

A thesis submitted to the Department of Environmental Sciences and Policy  
of Central European University  
in part fulfilment of the Degree of Master of Science

# Barriers to effective implementation of EU environmental directives in the Czech Republic

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Budapest

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ABSTRACT OF THESIS submitted by:

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EU environmental legislation in the Czech Republic suffers from a relatively high post-accession non-compliance. This implementation deficit poses a serious threat to the environment, because ca 80 % of all environmental legislation applicable in the Czech Republic is now adopted through the EU policy process. Hence this thesis aims to identify horizontal barriers to effective implementation of environmental directives adopted by the European Union after 1 May 2004, relevant for the Czech Republic. The term effective implementation refers to the degree to which both legal and practical implementation correspond with the objectives defined in the directives. Through 16 qualitative interviews with officials from Prague and Brussels, including two former Czech Ministers of Environment, I identify two narratives of non-compliance specific for the Czech Republic and two narratives embedded in the EU system of administration. The former cover resistance of many Czech politicians to environmental legislation as well as to any EU initiatives, and poor quality of the Czech civil service. The latter are poor quality of some directives and limited impact of infringement procedures. None of the narratives alone can explain non-compliance, but the combination of the four seems to cover all the major barriers. Based on the analysis, I offer recommendations to decision-makers who want to reduce these barriers. In particular, I advise the Commission to make better use of interim measures and linkages with structural funding, and Czech decision-makers to finally allow the civil service act to become effective and to use more performance-based remuneration in public administration.

Keywords: implementation deficit, environmental policy, transposition and application of directives, European Union (EU), European Commission, European Court of Justice (ECJ), new member states, post-accession compliance, Czech Republic, infringement

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## List of Abbreviations

- CEE – Central and Eastern Europe(an)
- ČIŽP – Czech Environmental Inspectorate
- Commission – European Commission
- Court – European Court of Justice
- DG ENV – Directorate General for Environment of the European Commission
- EEA – European Environment Agency
- ECJ – European Court of Justice
- EP – European Parliament
- EU-8 – Central and Eastern European countries which joined the EU on 1 May 2004 (excludes Cyprus and Malta)
- EU-10 – countries which joined the EU on 1 May 2004
- EU-12 – all new member states which joined the EU in 2004 and 2007 (includes Bulgaria and Romania)
- EU-15 – old member states which joined the EU in 1995 or earlier
- EU-25 – all EU member states which joined the EU before 2007 (excludes Bulgaria and Romania)
- EU-27 – all EU member states
- Parliament - European Parliament

# 1. INTRODUCTION

*"To govern is not to write resolutions and distribute directives; to govern is to control the implementation of the directives." (Joseph Stalin)*

## 1.1 Background on implementation in the EU

Implementation is the moment when intentions, which any policy text is made of, become reality. Or don't (Glachant 2001). Stalin's quote brings attention to the fact that in any political system the policy intentions can be materialized only if a policy-making process is followed by an effective policy-implementation process. Putting a legislative measure into practice is not a purely technical or apolitical affair (Treib 2006). As this thesis attempts to show, implementation is a very complex process influenced by a variety of administrative, economic, political and legal factors. The process of implementation<sup>1</sup> of legislation adopted by the European Union (EU), which is the focus of this thesis, is particularly complex. That is because EU legislation often leaves big discretion to the member states, so that they can adjust the legislation according to specific local conditions. Therefore an assessment of barriers to effective implementation has to take into account policy processes arising at the European level, as well as the ones occurring at the level of individual member states. This whole complexity makes implementation a very intriguing area of EU research.

The issue of deficient implementation has been high on the European political agenda since the mid-1980s when efforts to complete the internal market project intensified (Ekstroem 1994). In 1983 the European Parliament adopted a resolution requesting that the Commission submit reports on implementation every year (OJ 1983). Consequently, the Commission has been publishing the 'Annual Report on Monitoring Application of Community Law' since 1984 (McCormick 2001). In 1985 implementation came into the limelight with the Commission's White Paper on the completion of the internal market which listed all the pieces of poorly implemented legislation with the ultimate aim to safeguard fair competition within the EU (Jordan 1999). Due to increasing attention paid to implementation, the average rate of timely transposition increased from 90% in 1991 (Boerzel 2001) to 99% in 2010 (Commission 2011). The number of open cases of infringement identified by the Commission remained over last two decades relatively stable<sup>2</sup>, despite the significant growth in the number of member states as well

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<sup>1</sup> In the EU context, the term implementation will be used throughout this thesis in Treib's (2008) way – as the whole process covering transposition, effective enforcement and application. The related term compliance will be used rather as an expression of state, a measure of the outcome of implementation.

<sup>2</sup> 964 infringements were pending in 1990 (Boerzel 2001), while in 2010 the number was 1091 (Commission 2011).

as in the legislation itself, which went up from 885 directives in 1990 (Boerzel 2001) to 1,945 directives currently in force (OJ 2011). These data give only a very basic picture of non-compliance because they represent only the tip of the iceberg whose size and shape remains unknown (Mastenbroek 2005). Notwithstanding our limited knowledge of the actual size of the implementation deficit (Weiler 1991), this thesis rests on the assumption that the problem of non-compliance persists, provided the strong attention given to it by decision-makers and scholars (e.g. Boerzel *et al.* 2010; Falkner and Treib 2008; Jordan 1999; Mastenbroek 2005; Schimmelfennig and Trauner 2009; Toshkov 2009 or Whelanová 2009).

In the field of environment, EU institutions have been very active in producing new legislation, white papers, green papers and action plans (McCormick 2001). EU legislation now deals with a 'quasi complete' range of environmental issues: waste management, noise, pollution of air and water, etc. (Glachant 2001). However, the EU's record of translating its legislation into practical action has been much less impressive (McCormick 2001) – an investigation by the EU's Court of Auditors pointed to a significant gap between the environmental directives in force and their actual application already two decades ago (OJ 1992). Since then the issue of implementation has been raised by several Environment Commissioners, most recently by the current Commissioner Janez Potočnik who declared implementation as one of his three main priorities when he entered office (EP 2010). As ca 80 per cent of all environmental legislation applicable in the member states is now adopted through the EU policy process (Hix 2005), effective implementation of EU legislation is essential for achieving a high level of environmental protection in all the member states, including the Czech Republic. In addition to environmental concerns, weak implementation in some member states can distort competition within the EU (CEC 1996) and reduce legitimacy of the EU as an institution. Unless the adopted *acquis* is fully implemented, the environmental policy of the EU risks becoming a paper exercise with little impact on the ground (Jordan 1999).

## **1.2. Aim and objectives of the thesis**

The focus of my research is the implementation of EU environmental directives in the Czech Republic. Although both the Czech Republic and the environmental sector suffer from a relatively high propensity to non-compliance (see chapter 4), no academic paper seems to have analyzed implementation in the intersection of this sector and country in the short post-accession period (see chapter 2).

The primary aim of this thesis is to identify barriers to effective implementation of environmental directives adopted by the European Union after 1 May 2004, relevant for the Czech Republic. I will identify these barriers to effective and assess their relevance predominantly

through qualitative interviews with 16 key stakeholders, mainly officials from the public administrations of the Czech Republic and EU institutions.

The secondary objective of this thesis is to assess the actual level of implementation of EU environmental directives in the Czech Republic and compare the performance of the Czech Republic with other member states, both new and old. I will address this objective through an analysis of official statistics on reported cases of non-compliance.

The ultimate goal of my research is to offer guidance to decision-makers in Prague and Brussels who endeavor to improve implementation of EU environmental directives in the Czech Republic. Thus this thesis has an academic as well as a practical policy component. I hope to contribute both to the EU implementation research and to provide guidance to politicians and civil servants who would like to work on lowering the implementation deficit.

### ***1.3. Justification of the research problem and scope of the thesis***

This section aims to show why the implementation of EU environmental directives in the Czech Republic forms a relevant topic for current research and to specify the scope of this thesis. As I have shown in section 1.1., proper implementation of EU environmental legislation all over the Union is important not only for the protection of the environment, but also for prevention of competition distortions and for credibility of the EU. The case of the Czech Republic is especially compelling for research, because this country was a part of the by far biggest and most complex enlargement in the history of the European integration (Schimmelfennig and Trauner 2009), which raised in the 'old member states' strong concerns about the risk of post-accession non-compliance (Sedelmeier 2011). After seven years of membership, time is now ripe to evaluate whether these concerns have been justified. In addition, the freshness of the Czech membership in the EU ensures that the post-accession implementation is a new phenomenon, yet hardly studied in academic literature (see sub-sections 2.3.2. and 2.3.3. of the literature review).

The following paragraphs aim to clarify the thematic, geographic and timely scope of the thesis. They also seek to explain that barriers to effective implementation of EU environmental directives in the Czech Republic deserve particular attention, as this issue lies at an intersection of several features which seem to be particularly prone to non-compliance – directives among legislative measures of the EU, the environment among all the sectors and the Czech Republic among new member states.

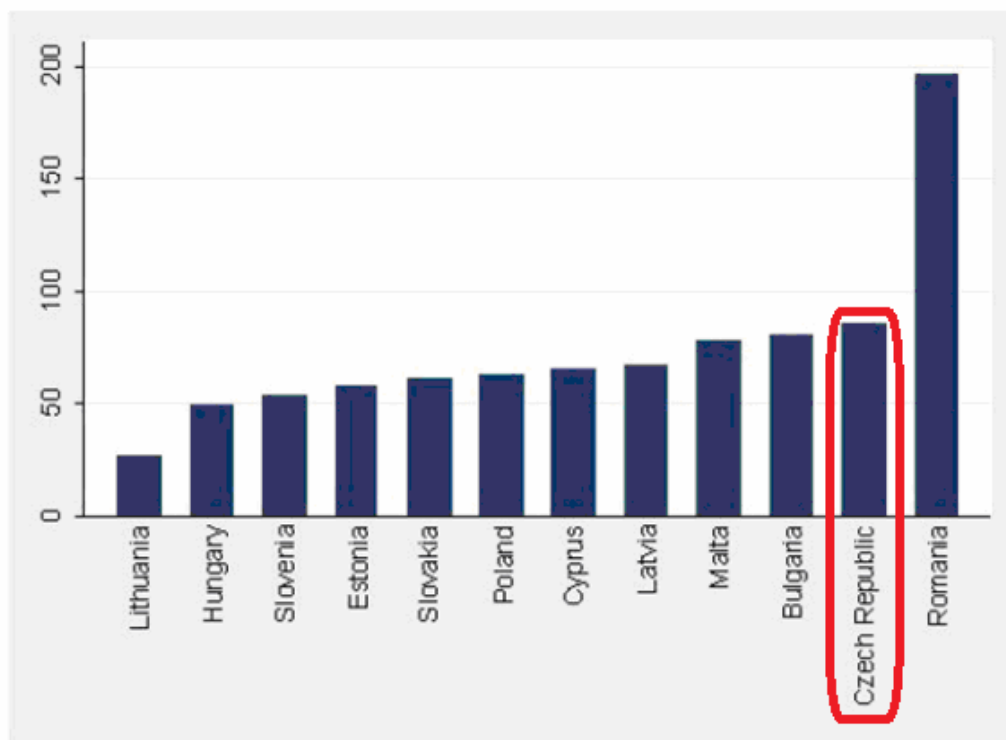
First of all, I need to choose one of the many potential delimitations of implementation. To demonstrate the scope of this thesis, I will use Weale's (1992) classification of implementation studies which distinguishes:

1. Investigating how the directives were transposed into national law, whether the laws conform to the goals set out in the directives and whether competent national authorities were nominated.
2. Assessing the effect of the adopted legislation on the state of the world, for example whether emissions of the greenhouse gases were reduced by the expected percentage. Hill (1997) notes that if the policy is poorly designed, it might be ineffective, even if the directive was transposed perfectly.
3. Assessing whether the chosen legislation represents a sufficient answer to the underlying environmental problem, for example, whether the climate change was mitigated. Would an alternative policy have provided a better solution? For Weale “sins of omission may be as important as sins of commission” in explaining why some problems were not solved. Jordan (1999) adds that this type of implementation study could be particularly relevant for the EU where the most progressive proposals are often lost during the negotiations and the final compromise has to be built on the lowest common denominator.

Due to my own work experience as a horizontal coordinator of EU issues across all the elements of the environment, I would like my research to maintain a broad perspective. For a broad horizontal approach and the scope of a Master’s thesis with limited time and resources, a type 1 implementation study seems best suited. Weale’s type 1 corresponds with Knill and Lenschow’s (2000) concept of effective implementation, which they defined as “the degree to which the formal transposition and the practical application of institutional and instrumental changes correspond to the objectives defined in the European legislation”. It is noteworthy that this approach encompasses both legal and practical implementation (see Figure 3 in section 2.3. for details). Knill and Lenschow explain that the focus on policy outputs rather than on the legislation’s contribution to the state of the environment – policy outcomes – has both analytical and substantive advantages. In regard to analysis, this rather narrow definition of effective implementation allows to assess and compare the implementation of widely different policy measures within the same thesis. With regards to substance, this limited focus on the legal-administrative component of implementation allows me to avoid empirically more blurry issues of scientific uncertainties or broader socio-economic circumstances, which lie under any environmental problems. A proper analysis of questions like ‘To what extent has the drinking water quality improved due to the EU legislation, and to what extent due to other factors, such as economic development or weather conditions’, would lie beyond the potential scope of a master’s thesis, especially as I aim to keep the horizontal focus across all the sub-sectors of the environment. As effective implementation is a necessary precondition for achieving policy

outcomes, this thesis will prepare the ground for later analyses of the whole chain of causalities from decision-making to improvements of the environment, which Weale would characterize as 'type 2' or 'type 3' studies.

Secondly, as regards the geographic scope, this thesis is limited to the area of the Czech Republic because I can rely on solid academic and professional experience in the Czech Republic. During my previous Master's education in International Relations and European Studies at the University of Economics in Prague, I dealt with peculiarities of the economic, legislative and political processes in the EU and in the Czech Republic. Later on, during my 3-year career in the EU Department of the Ministry of Environment of the Czech Republic, I had the opportunity to immerse myself in complex processes of EU decision-making as well as to acquire many useful contacts with key decision-makers in the area, which paved the way to getting qualitative interviews with relevant people for this thesis. The Czech Republic constitutes an interesting case for research because it seems to be one of the biggest implementation laggards among the 'new member states' – which joined the EU on 1 May 2004 ('EU-10') and on 1 January 2007 (Bulgaria and Romania) – according to some assessments (see Figure 1). The introduction does not offer sufficient space for different examples of cross-state comparisons, which are needed to give a better account of various features of the complex issue of non-compliance. Hence other figures are presented in sub-section 2.3.2. of the literature review and in a separate chapter 4.

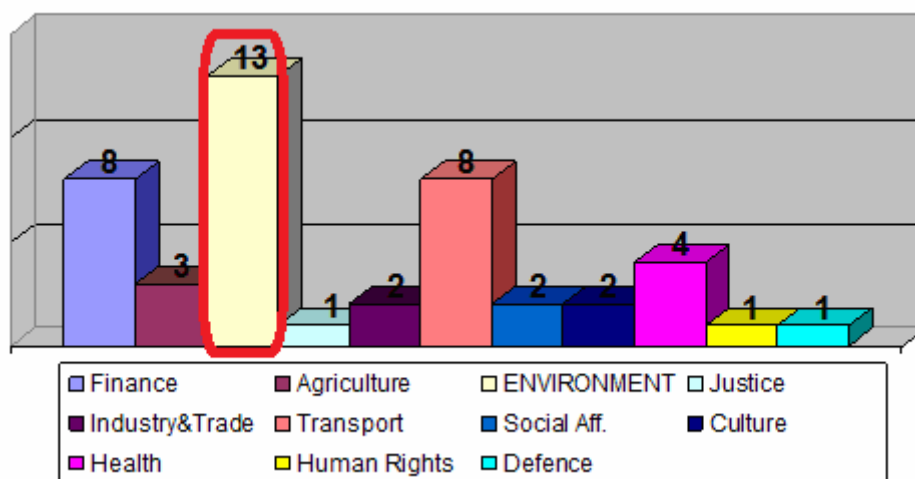


**Fig. 1: Average numbers of letters of formal notice received by new member states yearly in 2004-2007**

(Note: For Bulgaria and Romania the figure shows only data for 2007 because of their later accession)

Source: Adopted from Knill and Tosun (2009)

Thirdly, as regards the policy field, this thesis encompasses the environmental sector as a whole. For the delimitation of this sector I am using categorization of the Official Journal of the European Union (category 15.10. Environment, as elaborated at the end of this section) which vaguely overlaps with areas of responsibility of the Ministry of Environment of the Czech Republic or of the European Commission Directorate General for the Environment. My narrow sectoral approach is supported by Peters (1997), who argues that each policy raises its own implementation questions. The environmental sector provides an interesting case because the implementation performance of environmental policies appears to be comparatively worse than in most other policy areas. Now I will demonstrate that the latter statement is valid both for the Czech Republic and for the EU as a whole.



**Fig. 2: Infringements pending as on 31 December 2010 in the Czech Republic, split according to responsible ministries**

Source: Adopted from MFA (2011)

In the Czech Republic no other ministry has responsibility for more pending cases of infringement than the Ministry of Environment (see Figure 2 above). For the EU as a whole, the most relevant data on implementation are available in the regularly published Commission's Internal Market Scoreboard (Commission 2011). This document assesses member states' compliance with the legislation which is considered to have an impact on the functioning of the EU internal market, including a major part of the environmental legislation. Its latest issue puts environmental legislation in the second worst position right after taxation legislation (with respectively 22% and 24 % of all infringement proceedings open in November 2010). If the frequently breached nature protection legislation (Int3), which is excluded from the Internal



Market Scoreboard, was added into the picture, the environmental sector might even drop to the lowest rung of the ladder of implementation performance in the EU. Underlying causes of this particularly poor implementation performance in the environmental field will be presented in section 2.4. of the literature review. Some experts (Int8, Int16) stress that implementation performance differs from one sub-sector of the environment to another and so do the barriers. The Commission (2011) states that in November 2010 non-compliance with EU environmental law relevant for the internal market occurred mainly in areas of water protection and management (with 73 open cases), waste management (49), atmospheric pollution (41) and EIA (29). However, these sub-sector specific data are at any point of time biased by the legislative development in a few preceding years (Int1). As this thesis aims to discuss compliance in the whole environmental field in all seven years since accession, I will not go any further into variance in barriers among different sub-sectors of the environment. Instead, I will focus on the horizontal barriers common to most environmental policies.

Fourthly, as regards my choice of the analyzed legal instrument, I have opted for directives as a scope of this thesis because they are the most frequently breached tool of EU legislation with an 80% share of all cases of infringement identified by the Commission (Ciavarini Azzi 2000). Two factors seem to explain this high contribution of directives to breaches. Unlike regulations, directives have to be transposed into national legislation first and this extra phase, where a mistake can be made, creates a potential for breaches. In addition, directives are used in the EU environmental policy more frequently, with 352 pieces, as opposed to 192 regulations currently in force (OJ 2011). This is a result of the principle of subsidiarity under which “in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States” (Article 5(3) of the Treaty on European Union). This principle was reinforced by the Treaty of Amsterdam where the paragraph 6 states that “other things being equal, directives should be preferred to regulations”.

Finally, as regards the time scope, this thesis deals with post-accession implementation. More specifically, my focus lies on environmental directives adopted since 1 May 2004 – the directives which the Czech Republic could already shape as a full-fledged member of the Council. The list of the 73 directives adopted since May 2004 which fall in the Official Journal of the European Union under the category 15.10. Environment is provided to the reader as a separate Appendix I.

## **1.4. Thesis outline**

This thesis is divided into six chapters. After this introduction, the following chapter will go in detail through the literature on the EU implementation research, which is mainly based on experience of old member states, but already offers some insights from the Czech Republic and other new members states too. This review is structured thematically into four sections on international compliance literature, barriers at the Union level, barriers at the member states' level and implementation of environmental legislation. Chapter three covers the design of my research and the methods of data collection and data analysis. It will justify why this thesis uses qualitative methods and describe the background of the 19 respondents of my research. The following chapter will address the secondary objective of this thesis to evaluate the implementation performance of the Czech Republic and place it into the broader context of other member states. The size and structure of the visible part of the iceberg of non-compliance will be assessed through an analysis of the latest available official statistics of the Commission. Chapter five on data analysis aims to bring the most significant contribution to existing knowledge – it identifies barriers to effective implementation of environmental directives in the Czech Republic and assesses their relevance through a synthesis of the data from qualitative interviews and questionnaires filled by the experts in the second wave of the research. The chapter starts with a presentation of the ranking of barriers in Table 3 and continues with a detailed explanation of the four main identified narratives: resistance of Czech politicians to environmental legislation as well as to any EU initiatives, poor quality of the Czech civil service, poor quality of some directives and low impact of the infringement procedures. Finally, chapter six summarizes all the key findings of this thesis and gives recommendations to policy-makers who would like to improve the implementation performance of the Czech Republic.

## 2. LITERATURE REVIEW

This chapter will review the literature relevant to the implementation of EU environmental directives in the Czech Republic. The chapter has several goals. It aims to confirm the existence of the research gap and to prove that I am familiar with the essential literature in the field of implementation. It should also help me with my own research. Reviewing other scholars' approaches helps me clarify the scope and methodology of my thesis and to identify the right questions for both waves of data collection.

I have decided to structure this chapter thematically, according to the level of analysis, proceeding from general to specific. First, I will briefly go through some relevant contributions of the general compliance literature which aims beyond the EU (2.1.). Then I will move to EU implementation research, starting with barriers embedded in the system of the European Union (2.2.). Section 2.3. discusses challenges on the level of individual member states and it is divided into three sub-sections. Because the Czech Republic joined the EU just seven years ago, hardly any studies of post-accession compliance have been carried out so far. Consequently, the key sub-section 2.3.3., which reviews the literature on implementation in the Czech Republic, is rather thin. Because the mechanisms behind non-compliance are very similar in any member state, sub-section 2.3.3. is preceded by a review of a much richer literature on old member states (2.3.1.) and new member states (2.3.2.). The last section focuses on research which deals specifically with the EU environmental legislation. To give a full picture of literature on each level of governance, each of these sections contains examples of theoretical concepts as well as empirical work, using both primary and secondary sources of data, and quantitative and qualitative approaches to analyzing them.

### **2.1. *International compliance literature***

EU is by no means the only institution suffering from an implementation gap. Boerzel (2001) notes that every political or social system faces cases of violation of its norms. And actually there is nothing wrong about that because 100% compliance would entail such a level of administrative cost, which would be with a strong likelihood socially inefficient (Schucht 2001). Only if non-compliance climbs over a certain critical threshold, it may present a serious problem for the community.

Boerzel *et al.* (2010) outlines three main approaches explaining non-compliance. According to rational institutionalists states do not comply if the costs related to compliance are too high. Consequently, international organizations need to make sure through monitoring and sanctioning that the costs of non-compliance are even higher. In contrast to these enforcement

approaches, management approaches view non-compliance as involuntary. According to them, lacking financial and human resources are the key factors explaining non-compliance. Social constructivists stress norm internalization and socialization through processes of persuasion and social learning as factors beneficiary to compliance (Boerzel *et al.*). With respect to the EU, Boerzel *et al.* conclude that none of these three approaches alone can sufficiently explain why some states breach EU law more often than others. Thus integration of explanatory variables of all approaches is needed.

Depending on the point of departure, implementation research can be either top-down or bottom-up. Top-down researchers start their analysis with a piece of adopted legislation, analyze what barriers central actors face in the implementation process and conclude with the ways through which these barriers can be lowered from the top (Duprey n.d.). Sabatier (1986) criticizes this approach arguing that it is structurally impossible for the policy makers to control the street-level bureaucrats who are in charge of practical implementation. Therefore the bottom-up approach departs from decisions taken by the street-level bureaucrats – “public service workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work” (Lipsky 1980). A crucial question the bottom-up researchers ask to evaluate the success of implementation is to what extent did a certain policy allow for the processes of learning and capacity building (Knill and Lenschow 2000). Both approaches have their strengths and weaknesses and none of them can holistically explain the implementation process (Duprey n.d.). Being aware of the limitations, I am choosing the top-down approach. The main reason is methodological – due to my work experience at the Ministry of Environment of the Czech Republic I have an easier access to the decision-makers on the top. In addition, the top-down approach seems better suited for a master thesis with a very limited scope.

Before progressing to the EU research, I would like to highlight one contribution to the implementation research from the United States. Pressman and Wildavsky (1984) investigated why a federal employment program failed to live up to prior expectations. They explain that turning a policy statement into action requires cooperation of a high number of actors. Even if each of the links of the implementation chain agreed to the proposal with high probability, the resulting chances of a pass are very small when one multiplies all the probabilities. Consequently, Pressman and Wildavsky warn politicians that promising the unattainable leads to disillusionment with the policy process.

## **2.2. EU implementation research – barriers at the Union level**

There are different opinions among scholars on the question whether non-compliance with EU law is a systemic pathological problem, or whether it is comparable to the level of non-

compliance with domestic law in democratic liberal states (Boerzel 2001; Siedentopf and Ziller 1988). Glachant (2001) explains that one could expect the implementation of EU policies to prove more difficult than implementation of conventional national policies, due to the heterogeneity of the EU – especially due to different administrative traditions – and the clear-cut separation between the policy-making and the policy-implementation processes. Treib (2006) observes that the extent of actual enforceability places EU law between international law and domestic law. And similarly to Pressman and Wildavsky (1984), Glachant (2001) argues that the mere fact that member states may fail to transpose the directives adds one more spot where implementation could potentially go wrong.

Nevertheless, the empirical evidence is mixed. For instance, a comparison of compliance with three sorts of policies in the German federation, the European Union and the World Trade Organization evaluated EU's record as the best of all in all three policy fields (Zuern and Neyer 2005). Even if the implementation deficit was not peculiar to the EU, it does not mean that citizens and governments should accept them (Peters 1997). Hartlapp and Falkner (2009) raise a related question. Should implementation of EU legislation be assessed towards a benchmark of implementation of national legislation? Their own answer is no. Different benchmarks for different countries would contradict one of the very reasons for adopting EU-wide legislation – establishment of a level playing field.

The first scholars to draw attention to the problem of non-compliance in the EU were Krislov, Ehlermann and Weiler in 1986 (Mastenbroek 2005). Since then the EU implementation research has developed a plurality of methodological and theoretical approaches (Treib 2006). Qualitative studies usually compare “a small number of directives from a particular policy field across a subset of countries” (Mastenbroek 2005). Mastenbroek points out that researchers have so far paid disproportionate attention to implementation in the biggest EU states and in the fields of environmental and social policy. Therefore one should be careful not to generalize the findings for all countries and sectors. In addition, Boerzel (2001) criticizes that many studies rely on too few cases but include too many variables. Qualitative studies have shown that the ‘law in the books’ is not necessarily the same as the ‘law in action’ (Versluis 2004). Nonetheless, because of the lack of quantitative data on the ‘street-level’ aspects of implementation, most quantitative studies neglect enforcement and application and focus solely on transposition of directives into national law (Treib 2006). The empirical record of these studies, which have aimed to assess relative effects of the main legal, administrative, and political barriers is rather inconclusive (Mastenbroek 2005). According to Hartlapp and Falkner (2009) some outcomes contradict each

other partly because of the differing conceptualization of the dependant variable: compliance. “Often researchers simply are not talking about the same things” (Hartlapp and Falkner).

It is not the aim of this thesis to reconcile all the different explanations of non-compliance. The following sections will rather present different hypotheses on possible causes of non-compliance from literature and empirical evidence for or against them, where available. This chapter will gradually evolve from challenges inherent to the EU governance in general to consequent weaknesses of the directives themselves.

First of all, I will look into the institutional structure of the EU. Here the challenge is to reconcile the supranational level driven by actors with maximalist beliefs with a system of implementation dominated by nation states (Weiler 1981). Firstly, the European Commission and the European Parliament are relatively new institutions with motivation to increase their own competencies. Because it is the member states that are in charge of implementation, both the Commission and the Parliament have a strong incentive to disregard the implementation costs born by someone else while drafting the legislation (Jordan 1999). Jordan observes one of the symptoms of this negligence in the fact that the Commission often does not provide comprehensive compliance-cost assessment. Although the Council – which brings together all the member states – can influence the shape of the legislation, final directives usually differ from the Council proposal because of the need to compromise with the Commission and the Parliament. Secondly, most EU institutions are located in Brussels, Strasbourg and Luxembourg and are, therefore, geographically and politically detached from what happens on the ground all over the Union (Jordan 1999). Lastly, sharing of the Council Presidency among member states on a rotating six-monthly basis created an unhealthy competition to adopt as much legislation as possible (HOLSCEC 1987 in Jordan 1999). Given this institutional structure, it is hardly surprising that EU policies are often unfeasibly ambitious. As a result, high expectations at EU level are often slammed by weak and inconsistent enforcement at the national level (Jordan 1999). Mendrinou (1996) calls this phenomena “inbuilt pathology of non-compliance”.

Ciavarini Azzi (2000) develops the point of overambitious directives. He notes that especially directives which require active and expensive steps (e.g. construction of a water treatment plant) without being accompanied by sufficient financial support from EU structural funds are prone to stay unimplemented, particularly in poorer regions. McCormick (2001) adds that sometimes even the EU support for building of water treatment plants is not sufficient because local authorities sometimes lacked funds to maintain them, as the Court of Auditors found out in 1992.

Following the argument by Schucht on undesirability of a 100% compliance (see 2.1.), Glachant (2001) points out that imperfect implementation is not necessarily wrong per se. It is one of the tools available to member states to control the scope and the speed of the European integration. It allows the member states to fine-tune the legislation to local needs (Glachant 2001). The power of the member states to delay implementation of certain measures can be viewed as a part of checks and balances within the EU system.

The following paragraphs will examine the available means of enforcement of detected non-compliance. Until the discussions on strengthening of the internal market in the early 1980s, conspiracy of silence about non-compliance prevailed in policy circles: "For obvious reasons states prefer not to advertise their own findings and there is a well-established 'gentleman's agreement' not to draw attention to one another's failings" (Jordan 1999). Implementation of EU law by member states is supervised by the Commission and the Court (see Appendix 2 for the exact provisions of the Treaty in Articles 258 and 260), but the Commission is in a 'weak and invidious position' (Williams 1994). McCormick (2001) describes the Commission's role as 'responsibility without authority', because the Commission as the guardian of the treaties lacks the necessary staff numbers, funds or powers to impose sanctions quickly, there is no European police force that could make the states obey the EU rules. In addition, Commission administrators are generally more skilled in the area of policy formulation than in implementation (Peters 1997).

The decision to take a case to ECJ has to receive support of the College of Commissioners and is thus quite political (Jordan 1999). The 'bureaucrates bruxellois' usually have lower legitimacy in the eyes of the public than nation states (Glachant 2001), therefore Commission's efforts to improve implementation by 'naming and shaming' could strike back if the local politicians started questioning the wider integrationist project. Consequently, the Commission sometimes turns a blind eye to some member states, unless the local public strongly demands better implementation (Jordan 1999). Jordan observes that the Commission is especially careful not to upset the public opinion in the bigger member states, states with strongly Euroskeptic population and states, which contribute significantly to the EU budget. At the same time, if the Commission was too lenient, it would run the risks of offending the more legalistic member states and of making the EU legislative system look ineffective (Peters 1997).

Jordan concludes that as a result of limited capacity and willingness on the side of the Commission, only around 20% of the opened cases get to the Court. As long as the Commission decides to bring a non-compliant state to the Court, it hardly ever loses the case (Falkner *et al.* 2005). Before 1993 these court victories were toothless and merely symbolic. First with the entry

into force of the Maastricht Treaty, Article 171 was amended to allow the Court to impose penalties on states which had not complied for a long time (Jordan). For a specific member state the basic amount of the fine is multiplied by a factor ranging from 1 to 26, which captures the state's GDP and number of votes in the Council (Boerzel 2001). In 1999 Jordan could already observe a change in the behavior of member states – majority of cases at which the Commission suggested a penalty had been quickly settled.

The Lisbon Treaty introduced further measures which should make infringement procedures faster and more effective. Before 2010 penalties could be imposed only after ECJ's second judgment and the non-compliant state had to pay for every day of continuing non-compliance after the second judgment (Hadroušek 2011). The Lisbon Treaty increased the weight of the first judgment through an instrument called 'lump sum' – now the member state would sometimes have to pay already for the period from the first judgment until the legislation is implemented properly. Under a new paragraph 3 of Article 260 of the Treaty on the Functioning of the European Union (ex Article 226 of the EC Treaty), "the Commission may suggest to the Court, even at the stage of the infringement proceedings pursuant to Article 258 (ex Article 226 of the EC Treaty), that it impose a lump sum or penalty payment in the same judgment which finds that a Member State has failed to fulfill its obligation to notify measures transposing a directive" (EC 2010). The threat of penalties imposed as a part of the first judgment should lead to much shorter delays in cases of non-notification (Int1). Last but not least, the second infringement procedure (under Article 260) is after the Lisbon Treaty one step shorter – the reasoned opinion is not issued any more (Hadroušek 2011). It is too early to evaluate the success of these changes, but it is fair to assume that they will lead to significant cuts in the 'temporal sanctioning gap' (Sedelmeier 2008) – 'the time-span between the dispatch of the letter of formal notice and the judgment of the Court of Justice' (Kraemer 2003). Kraemer calculates that in 2000 and 2001 this delay used to amount to 59 months on average. The period between the first Court judgment and the identified breach is even longer, because that would include also informal negotiations between the Commission and the member states, as well as the time needed for filing the complaint.

Hadroušek (2011) highlights two other recent developments on the side of the Commission which are to make infringement procedures more effective. The Commission's infringement college – which used to meet only four times a year – now meets every month. Additionally, in April 2008 a database called the 'EU Pilot' was launched as a voluntary tool preceding the official infringement procedure. As soon as the Commission receives a complaint related to implementation, the member state is discretely informed through the database about



the complaint and has 10 weeks to find a solution and report back to the Commission, again through the EU Pilot. The Czech Republic joined the scheme in the first wave together with other 14 member states. In 2010, 30 complaints against the Czech Republic were handled through this database, out of which three come from the environmental field (MFA 2011).

Another issue on the EU level raised by many authors is the poor quality of the directives (Krislov *et al.* 1986, Weiler 1988, Collins and Earnshaw 1992, Dimitrakopoulos 2001b in M.). Glachant (2001) notes that aims of the environmental directives are often vague or contradictory. Auer and Legro (2005) note that the wording of Community law provisions is sometimes unclear and ambiguous. Ciavarini Azzi (2000) sees a barrier in the often very complex and specific provisions of the directives. These are primarily a result of negotiations in the Council and Parliament.

In regard to complexity – measured by the number of recitals of the directive – literature provides quite mixed results. For Kaeding (2006) complexity is beneficial to compliance, for Steunenberg and Rhinard (2006) it is detrimental whereas Haverland and Romeijn assign complexity no significant effect. If measured by the number of articles, complexity has a negative effect on compliance (Thomson 2007). Steunenberg and Kaeding (2009) measure complexity by several directive-level features together and they find a negative effect on the probability of compliance.

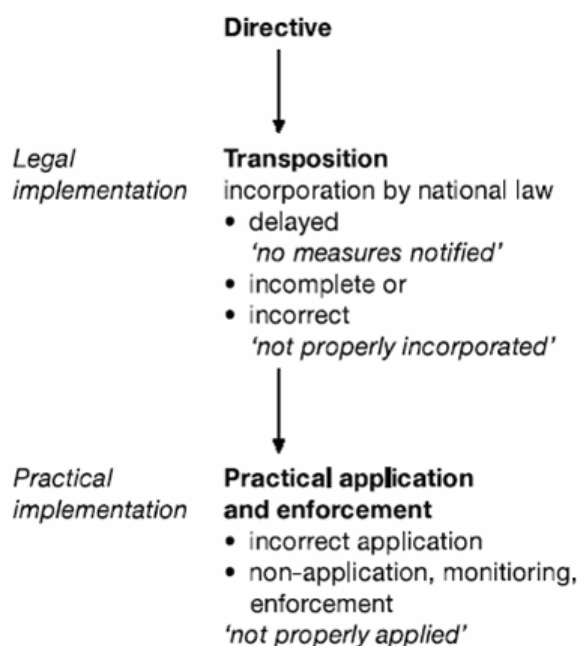
In regard to specificity, Thomson (2007) found a significant effect of discretion for the social policy sector, but not across all sectors (Thomson *et al.* 2007). The Final Act of the Treaty of Amsterdam supported Ciavarini Azzi's point, when it called upon framework directives in contrast with more detailed measures, due to the principles of subsidiarity and proportionality.

The scope and the form of the directives matter too. Steunenberg and Kaeding (2009) find out that specialization of the directive increases the probability of successful implementation. Directives adopted solely by the Commission – i.e. the more technical ones – are significantly more likely to be implemented on time in Italy (Borghetto *et al.* 2006), the Netherlands (Mastebroek 2003) and several other member states (Steunenberg and Rhinard 2006). Directives amending other directives are also more likely to be transposed on time in Italy (Borghetto *et al.* 2006) and the Netherlands (Mastebroek 2003). However, Steunenberg and Rhinard find a negative relationship between amending directives and timely transposition. The amount of time allocated for transposition has a positive impact on timely transposition in the Netherlands (Mastebroek 2003) and several other states (Steunenberg and Rhinard). Other authors (Borghetto *et al.* 2006 and Kaeding 2006) found no significant effect. Literature on other directive-specific

variables, such as the voting rule used for adoption of an act, comes with mixed results (Toshkov 2009).

In conclusion, the EU suffers from an 'inbuilt pathology of non-compliance' because the Commission and the Parliament tend to adopt overambitious legislation, disregarding the costs of implementation born by someone else – the member states (and private entities). I argue that the EU-level barriers – such as too specific provisions and unfeasibly high ambitions detached from the economic reality – play a key role in non-compliance in cases when hardly any state manages to comply on time and correctly. Ciavarini Azzi (2000) brings the example of the habitat directive on the conservation of wild flora and fauna in which infringement proceedings were started against 12 out of 15 member states. Another example of such massive non-compliance is the Directive 2008/50/EC on ambient air quality and cleaner air for Europe, where the Commission currently runs infringement proceedings against 20 member states (Int3).

### 2.3. Challenges at the level of individual member states

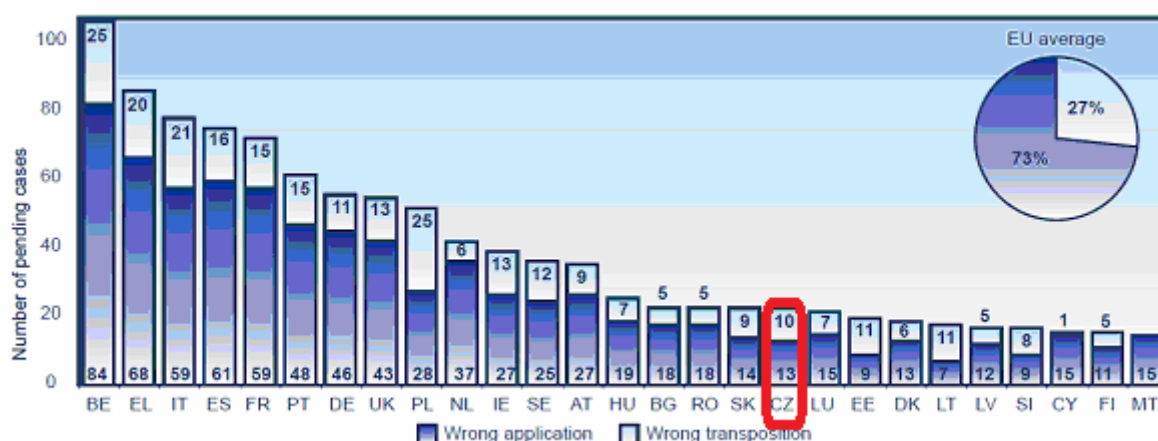


**Fig. 3: Three types of infringement of EU directives**

Source: Adopted from Boerzel (2001)

In principle, member states can infringe with EU directives in three different ways (see Figure 3). They can fail to inform the Commission about adopting the national transposition measures in due time (notification failure), they can either transpose the EU directives incorrectly, fail to transpose some parts of the directive into national law (wrong transposition) or they can badly apply some provisions of the directive (wrong application) (Boerzel *et al.* 2010 and Int1).

The cross-country variation in implementation performance is well-established (Toshkov 2009). Tallberg (2002), Sverdrup (2004) and Falkner *et al.* (2005) observe various patterns of basic propensity to compliance in different clusters of countries. The variance is supported also by the Commission's Internal Market Scoreboard (Commission 2011) which assesses member states' compliance with the legislation that is considered to have an impact on functioning of the EU internal market, including a major part of the environmental legislation (except for the nature protection legislation). According to the latest issue of the Scoreboard from December 2010, Malta did not transpose on time and properly 2 out of 1481 directives, while Italy did not transpose 52 directives. When wrong application of directives and regulations is added to the picture (see Figure 4), Malta still performs the best with 15 infringement proceedings pending in November 2010. On the other pole there is Belgium with 109 open proceedings (Commission 2011). The latest Internal Market Scoreboard shows that various rankings with different leaders and different laggards can be produced, depending on the indicator chosen. According to the Commission (2011) only a small number of member states perform systematically better or worse than the EU average no matter which indicator is chosen.



**Fig. 4: Number of infringement cases opened for wrong transposition of internal market directives and for wrong application for internal market rules which were pending on 1 November 2010**

Source: Adopted from Commission (2011)

Before I review available literature on implementation in the Czech Republic (2.3.3.) and other new member states (2.3.2.), I will go through the literature on implementation in old member states which aims to answer similar questions as this thesis. The quantity of this literature is much higher because these states joined the EU already in 1995 or before and thus scholars had much more time to assess factors influencing implementation performance there. The rich literature from old member states should help me identify key mechanisms behind non-compliance, which should be essentially very similar all over the EU.

### 2.3.1. Literature on implementation in the old member states of the EU

Variance in implementation performance can be attributed to a combination of ability and willingness of individual member states to comply with EU law (Lampinen and Uusikyläe 1998). Most scholars agree and elaborate that one needs to take into account factors related to capacity of the states to comply – i.e. especially administrative efficiency and veto players – as well as factors determining willingness of domestic actors to fulfill the EU requirements – political preferences of governments and interest groups as well as cultural dispositions (Treib 2006).

“The Commission routinely acknowledges that failures are more often the product of inefficiency and incompetence on behalf of states than deliberate disobedience” (Jordan 1999). Chayes and Chayes (1993) support this argument by stating that non-compliance is usually a consequence of poor management rather than of strategic decisions. Also Demmke (2001), Mastenbroek (2003) and Falkner *et al.* (2005) conclude that non-compliance is caused more often by administrative and legal problems than by intentional defection. Nevertheless, factors related to willingness cannot be completely neglected – sometimes member states can decide for some reason to hamper transposition on purpose, if they view it as politically expedient (Collins and Earnshaw 1992). Checkel (2001), Finnemore and Sikkink (1998), Risse (2000) and Sending (2002) assume that implementation will be significantly more time-consuming if some key national stakeholders oppose the directive. Thus Mastenbroek (2005) concludes that non-compliance can persist even if all legal and administrative barriers are overcome provided it is beneficial for certain interest groups or government agencies.

This sub-section will first deal with factors related to capacity of the member states and then with factors related to their willingness to comply. In the end I will present outcomes of five large studies which compare effects of these factors.

Almost every researcher who attempted to explain compliance patterns included the effect of government capabilities (Toshkov 2009). A key part of the government's capacity to implement EU legislation is the quality of the civil service and the related government efficiency. Toshkov argues that their positive effect on implementation is very well established and he summarizes that “evidence in its favor is brought by Berglund *et al.* (2006), Börzel *et al.* (2007), Haverland and Romeijn (2007), Lampinen and Uusikyläe (1998), Linos (2007), Mbaye (2001), Perkins and Neumeyer (2007), and Siegel (2006).” As corruption decreases bureaucratic quality, it is negatively correlated with compliance (Kaeding 2006). Ciavarini Azzi (2000) points out that the way governments and administrations are organized for implementing Community law matters. Guilianni (2003) supports this argument by showing that the national coordination capacity has a positive impact on implementation.

Another quite homogenous sub-field of research on state capacity aims to assess effects of political and legal culture. Boerzel *et al.* (2004) argue that public support for the rule of law is one of the explanatory factors why countries like Denmark – where citizens strongly support the rule of law – have a better transposition record than Greece, France or Portugal. “The assumption is that domestic traditions of rule of law form the role models of civil servants and other actors involved in transposition in such a way that they feel that compliance with law, including directives, is important” (Berglund *et al.* 2005). Boerzel *et al.* (2004) measured the extent of support for the rule of law on the basis of agreement with the following statements: ‘it is not necessary to obey a law which I consider unfair’, ‘sometimes is it better to ignore a law and to directly solve problems instead of awaiting legal solution’ and ‘if I do not agree with a rule, it is okay to violate it as long as I pay attention to not being discovered’. Their statistical analysis identifies a significant negative correlation between the support for the rule of law and the frequency of breaches of EU law. Although the rule of law hypothesis was confirmed, Boerzel *et al.* (2004) warn that “the used data are incomplete and were only collected at two points in time.” In a related category, Lampinen and Uusikyläe (1998) identified a strong correlation between stable political culture and compliance with EU rules (see Figure 5 below).

One of the most prominent hypotheses in the field is the veto players’ hypothesis which captures diverse national constitutional characteristics. Haverland (2000) argues that implementation deteriorates if the national constitution leaves more actors with the power to veto legislation or halt the legislative process. That is because veto players tend to oppose changes of the status quo required by implementation measures because of the related costs they have to (co)bear (Tsebelis 2002). Steunenberg (2006) counters that higher numbers of veto players per se do not have to lead to compliance problems, provided several players have similar preferences and act effectively as one player.

Despite the theoretical and intuitive plausibility of the veto players’ hypothesis, the empirical evidence for such a relationship is very weak (Toshkov 2009). Only Giuliani (2003), Steunenberg and Rhinard (2006) and Perkins and Neumayer find a negative relationship between the number of veto players and compliance, whereas studies of Mbaye (2001), Boerzel *et al.* (2003), Toshkov (2007), Jensen (2007), Boerzel *et al.* (2007) and Boerzel *et al.* (2010) find no significant effect. The outcome depends also on methodology, as shown by Kaeding (2006) who proved a negative relationship testing Schmidt veto points, but no effect when using Huber’s index of political structures.

Falkner *et al.* (2007) points out that veto players simply do not often play a crucial role in the implementation phase. A possible explanation is that veto players do not need to block

implementation of EU rules, as that they are able to effectively influence the member state's position for Council negotiations on the proposal (Boerzel *et al.* 2010). Lampinen and Uusikyläe (1998) support this explanation by observing that the level of compliance depends also on the involvement of actors responsible for implementation in the earlier phases of the legislative process. Similarly, Krislov *et al.* (1986) claim that parliaments may be hesitant to co-operate if they are not consulted at an early stage. Ciavarini Azzi (2000) supports this view arguing that national parliaments, ministerial departments, regional administrations and also interest groups can have a more positive attitude towards implementation of directives, were they involved in negotiating them. However, that is often not the case – McCormick (2001) observes that those national authorities which are strongly involved in implementation are usually excluded from the early stages of development of the legislation. Mastenbroek (2005) calls this phenomenon, which is present in many member states and their ministries, 'Chinese walls' between preparation and implementation. Toshkov (2009) concludes that there is empirical support for the hypothesis that stronger involvement of the national parliament in EU affairs leads to better transposition, but the link is rather weak.

Several sub-fields of research are related to the veto players' concept. As regards geographical decentralization, Toshkov (2009) summarizes that several scholars found a negative impact of federalism or regional autonomy, while others (e.g. Boerzel *et al.* 2010) argue that federal states do not perform systematically worse than unitary states. Another domestic factor related to the veto players' concept is variation in the way national parliaments operate and consequently the amount of time needed for approval of implementing legislation (Ciavarini Azzi 2000). Empirical studies undertaken by Siedentopf and Ziller (1998) do not strongly attribute the delayed transposition to the length and complexity of national parliamentary procedures, they see the cause of the delay rather in failures of the governments to present legislative proposals in time. Other scholars focus specifically on the number of parties in the government. Whereas Giuliani (2003) and Linos (2007) find a negative relationship between the number of parties and compliance, Bergman (2000) finds that the question whether the government has a majority in the parliament has no impact.

Another frequently quoted explanation of non-compliance is the goodness of fit hypothesis derived from an article by Héri-tier (1995). The assumption is that states implement more easily those directives which are closer in content to their own laws because their deeply rooted administrative routines and national policy traditions pose obstacles to any reforms from outside (Treib 2006). However, Mastenbroek (2005) and Treib (2006) summarize many studies (Knill and Lenschow (1998), Haverland (2000), Héri-tier *et al.* (2001), Falkner *et al.* (2005) and

Mastenbroek and van Keulen (2005)) which confirm that this hypothesis has in practice only limited explanatory power. Mastenbroek (2005) concludes that “a good fit is neither a necessary nor a sufficient condition for smooth compliance, and vice versa.”

Why is there hardly any support for this hypothesis? Treib (2003) explains that the change suggested by the EU legislation often aims in a direction preferred by some key national actors, they just might have lacked the courage or power to change the status quo. Thus EU requirements sometimes represent an ideal instrument for such a change. Empirical case studies by Treib (2003) show that political preferences of domestic governments matter: “governments may well accept wide-ranging deviations from the status quo if the direction of the required reforms is in line with their party political preferences. Conversely, government parties, who by definition hold veto power over transposition laws, may also drag their heels on the realization of rather minor adaptations if these modifications go against the grain of their party political goals”. Falkner *et al.* (2007) bring an example of such a politically influenced switch in compliance behavior from Germany where the centre-right government had refused to comply with the Parental Leave Directive because some of its provisions conflicted with the government’s conservative family policy preferences. With the takeover by a centre-left government not only the mandatory provisions were implemented, but Germany started also applying the non-compulsory recommendations of the directive. As Mastebroek and van Keulen (2005) sum up, favorable preferences of domestic governments “may work wonders in overcoming misfit”. In addition, Falkner *et al.* (2007) show on the case of Luxembourg that under conditions of administrative overload lower fit can be helpful – “directives that require more important changes may be treated with higher priority than measures that demand only minor changes.”

Steunenberg and Toshkov (2009) find support for the goodness of fit hypothesis, if only the formal legal fit is assessed, disentangled from domestic preferences on the content of the directives. In their analysis of timeliness of implementation of four directives adopted in 2005, they create four categories of legal misfit (high, moderate, limited and small). For instance, misfit is categorized as high, when a directive requires adoption of more than two legislative acts, when these acts are of higher order (laws and regulations) and when the legislations is transposed mostly through extensive amendments rather than through new acts. Steunenberg and Toshkov conclude that legal misfit is significantly negatively correlated with timely transposition – one unit increase in legal misfit (e.g. from limited to small) reduces the probability of timely transposition by a factor of 0.686, *ceteris paribus*.

Steunenberg and Toshkov analyze also the effect of discretion left to the member states. Discretion is measured through the number of substantive articles which allow for a choice by

national implementing authorities divided by the total number of substantive articles. They find out that higher discretion significantly slows down the transposition process. On the other hand, their research says nothing about potential benefits of discretion for the quality of the legislation. Last but not least, Steunenberg and Toshkov find no support for the hypothesis that the likelihood of timely transposition is correlated with periods of government changes or election periods.

As regards the effects of state power, literature contains examples of both positive correlation (Mbaye 2001; Jensen 2007; Perkins and Neumayer 2007) as well as negative correlation (Giuliani 2003; Boerzel *et al.* 2007; Boerzel *et al.* 2010; Siegel 2006) with implementation performance. The record on length of membership is similarly disputed. Steunenberg and Rhinard (2006), Berglund *et al.* (2006) and Steunenberg and Kaeding (2009) find a positive impact of experience on transposition performance, while Mbaye (2001), Giuliani (2003) and Perkins and Neumayer (2007) find that states comply best in the first years after accession and later their performance goes down. Last but not least, Ciavarini Azzi 2000 and Dimitrakopoulos 2001b argue that lack of resources can form a barrier to implementation.

After an extensive analysis of factors related to capacity, I will briefly stop at the preferences of political actors and of the domestic public. Toshkov (2009) concludes that there is mounting evidence (Siegel 2006; Toshkov 2007; Jensen 2007; Koenig 2009 and Linos 2007) that general ideological positions of national governments do not significantly affect compliance. And he adds that even the positions of the individual states towards specific issues or pieces of legislation do not have a significant effect on their implementation performance. This argument is supported by Linos (2007) who did not find any relationship between a vote against a directive in the Council and transposition problems. Similarly, Thomson (2007) and Haverland and Romeijn (2007) conclude that there is no effect of member states' preferences on implementation in the field of social policy. On the other hand, in a wider set of policies, Thomson *et al.* (2007) identified an effect of government's preferences on transposition delay and infringement proceedings.

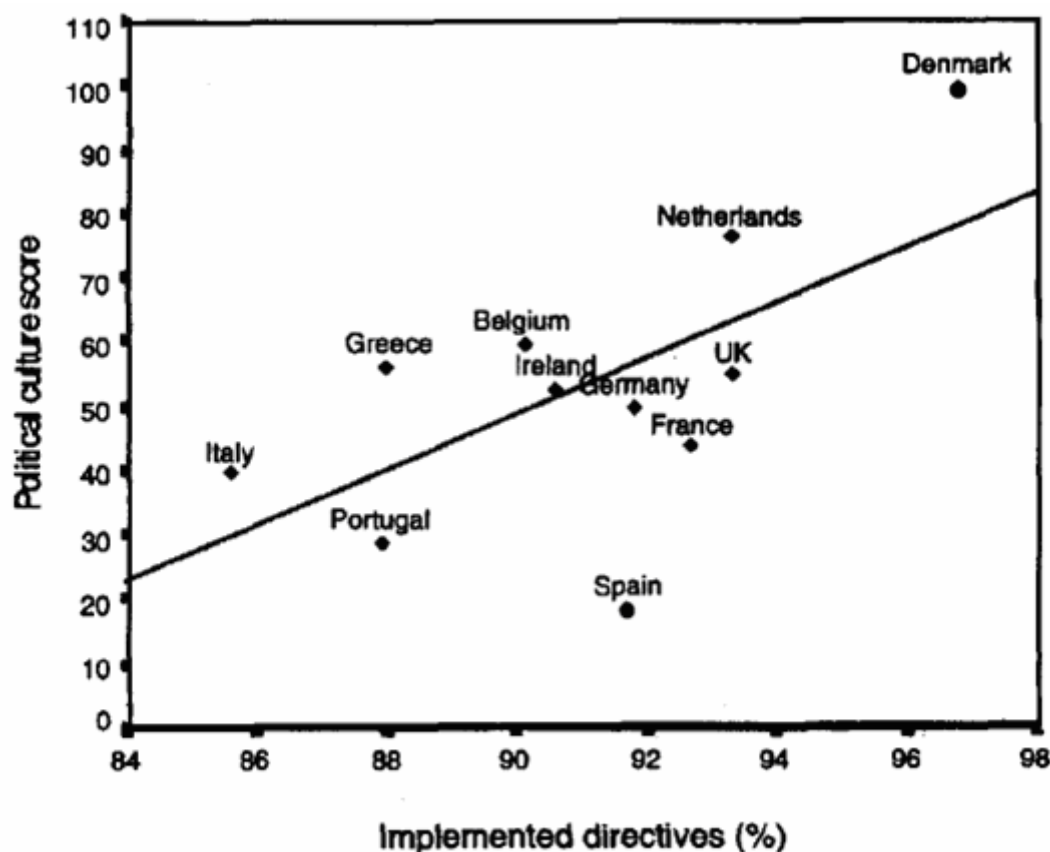
As regards attitudes of the broader public towards the EU, Toshkov (2009) concludes that no study so far identified a positive effect of EU support on implementation performance. The opposite relationship was identified by several studies (Mbaye 2001; see below for Lampinen and Uusikyläe 1998 and Boerzel *et al.* 2010), whereas other studies (Boerzel *et al.* 2007; Kaeding 2006; Lampinen and Uusikyläe 1998; Siegel 2006; Steunenberg and Rhinard 2006) found no relationship.



After identifying major factors influencing implementation, I will now review four large quantitative studies and one qualitative project which empirically test the impact of a wide range of factors on compliance. Most of these studies have the broadest possible scope which ensures that selection bias is avoided. Their aim is to find out why Italy breaches EU law more than 10 times more frequently than Denmark (Boerzel *et al.* 2010). Or more broadly, “why countries as diverse as Greece, Italy, France and Belgium violate EU law more frequently than Denmark, the Netherlands, the United Kingdom and Luxembourg” without any significant changes over time (Boerzel *et al.*). Cross-country comparisons of implementation performance might seem to suffer from the drawback that different states have different numbers of opportunities to violate EU law based on their unique conditions. For instance, land-locked countries can hardly incorrectly apply EU measures on deep-sea fishing. But Boerzel *et al.* downplay this bias by assuming that in aggregate ‘violative opportunities’ are relatively evenly distributed.

Koenig and Luetgert (2009) used the complete body of 1,590 directives from all policy sectors to assess which factors influenced transposition delays in all 15 old member states between 1986 and 2002. They conclude that timely transposition is more likely if the maximum ideological distance between any two member-state government positions on the issue is lower and if the unanimity voting is applied in the Council. Furthermore, transposition is increasingly delayed in federalist systems, pluralist systems as well as with a higher number of national measures required for adequate implementation. The authors are aware of limitations of their legalistic quantitative approach which relies solely on imperfect data published by the Commission. Most importantly, these data take into account only whether and when national transposition measures were notified and say nothing about correctness of the adopted measures.

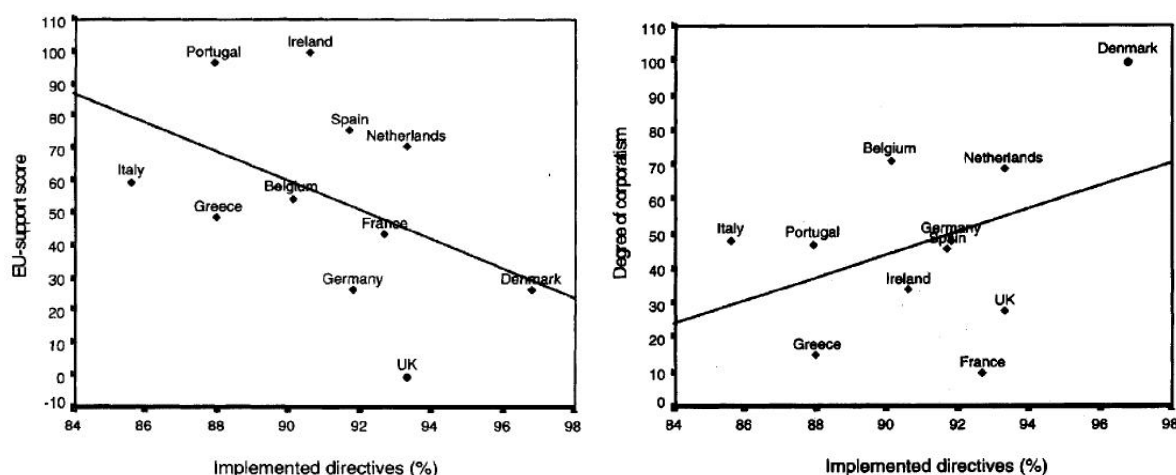
Lampinen and Uusikyläe (1998) based their research also on the Commission data published in the Annual Reports on Monitoring the Application of Community Law. Their implementation scores cover also correctness of implementation, because they include data on cases of infringement. Lampinen and Uusikyläe assessed which factors influenced implementation of directives in 12 member states in 1990-1995. Since the size of the sample seriously restricts causal analysis and statistical inference, the authors decided scatter plots would be the most appropriate way to present their results (see Figures 5 and 6). They found out that successful implementation had the strongest positive correlation ( $r=0.61$ ) with political culture (in the traditional Eastonian sense), which they measured by their own index based on a combination of following sectors: electoral participation, satisfaction with democracy, social fragmentation and individual values and autonomy (see Figure 5 below).



**Fig. 5: Scatter plot of political culture and implementation performance**

Source: Lampinen and Uusikylae (1998)

Lampinen and Uusikylae were surprised to identify also a modestly negative correlation ( $r=-0.46$ ) between the support for EU membership and successful implementation (see Figure 6). Figure 6 also shows that there is a moderately positive relationship ( $r=0.40$ ) between the implementation performance and the degree of corporatism expressed by participation in trade unions, support for moderate left parties and the significance of interest organizations in the society and in the political system. On the other hand, the impact of stability and efficacy of political institutions – the number of parliamentary chambers, number of political parties in the government, average duration of the government or volatility of voter support – was relatively low ( $r=0.33$ ).



**Fig. 6: Scatter plots of implementation performance with the EU support and degree of corporatism**  
Source: Lampinen and Uusikyläe (1998)

Mbaye's model (2001) is based on data from the highest stage of the infringement procedure, it aims to examine the impact of 14 country-specific variables on all infringement cases brought in front of the European Court of Justice in 1972-1993. She finds out that compliance is positively correlated with bureaucratic efficiency and economic power, whereas a longer period of membership, bigger bargaining power in the Council and higher autonomy of the regions have a significant negative effect on the number of cases of successful compliance. Fiscal resources, levels of corruption and corporatism, approval of democracy and the use of qualified majority voting are not significant. Mbaye concludes that compliance is influenced by many factors and can thus be satisfactorily explained, only if we integrate approaches of compliance literature in American federalism, EU studies and international relations in general.

Boerzel *et al.* (2010) also investigate non-compliance across all the sectors and all the member states. Their research is based on the Commission's internal database of infringements which had allegedly been made available for researchers for the very first time. This dataset is rather unique and therefore I will present these findings in bigger detail.

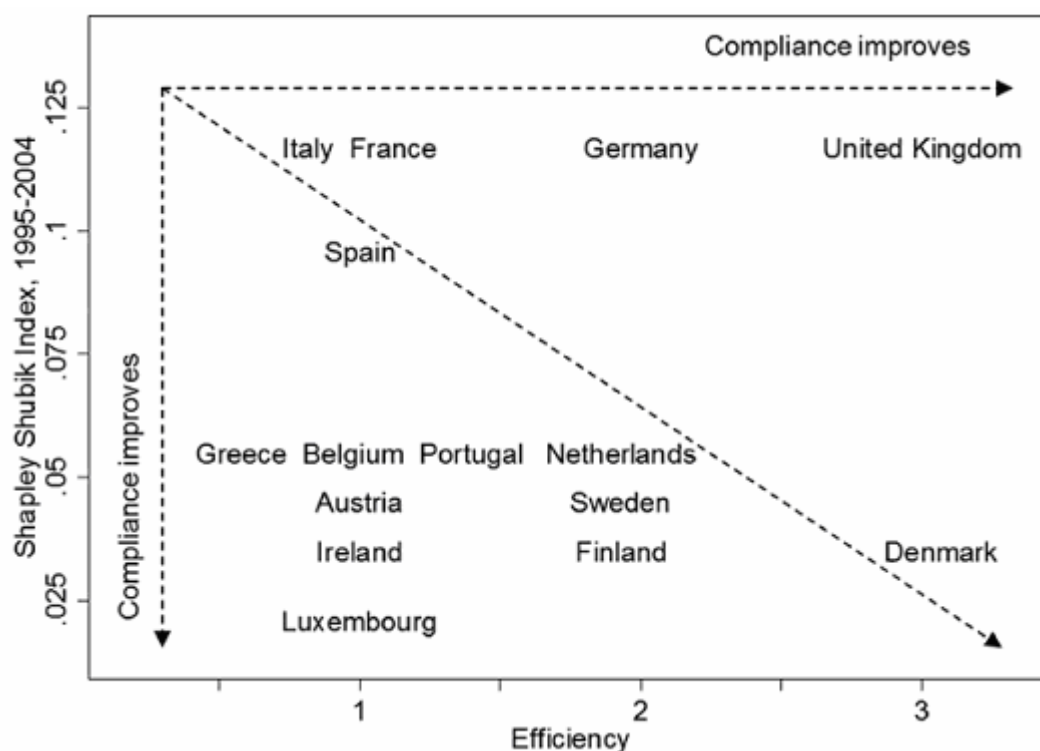
The model is based on more than 6,300 individual infringement cases in which the Commission issued a reasoned opinion between 1978 and 1999. Boerzel *et al.* choose a reasoned opinion as a feature of more serious cases of non-compliance which could not be solved at the previous stages of informal negotiations and of letters of formal notice.

The findings of Boerzel *et al.* strongly support the obstinacy hypothesis which assigns more cases of infringement to member states with bigger political weight, i.e. bigger population and consequently bigger voting power in the Council (measured with the Shapley Shubik Index). Keohane and Nye (1977) explain this phenomenon by an observation that less powerful

countries are more dependent on future goodwill and cooperation and are hereby more sensitive to the loss of reputation and material costs imposed by others. Therefore smaller member states are not willing to ignore the pressure of supranational enforcement authorities, especially of the Commission. Big states do not need to pay so much attention to their reputation vis-à-vis other member states or EU institutions because they maintain their influence through a high share of votes in the Council (Thomson *et al.* 2006). Thomson *et al.* add that bigger member states are less threatened by the risk of financial penalties for breaches of EU law because these account for a smaller part of their budgets.

Simultaneously, the assertiveness hypothesis has to be rejected. That means that the ability to shape the legislation according to one's interests does not prevent bigger states from breaching the resulting legislation (Boerzel *et al.* 2010). This relates to an observation made by Ciavarini Azzi (2000) that the member states which are the strongest opponents of the proposal of the directive, do not necessarily show the biggest resistance to the adopted directive in the implementation phase.

Boerzel *et al.* continues that the obstinacy hypothesis alone does not explain why the United Kingdom complies much better than other powerful member states. Neither does it explain why relatively weak Greece, Belgium and Portugal are among the worst compliers. Thus another key factor needs to be taken into account. Whereas neither GDP nor GDP per capita substantially affect countries' compliance record, what has a positive impact is the bureaucratic efficiency and professionalism of the public service as proxies of government's capacity to mobilize existing resources (Boerzel *et al.*). Because the frequently used indicator of bureaucratic quality of the World Bank lacks sufficient variance among the EU states, the authors decided to create their own index based on "three components: performance-related pay of civil servants, lack of permanent tenure and public advertising of open positions" (Boerzel *et al.*). Bureaucratic efficiency "explains why the United Kingdom outperforms its powerful counterparts. Although they may have similar power of obstinacy levels, they lack the efficiency of the British bureaucracy. Also at medium levels of political power, Belgium, Greece and Portugal are much more obstinate than the Netherlands, which features higher government capacity" (Boerzel *et al.*). Figure 7 demonstrates that a combined model of bureaucratic efficiency and power of obstinacy explains a substantial part of the observed variance in the implementation performance.



**Fig. 7: The influence of power and bureaucratic efficiency on expected compliance**  
Source: Boerzel *et al.* (2010)

The last finding is in line with the argument made by Mbaye (2001) that non-compliance often stems not from insufficient resources, but from the failure to bring existing resources to the right place, in particular if the resources are distributed among various ministries and other institutions on different levels of government. Henceforth, Boerzel *et al.* advise those who would like to improve compliance that transfer of resources to non-compliant states is not sufficient unless it is accompanied by investments into bureaucratic efficiency. Boerzel *et al.* recommend that these investments can be directed for example into anti-corruption measures because bureaucratic efficiency is strongly positively correlated with the Corruption Perception Index of Transparency International. (This correlation is actually the reason why they decided to exclude measures of corruption from this research, to avoid multicollinearity.)

Finally, Boerzel *et al.* hypothesized that public support for the EU in a given member state would be negatively correlated with the number of infringement cases. This hypothesis rests on the assumption that rules are better complied with if they are set by institutions which enjoy a higher degree of support (Boerzel *et al.*). However, their findings disproved the original hypothesis. In line with the earlier findings by Lampinen and Uusikyläe (1998) they identified a positive correlation between public support for the EU and violations of EU law – euroskeptic countries such as Denmark and the UK implement better than Belgium and Italy whose populations are supportive of European integration. The authors attributed this counterintuitive

finding to an observation that malfunctioning of the state triggers public support of the EU – inhabitants of badly functioning nation states turn to the EU with the hope that it will be more effective in providing public goods. But the implementation of EU policies lies again on the shoulders of the malfunctioning states which do not have the capacity to implement correctly and on time.

While quantitative research is able to analyze huge sets of imperfect data across all sectors and states, qualitative researchers have capacity to analyze in depth compliance in one sector or one country. A prominent example of such a large-scale qualitative project in the field of EU social policy is presented by Falkner *et al.* (2007). They analyze through more than 180 interviews factors explaining compliance of all 15 old member states with six labour law directives adopted in 1990s. This approach enabled the researchers to assess not only the time of formal transposition, but also the time when the directive was eventually implemented correctly.

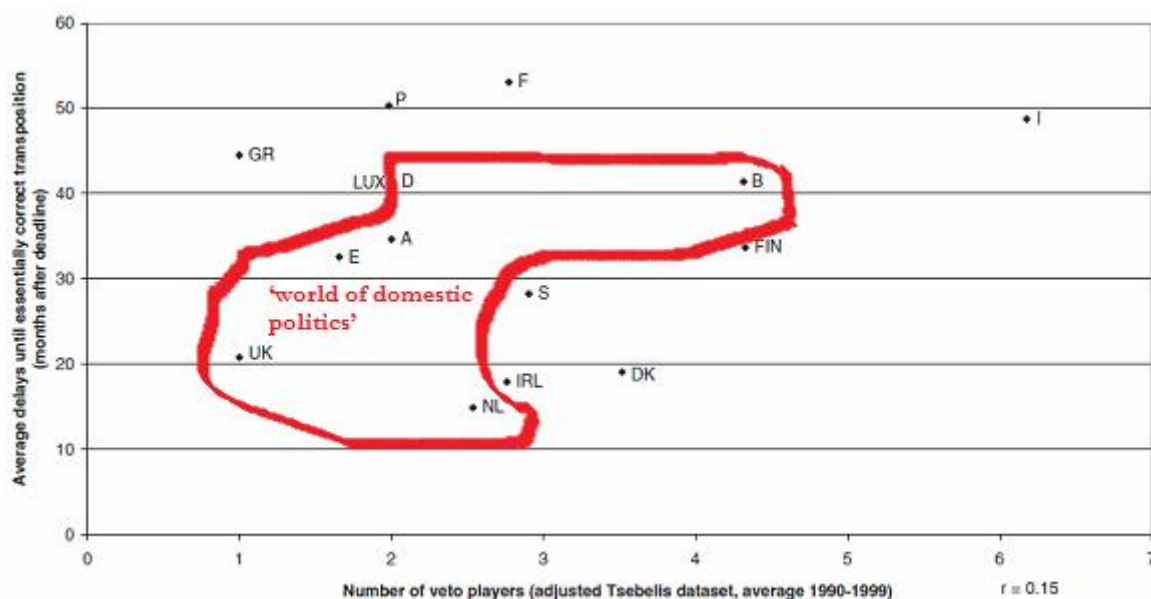
**Table 1: The relationship between misfit and correct transposition in the case of EU labour law directives**

Timing	Degree of misfit		
	low	medium	high
Less than two years delayed	25*	13***	3**
Delays of two years or more	19**	20***	7*

Notes: Benchmark: essentially correct transposition. \* Cases that are in principle consistent with the misfit hypothesis. \*\* Cases inconsistent with the misfit hypothesis. \*\*\* Cases for which no clear expectations may be derived from the hypothesis. A total of four cases have been omitted since essential correctness existed from the outset.

Source: Falkner *et al.* (2007)

Falkner *et al.* test the goodness of fit hypothesis. Table 1 above demonstrates that out of the 15x6 cases, only 32 are consistent and 22 are inconsistent with the hypothesis. Most of the remaining cases are characterized by a medium misfit, which does not give clear guidance according to the hypothesis. On the scale of the whole EU-15, Falkner *et al.* find neither any empirical support for a correlation between the number of veto players and implementation performance (see Figure 8 below).



**Fig. 8: The relationship between the number of veto players and time needed for correct transposition in the 'world of domestic politics' and all other EU-15 countries**

Source: Adopted from Falkner *et al.* (2007)

The authors conclude that these most prominent hypotheses in the field of EU compliance are only somewhere-true theories – factors which are highly relevant in one country might have no or even the opposite effect in another country. Falkner *et al.* reveal existence of three clusters of countries – three 'worlds of compliance' – each showing a specific pattern of treating transposition duties. Denmark, Finland and Sweden form together the 'world of law observance' where non-compliance occurs very rarely and only if fundamental regulatory philosophies or basic traditions are challenged. Falkner *et al.* explain that the presence of a culture of good compliance shared by politicians, civil servants and citizens ensures that even negatively affected veto players put a higher weight on the duty to comply with EU law than on their own interests.

Austria, Belgium, Germany, the Netherlands, Spain and the United Kingdom belong for Falkner *et al.* to the 'world of domestic politics' where a cost-benefit analysis is made for each single act of transposition. Political orientation of the government matters in this world. And so does the number of veto players which is positively related to transposition delay (see Figure 8). Thus timely and correct transposition is much more probable if the directive is in line with the interests of the key domestic players. In this world politicians and major interest groups sometimes openly call for disobedience with EU law without meeting much resistance within the country because breaches of EU law are more socially acceptable here than in the world of law observance (Falkner *et al.*).

The third world of compliance – the ‘world of transposition neglect’ – is represented by France, Greece, Luxembourg and Portugal. Here the typical initial reaction for a duty to implement an EU directive is usually inactivity – either due to administrative inefficiency, or due to the belief that domestic standards are superior. Falkner *et al.* argue that an effort to improve implementation by adding extra administrative resources could miss the point because “administrations in some countries seem to have enough resources, but are either organized too ineffectively to ensure proper performance or are characterized by a lack of willingness on the part of administrative actors to accept EU demands and to initiate processes of adaptation”. Consequently, Falkner *et al.* observe that neither the administration nor the politicians in this world take compliance too seriously, until an intervention by the European Commission.

The typology introduced by Falkner *et al.* (2007) was criticized by some scholars. Thomson (2009) draws very different conclusions from the dataset created by Falkner *et al.*. Thomson argues that he finds no significant differences in the direction of the effects of most of the key explanatory factors across the different clusters of countries. Effects of only one variable differed by world according to Thomson – government efficiency seems to have positive effect on implementation in the world of domestic politics, but not in other worlds. Furthermore, Thomson finds that misfit is associated with transposition delay in all three worlds – medium and high levels of misfit are associated with a significantly lower chance of successful transposition. Toshkov (2007) also runs a statistical analysis on the social policy dataset of Falkner *et al.* (2007) and argues that the three worlds of compliance are not significantly different from each other in regard to transposition delay. Falkner *et al.* (2007) would probably answer that Thomson (2009) and Toshkov (2007) misinterpret them – Falkner *et al.* have stressed that the three worlds do not indicate outcomes, but processes. “The implementation performance in a particular sample of cases may be as mediocre (or bad) in a country belonging to the world of domestic politics as in a country in the world of neglect, or it may turn out to be as good (or mediocre) as in a country from the world of law observance. What is important is that these outcomes are reached through very different processes.”

Falkner *et al.* later (2008) add several new member states to their research – including the Czech Republic. The following two sub-sections will present the outcomes of their research as well as some other contributions on implementation in new member states. First, sub-section 2.3.2. will review literature on various comparative studies and then sub-section 2.3.3. will review the few pieces of literature which deal specifically with the Czech Republic.



### 2.3.2. Literature on implementation in the new member states of the EU

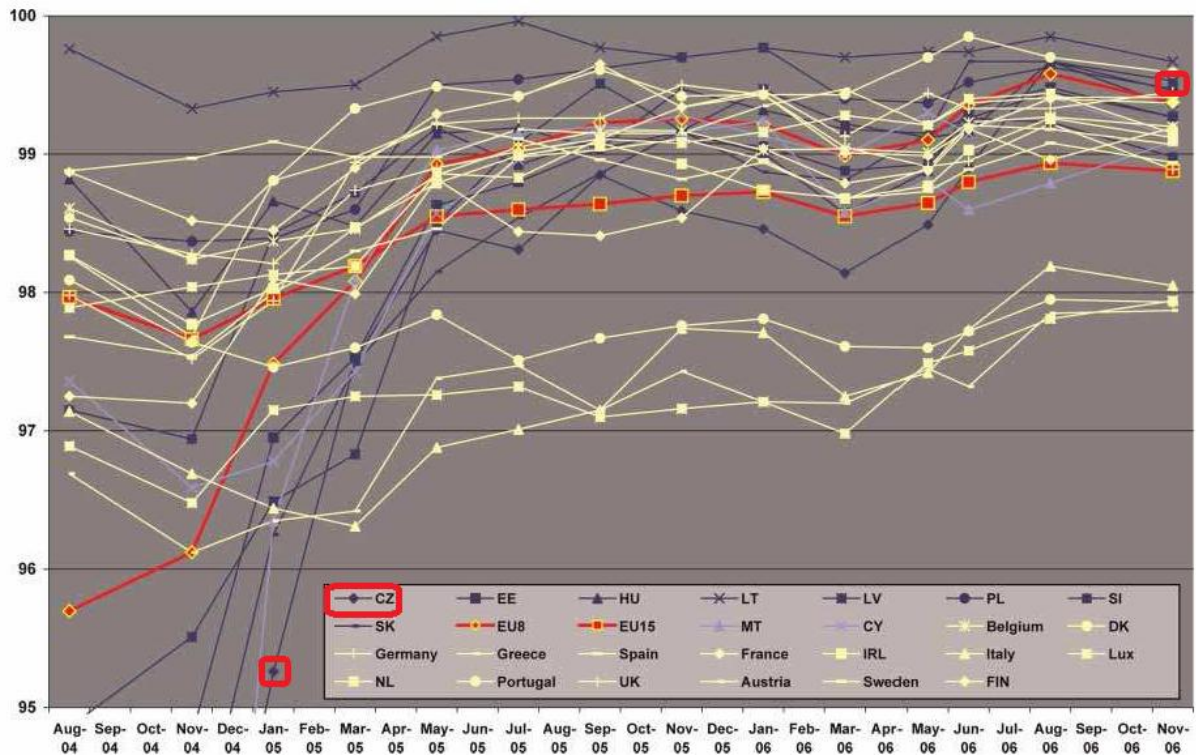
Before approaching the literature on post-accession compliance, which is the focus of this thesis, I will briefly present the main outcomes of the much richer pre-accession literature. Two pre-accession studies assess specifically the barriers to implementation of environmental legislation in CEE countries. Andonova (2004) identifies interests of the domestic industry and domestic institutional framework as the key factors explaining different performance in different sub-sectors of the environment in three CEE countries, including the Czech Republic. Lynch (2000) focuses on barriers related to the socialist heritage. Firstly, before 1989 the state was responsible not only for environmental protection, but also for economic activity. Consequently, some government officials might until today see the environmental protection as secondary to economic growth, although the latter is no more their responsibility. Secondly, governments in the region lack experience in translating general commitments into specific tasks. Authors of the legislation are not used to including a compliance strategy. Thirdly, the past centralization of the environmental decision-making left regional administrations unprepared and understaffed for fulfilling their duty to enforce environmental legislation (Lynch; Kružíková 2004). Last but not least, the inhabitants' hardships related to economic transition resulted in a dramatic drop in support for environmental NGOs. Waller (1998) observes that large grassroots campaigns were replaced by small professional organizations funded by Western institutions which adopt a less confrontational attitude in pressuring the national governments.

The main conclusion of the literature is the significant influence of accession conditionality, i.e. the power of the EU to demand reforms in exchange for the benefits of joining the Union (Toshkov 2009). This power stems from the asymmetrical nature of the relationship between a gatekeeper and someone eager to enter the club. Consequently, the power of conditionality diminishes after the accession date is set (Steunenberg and Dimitrova 2005) and vanishes completely on the day of accession. In a case study of implementation of social policy legislation in Poland, Leiber (2007) embraces the concept of conditionality, but he notes that conditionality is "too crude to enforce the implementation of individual policy measures."

If conditionality was the main driver of compliance before 2004, the absence of the membership carrot should – *ceteris paribus* – significantly slow down the implementation process after accession (Schimmelfennig and Sedelmeier 2005). The literature identifies several other reasons why the new member states are expected to comply systematically worse than old member states. The vacuum after the collapse of communism was filled by a very corrupt environment where "actors could rely on political connections, dysfunctional state institutions and corrupt judiciaries to perpetuate corrupt practices and prevent prosecution" (Vachudova 2009). Sedelmeier (2008) observes that new member states have fewer economic resources than

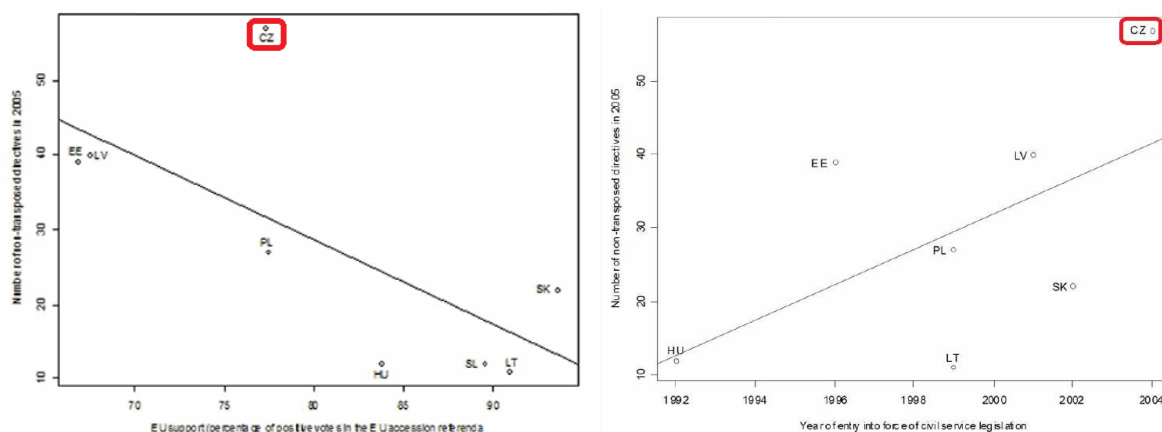
countries of the EU-15 and suffer from low administrative capacities and weak societal mobilization, which are the key explanatory factors of compliance. In addition, they have to bear high adjustment costs because the EU legislation adopted before accession neglects the specifics of post-communist countries, it rather reflects particular bargains between old member states which rest upon past socio-economic developments of Western Europe (McGowan and Wallace 1996).

However, Sedelmeier (2011) concludes that neither case studies of particular policy areas, nor recent cross-country comparisons find systematic evidence of compliance problems in the new member states after accession. On the contrary, new member states have been transposing on average better than old member states since as early as 2005 (Toshkov 2009). The dominance of post-communist member states is illustrated by Figure 9 below, which compares across all member states the transposition rates – numbers of directives actually transposed on a given date related to all directives that had to be transposed by then. “While the short observation period should caution us against overstating the positive performance of the EU-8, at an absolute minimum we can safely conclude that the nightmare scenario of a flood of court cases against the new members has not materialized” (Sedelmeier 2008). Figure 9 shows that the Czech Republic (marked as blue diamonds, highlighted with red framing) is the only member state from CEE whose performance dropped below the average of the EU-15 (red squares) and even that occurred only for half a year. Toshkov (2009) adds that even in 2007 the Czech Republic kept the highest number (38) of non-notified directives within the EU-8, while other CEE member states failed to notify from 8 to 29 directives.



**Fig. 9: Transposition rates (% of directives notified) in EU-25 in 2004-2006**  
Source: Adopted from Sedelmeier (2008)

Sedelmeier (2008) comments on the variance within the EU-8 that the lowest levels of compliance seem to occur in countries with the highest Euroskepticism in national parliaments. In studies of pre-accession compliance, Hille and Knill (2006) find no significant effect of the government's position towards the EU, whereas Toshkov (2008) finds out that EU legislation was more likely to be transposed in time if more pro-European governments were in power. Toshkov (2009) arrives at a similar conclusion using the percentage of the 'Yes' votes in the referenda on accession to the EU (see the left side of Figure 10 below). The  $R^2$  value of 0.49 indicates that a significant percentage of the variation in transposition deficit can be explained by different levels of EU support (Toshkov). The positive relationship between implementation performance and EU support is surprising, because it runs counter the correlation identified for the old member states (see 2.3.1.).



**Fig. 10: The relationships between the number of non-transposed directives in 2005 and public support for EU membership before accession (on the left) and the year when civil service legislation entered into force (on the right) in EU-8**

Source: Adopted from Toshkov (2009)

Toshkov (2009) looks for an explanation, why the Czech Republic and Slovakia deviate from the regression line to the top and Hungary to the bottom (on the left side of Figure 10 above). He identifies the quality of public administration – expressed by the lifetime of the legislation on civil service – as the key factor which positively influences implementation ( $R^2 = 0.42$ ; see the right side of Figure 10 above<sup>3</sup>). Toshkov elaborates that high administrative capacity which allows the state to analyze the EU requirements and to adapt them to local conditions can paradoxically lead to slightly longer transposition delays. However, these should be more than compensated by the fact that the legislation was moved closer to the preferences of domestic actors. Toshkov concludes that administrative capacity together with EU support are able to explain 81% of the variation in transposition performance. Other scholars reiterate the positive impact of administrative efficiency. Based on the Commission's reports on progress of Central and Eastern European countries towards accession achieved in 1999-2003, Hille and Knill (2006) argue that "the functioning and the quality of the domestic bureaucracy constitute crucial preconditions for effective alignment with EU policy requirements", with a statistical significance at the 99% level. Centralization of co-ordination structure and strong political leadership also had a positive effect on legislative alignment in Poland, Hungary and the Czech Republic (Zubek 2008). Haverland and Romeijn (2007) add that administrative capability in EU affairs might grow with increasing time of membership.

<sup>3</sup> In the Czech Republic, the Act on civil service has still not entered into force as of August 2011 (Int 7), see more in section 5.3.

Toshkov (2009) tests several other hypotheses, relying on the number of non-transposed directives as the dependant variable. He finds no support for the hypothesis that there is a difference between the performance of the governments where the EU coordination is primarily at the hands of the prime minister or his cabinet and the governments where the ministry of foreign affairs plays a central role. Neither does the number of parties in the government matter. On the other hand, the maximum ideological distance between any two parties in the governing coalition measured by the expert surveys by Benoit and Laver (2006) does have an effect ( $R^2 = 0.29$ ). "The more cohesive governments in Hungary, Lithuania, Poland and Slovakia have managed to process more EU legislation on time than their more ideologically diverse counterparts in Estonia, Latvia, and the Czech Republic" (Toshkov). In regard to lengthier legislative procedures, Toshkov's case study on information society directives shows that bicameralism in Poland and the Czech Republic sometimes contributes to a transposition delay, but only by 1-2 months. In the end, Toshkov shows that he is aware of the limitation of his research – very few degrees of freedom with only eight countries analyzed.

Whereas Sedelmeier (2008) and Toshkov (2009) used timely notification to assess levels of compliance, Knill and Tosun (2009) based their analysis on the number of letters of formal notice received by new member states in 2004-2007 (see Figure 1 in section 1.2.). They identified the strongest correlation of compliance with administrative capacity: its negative relationship with the number of initiated infringements is significant at the 1% level. So is the negative relationship with policy alignment before accession. This finding confirms that the member states do not strategically stop complying after the conditionality incentive is gone, but rather build on the pre-accession experience. Knill and Tosun identify also a negative relationship with the country's dependence on trade relations within the EU as significant, though only at the 5% level.

Sedelmeier (2008) also compares numbers of letters of formal notice, but he adds to the picture the old member states and further stages of the infringement procedure. Narrowing the focus down only to the directives that had to be implemented after the accession date of 1 May 2004 (and before the end of 2005), he finds out that the number of initiated infringements is the same for median members of the EU-8 and EU-15 (around 35% of the directives). The first infringement procedures against some new entrants were initiated already within the first six months of their membership (Toshkov 2008). That shows that the new member states could not enjoy any period of grace, exactly as the Commission had promised before their accession (Sedelmeier 2008). The difference is that the new member states from CEE settle cases of infringement faster by nearly three months and at earlier stages of the infringement procedure (Sedelmeier 2008).

The good performance of new member states has been confirmed by the most recent official Commission's data on transposition timeliness (Commission 2011). According to my own calculations, the average transposition deficit in the new member states is 13 non-notified directives (0.8%), whereas the old member states have on average 21 non-notified directives (1.4%). Sedelmeier (2008) points out that these statistics are still skewed by the fact that new member states have fewer opportunities to violate EU law because they have secured post-accession transition periods in some areas, especially in some sub-fields of the environment – the policy area which traditionally attracts highest numbers of infringement cases. Nevertheless, he claims that these periods did not probably have a dramatic effect on validity of the observations. If the transposition performance is much better in new member states, why is it so? Sedelmeier (2008) suggests that it might be a result of the pre-accession conditionality, which had lead to investments into institutional infrastructure and at the same time made the new member states more sensitive to criticism and shaming strategies of the Commission.

However, an overemphasis on indicators of formal compliance might mask problems with practical application and enforcement, which often remain undetected (Sedelmeier 2008). Because of decades of tradition of fraud in administration of CEE – e.g. by false reports on fulfillment of 5-year plans (Lynch 2000) – the 'deception gap' between what is said on the paper and what is actually done in practice (Lynch 2000) was identified by scholars as the key challenge in CEE countries already prior to their accession. Jacoby (1999) calls this phenomenon the 'Potemkin harmonization'.

In 2008, Falkner *et al.* are already able to assess the state of implementation after accession. And they demonstrate that the official data might be showing a too rosy picture of implementation performance in the new member states. On the one hand, their qualitative analysis of implementation of three social policy directives in the Czech Republic, Hungary, Slovakia and Slovenia in 2005-2006 does confirm that the transposition record of the four new member states is considerably better than the average performance of the old member states. On the other hand, Falkner *et al.* observe that many more reforms are needed to achieve practical compliance on the ground. "Many of the legal provisions that entered the statute books in order to fulfill the EU's social policy *acquis* have so far largely remained dead letters" (Falkner *et al.*). Consequently, Falkner *et al.* create a new world number 4 in their typology of worlds of compliance with different typical process patterns – the 'world of dead letters'. In this world, the transposition phase is ruled by domestic politics and is generally quite successful, but then the member states lack proper institutions and processes for turning the national laws into action. Falkner *et al.* claim that the hurdles for better street-level compliance with the EU directives are

the same as the ones that hamper proper application of 'home-made' standards – insufficient systems of enforcement. Sedelmeier (2011) suggests that the discrepancy between legal and practical implementation might be partly an unintended consequence of the disproportional pre-accession emphasis of EU institutions on legal implementation which had been easier to monitor. Some countries might have got used to literally copying texts of directives into national law, without debating how the aims could be reached best in the national context and hereby postponing the problems to later stages of application and enforcement (Sedelmeier 2008).

The world of dead letters is represented not only by the four investigated new member states, the old member states Italy and Ireland show similar features too. Falkner *et al.* conclude that this world could probably be expanded to Poland which was not a part of their study (based on Leiber 2007) and also outside the realm of social policy, considering that many of the shortcomings arise from general patterns of weak civil societies and imperfect bureaucracies and court systems.

As regards other factors, in the EU-8 it is impossible to test the influence of federalism because all the new member states are unitary (Toshkov 2009). Toshkov adds that decentralization, as a more general concept is irrelevant for legal implantation either, because in this region even strong regional governments do not participate in policy making at the national level. Hille and Knill find no support for the veto players' hypothesis. On the contrary, they identify a positive correlation (significant at the 95% level) between the candidate countries' political constraints and their performance in implementing EU policies. This corresponds with Hellman's (1998) finding that CEE countries were more successful at adopting economic reforms, if there were more veto players. Why is that so? Hellman elaborates that more inclusive political systems with proportional electoral systems and multi-party coalitions are less prone to serve particularistic interests. And Birchfield and Crepaz (1998) add that consensual democracies have a better capacity to implement policies due to a wider representation of affected interests during the legislative process.

Toshkov (2009) warns that it is hardly possible to generalize the abovementioned findings beyond policy sectors, countries and rather short time-periods. And he concludes that "while there are differences in the relative importance of certain factors in the old and the new member states, there is no evidence that compliance works fundamentally differently in the East."

### **2.3.3. Literature on implementation in the Czech Republic**

While reviewing literature on implementation of EU directives in new member states, I have found a few studies focusing specifically on the Czech Republic, mainly in the pre-accession period. I will start this sub-section with three articles specifically from the environmental field

and then move to several legal articles. Kružíková (2004), Miko (2000) and Toshkov (2009) deal specifically with the pre-accession harmonization of environmental legislation. Miko (2000) sees a barrier in pre-existing attitudes of policy-makers, legal practitioners and other administrators who had been accustomed to certain stereotypes of their work.

Kružíková points out that the Czech Republic was the first candidate country to close accession negotiations on the Environment chapter, on 1 June 2001. And she continues by listing various challenges to implementation of EU law, which she identified just before the Czech Republic joined the EU. Kružíková stresses that CEE countries did not have any word in drafting of the pre-accession legislation. Furthermore, this legislation rests upon legal traditions of Western democracies, which underwent a very different development than socialist countries for decades after World War II. One of the consequences is a very different institutional setting – some of the provisions of EU environmental directives belong in the Czech Republic to the competence of the Ministry of Industry and Trade, Transportation or Agriculture. Kružíková also observes that during the transposition process domestic legislators have not taken into account judgments of the ECJ, because they are not used to the supremacy of Community law. In addition, the Czech language version of the legislation is not always top quality. Kružíková concludes that the rush to harmonize the Czech legislation with ca 200 scattered directives and regulations sometimes resulted in adoption of overlapping and potentially contradictory measures.

A case study by Toshkov (2009) on transposition of the Habitats Directive (92/43/EC) and the Bird Directive (79/409/EC) sheds some light on the process of implementation of environmental EU directives in the Czech Republic. Toshkov chooses these directives – which have together established the NATURA 2000 ecological network – because their implementation had posed a great challenge to the old member states. The Czech Republic achieved on time a partial transposition of the directives through the new Law for Nature and Landscape which came into force on 28 April 2004. Through expert interviews, Toshkov (2009) comes to the conclusion that the main success factor appears to be the support of the sectoral minister and the ability of the ministry to use the pressure from society and the European Commission to push through the reforms. In this particular case, the legislation enjoyed considerable political support of the minister of environment and higher civil servants. Plus the administrative capacity of the ministry was sufficient. While local communities hardly participated, numerous national and international NGOs were strongly involved in the policy-making process. An informal coalition between the Ministry of Environment, the Commission and NGOs was instrumental in overcoming resistance of the ministries of agriculture and industry within the government



(Toshkov). Nevertheless, economic lobbies were able to persuade some MPs to make the final law weaker than the ambitious draft of the government. Toshkov concludes that a conflict between the ministries of agriculture and industry on one side, and environment on the other is a recurring theme in all the case studies on environmental policies. And he adds that this conflict can persist even if the mentioned ministers are from the same political party.

Several authors aim to assess quality of national courts as one of the determinants of enforcement of EU law in the Czech Republic. Law enforcement and application in the Czech Republic is weakened by general disrespect for the rule of law due to the 40-year-heritage of socialism (Hagan and Radeova 1998). Hagan and Radeova elaborate that cynicism about law and its binding nature is quite widespread between political elites. Furthermore, for many citizens a commitment to legality does not present moral value of high importance for the functioning of the society. And they continue that “individuals who have lived for a generation or more in a police state are unlikely to immediately turn to the judiciary to resolve their grievances.”

Wiedermann (2008) adds that civil procedures for individual enforcement of rights were not foreseen in the communist past and consequently there is a lack of vivid ‘civic legal culture’. Wiedermann continues that the constitutionally enshrined independence of judges leads to partly inconsistent adjudication and consequent legal uncertainty. Furthermore, judicial proceedings take too long – a five-year-duration is not uncommon (Wiedermann). Consequently, only less than one third of the population has trust in the court and in the domestic legal system (Falkner 2010). Kuehn (2005) adds that there are serious doubts whether lower-level judges consistently ensure precedence of EU law over the ‘old Czech legislation’. Wiedermann confirms that this problem persists even some time after the accession of the Czech Republic to the EU. He highlights anti-European practices in institutions responsible for the enforcement and application of directives as a result of Euro-skepticism of influential political actors in the Czech Republic (Sirovátka 2010). In addition the Czech courts request only very rarely a preliminary ruling by the ECJ (Wiedermann). Mucha *et al.* (2005) argue that the courts rather refer unclear cases of application of EU law to higher courts within the Czech Republic, to avoid this ‘strange’, ‘complicated’ and ‘external’ procedure.

In regard to the legislative procedure for transposition in the Czech Republic, Whelanová (2009) highlights the relatively strict constitutional and legislative rules. One of the Czech constitutional laws states: “Obligations may be imposed only by statute and within its limit ...” (Art.4 para. 1 of the Charter of Fundamental Rights and Freedoms). There was an attempt to introduce a simplified legislative method for transposition using a ‘government regulation with the statutory effect’, but the proposal to allow for this amendment to the Constitution was

rejected by the Chamber of Deputies in 1999 (Whelanová). Consequently, transposing legislation has to go through the ordinary legislative procedure which is relatively time-consuming with three readings in the Chamber of Deputies. In addition, the Czech Parliament has two chambers, so every proposal has to go through the Senate too. Toshkov (2009) notes that only Poland is another EU-8 country with two parliamentary chambers. This leaves the Czech Republic among the new member states as one of the countries with the longest procedures for adopting transposition legislation.

Whelanová claims that the Czech Republic has a relatively well-organized system for ensuring implementation of EU law. Simultaneously, she identifies several other barriers to implementation of EU law in the Czech Republic. She argues that implementation aspects of the legislation sometimes do not get sufficient attention of those in charge of negotiation of the directives, particularly in ministries where a certain rivalry between the EU unit and the legislative unit prevails. In respect to personnel, Whelanová notes that it is hardly possible to staff the institutions with experienced law-makers, who would at the same time have a good understanding of EU law.

## **2.4. Implementation of environmental legislation**

Transposition performance varies more between sectors than between states (Hartlapp and Falkner 2009) with environmental policy as one of the fields with the worst implementation performance in the EU. As I have shown in the introduction, the most recent Commission's official data puts the environmental policy on the second place from the bottom, with a 22% share in open infringement proceedings (Commission 2011). The exact position of the environmental legislation in the ranking depends on the methodology used and the exact timing of the assessment. According to Hartlapp and Falkner (2009) environmental policy, consumer policy and internal market legislation suffer from the highest numbers of infringements. Lampinen and Uusikyläe (1998) calculated that the implementation performance is worse only in the fields of social policy, energy policy and agriculture and fishing. McCormick's comparison of different sectors based on the data from 2000 puts the environmental field on the by far worst position with 946 infringement proceedings underway, followed by the internal market with 697 cases. Toshkov's (2008) analysis of compliance behavior of new member states shows that even within this specific group of countries, environmental legislation is significantly less likely to be transposed on time. "A regular directive with an average number of recitals during a two-party government and having mean scores on the EU and left/right dimension has a probability of 86% to be transposed on time if it is related to trade", but only 68% of it is a part of environmental *acquis* (Toshkov).

The high number of breaches has to do with both the amount of violative opportunities and the high propensity of environmental legislation to be violated. The former stems from the fact that the environment represents one of the most developed policy fields of the European Union (Glachant 2001) with more than 200 regulations and directives of the Council (Kružiková 2004). For the latter, there are several explanations to the question, why the environmental legislation is one of the most prone to non-compliance.

Firstly, environmental legislation is very costly to implement (Toshkov 2008). This has to do both with the character of the legislation and with the fact that the tendency of the EU institutions to adopt unrealistically ambitious measures described in chapter 2.2. might be even more pronounced in the environmental field (Cini 1997). In her account of administrative culture in the Directorate General for Environment of the European Commission (DG ENV), Cini explains that since DG ENV was set up in late 1960s, a sense of difference and commitment was instilled in its staff, that had rather environmentalist than EU policy background. With the mission to save the planet and fight against the lobbies described in the previous paragraph, DG ENV officials produced by 1993 a huge amount of legislation (over 12,000 pages) with hardly any involvement of those who would have to implement. “The Commission’s environment policies were often considered unrealistic, unworkable, and even utopian by those whose job it was to apply them at the grassroots level” (Cini). The creators’ awareness of implementation costs has probably improved now with the frequent inclusion of ex ante impact assessments into legislative drafts (Glachant). Additionally, Toshkov’s analysis of compliance behavior in EU-10 shows that costly directives are more likely to suffer delays.

Secondly, environmental problems are often very complex (McCormick 2001). This complexity has a scientific and a societal component. The scientific complexity – the fact that environmental policies have to rely on limited scientific understanding which evolves over time (McCormick) and thus some policies might be imperfectly designed despite the best efforts of their creators – does not form a focus of this thesis because it lies beyond the concept of effective implementation, as explained in section 1.3. On the other hand, societal complexity has to be dealt with within this thesis. Some environmental problems can be solved only by parallel changes in several sectors. Consequently some implementation difficulties arise from the fact that changes in environmental law collide with powerful interests of agricultural, transport or industrial sectors (McCormick); or from the fact that interactions in other sectors are difficult to anticipate for the environmental regulator (Glachant). This leads Glachant to an observation that “surprises at the implementation stage are the rule rather than the exception”. The cross-sectoral challenge is reflected by the findings of Macrory and Purdy (1997) who argue that the most

difficult to implement are the horizontal directives which cross the conventional administrative boundaries, such as the directives on access to environmental information or EIA.

Thirdly, in contrast to the fields of competition or fisheries, the Commission has no direct power of enforcement in factories or on river banks (Jordan 1999). “The Commission has neither the legal authority nor the technical means to enforce EU law against individuals or private entities non-compliant with the Directive’s requirements” (Glachant 2001). It can only start infringement procedure against the member state where the breach occurred. Enforcement against polluters which do not comply is the responsibility of the member state (Glachant). All the proposals to establish green police, an EU environmental inspectorate or an inspection audit scheme have so far been rejected by the member states who oppose any increase in the staff or budget of the Commission (McCormick 2001). McCormick (2001) notes that the European Environment Agency (EEA) had been originally expected to fill this gap. However, in the end regulation 1210/90 created EEA with the mission to only gather data on the state of the environment in the EU (McCormick 2001). The EU network for the Implementation and Enforcement of Environmental Law (IMPEL) also has the potential to contribute to better implementation through exchange of information and experience between member states and also between member states and the Commission (Verkerk 1996). McCormick adds that IMPEL has encouraged the Commission to draft fewer new laws and instead to focus on improving efficacy of existing legislation.

Fourthly, in the field of environmental protection powerful and committed vested interests are absent, in contrast with other policy areas. Organizations fighting for public goods are usually politically weak and geographically dispersed (HOLSCEC 1992). Except for the small environmental lobby in Brussels, there is no lobby defending interests of the environment. And even if there was a pressure group or an individual active in a particular case of non-compliance, they cannot take cases of non-compliance directly before ECJ, unless they can establish locus standi (Jordan 1999). Neither can they go to national courts because environmental directives are usually “programmatic and general, and thus do not grant non-ambiguous rights to individuals” (Glachant 2001).

Last but not least, heterogeneity of the EU space does not have only administrative, political and economic aspects, but also an ecological aspect (Glachant 2001). Some environmental directives might thus be difficult to implement if the proposed measures are too specific and fail to leave sufficient space for diverse natural conditions across the EU.

The picture would probably look even gloomier, if one added undetected non-compliance – the invisible part of the iceberg. The body of the EU environmental law has grown much faster

than the resources of the Directorate General for Environment (McCormick 2001) – there is maximum one desk officer assigned to deal with all suspected cases of non-compliance in each member state (EC 2011). Consequently, the Commission concentrates on areas where it can make a difference – on the most violent breaches and on formal rather than practical non-compliance (Jordan).

In addition, the size of the iceberg probably differs from country to country because there is a wide disparity in the resources entitled to national environmental enforcement agencies across the EU (McCormick 2001). Similarly, ambiguous concepts, such as ‘the best available technology not entailing excessive cost’, “can be interpreted differently from one member state to another, from one industry to another and even from one company to another” (McCormick). This is because environmental regulations are viewed as a priority by some countries (e.g. in Scandinavia), but as a barrier to industrial development in some poorer countries – “some member states may even see it as being in their interests to drag their feet on implementation so as to give them a competitive edge over other member states, or to appease a sectional interest at home” (McCormick). Even within the environmental field, different sub-fields have different priority assigned to them in different member states. McCormick provides examples of forest management being a higher priority for Germany, while the welfare of wildlife might be of a higher concern for Britain. Consequently, the resources assigned to monitoring of various areas differ from country to country. Because member states may not have a strong incentive to provide reliable information on their own breaches (Glachant 2001), the Commission has to rely predominantly on costly consultancy reports (Boerzel 2001) or on complaints by local NGOs, governments, media as well as active individuals, including members of the European Parliament (MEPs) in discovering breaches (McCormick 2001).

For Jordan (1999) the imperfect implementation of EU environmental policies forms a microcosm of the wider story of European integration – the journey from an intergovernmental to a partly supranational structure. He foresees that the implementation gap will be there until the member states vest the Commission or the EEA with the same power to do inspections, which the Commission enjoys in the fields of fisheries or competition.

### 3. METHODOLOGY

The previous chapter thoroughly reviewed the academic literature on explanatory factors of non-compliance in the EU. It covered barriers present at the Union level as well as issues specific to different member states, both old and new. Going through the literature helped me clarify the scope of my thesis and also to choose the appropriate methods of data collection and data analysis. Moving from other scholars' ideas to my own research, in this chapter I will present the chosen scope and methods and explain my choice.

#### 3.1. *Research design*

The aim of this thesis is to identify barriers to effective implementation of environmental directives adopted by the European Union after 1 May 2004, in the case of the Czech Republic. The term effective implementation here refers to the degree to which both legal and practical implementation correspond with the objectives defined in the directives. The design of this thesis as a study of a single case of the Czech Republic allows for a deep and comprehensive exploration of the problem of non-compliance with the EU environmental directives. This chapter justifies my choice of qualitative methods over quantitative methods, and of the concrete methods of data collection and data analysis. Following the same methodology should enable other scholars to expand this research to other countries. Thus this study has a potential to become a part of a comparative case study, supported by Treib (2006) in his comprehensive overview of EU implementation research.

The review of literature on EU implementation research in Chapter 2 provides ample examples of both qualitative and quantitative studies. This section explains why I have chosen qualitative interviews as the most appropriate method for assessing barriers to effective implementation in the case of the Czech Republic. I am aware of the fact that quantitative methods are becoming increasingly popular in the field (Treib 2006), owing to the fact that the EU provides a detailed database of non-compliance, unlike any other international organization or nation state (Boerzel 2001). However, quantitative approaches are best suited for broad studies which aim to put together different policy sectors, countries and long time records (Treib 2006). The focus of this study is the opposite – a case study of non-compliance in a single sector in a single country over a relatively short period of seven years.

In addition, this thesis encompasses both legal and practical implementation. Hence it cannot rely solely on the official statistics on transposition notifications and on infringement procedures provided by the Commission, which represent only that slice of non-compliance which the Commission is able to see and wants to publicize (Falkner *et al.* 2005) – the tip of the

iceberg of unknown size and shape (Mastenbroek 2005). As this thesis aims to investigate also that part of non-compliance which remains unreported, official data will be used only to illustrate roughly the extent of non-compliance in the Czech Republic and to put the situation in the Czech Republic in the wider context of other member states, both new and old (Chapter 4). The main original contribution of this thesis (Chapter 5) relies on primary data collected by the author through qualitative interviews in Prague and Brussels during the period of May-August 2011. Qualitative research is well suited for exploring phenomena (Mack *et al.* 2005) and it allows me to investigate the issue of non-compliance from different perspectives. Hereby I follow the approach suggested for studies of post-accession compliance by Sedelmeier (2008), who recommends starting with quantitative data on cases of infringement, and then to continue with qualitative case studies on application of the *acquis*.

### **3.2. Methods of data collection**

The thorough review of literature has shown that my research needs to bring together barriers present on the EU level, as well as the ones arising specifically in the Czech Republic. In addition, the combination of my own work experience and evidence from academic literature led me to include not only experts involved directly in implementation, but also those who deal with negotiation of the directives which precedes and partially determines non-compliance. The collection of data consisted of three chronologically distinct waves.

In the preparation wave ('zero'), I identified through the literature review potential questions for the interviews. I also selected through purposeful sampling (Patton 2002) the core of the respondents who could provide me with rich information on issues important for my research. Specifically, I was looking both in Prague and Brussels for experts dealing with negotiation or implementation of EU environmental directives – civil servants, former politicians, scholars and NGO representatives. Due to my previous work experience at the EU Department of the Ministry of Environment of the Czech Republic I knew whom to contact in this phase. Personal contacts also ensured that an overwhelming majority of the contacted experts expressed willingness to meet me for a qualitative interview and/or to fill in the form in the second wave of research.

The first wave of the data collection consisted of research trips to Prague and Brussels in May and June 2011. During this phase I continued expanding the sample through snowball sampling (sometimes called chain sampling). This technique relies on finding information from key informants about potential interviewees during interviews with them (Patton 2002). The qualitative interviews always started with the question 'How would you assess the state of

implementation of EU environmental directives in the Czech Republic?<sup>4</sup> Further questions, such as 'Can you observe a trend in the quality of implementation? If yes, how would you explain it?', 'How do you assess the approach of the European Commission and the European Court of Justice to enforcement?', 'What influence do individual ministers of environment have on implementation?', 'How would you assess the quality of the civil servants in charge in the Czech Republic?' or 'To what extent has the Czech Republic been able to shape the directives after 2004?' usually formed a part of the interview, depending on the development of the interview and on the field of expertise of the individual respondent.

To achieve utmost openness, all the respondents were offered anonymity. Not only are their names never mentioned in this thesis, but even the links between the codes used as references of personal communication with the interviewees (Int1 – Int16) and the institutions they represent are not revealed to the reader. The codes from one to 16 were assigned to the interviews randomly. Originally, I was planning to tape the interviews. However, the offer to record the interview was not welcome by several of the first interviewees and created a certain tension at the beginning of the interviews. Hence I decided to drop the question on taping and made only notes at all later interviews, not to undermine the atmosphere of mutual trust which is crucial for acquiring the most relevant data. As regards location, most of the interviews took place in the offices or meeting rooms of the institutions, a few meetings occurred in cafés. Depending on respondents' schedule, expertise and openness, the duration of the interviews varied from 20 minutes to two hours, with a median length of approximately one hour. In addition to acquiring qualitative data, I collected during the interviews some previously unpublished quantitative data which will be presented in Chapter 4.

The second wave of the data collection (July-August 2011) aimed to acquire data on ranking of the barriers through individual ratings by the experts. Based on the 16 qualitative interviews and the literature review, I had identified dozens of barriers. As some of them were linked rather to correctness, while others rather to timeliness of implementation and I did not want to compare the incomparable, I had to make a choice which barriers to include in the ranking. Because the average transposition delay amounts in the Czech Republic only to five months (Commission 2011) and its main cause seems rather straightforward – the length of the Czech legislative procedure – I decided to narrow the second wave of research down to essentially correct transposition and application.

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<sup>4</sup> Most interviews were conducted in Czech, this is a translation by the author. Similarly, all quotes from the interviews are translations from the Czech original.



In this stage of the research, the experts were to rate the relevance of the 47 potential barriers to correct implementation of EU environmental directives in the Czech Republic. To facilitate orientation of the reader within the list, I grouped the items into four themes: 'EU level phenomena occurring in the negotiation phase', 'EU level phenomena occurring in the implementation phase', 'Member state level: issues related specifically to EU matters' and 'Member state level: general issues in the Czech Republic'. At a personal consultation with Brandon Anthony, who is an expert on quantitative research methods, the importance of randomizing the order of the items on the list was made clear to me. Consequently, I decided to create an on-line form which allows for randomization of the order of items within each theme. As regards the number of scale points in the rating, I followed the advice of an expert Phil G. (2011) from SurveyMonkey to opt for five scale points because the construct of the phenomenon's relevance as a barrier to implementation is unipolar. Consequently, the respondents could assign 1-5 stars to each phenomenon, ranging from 1 (irrelevant, not a barrier) to 5 (very high relevance). The preview of the rating form can be seen [on-line](#)<sup>5</sup> or in Appendix 3 which reproduces the version in Microsoft Excel. The latter version was used by five respondents who were not able to access the on-line form, with the drawback that the order of the items was not randomized. The electronic communication in this stage of the research had the advantage that further three respondents could be included who I had not been able to meet in person during my research trip.

The combination of the purposeful and the snowball sampling resulted in contacting approximately 30 experts. For qualitative interviews 16 respondents were available – ten in Prague and six in Brussels. Out of the 16 participants of the first wave, 12 took part also in the second wave of data collection. As three new respondents joined the second wave, 15 experts took part in the rating of the barriers. I am aware that is not a huge sample for quantitative analysis. Nevertheless, the sample covers a major part of the pool of experts involved in the narrow field of negotiation and implementation of EU environmental directives in the Czech Republic. Thus I argue that the ranking of the barriers provides a quite strong indication of relevance of the barriers to effective implementation.

Altogether the data were collected from 19 respondents. I promised not to disclose the identity of the individuals, but I can indicate various characteristics of the sample. As regards their profession, 18 respondents are current or former civil servants from

- the Cabinet of the European Commissioner for the Environment, Janez Potočnik,

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<sup>5</sup> [http://www.kwiksurveys.com/online-survey.php?survey\\_ID=NMMILN\\_ff6e0c76&preview](http://www.kwiksurveys.com/online-survey.php?survey_ID=NMMILN_ff6e0c76&preview)

- the Cabinet, the EU Department and the Legislative Department of the Ministry of Environment of the Czech Republic,
- the Department for Compatibility with EC Law of the Office of the Government of the Czech Republic,
- the Directorate General for Health and Consumers of the European Commission,
- the Legal Service of the European Commission,
- the Office of the Government Representative of the Czech Republic with the European Court of Justice,
- the Office of the President of the Czech Republic,
- the Parliamentary Institute of the Parliament of the Czech Republic,
- the Permanent Representation of the Czech Republic to the European Union
- and the Unit 'A.1- Enforcement, infringements coordination and legal issues' of the Directorate General for Environment of the European Commission.

At least four of them have been active as scholars in the area, three have NGO experience in the field and two occupied the position of the Minister of Environment of the Czech Republic. Furthermore, 18 out of the 19 respondents deal specifically with the Czech Republic and 16 respondents focus concretely on the environmental sector. Finally, at least ten of all the respondents possess significant working experience in Brussels.

As this thesis focuses on horizontal barriers, relevant for most sub-sectors of the environment, technical experts and inspectors were excluded from this research. These experts have certainly obtained valuable experience with implementation in their specific narrow sub-field. However, to avoid bias towards one or two elements of the environment, I would have had to cover a wide range of case studies, which was not possible in the scope of a Master's thesis. Expanding the sample to various technical experts and inspectors seems to be a promising area for future research. Researchers with more time and resources could also attempt to interview Czech politicians, judges and business representatives.

### **3.3. Methods of data analysis**

The two most commonly used ways of analyzing qualitative data are content and thematic (Namey *et al.* 2008 and Dawson 2007). Whereas the content analysis identifies frequent ideas and keywords by measuring frequency of words, their synonyms or other relevant elements in raw qualitative data, thematic analysis identifies and describes not only explicit but also implicit ideas (Namey *et al.* 2008). In my research I have used the thematic analysis, based on the analysis of codes.

Specifically, in analyzing the qualitative data acquired in 16 interviews, I have followed mainly advice by Dey (1999) on producing grounded theory, which was defined as "the discovery of theory from data" (Glaser & Strauss 1967). First of all, I have transcribed my field notes as well as the two recordings. As only one out of the 16 interviews was taken in English, I had to translate most of the interviews from Czech to English. I was attaching codes to each sentence or group of sentences. Gradually I was coming back to the first coded interviews and I was adjusting the coding based on later interviews. I made themes out of codes which were recurring in various interviews, created a map of themes according to their proximity and finally I linked the themes to four narratives, which will be presented in chapter 5. Throughout the whole process I aimed to remain true to the data, trying to avoid any preconceived ideas, as had been stressed by Dey (1999).

To analyze the ratings acquired from 15 experts, I used basic statistical methods. For representation of the relevance of the barriers I decided to use both mean and median. The median seems more representative because it is not skewed by one or two extreme opinions, considering the relatively small size of the sample and the various backgrounds of the interviewees. However, the variety allowed by the median – only three rating values from two to four – was not diverse enough to create a rating of 47 barriers. Therefore, I decided to use the mean as the main indicator, because it offered a much higher variety of values. As I am aware of the risk that mean can be skewed by one or two extreme ratings, I included in the final table also minimal and maximal values, which give at least a very basic reflection of variance of ratings.

## 4. IMPLEMENTATION PERFORMANCE OF THE CZECH REPUBLIC

After reviewing available academic literature on factors behind non-compliance (chapter 2) and introducing the methodology of the research (chapter 3), this thesis now progresses to a presentation and a discussion of the results in the following two chapters. As I previously explained in section 3.1. on research design, I follow the advice by Sedelmeier (2008) to start with quantitative data on cases of infringement and then move to qualitative studies. Thus the detailed analysis of the barriers in chapter 5 is preceded by this chapter, which provides a brief assessment of implementation performance of the Czech Republic and puts the Czech case in a broader context of the whole EU.

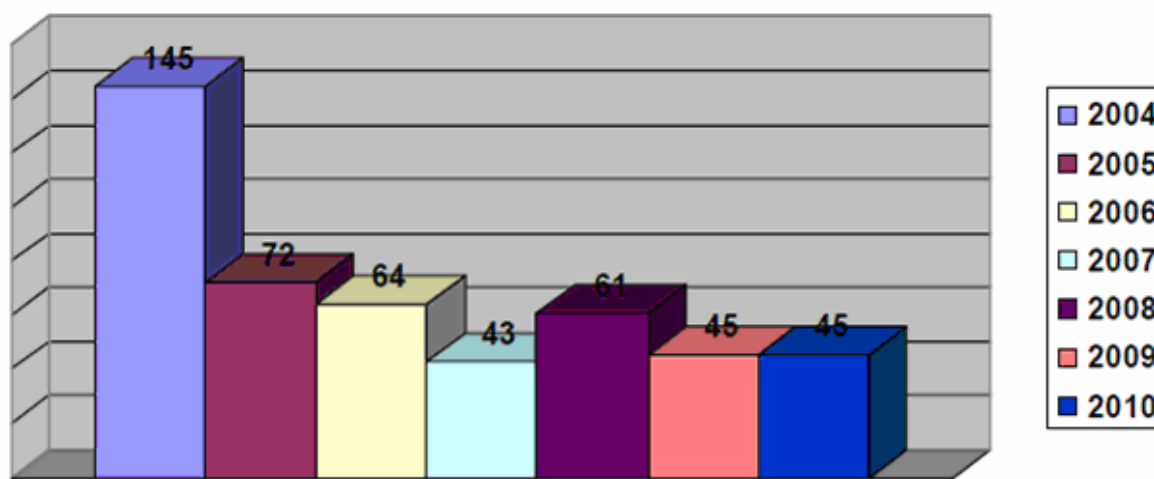
This chapter serves several purposes. First of all, it goes deeper in justifying the relevance of the chosen research problem, for which the introduction offered only a limited space. It aims to show the existence of the implementation gap and the high relative propensity of the Czech Republic and of the environmental legislation to infringements. Secondly, it assesses the size and structure of the visible part of the iceberg of non-compliance, with the aim to show the relative relevance of the three types of non-compliance, distinguished in Figure 3 in section 2.3. Lastly, for the decision-makers among the readers of this thesis, it aims to answer the questions such as how the Czech Republic performs in comparison with other member states and how the performance evolves over time, which many of the interviewed experts seemed curious about.

Whereas this thesis as a whole aims to go beyond the reported non-compliance and to investigate the full 'iceberg', this chapter will focus only on the visible tip of the iceberg because this is the only part covered by quantitative data. Before presenting the outcomes, I want to briefly go through the limitations of these data. The data rest upon decisions of the Commission on which cases to open and which of those will be brought to further stages (Boerzel 2001). Consequently, rather than non-compliance itself, these data represent the Commission's assessment of non-compliance, which can be skewed by a combination of mistakes, inefficiencies and strategic decisions by the Commission (Hartlapp and Falkner 2009). Falkner *et al.* (2005) demonstrate on the field of social policy that infringement procedures were initiated in only 60% cases of breach and Boerzel (2001) adds that in other sectors, we simply do not know what fraction of non-compliance remains unrevealed.

The chapter is structured in three short sections according to the three main official sources of information – The report on the activities of the government representative of the Czech Republic with the ECJ in 2010 (MFA 2011), the latest issue of the Internal Market

Scoreboard (Commission 2011) and the most up-to-date internal data provided by an official from the Unit 'A.1- Enforcement, infringements coordination and legal issues' of DG ENV.

#### 4.1. Cases of infringement by the Czech Republic



**Fig. 11: Numbers of infringement proceedings started by the Commission against the Czech Republic in a given year**

Source: Adopted from MFA (2011)

This section aims to reflect on the brief history of infringement proceedings against the Czech Republic, and the share of environmental legislation in these proceedings. The report on the activities of the government representative of the Czech Republic with the ECJ in 2010 (MFA 2011) shows that 495 infringement proceedings were started against the Czech Republic between the accession in May 2004 and 31 December 2010. After a sharp drop between 2004 and 2005, the numbers of initiated infringements have been relatively stable over the years with a slightly declining tendency (see Figure 11 above). Out of the 495 cases initiated between 2004 and 2010, 429 were closed before reaching the final ECJ stage (MFA 2011). On the other hand, in 13 cases the ECJ already delivered judgments against the Czech Republic, all of which were a part of the first round of the infringement procedure (currently under Art. 258 after the Treaty of Lisbon) and thus did not include sanctions. Out of the 13 ECJ judgments against the Czech Republic, two fall under the competence of the Ministry of Environment – non-compliance with the EIA directive and with the directive on groundwater protection. This leaves the environmental legislation in this aspect on the third rank from the bottom, just after the legislation transposed by the ministries of health and finance (MFA 2011).

Other ECJ judgments for breaches of environmental legislation might be coming soon because nearly half (8) of the 17 breaches of the Czech Republic which reached by the end of 2010 the stage of a reasoned opinion come from the environmental sector (see Table 2 below).

Table 2, which is based on the data from the latest report on the activities of the government representative of the Czech Republic with the ECJ (MFA 2011), also shows that five more breaches of environmental legislation were at the stage of the letter of formal notice. The high proportion of the cases from the environmental field among all the Czech infringements was illustrated also by Figure 1 in the introduction, which put the environmental legislation with 13 pending breaches in the worst place, followed by transport and finance with eight cases each. Table 2 demonstrates that these breaches are quite equally distributed between late (seven cases) and incorrect implementation (six cases).

**Table 2: Classification of cases of infringement against the Czech Republic, pending as of 31 December 2010.**

Infringements in the environmental field / all infringements	Non-notification	Incorrect (transposition and application)	In total
Letter of formal notice	4/16	1/6	5/22
Reasoned opinion	3/4	5/13	8/17
In total	7/20	6/19	13/39

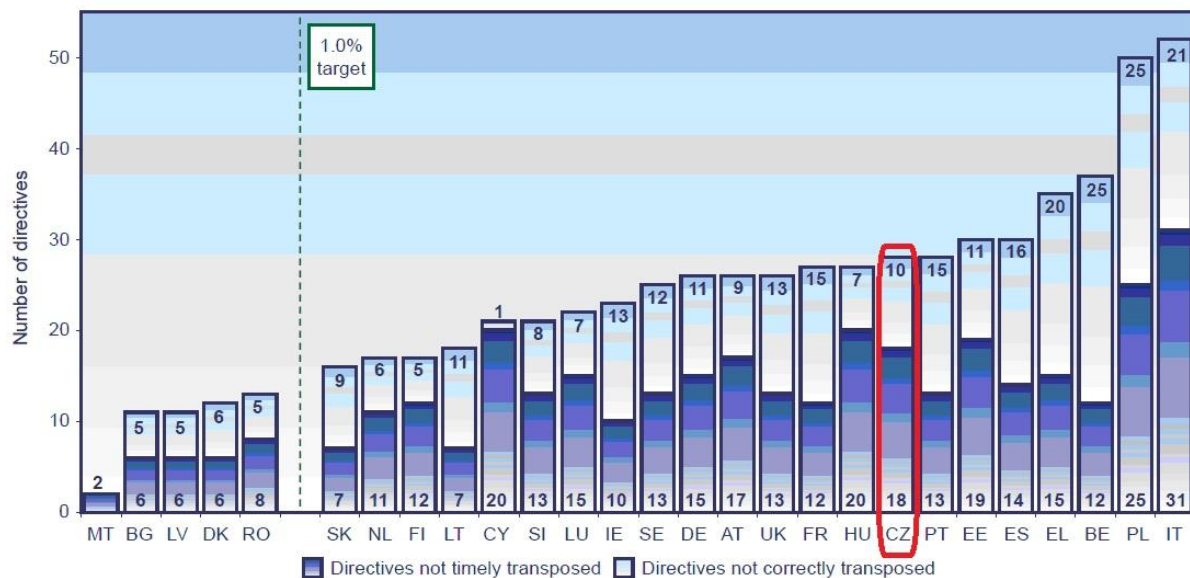
Source: Adopted from MFA (2011)

#### ***4.2. Comparison of infringements in different member states – internal market legislation in general***

In the introduction I have shown that among the EU-12 the Czech Republic was the second biggest implementation laggard in 2004-2007, based on the number of received letters of formal notice (see Figure 1). As this was only a very simple snapshot of the complex issue of non-compliance, this section presents other pieces of official Commission data, with the aim to give a more appropriate assessment of the position of the Czech Republic on the EU-ladder of implementation performance.

For the whole EU, the most relevant and up-to-date general data on implementation can be found in the Internal Market Scoreboard (Commission 2011), which was introduced in section 1.3. This Scoreboard encompasses also a major part of EU environmental legislation, with only the nature protection legislation excluded. The Scoreboard covers all three types of non-compliance described in section 2.3. – notification failures, wrong transposition and wrong application. Figure 12 below demonstrates the first two categories of breaches together. According to the Figure, the Czech Republic (CZ) shares the 7<sup>th</sup> worst place with Portugal in the EU-27 in timeliness and correctness of transposition of internal market directives. Figure 12 also

shows that among new member states, only Poland and Estonia performed worse than the Czech Republic in 2010.



**Fig. 12: EU-wide comparisons of non-notified and incorrectly transposed internal market directives, as of 1 November 2010.**

Source: Adopted from Commission (2011).

Now I will have a closer look at each of the two types of transposition breaches shown in Figure 12. The timeliness of transposition – represented by the dark blue parts of the columns in Figure 12 – seems to present a bigger challenge for the Czech Republic than the correctness which will be assessed later. By 1 November 2010, the Czech Republic failed to notify the Commission about transposition of 18 directives which were to be transposed by that time. Only five member states performed worse in this aspect – four other new member states and Italy. The high number of non-notified directives is partly outweighed by the relatively short duration of the transposition delay – the average delay in the Czech Republic amounted to five months, which is slightly less than the EU average of 5.8 months (Commission 2011). As regards the correctness of the transposition – represented by the white parts of the columns in Figure 12 – the Czech Republic's performance is better. It lies at the median of the 27 member states with ten directives transposed in a way which made the Commission initiate an infringement proceeding for non-conformity.

As regards wrong application, this seems to be a relatively minor issue for the Czech Republic. With only 13 badly applied internal market measures, the Czech Republic ranks as the 6<sup>th</sup> best in the whole EU, together with Denmark (see Figure 4 in Section 2.3.). In sum, the Commission's data indicate that in comparison with other member states, the Czech Republic is prone to transpose late with a relatively moderate delay of five months and with average

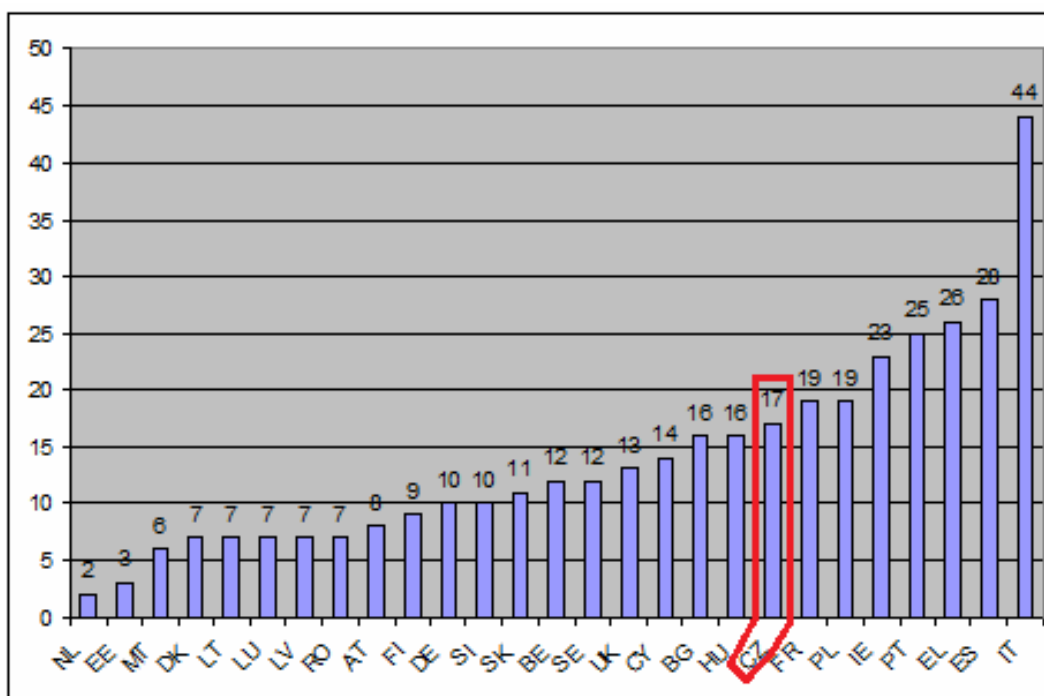
correctness, while in the later stage of application the Czech Republic seems to perform above average. When one puts all three types of infringement procedures together again, the Czech Republic needed 20 months on average to either close a case or be brought before the Court. This is slightly more than the 19 months needed on average by new member states, but less than the EU average of 24 months (Commission 2011). These diverse findings demonstrate that it cannot be simply decided whether the Czech Republic is an implementation laggard or leader. This outcome is in line with the Commission's (2011) observations that assessments vary according to the indicator chosen and that consequently only a small number of member states perform systematically better or worse than the EU average in all the indicators. The following section will investigate whether the picture is a bit clearer for the narrow sector of the environment.

### ***4.3. Comparison of infringements in different member states – environmental legislation***

As the focus of this thesis lies specifically on effective implementation of the environmental legislation, it would be interesting to know how the Czech Republic performs in this specific sector. However, there are no publicly available statistics on this matter. As I was able to acquire the most up-to-date internal Commission data, this section can compare the implementation performance of the Czech Republic with the other member states, both new and old. The data comes from the internal infringement database of the Commission which covers not only the cases when an official letter of formal notice has been sent, but also cases in which DG ENV has identified an infringement and is working on the letter.

Whereas section 4.2. grouped infringements according to the type of breach, this section distinguishes between Art. 258 proceedings and Art. 260 proceedings (see Appendix 2 for the precise wording of the Articles of the Treaty). After the entry into force of the Treaty of Lisbon, the former covers the whole proceeding in cases of non-notification and the first round of proceedings in cases of incorrect transposition and application, whereas the latter encompasses the second round of proceedings in cases of incorrect transposition and application.

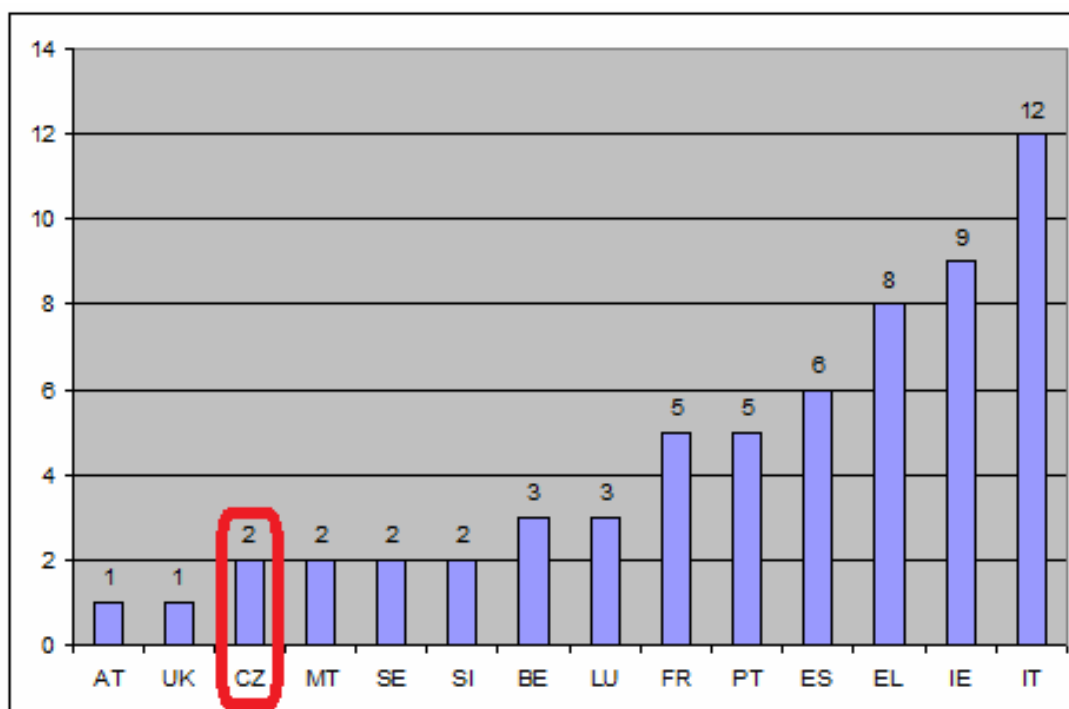




**Fig. 13: Cross-state comparison of pending Art. 258 infringement cases administered by DG ENV, as of 29 July 2011.**

Source: Adopted from internal information of DG ENV, acquired in 2011.

As regards Article 258 infringement proceedings, the Czech Republic has the 8<sup>th</sup> worst record in the EU-27 with 17 pending infringement cases (see Figure 13 above). From the new member states only Poland performs worse in this aspect of implementation of environmental legislation, with 19 open infringement proceedings. As regards Article 260 proceedings, I have demonstrated in section 4.1. that two cases from the Czech Republic have proceeded into this phase – the EIA directive and the directive on groundwater protection. That puts the Czech Republic on ranks 9-12 together with Malta, Slovenia and Sweden (see Figure 14 below). Figure 14 shows that none of the new member states performs worse than the Czech Republic in this aspect of implementation of environmental legislation.



**Fig. 14: Cross-state comparison of pending Art. 260 infringement cases administered by DG ENV, as of 29 July 2011.**

(Note: all the other states not mentioned in the Figure have 0 pending cases).

Source: Adopted from internal information of DG ENV acquired in 2011.

In conclusion, most of the indicators point in the same direction – both the Czech Republic and the environmental legislation have a high relative propensity to infringements. Within all the pending infringements against the Czech Republic, the environmental sector is quite dominant, occupying the first place with a full third of all cases. Simultaneously, in implementation of EU environmental legislation, the Czech Republic appears to be one of the biggest laggards among the new member states. This finding is rather surprising, considering the rather positive image of the Czech implementation performance by most interviewees, as well as the fact that the Czech Republic was the first candidate country to close accession negotiations on the Environment chapter (Kružiková 2004). On the other hand, the variance within EU-12 is not too high and the gap between the Czech Republic and the best performers is not abysmal. In addition, the official data on the ‘visible part of the iceberg’ could possibly be biased by a relatively high activity of Czech inspectors and NGOs, compared to other new member states. Within a broader scope of all member states, the Czech Republic performs in implementation of EU environmental legislation slightly under the average of the EU-27.

As regards the types of infringement, the Czech Republic has one of the best records of application in the EU and a mediocre record of correct transposition. The major problem lies in delayed transposition, which seems to result from the lack of specialized legislative procedure for

transposition and from excessive length of the ordinary domestic legislative procedure, with the Czech Republic being one of the two bicameral countries within the EU-12 (together with Poland). These findings correspond with the assessment of Int6, who argues that the Czech Republic might suffer from small problems with transposition, but the level of practical compliance is rather high in the Czech Republic, compared to other new member states. Although timely transposition seems to present a significant challenge for the Czech Republic, in the long term I do not consider the rather small average delay of five months as a highly relevant area for research. Therefore, this thesis only touches upon delayed transposition and concentrates rather on correct transposition and application and consequently the barriers to achieving these, which form the focus of the following chapter.

## 5. DATA ANALYSIS – RESULTS AND DISCUSSION

Whereas the previous chapter briefly assessed the state of implementation of EU directives in the Czech Republic, this chapter aims to determine the key barriers to effective implementation of EU environmental directives in the Czech Republic and to assess the relevance of the identified barriers. Thus it forms a core of this thesis. First of all, section 5.1. will present the final ranking of the barriers. I start with the outcome of the second wave of the data collection because it helped me prioritize key issues and guided me in structuring the rest of the chapter which builds on data from both waves. The following sections (5.2. to 5.5.) will present and discuss the four major narratives of barriers to implementation: resistance of Czech politicians to environmental legislation as well as to any EU initiatives, poor quality of the Czech civil service, poor quality of some directives and limited impact of the infringement procedures.

### 5.1. Ranking of the barriers

As I explained in section 3.2. of the methodology chapter, the second wave of data collection consisted of acquiring expert opinions on rating of the barriers' relevance through electronic communication in July and August 2011. Beside the 12 respondents who had participated also in the first wave, three other experts were active only in this part of the research. As shown in the form [on-line](#)<sup>6</sup> or in Appendix 3, the question was which of the 47 listed phenomena posed significant barriers to correct transposition and application of EU environmental directives, adopted since 2004, in the Czech Republic. Based on their own experience and judgment, the experts were to assign each item with a numerical value between 1 (irrelevant, not a barrier) and 5 (very high relevance). Whereas a detailed account of the ratings by all 15 respondents can be found in Appendix 4, Table 3 below shows an ordered list of the barriers ranked according to the mean value of the rating. This big table is followed by a thorough data commentary.

**Table 3: Experts' ranking of barriers to implementation of EU environmental directives in the Czech Republic**

Barrier to effective implementation of EU env. directives in the Czech Rep.	MED		M	M
	MEAN	IAN	N	A
1. The view of some Czech decision-makers that environmental legislation is primarily a barrier to economic development	4.36	4	4	5
2. Weak position of the Ministry of Environment within the Czech government	4.00	4	2	5

<sup>6</sup> [http://www.kwiksurveys.com/online-survey.php?survey\\_ID=NMMILN\\_ff6e0c76&preview](http://www.kwiksurveys.com/online-survey.php?survey_ID=NMMILN_ff6e0c76&preview)

3. Defiance of some Czech politicians towards anything 'coming from Brussels', their concern not to overachieve in implementation	3.92	4	3	5
4. Gaps in institutional memory due to high turnover of civil servants	3.92	4	3	5
5. Tensions between ministries in cases when they share responsibility for implementation	3.92	4	2	5
6. Insufficient attention paid to implementation concerns during the negotiation of the directive	3.71	4	2	5
7. Individual MPs' constitutionally guaranteed right to amend draft bills	3.69	4	1	5
8. Weak civil society and a lack of vivid civic legal culture	3.69	4	3	5
9. Frequent changes in the seat of the Minister of Environment of the Czech Republic	3.64	4	2	5
10. Low level of cooperation between negotiators and implementers within the institutions	3.50	4	2	5
11. High level of corruption	3.43	3	1	5
12. Low respect for the rule of law among Czech politicians	3.36	4	1	5
13. Strong industrial orientation of the Czech economy	3.36	4	1	5
14. Low involvement of the Parliament in EU negotiations after the Framework Position towards the Commission proposal is finalized	3.31	3	1	5
15. Insufficient resources of DG ENV enforcement units	3.23	3	1	5
16. Low salaries and low prestige of the Czech civil servants, related to a missing legislation on civil service	3.23	3	1	4
17. Scattering of the Czech environmental legislation into many various pieces of legislation	3.21	4	1	5
18. Poorly designed or executed mechanism of coordination of implementation	3.17	3	2	4
19. Limited power of EU institutions to acquire information on the ground, leading to their very legalistic approach to enforcement	3.13	3	1	5
20. A long time span between a complaint on non-compliance and an ECJ judgment on penalties	3.13	3	1	4
21. Limited exchange of experience between member states on implementation issues	3.07	3	1	4
22. A long time gap between the negotiation phase and the implementation phase (uncertain future and higher priority of more urgent matters)	3.07	3	1	5
23. Low prestige of implementers' positions within the institutions (as opposed to creators of new laws)	3.00	3	2	5

24. Low priority given by responsible experts to negotiation of the directives	3.00	3	2	4
25. Lack of experts who possess both legal and technical education	2.93	3	2	4
26. Lack of genuine mutual communication, trust and cooperation between the Commission and member states	2.92	3	1	4
27. Lack of the specialization "legislator" at faculties of law in the Czech Republic	2.92	3	1	5
28. Low capacity of the Czech Environmental Inspectorate (ČIŽP)	2.85	3	1	4
29. Low interest of the Czech media in detection of non-compliance with EU law	2.77	3	1	4
30. Overambitious directives disregarding economic conditions	2.73	3	1	5
31. Zero experience of the Czech Republic with penalties from the EU Court	2.69	3	1	5
32. Reluctance of the Commission to withhold payments from structural funds in cases of non-compliance	2.64	3	1	4
33. Commission's failure to draft promised guidance documents on time	2.58	2	1	4
34. Short experience with membership	2.54	2	1	5
35. Weak linkages between goals of EU environmental legislation and priorities of EU structural funds	2.46	2	1	5
36. Lack of country-specific assessments in the impact assessment of the Commission	2.43	2	1	5
37. Unfeasibly tight transposition deadlines	2.43	3	1	4
38. Reluctance of some Commissioners to start infringement proceedings or move them to the next level	2.43	3	1	4
39. <i>Absence of mandatory correlation tables</i>	2.38	3	1	3
40. Low support for the EU among Czech citizens	2.38	2	1	5
41. Too specific directives which do not leave sufficient space for adjusting to different local conditions (both legal and natural)	2.33	2	1	4
42. Competition between rotating presidencies of the Council to adopt as much legislation as possible	2.27	2	1	5
43. <i>Insufficient consultation of the member states by the Commission before adopting the legislative proposal</i>	2.23	2	1	3
44. Need of the Commission to produce new drafts to justify its existence	2.20	2	1	5
45. Low-quality translations of the directives	1.87	2	1	4
46. <i>Under-representation of Czechs in the Commission</i>	1.80	2	1	3
47. Rather small size of the Czech Republic	1.75	2	1	4

Table 3 lists the barriers from the most significant at the top – ‘The view of some Czech decision-makers that environmental legislation is primarily a barrier to economic development’ with a mean rate of 4.36 – to the least significant at the bottom – ‘Rather small size of the Czech Republic’ – with a mean rate of 1.75. In addition to the mean rating, Table 3 contains also the median, as well as the minimal and maximal value. The mean difference between the minimal and the maximal value assigned to each phenomenon is 3.15 on a scale of four. This huge disparity of ratings shows that judgments of individual experts differ strongly. This is probably due to the high diversity of perspectives brought together in this thesis. Hence Table 3 highlights also other issues apart from only the mean rating, which can be skewed through one assessment diverging from most others. Yellow shading is applied to highlight all the barriers with the highest median four, while all the phenomena with the lowest median two are shaded in grey as rather insignificant. In addition, in all the cases where all the experts unanimously opted for rating three or higher, a bold font is applied. The minimal value is especially striking in the barrier with the highest ranking – ‘The view of some Czech decision-makers that environmental legislation is primarily a barrier to economic development’ – which did not receive a lower rating than 4 from any of the respondents. In the opposite cases where none of the experts assigned an item a higher value than three, italics is used.

The full record of the ratings (Appendix 4) allows us to see how the significance of barriers varies across the four themes: ‘EU level phenomena occurring in the negotiation phase’, ‘EU level phenomena occurring in the implementation phase’, ‘Member state level: issues related specifically to EU matters’ and ‘Member state level: general issues in the Czech Republic’. The experts clearly see the most significant barriers in the theme ‘Member state level: general issues in the Czech Republic’ with the highest mean (3.47) and median (four). This category harbors three of the TOP5 barriers: ‘The view of some Czech decision-makers that environmental legislation is primarily a barrier to economic development’, ‘Weak position of the Ministry of Environment within the Czech government’ and ‘Gaps in institutional memory due to high turnover of civil servants’. This theme is followed by the other domestic theme ‘Member state level: issues related specifically to EU matters’ with the mean and median both amounting to 3.00. This category includes the two other TOP5 barriers: ‘Defiance of some Czech politicians towards anything ‘coming from Brussels’, their concern not to overachieve in implementation’ and ‘Tensions between ministries in cases when they share responsibility for implementation’. EU level barriers follow with lower values: 2.91 and three for phenomena occurring in the implementation phase and 2.46 and two for phenomena occurring in the negotiation phase. Only one of the EU level

issues ranks high (6<sup>th</sup>) and that is the 'Insufficient attention paid to implementation concerns during the negotiation of the directive' with mean rating of 3.71 and median rating of four.

Within the very limited sample of four respondents from the European Commission (see columns B-E in Appendix 4), 'EU level phenomena occurring in the implementation phase' place much higher in the ranking, with a mean value of 3.53 and a median rating of four. Specifically, the 'Limited power of EU institutions to acquire information on the ground, leading to their very legalistic approach to enforcement' and 'Insufficient resources of DG ENV enforcement units' climb much higher in the ranking with mean values of 4.50 and 4.25 respectively. Nonetheless, even within this group the highest ratings are assigned to the theme 'Member state level: general issues in the Czech Republic' (mean value: 3.88, median: 4).

Table 3 will be repeatedly referred to through the rest of this chapter. The following sections will gradually present the four major narratives of barriers to implementation which came out of my data: resistance of Czech politicians to environmental legislation as well as to any EU initiatives, poor quality of the Czech civil service, poor quality of some directives and low impact of the infringement procedures.

## ***5.2. Czech politicians' resistance towards environmental legislation and 'anything coming Brussels'***

The ranking above and the synthesis of the data acquired in the qualitative interviews aim both in the same direction. The resistance of Czech politicians against environmental legislation as well as against EU legislation seems to pose the most significant barrier to the implementation of the intersection of both. Int4 observes that sentiments against the EU and against restrictive environmental policies are currently on the rise all over the EU, with the Czech Republic as one of the 'front-runners'. This section will elaborate on the issue of low willingness of Czech decision-makers to implement EU environmental legislation.

The political level brings together several issues identified as fundamental at the top of Table 3. Regardless of the European aspect, environmental legislation in general is viewed by many Czech decision-makers primarily as a barrier to economic development. This persuasion probably has to do with the strong industrial orientation of the Czech economy and with a consequent lobbying by businesses. To get adopted, an environmental bill first has to be supported within the government and then needs to find backing in the Parliament. As regards the former, the position of the Ministry of Environment within the Czech government is rather weak and it does not help that nine different people occupied the position of the minister of environment within the last five years (Int12). The weak position of the Ministry of Environment



forms a barrier especially in cases when several ministries share responsibility for the legislation. As regards the latter, the combination of a high level of corruption and individual MPs' constitutionally guaranteed right to amend draft bills often results in changes in the government draft, which are not compatible with the aims of the directive. These lapses could be removed through pressures from the bottom, but this is hardly ever the case because of the weak development of the Czech civil society and a lack of vivid civic legal culture.

When one adds the EU dimension to the picture, the pressure from the top by the European Commission as guardian of the treaties presents an extra tool to combating non-compliance. The weaknesses of these infringement proceedings will be discussed in a separate section (5.5.). This narrative continues with the Czech perspective, explaining how low respect for the rule of law allows Czech legislators to demonstratively stress their 'sovereignty' and to defy any initiative coming from Brussels. This leads not only to widespread ignorance of infringement procedures or even to non-compliance out of spite, but also to the underestimation by the national politicians of the phase when the directives are negotiated and the Czech Republic could actually shape them. Now I will go step by step through all the above-mentioned barriers and bring evidence from the interviews and from the ranking to support their relevance.

### **5.2.1. High industrialization and perception of environmental legislation as a barrier to development**

As shown above, 'The view of some Czech decision-makers that environmental legislation is primarily a barrier to economic development' was ranked as the most significant barrier with a mean rate of 4.36. This issue is the only one out of the 47 identified barriers which was unanimously rated as highly relevant (4 or 5) by all the respondents from all the different institutions.

The negative perception of the environmental legislation seems closely linked with the key role of industry for the development of the Czech economy. Going through the economic structures of all EU-27 countries, I have found out that the Czech Republic is with a 38% share of industry in GDP the member state with the highest dependence on industry in the EU (CIA 2011). The fundamental role of the industrial sector can be reflected either in successful lobbying, or in an honest persuasion of the Czech legislators that blocking of environmental legislation benefits the Czech economy. Both of these result in anti-environmental sentiments of the Czech legislators. In practical terms, the positions of industrial lobbies are often brought on board by individual MPs, or by the Ministry of Industry and Trade who is usually more powerful than the Ministry of Environment (Int12).

This long-term negative perception of environmental legislation has been recently reinforced through the economic crisis and a certain sobering-up after a period of accession enthusiasm (Int11). The legislators have realized that around 2004 transposition went above the minimal standards. Thus the government is currently undertaking an audit of the Czech environmental legislation, to get rid of any unnecessary weight for domestic industry (Int11). As Int13 put it, “the pendulum was held for a long time at the extreme position, against the pressure of trade unions and employers (...) the current government is more eager to protect the industry than the people.” In parallel, a similar process takes place at the EU level with the fitness checks, which aim to increase competitiveness of the Union as a whole (Int1).

This observation corresponds with the conclusions of sub-section 2.3.2. of the literature review on the new member states, where Andonova (2004) identified the interests of domestic industry as one of the key factors explaining the different performance in different sub-sectors of the environment in the Czech Republic and two other CEE countries. In the same sub-section, Lynch (2000) showed that some government officials in post-communist countries might see environmental protection as secondary to economic growth, because before 1989 the state had been responsible not only for environmental protection, but also for economic activity. The combination of the strong industrial orientation of the Czech economy, the heritage of stronger government involvement in economic development and the recent economic crisis seems to be behind the strong negative perception of the environmental legislation in the Czech politics.

### **5.2.2. Limited influence of the Ministry of Environment within the government**

The following two sub-sections are dedicated to the limited power of the Ministry of Environment that has been (co-)responsible for transposition of most of the 73 directives listed in Appendix 1, which form the scope of this thesis. In general, the efforts of the ministry in charge can be hampered both within the government and at the later stages of the legislative process. Hence this sub-section deals with the position of the ministry within the government, while the following sub-section will go through the barriers diminishing the ministry's influence on other parts of the legislative chain.

The weak position of the Ministry of Environment within the Czech government was identified by the respondents as the second most significant barrier, with mean and median values both amounting to 4.00. The stronger position of other ministries probably has to do with powerful interests of agricultural, transport or industrial lobbies which often collide with environmental law, as described by McCormick (2001) in section 2.4. of the literature review. In

the same section, Jordan (1999) highlights the lack of vested interests in the field of environmental protection. From this argument it can be drawn that the Ministry of Environment can rely only on backing by a few non-governmental organizations.

The position of the ministry has been recently further weakened by extremely frequent changes in the seat of the Minister of Environment of the Czech Republic – within the last five years nine different people occupied that position (Int12). The frequent changes of ministers were ranked by the experts as the 9th most significant barrier, with a mean rating of 3.64 and a median rating of four.

If the Czech Republic in the future has to pay penalties for non-compliance with any of the environmental directives, the payment will probably be executed from the budget of the Ministry of Environment (Int9). This is one of the reasons why the ministry has a strong interest in achieving correct implementation. However, the ministry possesses no higher force to ensure this as adoption of transposition legislation does not differ significantly from adoption of any other legislation, rather it is an outcome of power negotiations (Int9). This can be illustrated best in the case of the EIA bill where other ministries, MPs and the President have resisted the proposals of the Ministry of Environment, although the ECJ already made the first judgment and the case is progressing into the Art. 260 procedure (Int16).

Int7 stresses that the weakness of the Ministry of Environment matters especially in cases where remits are shared between more institutions, as is in water and forests (Ministry of Environment with Ministry of Agriculture) or in mineral resources and energy (Ministry of Environment with Ministry of Industry and Trade). The frequent occurrence of shared responsibility for implementation appears to be a consequence of the cross-sectoral nature of many environmental issues, observed by McCormick in section 2.4. Tensions between ministries in such cases were identified as the 5th biggest barrier, with a mean rate of 3.92 and a median value of four. This finding is in line with Toshkov's (2009) observation from sub-section 2.3.3. that a conflict between the ministries of agriculture and industry on one side, and environment on the other is a recurring theme in the Czech environmental policy-making, regardless of the political orientation of the ministers. Int9 demonstrated the significance of cooperation in the recent example of the directive on carbon capture and storage (CCS) where transposition works started on time and the directive itself seems quite straightforward. However, strong differences in opinions of the two institutions in charge – the Ministry of Environment and the Czech Mining Office – have resulted in significant delays in transposition (Int9).

### 5.2.3. Limited influence of the Ministry of Environment on the Parliament and on the President

Even if the responsible ministry manages to overcome the barriers mentioned in the previous sub-section and makes sure that the government transposition proposal is in line with the directive, “what happens later in the Parliament and at the Castle lies outside the control of the government” (Int9). The limited impact of the responsible ministry on transposition in the further stages of the legislative process is a recurring theme frequently mentioned by the respondents.

Int7 elaborates that “in the Parliament the bill becomes an ‘uncontrolled missile’ due to the very liberal rules for drafting bill amendments” - any individual MP has the power to file amendments. The issue of excessive freedom of individual MPs was brought up by several respondents (Int7, Int9, Int14 and Int16) as a general weakness of the Czech legislative procedure. This weakness applies also to transposition as the Czech Republic has no simplified legislative procedure for this purpose, because the proposal to allow transposition through government regulations was rejected by the Chamber of Deputies in 1999, as highlighted by Whelanová (2009) in sub-section 2.3.3.<sup>7</sup> Consequently, ‘Individual MPs’ constitutionally guaranteed right to amend draft bills’ was rated by the experts as the 7th most significant barrier to effective implementation, with a mean value of 3.69 and a median of four. The representative of the Department for Compatibility with the EC Law of the Office of the Government explained in the interview that the transposing provisions need to be clearly highlighted in the government bill, whereas amendments by individual MPs do not have to indicate this. In fact, MPs can even use unjustified claims about the transposing nature of their proposals to gain additional leverage (Int8) and the power of the Department for Compatibility with the EC Law to oppose such claims is rather limited according to its representative.

The high number of amendments has a potential to create a rather chaotic environment, where some MPs can file proposals prepared by lobbyists for diverse political, economic and other interests (Int2). In this mess, MPs can hardly be aware of the impacts of deleting or adding every single provision (Int9), which may be exactly what the lobbyists need because they often aim to modify only a few provisions which collide with some local economic interests. While some MPs do not even know that the bill breaches the directive, others can be very well aware of the breach. These MPs probably aim to gain several years of competitive advantage for the represented lobby (Int2), or they hope that the breach will never be discovered or prosecuted,

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<sup>7</sup> Int11 notes that the Department for Compatibility with the EC Law of the Office of the Government prepared further proposals on simplification of the transposition procedure, but getting them through the Parliament seems quite improbable in the near future.

due to the weaknesses of the Czech civil society and of the EU infringement mechanisms (see section 5.5.).

Some experts indicated that MPs' amendments are often a consequence of corruption, which poses a serious challenge for many post-socialist countries, as explained by Vachudova (2009) in sub-section 2.3.2. In the ranking, the high level of corruption in the Czech Republic was placed as the 11th most significant barrier, with a mean rate of 3.43 and a median of three. The respondents' negative evaluation of corruption in the Czech Republic is supported by empirical data. According to the latest issue of the Corruption Perception Index of Transparency International (TI 2010), the Czech Republic's position is 21<sup>st</sup> among 27 member states. Out of the 12 new member states only Slovakia, Latvia, Bulgaria and Romania perform worse in this indicator. The World Bank's Measure for Control of Corruption yielded similar results in 2007 – the 22<sup>nd</sup> place within the whole EU and rank 8 in the EU-12 (Vachudova 2009).

However, not all cases of legislators' resistance can be linked to corruption, sometimes the transposition proposals conflict with some values important for them. For instance, President Klaus has several times blocked transposing legislation, not because he would disagree with the specific way the Government or the Parliament chose for the Czech Republic, but to demonstratively show his disagreement with the directive itself (Int11). Nevertheless, the Czech Republic will have to transpose that directive, as any other piece of adopted *acquis*. Klaus's advisor explains in the interview that the President understands he will usually be outvoted by the Parliament, thus vetoes are rather symbolic - for the President it is a way to express his opinion. Another example of ideological resistance comes from the Parliament. Int15 explains that to achieve the goals of the directive on ambient air quality, it would be necessary to allow inspectors to check what is combusted in households. However, this proposal failed because the principle of untouchability of private households is sacred to most Czech MPs. This case mirrors two other issues discussed later – the overambitious nature of some directives when implementation concerns are not taken into account at the negotiation phase (5.4.) and the minister's role in getting the sometimes unpopular transposing bills through the Parliament (5.2.4.).

#### **5.2.4. Resistance of the ministers, Parliament and the President to implementation of EU directives**

Whereas the previous three sub-sections dealt predominantly with the defiance of environmental legislation by the Czech legislators, the following two sub-sections elaborate on the anti-EU sentiments of Czech politicians and their consequences – first in the implementation phase (5.2.4.) and later I will come back to the negotiation phase (5.2.5.). 'Defiance of some Czech politicians towards anything 'coming from Brussels' and their concern not to overachieve

in implementation' was placed as the 3rd most significant barrier in the ranking. None of the respondents rated it lower than with a three, which resulted in a mean value of 3.92 and a median of four. I will start with explaining the causes of this phenomenon and then I will move on to its consequences.

I have identified several reasons for the widespread anti-EU sentiments among Czech politicians. Firstly, ignorance of the member state's obligation to implement EU directives in a timely and correct manner can persist in the Czech Republic due to the widespread low respect for the rule of law among Czech politicians. Hagan and Radeova (1998) showed in sub-section 2.3.3. that cynicism about law and its binding nature is quite widespread between political elites in the Czech Republic due to the 40-year-long heritage of socialism. Eleven years later, the experts ranked it as the 12th most significant barrier with a mean rate of 3.36 and a median of four.

Secondly, the resistance partly stems from a widespread feeling among the domestic legislators that they are sidelined by the EU legislative process (Int10 and Int13). For instance, some MPs still feel upset about being excluded from discussions on the ban on incandescent light bulbs which was agreed through a rather technical comitology procedure where the Parliament is no more actively involved in forming the national position (Int8). Czech MPs' feeling of exclusion seems to be related also to another systemic issue – 'Low involvement of the Parliament in EU negotiations after the Framework Position towards the Commission proposal is finalized', which was placed 14th in the ranking of the barriers with a mean value of 3,31 and a median of three. Int8 notes that the Chamber of Deputies' Committee for EU Affairs may invite the ministry representatives for further updates, but the Committee does not have the capacity to shape the Czech position towards the numerous and dynamically changing compromise proposals discussed at any moment. It is probable that the Parliament would be more willing to transpose the directives, had it been more closely involved in the negotiations, like some Scandinavian parliaments.

Thirdly, another reason underlying the national resistance is the extremely low willingness of the European Commission to give any competences back to the member states, illustrated by Int6 in the example of GMOs. Int6 elaborates that "if the member states see that the European integration is basically a one-way road, no wonder that they tend to block any further movements of power to the Commission." This is in line with Glachant's (2001) argument that imperfect implementation is one of the tools available to member states to control the scope and the speed of the European integration (see section 2.2. of the literature review). Int6 adds that a certain feeling of over-regulation prevails all over the EU and that especially the new member states are tired of Brussels' initiatives after the pre-accession 'legislative storm'.

Fourthly, the power of status quo presents another reason for the defiance – local elites try to resist any interference with their sovereignty (Int13) or oppose changing mechanisms which worked well before (Int15). The latter is particularly relevant in the environmental field where the Czech Republic had a very modern legislation since the big societal changes at the beginning of 1990s (Int13). These observations are in line with Miko (2000), who sees a barrier in pre-existing attitudes of policy-makers, legal practitioners and other administrators who had been accustomed to certain stereotypes (see sub-section 2.3.3.). Furthermore, the environmental legislation is adopted through qualified majority voting, which sometimes leaves the Czech Republic on the ‘losing team’ (Int5). Last but not least, sometimes the defiance is justified by poor quality of some directives (Int10), which will be discussed in detail in section 2.4.

The presentation of consequences of the anti-EU sentiments will be structured according to the political level where these sentiments occur and where they can hamper implementation. I will start with the Prime Minister, continue with the Minister of Environment and then go in detail through the anti-EU sentiments of the legislators – MPs and President Klaus<sup>8</sup>. As regards the highest political level, one of the interviewed former ministers remembers government discussions on the ranking of the Czech Republic in the Internal Market Scoreboard: whereas before the Czech Presidency in the Council the Prime Minister encouraged the ministries to speed up transposition efforts to increase the credibility of the country, at another occasion the Prime Minister discouraged the ministers from overachieving in transposition in order to avoid annoying President Klaus. Int11 recalls similar words of Prime Minister Topolánek that “there is no need for us to be Number One.”

As regards the ministerial level, several respondents stressed the importance of political and personal attitudes of the Minister of Environment in the implementation phase. Firstly, Int14 observes that more euroskeptical ministers have been more passive in tackling cases of infringement, whereas ministers closely involved in the EU affairs have shown that most infringements can be solved. For instance, Ladislav Miko – who came from the Commission as an interim minister for seven months – declared lowering the number of infringements as one of his highest priorities and even in the limited time available he did manage to solve or move further approximately three quarters of all the cases of infringement (Int6). The example of the transposition of the ambient air quality directive, which was mentioned at the end of the previous sub-section, demonstrates that the minister risks losing political points for a cause which is considered unpopular (Int16), unless the environmental benefits are explained sufficiently to the

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<sup>8</sup> President Václav Klaus is personified throughout this thesis, as the Czech Republic has not experienced any other President since its accession on 1 May 2004.

public. Because the relevant minister can lose a lot, but gain only very little in the short-term, more euroskeptical ministers probably tend to leave the politically unpopular dossiers to their successors. Secondly, minister's priorities also guide priorities and approaches of the civil servants which play a key role in transposition. Lastly, Int7 adds that the ministers also influence the specific shape of transposition: "some view the directive truly as a minimal standard, others say to put into the bill what Europe wants from us, but nothing extra."

The rest of this sub-section will demonstrate consequences of ignoring or even out of spite behavior of Czech legislators – MPs and the President. One could expect that adoption of transposing acts would be quite a smooth process because every member state faces a threat of sanctions from the European Court of Justice in case of long-term infringements with European law. However, "in the Czech Republic it is not necessarily easier to get through the Parliament transposition legislation than 'domestic' legislation" (Int11). Mentioning the link to the EU can be even counterproductive due to the widespread anti-EU sentiments (Int2). Int16 elaborates that "it is naive to think that waving a letter from Brussels will persuade Czech politicians." Other interviewees have shown similar experience with the Economic committee of the House of Deputies and other MPs: "We are sovereign deputies of a sovereign republic, don't try to intimidate us with Brussels" (Int6). "It does not mean a thing that we are told something by the Commission. You are explaining it to the EU insufficiently, we would have explained it to them" (Int7). Similarly, Int16 remembers: „You have not explained the issue well enough to the Commission. You should go to Brussels and explain it to them better this time." Finally, Int14 was told by MPs: "What sanctions? Show us the letter you are talking about!"

The low susceptibility towards any pressures from Brussels to improve implementation can be illustrated best in the example of the EIA bill which President Klaus returned to the Parliament right before the ECJ was to make its first judgment (Int16). As shown in sub-section 5.2.2., MPs or some ministries are no less numb towards outside pressure. Although the case is currently progressing into the Art. 260 procedure with a threat of financial penalties for the Czech Republic (Int11), the decision-makers still oppose changes in the EIA act because, according to them, these changes could limit business activity and economic growth (Int11). Consequently, to get the transposing bill through the Parliament, responsible ministries often need to play a game with the legislators – they have to offer them an argument unrelated to the EU why they should adopt the proposal (Int6). "The Ministry representatives cannot do more than keep persuading, persuading and persuading" (Int11). Int6 observes that the President, as well as the MPs, are well aware of their obligation to transpose EU legislation, but they like to provoke with their 'sovereignty' and act in front of the voters, as if the EU legislation was still



something external, not co-created by the Czech decision-makers. Int6 concludes that maybe this barrier will be truly overcome first when a new generation of politicians, civil servants and voters get into positions in the Czech Republic, for whom the EU will not be 'them' any more, but 'us'.

The low weight assigned by Czech politicians to infringement procedures appears to be in part a consequence of the zero experience of the Czech Republic with sanctions by the ECJ<sup>9</sup> – so far infringement proceedings against the Czech Republic have resembled mere harmless exchanges of letters (Int11). It is difficult to say whether Czech legislators do not know yet about the sanctions (Int16), or whether they just do not take that threat seriously enough because the Czech Republic has not had to pay any penalties so far (Int11), or whether some of them are even looking forward to the first sanctions against the Czech Republic (Int4), so that they can blame the EU even more, this time for taking away money from Czech tax-payers in a time of economic crisis (Int12). The respondent from the Parliamentary Institute argues that at least all the MPs on the Committee for European affairs of the House of Deputies, as well as their assistants, are aware of the sanctions, because the overwhelming majority of them have heard about the sanctions at a seminar which takes place at the beginning of each legislative period. And Int2 adds that most ministers also know about the sanctions because they are informed by the European Commissioner from the Czech Republic, Štefan Füle, or via the Ministry of Foreign Affairs, if the threat arises. "Unfortunately, these words do not fall on fertile ground" (Int2). Int14 concludes that the only threat the legislators pay attention to is a potential cut in EU structural funding. I have now given a detailed account of the member state's ignorance of the enforcement efforts of EU institutions. The Union-level perspective on this issue will be presented later in a separate section 5.5.

This sub-section has demonstrated that the anti-EU sentiments of the Prime Minister, the Minister of Environment, MPs or the President all have a potential to stand in the way to effective implementation, if the politicians ignore the Czech Republic's obligations, or even decide to act out of spite against 'Brussels'. The following sub-section will go through analogical barriers in the negotiation phase, when the Czech Republic can shape the directives.

### **5.2.5. Ignorance of the negotiation phase by political elites**

The rationale behind the relevance of the negotiation phase for implementation is Int6's observation that "in the fields where we were active in negotiations, we had fewer problems with implementation. But we do not influence the text of EU directives as much as we could." Since joining the EU in 2004, the Czech Republic has been represented in the Council, the Parliament

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<sup>9</sup> The absence of penalties itself does not seem to pose a strong barrier to implementation, the experts assigned this phenomenon only a mean value of 2.69 and a median of three.

and the Commission and has thus been allowed to take part in negotiations of the directives. I argue that the Czech representatives have not fully used this potential and that the ignorance of the negotiation phase by the political elites has significantly contributed to this failure.

If the Czech politicians are truly concerned about their sovereignty, one could expect them to be very active in decision-making on the EU level, so that they make sure what kind of legislation gets passed. However, the opposite seems to be true. The widespread defiance of Czech politicians towards anything 'coming from Brussels' – identified in the previous subsection as a very significant issue – is reflected rather in their low understanding of the EU legislative procedures and consequent ignorance of the negotiation phase (Int4). Int6 describes the sentiment of many Czech legislators as: "Let those in Brussels discuss whatever they want, we don't care."

Because the politicians' mandate guides the activity of civil servants, the civil servants who take part in the negotiations have to allocate more time for issues unrelated to the EU, if these are of higher priority for the minister. Hereby, the political elites sometimes hamper the potential of highly qualified Czech environmental experts to shape the directives (Int4). Consequently, due to politicians' apathy towards the Union, the Czech Republic often comes to the meetings without clear interests or positions (Int2). As Int10 put it, "we are too much backing away, too often just dragged along."

As regards the particular area of environmental legislation, an attaché of the Czech Republic to the European Union confirms that the Czech Republic does drift in many issues. The Czech negotiators hardly ever aim to block the negotiations completely, even though several respondents (Int10, Int12, Int13 and Int15) pointed out that some Commission proposals resemble 'horseshit'. On the other hand, "if the Czech Republic has a strong interest, we are usually not the only ones in the EU with such a concern, we are able to find partners, fight for our interests and shape the final text of the directive" (Int5). Int13 and Int14 bring the case of the limitations on transboundary movement of waste in the waste framework directive as an example of successful shaping of the legislation by the Czech Republic. This might be a sign of a positive trend due to gradual social learning, as the rising length of membership and in particular the experience with the Presidency of the Council in spring 2009 have strongly increased awareness about the negotiation phase among Czech politicians and civil servants (Int7 and Int14). Int14 recalls some other examples (e.g. the climate-energy package), where the Czech negotiators defended interests of the Czech industry. This has to do with Int14's observation that "Czech businesses – such as the energy company ČEZ – learned fast how to influence EU legislation.

Unlike most NGOs who often do not understand who to talk to and how the legislative process proceeds.”

Several other barriers to stronger influence of the Czech Republic on the directives were brought up by the respondents. Int15 mentions as one of the barriers the decreasing role of the Council as a whole, with the adoption of the Lisbon Treaty. The rather small size of the Czech Republic does not appear to be a significant obstacle, - it was ranked as the least significant barrier out of all 47, with a mean rate of 1.75 and a median of two. Both Int4 and Int6 support this by highlighting the example of the Netherlands as a country of grossly similar size, which is much more able to influence the outcome of EU negotiations due to a more active approach of the politicians and the negotiators and regular analyses of failures and successes in the past<sup>10</sup>. ‘Under-representation of Czechs in the Commission’ seems similarly insignificant, with a mean rate of 1.80, median of two and none of the respondents attaching it a higher value than three. Int13 points to weak foreign policy activity of the Czech Republic in general due to a widespread feeling among elites that investments in international negotiations do not pay off, because the Czech Republic cannot influence much anyway. Additionally, Int13 continues that “if someone is to be sent to international institutions, the Czech government usually chooses someone not wanted in the country any more, rather than an active person.” Finally, Int6 advocates a more active use of the Visegrad Four group which has in the EU much higher clout than a single member state.

The low engagement of the Czech Republic in EU negotiations results in neglect of the Czech positions by the negotiators from other countries and institutions. As Czech interests are not taken into account, the feeling of Czech politicians that they cannot influence the directives gets reinforced. This vicious circle is harmful for the Czech Republic which eventually has to adopt all the directives without influencing them significantly. This plays into the hands of nationalist politicians whose criticism of ‘another piece of bullshit coming from Brussels’ can fall on fertile ground, because the voters often do not understand that the Czech Republic could have influenced the directives (Int4). Similarly harmful for the Czech Republic are the highly visible activities of the Czech President Klaus on the European scene, according to several respondents. In the example of Klaus’s intervention against the Lisbon Treaty, Int6 shows that the Czech President decides to step into the negotiations too late, after all the partners spent years finalizing the compromise. Int13 and Int14 explain that this behavior is considered weird by other member states and the EU institutions and undermines the future position of the Czech

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<sup>10</sup> Int6 notes that the low interest in EU issues will probably result in total ignorance of this particular thesis by the government, even if the thesis contained essential advice for public administration of the Czech Republic.

Republic in negotiations. “We are on the edge of becoming a notorious trouble-maker who the others do not want to make coalitions with” (Int11). From the rationalists’ perspective, this behaviour of the President is rather surprising, considering the medium size of the Czech Republic. Whereas the big member states (e.g. Poland) can afford to play with their trustworthiness because they maintain their influence through a high share of votes in the Council, the power of smaller states depends strongly on their reputation, as explained by Thomson *et al.* (2006) in sub-section 2.3.1. of the literature review. Loss of reputation is harmful for the Czech Republic not only in the negotiation phase, but also in the later infringement proceedings where low trust can result in a nitpicking approach by the Commission (Int6). This illogical counter-productive behavior of Czech political elites presents one of the typical examples, how domestic politicians threaten the implementation performance through their anti-EU sentiments. By bringing together many such examples in the five sub-sections above, I have demonstrated that resistance of the Czech politicians towards EU environmental legislation forms a major barrier to its effective implementation.

### **5.3. Poor quality of the Czech civil service**

Whereas the resistance of Czech politicians, discussed in detail in the previous section, seems to clearly find support in the ranking in Table 3 as the most important narrative of non-compliance, the picture given solely by the data acquired during the qualitative interviews is far less clear. While low political willingness seems to be a key determinant of tactical or demonstrative non-compliance close to the transposition deadline, “the member states know in the end they will have to implement the directive” (Int5). Int14 also argues that purposeful non-transposition rarely occurs. Int6 agrees that voluntary non-compliance is rare and limited to cases when the legislation conflicts with strong local economic interests. If the factors related to low willingness of Czech politicians explain only a part of the story, what is then the other major narrative of non-compliance?

The qualitative data support high relevance of one more group of domestic barriers, which I grouped under the narrative ‘poor quality of the Czech civil service’. “Much more frequent are cases when the Czech public administration lacks capacities, knowledge or experience” (Int6). Hence Int6 supports capacity building as a major tool for combating non-compliance. Simultaneously, Int6 explains why such measures are not too attractive for the politicians who would have to support them: “the fruits of such programs are often visible first in a decade.” Int7 wraps up that “implementation is primarily an expert issue, with political connotations.” These observations are in line with the findings of many authors (Jordan 1999; Chayes and Chayes 1993; Demmke 2001; Mastenbroek 2003 and Falkner *et al.* 2005) that non-

compliance tends to be more often a consequence of poor management, rather than of intentional defection (see sub-section 2.3.1. of the literature review). This section will focus on the quality of the civil service as a proxy of the government's capacity to implement EU legislation, which was identified as a key explanatory factor by the overwhelming majority of scholars in the field (see section 2.3. of the literature review). First I will present two indicators of quality of the civil service and then I will explain what specific barriers prevent the Czech civil service from implementing more effectively.

To illustrate poor quality of the civil service in the Czech Republic, I will rely on two indicators from the previous literature (see section 2.3.) – the Corruption Perception Index of Transparency International (TI 2010) which is strongly positively correlated with bureaucratic efficiency (Boerzel *et al.* 2010) and the lifetime of the legislation on civil service used by Toshkov (2009). The former places the Czech Republic as the 21<sup>st</sup> among 27 member states, with only Slovakia, Latvia, Bulgaria and Romania performing worse within the EU-12. This leaves high level of corruption as the 11<sup>th</sup> most significant barrier in the ranking, as demonstrated in sub-section 5.2.3. As regards the latter, the adoption of the act on civil service had been a formal requirement for EU accession of the Czech Republic. Notwithstanding this, the act has never become effective in the Czech Republic. The Parliament has delayed its entrance into effect already five times (Int7) and the Government is currently considering repealing the act completely (Novinky 2010). "This reflects the approach of the Czech Republic's politicians to the civil service" (Int7). In most other new member states, the legislation became effective between 1992 and 2002, as shown on the right side of Figure 10 in sub-section 2.3.2. In relation to the theme of administrative capacities, the middle section of the ranking contains several barriers with a median of three and mean values between 2.85 and 3.17: 'Lack of experts who possess both legal and technical education', 'Lack of the specialization "legislator" at faculties of law in the Czech Republic', 'Low capacity of the Czech Environmental Inspectorate (ČIŽP)' and 'Poorly designed or executed mechanism of coordination of implementation.' As regards the latter, Int7 and Whelanová (2009) in sub-section 2.3.3. of the literature review argue that the national process of implementation is set-up quite well in the Czech Republic.

As regards the specific features of the Czech public administration particularly relevant to non-compliance, I have identified the following three: high turnover of civil servants, lack of cooperation within and across the national institutions and short experience with membership. The rest of this section will be organized according to these three main barriers.

High turnover of civil servants in the Czech Republic is a recurring theme mentioned by many respondents. They agree that a lot of high-quality fresh graduates enter the civil service.

“But it is difficult to keep them, hardly anyone stays in the institutions for more than five years” (Int9) due to low prestige of the profession of civil servants in the Czech Republic (Int6), low salaries and lack of positive reinforcement for good work (Int9 and Int12), low stability due to missing civil service legislation (Int7) and due to the above described high frequency of changes in the seat of the Minister of Environment (Int12). The frequent changes at the top can lead to consequent frustration of employees because of constant reversals in priorities and strategies (Int12) or to forced dismissals or drops in competencies or salaries, as the act on civil service is not in effect (Int7). As regards the low prestige, Int6 suggests that it could be increased if specialized French-style administrative colleges were founded in the Czech Republic which would systematically prepare civil servants capable of connecting administrative work with science and politics. ‘Low salaries and low prestige of the Czech civil servants, related to a missing legislation on civil service’ ranked 16th, with a mean value of 3.23 and a medium rating of three.

What seems much more directly harmful for implementation performance, are the consequent ‘Gaps in institutional memory due to high turnover of civil servants’. These gaps were identified as the 4th most significant barrier in the ranking. None of the respondents rated them lower than a three, which resulted in a mean value of 3.92 and a median rating of four. The problem is that often “people with detailed knowledge on the negotiated directive are no more present at the ministry in the times of transposition” (Int12). Int16 elaborates: “Ideally the experts who took part in negotiations should be also in charge of implementation, they should be able see under the surface, understand why that particular provision is included in the directive. But far too often we see that that one is gone too.” These findings are in line with Whelanová’s (2009) observation in sub-section 2.3.3. of the literature review that it is hardly possible to staff the institutions with experienced law-makers, who would at the same time have a good understanding of EU law. In addition, these gaps can lead to inconsistencies in positions of the Czech Republic with respect to the negotiation phase (Int9).

The second identified key feature of poor civil service is the low level of cooperation, or even rivalry, within and across institutions. The data indicate three types of problems. Firstly, the Czech public administration is characterized by a certain animosity between different institutions, e.g. the Ministry of Environment and other ministries. As shown in sub-section 5.2.2., tensions between ministries form a significant barrier in cases when they share responsibility for implementation, and that even in situations when the ministries are led by members of the same political party.

Secondly, within the institutions, Int13 observes a high degree of self-censorship on low and medium levels of the public administration due to the general atmosphere of fear, which is

partly related to the missing legislation on civil service. Recently, the self-censorship has been reinforced through cuts and changes in staff and a widening gap between the Minister of Environment and the civil servants (Int7). As a result, “officials do not dare to approach the minister and ask him to fight for a certain cause and many issues negotiated in Brussels are thus neglected by the Czech Republic” (Int13).

Last but not least, even if the participants of the negotiations still work at the ministry at the time of implementation, the transfer of information between them seems to be far from smooth. ‘Low level of cooperation between negotiators and implementers within the institutions’ was ranked as the 10th most significant barrier with a mean rate of 3.50 and a median value of four. These findings correspond with Mastenbroek’s (2005) metaphor of ‘Chinese walls’ between preparation and implementation, or with McCormick’s (2001) observation that those national authorities which are involved in implementation are usually excluded from early stages of development of the legislation (see sub-section 2.3.1. of the literature review). Representatives from the EU Department and the Permanent Representation confirmed they have never been asked for advice with implementation. Simultaneously, the respondents from the Legislative Unit and the Department for Compatibility with EC Law of the Office of the Government explained they hardly ever followed the process of negotiations before the final adoption. Int14 wishes that the Legislative Unit should be more involved in the negotiation phase, to understand better the purpose of different provisions of the directive. The respondent from the Department for Compatibility with EC Law elaborates: “We do not know what is negotiated in Brussels, a different unit is in charge. It would be more effective if we knew how and why certain provisions were negotiated. But I’m not sure if such a reorganization is possible.” These findings match well with the contribution of Whelanová (2009) in sub-section 2.3.3. of the literature review who argues that implementation aspects of the legislation sometimes do not get sufficient attention of those in charge of negotiation of the directives, particularly in ministries where a certain rivalry between the EU unit and the legislative unit prevails. All these problems are closely linked to the issue of ‘Insufficient attention paid to implementation concerns during the negotiation of the directive’ which was identified as the 6<sup>th</sup> most significant barrier to implementation and will be discussed in detail in section 5.4. Int14 concludes that the experience with the Czech Presidency of the Council presented a major step forward in overcoming these barriers: “People responsible for transposition started to understand more that the Czech Republic can influence the shape of the directives. Communication between these two groups improved and experts became more and more involved in negotiations.” On the other hand, the positive effect of the Presidency has been diminishing over time since spring 2009, due to the above-discussed high turnover.

Int14's positive notion on social learning forms a perfect bridge to the last identified theme related to the performance of the Czech civil service – short experience of the Czech Republic with EU membership. The short period of the Czech membership in the EU has several consequences. Firstly, experts who do not encounter EU issues regularly still tend to view the EU as something foreign which the EU Department or someone else from the international section should deal with (Int12). Even the experts who had taken part in negotiations and could understand the peculiarities of the adopted directive, cannot always reap this potential, because in the time of negotiations they had often been overwhelmed with more urgent national matters (Int5) or EU matters had not been of a high priority for them, or their managers (Int12). 'Low priority given by responsible experts to negotiation of the directives' took the 23<sup>rd</sup> position in the ranking, with both mean and median values of 3.00. Int12 argues that the image of the EU as 'them' will persist, until all the management of the ministry clarifies to their subordinates this relatively new component of their job description. On the other hand, some experts are already fully aware of the EU component of their duties and have been able to come up with their own proposals during negotiations and hereby to actively shape the EU legislation. Int6 and Int11 demonstrate this in the Czech involvement in negotiations on REACH and other pieces of legislation on chemicals. Secondly, under-representation of Czechs in the EU institutions and the related lack of informal communication channels is another barrier related directly to the short period of membership that is being gradually reduced over time (Int1). Lastly, another issue the Czech Republic has to deal with as a new member state, are the legal traditions different from the West: "EU legislation often reflects principles contained in the legislation of some old members states, which puts them in an advantageous position in implementation" (Int16).

Not all experts would probably agree with the relevance of the argument on the short period of membership. Int4 views the Czech Republic after seven years of membership as a fully-fledged member state and sees no need any more to distinguish between old and new. This view is supported by the low rating for the 'Short experience with membership' – mean value of 2.54 and a median of mere two. What all experts could probably agree on is that these experience-related barriers are gradually disappearing over time. For instance, Int2, Int12 and Int14 observe a gradual disappearance of some barriers, such as low understanding of all the complex EU processes and of techniques of successful negotiation.

In this section I have demonstrated, with the help of indicators of corruption and experience with civil service legislation, that the quality of the Czech civil service lies under the EU average. This seriously hampers the capacity of the Czech Republic to effectively implement EU environmental legislation. While barriers related to the short period of the Czech



membership seem to gradually fade, the most relevant barriers in this narrative are the gaps in the institutional memory due to high turnover of civil servants and low level of cooperation between negotiators and implementers within the institutions. The latter is one of the explanatory factors for the insufficient attention paid to implementation concerns during the negotiation of the directive, which will form the focus of the next section.

#### **5.4. Poor quality of some directives**

The domestic narratives, described in the previous two sections, received the highest ratings of the experts. Nevertheless, on their own they cannot fully explain non-compliance in the Czech Republic. Both the primary data from the qualitative interviews and the academic literature (see the whole section 2.2.) show that some barriers are present at the Union level and are common to all the member states. As Int6 put it, “non-compliance is a complex problem resulting from the very system of EU administration”. I have identified two minor narratives encompassing barriers present at the Union level: poor quality of some directives and limited impact of infringement procedures. The former presents the focus of this section. In a nutshell, the challenge is that “an adopted directive is a valid piece of law, no matter how stupid it might be, and thus has to be implemented” (Int16). Thus this section will analyze the mechanisms, embedded in the EU legislative procedure, behind the observation that EU directives are sometimes very difficult to implement.

Among the barriers embedded in the system of administration of the European Union, ‘Insufficient attention paid to implementation concerns during the negotiation of the directive’ was placed by far the highest. The experts ranked it as the 6<sup>th</sup> most significant barrier to effective implementation, with a mean rate of 3.71 and a median value of four. Most of the other phenomena related to the negotiation phase ranked very low with a median of two, except for ‘A long time gap between the negotiation phase and the implementation phase (uncertain future and higher priority of more urgent matters)’, ‘Low prestige of implementers’ positions within the institutions (as opposed to creators of new laws)’ and ‘Overambitious directives disregarding economic conditions’ which were rated with a median of three and mean values between 2.73 and 3.07.

The directives can suffer from various drawbacks. They can neglect implementation concerns, either because the Commission neglected the issue in its legislative proposal, or because of later changes during the legislative process. Neglect at any of the two phases can lead to unfeasibly ambitious directives. Finally, the directives can disregard the heterogeneity of local conditions. I will now discuss all these aspects in bigger detail.

As regards the Commission proposal, the respondents from the Commission claim that it usually tries to take future implementation needs into account. However, the time gap between the negotiation phase and the implementation phase is sometimes very long and the Commission can hardly predict all future economic and political developments which are key for successful implementation, especially in cases of large infrastructure projects (Int5). For instance, Int5 argues that unrealistic expectations about economic development lie behind the current widespread non-compliance of the Czech municipalities with the urban wastewater directive. The current Environment Commissioner Potočník aims to overcome this barrier through strengthening of linkages between EU environmental policy and EU structural funds – e.g. through environmental conditionality of the Common Agricultural Policy (Int5). However, Int15 argues that so far these linkages have been very weak and environmental priorities have not really been integrated with the priorities of EU cohesion policy. This poses a significant barrier to effective implementation, especially in the current times of economic crisis, which “is not the cause, but just makes the problems more visible” (Int6).

In the end, no matter how much the Commission thought about implementation in the original draft, the real challenge lies in bringing together the interests of all participants of the EU legislative procedure. “The need to satisfy all the institutions – especially after increasing the use of co-decision procedure with the Treaty of Lisbon – gives priority to any potential compromise over feasibility of implementation” (Int6). Int6 explains that even if the final compromise contains obvious flaws, the Commission is usually very reluctant to re-open the directive, because experience has shown that powerful lobbies often manage to make the later version of the directive even worse.

The fact that the final compromise is often unfeasibly ambitious has to do with the ‘inbuilt pathology of non-compliance’ – the Commission and the Parliament tend to adopt overambitious legislation, disregarding the costs of implementation born by the member states (Mendrinou 1996 in section 2.2.). I have shown in sub-section 5.2.4. in the example of the ambient air quality that this puts in a difficult position the ministers of member states who have to risk losing political points for fulfillment of somebody else’s ambitions. Int16 brings a similar example, wondering why the minister should fight for an unpopular increase in payments for landfilling, just to achieve compliance with EU legislation. These sacrifices seem particularly sensitive in the rare cases when a member state has to implement legislation it did not agree with, but was outvoted.

The last issue discussed in this section is that the inherent heterogeneity of legal traditions or natural conditions sometimes makes unification of measures impossible. Consequently, the

EU should aim to leave enough space for the member states and adopt less specific directives or in some areas no legislation at all. As regards the specificity, Int6 and Int16 argue that the directives often go beyond their original purpose and prescribe not only goals, but also specific measures, which might make them unsuitable for implementation in some states. This barrier can be an outcome of both the Commission proposal, or of later negotiations in the Council and in the Parliament. Excessive specificity imposed by others poses a particularly significant threat for smaller and less experienced member states, such as the Czech Republic, who are not so skilled at shaping the legislation (Int5).

As regards the excessive amount of legislation mentioned by Int7, Int9, Int10, Int12, Int13 and Int15, that has to do with functioning of any bureaucracy in general. Every official has an incentive to keep producing documents because if they stopped, they could be considered redundant and their position could be cancelled (Int6). Int10 adds that in the big picture, the same is true for EU institutions which keep producing new legislation to justify their existence. Furthermore, Int6 observes that politicians and civil servants on all levels become more visible through a change in law, or a currently modern deletion of parts of the law, rather than by ensuring proper implementation. "It's in the heads of the people. In the annual self-assessment all EU employees want to write they took part in a new project, not in implementation of an old one" (Int6). Creating excessive amounts of legislation is basically another symptom of the pathology of non-compliance, inbuilt in the EU system.

In this section I have demonstrated why the EU directives tend to neglect implementation concerns, why they are often too ambitious disregarding the economic conditions, why they tend to be too specific and why there might be too many of them. The following section will maintain the focus at the Union level, but it will move from the negotiation phase to the implementation phase.

### ***5.5. Limited impact of infringement procedures***

After going through the domestic barriers and the EU-level barriers detrimental for the negotiation phase, the last narrative presents EU-level barriers occurring in the implementation phase. These barriers, together with the barriers grouped under resistance of national politicians to implementation of EU directives discussed in sub-section 5.2.4., aim to explain the limited impact of infringement procedures by the European Commission and the European Court of Justice. Most of the below described barriers are closely linked to the weak and invidious position of the Commission (Williams 1994), or the Commission's 'responsibility without authority', as McCormick (2001) puts it (see section 2.2. of the literature review).

As shown in section 5.1., the EU-level barriers occurring in the implementation phase were rated with a mean value of 2.91 and a median of three by the full sample of respondents, while the very limited sample of four officials from the European Commission attached much higher values to these barriers – a mean rate of 3.53 and a median rate of four. Specifically, ‘Limited power of EU institutions to acquire information on the ground, leading to their very legalistic approach to enforcement’ and ‘Insufficient resources of DG ENV enforcement units’ climb much higher in the narrow ranking, set up solely by the Commission officials, with mean values of 4.50 and 4.25 respectively. In the complete ranking both these barriers, as well as other related barriers – ‘A long time span between a complaint on non-compliance and an ECJ judgment on penalties’, ‘Lack of genuine mutual communication, trust and cooperation between the Commission and member states’ and ‘Reluctance of some Commissioners to start infringement proceedings or move them to the next level’, ranked in the medium section with median value of three and mean ratings between 2.43 and 3.23.

I have identified three main reasons for a limited impact of the infringement procedures – the Commission does not know about all the breaches, or it does not want to push too hard, or it is not able to ensure compliance, even if it knows about the infringement and wants to tackle it. The section is divided into three sub-sections according to these reasons. Whereas the later sub-sections 5.5.2. and 5.5.3. discuss the limited willingness and ability of EU institutions to halt the detected breaches, the first sub-section demonstrates the limited capability of EU institutions to detect non-compliance.

### **5.5.1. Limited capability of EU institutions to detect non-compliance**

Several respondents from the Commission agree that many cases of incorrect implementation probably remain undetected by the Commission. “Probably the most frequent non-compliance is the one we don’t know about” (Int6). This sub-section aims to explain why the EU institutions overseeing enforcement cannot detect more than the tip of the iceberg of non-compliance (Int3 and Int6). A key issue restricting the ability of the Commission to detect non-compliance is the very limited capacity of enforcement units in DG ENV. For the cases of infringement by the Czech Republic there is a capacity of 0.5 person, because this official is responsible also for infringements by Slovakia (Int1). Considering the high number of adopted environmental directives and regulations – more than 200, as shown above – it is obvious that this person with limited time and resources can hardly detect all the cases of infringement and has to prioritize which areas to focus on.

Before going to other limitations on detection of non-compliance, I would like to remind the reader that there are three possible types of non-compliance (see Figure 3 in section 2.3.) –

the member states can fail to inform the Commission about adopting the national transposition measures in due time (notification failure), they can transpose the EU directives incorrectly or fail to transpose some parts of the directive into national law (wrong transposition) or they can badly apply some provisions of the directive (wrong application) (Boerzel et al. 2010 and Int1). In the case of the Czech Republic, only four out of 45 new cases of infringement started by the Commission during 2010 regarded wrong transposition or application, whereas the remaining 41 cases represent notification failures (MFA 2011). This could be viewed as evidence of extremely successful correct implementation. However, a much more probable explanation is that the Commission performs better at detecting delayed transposition, than at detecting incorrect implementation. Falkner et al (2005) demonstrate this discrepancy in their deep study of implementation of social policies – while the Commission was able to initiate the infringement procedure in 95% of cases of non-notification, 49% of the cases of significantly incorrect transposition went unnoticed. I will explain below the reasons for this discrepancy.

Identifying cases of notification failure is relatively easy for the Commission. It merely needs to compare the databases of transposition deadlines and of notifications by member states (Int1). There is only a minor obstacle – directives are often transposed through several national acts and the data on notification might look better than the actual transposition reality, provided a national government decides to notify the Commission about the adoption of the first of the series or transposition laws, or even about its intention to adopt a law which gets later blocked in the Parliament (Hartlapp and Falkner 2009).

On the other hand, the correctness of transposition and application is much more difficult to assess. This is because the Commission has to rely predominantly on information from the member states who do not want to harm themselves by highlighting their own breaches (Int3), from local NGOs that usually have limited capacity and can thus cover only a few attractive sub-sectors of the environment (Int13), and from the media that are able to bring attention only to the most blatant cases of non-compliance, such as the garbage crisis in Naples (Int3). Int13 suggests that EU institutions should aim to get more access into the Czech media and to explain better to the Czech public the costs of non-compliance, in order to activate the civil society, which is in the best position to detect the breaches. Int1 explains that to increase the capacity of local NGOs to file complaints, an official from the enforcement unit of DG ENV goes once a year to the Czech Republic for personal exchange of information with NGO representatives. Another source of information are conformity studies which DG ENV outsources to external consultancies, but these are able to assess only a narrow slice of the adopted legislation – “every year one topic is assessed, for instance, this year the focus lies on the

INSPIRE directive" (Int1). Int4 adds that for a certain time the unit lacked anyone who would speak Czech. In this period, the 100% reliance on translations hampered the ability of DG ENV to detect non-compliance in the Czech Republic, especially the cases of incorrect transposition and application. In conclusion, the discrepancy between detected cases of delay and detected cases of incorrect implementation results in an excessively formalistic or legalistic approach of the Commission towards non-compliance, criticized by several experts.

In order to improve detection of non-compliance, the Commission would like to move from the current complaint-based system to a systemic horizontal approach (Int3). For that, the Commission would need more information gathered independently from the member states (Int3), or more capacity to analyze the existing reports (Int1). EEA seems well-suited to fulfill these tasks and thus the Commission is currently considering a proposal to re-define the priorities of the Agency (Int1 and Int3). In some member states, a very low level of environmental inspections presents another obstacle to detecting non-compliance (Int3). While Int4 and Int13 see a solution to this in the increased exchange of best practices through the IMPEL network, Int3 advocates more stringent EU-wide minimal standards of inspections, which currently have only the form of a recommendation. Better inspections could result not only in higher detection of non-compliance, but they could also provide a stronger basis for NGO complaints (Int1). In this context, Int3 stresses the importance of making more and more data publicly available, to empower the citizens. Improved inspections and more publicly available data could benefit implementation in the Czech Republic where NGOs have already learned how to file complaints with national courts or with the Commission, which resulted in several cases of improved implementation (Int13). However, the codification of inspection standards is unlikely to happen because member states tend to oppose any further transfers of power to the EU level (Int3). Consequently, incorrect implementation in the field of environment is likely to persist, until the national inspections become more active or until the member states agree to vest one of the EU institutions with the same power to do inspections, which the Commission enjoys in the fields of fisheries or competition, as Jordan (1999) put it in section 2.4. of the literature review.

### **5.5.2. Limited willingness of EU institutions to ensure compliance**

The following two sub-sections will focus on the cases when EU institutions manage to overcome all the above mentioned barriers to detecting an infringement. The aim is to explain why even in many of these cases the Commission and the ECJ fail to make the member state comply. As indicated in Section 2.2. of the literature review, the low effectiveness of infringement procedures results from a combination of limited ability and willingness of the European

Commission and the European Court of Justice to ensure compliance. This sub-section aims to explain why EU institutions are sometimes not willing to push too hard for compliance.

In general, “the Commission considers very carefully starting or moving of each case of infringement, because it does not want to be blamed by the member states for being too harsh” (Int6). This careful approach has to do with Glachant’s (2001) observation that the ‘bureaucrates bruxellois’ usually have lower legitimacy than nation states, in the eyes of the public. If the Commission was ‘naming and shaming’ too much, national politicians could backfire by questioning the whole EU project (see section 2.2. of the literature review).

Int4 argues that the decision to refer a case of infringement to the European Court of Justice is quite political, as it lies in the hands of the College of Commissioners. An official from the Cabinet of the Environment Commissioner Potočník recalls many examples of national politicians’ efforts to slow down or halt infringement proceedings: “We have seen quite a few ministers who wanted to delay this or that.” However, the Czech ministers of environment have not tried to influence the Commission in this way in the two years Mr. Potočník has been in his position, according to this official. Int1 and Int3 add that the pressure to halt the infringement proceeding comes sometimes from the President of the Commission Barroso or from Cabinets of other Commissioners. The heavy lobbying can be demonstrated in the example of the protection of hamsters as keystone species in the French region of Alsace: “President of the EPP group Joseph Daul approached Barroso on this issue, every time they saw each other” (Int1). Nevertheless, the Commission pursued the case.

This probably has to do with the highly objective approach of the current Commissioner Potočník whose neutrality was highlighted by several respondents. Int3 observes that Potočník’s predecessor Dimas from Greece was much more passive in enforcement. Int3 speculates that Dimas was passive, in order to avoid going against his own country which belongs to the biggest implementation laggards (see Figures 13 and 14 in chapter 4). Int3 illustrates the differences in approaches of the Commissioners in the example of toxic waste in the Italian commune of Rodano. While Dimas was hesitant to start the second round of the infringement procedure and the case was frozen for two years, Potočník chose to personally remind the Italian minister about the threat of sanctions, which helped speed up the solution of the problem (Int3). This demonstrates that personal resistance of the Commissioner can form a relevant barrier to effective implementation.

Similarly, the infringement case can be slowed down at any lower level as well, because “the Commission is not a neutral God” (Int16). As any other institution it is made up of people who pursue their own interests and agendas (Int10). The same might be true for the European

Court of Justice whose record has also not been perfect (Int2). Consequently, Int4 admits that the Commission might be more reluctant to progress with a case against more powerful member states. Or as Jordan (1999) put it in section 2.2. of the literature review, the Commission closes the eyes, especially in cases of bigger member states, states with strongly Euroskeptic population and states which contribute significantly to the EU budget. However, Int1 downplays these arguments by explaining that horizontal task forces on different sub-sectors of the environment aim to ensure maximum equality of approaches of the Commission towards non-compliant member states.

In conclusion, a decision to open or move forward a case of infringement is not made by a machine, it is an outcome of a chain of steps taken by many people with various interests. I have demonstrated that the infringement procedure can be slowed down or even halted by Commission officials on all levels, ranging from President Barroso to desk officers in the enforcement unit of DG ENV. However, the Commission cannot afford to make the EU legislative system look ineffective (Peters 1997) and therefore in many cases it actively works on ensuring compliance. The following sub-section will look into these cases, when the Commission knows about the infringement and is willing to tackle it.

### **5.5.3. Limited ability of EU institutions to ensure compliance**

After going through the barriers to detection and to willingness, this sub-section will present barriers to the ability of EU institutions to ensure compliance, in cases when the Commission knows about the breach and is willing to halt it. First of all, it is important to realize that the infringement procedures cannot achieve the unachievable. As I have demonstrated in section 5.4., some directives are poorly designed. If a directive dictates something which is in sharp conflict with the local conditions, or if its ambitions are much higher than the present economic situation allows, no penalties by the ECJ can solve the breach. The current Environment Commissioner Potočník is aware of this limitation and therefore he prefers using preemptive measures, such as linking of the financial support from EU funds with environmental priorities, rather than infringement proceedings (Int5).

Secondly, the infringement mechanism allows formally only for communication between the Commission and the central government of the member state. A problem arises if a municipality or a region is responsible for implementation and does not comply. The only thing the Commission can do, is keep sending letters to the Ministry of Environment, which has, however, no authority over the elected representatives of the regions or municipalities. Int13 demonstrates this in the case of the directive on treatment of urban wastewater, when several Czech municipalities have decided not to build a wastewater treatment facility, although the



directive obliged them to do so by the end of 2010. If these decisions are predominantly an outcome of limited economic resources of the municipalities, exchanges of letters between Brussels and Prague can hardly solve the problem.

Thirdly, the resources of enforcement units in the Commission are limited and the infringement proceedings take a very long time. As demonstrated in sub-section 5.5.1., within DG ENV only a capacity of 0.5 person is available for enforcing environmental legislation in the Czech Republic. Int4 explains that to bring a case against a non-compliant state to the European Court of Justice, the European Commission often needs very technical information, which it can acquire only from the member state. As the state does not want to hurt its own interests by providing the information too quickly, the breach does not always result in an ECJ judgment against the non-compliant member state, because of lacking evidence (Int4). And even if it does, the infringement proceeding usually takes very long (Int4). Int11 elaborates that in the case of the EIA directive the time-span between the dispatch of the letter of formal notice and the first judgment of the Court of Justice against the Czech Republic was four years. Kraemer (2003) showed in section 2.2. of the literature review that this is no excessive length, as the average time-span in 2000 and 2001 amounted to 59 months. And it could take several more years before the Court decides on the sanctions, which is the only moment that would raise the interest of most Czech decision-makers (Int11). Because in the brief period of seven years of membership the Czech Republic has not yet been sentenced in the second round, all the infringement proceedings so far have resembled mere harmless exchanges of letters (Int11). Nonetheless, even if the Czech Republic was sentenced in the second round and had to pay a penalty, the only one who would truly lose would be the Czech taxpayers (Int16), as the responsible politicians or civil servants would not be personally liable for the expenditures.

Lastly, the long years of letter exchanges and sometimes even the ECJ judgment have no direct effect on the environmental problem that is to be solved. Int3 demonstrates this in the example of half a million tons of toxic waste which have been lying for a decade without treatment in the Irish countryside, causing a 40% higher incidence of cancer in the region. Sometimes the breach can even result in irreversible damages to the environment, which no later penalties could mitigate. This is particularly true for infringements related to large infrastructural projects, such as highways (Int3).

The probability of preventing the environmental damage in time could be increased through three measures – speeding up the infringement procedure, higher use of interim measures and stricter use of EU structural funding. As regards the length of infringement

proceedings, several respondents expect that the proceedings should get shorter with the modifications introduced by the Treaty of Lisbon (see section 2.2. of the literature review).

With respect to the ECJ interim measures, which could ban a construction or a hunt, until the fulfillment of the environmental conditions and could thus make a real difference on the ground, Int3 explains that the ECJ is very restrictive in their use. The Commission would have to prove urgency, certainty of the breach and relevance of its interest over the interest of the opposite side. Being aware of its low success rate in this case in the past, the Commission is hesitant to ask the Court for interim measures and prefers to focus its limited enforcement resources elsewhere (Int3). Int13 notes that the low use of interim measures by the ECJ, as well as by the national courts, harms not only the environment. If a court neglects the option to impose interim measures, and bans a highway first after it has been finished, “it just raises emotions of the public against NGOs” (Int13), courts and the EU.

As regards the EU structural funds, these are essential for financing many of the large construction projects, which cause irreversible damage to the environment, unless the environmental conditions are fulfilled. Thus timely inspections and consequent cuts in funding seem to present the most promising opportunity to prevent environmental damages in time, before the damages become irreversible (Int2). Unlike the harmless exchanges of letters, the threat of interruption of financial flows from the EU can be very effective. “It targets national politicians at their weak spot because the voters would get angry, if the regions or towns did not get the promised money” (Int13). Int3 even advocates for a higher involvement of the Commission in the phase, when the conditions of tenders for big infrastructural projects are set, because this is the time when the most beneficial modifications for the environment can still be made.

This section presented the three main limitations of infringement procedures. Many cases of incorrect implementation probably remain undetected, because the Commission itself has quite limited resources and has to rely on incomplete information from the member states, NGOs and media. Even if the Commission knows about the breach, sometimes it turns a blind eye to it because – as any other institution – it is made up of people who pursue their own interests and agendas. And even if the Commission decides to pursue the case, the infringement procedure sometimes cannot ensure compliance. The ability of the Commission to ensure compliance is particularly limited in cases when the directive is poorly designed, when the breach occurs at the local level the Commission has no direct ties with and especially if irreversible damage to the environment has already been done, while the Commission was exchanging letters with the member states for years. Therefore in the cases of large construction projects the

Commission should make better use of interim measures and linkages with EU structural funds, which could achieve a positive change on the ground.

## 6. SUMMARY OF KEY FINDINGS AND POLICY RECOMMENDATIONS

After presenting the detailed results of my analysis in the previous two chapters, this chapter aims to summarize all the key findings of this thesis (section 6.1.) and then to offer recommendations to decision-makers both in Prague (sub-section 6.2.1.) and in Brussels (sub-section 6.2.2.).

### 6.1. *Summary of key findings*

Chapter 4 has shown that both the Czech Republic and the environmental legislation have a high relative propensity to infringements, according to the official Commission data. Within all the pending infringements against the Czech Republic, the environmental sector is quite dominant, occupying the first place with a full third of all cases. I have explained in section 2.4. that the high number of infringements of environmental legislation is a result of the high number of violative opportunities – i.e. relatively big amount of environmental legislation – and the high vulnerability of environmental legislation due to high costs and the strong resistance from economic interests, which often collide with the aims of the legislation. Simultaneously, in a cross-state comparison of implementation performance of EU environmental legislation, the Czech Republic appears to be one of the biggest laggards among the new member states. On the other hand, the variance within EU-12 is not too high, the gap between the Czech Republic and the best performers is not abysmal. Within a broader scope of all member states, the Czech Republic performs slightly under the average of EU-27 in implementation of EU environmental legislation.

Chapter 5 addressess the key research question of this thesis, what barriers stand in the way to more effective implementation of EU environmental directives in the Czech Republic, where the term effective implementation refers to the degree to which both legal and practical implementation correspond with the objectives defined in the directives. I have identified four narratives explaining the relatively low level of effective implementation of EU environmental directives in the Czech Republic. Two of them are specific for the Czech Republic, while the other two encompass barriers which are embedded in the EU system of administration. The key domestic barriers are resistance of Czech politicians to environmental legislation as well as to any EU initiatives and poor quality of the Czech civil service, whereas the Union-level barriers are poor quality of some directives and limited impact of the infringement procedures. None of the narratives alone can explain non-compliance, but the combination of the four seems to cover all the major barriers. I will now summarize all four narratives, one by one.

The first narrative on defiance of EU environmental legislation by many Czech politicians has two features – anti-environmental and anti-EU sentiments. As regards the former, environmental legislation is viewed by many Czech decision-makers primarily as a barrier to economic development. This perception probably has to do with the Czech Republic's long history of state involvement in economic development and with the fact that no other EU country has such a high share of industry in GDP, as the Czech Republic (38%). In addition, the negative perception of environmental legislation is reinforced by the current economic crisis. As a result, the Ministry of Environment has a weak position within the government and its position has been further weakened recently by nine changes in the seat of the minister within the last five years. Consequently, the transposition efforts of the Ministry of Environment can be easily blocked by other ministries representing stronger economic interests, by a veto of the President, or even by an amendment filed by a single MP, as allowed by the constitution. It is fair to assume that these amendments by individual MPs are often pushed through by various lobbyists, considering the Czech Republic's 21<sup>st</sup> position among EU-27 at the latest Corruption Perception Index of Transparency International.

As regards the anti-EU sentiments, these have two main consequences. In the negotiation phase, the neglect by politicians, and consequently by civil servants, means that the Czech Republic often has to adopt directives which it did not shape according to its needs. In the implementation phase, it is not necessarily easier to get through the Czech Parliament transposition legislation than 'domestic' legislation. This is because the anti-EU sentiments, combined with the widespread low respect for the rule of law, allow Czech legislators to demonstratively stress their 'sovereignty' and ignore the directives, or even reject them out of spite. This might slow down implementation by years. Although sometimes this behavior might be a rational effort to control the scope and the speed of the European integration, in the long term it severely undermines the reputation of the Czech Republic and deteriorates the Czech position in future EU negotiations.

The second narrative investigates poor quality of the Czech civil service. It highlights two main issues – gaps in institutional memory due to high turnover of civil servants and low level of cooperation between negotiators and implementers within the institutions. The high turnover results from a combination of factors: low prestige of the profession of civil servants in the Czech Republic, low salaries and lack of positive reinforcement for good work, and low stability due to missing civil service legislation and frequent changes in the seat of the Minister of Environment. Consequently, the experts, who had taken part in negotiations and could thus understand why each particular provision is included in the directive, often no longer work at the

ministry during the implementation phase. Even if the negotiators are still around at the time of implementation, the cooperation between them and the units responsible for implementation is rather low. Hereby my data confirms the existence of 'Chinese walls' within the institutions, identified by Mastenbroek (2005). If the communication between negotiators and implementers improved, it would not only facilitate implementation after the adoption of the directive, but it could also ensure stronger inclusion of implementation concerns in the negotiation phase. Like some other barriers, this barrier has been gradually reduced through the experience with longer EU membership and especially with the Council Presidency in spring 2009, when all the officials could see that the Czech Republic can really shape the directives. Another barrier has to be added in cases when several ministries share responsibility for the implementation – 'Chinese walls' between institutions. This has to do with Toshkov's (2009) observation that a conflict between the ministries of agriculture and industry on one side, and environment on the other is a recurring theme in Czech politics, even if these are led by ministers from the same political party.

The third narrative sees the obstacle in poor quality of some directives which are to be implemented. The directives often pay little attention to implementation concerns, either because the Commission neglected the issue in its legislative proposal, or due to changes during the later legislative process. These later modifications frequently neglect implementation concerns, because many other variables need to be taken into account, in order to reach any compromise in the complex institutional setting of the EU. The neglect of implementation concerns has to do with two symptoms of the Union's inbuilt pathology of non-compliance. Firstly, the EU produces excessive numbers of directives because all the EU institutions and their employees need to justify their existence and because politicians and civil servants on all levels are motivated to make changes in legislation, as these make them more visible. Secondly, although only the member states are in charge of implementation, the Commission and the Parliament have a strong say in the negotiation phase, which gives them an unhealthy incentive to adopt overambitious legislation. As a result, EU directives sometimes disregard the economic conditions, especially if the time gap between the negotiation phase and the implementation phase is very long. In other cases, they might be too specific, not paying sufficient respect to heterogeneity of legal and natural conditions.

The last narrative explains that infringement procedures can have only a limited impact because the Commission does not know about all the breaches, or it does not want to push too hard, or it is not able to ensure compliance, even if it knows about the infringement and wants to tackle it. Many cases of non-compliance, especially of incorrect transposition and application, remain undetected by the Commission because of the low capacity of enforcement units in DG

Environment. For instance, DG Environment has only one person responsible for all infringements against the Czech Republic and Slovakia. Hence the Commission has to rely on complaints by NGOs and information from the media on the most blatant cases of non-compliance. This information is especially limited in countries where inspections are of a very low quality, which is enabled by a lack of binding EU-wide minimal standards of inspections.

As any other institution, the Commission is made up of people who have their own agenda. Thus a decision to open or move forward a case of infringement is not automatic, it is rather an outcome of a chain of steps taken by several people with various interests. The infringement process can be slowed down or even halted by Commission officials on all levels ranging from President Barroso to desk officers in the enforcement unit of DG Environment, who all find themselves under heavy lobbying by representatives of the member states. Despite these pressures, in many cases the Commission actively works on ensuring compliance, as it cannot afford to threaten the effectiveness and image of the EU legislative system by excessive passivity. Nonetheless, the Commission can hardly succeed, if the directive is poorly designed and it dictates something which is in sharp conflict with the local conditions, or if its ambitions are much higher than the present economic situation allows. Nor can the Commission make a huge difference by sending more letters to Prague in cases when the breach occurs at the local level the Commission has no direct ties with, as demonstrated in the example of reluctance of some Czech municipalities to construct wastewater treatment facilities. The infringement proceedings are particularly ineffective in cases of large construction projects when sometimes irreversible damage to the environment has already been done, while the Commission has been exchanging letters with the member states for years. Therefore in the next section, I will advocate higher use of interim measures and linkages with EU structural funds in these cases, which could achieve a positive change on the ground.

After summarizing each of the four narratives, I want to synthesize the findings and assess the relative relevance of the narratives. Only a few above mentioned barriers are tightly linked to the environmental nature of the legislation. Most of these are covered by the first narrative – the negative perception of environmental legislation by many decision-makers related to the high industrial orientation of the Czech economy and the weak position of the Ministry of Environment within the government, further weakened recently by frequent changes of the minister. Other narratives mention irreversibility of ecological phenomena, excessive specificity conflicting with heterogeneity of natural conditions and unfeasible ambitions, which are more prominent in the environmental sector, as explained in section 2.4. Most other identified barriers seem to have a cross-sectoral character.

In line with the findings of academic literature, I have identified both domestic barriers and barriers occurring at the EU-level. As regards the relative weights of the barriers, the domestic barriers received much higher ratings (see Table 3 and Appendix 4 for all the details). Nevertheless, even the 'poor quality of some directives', which is least supported by highly ranked barriers, can in some cases alone block any implementation efforts. Therefore I conclude that all four narratives are needed to account for non-compliance with EU environmental directives in the Czech Republic.

## **6.2. Policy recommendations**

Based on the data analysis above, I recommend the following to those who would like to contribute to improvement of the implementation performance of the Czech Republic in the field of EU environmental policy:

### **6.2.1. for the Czech decision-makers**

1. to make more effort to keep experienced high-quality experts in the public administration.  
The positive experience from the EU Council Presidency in spring 2009 has shown that this can be partly achieved through performance-based remuneration. In addition, the Czech Republic should fulfill one of its EU membership's obligations and the Czech Parliament should finally allow the civil service act to become effective. This will increase the stability of the civil service, make the civil service more independent from changing political tides and contribute to an increase in prestige of this profession in the long term.
2. to make an assessment of past success stories and failures of the involvement of Czech politicians, experts and diplomats in EU negotiations, and to regularly update this assessment (on the level of the EU Committee of the Government). This could facilitate the learning process of all representatives of the Czech Republic and it could also help stress the importance of the negotiation phase for all the decision-makers.
3. to involve in the negotiation phase the representatives from the Legislative Unit of the ministry, who will be later responsible for the implementation of the negotiated directive. This might sound very time-consuming for them, but the key is merely to get them involved at the beginning of the process of the preparation of the Framework Position of the Czech Republic, immediately after the Commission publishes the legislative proposal. This will establish contact between the negotiators and the future implementers and help raise awareness of the implementers of what is currently negotiated. If the implementers become more involved in the negotiation phase, this should result in lessening of the neglect of the implementation concerns.



4. to strengthen local NGOs through increased funding, or at least through a reduction of the administrative barriers. I am aware that the opposite is currently happening in the Czech Republic, but I insist that empowering the watchdogs is one of the best ways to improve the implementation performance of the Czech Republic.
5. to modify the Constitution and increase the number of MPs needed for filing an amendment, or to introduce a specialized legislative procedure for transposition. This advice is probably the most utopian because the MPs themselves would have to introduce these limitations of their competencies. However, the recent drops in MPs' salaries have shown that even such changes are possible if the voters put sufficient pressure on the legislators. If the MPs did not have as much power in the transposition phase, they would hopefully re-focus their energy into the negotiation phase, where their stances could actually make a difference. The interests of the Czech Republic would be represented more strongly, which would also make the implementation easier.

#### **6.2.2. for the EU decision-makers**

1. to increase the use of interim measures, in order to ensure that activities detrimental to the environment are stopped before irreversible ecological damage is done.
2. to tighten the link between EU environmental policies and the priorities of EU structural funding. In particular, EU institutions should not hesitate to cut the funding, in cases when the project breaches the environmental conditions.
3. to strive for codification of EU-wide standards of inspections, so that in some member states environmental policies do not stay just on paper.
4. to support local NGOs and media, especially in new member states, through financing, education and exchange programs with their peers in old member states. This should result in a higher quantity and quality of complaints about non-compliance, both directly and indirectly, through a later involvement of activated citizens. The Commission could activate civil society even more if it improved its communication and put more efforts in explaining to the citizens how they will benefit from compliance in each particular case of infringement.
5. to shift some units of DG ENV from negotiation to enforcement, as most environmental sub-sectors are already covered by EU legislation and now most human potential is needed in the area of implementation.
6. to invest more energy in analyzing the rich data available in national reports and EEA reports.

7. to shift the focus of environmental legislation from restrictive measures to more green-growth oriented ones, in order to make the directives more acceptable and more attractive for the national decision-makers who are primarily concerned about economic growth.
8. and to consult any legislative proposal more actively with the member states, as well as with the enforcement units, in order to accurately address their implementation concerns.

All the identified EU-level barriers are from their nature significant for all the member states. In addition, some of my findings on national-level barriers could be relevant beyond the Czech Republic, as the mechanisms behind non-compliance are essentially the same all over the EU. Consequently, I hope that the outcomes of my case study, as well as some of the policy recommendations presented above, could be of use for scholars and decision-makers also in other member states, especially the new ones.

This thesis has identified several dozens of barriers, grouped the most relevant ones under four narratives and introduced recommendations for the decision-makers. If the policy-makers both in Prague and Brussels follow some of the advice, the currently rather problematic implementation of EU environmental directives in the Czech Republic could improve, which could significantly benefit the environment in the Czech Republic, as EU legislation accounts for approximately 80 % of the Czech environmental legislation.

This thesis aims to show the path to more effective implementation, but it does not say that the Czech Republic needs to follow it all the way, as 100% compliance would entail such a level of administrative cost, which would be with a strong likelihood socially inefficient (Schucht 2001). This thesis presents a toolbox, but the decision on the goal lies in the hands of the democratically elected representatives of the Czech Republic, for whom imperfect implementation presents one of the tools to control the scope and the speed of the European integration (Glachant 2001).

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## **PERSONAL COMMUNICATIONS**

The author of this thesis made an agreement with all the 16 respondents of qualitative interviews that their identity will not be disclosed. Therefore this thesis does not include a list of personal communications. The respondents as a group are described in section 3.2. of the chapter on methodology. The interviews were undertaken in Prague and Brussels in May and June 2011. Within the thesis, the interviews are referenced as Int1 – Int 16, the codes from one to 16 were assigned to the interviews randomly.

## Appendix 1: List of EU directives adopted since 1 May 2004 listed in EUR-Lex under the category [15.10. Environment](#)<sup>11</sup>

1. Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment
2. Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)
3. Commission Directive 2010/79/EU of 19 November 2010 on the adaptation to technical progress of Annex III to Directive 2004/42/EC of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds
4. Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings
5. Commission Directive 2010/22/EU of 15 March 2010 amending, for the purposes of their adaptation to technical progress, Council Directives 80/720/EEC, 86/298/EEC, 86/415/EEC and 87/402/EEC and Directives 2000/25/EC and 2003/37/EC of the European Parliament and of the Council relating to the type-approval of agricultural or forestry tractors
6. Commission Directive 2010/26/EU of 31 March 2010 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery<sup>5</sup>
7. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds
8. Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides
9. Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations
10. Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements
11. Commission Directive 2009/90/EC of 31 July 2009 laying down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status<sup>10</sup>
12. Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations
13. Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006

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<sup>11</sup> The database lists 1,945 EU directives in force on 2 August 2011, out of which 352 are listed under the category [15.10. Environment](#) (including directives adopted solely by the Commission)

14. Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (Text with EEA relevance)
15. Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community
16. Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC 15
17. Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims
18. Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms (Recast)
19. Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles
20. Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community
21. Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council 20
22. Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law
23. Directive 2008/103/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators as regards placing batteries and accumulators on the market
24. Directive 2008/102/EC of the European Parliament and of the Council of 19 November 2008 amending Council Directive 79/409/EEC on the conservation of wild birds, as regards the implementing powers conferred on the Commission
25. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives
26. Commission Directive 2008/74/EC of 18 July 2008 amending, as regards the type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and access to vehicle repair and maintenance information, Directive 2005/55/EC of the European Parliament and of the Council and Directive 2005/78/EC 25
27. Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)

28. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe
29. Directive 2008/35/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment as regards the implementing powers conferred on the Commission
30. Directive 2008/34/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2002/96/EC on waste electrical and electronic equipment (WEEE), as regards the implementing powers conferred on the Commission
31. Directive 2008/33/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2000/53/EC on end-of-life vehicles, as regards the implementing powers conferred on the Commission 30
32. Directive 2008/32/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2000/60/EC establishing a framework for Community action in the field of water policy, as regards the implementing powers conferred on the Commission
33. Directive 2008/27/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms, as regards the implementing powers conferred on the Commission
34. Directive 2008/12/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators, as regards the implementing powers conferred on the Commission
35. Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version)
36. Commission Directive 2007/71/EC of 13 December 2007 amending Annex II of Directive 2000/59/EC of the European Parliament and the Council on port reception facilities for ship-generated waste and cargo residues 35
37. Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks
38. Directive 2007/51/EC of the European Parliament and of the Council of 25 September 2007 amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury
39. Commission Directive 2007/34/EC of 14 June 2007 amending, for the purposes of its adaptation to technical progress, Council Directive 70/157/EEC concerning the permissible sound level and the exhaust system of motor vehicles
40. Commission Directive 2006/139/EC of 20 December 2006 amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of arsenic compounds for the purpose of adapting its Annex I to technical progress
41. Directive 2006/113/EC of the European Parliament and of the Council of 12 December 2006 on the quality required of shellfish waters 40
42. Directive 2006/93/EC of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3 , Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988) (codified version)

43. Directive 2006/122/EC of the European Parliament and of the Council of 12 December 2006 amending for the 30th time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (perfluorooctane sulfonates)
44. Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration
45. Council Directive 2006/105/EC of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of environment, by reason of the accession of Bulgaria and Romania
46. Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel 45
47. Commission Directive 2006/89/EC of 3 November 2006 adapting for the sixth time to technical progress Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road
48. Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC
49. Directive 2006/44/EC of the European Parliament and of the Council of 6 September 2006 on the quality of fresh waters needing protection or improvement in order to support fish life
50. Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC
51. Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC 50
52. Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste
53. Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC - Statement by the European Parliament, the Council and the Commission
54. Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (Codified version)
55. Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC
56. Directive 2005/90/EC of the European Parliament and of the Council of 18 January 2006 amending, for the 29th time, Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (substances classified as carcinogenic, mutagenic or toxic to reproduction — c/m/r) 55
57. Commission Directive 2006/8/EC of 23 January 2006 amending, for the purposes of their adaptation to technical progress, Annexes II, III and V to Directive 1999/45/EC of the European Parliament and of the Council concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations
58. Directive 2005/88/EC of the European Parliament and of the Council of 14 December 2005 amending Directive 2000/14/EC on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors
59. Directive 2005/84/EC of the European Parliament and of the Council of 14 December 2005 amending for the 22nd time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (phthalates in toys and childcare articles)

60. Directive 2005/69/EC of the European Parliament and of the Council of 16 November 2005 amending for the 27th time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (polycyclic aromatic hydrocarbons in extender oils and tyres)
61. Commission Directive 2005/78/EC of 14 November 2005 implementing Directive 2005/55/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles and amending Annexes I, II, III, IV and VI thereto 60
62. Directive 2005/59/EC of the European Parliament and of the Council of 26 October 2005 amending for the 28th time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (toluene and trichlorobenzene)
63. Directive 2005/55/EC of the European Parliament and of the Council of 28 September 2005 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles
64. Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements
65. Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC
66. Directive 2005/20/EC of the European Parliament and of the Council of 9 March 2005 amending Directive 94/62/EC on packaging and packaging waste 65
67. Commission Directive 2005/21/EC of 7 March 2005 adapting to technical progress Council Directive 72/306/EEC on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in vehiclesText with EEA relevance
68. Commission Directive 2005/13/EC of 21 February 2005 amending Directive 2000/25/EC of the European Parliament and of the Council concerning the emission of gaseous and particulate pollutants by engines intended to power agricultural or forestry tractors, and amending Annex I to Directive 2003/37/EC of the European Parliament and of the Council concerning the type-approval of agricultural or forestry tractors
69. Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air
70. Commission Directive 2004/111/EC of 9 December 2004 adapting for the fifth time to technical progress Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road
71. Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms 70
72. Commission Directive 2004/98/EC of 30 September 2004 amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of pentabromodiphenyl ether in aircraft emergency evacuation systems for the purpose of adapting its Annex I to technical progress
73. Commission Directive 2004/96/EC of 27 September 2004 amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of nickel for piercing post assemblies for the purpose of adapting its Annex I to technical progress

## **Appendix 2: Articles 258 and 260 of the Treaty on Functioning of the European Union**

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### **CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION**



*Article 258*  
(ex Article 226 TEC)

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

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*Article 260*  
(ex Article 228 TEC)

1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 259.

3. When the Commission brings a case before the Court pursuant to Article 258 on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

## Appendix 3: The ranking form

<p>Dear respondent,</p> <p>this form is a part of my Master Thesis research on barriers to implementation of EU environmental directives in the Czech Republic.</p> <p>In the first phase of the research, I have undertaken 16 qualitative interviews with key experts in the field in Prague and Brussels. Based on these interviews and a thorough review of academic literature, I have identified around 50 potential barriers which I had grouped below into 4 categories.</p> <p>In the second phase of my research, I would like to rank the barriers according to their relevance. Therefore I would like to know your expert opinion on which of the following phenomena pose significant barriers to CORRECT TRANSPOSITION AND APPLICATION of EU environmental directives, adopted since 2004, in the Czech Republic. Based on your own experience and judgment, please assign to each item a numerical value between 1 and 5 according to their relevance as explanatory factors for incorrect implementation, ranging from 1 (IRRELEVANT, not a barrier) to 5 (very HIGH relevance). You may leave some items without rating, in case you do not have an opinion on them.</p> <p>Filling in the form should not take more than 10-15 minutes, please try to do it by 4 August 2011. Thank you in advance for your time. In case of any questions or comments, please do not hesitate to contact me at jevsejenko@gmail.com.</p> <p>Alexandr Jevsejenko, Central European University, Budapest.</p>	<p><b>In this column, please type a value between 1 and 5</b></p>
<p><b>EU level phenomena occurring in the negotiation phase</b></p> <ul style="list-style-type: none"> <li>• Insufficient attention paid to implementation concerns during the negotiation of the directive</li> <li>• Too specific directives which do not leave sufficient space for adjusting to different local conditions (both legal and natural)</li> <li>• Overambitious directives disregarding economic conditions</li> <li>• Lack of country-specific assessments in the impact assessment of the Commission</li> <li>• Insufficient consultation of the member states by the Commission before adopting the legislative proposal</li> <li>• Competition between rotating presidencies of the Council to adopt as much legislation as possible</li> <li>• Absence of mandatory correlation tables</li> <li>• Weak linkages between goals of EU environmental legislation and priorities of EU structural funds</li> <li>• Unfeasibly tight transposition deadlines</li> <li>• Need of the Commission to produce new drafts to justify its existence</li> <li>• Under-representation of Czechs in the Commission</li> <li>• A long time gap between the negotiation phase and the implementation phase (uncertain future and higher priority of more urgent matters)</li> </ul>	

• Low-quality translations of the directives	
<b>EU level phenomena occurring in the implementation phase</b>	
• Limited power of EU institutions to acquire information on the ground, leading to their very legalistic approach to enforcement	
• Low prestige of implementers' positions within the institutions (as opposed to creators of new laws)	
• Lack of genuine mutual communication, trust and cooperation between the Commission and member states	
• A long time span between a complaint on non-compliance and an ECJ judgment on penalties	
• Insufficient resources of DG ENV enforcement units	
• Reluctance of some Commissioners to start infringement proceedings or move them to the next level	
• Reluctance of the Commission to withhold payments from structural funds in cases of non-compliance	
• Limited exchange of experience between member states on implementation issues	
• Commission's failure to draft promised guidance documents on time	
<b>Member state level: issues related specifically to EU matters</b>	
• Rather small size of the Czech Republic	
• Short experience with membership	
• Low level of cooperation between negotiators and implementers within the institutions	
• Low priority given by responsible experts to negotiation of the directives	
• Tensions between ministries in cases when they share responsibility for implementation	
• Poorly designed or executed mechanism of coordination of implementation	
• Low support for the EU among Czech citizens	
• Low interest of the Czech media in detection of non-compliance with EU law	
• Low involvement of the Parliament in EU negotiations after the Framework Position towards the Commission proposal is finalized	
• Zero experience of the Czech Republic with penalties from the EU Court	
• Defiance of some Czech politicians towards anything 'coming from Brussels', their concern not to overachieve in implementation	
<b>Member state level: general issues in the Czech Republic</b>	
• High level of corruption	
• Individual MPs' constitutionally guaranteed right to amend draft bills	

• Low respect for the rule of law among Czech politicians	
• Weak position of the Ministry of Environment within the Czech government	
• The view of some Czech decision-makers that environmental legislation is primarily a barrier to economic development	
• Lack of experts who possess both legal and technical education	
• Frequent changes in the seat of the Minister of Environment of the Czech Republic	
• Low capacity of the Czech Environmental Inspectorate (ČIŽP)	
• Scattering of the Czech environmental legislation into many various pieces of legislation	
• Strong industrial orientation of the Czech economy	
• Weak civil society and a lack of vivid civic legal culture	
• Lack of the specialization “legislator” at faculties of law in the Czech Republic	
• Low salaries and low prestige of the Czech civil servants, related to a missing legislation on civil service	
• Gaps in institutional memory due to high turnover of civil servants	
<b>Please feel free to elaborate on your answers in writing:</b>	

## Appendix 4: The complete rating of all barriers by all respondents

Potential barrier to effective implementation of EU env. directives in the Czech Rep.																			MEDIAN	MEAN	MIN	MAX
EU level phenomena occurring in the negotiation phase																			2	2,46	1	5
• Insufficient attention paid to implementation concerns during the negotiation of the directive	5	4	4	2	4	4	3	5	4	4	3	3	2	5					4	3,71	2	5
• Too specific directives which do not leave sufficient space for adjusting to different local conditions (both legal and natural)	1	3	4	2	2	1	2	2	3	3	1	3	2	3	3				2	2,33	1	4
• Overambitious directives disregarding economic conditions	3	2	3	2	2	2	3	3	4	3	3	1	1	4	5				3	2,73	1	5
• Lack of country-specific assessments in the impact assessment of the Commission	1	1	1	3	3	1	2		4	5	2	3	2	4	2				2	2,43	1	5
• Insufficient consultation of the member states by the Commission before adopting the legislative proposal	1	2	3	3	3	1	2	2	3		3	2	2	2					2	2,23	1	3
• Competition between rotating presidencies of the Council to adopt as much legislation as possible	1	3	5	3	2	1	2	1	2	2	3	1	2	3	3				2	2,27	1	5
• Absence of mandatory correlation tables	3	3	3	3		1	2	3	2	3	2	1	3	2					3	2,38	1	3
• Weak linkages between goals of EU environmental	1	3	2	2	3	1	2	1	3	4		2	5	3					2	2,46	1	5

legislation and priorities of EU structural funds																			
• Unfeasibly tight transposition deadlines	1	2	2	4	1	3	2	3	3	3	1	4	2	3		3	2,43	1	4
• Need of the Commission to produce new drafts to justify its existence	1	1	2	4	1	2	2	2	4	3	1	2	1	2	5	2	2,20	1	5
• Under-representation of Czechs in the Commission	1	1	2	3	2	1	2	2	3	1	1	1	2	2	3	2	1,80	1	3
• A long time gap between the negotiation phase and the implementation phase (uncertain future and higher priority of more urgent matters)	5	3	4	4	3	4	3	2	2	4	4	3	2	2	1	3	3,07	1	5
• Low-quality translations of the directives	1	4	2	2	2	1	2	2	2	3	2	1	1	2	1	2	1,87	1	4
EU level phenomena occuring in the implementation phase																3	2,91	1	4
• Limited power of EU institutions to acquire information on the ground, leading to their very legalistic approach to enforcement	5	4	4	5	2	1	2	3	3	5	2	2	2	4	3	3	3,13	1	5
• Low prestige of implementers' positions within the institutions (as opposed to creators of new laws)	4	2	3	4	2	2	2	3	3	3		2	4	5	3	3	3,00	2	5
• Lack of genuine mutual communication, trust and cooperation between the Commission and member states	2	4	4	4	3	3	2	1	3			3	2	3	4	3	2,92	1	4
• A long time span between a complaint on non-compliance and an ECJ judgment on penalties	4	4	4	3	3	1	3	2	3	4	4	3	4	4	1	3	3,13	1	4

• Insufficient resources of DG ENV enforcement units	5	4	4	4	2	2	3	1	3	4		3	3	4		3	3,23	1	5
• Reluctance of some Commissioners to start infringement proceedings or move them to the next level	2	4	4	3	3	1	3	1	3		1	2	3	3	1	3	2,43	1	4
• Reluctance of the Commission to withhold payments from structural funds in cases of non-compliance	2	4	2	3	1	1	3	1	4	4		3	4	4	1	3	2,64	1	4
• Limited exchange of experience between member states on implementation issues	3	3	4	4	4	3	2	2	4		3	3	4	3	1	3	3,07	1	4
• Commission's failure to draft promised guidance documents on time	4	3	3	2		1	2	2	2		2	4	2	4		2	2,58	1	4
<b>Member state level: issues related specifically to EU matters</b>																3	3,00	1	5
• Rather small size of the Czech Republic		1		2	1	1	2	2	2	1		2	4	2	1	2	1,75	1	4
• Short experience with membership		2		3	2	1	2	1	4	2	5	2	2	4	3	2	2,54	1	5
• Low level of cooperation between negotiators and implementers within the institutions		4		3	4	2	3	5	4	4		3	2	4	4	4	3,50	2	5
• Low priority given by responsible experts to negotiation of the directives		3		2	4	2	3	4	2	3		3	3	3	4	3	3,00	2	4
• Tensions between ministries in cases when they share responsibility for implementation		4		5	5	3	3	4	3	4		4	5	5	2	4	3,92	2	5
• Poorly designed or executed mechanism of coordination of		4		4	4	3	3	4	2	3		2	3	3	3	3	3,17	2	4

implementation																				
• Low support for the EU among Czech citizens		3		2	2	1	2	2	3	2	1	3	2	3	5		2	2,38	1	5
• Low interest of the Czech media in detection of non-compliance with EU law		4		2	4	1	2	1	3	2	3	3	3	4	4		3	2,77	1	4
• Low involvement of the Parliament in EU negotiations after the Framework Position towards the Commission proposal is finalized		4		3	5	1	2	4	3	2	3	3	3	5	5		3	3,31	1	5
• Zero experience of the Czech Republic with penalties from the EU Court		4		2	1	1	3	2	3	3	4	3	5	3	1		3	2,69	1	5
• Defiance of some Czech politicians towards anything 'coming from Brussels', their concern not to overachieve in implementation		4		3	5	3	4	3	4	3	3	4	5	5	5		4	3,92	3	5
Member state level: general issues in the Czech Republic																	4	3,47	1	5
• High level of corruption		3	4	4	5	4	3	3	3	3	5	4	3	3	1		3	3,43	1	5
• Individual MPs' constitutionally guaranteed right to amend draft bills		4	4	3	5	1	3	4	3	4		4	4	5	4		4	3,69	1	5
• Low respect for the rule of law among Czech politicians		5	3	3	5	1	3	4	4	4	3	4	2	5	1		4	3,36	1	5
• Weak position of the Ministry of Environment within the Czech government		5	4	4	4	3	4	5	4	3	5		4	5	2		4	4,00	2	5



