Part III

Analysis within a combined research design
Chapter 5:
EU 1995-2004 transport transposition data set:


5.1 Introduction

After reviewing the rich scholarly discussion on implementation and transposition in the European Union (EU), I assessed the characteristics of the historical development of the EU transport policy field. Results from this review further supported my theoretical framework, which explains why member states miss deadlines for transposing EU transport directives. In this chapter, to test the six hypotheses quantitatively, I present a new data set of the second round that covers almost two-thirds of the full population of the EU transport acquis from 1995 to 2004. Before I operationalize and test the hypotheses in the subsequent chapters, here, I deal with methodological issues. First, I address my motivation of the selection of the policy field, the member states, and the time period of investigation. I then present the sources of information and assess the completeness of the data set, while devoting particular attention to missing values and other important choices.

5.2 Policy field selection

While the research focus is to understand the reasons and mechanisms behind member states’ transposition delay of EU Internal Market legislation, directives are of particular interest. They are not immediately applicable at the national level, but must first be incorporated into national law. Therefore, this book’s focus is the transposition of European directives. It is difficult, however, to analyze all European policy fields in which directives are issued within the context of the proposed study. Whereas the amount of ‘legislation in force’ in general has more than doubled from 4,566 legal acts in 1983 to 9,767 in 1998 (Wessels, Maurer and Mittag, 2003), the occurrences of EU directives in particular was 2,285 in 1998 and 2,674 (European Commission, 2006) on 8 March 2006.

The policy area selected for the study was guided by four considerations: Because the study’s focus is on the timeliness of national transposition processes, I will not consider areas in which the EU primarily issues regulations, such as in the field of cohesion policy, international trade and the common agricultural policy (Alesina, Angeloni and Schuknecht, 2005). Second, I will focus on a core policy area of the Union established by the Treaty of Rome (Franchino, 2005). Furthermore, a classic way of distinguishing between
policy types, which I will use, is in terms of regulatory, re-distributive and distributive policies (Lowi, 1964). Typically, EU policies have a strong regulatory emphasis (Nugent, 2003: 324), and Majone even argues that the EU can be thought of as a regulatory state (1991; 1994; 1996). In order to facilitate the generalization of my findings at a later point, the second consideration is whether the policy area in question fit well into the dominant EU regulatory category. And fourth, to be able to produce empirical regularities for research on transposition of EU directives, I present areas with a sufficiently large number of cases and sufficient variety between the cases (for concise overview of EU legislative output, see: Alesina, Angeloni and Schuknecht, 2005).

On the basis of these four criteria this current study opted for the transport sector. Transport has a strong regulatory component, and furthermore, is one of the crucial enabling technologies for civilization. Since transport had played a longstanding and key role in people’s everyday lives and was a major factor in economic competitiveness and employment, the creation of the single market for intra-Community transport was judged as one of the necessary conditions for achieving the ‘four freedoms’ enshrined in articles 74-84 of the Treaty of Rome. Transport contributes to social and territorial cohesion and by its very nature is fundamental to the achievement of freedom of movement across the EU, satisfying a primary objective of EU policy. Furthermore, permitting quantitative research, the transport acquis includes a sufficient number of directives (106).

5.3 EU transport transposition data set 1995-2004

While the selection of the policy area was primarily guided by four analytical reasons, in the following sections, this study argues that we must make additional choices about which member states to include in the data set, what time period to cover, sources of information, what information to garner and what to do with missing values.

5.3.1 Selection of member states:

For analytical reasons this study opted for nine member states: France, Germany, Greece, Italy, Ireland, Spain, Sweden, the Netherlands and the UK. These states were selected to cover most of the important dimensions of variation on the national level independent variables: centralized versus decentralized states variation in legal traditions and practices, and variation in the number of veto players across and within member states. Here, institutional aspects of the member states’ political system play a role, since they are part of the explanatory factors. Whereas some governments tend to be more stable than others, also included are member states with clear preferences for a limited number of transport sub-sectors, such as the Netherlands for inland
waterways. In contrast, Germany considers all five modes of transport equally important. In addition, the study highlights a pair of notorious transposition laggards – Greece and Italy. Conversely, Spain and Sweden have often led the Commission’s scoreboards on the notification of national measures of implementing directives (European Commission, 2005). Eventually, also included are France, Greece, Sweden and Ireland, a group on which little implementation research work has been done to date.

5.3.2 Time period: 1995-2004

This study opted to focus on only recent cases (1995-2004) of EU national implementation instruments in the area of transport covering almost ten years for three reasons. First, EU history experienced a new level of quality with the adoption of the Single Market in the early 1990s. It was the Single Market idea that triggered important new policy developments in more general areas. The Transport Chapter illustrates that it was not until the 1990s that all sub-sectors were covered by EU legislation. The Internal Market Project entailed the first ever legislative efforts in the railway sector, an area that had not previously attracted considerable attention. Second, rounds of enlargement widened the group of member states. With Sweden, the study includes a country that became member of the EU as late as 1995. Another consideration is Schulz and König (2000) finding that data sources on EU legislation and national legal instruments such as Celex, are biased toward the period before the late 1980s, i.e. the Celex data base is complete only as of late 1980s. There is a considerable delay before the Celex database is fully updated by the Commission, as national data is transferred sporadically. To maintain the effect of right censoring controllable (with regard to those directives for which the transposition process has not been concluded yet), I ignored directives with transposition deadlines set for after 2004.

Overall, the EU transport transposition data set 1995-2004 covers almost ten years of crucial EU transport history while representing 63 percent of the full transport acquis, which had to be adopted by the member states of the last round of enlargement in 2004. The data covers all transport sub-sectors. The distribution of policy sub-sectors in the transport acquis is summarized in Figure 5.5.

Road and shipping directives account for almost two-thirds of the transport acquis, whereas air and rail represent 12% each, general framework directives constitute 8% while inland waterways are used for 4%.

---

22 See also Alesina, Angeloni and Schuknecht (2005) for a breakdown of EU legislation by policy domain.
5.3.3 Sources of information:

Information on the EU transport directives is taken from the official legal database of the European Union – Celex (Communitatis Europeae Lex) which covers all Community legislation, preparatory acts, case-law of the European Court of Justice (ECJ) and parliamentary questions. Celex also aids the interaction between community law and national law by providing publication references regarding member states’ national provisions to enact community directives. Almost 70% of all national implementing measures for Germany, Spain, the Netherlands, the UK, Sweden, Ireland, Italy, France and Greece have been reported in Celex and other Commission sources. However, the official legal databases of the European Union are not the only accessible source to report national implementing measures (or an overview, see Hudson, 2005).

To compare and control for the quality of Celex, I contacted each Transport Ministry in the nine Member States and received a full list from their national transposition databases dating back to the very first directive of the transport acquis. Interestingly, 80% of the data that was often referred to as ‘unreliable’ (Börzel, 2001; Mbaye, 2001; Mastenbroek, 2003) matched the national data. In only 20% of the cases I added further information on the national implementing instrument derived from the national databases. There was

---

23 See Steunenberg and Rhinard (2005) for an overview of Commission’s efforts to gather reliable compliance data.

24 www.boe.es/g/es (Spain); www.gazzette.comune.jesi.an.it (Italy); www.jura.uni-sb.de/BGB1/suche.html (Germany); www.legifrance.gouv.fr (France); www.online-law.co.uk/lawsearch/lawsearch/html (UK); www.opmaat.sdu.nl (The Netherlands); www.swedengov.se/sb/d/3288, www.infotorg.sema.se and www.rixlex.riksdagen.se/ntbin/thw?%24% (Sweden). I would like to thank Panagiota Massouridou to assist me in getting access to the secured data base for the Greek legal professions.
no biased lack of information across member states or transport sub-sectors worth mentioning. However, I did add information for all modes of transport within each member state following the efforts in line with transposition data of the second generation.

5.3.4 Missing data:

When considering the detailed information for each transport directive from the first national implementing measure, missing values became apparent. However, incomplete data on the EU directives or the national implementing measures seems unrelated to member states or transport sub-sectors. Since these missing values are random noise, they are not expected to affect the findings in a systematic manner. Consequently, I took the following steps to improve the quality of data. First, in cases where a date of publication was not recorded, I used their date of adoption. Second, I excluded missing values for which I had not found a date of transposition. Third, I deleted two EU directives portions from the transport acquis which only dealt with transport in the broadest sense, namely: summer time provisions. Fourth, I excluded all cases in which member states had already complied before the EU directive was adopted. Finally, I deleted all transposition cases of consolidating directives that combined existing directives, repealed directives or corrected directives. The last information added on pending cases was February 1, 2004.

5.3.5 Recording the first national transposing instrument:

Member states sometimes translate EU legislation by using more than one national transposing instrument. When they do this, they necessarily notify the Commission of all to-be-used measures. For the purpose of this research, it was not feasible to record all the transposing instruments that were notified to the Commission. Therefore, in order to calculate transposition delay at a later stage of this analysis, a decision had to be made with regard to which national implementing measure is recorded. It is an important question, not in the least because whatever legal instrument is recorded will be used to calculate the dependent variable, timeliness. Three primary considerations denote the first national legal instrument as the prudent choice: practical, conceptual and legal.

First, from a practical point of view, recording the first national implementing measure makes sense because the Commission considers the first national legal instrument notified as sufficient (IP15). It is sufficient with respect to

26 Please see Steunenberg and Rhinard (2005) for additional information on the Transposition Group data set.
complying with the requirement of timely notification. That is not to say that timely notification is an appropriate measure to explain the completeness of implementation. Nonetheless, timeliness is the dependent variable of this study and, moreover, a necessary first step for full compliance with the EU Treaty obligations. Only after the Commission has been notified of the first instrument does the ‘clock start ticking’ to measure an instrument’s appropriateness and correctness for transposing a particular EU directive.

From a conceptual point of view, opting for the alternative ‘last’ implementing measure would have been problematic. Since there is always the possibility that new measures will be added later on, due to the transposition of new EU legislation in the area, it is rather difficult to identify the last instrument, especially in a large-n study. Conceptually, then, there is not such thing such as a last instrument (see Berglund, Gange and van Waarden, 2006 for detailed discussion). When is an instrument the last one? When is a national implementing process finalised?

From a legalistc point of view, opting to record the first national transposition instrument is prudent because the instrument normally represents the key legislative measure in the national transposition process. Moreover, it often clears the way for additional pieces of legislation, if required, to be implemented.

In summary, the first recorded measure might not indicate whether the national transposition process is complete. However, by using this indicator we can confidently ascertain whether there has been a delay. Focusing on the timeliness of national transposition processes, furthermore, taking for record the first instrument also diminishes the possibility of exaggeration of delays.

5.3.5 Data set:

The EU transport transposition data set covers the period of 1995-2004 and includes information on the first 367 national implementing measures in nine member states covering 67 EU transport directives and representing 63% of the total transposition acquis that member states had to transpose before the last enlargement round in 2004. To increase the quality of the Celex data (and thereby satisfy the recent efforts of the implementation data of the second generation), this study controlled for and added national data sources and tidied up the data set for analysis purposes.

27 I will return to this argument when presenting the case studies. When presenting them, I have the advantage of hindsight to accurately account for all legislative instruments, since all four cases had been concluded.