Implementation across 15 Countries and 6 Directives: Outcomes in the Light of Theoretical Hypotheses

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This document contains the summary of a text that will be published as Chapter 14 of the following co-authored book:

Complying with Europe?
The Impact of EU Minimum Harmonisation and Soft Law in the Member States

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Draft version, June 2004

14 Why Do Member States Fail to Comply? Testing the Hypotheses Suggested in the Literature

Summary

The existing literature on EU policy implementation and Europeanisation presents a diverse array of hypotheses on the reasons for implementation success or failure. Based on the empirical results from our 90 case studies on the implementation of six EU social policy Directives in 15 member states, this chapter discusses the most important of these hypotheses as well as a number of new ones that we formulated on the basis of our own theoretical considerations. At first sight, a rather untidy picture emerges. While most factors have some explanatory power for our cases, there is no single overriding variable (nor even a small set of variables) that may account for the transposition performance of the 15 member states. Nevertheless, some causal conditions turn out to be more important than others.

We argue that, contrary to intergovernmentalist assumptions, the “upstream phase” (i.e. features of the EU decision-making process) has only a limited impact on the “downstream phase” of adaptation at the national level. Hence, the behaviour of a government in the “uploading” process tells us little about its performance in “downloading” the policies adopted in Brussels. Among the EU-level factors, a more important role is played by the legal quality of the underlying Directives. Thus, we have observed several cases where transposition problems occurred because the underlying provisions were worded vaguely or lacked clarity and consistency.

Nevertheless, the main focus of our explanation lies on domestic factors. We show that two of the most prominent hypotheses suggested in the recent literature, the misfit hypothesis and the veto player argument, do not hold for our cases. Hence, transposition problems are not simply the outcome of the will to defend the existing regulatory traditions in cases of significant misfit, nor do we observe smooth adjustment processes if the EU requirements only demand small adaptations. Similarly, the number of veto players has no direct impact on transposition performance either. While we do find individual countries that have few veto players and perform comparatively well or others that have many veto players and a bad implementation record, the overall picture is much more mixed and does not sum up to a clear-cut relationship.

In contrast, we argue that domestic politics played an important role in a significant number of cases. First, party political preferences of governments have to be considered. Rather than acting as guardians of the domestic status quo, governments also assess the usefulness of European policies on the basis of their party political preferences. Thus, even far-reaching reform requirements may be satisfied without major problems if they correspond to the party political goals of the respective government. Conversely,
even the realisation of minor adaptations is bound to fail if these modifications are rejected on party political grounds. Second, other “powerful players” in the domestic arena, most notably important interest groups such as trade unions and employers’ associations, also play an important role. Although their impact did not systematically depend on the form of their involvement, trade unions and employers’ organisations frequently had an impact on the outcomes. Governments, even if they are institutionally empowered to act unilaterally, often simply do not want to decide on how to transpose a particular Directive without having first tried to find an agreement with one or both sides of industry. This may give rise to delays, but also to flawed transposition.

Domestic politics also played a role in a broader sense. While previous research has hitherto tended to treat the implementation of each EU Directive as an isolated process, we have found that national adaptation is frequently linked to other political processes at the domestic level. This kind of issue linkage, either resulting from deliberate decisions by governments or stemming from material interdependencies, often influenced the transposition outcomes. The direction of this influence, however, turned out to be ambivalent. While issue linkage usually gave rise to delayed adaptation, it also turned out to be a facilitating factor in cases where the transposition of a Directive could be easily fed into an ongoing reform.

Finally, our empirical case studies highlight the partial importance of lacking administrative resources as a reason for late adaptation, while administrative co-ordination problems, long law-making procedures or the presence and institutional standing of administrative watchdog units did not play a decisive role. Among the factors highlighted by the first studies on the implementation of EU law, therefore, only administrative resources turned out to be meaningful for our cases.

In conclusion, the analysis shows that simple theoretical arguments, which highlight the importance of one or a few individual causal conditions, are unable to explain the implementation outcomes we observe. Instead, we find that a combination of different factors is needed to explain the diverse implementation performance in the 15 member states. As the next chapter will show in more detail, the relevant combinations of factors and the logic of their interplay vary fundamentally in different country clusters.

If you are interested in receiving draft chapters for feedback, please contact (falkner@ihs.ac.at). Related articles on specific sub-topics can be found on our project homepage: http://www.mpi-fg-koeln.mpg.de/socialeurope.

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