



Universiteit  
Leiden  
The Netherlands

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

Toshkov, D.D.

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## **CHAPTER 9**

# **ESTABLISHING THE MINIMUM STANDARDS FOR WORKING CONDITIONS**

The previous chapter presented transposition and implementation performance of the CEE member states in the field of electronic communications regulation. This chapter continues the comparative case studies by discussing compliance with working conditions legislation in several post-communist states.

### **9.1 Social policy in the EU**

Working conditions and health and safety at work (working conditions) is the second sub-policy area analyzed in this chapter<sup>48</sup>. The adoption of legislation setting minimum requirements is one of the EU's main achievements in the field of social policy. Health and safety at work is now one of the most 'hard law'-heavy and advanced areas of EU social policy. The parts of Community labour law examined here 'ensur[e] that the creation of the Single Market didn't lead to a lowering of labour standards or distortions in competition' (EUROPA Summaries of Legislation). The policy field is diverse and covers issues like protection from chemical, physical and biological agents, protection of specific group of workers, information and consultation of workers (Sissenich, 2005).

It is important to emphasize that the directives in this field set only minimum standards and are not intended to fully harmonize the national regulatory frameworks. Hence, although legislation in this area deals with very important issues, usually the requirements the member states have to fulfill are not really harsh. It is telling that during the enlargement negotiations the candidate countries did not request many derogations and transitional periods in this policy area (see the table above).

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<sup>48</sup> Parts of this chapter are based on Toshkov (2007b)

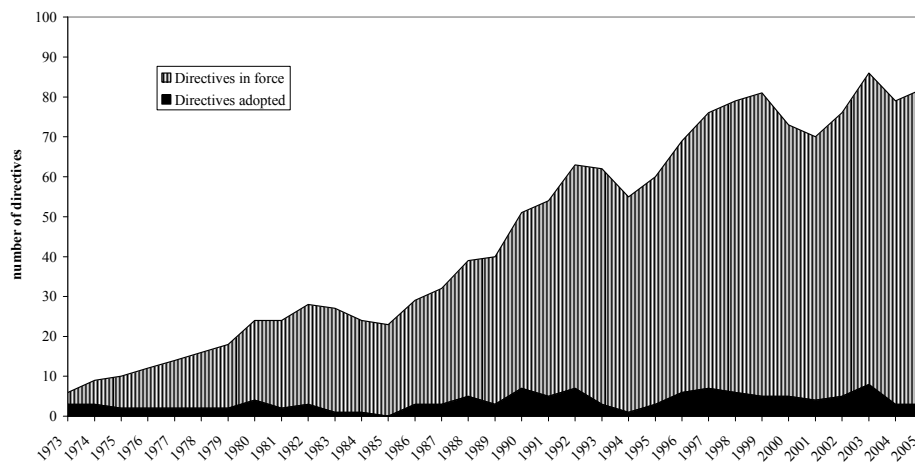
**Table 9.1 Accession negotiations on Chapter 13 ‘Employment and Social Policy’**

Country	Chapter opened	Chapter provisionally closed	Negotiations duration	Transitional arrangements
Czech Republic	September 1999	May 2001	21 months	0
Estonia	September 1999	October 2000	14 months	0
Hungary	September 1999	November 2000	15 months	0
Latvia	February 2001	June 2001	5 months	3
Lithuania	November 2000	March 2001	5 months	0
Poland	September 1999	March 2001	19 months	1
Slovak Republic	February 2001	May 2001	4 months	0
Slovenia	September 1999	November 2000	15 months	4

How much is there to transpose and implement in the social policy field? Despite the predominant interest in EU soft law approaches to co-coordinating social policy, actually there is a substantial body of directives covering a few social policy sub-domains and adopted over the course of several decades now (Falkner *et al.*, 2005). Minimum harmonization and social dialogue are important instruments in EU social policy development; still, the importance of traditional ‘hard’ law should not be underestimated. Figure 9.1 sketches the pace of development of social policy directives over time.

The solid black area shows the number of directives adopted in the field of social policy and employment each year while the shaded area shows the total number of directives in force in any particular year. The varying slopes result both from the changing number of directives adopted and from the volume of directives repealed or expiring in that particular period. The main trends in development of EU social policy legislation are clearly identifiable with an increase in the average number of directives passed after the middle of the 1980s, as well as after the middle 1990s. It also shows that by the time the

CEE countries joined the EU more than 70 social policy directives needed to be implemented. The three main areas of activity cover health and safety at the workspace, other working conditions, and gender equality and non-discrimination (Falkner et al., 2005).



**Figure 9.1 The growth of social policy legislation**  
 Source: *Figure 1 in Toshkov (2007b)*

## 9.2 Social policy transposition in CEE

Since the number of legislative acts included in this policy filed is large, I will not attempt to summarize the efforts of the CEE countries to comply with each and every directive. Instead, I will focus on three directives and trace their transposition in detail. These three acts reflect the broader patterns of compliance in the sub-fields of working conditions and health and safety at work. The three directives are Directive 2001/45/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work, Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the

exposure of workers to the risks arising from physical agents (vibration), and Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer. Table 9.2 gives an overview of the transposition delays in the eight countries of CEE.

What is immediately clear is that in this policy field, the impressions about compliance we get from looking at the transposition delay and looking into infringement procedures are quite different. Unlike information society and nature protection, here infringement procedures are opened against countries that seem to have transposed the legislation on time (e.g., Latvia in the case of Directive 2001/45); also, countries that appear to have serious delays do not always have an infringement procedure (e.g., Estonia in the case of Directive 2002/74). The discrepancy probably reflects the fact that often the notified implementing legislation is not considered enough to adapt to a sufficient degree the national legislation to EU rules. Most of the countries adopted at least some implementing measures in the years 2000-2002.

**Table 9.2 Transposition delay in CEE in regard to social policy**

	<b>Vibration</b> (2002/44)	<b>Insolvency</b> (2002/74)	<b>Equipment</b> (2001/45)
Czech Republic	10	6 *	? *
Estonia	17	14	- 2
<b>Hungary</b>	<b>2</b>	<b>- 3</b>	<b>- 3</b>
<b>Latvia</b>	<b>- 13</b>	<b>2 *</b>	<b>- 19 *</b>
<b>Lithuania</b>	<b>- 14</b>	<b>- 6</b>	<b>- 24</b>
<b>Poland</b>	<b>1</b>	<b>10</b>	<b>- 10</b>
<b>Slovakia</b>	<b>2</b>	<b>0</b>	<b>22 *</b>
<b>Slovenia</b>	<b>3 *</b>	<b>9 *</b>	<b>0 *</b>

*Notes: \* = infringement procedure. Negative numbers indicate transposition time before the deadline*

However, many had to fundamentally amend or supplement these measures in 2006 after the Commission scrutinized the notified measures. Nevertheless, our relevant ranking of the compliance performance of the countries remains to a large degree intact with Hungary and Lithuania doing somewhat better than the rest, and Slovenia trailing behind.

### **9.3 Hungary and Poland: smooth transposition**

In Hungary both the Vibration and Work Equipment directives were transposed on time, and the Insolvency directive was incorporated with a very slight delay. The governing Hungarian party at the moment of accession, the Hungarian Socialist Party, expressed a very strong support for the EU employment policy (according to party positions surveys - (Benoit and Laver, 2006; Gary Marks et al., 2006). Furthermore, it is a party with a leftist orientation. Coupled with the generally high bureaucratic quality and the absence of government crises in the crucial for finalizing the approximation of national legislation months before accession, the high political support is enough to explain the smooth alignment of Hungarian working conditions laws to the EU requirements.

Similarly, the Polish Alliance of Democratic Left expressed very high commitment to the European social and employment policy. While cabinet changes in 2004 and the minority status of the government eroded the ability of the executive to steer through reforms, in the case of the working conditions directives the adaptation of Poland was timely and relatively successful. It should be reminded that the policy deals with issues of relatively low political and societal salience.

### **9.4 Slovakia and Lithuania: problems with implementation**

Slovakia and Lithuania show a mixed record in the field. While the transposition is at a first glance timely, several outstanding problems with the implementation of the legislation are evident after we look into the infringement procedure started by the EU. Especially in Lithuania, the legislative alignment was (allegedly) completed already in 2002/3. In the specific cases of the three directives in focus, these early efforts appear sufficient for compliance with the directives. The main party in the government coalition at the time of

legislative change is, as in the cases of Hungary and Poland, was a leftist party with a very strong (6.25 out of 7) (Gary Marks et al., 2006) support for the European employment policy. The strong co-ordination of the EU activities by the government office, and the fact that often the lowest legislative measures possible are used further explains the relatively successful transposition in Lithuania.

Slovakia defies the pattern small preference distance – timely transposition. The main party in the government at the time and before accession – the Slovak Democratic and Christian Union is a pro-European but rather liberal party. Consequently, its support for the European social policy is evaluated as moderate at best, and definitely lower than in Poland, Lithuania, and Hungary. Nevertheless, as far back as 2002, the Commission expressed satisfaction with the progress of transposition and the development of implementation capacity in the working conditions, and social policy more generally. The high level of policy-specific bureaucratic expertise might be the main factor behind the positive results. In the case of Slovakia, the number of infringement procedures opened until 2007 may lead to an overvaluation of the level of compliance, because in the next year the number of suspected breaches of EU labour law tends to increase.

## **9.5 Latvia and Slovenia – transposition delays**

In Latvia and Slovenia, governing coalitions led by liberal parties are the chief suspects for the delays and problems with compliance. The case of Latvia is rather peculiar since most of the notified transposition measures date from the years 2000-2003. The sufficiency of most of these acts was later challenged by the EU, however. Apparently, the problems were not a result of neglect but of efforts to transpose ‘minimally’ the European regulatory framework. The Latvian government actually requested three transitional periods in the field of health and safety at work, and justified the requests by the considerable investments that would need to be made by employers to comply with the EU directives. In Slovenia, the main law transposing the framework directive in the field of health and safety dates from the beginning of the 2000s. Some of the secondary acts were considered not sufficient for full implementation. The amendments were passed after the expiration of the transposition deadlines.

In the field of working conditions, government affinity to the European employment policy, and the related socio-economic left/right positions seem very much related to the extent of compliance. The match is far from perfect but neither early start of the preparation nor administrative capacity help better explain the outcomes.