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Better regulation in the European Union : lost in translation or full stream ahead? : the transposition of EU transport directives across member states

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Chapter 6: EU transposition deficit – statistical illusion or reality?

'Failure to apply European legislation on the ground damages the effectiveness of Union policy and undermines the trust on which the Union depends. The perception that 'we stick to the rules but others don't', wherever it occurs, is deeply damaging to a sense of European solidarity... Prompt and adequate transposition and vigorous pursuit of infringements are critical to the credibility of European legislation and the effectiveness of policies.' (European Commission's Strategic Objectives 2005-2009, COM(2005) 12 final, p.5).

6.1 INTRODUCTION

There has long been a vague supposition that the EU has a transposition problem. The study first demonstrates that, indeed, the EU does have a serious transposition problem among member states and different modes of transport. Based on information from 367 national implementing measures covering nine member states during 1995-2004, indeed it is shown that that the EU transposition deficit is more than just a statistical illusion. While only 50 percent of national transposition instruments are completed on time, cross-country variance is respectable pinpointing to laggards and leaders among member states.

6.2 THE EUROPEAN TRANSPOSITION DEFICIT FURTHER SPECIFIED

Calculating the difference between the transposition deadline set in the EU directive and the date of publication of the first national transposing instrument, Figure 6.6 shows that the EU faces a serious transposition deficit in the transport sector. Figure 6.6 displays the delays in weeks for the 367 national implementing measures in the transport data set. A *negative* delay, as indicated on the horizontal axis of the figure, indicates that a national implementing instrument was adopted early, i.e. before the official deadline set by the Council of Transport Ministers.

During 1995-2004, the nine member states under investigation notified 53 percent of the national instruments on time. In addition, we find cases that were transposed up to 2,4 years earlier than demanded by the directive (see index, No. 367 and 366). However, 47 percent were transposed late, varying between just a few days tardy to 251 weeks (almost 5 years) overdue, as it is the case for Greece's national transposing measure for the EU directive *on the harmonization of boatmasters' certificates* (index No. 11). The mean transposition time in the transport sector was 26 weeks (six months) late, whereas the median was zero weeks, i.e. on time.

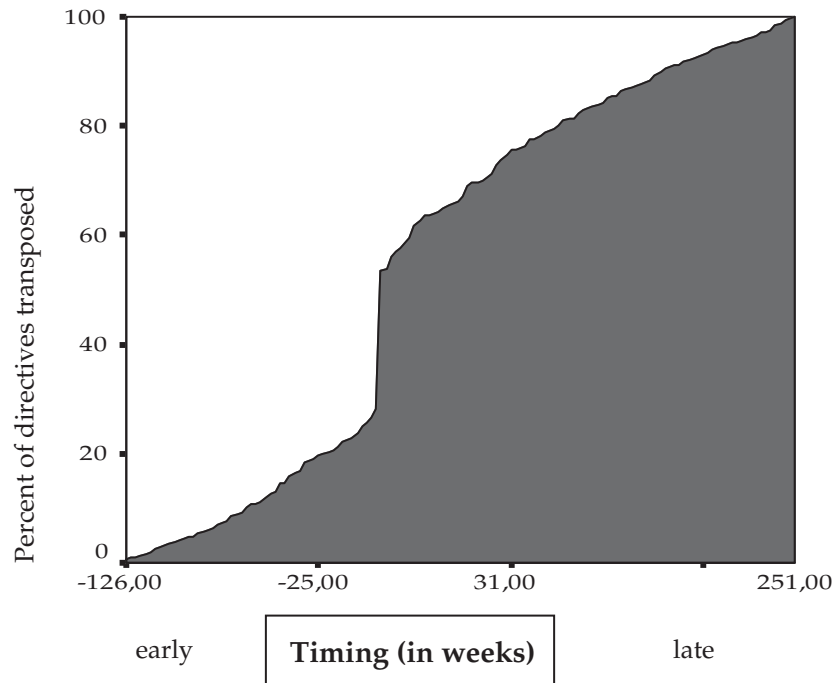


Figure 6.6: Transposition of transport directives in Germany, Spain, the Netherlands, UK, Greece, Ireland, France, Italy, and Sweden: Delay in weeks.

6.2.1 Mean/median discrepancy:

Before additional results are addressed a more detailed discussion of the discovered mean and median values is prudent to address first. The recorded discrepancy between median/mean values uncovers the following, which is crucial for the remainder of the book. On the one hand, we see that about half of the national transposition measures were notified on time, while the remaining half were late (median). On the other hand, the standard average (arithmetic mean) indicates that the average transposition delay was about six months. With a discrepancy between the mean and median of 26 weeks (half a year), we notice that a considerable number of national legal instruments must record a remarkably long delay. The distribution of the mean delay is skewed upwards so that the majority of national transposition processes have a delay lower than the mean. Indeed a closer look at the figures shows that 70 percent of the delayed transpositions have a delay longer than six months (the mean), a circumstance that causes the discrepancy between median/mean values.

Looking at these patterns, we can identify three main groups of outcomes. The first (50 percent of cases) represents those national instruments notified on time. A second group of instruments had a transposition delay of less than six months (15 percent of cases), and finally, the third group of national measures were transposed more than six months late (35 percent of cases). I will

return to this data characteristic when discussing the appropriate statistical method to test the theoretical framework.

6.2.2 Variation across member states and policy areas:

In line with Conant's findings (2002), which uncover delays upwards of 10 years, and also reveals a significant variation between both member states and policy areas, Table 6.7 shows that the nine member states can be clustered into three groups with Sweden (SE) and the UK performing the best, having an average transposition delay of less than two months. Germany (DE), France (FR), Spain (ES) and Ireland (IE) performance range below 30 weeks delay. The Netherlands (NL), Greece (EL) and Italy (IT) represent a group of their own, performing worst among the nine member states with an average transposition delay beyond 35 weeks. The independent sample of t-tests for the five member states indicate that the groups differ significantly in their average level of the dependent variable.

Interestingly, the patterns shift slightly if we consider the median value of

Table 6.7: National differences in transposition delays in weeks.

Delay (in weeks)	SE	UK	DE	FR	ES	IE	EL	NL	IT
Mean	3	7	25	25	28	29	35	37	42
Median	0	0	8	20	0	10	10	22	13

delay across member states. The transport data set reveals that the mean and median delays differ considerably between member states. Whereas the champions such as Sweden, Spain and the UK have a median transposition delay of zero weeks, the laggards of Dutch and French implementing instruments have a median transposition delay of 22 and 20 weeks respectively. In the Netherlands, approximately half of the population has values less than 22 weeks and the remaining half has values greater than the median.

Despite the problematic records for Italy, the Netherlands and France, transposition also varies across the different transport sub-sectors, namely: maritime, road, rail, air and inland waterways. Whereas maritime and general transport directives perform best with an average delay of 20 weeks or less, Table 6.8 illustrates that air directives are delayed an average of one year. Road and rail directives range in-between with eight and nine months of delay. Inland waterways directives take the most time. Here, the average transposition delay is 27 months (2,25 years).²⁸

²⁸ Testing the similarity of means for the differences of transport subsectors in transposition delays, similar conclusions can be drawn. Only inland waterways does not differ systematically from the average means of the other modes of transport despite its extreme value of an average transposition delay of 27 months.

Again we find slight changes when looking at the median values. Rail and inland waterways seem to be the transport sub-sectors with considerable transposition delays (32-98 weeks) across all member states.

Table 6.8: Different transposition delays of modes in weeks.

Mode of transport	Transport general	Maritime	Road	Rail	Air	Inland waterways
Mean	-17	20	31	38	49	109
Median	0	6	12	32	23	98

6.3 CONCLUSION:

Whereas the nature of the Commission's scoreboards has raised some questions about its quality in general and the existence of a serious EU transposition problem in particular, the analysis of the EU transport transposition data set from 1995-2004 *uncovers a noticeable transposition deficit*. The EU transposition deficit is more than just a statistical illusion; it is a sad reality. In line with the recent findings of Falkner, Treib, Hartlapp and Leiber (2005), the study uncovered evidence that the EU suffers from a serious transposition deficit. Falkner et al. (2005) maintain that in more than two-third of all cases (63 out of 91), the adaptation requirements were delayed by two years or more before full implementation. The data corroborate their findings. Almost 50 percent of the national transposing instruments are reported late.

Furthermore, the figures show that member states failed to meet the Barcelona (2002) Zero Tolerance Objective (2002) in case of directives whose transposition is more than two years overdue. According to the EU 1957-2004 transport transposition data set still 8 percent of national transposition processes were delayed for more than 2 years amounting to almost 5 years of transposition delay. *The EU transposition problem appears to be a epidemic problem and not a problem of 'statistical artifact'*.

In addition, the difference in mean and median values, which vary significantly across member states and policy sub-sectors, uncover three groups, namely: national transposition measures transposed *on time, delayed by less than six months and delayed by more than six months*. Especially in the Netherlands, France, Italy, Ireland, Greece and Germany, there exists a transposition problem with regard to transport directives.

While the Commission data seem to seriously underestimate the transposition deficit in terms of timeliness across all member states and policy sectors, the next chapter tests empirically the theoretical framework addressing the central question of why member states miss the deadlines when transposing EU transport directives.