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## **Between politics and administration : compliance with EU Law in Central and Eastern Europe**

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### **Citation**

Toshkov, D. D. (2009, March 25). *Between politics and administration : compliance with EU Law in Central and Eastern Europe. Between politics and administration: Compliance with EU law in Central and Eastern Europe*. Retrieved from <https://hdl.handle.net/1887/13701>

Version: Not Applicable (or Unknown)

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**Note:** To cite this publication please use the final published version (if applicable).

## **CHAPTER 8**

### **REGULATING ELECTRONIC COMMUNICATIONS**

This chapter is the first of three to describe the case studies. The first series of case studies deal with information society policy and the regulation of electronic communications (a wider concept than telecommunications). First, I will provide some details about the EU regulatory approach and legislative measures in this policy- field. Next, I will discuss in detail the transposition and implementation performance of the five selected member states. Finally, the chapter will end with a discussion of the country-level differences in compliance in this policy sector.

#### **8.1 Information society policy**

The EU has a comprehensive information society policy. Five laws, parceled together as the Telecommunications Package, are at the core of the EU regulatory approach in the field. The telecom package was adopted in 2002 and was ‘designed to recast the existing regulatory framework for telecommunications in order to make the electronic communications sector more competitive’ (EUROPA Summaries of Legislation). This new regulatory framework comprises five directives dealing with the:

- common regulatory framework for electronic communications networks and services,
- authorisation of electronic communications networks and services,
- access to electronic communications networks,
- universal service and,
- processing and protection of personal data.

The main goals of the package are ‘to encourage competition in the electronic communications markets, to improve the functioning of the internal market and to guarantee basic user interests that would not be guaranteed by market forces’ (EUROPA Summaries of Legislation). The regulatory approach embodied in the telecom package

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relies predominantly on market forces and competition while the expected shortcomings of the free market are addressed by specific regulatory measures. The telecom package is grounded in the so-called Framework directive which sets out the main principles and objectives for an EU regulatory policy in the field of electronic communications services. The directive also provides a definition of ‘significant market power’ and it adopts a procedure to define the relevant product and service markets.

Extending the efforts to institute a harmonized market for electronic communications, the Authorisation directive establishes a regime of general authorization to all electronic communications networks and services. The general authorisation comes in place of individual licenses, so that any company wishing to provide access to electronic networks or services may only be required to file a notification but it cannot be required to obtain an explicit permission. Given the position of the incumbent national telecom operators, the Access directive regulates the rights and obligations for operators and companies seeking interconnection and access to their networks. The directive stipulates that operators that are found to possess significant market power may be imposed with certain obligations, like transparency, accounting separation, access to its network facilities, etc. Addressing another type of potential market failure, the Universal Service directive requires a minimum level of availability and affordability of basic electronic communications services and guarantees a set of basic rights for users and consumers of electronic communications services. The member states must ensure that all people in their territory regardless of geographical location have affordable and quality service. Also in service of the people, a comprehensive directory of users must be available, as well as public pay telephones. The national authorities may designate one or more companies to provide (elements of) the universal service to cover (different parts of) the territory. The law also calls for a single emergency call number (112) that has to remain free of charge, and for portability of numbers (users should be able to keep their number when changing the operator). Finally, the directive on privacy addresses issues such as the retention of connection data for police surveillance purposes, the sending of unsolicited electronic messages (SPAM), inclusion of personal data in public directories and the like.

The telecom package provides a wide-ranging regulatory architecture for electronic communications networks and services. The individual pieces of legislation cover an

extensive array of issues, covering both liberalization provisions and the establishment of new standards and institutions.

## **8.2 Transposition of the telecom package in the EU: old and new member states**

The member states were given 15 months to transpose the legislation (until July 2003 with the exception of the privacy directive which had to be transposed by the end of October 2003). In the case of the CEE countries which were about to join, the effective deadline was the date of accession (1 May 2004) (confirmed by interviews 5, 12 and 14). In its 9<sup>th</sup> Report on the Implementation of the telecom package Regulation and Markets, the Commission noted that, as of November 2003, only 'eight countries had taken action to incorporate the Framework, Authorisation, Access and Universal Service Directives into national law' (European Commission, 2004a). Only five had transposed the e-Privacy directive by the deadline.

The Commission also identified the major issues on which to focus its monitoring efforts: the powers, independence, and tasks of the national regulators; the timely completion of the market analyses provided for in the directives; and the scope of the universal service. A year later, when the 10<sup>th</sup> Report on Implementation was issued, the Commission noted that 20 countries had adopted the primary legislation needed to transpose the telecom package and 17 also had the secondary legislation in place.

A detailed overview of the performance of the 25 member states is presented in Table 8.1. The first two columns of the table show the number of infringement procedures opened by the European Commission in regard to transposition and implementation problems respectively. The third column presents the total number of infringements (transposition plus implementation). The last column shows how many of the infringement procedures reached the stage of formal referral to European Court of Justice. Interestingly, the mean number of infringement procedures opened for non-communications of implementing measures is lower in the new member states but the mean number of infringement procedures opened for non-implementation is significantly higher (see Table 8.1). In other words, the problems of the new members are related to

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the implementation of the directives and not so much with the transposition of the legal texts.

**Table 8.1 Infringement procedures in regard to the Telecom Package**

|                  | In regard to<br>transposition | In regard to<br>implementation | TOTAL<br>infringements | ECJ<br>referrals |
|------------------|-------------------------------|--------------------------------|------------------------|------------------|
| Austria          | 0                             | 3                              | 3                      | 0                |
| Belgium          | 5                             | 5                              | 10                     | 2                |
| <b>Cyprus</b>    | <b>0</b>                      | <b>6</b>                       | <b>6</b>               | <b>0</b>         |
| <b>Czech R.</b>  | <b>4</b>                      | <b>4</b>                       | <b>8</b>               | <b>0</b>         |
| Denmark          | 0                             | 1                              | 1                      | 0                |
| <b>Estonia</b>   | <b>5</b>                      | <b>4</b>                       | <b>9</b>               | <b>1</b>         |
| Finland          | 1                             | 5                              | 6                      | 1                |
| France           | 5                             | 2                              | 7                      | 2                |
| Germany          | 5                             | 6                              | 11                     | 0                |
| Greece           | 5                             | 2                              | 7                      | 2                |
| <b>Hungary</b>   | <b>0</b>                      | <b>2</b>                       | <b>2</b>               | <b>0</b>         |
| Ireland          | 0                             | 1                              | 1                      | 0                |
| Italy            | 0                             | 2                              | 2                      | 1                |
| <b>Latvia</b>    | <b>0</b>                      | <b>6</b>                       | <b>6</b>               | <b>1</b>         |
| <b>Lithuania</b> | <b>0</b>                      | <b>3</b>                       | <b>3</b>               | <b>1</b>         |
| Luxembourg       | 5                             | 3                              | 8                      | 2                |
| <b>Malta</b>     | <b>0</b>                      | <b>5</b>                       | <b>5</b>               | <b>1</b>         |
| Netherlands      | 5                             | 3                              | 8                      | 1                |
| <b>Poland</b>    | <b>0</b>                      | <b>9</b>                       | <b>9</b>               | <b>3</b>         |
| Portugal         | 5                             | 4                              | 9                      | 1                |
| <b>Slovakia</b>  | <b>0</b>                      | <b>7</b>                       | <b>7</b>               | <b>1</b>         |
| <b>Slovenia</b>  | <b>0</b>                      | <b>3</b>                       | <b>3</b>               | <b>0</b>         |
| Spain            | 4                             | 2                              | 6                      | 0                |
| Sweden           | 1                             | 2                              | 3                      | 1                |
| UK               | 5                             | 1                              | 6                      | 0                |
| Mean             | 2.0                           | 3.4                            | 5.4                    | 0.8              |
| Mean 10          | 0.9                           | 4.9                            | 5.8                    | 0.8              |

*Note: Includes infringement procedures opened until July 2007.*

Table 8.2 provides an overview of the transposition delay in the eight new member states from CEE. The countries selected for in-depth study are in bold. Clearly, the Czech Republic and Estonia have the largest delays while Lithuania and Slovenia have incorporated the EU legislation on time. A negative delay means that the countries have adapted their national legislation before the required deadline. Next, I will discuss the performance of individual countries. I will trace the transposition and implementation of the electronic communication legislation in each of the countries selected for analysis: the Czech Republic, Estonia, Lithuania, Poland, and Slovenia. The description of these five cases will focus on the main events in the preparation and adoption of the national transposition acts, and the major problems faced during the implementation of the EU rules. The factual information presented in the following pages is based on EU and national document analysis, and four interviews with policy-making officials from the CEE countries.

**Table 8.2 Transposition delay in CEE in regard to the Telecom Package**

| Transposition delay (in months) |             |
|---------------------------------|-------------|
| <b>Czech Republic</b>           | <b>12</b>   |
| <b>Estonia</b>                  | <b>8</b>    |
| Hungary                         | -5          |
| Latvia                          | -4          |
| <b>Lithuania</b>                | <b>0</b>    |
| <b>Poland</b>                   | <b>4</b>    |
| Slovakia                        | 6           |
| <b>Slovenia</b>                 | <b>0</b>    |
| <b>Average</b>                  | <b>2.75</b> |

### 8.3 The Czech Republic: administrative or political reasons for delay

I will start the review of the countries' experiences with adapting to the European electronic communications regulations with the Czech Republic. The government of the Czech Republic approved the first draft of the new Electronic Communications Act in August 2004. Apparently, even the administrative/ preparatory phase of the transposition process had been severely delayed since the transposition deadline had already expired by the time the drafting of the proposal was finalized. Figure 8.1 compares the transposition of the electronic communications legislation in the five countries analyzed in this chapter, and provides a clear picture of the administrative and legislative phases in the adoption of legislation. The lower chamber of the Parliament dealt with the proposal from September until December 2004. The Senate discussed the proposal in January 2005 and after that in February 2005 the draft was finally processed by the legislature. The Electronic Communications Act entered into force in May 2005, one year after the deadline. Meanwhile, at the end of 2004 the Commission had already started an infringement procedure for non-notification. Although the discussion in Parliament did contribute to the delay, the total period of six months within which the legislature discussed the proposal is by no means excessive.

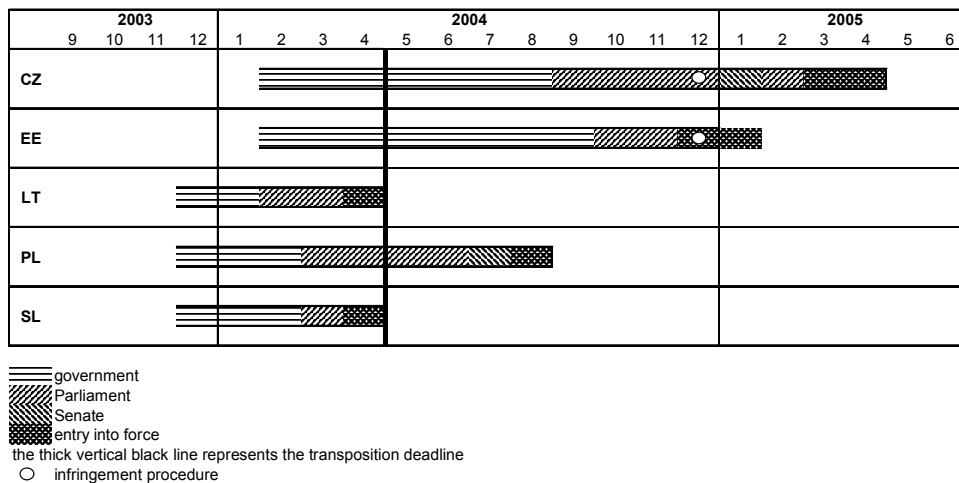


Figure 8.1 Transposition of the Telecom Package: administrative and legislative phases

There is also no indication of much opposition to the act expressed in the Senate. The upper house of the Czech legislature voted overwhelmingly in favor of the law. In the lower chamber, however, the opposition ODS party voted against the proposal. Despite the opposition, the law was swiftly approved with the votes of the remaining political parties.

According to the opinion of Czech policy-making experts, party political preferences cannot be linked to the transposition delay (interview 11). The Czech Social Democrats, ruling at the time of transposition of the telecom package, were strong supporters of European Integration. Although there is little in the general political attitudes of the Czech government to suggest any political opposition to telecommunications reform, the government had been struggling with the privatization of the national telecom incumbent (Cesky Telecom) for several years until June 2005. It is plausible that the delay in the adoption of the new regulatory framework is related to some extent to the privatization of the major business actor (Cesky Telecom) in the field. On the other hand, liberalization of the Czech telecom market had proceeded far by 2004/5 and the mismatch between the liberalization impulse of EU telecom policy and the status quo in the Czech Republic was low.

The draft law was also caught in debates about the restructuring of the Council for Radio and Television Broadcasting and merging this body with the Telecom Office after the law enters into effect. These structural changes proved controversial and delayed the entire electronic communications legislation<sup>40</sup>.

The government crisis after the elections for European Parliament in 2004, leading to the resignation of Prime Minister Spidla in June 2004 may have also contributed to the transposition delay. The new government was formed only in the beginning of August 2004, and the Law on Electronic Communications was a low priority in this period of turmoil.

In terms of administrative capacity, the Czech Republic was one of the few countries that had a separate ministry for informatics at that time. The ministry had been established in January 2003 (interview 11). The opposition ODS party actually opposed the existence of a separate ministry for informatics but 'the minister, Vladimír Mlynář,

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<sup>40</sup> 'Milan Jakobec se přiklonil k názoru, že rada je ve své současné podobě politickým orgánem.', BBC Czech, 3 května 2003.

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delivered a clear position: to be maintained'<sup>41</sup>. The ministry did not consider the delay in the transposition as a shortcoming of its work. In fact, surprisingly, it considered the adoption of the Czech implementing legislation 'a partial success'<sup>42</sup>. The minister had at least twice tried to pass the proposal for the draft act through the Legislative Council of the government but was unsuccessful. When finally the government approved the proposal, the draft was caught in the interregnum period before the accession of a new government and after the old one had stepped down.

Numerous amendments to the draft law were proposed in the Parliament as well. Some 400 suggestions altogether were gathered in the main legislative committee discussing the proposal. Representative from the opposition ODS party also suggested that the law be redrafted due to numerous flaws<sup>43</sup>. The government however insisted that it is a priority law and requested accelerated discussion in Parliament.

The efforts of the government to cut short the discussion in the legislature fit nicely with our theoretical expectations. The government was concerned about the timely implementation due to its general support for European integration. Faced with a significant delay, it chose to limit the policy-making activity for interpretation of the draft national law.

In the preparation of the draft the ministry consulted with associations of the electronic communications network operators and service providers and with all ministries and other central administration offices. According to one source, there were no less than 22 meetings between the Ministry of Informatics, Cesky Telecom and interest associations. Cesky Telecom alone announced the filing of its 756 comments to all areas of application of the law.

The minister considered the legislative phase to be the major cause of delay: "You can even say, because our legislative process is very long, the Senate is involved and this is a very complex and onerous law"<sup>44</sup>. Figure 8.1, however, leads us to believe otherwise: while the discussions in the legislature have taken their toll on the timeliness of the legislation, the administrative phase actually is responsible for the greater part of the delay. Apparently, the Commission did not consider the delay a very serious matter (above and

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<sup>41</sup> 'Rok a půl Ministerstva informatiky', Jiří Peterka, <http://www.earchiv.cz/b04/b0721001.php3>.

<sup>42</sup> 'Rok a půl Ministerstva informatiky', Jiří Peterka, <http://www.earchiv.cz/b04/b0721001.php3>.

<sup>43</sup> 'Anketa: Názory poslanců na ZEK', Irena Ryšánková (Česká Média), 3.11.2004

<sup>44</sup> 'Vladimír Mlynář se vyslovil pro to, aby byly v budoucnu televizní licence prodávány v dražbě.', BBC Czech, 30 dubna 2003.

beyond filing infringement procedures of course): ‘representatives of the Brussels commission ...they also understand and accept [the delay]’<sup>45</sup>.

In conclusion, outright political opposition and low administrative capacity cannot be directly related to the long delay in adopting the Czech electronic communications law. Government turmoil and problems with the privatization of the telecom incumbent are more likely to be related to the one-year delay. Still, the number of infringement procedures against the Czech Republic in the information society sector overestimates the problems with compliance in the country. Implementation of the provisions of the telecom package is reasonable, despite the late start (see below in section 8.9 of this chapter).

#### **8.4 Estonia: high ambitions and low capacity**

Estonia transposed the telecom package in January 2005, after a significant delay of eight months. Again, the involvement of the Parliament did not contribute much (if at all) to the delay, since the law was processed within two months by the legislature. The major reason for the delay during the administrative preparation of the implementing measures was the ambition to interpret the law and make use to a great extent of the discretion contained in the text of the EU directives. Taking seriously the regulatory framework rather than neglect of its provisions contributed to the belated incorporation of the telecom package (interview 5). Estonia is usually considered a frontrunner in all aspects of information society and e-government policy. The policy-making ambition was not met by adequate administrative capacity in the case of transposing the telecom package, however. The department within the Ministry of Economy dealing with electronic communications had only a very limited amount of officials to work on the telecom package. Only six people were dealing with telecommunications in the ministry, and these same people were responsible for competition and other issues, in addition to their work for the telecom package (interview 5).

In terms of EU co-ordination, there was an EU integration unit in the ministry (later closed down) but it was not dealing with transposition at all. The major coordinating body

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<sup>45</sup> ‘Vladimír Mlynář se vyslovil pro to, aby byly v budoucnu televizní licence prodávány v dražbě.’, BBC Czech, 30 dubna 2003.

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for the legislative process was the State chancellery, attached to the prime-ministerial which oversees all the policies. It was also responsible for the overall economic strategy, connected to the sectoral strategies and the budgets (interview 5). It thus seems that the adoption of the new telecom regulations was linked to broader policy strategies and the changes were integrated to some extent into a broader reform vision. The Chancellery did not exercise ‘pressure’, however, in the sense of pushing for faster transposition.

Co-ordination with other parts of the administration was not problematic. “Usually the stamping is a formality, the other ministries do not intervene too much. Usually, the interested parties are not too interested.” (interview 5). The transposition of the telecom package was considered a ‘technical issue’ and politicians were not involved. Quite tellingly, the selection of members to the independent regulatory authority, envisaged in the regulatory framework, was also depoliticized (in stark contrast with the Czech case!) and purely technocratic (interview 5).

Consultation with interest groups and business associations was conducted, although without any serious consequences for the delay in adopting the legislation. There was no government change in the period of transposing the telecom package.

In addition to the considerable transposition delay, the Estonian Telecommunications regulatory authority was late issuing the market reviews (major analytical reports creating the basis of the regulatory approach, according to the telecom package – see a comparative analysis at the end of this chapter). Similarly to the Czech case, however, the number of infringement procedures and the delays in transposition and implementation actually overestimate the problems with compliance in Estonia. Despite the belated start, the regulatory framework in the field of electronic communications is applied rigorously in Estonia (European Commission, 2006, 2007a).

### **8.5 Lithuania: early start and prioritizing the EU**

Lithuania transposed the telecom package on time, and has only a few infringement procedures in regard to implementation shortcoming. The level of compliance is deemed as generally satisfactory in the more qualitative assessments of the Commission contained in the Implementation Reports (European Commission, 2006, 2007a). One of the main reasons for the smooth implementation is the early start in preparing for the adoption of

the telecom package. The Lithuanian government had already kept an eye on the new regulatory approach contained in the telecom package while approximating its legislation to the previous regulatory regime in the field of telecommunications. In fact, a lot of the provisions of the Lithuanian legislation in 2003 had been compatible with the telecom package, and the innovations created by the telecom package were kept under scrutiny (interview 14). The old law had already been quite close to the provisions of the new telecom package. Also, the work on the new transposing legislation began as early as 2003. In fact, the government even inquired whether they can transpose the telecom package already in 2003 but were not allowed. In response, Lithuania passed an intermediate Law on Telecommunications. Moreover, once the intermediate law was passed, the Ministry decided to see first how the law worked before they drafted the new legislation.

Actually, the national regulatory authority had taken the leading role in the drafting of the new legislation (interview 14). The preparation of the transposing measures was largely 'outsourced' from the responsible ministry to the telecom regulatory authority. Consultation was conducted and it was considered important, although it did not take too much time. Meetings with a working group composed of representatives of the operators, the association of industry and consumer associations were held on several occasions during the preparation of the law.

The strong co-ordination capacity of the center of the government with regards to EU-related issues also played a role, since it prioritized the timely transposition vis-à-vis a more thorough interpretation of the provisions of the telecom package: 'They were not very strong in protecting the national interest' (interview 15). The co-ordination unit discouraged any interpretation of the directive in order to avoid future problems: 'The Chancellery works very formally and we always have problems with trying to persuade them that they should do not be too much formalistic' (interview 15). There has been no political opposition to the substance of the telecom package and no government changes in the period of preparation.

The practical implementation of the telecom package follows the timely transposition with most of the market reviews adopted fast, and the main requirements of the legislation fulfilled. Nevertheless, there were temporary problems with the number portability for mobile connections, the directory of subscribers, and the emergency number 112.

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According to the admission of a senior Lithuanian civil servant working in the field of telecommunications, the translations of the EU laws were not very professional and some places of the legislation were transposed completely letter by letter (interview 15). In general, 'the text of the directive was followed quite closely'. In contrast to the Estonian case, respondents in Lithuania have emphasized that there is no 'tradition in looking too far ahead' in policy making. The conclusion was raised in regard to the (missed) opportunities by companies and interest groups to participate in the making of the laws.

### **8.6 Poland: organizational mismatch and (political) opposition**

Poland transposed the telecom package in September 2004 with a delay of four months. Unlike the case of Estonia, however, here the hindrance was in the legislature because the draft law was submitted to the Parliament in March 2004 (see Table 8.1). Both Slovenia and Lithuania which were on time submitted the drafts of the laws to their respective legislatures at approximately the same time. The two-chamber Parliament in Poland, however, used five months to process the legislation. Five months is not an exceptionally long period for three readings in the lower chamber and a discussion in the Senate by any means. Still, in regard to the transposition of the telecom package it contributed to the delay.

In Poland, however, the initial delay is related to more general problems with the application of the telecom package. Poland started issuing the market reviews with a considerable delay and at a slow pace (see details below). Moreover, the implementation of several important issues, like the independence of the national regulatory authority (a major provision of the telecom package), was questioned by the European Commission. The overall level of compliance seems lower than in the rest of the CEE member states (European Commission, 2006, 2007a).

As in the case of the Czech Republic, a government (prime-ministerial) change in May 2004 stole attention from the transposition of the telecom package. Administrative co-ordination problems also played a role for the speed and quality of transposition. The first version of the legislation was prepared under the responsibility of the Ministry of Infrastructure. In 2007, a major revision was enacted, prepared by the Ministry of Transport and the telecom regulatory authority (information based on internal documents

on the Ministry of Infrastructure). On the other hand, at that period general EU co-ordination was rather strong and located under the auspices of the government office (Zubek, 2008).

## **8.7 Slovenia**

Slovenia adopted the main act on electronic communications in April 2004, just in time to enter into force before the deadline in May. In addition to the timeliness of the transposition, the overall compliance is rated quite high. The submission of the market reviews started very early and progressed steadily. Relatively few problems with the practical implementation of the telecom package were noted (European Commission, 2006, 2007a).

Like the Czech Republic, Slovenia also had a separate ministry for information society which took a leading role in the preparation of implementing legislation. Preparation of the law had already started in 2003 with a visit to Finland to get to know more about the Finish experience with regulation in the field and with the implementation of the EU directives. The administrative capacity was sufficient. A total of 13 people were working in the ministry's department at the time of preparation of the legislation, and legislative advice was asked from outside the government. Approximately 5 people were working on later amendments of the legislation (interview 12).

From November 2002 the Ministry of information society, which was in charge of the preparation of the draft law, split its work with the ministry of infrastructure, the ministry of science and technology, and the ministry of public administration (in regard to e-government). Some parts of the legislation touch upon infrastructure development, so the ministry of environment submitted comments as well. Another example of inter-ministerial co-ordination concerns the universal service financing compensation fund. The fund was designed to collect money if needed to finance the universal service. Curiously, the Slovenian operators never asked for it. The government considered that it can cover some parts of the universal service, for example for the disabled, and involved the ministry of social affairs in the consultation. As a result, a reaction and amendments were introduced by the ministry of social affairs (interview 12). In another case, the

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ministry of transport had problems with the infrastructure, which led to the ministry of informatics including an additional article in the draft.

Official inter-ministerial consultation took 2 weeks. In addition, the draft was sent to the Government Office for Legislation. In practice, the Office can say if something is not in agreement with the Constitution: “The government office checks the nomotechnique - consistency and constitutionalization of the law” (interview 12).

Similarly to most of the other new member states, the transposition of the telecom package did not attract much political interest in Slovenia. However, the telecom package was considered urgent and, therefore, a special legislative procedure was used (interview 12). The Parliament subjected the issue to a fast-track procedure and processed it within one month (!). Consultation with interest groups had been conducted during the administrative preparation of the law, but also during the short Parliamentary discussion one stakeholder managed to get a favored amendment through (interview 12). For the amendments in 2006 even the consumer organizations got their proposals incorporated in the law. In the ministry the comments by the interest groups were taken seriously: “In this field the operators are interested ... you must pay attention because they are going to act... they have experts and they do know things, it is worth listening.” (interview 12).

The opposition would have preferred more time for discussion. The government, however, valued highly the reputation costs of transposing on time and did not allow for extensive political discussions. In the words of one civil servant: “Reputation is also a valid consideration - you need clear provisions. You don’t want to be the last one in the EU [with the transposition]”.

Although transposition was fast, and on time, the usage (implementation) of the law is more problematic (than the transposition), according to the interviewees. The specific cases of incomplete implementation for which infringement procedures were started, however, were solved swiftly and successfully. More details on the implementation follow in section 8.9. Before that, I will look into the national variation in the interpretations of the EU law that were formalized into laws in CEE.

## **8.8 Transposition and interpretation**

So far, the analysis focused primarily on transposition speed and timeliness but not on the content of transposition. In this section, I will look into the amount of interpretation to the original text of the directives. Theory strongly suggests that more interpretation is related with longer time used for transposition.

The Telecom Package is an extremely long, complex and technically-difficult text to interpret. Instead of studying in detail the legal provision of all the articles of the five electronic communications directives, I will use content analysis to gain a measure of the similarity between the original text of the directives and the transposing instruments of the five member states (Lowe, 2006). In order to perform automated content analysis, I collected and imported into the software program Yoshikoder<sup>46</sup> the texts in English of the five main directives of the Telecom Package, and the corresponding national implementing measures.

What we are primarily interested is the scope of the implementing legislation: whether it covers TV, radio, internet, land and mobile telephone regulation. In addition, it is instructive to see whether the emphasis on public service and related values is equally mentioned in the different national texts. Similarly, the emphasis put on regulation and related concepts is telling about the nature of the transposing legislation. Finally, it is worth comparing the amount of discretion (assessed quantitatively) in the five national laws. Discretion in this context means the amount of leeway that the national laws allow in the interpretation of their provisions. Discretion can be discovered in the legal texts when words like ‘appropriate’, ‘suitable’, ‘proportionate’, etc. appear.

In order to compare the national transposition measures, we can compute measures of similarity between the original text of the Telecom Package, and each of the corresponding national laws. The software processes the texts and compares the frequency of use of specific, user-defined ‘dictionaries’. Dictionaries contain a number of related concepts and words which tackle a single idea. The definitions of the entries in the dictionaries used in this analysis are contained in Appendix IV. The results of the comparison are presented in Table 8.3. The columns of the table list the number of times a set of concepts have been encountered in the texts. Using raw counts has disadvantages since the length of the texts differ, so I analyzed also the proportion of all words

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<sup>46</sup> The program is freely available from <http://www.yoshikoder.org>.

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comprising each entry. No differences in interpretation result and I only report the counts for simplicity. The content analysis software also provides estimates of the likelihood the differences to arise entirely by chance. Given the very small relative share of the entries from the entire texts, however, these measures contain little information and are not reported.

**Table 8.3 Content analysis of the Telecom Package transposition**

| entry                           | Original<br>count | Czech Republic<br>count | Estonia<br>count | Slovenia<br>count | Poland<br>count | Lithuania<br>count |
|---------------------------------|-------------------|-------------------------|------------------|-------------------|-----------------|--------------------|
| TV                              | 43                | 46                      | 33               | 29                | 23              | 30                 |
| discretion                      | 97                | 54                      | 44               | 54                | 14              | 49                 |
| electronic                      | 131               | 326                     | 107              | 171               | 53              | 487                |
| equipment                       | 15                | 113                     | 120              | 43                | 207             | 94                 |
| regulation                      | 437               | 361                     | 316              | 221               | 380             | 773                |
| internet                        | 2                 | 7                       | 4                | 4                 | 11              | 1                  |
| mobile                          | 10                | 25                      | 40               | 15                | 18              | 5                  |
| privacy                         | 7                 | 5                       | 2                | 1                 | 1               | 13                 |
| public service                  | 941               | 1551                    | 1098             | 1095              | 1319            | 851                |
| radio                           | 104               | 480                     | 582              | 426               | 310             | 321                |
| telephone                       | 99                | 224                     | 193              | 94                | 146             | 81                 |
| <b>TOTAL</b><br>number of words | 26 682            | 54 392                  | 42 321           | 35 503            | 49 639          | 34 682             |

Starting from the last row in the table, we can notice that three of the laws that have been most delayed (Czech Republic, Poland and Estonia) are longer in comparison to the rest. On the other hand, the transposing legislation in Lithuania and Slovenia is relatively short. The Polish text seems to offer least discretion of all, based on counts of expressions that leave room for interpretation in the application of the text (see Appendix IV).<sup>47</sup>

The regulative aspects of the legislation are most pronounced in the Lithuanian case and are the least important in the Slovenian law. Similarly, privacy issues are mentioned

<sup>47</sup> A disclaimer applies here, since the texts subject to content analysis are not the original texts but translations in English. It could be, therefore, that the differences reported in this section result from differences in the translation rather than in substance. Legal text, and its interpretation and translation is, however, highly standardized and huge differences resulting from the translation into English are unlikely, especially since the originals in the local languages have been based on the English text of the Telecom Package.

often in the Lithuanian text but not much in the rest. The emphasis on the public service aspects of the laws is most pronounced in the Czech and Polish cases, and least pronounced in the Lithuanian case. Again, it should be reminded that we are not comparing the meaning of the legal provisions but the relative share of attention devoted to certain topics.

Differences in the scope of the national laws are also visible with television regulation being mentioned much more in the Czech case (compare this finding with one of the proposed reasons for the transposition delay earlier in the chapter). The Polish case deals much more with equipment-related issues than the rest. Estonia and Slovenia are occupied with the radio sector on the other hand. Mobile communications are most often mentioned in Estonia and the Czech Republic.

The content analysis reveals significant differences in the relative share of attention devoted to different aspects of the electronic communications regulatory framework in the different countries. The differences concern the scope of the laws but also differences in attention to the public service aspects of the law. Especially in the case of Lithuania, these conclusions confirm information from the in-depth interviews, providing validation for the automated content analysis method. Also a tentative link between the length of the transposing legislation and the transposition delay can be supported on the basis of the data.

## **8.9 Practical implementation: market reviews**

The analysis so far dealt mostly with transposition and the interpretation of the original texts of the EU directives. Let us have a more detailed look into the practical implementation of the Telecom Package. One of the major regulatory activities envisaged by the directive is the preparation of the so-called ‘market reviews’ by the national regulatory authorities. The market reviews are the stepping stones of the regulatory approach as they define the problems faced by each particular market and recommend measures to address the market failures. The text of the EU directives provides a list of the ‘markets’ in the field of electronic communications. However, the list is possible to amend by the national authorities (they have the discretion to determine their own list

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based on the template suggested by the EU). Only Estonia however attempted to amend the list.

Figure 8.2 shows the pace of submission of the market reviews by selected member states from CEE over time. The figure plots the total number of submitted market review to the Commission over time for each of the CEE countries analyzed in this chapter. The figure traces the progress in fulfilling this major requirement of the Telecom Package, and indicates how fast the Czech Republic, Lithuania, Slovenia, Poland, and Estonia prepared and sent to the Commission the required market reviews. The main conclusion to be drawn is that the length of transposition delay is actually linked with the length of preparation of the market reviews. Countries that have transposed fast have also submitted fast their market reviews. Countries with delays during the transposition phase are slower in submitting the market reviews. What this means in terms of our theoretical expectation that transposition hastiness leads to implementation problems is unclear. In fact, it could be that countries like Estonia that take more time to prepare the market reviews do that for the same reason that they spend longer at the transposition stage. In the case of Estonia, this means taking the regulatory framework seriously and trying to fit it to the national context even at the expense of some delay. Moreover, administrative capacity limitations at the transposition stage suggest administrative capacity limitations at the implementation stage as well: “(In Estonia approximately) 10 people have been working for the reviews. The amount of work is the same for small countries and big countries.” (interview 5). On the other hand, the delays might not be related to the *quality* of the transposition, market reviews, and regulation in general. However, I am in no position to assess the quality of regulation in these countries.

So far, this chapter has presented five country case studies. These case studies described the transposition process, the differences in the scope of the national implementing legislation, and some aspects of the practical implementation process. I will conclude the chapter by drawing the cross-country comparisons.

### 8.10 Cross-country comparisons

In the field of information society, problems stem either from a combination of high ambition and low capacity, or from government preferences to delay and limit the implied

reforms. The existence of a separate ministry for information society policy has no effect on the outcome since in the Czech Republic it was not enough to secure timely transposition while in Slovenia it is not related to a delay. Still, the peculiar organizational arrangement in Poland, where the draft of the law was prepared by the Ministry of Infrastructure may have contributed to the problems in this country. The involvement of interest groups also has no causal effect: practically all countries consulted, in one form or another, relevant stakeholders. But in some cases the consultation contributed to transposition delays while in other it did not slow down the process. Lastly, high administrative capacity is not sufficient for success since neither in the Czech Republic nor in Poland administrative capacity constraint have been emphasized as important factors. Unless special legislative procedures are used (like in the case of Slovenia) or the EU co-ordinating body has the de facto power to request speeding up of the administrative phase (like in the case of Lithuania), parliamentary involvement slows down the process with a few months. Longer parliamentary discussions are also related to longer texts of the transposing legislation which in turn is also related to the length of the delay. Contrary to our theoretical expectation, implementation difficulties and delays are related to delays in the transposition phase. In the next chapter of the book, I will investigate the compliance of another set of CEE member states with the European rules in the working conditions field. The additional case studies will provide information on some countries that have not been analyzed in depth yet, and they will offer a new policy setting for cross-country comparisons.

Figure 8.2 Market reviews in CEE

