Chapter 9:  
Tracing the process of four national transposition cases


9.1 Introduction

In the previous chapter, detailed explanations of the selection process in adopting four national legal instruments to transpose EU transport directives were provided. Namely, the sample of 1998/55/EC, 2001/14/EC, 2001/53/EC, and the 2002/59/EC was discussed. Two important sub-sectors in the transport field – maritime and rail which represent 43% of the overall EU transport acquis – are the focus of this chapter, as they have been crucial departments for the EU’s economic and regional development.

With coastlines running virtually uninterrupted from the Aegean Sea across the Mediterranean, and along the Atlantic Ocean and the North Sea to the Baltic, the maritime sector is very important. Roughly 40% of the contemporary world fleet is European, and around 4% of the EU’s gross domestic product (GDP) comes from maritime industries and services. Around 90% of global cargo is transported by sea, with 3.5 million tonnes of goods cruising through EU waters every year. More than 40% of the EU’s internal trade goes by sea. Each year, nearly two billion tonnes of freight is loaded and unloaded at EU ports. Another indicator, if an unfortunate one, of the importance of EU waters is the fact that out of the world’s 23 major oil spill incidents in the past 40 years, 11 occurred in European waters (WMU, 2006). Based on its economic importance, as well as the risks to the environment EU maritime legislation has attracted a lot of attention, and represents about 31% of the full EU transport acquis.

Railways in the EU, on the contrary, have been declining in economic importance over the last almost four decades. Though it currently represents about 12% of the full EU transport acquis, its decline in market share is considerable, and probably irreversible. This is despite the railway’s achievements of both a steady passenger flow, and a freight transport growth. Between 1970 and 2001, the rail’s market share collapsed, falling from 21% to 7.8% (Di Pietrantonio and Pelkmans, 2004: 2). In the case of freight transport, railways lost market share, not only in relative terms, but even in absolute terms. It is estimated
that between 1990 and 2001, the market share of general freight transport rose by 25%, whereas the respective shares of road transport (-35%) and rail freight transport (-6%) actually decreased. The current challenge of the European rail industry is to develop maximum passenger/customer value. Trains have to be safe, clean, reliable, and prompt, both for passengers and stock. Improved services may give rail transport a enormous competitive edge, making it the best way to combine low travel time with easy accessibility to both leisure and professional hubs.

**Methodology**

So far, the determinants of transposition delay have been identified. This chapter addresses the second sub-question how the identified determinants influence the timeliness of the national transposition processes. The causal mechanisms underlying the correlations between the timeliness of national transposition processes and the individual components of the theoretical framework will be further elucidated through process-tracing. Qualitative research focusing on four case studies will further explain the ambivalent statistical results produced by the data and displayed, in the previous chapter, by the deviant residuals. George and Bennett (2005: 206-207), explain the process-tracing method as follows:

'The process-tracing method attempts to identify the intervening causal process – the causal chain and the causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable. [...] Process-tracing forces the investigator to take equifinality into account, that is, to consider the alternative paths through which the outcome could have occurred, and it offers the possibility of mapping out one or more potential causal paths that are consistent with the outcome and the process-tracing evidence in a single case.'

I will trace the operation of the causal mechanisms at work in the transposition process, and infer the essence of the cognitive processes that accompany these mechanisms. Consequently, this method calls for a theoretically informed, and very specific trace of the four national transposition processes. I will carefully map this process, ‘exploring the extent to which it coincides with prior, theoretically derived expectations about the workings of the mechanisms’ (Checkel, 2005: 6).

**Data**

The causal mechanisms that explain why member states miss transposition deadlines will be clearly elucidated through process-tracing. The required data for process tracing is qualitative in nature and includes official documents, EU legal databases, press accounts, and interviews. Information about the negotiation phase can be found in Prelex, which follows all Commis-

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37 Process tracing is synonymous with a mechanism-based approach to theory development (Checkel, 2005: 17).
38 http://ec.europa.eu/prelex
sion proposals and communications from their transmission to the Council or the European Parliament. Links allow users to access directly the electronic texts available (COM documents, Official Journal, Bulletin of the EU, documents of the EP, press releases). The largest documentary databases on EU law (Eurlex and Celex) and national legal databases provide information on the national implementing measures. Information on the timing of national elections and the change of transport ministers were found in the annual political data provided by the European Journal of Political Research. Information on national-level transport related accidents were studied by content analysis (Krippendorf, 2004) of newspapers. For cross-checking purposes and the procurement of additional data for these theoretical informed case studies, I conducted 15 interviews in Brussels and in different member states between January 2005 and January 2006 (see Appendix for overview).

Structure of the four case studies
The structure of the four case studies is as follows. The analysis is grouped into two on-the-line and two off-the-line cases. On-the-line incidents represent those that are well explained by the theoretical model for apt transposition with residual deviants of around '0', and off-the-line incidents describe those that are poorly explained by the statistical model and the fuzzy set. To begin, a short introduction about the directive’s relation with the full transport acquis is given. Then, analysis addresses the European level factors that account for transposition delay, namely: the European negotiation process in general, and the content of the European directive in particular. Following this is a closer look at the national transposition practices, and the transposition actors involved at the national level. Last but not least, the effects of past crises in the national transposition process are examined. These four cases are later used to generalize subsequent conclusions of this chapter.

9.2 On-The-Line Case Studies


In order to sketch the overall scope of Directive 98/55/EC, the purpose of the amended Directive 93/75/EEC is crucial to understand. After the 1978 Amoco Cadiz accident yielded environmentally devastating consequences, and especially after the 1987 Herald of Free Enterprise accident claimed the lives of 193 people, the EU legislative bodies adopted Directive 93/75/EEC concerning minimum requirements for ships bound for or leaving Community ports and carrying dangerous or polluting goods. The idea was to oblige vessels bound for Community ports to notify the national authorities of the nature of the dangerous and polluting goods they were carrying, and to make available
to those authorities a plan indicating the location of such goods on board. In addition, vessels were to immediately inform authorities in the case of accidents. In accordance with International Maritime Organisation (IMO) regulations, authorities were then to forward information about the accident to other shipping vessels in the area, and also to other affected member states.

9.2.1.1. European level characteristics:

Six months transposition deadline
The Commission proposal for the Council directive amending Directive 93/75/EEC was introduced on 23 September 1996, and was finally adopted in the second reading during the first days of the Austrian Presidency on 17 July 1998. Hence, it took almost two years to adopt the new EU legislation in the field of maritime safety. In light of developments in international legislation on maritime safety, the purpose of the Commission’s proposal was to update the annexes to the 93/75 Directive and to facilitate their subsequent amendments. In the first reading, the European Parliament (EP), headed by the EP’s rapporteur, Alfonso Novo Belenguer (Radicals, ES), was quite complementary to the Commission’s text. The EP urged the Council to extend the scope of Directive 98/55/EC to include the carriage by sea of irradiated nuclear fuel, plutonium, and high-level radioactive waste in flasks. In total, the European directive has six recitals, it was just two pages long, containing two annexes, each of which were one page long. In the end, the transposition deadline was set at six months (31 December 1998), which is the normal timeframe for the implementation of an amendment that will replace, foremost, the annexes of already existing EU legislation. In the meantime, Directive 98/55/EC has been repealed by Directive 2002/59/EC.

Table 9.13: Policy cycle timetable of 98/55/EC.

<table>
<thead>
<tr>
<th>98/55/EC</th>
<th>Initiated</th>
<th>Adopted</th>
<th>Deadline</th>
<th>French Notification to Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>23 September 96</td>
<td>17 July 98</td>
<td>7 November 99</td>
<td>19 February 99; 17 March 99</td>
</tr>
</tbody>
</table>

No discretion for interpretation
Amending Directive 93/75/EEC, Directive 1998/55/EC had two main objectives. First, it specified that the Directive 93/75/EEC covered nuclear transport, i.e. irradiated nuclear fuel, plutonium, and high-level radioactive waste. These radioactive materials (RAM), of natural or artificial origin, are of widespread use in developed societies all over the world. They are used in medicine, research, industrial manufacturing, agriculture, electric power generation, and in other applications that assist our daily lives. The handling, use, and management of RAM, including their transport gives rise to potential
radiological hazards. Directive 1998/55/EC was designed to include RAM. Second, Directive 1998/55/EC emphasised the search for harmonization of EU member states’ legal instruments on the basis of already existing international standards, conventions, and agreements. Hence, the two objectives of Directive 1998/55/EC were to maintain the scope of Directive 93/75/EEC, and to facilitate the adaptation of those annexes to developments in international law through the committee procedure. It added relevant INF codes (International code for the Safe Carriage of packaged irradiated nuclear fuel, plutonium and high-level radioactive wastes on board ships) to the content of the accident information that was to be reported to the authorities of the Community port’s member state. Therefore, the duty of notifying authorities of accidents was extended to include all ships, regardless of their date of construction or size. Directive 1998/55/EC specified how RAM should be carried on each kind of ship.

After all these adjustments, member states were left with little discretion as to how to interpret the provisions on RAM, a fact confirmed by all interview partners. Although one article was adopted to amend Directive 93/75/EEC’s annexes I and II, they include a clear and straightforward checklist for vessels, and permit no discretion.

9.2.1.2. The national transposition process: France

With the exception of the UK, member states transposed Directive 1998/55/EC before the deadline, or else notified the Commission of a short delay of between one and five months. Table 9.14 illustrates that most member states did not encounter considerable transposition delays. This is despite the fact that no member state was able to refer to already existing national legislation, but instead had to actively adopt new legal instrument(s) to transpose the Directive (IP2).

Table 9.14: Transposition delays in months of Directive 1998/55/EC.

<table>
<thead>
<tr>
<th>Member State EU15</th>
<th>BE</th>
<th>DK</th>
<th>DE</th>
<th>EL</th>
<th>ES</th>
<th>FR</th>
<th>IE</th>
<th>IT</th>
<th>LU</th>
<th>NL</th>
<th>AU</th>
<th>PT</th>
<th>FI</th>
<th>SE</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transposition delay in months for 1998/55/EC</td>
<td>1</td>
<td>0</td>
<td>-3</td>
<td>0</td>
<td>4</td>
<td>3</td>
<td>5</td>
<td>-3</td>
<td>n.r.</td>
<td>4</td>
<td>n.r.</td>
<td>n.r.</td>
<td>3</td>
<td>0</td>
<td>21</td>
</tr>
</tbody>
</table>

Source: Eurlex and national databases; n.r. = no reference (16.9.04), Legend: BE (Belgium), DK (Denmark), DE (Germany), EL (Greece), ES (Spain), FR (France), IE (Ireland), IT (Italy), LU (Luxembourg), NL (the Netherlands), AU (Austria), PT (Portugal), FI (Finland), SE (Sweden), UK (United Kingdom).

France belongs to the group of member states that did not encounter serious transposition delay while transposing Directive 1998/55/EC. With a notification to the Commission of the first national instrument on 19 February 1999, France had a short delay of three months.
Relatively large numbers of transposition actors

In the end, France notified the Commission of two measures belonging to the ‘lowest’ level instrument in the French hierarchy of legal measures\(^{39}\), namely, the ministerial order (\textit{arrêté ministériel}). The first order\(^{40}\) was adopted almost three months after the transposition deadline set in the Directive, and the second one was 14 weeks after this deadline (17 March 1999)\(^{41}\). Both ministerial orders were signed by the director for maritime transport, M. Gressier, and three ministries were directly involved in the transposition process, namely: the Ministry of Economics, the Ministry of Environment, and the Ministry of Transport. An interview partner of Transport ministry stressed the three-dimensionality of the Directive – it covered boat, harbour, and circulation – which required the extraordinary involvement of more than just the Ministry of Transport. Despite the fact that lowest national instrument was chosen, the number of veto players (4) was consequently relatively high.

Transposition package with 98/55/EC and 98/74/EC

Whereas Directive 98/55/EC was one among four directives to be transposed in the maritime units, it was the first Directive in a transposition package with Directive 98/74/EC. It was the State Council (\textit{Conseil d'Etat}) that was responsible for determining whether the text would require legislative action, or else could be dealt with by government regulation. Furthermore, in accordance with the State Council and the SGG (\textit{Secrétariat Général du Gouvernement}), the SGCI (\textit{Secrétariat Général du Comité Interministériel pour les questions économiques européennes}) decided on the application of the package approach.

Adopted on 1 October 1998, the last Directive in the package, however, had a transposition deadline set for 2 November 1999—almost one year later than that of Directive 98/55/EC. Considering the time difference, one can see that the package approach matters. While the latest transposition measure in the package was adopted almost eight months in advance, this packaging method had a delaying effect for the transposition of Directive 98/55/EC. Adopted three months later in the Council of Transport Ministers, but having double the transposition time guaranteed by the EU Transport Ministers, the transposition of Directive 98/74/EC was combined with the Directive 98/55/EC (that covered minimum requirements for vessels bound for or leaving Community port and carrying dangerous goods) which had a delaying effect on the transposition process of Directive 98/55/EC.

\(^{39}\) Consult chapter 8 for an overview of all types of national implementing measures in the nine member states covered by this study.

\(^{40}\) Arrêté du 19 février 1999 portant modification du règlement annexé à l'arrêté du 23 novembre 1987 modifié relatif à la sécurité des navires.

Tracing the process of four national transposition cases

Third French cohabitation (1997-2002)

During the transposition period, 17 July 1998 to 17 March 1999, the political climate in France was not tense, and no general election took place. Instead, between 4 June 1997 and 7 May 2002, France experienced its third cohabitation. Whereas Jacques Chirac of the liberal-conservative Union for a Popular Movement (UMP) was the president of the French Republic, Lionel Jospin, from the Socialist Party (PS), was Prime Minister. ‘It was a relatively stable five-year term of government’ (IP1). During these five years, Jean-Claude Gayssot, of the French Communist Party (PCF), was the only transport minister under Lionel Jospin, a fact that guaranteed the prospect of continuity and ‘business as usual.’ (IP1).

9.2.1.3. Crises:

No maritime accident

During the eight months of the transposition period, no maritime accident occurred. An accident would have had an effect on the implementation process in France. The next ecological disaster, however, was not far off. On 12 December 1999, the oil tanker Erika sank 40 miles off the coast of Brittany, releasing more than 10,000 tonnes of heavy fuel oil. The ecological disaster was devastating, polluting 400 kilometres of the French coast line. Only a few months later, the next European maritime directives were adopted under the highest political priority during the Portuguese Presidency (January-June 2000).

9.2.1.4. Preliminary findings:

The knowledge gleaned by following the French transposing of EU maritime Directive 1998/55/EC, from the Commission’s initiative to the final adoption of the last ministerial order corroborates the study’s theoretical framework (see table 9.15). Whereas the six-month deadline set in the Directive, which is very formal in character and leaves no room for interpretation, would have been sufficient time for transposition. However, the extraordinary number of transposition actors and the national transposition packaging caused some delay in the end.

Three French ministries had to agree on a national instrument that would be used in transposing 1998/55/EC, a directive that covered three issues: boat, harbour, and circulation. This lead to some coordination efforts between the SGCI and the head of the Ministry of Transport, efforts that would ultimately risk a problem-free procedure. Furthermore, the SGCI had agreed to set up a transposition package for two maritime Directives adopted by the EU ministers of transport in 1998, whose transposition deadlines, however, differed by almost one year. Consequently, this approach caused a three-month delay for the first Directive in the package (98/55/EC), but accelerated the transposition process of the second Directive (98/74/EC) by almost eight months. Next, I address the second on-the-line case whose implementation record is less convincing.

The EU has had the goal of revitalizing its railways on the agenda since the early nineties. Three railway packages have, meanwhile, been adopted amounting to a series of directives. This all started in 1991, with the adoption of single directives, like Directive 91/440/EEC on the development of European railways. The intention of this Directive was to improve the legal framework for railways, and to halt the ongoing decline in their market share. Directive 91/440/EEC was complemented by a follow-up in 1995, Council Directive 95/18/EC on the licensing of railway undertakings and one on allocation of railway infrastructure capacity and the levying of charges (95/19/EC). A second step of reforms at EU level, which were adopted on 26 February 2001, goes under the name ‘first railway package.’ Referring to rail freight only, it represented an attempt at liberalizing the sector through the introduction of open access and forms of head-on competition—at least on the Trans-European Rail Freight Network (TERFN). The TERFN is responsible for 50% of EU railway networks and 80% of traffic. Open access and head-on competition will extend to the whole network by 2006, according to the 2004 adopted ‘second railway package’. On 3 March 2004, the Commission adopted its third railway package. This package contained four legislative measures, which are still being negotiated in the Council’s working groups. Directive 2001/14/EC, which is part of first railway package, will be the focus of the second case study of this chapter.

Table 9.15: Results of case study no. 1.

<table>
<thead>
<tr>
<th>European directive related factors</th>
<th>Transposition time set in the directive</th>
<th>Transposition of 1998/55/EC in France</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of discretion granted by the directive</td>
<td>No discretion for interpretation</td>
<td>6 months</td>
</tr>
<tr>
<td>Number of veto players</td>
<td>Relatively large numbers of transposition actors</td>
<td></td>
</tr>
<tr>
<td>Package approach</td>
<td>Transposition package with 98/55/EC and 98/74/EC</td>
<td></td>
</tr>
<tr>
<td>Situational change of internal and external environment</td>
<td>General elections</td>
<td>No election; Third French cohabitation</td>
</tr>
<tr>
<td>Transport related accidents</td>
<td>No maritime accident</td>
<td></td>
</tr>
</tbody>
</table>

9.2.2.1. European level characteristics:

Two years transposition deadline
The EU negotiations for the first railway package, containing Directives 2001/12, 2001/13, and 2001/14, were concluded in February, 2001. The Commission proposal was introduced during the Austrian Council Presidency on 22 July 1998. On 25 August 2000, the Council declared that it could not accept all the EP’s amendments that were drafted by EP’s rapporteur, Johannes Swoboda (PSE, Austria). Subsequently, the Council convened the Conciliation Committee, which met for the first time on 11 October 2000. Meanwhile, several meetings of EP’s delegation and in trialogues (Farell and Hértier, 2003; Häge and Kaeding, 2007) took place before and after that date. On 22 November 2000, the Conciliation Committee reached its final agreement on the entire railway package. Ultimately, the first railway package was signed by the EP after its third reading and by the Council after two and a half years of bargaining. The date of the signing was 26 February 2001.

Regarding infrastructure access, Directive 2001/14/EC superseded and repealed Directive 95/19/EC. Strongly inspired by the 1998 White paper on infrastructure access pricing, Articles 7 and 8 of Directive 2001/14/EC inject new, essential, and detailed principles of charging. The deadline for transposition was set at two years (15 March 2003)\(^{42}\). Compared to the average 18 month transposition time of other transport directives in 2000 to 2005, the 24 month deadline was considerably above average (IP5).

While Directive 2001/14/EC was in transposition, Article 30 of Directive 2004/49/EC (in the second railway package) amended the title of Directive 2001/14/EC, as well as the contents of Articles 30.2., 32, and 34 to remove provisions on safety.

Table 9.16: Policy cycle timetable of 2001/14/EC.

<table>
<thead>
<tr>
<th>2001/14/EC</th>
<th>Initiated</th>
<th>Adopted</th>
<th>deadline</th>
<th>Spanish Notification to Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>22 February 98</td>
<td>26 February 01</td>
<td>15 March 03</td>
<td>17 November 2003; 30 December 04; 7 April 2005</td>
</tr>
</tbody>
</table>

\(^{42}\) There are derogations in respect of the implementation of certain provisions of the Capacity Directive for Ireland, the UK and Greece, and those provisions do not have to be implemented until 15 March 2008.
Relatively high level of discretion

Directive 2001/14/EC is a 17 page document with 40 articles and 3 short annexes. It deals with potentially applicable principles and procedures for the setting of railway infrastructure charges, both international and domestic, and the allocation of railway infrastructure capacity\(^{43}\), i.e. each Member State has to designate the allocation body which should be informed of all train paths available, and has to ensure that the railway infrastructure capacity is allocated on a fair and non-discriminatory basis. The existing directives had not prevented major disparities in the structure of railway infrastructure charges, nor the levels of such charges, nor the form or length of capacity-allocation procedures. Thereupon, Directive 2001/14/EC provides much detail necessary to describe the general character of the infrastructure manager’s\(^{44}\) monopoly regulation. It addresses the following questions explicitly: Who is entitled to access the network? Who allocates access? What is the allocation process? How long is an allocated access period? How is access priced? What are the other terms of access? What if the network is congested? The directive is considered a ‘rather complicated document’ (IP5), with 50\(^{45}\) recitals that state the scope of the legislation. Although they are not legally binding, they clearly indicate the Directive’s complexity. In the end, however, Directive 2001/14/EC does allow for a certain degree of flexibility (IP5). It entails a considerable amount of discretion in the interpretation and application of its requirements. All interview partners confirmed that it provides infrastructure managers and train operators with appropriate incentives and flexibility in capacity allocation, and in performing allocation procedures fairly (Article 7.2.; 8.1.; 10.1.; 14.1.; 16; 19; 29).

9.2.2.2. National transposition process:

Member states had different points of departure after the adoption of the first liberalizing directives in the early 1990s. Whereas most member states had not foreseen any separation in the railway sector administration, Sweden was the first European country that provided the legal framework for non-discriminatory competition on the rail network, remarkably, even before its official membership to the EU. Sweden’s railway reform of 1988 separated the infrastructure and the operator completely. The separation in administration had also already been accomplished in the UK. The British railway system had been divided into a number of different entities, including infrastructure, passenger and freight operators, rolling stock companies, and regulator. In Spain, too, the railway system also had been divided into different admin-

\(^{43}\) ‘Allocation’ means the allocation of railway infrastructure capacity by an allocation body (2002/14/EC Article 2 e)

\(^{44}\) ‘Infrastructure manager’ means any public body or undertaking responsible in particular for establishing and maintaining railway infrastructure, as well as for operating the control and safety systems (Directive 2001/14/EC Article 2c)

\(^{45}\) Directive 2001/14/EC is the transport directive with the most recitals in history.
istrative entities, in the 1990s, following the British model, but all entities still fell under the umbrella organization RENFE (Red Nacional de los Ferrocarriles Españoles, empresa pública operadora).

Table 9.17 illustrates that, all in all, member states had difficulties in transposing the directive by the deadline. Whereas initially Sweden, the UK, Denmark, Finland, and Italy notified the national measures to the Commission on time, in the end, only Denmark and Finland complied with EU legislation to the Commission’s satisfaction. Infringement proceedings were started against the UK and Sweden because their existing legislation was not sufficient in scope (IP5). On the other hand, most member states experienced more considerable transposition delays, including Germany, France, the Netherlands, and Belgium. After months of intensive legislative activity, Belgium, for example, needed 24 national implementing measures. At first, Spain notified the Commission that its first instruments would be only moderately late, estimating implementation on 17 November 2003. The adopted legislative act, however, was to come into force six months later, on 18 May 2004, which is referred to as the so-called vacatio legis46. Even then, it was not enforced before 31 December 2004, accumulating almost two years of delay.

Table 9.17: Transposition time in months of Directive 2001/14/EC.

<table>
<thead>
<tr>
<th>Member states EU 15</th>
<th>BE</th>
<th>DK</th>
<th>DE</th>
<th>EL</th>
<th>ES</th>
<th>FR</th>
<th>IE</th>
<th>IT</th>
<th>LU</th>
<th>NL</th>
<th>AT</th>
<th>PT</th>
<th>FI</th>
<th>SE</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transposition delay in months for 2001/14/EC</td>
<td>19</td>
<td>-3</td>
<td>25</td>
<td>n.r.</td>
<td>8</td>
<td>23</td>
<td>n.r.</td>
<td>4</td>
<td>n.r.</td>
<td>21</td>
<td>9</td>
<td>8</td>
<td>0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Eurlex and national databases (16.9.04); n.r. = no reference, Legend: BE (Belgium), DK (Denmark), DE (Germany), EL (Greece), ES (Spain), FR (France), IE (Ireland), IT (Italy), LU (Luxembourg), NL (the Netherlands), AT (Austria), PT (Portugal), FI (Finland), SE (Sweden), UK (United Kingdom).

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Large number of transposition actors:

After the adoption of the first railway package in 2001, Spain initially waited before taking any action. Since Directive 2001/14/EC gave considerable leeway to the member states, Spain watched and consulted with other member states ‘to see which interpretation was pursued’ by them (IP6). Apparently, RENFE (Red Nacional de los Ferrocarriles Españoles) had steady contact with

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46 The period between the publication of a statute in the Official Journal of Laws and the beginning of the tax year. The official Spanish text in the legislative act reads as follows (Ley 39/2003, BOE 276/40561): ‘La presente ley entrará en vigor a los seis meses desde su publicación en el boletín oficial del estado.’
its French and German counterparts for these reasons, and also because it became clear that not all Spanish political forces would agree with their government’s approach in the transposition process. Therefore, Spain hoped to watch and learn from other states so as to develop a measure that would please the most people.

On 17 November 2003, the Spanish parliament adopted a legislative act opting for the ‘radical division’ between the new public administration, ADIF (Administrador de Infraestructuras Ferroviarias) and the RENFE-Operator. Although this legislative act was ‘again a good example for Spain’s radical transposition style’ (IP7), there was still a pending issue to be solved. Before the legislative act could come into force, the questions about the umbrella organization (RENFE)’s debt had to be solved, leading to a provisional vacatio legis of six months (IP4). Two ministries were involved in the Spanish transposition process. The Ministry of Transport (Fomento) lead the process of transposition, while the Ministry of Economics (Ministerio de Economía y Hacienda) tackled the debt of 7,200 million Euros (El País, 2004: 60; Goméz, 2005)

A legislative act (ley ordinaria), which is the highest legal instrument in the hierarchy of Spanish legal measures, involves a considerable number of veto players in the policy-making process. Legislative acts represent only about 12% of the total legal instruments used for the transposition of EU directives in Spain (Steunenberg and Voermans, 2005: 132), yet the adoption of a ley ordinaria requires parliamentary approval as well as the advice of the State Council. The additional role played by the Ministry of Economics made a six months vacatio legis indispensable.

Furthermore, the ‘gladiator style’ (IP4) separation incited extensive discussions between the conservative Aznar government and left opposition parties in the parliament and, consequently, delayed the drafting of complementary regulations, which were considered necessary. Although the administrative separation of units (infrastructure and circulation) had been already taken place in the early 1990s, the discussion now was more about the physical separation of persons and the threat of licensing third contractors to the national infrastructure due to rationalizing means (IP7).

Transposition package without relevance

The first railway package was being transposed concomitantly with eight other ongoing transposition processes in the railway sectors units of the Ministry of Transport. Despite the massive workload, Spain transposed all

48 Whereas Germany and France opted for a middle way, Spain decided to separate infrastructure manager and railway undertaking from each other, not only legally, but also in terms of buildings and human resources.
three directives of the first railway package through one legislative act (ley) 39/2003 on 17 November 2003, amending the already existing legislation of 30 July 1987. Although Spanish authorities applied a transposition package for the entire first railway package, the timeliness of the transposition process was not improved. This was because all three EU directives were not only adopted by the EU Ministers of Transport on the same day (26 February 2001), but they also had the same transposition time guaranteed—a final date fixed for two years later (15 March 2003). Consequently, it is not possible to differentiate between the first or the last Directive in this particular Spanish transposition package, nor would the theoretical model foresee any effect on the timeliness of transposition.

Spanish general election of 14 March 2004

The aforementioned conflicting discussions between the conservative Aznar government and the left opposition in parliament were further augmented by the campaigning for the general elections of 14 March 2004. With these discussions now came an interruption in the transposition process. Over time, the clear division between ADIF and RENFE-Operador became an election campaign issue (IP4). Although less ideological than the French counterparts, the Spanish unions UJT (Transistors Unión) and SEMAF (Sindicado de Maquinistas y Ayudantes Ferroviarios) demonstrated against the legislative act.

The autonomous regions in Spain, CCAA (Comunidades Autónomas), especially those governed by the opposition party groups – Aragón, Asturias, Castilla-La Mancha and Cataluña – initiated a constitutional proceeding concerning their regional transport competence (Articles 79d and 31). Their goal was to carry out their full regional competences in the railway sector in general and the infrastructure in particular, since they would be responsible for the practical application of the legislative act, as well as its three related regulations. Although their constitutional proceeding was eventually dropped, all interview partners confirmed that it served to irritate the national situation for some time.

Despite the overall displeasure about the conservative government’s radical approach, a few weeks before the general election, the conservative government seemed very likely to keep their positions after the election. But then something unforeseen happened, traumatising Spain and the Spanish voters. After the fatal Atocha Central Station bombings on 11 March 2004, the centre-left party, PSOE, lead by Zapatero won the elections. Those who had criticized the legislative act in parliament were now (surprisingly) in power. They assigned a new transport minister, Magdalena Álvarez. Her first action as transport minister was to postpone the coming into force of the transposing legal instrument. She added another year to the vacatio legis in order to facilitate discussions between the trade unions (UJT and SEMAF) and the autonomous regions (CCAA), which had supported the new government fiercely in opposition during the election campaigns.
This self-imposed year of reflection (14 March 2004 to 30 December 2004) concluded with three additional implementing measures (real decreto) adopted on 30 December 2004 – one year after the publication of the legislative act 39/2003. Based on Article 86 of the Spanish Constitution, the government may issue this special type of decree in regards to the status of the law in case of extraordinary and urgent need (Steunenberg and Voermans, 2005: 131). The provisions of the real decreto-ley are directly applicable, but they must be immediately submitted to parliament. Although the Spanish government considered the speediest Spanish legal instrument urgently necessary (IP4), the Commission, considered it to be insufficient. The Commission started an infringement procedure for non-compliance, leading to two additional ministerial orders (orden) adopted on 7 April 2005, which are provisions issued by the minister without explicit authorization through law. Thereupon, the Commission closed the infringement proceedings against Spain.

Ultimately, Spain adopted six national instruments covering almost all different types of instruments, whereas most of the other member states – with the exception of Belgium – remained in the margin of between one and four. The Spanish Ministry of Transport, Magdalena Álvarez, stands still in contact with the Commission to further improve the transposition of the first railway package in Spain (IP4).

9.2.2.3 Crises:

No major railway accidents on Spanish territory

Whereas the UK is ‘sadly famous’ for its fatal railway accidents, Spain has not experienced any major train crashes, in general; nor did any occur during the transposition period. The Atocha bombings during the election campaign had a delaying effect on the proceedings of Spanish policy-making. However, since they were not directly related to transport or railway liberalization, no accelerating effect could be expected.

9.2.2.4 Preliminary findings:

In the end, the Spanish authorities notified the European Commission of six legal instruments that would be used to transpose the first railway package, including Directive 2001/14/EC. The preconditions for a swift transposition process were already null because of the high degree of discretion given to the member states. This flexibility resulted in a time-consuming ‘wait and

49 Real decreto 2395/2004, de 30 de diciembre, por el que se aprueba el Estatuto de la entidad pública empresarial Administrador de Infraestructuras Ferroviarias. Real decreto 2396/2004, de 30 de diciembre, por el que se aprueba el Estatuto de la entidad pública empresarial RENFE-Operador. Real decreto 2387/2004, de 30 de diciembre, por el que se aprueba el Reglamento del Sector Ferroviario.

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see’ situation right after the EU Ministers of Transport had adopted Directive 2001/14/EC. After the Spanish authorities had deliberated on the different approaches envisioned by Germany and France, they decided to go for the ‘gladiator style’ of separation between ADIF and RENFE-Operador. The potestad reglementaria opted for the highest Spanish instrument, the ley ordinaria, involving large numbers of transposition actors (State Council, parliament, autonomous regions etc.). However, before transposition could begin, the ADIF’s debt of 7,200 million Euros had to be tackled by the Ministry of Transport and the Ministry of Economics. This situation resulted in one additional agency’s involvement, the Ministry of Economics, and required the introduction of the so-called vacatio legis. Furthermore, the radical Spanish approach caused considerable agitation within the country. Unions protested in the streets of Madrid, autonomous regions began legal proceedings, and the opposition antagonized the draft legislation in parliament.

Table 9.18: Results of the second case study.

<table>
<thead>
<tr>
<th>European directive related factors</th>
<th>Transposition of 2001/14/EC in Spain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of discretion granted by the directive</td>
<td>Relatively high amount of discretion</td>
</tr>
<tr>
<td>Transposition time set in the directive</td>
<td>2 years transposition deadline</td>
</tr>
<tr>
<td>Form and method of national transposition process</td>
<td>Number of veto players</td>
</tr>
<tr>
<td></td>
<td>Relatively large numbers of transposition actors</td>
</tr>
<tr>
<td>Package approach</td>
<td>Transposition package without relevance</td>
</tr>
<tr>
<td>Situational change of internal and external environment</td>
<td>General elections</td>
</tr>
<tr>
<td></td>
<td>Spanish general election of 14 March 2004</td>
</tr>
<tr>
<td>Transport related accidents</td>
<td>No railway accident</td>
</tr>
</tbody>
</table>

The hostile response by unions, autonomous regions, and the opposition was further harassed by the general elections, which were scheduled in the last month before the Directive’s transposition deadline (15 March 2004 – 17.11.03 plus 6 months). The fatal Atocha Central Station bombings of 11 March 2004 were likely responsible not only for preventing the Aznar’s from winning the elections, but also for further delaying the transposition process of 2001/14/EC. The Directive was set to the side, as other issues, such as terrorism and security, earned priority status. After the bombings and the unexpected electoral victory of the centre-left, however, Spain needed a general period of reflection. A new centre-left government assigned a new transport minister, whose first action was to proclaim this year of reflection. Furthermore, by postponing the final adoption of Direct 2001/14/EC by one year, the Spanish government also honoured the trade unions’ and the autonomous regions for their strong support during the election campaigns.
Chapter 9

9.3 Off-the-line case studies

While the first two cases corroborate to great extent the theoretical framework on apt transposition, the following off-the-line studies will help to further improve our understanding of timely transposition.


9.3.1.1 European level characteristics:

The sinking of the oil tanker Erika off the French coast in December, 1999 spurred new developments in Europe’s maritime safety policies. The ‘Erika I’ package included two Directives that would update existing Directives on classification societies, Port State Control, also update a Regulation on the phasing out of single-hull tankers. ‘Erika II’ aimed to bring about lasting improvements in the protection of European waters, and spoke to accidents and marine pollution. This second set of measures was presented on 6 December 2000 by the Commission. It contained two proposals for Regulations and one proposal for a Directive. This final proposal will be the focus of this case study.

18 months of transposition time

As is the case for 95% of all transport directives, Directive 2002/59/EC was a European Parliament and Council directive. Repealing Directive 93/75/EEC, the only one in the Erika II package, Directive 2002/59/EC was adopted by the EU Ministers of Transport and the EP relatively quickly. Initiated on 6 December 2000, Directive 2002/59/EC was mainly the EP’s issuing of stricter provisions. In the first reading, on 13 June 2001, the EP’s transport committee, and especially the rapporteur, Dirk Sterckx (ELDR, Belgium), urged the Commission and the member states to broaden the scope of their objectives. The hope was that new objectives would include all types of ships as well as the development of a working relationship with the international maritime community to promote a culture of safety in all transport sectors. Furthermore, the Committee accused the Commission’s proposal of ignoring the ‘human element and over-emphasizing technological solutions’ (IP14). In the second reading, the EP asked for additional measures. It suggested the introduction of an adequate compensation scheme for EU ports accommodating a ship in distress, and also suggested the possibility of requiring that ships to come to a Community port to be adequately insured. On 12 June 2002, the Commission modified its proposal to include almost all the amendments proposed by

51 Addressing of who has to pay for the salvage costs of a ships on national waters?
Parliament. Just two weeks later, on 27 June 2002, the Council finally adopted Directive 2002/59/EC repealing 93/75/EEC. In the end, the EU negotiations took only 18 months. The process is probably best explained by the high political priority assigned to the maritime safety dossier by the member states after the Erika accident in 1999 (IP14).

Member states, the Commission, and the EP agreed on a 18 months transposition deadline (5 February 2004), which was the average transposition time guaranteed to all EU transport directives in that period (2000-2004). However, compared to the average 13 month transposition time for maritime directives in the *acquis*, 18 months is quite long. Interview partners confirmed the extraordinary timeframe set for this Directive, which they ascribed to ‘the Commission’s colloquial approach towards member states.’ In the pre-negotiation phase, member states were already allowed to raise their concerns and influence the content of the Directive as well as the transposition deadline, which they considered to be crucial (IP12 and IP13).

### Table 9.19: Policy cycle timetable of 2002/59/EC.

<table>
<thead>
<tr>
<th>2002/59/EC</th>
<th>Initiated</th>
<th>Adopted</th>
<th>Deadline</th>
<th>German Notification to Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>6 December 2000</td>
<td>27 June 02</td>
<td>5 February 04</td>
<td>27 February 04</td>
</tr>
</tbody>
</table>

*Almost no leeway for national interpretation*

As mentioned before, this Directive is to be viewed in the context of the second package on maritime safety (Erika II), and as a direct response to the sinking of the Erika in 1999. In general, it applied to ships of 300 gross tonnages, and was to improve maritime safety and reduce the possible environmental consequences of accidents at sea. The Directive, in particular, foresaw the improvement of accident prevention measures. It also called for the monitoring of ships sailing in European waters, an action that would also cover ships not calling at European ports. The Directive expressly provided for the installation of a notification system that would include vessels not calling at Community ports. Before entering member States territories, ships must be equipped with EDI (electronic data interchanges), the automatic vessel identification system (AIS system), and a voyage data recorder (VDR) system (‘black box’) to facilitate investigations following accidents (IP4). The Directive also called for increased cooperation among member states and a closer monitoring of vessels that present specific risks to maritime safety and the environment.

Ultimately, Directive 2002/59/EC strengthens the power of coastal member states to take action in the event of accident or pollution risks off their coasts, and even outside their territorial waters. The directive enables them to order
a potentially threatening ship to change route; member states also have the options of sending aboard a risk evaluation team, as well as piloting or towing the ship. Finally, the directive requires each member state to designate ports of refuge where vessels in distress can seek shelter.

In total, Directive 2002/59/EC is 16 pages long, including 4 annexes of about 1 page each. Additionally, the Directive lists 22 recitals compared to the median number of recitals in transport directives (8), which may indicate its complexity and may also explain the atypical amount of time for transposition set in the Directive in the first place.

Furthermore, the 32 articles guarantee little leeway for interpretation. The exceptions to this are Articles 15 and 16. Whereas Article 15 introduces an exemption for services performed between ports on one member state’s territory, the remaining ones do not include any amount of discretion in this regard. Concerning Article 16, interview partners spoke of the highly technical nature of the Directive 2002/59/EC, and this article in particular. Repeatedly they underscored the German efforts to keep Länder competences out of the directive, a feat that could only be accomplished by a restrictive interpretation of Article 16 II. It reads as follows:

‘Costal stations holding relevant information on the ships referred to in paragraph 1 shall communicate it to the coastal stations concerned in the other Member states located along the planned route of the ship.’ (Article 16 of Directive 2002/59/EC)

In order to guarantee a centralised coordination along the German coastlines, the federal ministry insisted that this task was to be taken over by a federal body and would not fall under the responsibility of the bordering Länder.

9.3.1.2 National transposition process:

Directive 2002/59/EC encountered timeliness problems across the member states. Whereas only Denmark and Spain notified the Commission of their instruments on time, all the other member states experienced delays in notification, ranging from 1 month in Germany to 10 months in the Netherlands, and 19 months in Belgium.

In comparison to the other member states, Germany performed rather well. Notifying its ministerial order 52 (Verordnung) on the 27 February 2004, it surpassed the deadline by only three weeks.

52 Elfte Verordnung zur Änderung sectorverkehrsrechtlicher Vorschriften vom 18/02/2004 BGBl. Teil I no 8 vom 27/02/2004 p. 300.
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Small number of national transposition actors

The goodness of fit between the pre-existing German legislation and Directive 2002/59/EC seems evident. Despite the considerable workload for the drafters of new maritime legislation caused by the subsequent accidents on European sea, German legislation had to include relatively small number (12) of newly introduced articles by the ministerial order. All interview partners confirmed the Directive’s harmony with pre-existing German legislation. Out of seven issues covered in the EU directives, four had been already discussed in Germany, namely: Article 5 (monitoring of ships entering the area of mandatory ship reporting systems), Article 9 (infrastructure for ships’ reporting systems, ships’ routing systems, and vessel traffic services), Article 12 (obligation on the shipper), and Article 20 (places of refuge). Moreover, the transposition team explicitly chose not to introduce new legislation. Instead, the German ministerial order changed already existing annexes to legislative acts, and altered the content of ministerial orders, without introducing new instruments.

The German interpretation of Article 16 of the Directive was a practical one (IP12). Germany adopted a ministerial order (Verordnung) in maritime transport. Normally, Länder competencies are involved in maritime transport legislation, being that six Länder have access to the sea, namely: Mecklenburg-Western Pomerania, Schleswig-Holstein, North Rhine-Westphalia, Lower Saxony, Bremen and Hamburg. However, Länder involvement in Article 16 would have made the transposition procedure much more complicated by

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Table 9.20: Transposition delay in months for Directive 2002/59/EC.

<table>
<thead>
<tr>
<th>Member State EU15</th>
<th>BE</th>
<th>DK</th>
<th>DE</th>
<th>EL</th>
<th>ES</th>
<th>FR</th>
<th>IE</th>
<th>IT</th>
<th>LU</th>
<th>NL</th>
<th>AT</th>
<th>PT</th>
<th>FI</th>
<th>SE</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transposition delay in months for 2002/59/EC</td>
<td>19</td>
<td>-4</td>
<td>1</td>
<td>n.r.</td>
<td>0</td>
<td>5</td>
<td>n.r.</td>
<td>n.r.</td>
<td>7</td>
<td>10</td>
<td>n.r.</td>
<td>5</td>
<td>n.r.</td>
<td>5</td>
<td>n.r.</td>
</tr>
</tbody>
</table>

Source: Eurlex and national databases (16.9.04); n.r.= no reference, Legend: BE (Belgium), DK (Denmark), DE (Germany), EL (Greece), ES (Spain), FR (France), IE (Ireland), IT (Italy), LU (Luxembourg), NL (the Netherlands), AT (Austria), PT (Portugal), FI (Finland), SE (Sweden), UK (United Kingdom).

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53 Between 2000 and 2003, sixteen EU maritime legislations had been adopted. The maritime unit in the German Ministry of Transport had a considerable number of ongoing transposition processes (7) right after the start of the national transposition processes.

54 Änderung der Anlage zum Schiffssicherheitsgesetz; Änderung der Schiffssicherheitsverordnung; Änderung der Anlaufsbedingungsverordnung; Verordnung über die Sicherung der Seefahrt und die Änderung der Sportbootsführerscheinvorordnung-See.
requiring all six governments to adopt implementing measures. Instead of involving Länder, Germany used an adopted ministerial order on the federal, not local, level. This kind of order is the fastest German transposition instrument. It ranks lowest in the set of implementation measures in Germany, requiring only a very small number of compulsory actors (Steunenberg and Voermans, 2005: 174-188). The ministerial order was signed only by the Minister of Transport, a fact that underscores the relatively small number of actors involved. After all, the provisions are issued by one minister with explicit authorization through law (Ermächtigungsgrundlage), and do not require the signatures of other actors.

The German Ministry of Transport decided to apply a transposition package including four EU directives, namely: 2000/59/EC, 2001/106/EC, 2002/59/EC, and 2003/75/EC. The deadlines of the four directives differed by 14 months. Whereas the first directive’s 2000/59/EC deadline was set for 28 December 2002, the last directive’s deadline (2002/59) was 5 February 2004. In the end, the German ministerial order transposed all four EU directives at once, causing a considerable overdue for the first measures in the package. The first directive, 2000/59/EC, was transposed with a delay of almost 15 months. Consequently, the hypothesis in this book about the delaying effect of the package approach for the first directive is corroborated. The package approach’s effect on the last directive in the package, however, is less straightforward. The last two directives in the package, with similar transposition deadlines, were transposed three weeks late. This can be considered a very short delay; however, a clear accelerating effect is certainly not confirmed in this case.

German general elections of 22 October 2002
During the adoption period of the German ministerial order transposing EU directive 2000/59/EC, between 25 September 2002 and 18 February 2004, there was indeed one general election, scheduled for 22 October 2002. Falling only one month after the adoption of the EU transport directive, it might have had a delaying effect on the German policy-making process. The interview partners confirmed that the fiercely fought election campaign created a near standstill in national politics. ‘Ministers had to campaign [and] mobilize their electorate, which did not leave sufficient time for day-to-day politics.’ (IP13).

However, as it happened, the electoral outcome did not cause a change of government; the ruling Schröder red-green coalition achieved a marginal win. Yet, even if the constellation of the government did not change, with the Social Democrats and the Green Party still in power, the portfolios were indeed reshuffled, and the Ministry of Transport was taken over by Manfred Stolpe. This reshuffle paralyzed German policy-making the following
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months. Since a new minister and with him personal assistants, and so forth, had to become acquainted to their new positions, it took some time before ‘the Berlin republic could move on with politics as usual’ (IP12).

9.3.1.3 Crises:

Accidents in the North Sea, the Baltic Sea and the Atlantic

From the early EU negotiations onwards, Germany had been one of the member states pushing for stricter legislation in the field of maritime safety. Although not directly affected by the Erika accident in 1999, it was already sensitized by three earlier accidents in its own waters, both of which had caught a lot of media attention. The Clement sank in the Bermuda Triangle in the Baltic Sea on 6 March 2000, and the Baltic Carrier caused an ecological disaster in the Baltic Sea on 29 March 2001. Foremost in influence, however, was the Pallas accident in late 1998, which was by all accounts, been very present in people’s minds. ‘Pallas should be not possible in the future anymore,’ a common statement went (IP12). What had happened?

It was on 25 October 1998 that the wood cargo ship Pallas caught fire near the Danish coastline. During four days the cargo ship floated in the North Sea, while attempts of extinguishing the fire and sending out tugboats had failed. Finally, the Pallas floated to and grounded on the German island Amrum, in the North Sea. When it landed, it caused the deaths of one crew member56 (von Wecheln, 1999) and more than 16,000 birds, and devastated the wading sea by dumping into it 60,000 tonnes of heavy fuel oil.57 Later investigations revealed that the responsible classification society, and several others, had not noticed the chain cable’s exceeding amount of rust. The chain cable’s deplorable state was left at 80% of its original weight, which precluded any attempts of anchoring. Furthermore, the lifeboat on the ship was not serviceable, which dissented with the regulations (von Wecheln, 1999). Last but not least, the cooperation between the Danish and the German bodies was not good. Given the fact that a burning, disassembled ship was floating towards Germany’s coast, Denmark should have alarmed the German coast guard immediately.

The lessons learned from the Pallas accidents in the North Sea and the Erika accident shortly thereafter before the French coast were taken very seriously by Germany and the European Commission. Next to the salvage operation of the Pallas in the North Sea, which cost about 14 million DM (7,16 million EUR) it was an ecological disaster for the North Sea in general and the small island, Amrum, in particular due to reasons which are addressed by the provisions of the directive.

56 The others had been rescued under severe weather conditions by helicopter.
57 See other case study on Directive 98/55/EC where Germany, probably due to this accident in own waters, transposed the Directive very fast.
The transposition process in Germany was overshadowed by another ecological disaster, albeit one far from the German coastline. On the 13 November 2002, five months after the adoption of the Directive 2002/59/EC, the oil tanker Prestige broke in two off Galicia in Spain. It released a considerable amount of the 70,000 tonnes of heavy fuel oil onboard. This maritime catastrophe caught a lot of media attention, in Germany too (IP12). It illustrated, once again, the importance of improved enforcement of existing EU legislation in the field of maritime safety.

9.3.1.4 Preliminary findings:

Circumstances seemed ideal for Germany to notify the Commission of its transposition measures in a timely fashion. Directive 2002/59/EC came with an ample deadline. It also contained rather strict provisions. Leaving almost no leeway for interpretation, Germany decided to apply its lowest level instrument to transpose the Directive, an instrument that allowed few veto players. Moreover, Directive 2002/59/EC was the last in transposition package. In addition, despite the situational changes in the external environment caused by three maritime accidents that directly affected Germany’s coastline and the Prestige accident which too place in the first months after the adoption of the directive, Germany passed the deadline by a mere three weeks. Note that in comparison to other member states, Germany performed quite well.

Table 9.21: Results of case study number three.

<table>
<thead>
<tr>
<th>European directive related factors</th>
<th>Transposition of 2002/59/EC in Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of discretion granted by the directive</td>
<td>Almost no leeway for national interpretation</td>
</tr>
<tr>
<td>Transposition time set in the directive</td>
<td>18 months of transposition time</td>
</tr>
<tr>
<td>Number of veto players</td>
<td>Small number of transposition actors</td>
</tr>
<tr>
<td>Situational change of internal and external environment</td>
<td></td>
</tr>
<tr>
<td>General elections</td>
<td>German general election from 22 October 2002</td>
</tr>
<tr>
<td>Transport related accidents</td>
<td>Earlier and actual accidents in the North Sea (Prestige, 1998), the Baltic Sea and the Atlantic (Erika, 1999)</td>
</tr>
</tbody>
</table>
Two issues may reasonably be pointed to as causes for the short delay. They both indicate that the level of political priority assigned to the transposition process may play an important role. While the German parliamentary elections in 2002 did not result in a change of government, they did require a lot of resources. As it happened, then, resources became unavailable for day-to-day policy-making. Until election day, polls forecasted a close run between the two alternative party group blocs, a situation that called for the full engagement in the electoral campaign by every member of the cabinet. The German government remained in place after the election. This was, largely because of the strong performance of the smaller coalition party, headed by Joschka Fischer. Another strong influence of the victory was that of the Eastern German electorate. The electorate gave strong support to the ruling government that had just promised emergency funds for recovery after the devastating hundred year flood in Eastern Germany which had occurred in late summer 2002. Despite the maintenance of power, however, the minister posts were reshuffled. The minister of transport was replaced and endorsed with a new portfolio. Manfred Stolpe was not only Minister of Transport, but was, from then onwards, special appointee for the new federal Länder where the general election, in the end, had been won. During the first months after the election, it was this new portfolio that attracted most of the minister’s attention, thereby granting a rather unassertive start for the transposition of Directive 2002/59/EC (IP12). Political priority attached to the transposition process was low.

With regard to the maritime accidents in German waters, the Erika I package demonstrates that people forget quickly. Despite the fact that the ecological disaster caused by the Erika tanker was by far the worst in EU history, the first Erika package was not at all rapidly transposed into national law. In fact, by 23 September 2003 (the transposition deadline), only five EU countries had transposed both of the Directives relating to the Erika I package. The Commission even initiated legal proceedings against Austria, Belgium, Finland, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Sweden for failing to implement one or both of the Erika I Directives (IP14). This example indicates that the priority assigned to transposition by the transposition actors is crucial, and it must be reinforced on a regular basis. Accidents have a brief impact. They only affect the perceived costs and benefits of new EU legislation when they occur within the national transposition process itself on national territory.


9.3.2.1 European level characteristics:

International conventions, such as the 1974 International Convention for the Safety of Life at Sea (SOLAS), require that marine equipment onboard ships conform to certain safety regulations. The Marine Equipment Directive (MED) seeks to enhance safety at sea and prevent marine pollution through
the uniform application of relevant international instruments. These instruments establish common rules about equipment and eliminate differences in the implementation of international standards in the member states. The MED 1996/98/EC, as amended by Directives 98/85/EC, 2001/53/EC, and 2002/75/EC, began a two-year transition period on 1 January 1999, and became mandatory on 1 January 2001. In general, Directive 1996/98/EC applies to marine equipment on both new and existing vessels that are registered in the EU/European Free Trade Agreement (EFTA) area. In particular, the Directive covers life-saving appliances, marine pollution prevention, fire protection. It also refers to fire-fighting equipment, navigational equipment, and radio-communication equipment.

Six months transposition time
The Commission Directive 2001/53/EC, amending Directive 1996/98/EC, was adopted by regulatory comitology procedure involving the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), which was set up by Council Directive 93/75/EC of 13 September 1993. Falling under regulatory procedure (Steunenberg, Koboldt and Schmidtchen, 1996), the Commission was obliged to consult the COSS, whose opinions were binding on the Commission. Chaired by the Commission, the COSS meetings always counted among its attendees representatives of old member states which were very active. Whereas France, Germany, and the Netherlands were very involved in the meetings, the Spanish representative, for example, hardly participated in the negotiations. After several months of weekly discussions, the Commission directive was adopted by a qualified majority during the first days of the Belgium Council Presidency, on 10 July 2001.

The typical transposition deadline for amending directives that fall under the comitology procedure was six months. The deadline for Directive 2001/53/EC was also set for six months, to be completed by 31 January 2002. The length of time afforded here was, however, considerably less than the average transposition time for transport directives (18 months) in general.

<table>
<thead>
<tr>
<th>2001/53/EC</th>
<th>Initiated</th>
<th>Adopted</th>
<th>Deadline</th>
<th>French Notification to the Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>10 July 01</td>
<td>31 January 02</td>
<td>29 January 02</td>
<td></td>
</tr>
</tbody>
</table>

Little discretion allowed in interpretation
The MED 2001/53/EC is very technical. It covers certain statutory equipment carried and used on ships registered under the flags of the EU member states which are required to meet the international conventions (SOLAS, MARPOL).

58 International Convention for the Prevention of Pollution from Ships
Tracing the process of four national transposition cases

etc.). The aim of the MED is to ensure that equipment meets common standards of safety and performance acceptable to each member state through the harmonization of states’ approval requirements. The equipment categories covered are listed in Annex A of the Directive. 59 Annex A is divided into two sections, A.1. and A.2., and equipment can fall under either or both sections. Only equipment listed under A.1 is required to be certified in accordance with the MED. Those items listed in A.2. must comply with national requirements (IP10). Each member state, or the organizations acting on their behalf (notified bodies), must ensure, when issuing or renewing the relevant safety certificates, that the equipment onboard complies with the requirements of the Directive.

The MED’s high level of technicality did not leave any room to manoeuvre in interpreting it. On the one hand, its sternness is reflected in the high number of appendix pages. Whereas the directive includes only 4 articles on 2 pages, the annexes consist of 26 pages. On these 26 pages are tables on equipment for which detailed testing standards either exist or do not yet exist on the international stage. On the other hand, the number of recitals is relatively small, which reflects a low degree of complexity (Kaeding, 2006). Furthermore, the comitology procedure set a six month transposition time that underscores the rather technical issue of the MED. Technical amendments normally grant a transposition deadline of not more than six months. Last but not least, interview partners confirm that there seemed to be only limited possibilities of interpretation for member states while transposing the Directive into national law. ‘It was rather a ‘copy-and-paste’ job’ (IP11).

9.3.2.2 National transposition process:

Table 23 illustrates the timelines in which member states transposed the MED into national legislation. Whereas some member states – Italy, Denmark, Luxembourg, Portugal – had considerable problems and delays of more than one year, other member states – Sweden, Spain, the UK, Ireland, and the Netherlands – did not encounter delay-causing problems in the transposition process (IP8 and IP9).

Table 9.23: Transposition delay in months for Directive 2001/53/EC.

<table>
<thead>
<tr>
<th>Member State EU15</th>
<th>BE</th>
<th>DK</th>
<th>DE</th>
<th>EL</th>
<th>ES</th>
<th>FR</th>
<th>IE</th>
<th>IT</th>
<th>LU</th>
<th>NL</th>
<th>AT</th>
<th>PT</th>
<th>FI</th>
<th>SE</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transposition delay in months for 2001/53/EC</td>
<td>7</td>
<td>13</td>
<td>8</td>
<td>3</td>
<td>-1</td>
<td>0</td>
<td>1</td>
<td>21</td>
<td>13</td>
<td>1</td>
<td>5</td>
<td>12</td>
<td>9</td>
<td>-1</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Eurlex and national databases (16.3.04); n.r. = no reference, Legend: BE (Belgium), DK (Denmark), DE (Germany), EL (Greece), ES (Spain), FR (France), IE (Ireland), IT (Italy), LU (Luxembourg), NL (the Netherlands), AT (Austria), PT (Portugal), FI (Finland), SE (Sweden), UK (United Kingdom).

59 Life-saving appliances, marine pollution prevention fire protection, navigation equipment, radio communication equipment, COLREG 72 and bulk carrier safety equipment.
France, too, did not encounter any problems in notifying its national instrument to the Commission on time. Whereas the transposition deadline was set for 31 January 2002, the French transposing instrument was adopted 29 January 2002 and published on 8 February 2002.

**Comparatively ‘high’ number of French transposition actors**

France transposed the MED with the lowest ranking instrument in the hierarchy of French national implementing measures, namely: ministerial order (arrêté ministériel). It required and obtained only the signature of the Ministry of Transport, at a time when five other transposition processes in the field of maritime transport were also underway. In total, the French ministerial order includes six articles on two pages, and refers to two already existing legislative texts from the mid-1980s. According to the interview partner, the goodness-of-fit was extraordinarily high. ‘On n’a rien créé’ (‘We did not create anything’) (IP11).

Despite the fact that the national implementing measure required only one minister’s signature, another institution was actively involved in drafting the French national legal instrument. As mentioned before, the key players in carrying out the transposition of a directive are the national notified bodies. They are in charge of assessing member states’ conformity to the applicable directive. Member states are responsible for their notification to the Commission. They select the institutions they will notify from the bodies falling under their jurisdiction which comply with the requirements of the directive and the principles laid down in Decision 93/465/EEC. But not every member state has a notified body for the MED. Whereas Italy has three, Germany does not have any, but uses the one in Luxembourg. In France, there is one notified body, namely: Bureau Veritas (BV). Normally, the manufacturers have to contact the notified bodies and arrange for the equipment to be type examined. Once a production-control phase module is deemed appropriate the equipment is affixed with the mark of conformity, indicating that it complies with the Directive. From the date of its entry into force, only equipment complying with 2001/53/EC is allowed to be placed onboard sea-going vessels. This means that the Directive is a very powerful economic weapon for the industry deciding on provision of certifications. Herein lies the interest and the necessity of involvement of the notified body in the policy-making process since they have to carry out the licensing task. With the involvement of these notified bodies, the national implementing measure, in practice, calls for two actors: the minister, and the respective notified body.

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61 Décret no 84-810 du 30 août 1984 modifié relatif à la sauvegarde de la vie humaine en mer, à l’habitabilité à bord des navires et à la prévention de la pollution ; arrêté du 23 novembre 1987 modifié relatif à la sécurité des navires.

62 For further details please consult: http://www.mared.org/
No package approach
Whereas the French administration uses transposition packages in the field of transport, and especially in maritime policy, the MED was not part of one. In fact, only Denmark set up a transposition package for Directives 2001/53/EC and 2002/75/EC.

French general elections shortly after the transposition deadline
During the French transposition process, between 10 July 2001 and 29 January 2002, no general elections were scheduled. Neither did the Minister of Transport change. However, 2002 was a super-election year in France with presidential elections on 21 April and 4 May, with elections for the French National Assembly on 9 June and 16 June 2002. The final date of elections was almost one year away in the quite distant future, from a transposition actor’s point of view. However, the first half of 2002, which included the last months of transposition process, was considered characterized by a paralysis of France decision-making. Due to the numerous elections and predicted change of government, French policy-making was slowing down (IP11). With regard to Directive 2001/53/EC, the adoption of the French legal instrument occurred within the last months of the electoral campaigning, which could have fostered a timely transpose. The general election was set for spring 2002, and all draft legislation from the old parliamentary term had to be adopted by then. The principle of discontinuity states that all non-adopted legislative proposals have to be re-introduced at the beginning of the new legislative term. Therefore, according to this principle, the drafts had to be passed within the last months before the new, post-election government formation. In the end, President Chirac was elected, and the opposition centre-right coalition held majority in the parliament. The former Prime Minister Lionel Jospin left and with his resignation, the government reshuffled. On 7 May 2002, Gilles de Robien became new Transport Minister of France.

9.3.2.3 Crises:

No transport related accidents:
Between the six month period of the French transposition process of Directive 2001/53/EC (10 July 2001 to 29 January 2002), there was no maritime transport related accident taking place on French territory.

9.3.2.4 Preliminary findings:

Whereas the theoretical model would have predicted a longer delay for this case, the findings are ambiguous. The transposition time was only 6 months, which is short compared to the average 18 month deadlines set in transport directives, but on the other hand, normal for technical amendments agreed in comitology. The number of transposition actors was even higher than reported in the statistical data, including next to the ministry of transport the French notified body (BV). Hence, the number of actors was comparatively
high, including the Ministry of Transport and the Bureau Veritas (French notified body). Moreover, the Directive left meagre room for member states to exercise discretion in interpreting its provisions.

Table 9.24: Results of case study number four.

<table>
<thead>
<tr>
<th>European directive related factors</th>
<th>Transposition of 2002/59/EC in France</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of discretion granted by the directive</td>
<td>No discretion of interpretation</td>
</tr>
<tr>
<td>Transposition time set in the directive</td>
<td>6 months transposition time</td>
</tr>
<tr>
<td>Number of veto players</td>
<td>Relatively high number of transposition actors</td>
</tr>
<tr>
<td>Package approach</td>
<td>No package approach</td>
</tr>
<tr>
<td>General elections</td>
<td>General election three months after deadline (21.4.-16.6.2002)</td>
</tr>
<tr>
<td>Transport related accidents</td>
<td>No maritime accident</td>
</tr>
</tbody>
</table>

Again in this case, the political priority attached to the Directive may help explain the timeliness of transposition across the member states. The political priority assigned to Directive 2002/59/EC was high. Two clear indications of its deemed importance are the role played by the French notified body (BV), and the specialization of the department in charge of implementing the Directive.

Although it is considered a second actor in the French transposition process, the Bureau Vertias (BV) has always had a considerable interest in extending its market share, and consequently its influence, on French policy-making in the field of maritime transport (IP10). Since the mid-1980s, BV had been preparing a text for a possible European directive, which, however, was not adopted until 1996. However, BV considered the certification of marine equipment ‘une arme terrible pour l’industrie’ (‘a terrible weapon for the industry’) (IP10) because the assessment of the body seeking notification determines if it is technically competent and capable of carrying out the conformity assessment procedures in question. Furthermore, the notified body must also demonstrate the necessary level of independence, impartiality, and integrity. The notified body earns a lot of money with assigning certificates. It controls the certification of marine equipment for France. This is why BV has always had a strong interest in global maritime industry. Moreover, according to the interview partners, BV has always been very commercially aware, and has had strong relations with the government in order to guarantee its profits in the big maritime market. In former times, it was the BV that controlled the policy making process.
Mr. Pinog, who had been the director for marine merchant in the Ministry of Transport, took over the head BV position in the mid-1990s. His promotion to this seat granted informed communications between the government and the industry. Over the last few years, however, BV’s influence has diminished from being actively involved in all decisions in the area of marine equipment to equally shared competences among the ministry and BV. Currently, in marine equipment, a division of labour between the ministry and the BV is practiced. Whereas the safety matters are handled by the Ministry of Transport, BV deals with the commercial aspects of the directive. All interview partners confirm that this coordination among the two institutions work very well by guaranteeing short communication tracks and immediate coordination in a policy area which is both strategically powerful and profitable.

Another indicator of the high priority France assigned to maritime equipment is the special civil servant assigned for the dossier. Whereas in the UK, for example, different departments are involved in the transposition of the MED (IP10) — which involves more time-consuming coordination among the actors — in France, there is only one person responsible for all aspects of the MED. Here, one finds ‘une adresse email spécialisée’ (‘a special email address’) set up for maritime equipment issues only (IP10). This specialization is also a rather unique phenomenon in French administration. All in all, it was the high priority attached to the marine merchant in French policy-making exemplified by the special civil servant post and the considerable involvement of BV in French marine merchant policy-making that facilitated the MED’s problem-free and timely transposition.

9.4 Conclusion

The study has shown that the process tracing method is a helpful research tool. It uncovers the correlational findings and elucidates the causal mechanisms explaining why member states miss their deadlines when transposing EU Internal Market directives. Moreover, it helps to clarify and correct for measurement errors and concept overstretch committed in large-n statistical analysis. It, for example, allowed controlling for first and last national implementing measures since all four cases had been concluded by the end of this study. Representing two major transport sub-fields which account for over 43% of the EU transport acquis, liberalizing and harmonizing types of directives alike, the four maritime and railway cases in this chapter advance our understanding of national transposition processes across member states in the EU. Based on official documents, EU legal data bases, press accounts, and interviews with stakeholders in the European and national policy-making procedures, the process tracing method directed this study to trace the four national transposition processes in three different member states in a very specific and, most importantly, theoretically informed way.
Tracing back the processes of the French (98/55/EC) and Spanish (2001/1/EC) on-the-line cases corroborates earlier findings and illustrates that the statistical model has some explanatory power. While both cases have been explained well by the statistical model, the case studies in this chapter clarify how the different factors in rather complex national transposition processes work can cause delays of varying lengths.

On the other hand, process tracing further elucidates those cases that are off-the-line, i.e. show higher values of deviance residuals. Focusing on the German (2002/59/EC) and the French (2001/53/EC) cases, we obtained an additional explanation for those deviant cases. The case studies uncover an additional important factor in explaining transposition delay. We found that the political priority assigned to the transposition process seems to matter and might be a missing component causing the outliers.

In particular, for the German case, we found that despite a handful of crises – three maritime related accidents in German waters some years before the start of the transposition process, and one ecologically devastating accident on the Atlantic during the 20 months of the German transposition process – Germany’s notification to the Commission was still one month delayed. Interview partners confirm that a maritime accident beyond German waters would not attract Germany’s attention or, thereby, accelerate the transposition procedures. Those three examples of loss at sea with a direct effect on Germany, however, had occurred too long ago to influence the German transposition process of 2002/59/EC. However, the Pallas accident in 1998 did influence the process. Interview partners confirm that, due to this accident in Germany’s own waters, another related Directive (1998/55/EC) was transposed three months before the expiry of the deadline. However, in terms of time, the Pallas disaster was too distant in the public memory to have a direct impact on the German transposition process of Directive 2002/59/EC.

Furthermore, the general election of 22 October 2002 affected the priorities of the transport ministers’ political agendas. The election did not put a new ruling party in change the government. However, the minister for transport was replaced, and the position was enriched with an additional portfolio that attracted the new minister’s full attention and delayed the start of the transposition process at the beginning of his term. The elections had been won in the ‘east’ of Germany, after the hundred year flood and the government actions it aroused. The electorate in the east had given strong support to the ruling government. This same government had just promised emergency funds for recovery after the devastating flood that lead to the evacuation of 37 towns and resulted in the largest natural-disaster mission in history of the German Armed Forces and the Technical Relief (Technisches Hilfswerk). Therefore, during his first months in office, the new minister of transport, and special appointee for the new Länder, rather unassertively start the German transport policy, in general, and the implementation of EU directives, in particular.
The second outlying case further elucidates the importance of political priority for a swift and problem-free transposition process across member states. The high priority France priority assigned to merchant marine affairs can be viewed in two ways. On the one hand, we see the ministry of transport and the industry working together in a very productive way. While the assigning of certificates is seen as ‘une arme terrible’ (‘a powerful weapon’) for the merchant industry, the notified body has been assisting in drafting French positions in EU negotiations and national policy-making. Helpful here was the exchange of high-level personnel between the two institutions. Also indicating the high priority of this directive was the uncommon setup of contact points for marine equipment within the notified body as well as the ministry’s facilitating the exchange of information.

If political priority is indeed important for the timely transposition of EU directives and constitutes the missing component in explaining the unexplained variance in the two deviant cases, then we might have another look at the two well-explained cases to see how this factor plays out there. Whereas it is not so evident in the first French case, the Spanish case shows that political priority indeed mattered. Whereas the transposition process of Directive 2001/14/EC caused media-wide discussions (IP4) about the separation of the Spanish railway operator and railway infrastructure manager, the Atocha attack on 11 March 2004, left Spain in total paralysis for the subsequent months and condemned the transposition process to insignificance. Until the last week before the general elections, on 14 March 2004, the national implementing measure attracted considerable public attention, with unions demonstrating in the streets of Madrid, and autonomous regions filing a law case against the government. It is fair to argue that without the Atocha attacks, the government would have remained in power and would have adopted subsequent legislation faster. The fatal incident, however, resulted in additional Spanish measures on safety and security that further delayed the process. Therefore, Directive 2001/14/EC was adopted more than two years after the set transposition deadline.

However, the current study requires more than a simple cross-check with the two well-explained cases in order to generalize the importance of political priority for the timeliness of national transposition processes across member states. This will be the focus of the next chapter.