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The Netherlands

## **Presentation: Overview and analysis of the implementation of EU legislation**

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# **Overview and analysis of the implementation of EU legislation**

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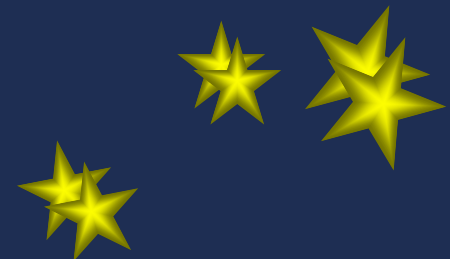
**European Parliament September 15**



# Implementation studies

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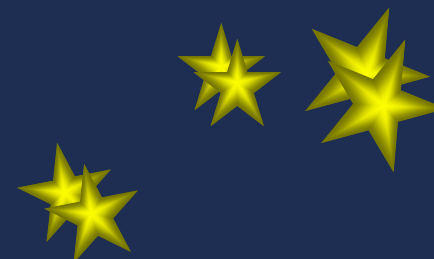
- 1. Spyros A. Pappas (ed.), *National administrative procedures for the preparation an implementation of Community decisions*, Maastricht 1995



# Implementation studies

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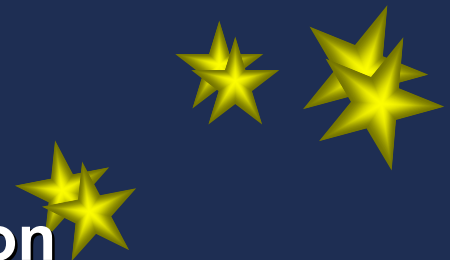
- 2. Eijlander e.a., *Quality, Implementation and Enforcement*; Research into the Quality of EC Rules and the Impact on the Implementation and Enforcement within the Netherlands, The Hague 2000/2001 (Mandelkern report)
- 3. Steunenbergh and Voermans, *Transposition of EU Directives: instruments, techniques and processes, compared in 6 EU Member States*, Leiden/The Hague 2005



# Implementation: correct transposition

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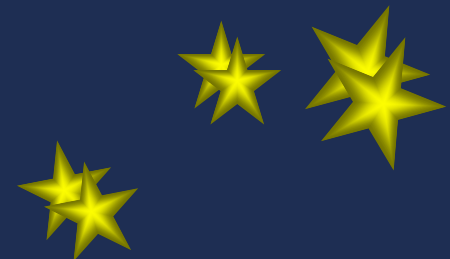
- Raising the game for transposition:
  - **zero tolerance and 1,5% Lisbon target**
- Problems of correct implementation & transposition
  - **Paper-implementation culture**
  - **'Silent' losses** - *good-repute requirement Directive 96/26 for road haulage operators and road passenger operators - 'serious offence'*
  - **Tunnel vision?**
    - Relation scoreboard achievements, reasoned opinions, infringement procedures and Court judgements on correct implementation



# Implementation: correct transposition


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- Still serious back logs
- Back-fire effect of national better regulation policies – fear for ‘goldplating’ and ‘over-zealousness’
- ‘Saturation’ – debates on legitimacy
- Olympic-committee-on-visit-effect
- Middle of the road-culture
- No benefits in timely and correct transposition over the years
- **Research (see last slide)**




# Implementation: enforcement

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- Compliance and enforcement
    - **Non-compliance as ‘black matter’**
      - What do we really know about (non-) compliance of EU-legislation?
        - Annual reports on monitoring the application of Community law do not explicitly score, analyze or compare the compliance-scores or enforcement achievements
      - Member States are left in charge - invisible NC
      - Aloof, indirect supervision (sometimes in concert with Member state authorities)
      - Reporting methods are – in a sense – self-incriminatory
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# Implementation: enforcement

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- **Non-compliance is a serious, underestimated problem**
  - E.g. Procurement legislation
  - Lacking communication, coordination, enforcement expertise, capacity
  - *Preserved woods in the Basle regulation 259/93*
  - ‘silent-losses’
- **Initiatives as tell-tale (Impel-network)**
- **Europeanization of supervision and enforcement**
  - European agencies
  - Criminal law-sanctions: e.g. Directive on the criminal-law protection of the Community's financial interests COM (2002) 577 

# Causes?

- One-dimensional, policy oriented legislative processes
  - Pushing/rushing to ‘yes’
  - No systematic assessment of alternatives, or (external & technical) legislative review
  - Focus on achieving policy goals
  - Lacking ex ante Impact assessment
- Lacking cooperation between legislative partners
  - Horizontal communication between institutions *Free access to information on the Environment 90/313*
  - Vertical: coordination of policy preparation and implementation – *the legislative cycle*



# Causes

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- **Insufficient Feedback**
  - No feedback-culture - no cyclic processes (**learning legislative cycle**: inception, draft, enactment, implementation and evaluation)
  - Reporting culture and methods
- **Legislative quality**
  - Deliberate ambiguity
  - Technical quality
  - (Ab)use of legislative instruments (Directives and regulations - legal base)



# Causes

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- **Byzantine corpus of Community legislation - speed**
  - **Legislative 'flood' (completion of the internal market) – speed of legislation**
  - **Overcomplicated, inaccessible**
  - **Piece-meal legislation**
- **Legitimacy related problems**
  - **Push of the internal market initiative seems to fade**
  - **Constitutional Treaty**



# Further reference

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- Dutch research group '**Analyzing EU Policies: The Transposition of Directives**'  
Kees van Kersbergen, Frans van Waarden, Antoaneta Dimitrova, Markus Haverland, Ellen Mastenbroek, Sara Berglund, Ieva Gange, Michael Kaeding, and Marleen Romeijn, Bernard Steunenberg.
- Funding Netherlands Organisation for Scientific Research (NWO).



# Variables on national compliance

**Table 2: Explanatory variables: their empirical impact on national compliance**

Key variable	Study	Source	Method	Result
a/ national institutional variables				
1. political institutions index	Lampinen and Uusikylä (1998)		multivariate	positive
2. number of legislative veto players	Giuliani (2003a); Mbaye (2003); Mbaye (2001);	Tsebelis (2005)	multivariate	negative/none
3. number of legislative veto players	Börzel et al. (2004)	Beck et al. (2002)	multivariate	positive
4. effective number of political parties	Giuliani (2003a)		multivariate	positive
5. executive control index	Giuliani (2003a)	Döring (1995)	multivariate	positive
6. centrality of Foreign Affairs ministry in EU policy coordination	Giuliani (2003b)	Kassim et al (2000)	crosstabs	negative
7. informing parliament on EU	Giuliani (2003b)	ECPRD (2002); Katz and Wessels (1999)	bivariate	positive
8. number of meetings national EU Affairs committee	Giuliani (2003b)	ECPRD (2002); Katz and Wessels (1999)	bivariate	positive
9. impact parliamentary action on EU policy	Giuliani (2003b)	ECPRD (2002); Katz and Wessels (1999)	bivariate	positive
10. capacity of coordinating national position on EU issues	Giuliani (2003b)	Kassim et al (2000) ; Kassim (2003)	bivariate	positive
11. regional autonomy	Mbaye (2001); Mbaye (2003)	Hooghe and Marks (2000)	multivariate	negative
12. corporatism index	Lampinen and Uusikylä (1998); Mbaye (2001); Mbaye (2003)		multivariate	none/positive
13. transposition through law versus other, lower-level legal measures	Mastenbroek (2003)		multivariate	negative
14. number of ministries involved in transposition	Mastenbroek (2003)		multivariate	negative
b/ national policy variables				
15. anticipatory policy style	Giuliani (2003b)	Kassim et al (2001) ; Kassim (2003); Van Waarden (1999)	bivariate	none
16. inclusive policy style	Giuliani (2003b)	Kassim et al (2001); Kassim (2003); Van Waarden (1999)	bivariate	none
17. complexity based on number of transposing measures	Mastenbroek (2003)		multivariate	positive*
18. complexity due to a new EU directive	Mastenbroek (2003)		multivariate	negative



# Variables on national compliance

c/ EU legislative process variables				
19. Shapley-Subik index for voting in the Council of Ministers	Giuliani (2003a)	Nurmi and Meskanen (1999)	multivariate	negative
20. weighted vote of a member state	Mbaye (2001); Börzel et al. (2004)		multivariate	negative
21. staff size Permanent Representation	Giuliani (2003b)		bivariate	negative
22. population based relative staff size Permanent Representation	Giuliani (2003b)		bivariate	none
23. capacity of coordinating national position at EU level	Giuliani (2003b)	Kassim et al (2001) ; Kassim (2003)	bivariate	positive
24. amount of national networking at EU level	Giuliani (2003b)	Kassim et al (2001) ; Kassim (2003)	bivariate	positive
25. Commission versus other types of EU directives	Mastenbroek (2003)		multivariate	positive
d/ national political and bureaucratic culture variables				
26. political culture index	Lampinen and Uusikylä (1998)		multivariate	positive
27. satisfaction with democracy	Mbaye (2001); Mbaye (2003)	Eurobarometer	multivariate	none/negative*
28. trust in national institutions	Börzel et al. (2004)	World Values Survey	multivariate	positive
29. EU support index	Lampinen and Uusikylä (1998); Börzel et al. (2004)		multivariate	none
30. satisfaction with EU membership	Mbaye (2001); Mbaye (2003)	Eurobarometer	multivariate	negative/positive
31. professionalism of national bureaucracy (bureaucratic efficiency)	Mbaye (2001); Mbaye (2003); Börzel et al. (2004)	Auer et al. (1996)	multivariate	positive
32. corruption	Mbaye (2001); Mbaye (2003)	International Center for Corruption Research	multivariate	negative/none
33. misery index	Mbaye (2003)	inflation and unemployment rates	multivariate	none
e/ other variables				
34. share of total GNP of EU member states; GDP	Mbaye (2001); Börzel et al. (2004)		multivariate	positive
35. percentage government receipts of GDP	Mbaye (2003)		multivariate	negative
36. length of membership	Mbaye (2001); Giuliani (2003a)		multivariate	negative

