2001)

* Variable 'number of veto players' has been tested in three quantitative studies, and only one of them showed the expected result, although explaining small amount of variance. In the rest of the studies, the hypothesis was not confirmed.

** The analysis showed significant negative correlation.

*** The author even found a strong negative correlation.