

TRANSPOSITION OF EU LEGISLATION IN NEW MEMBER STATES: A CASE STUDY OF THE CZECH REPUBLIC

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Abstract

EU implementation research has seen a significant development in the recent decade. However the study of transposition is still rather inconclusive. The present thesis partially fills in some of the existing research gaps. First, it engages theoretical and empirical impactation gathered by the scholarly literature to date. Second, two factors—conditionality and domestic politics, which are expected to influence the process of transposition, are derived the findings the analysis of secondary literature. Nevertheless, it shows that theoretical assumptions about the effects on the national transposition process of conditionality and the implications of transposition for the domestic legislative process does not hold in the present case. Rather, the thesis comes to the conclusion that transposing laws are very similar to regular legislation moved by the government. Additionally, the thesis also argues that administrative-legal aspects of transposition have good explanatory power. Finally, this thesis offers an overview of the very process of transposition and observes some features of the parliamentary debates in the Czech Parliament.

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List of abbreviations

CDP-CR – Chamber of Deputies of the Parliament of the Czech Republic

CEE – Central Eastern Europe

CEEC – Central Eastern European Countries

EU – European Union

NEM – national execution measure

TEU – Treaty on European Union

TFEU – Treaty on the Functioning of the European Union

1. Introduction

“Member States shall adopt all measures of national law necessary to implement legally binding Union acts“

(Art. 291 TFEU)

The fact that most of legislation adopted in the member states is, to one degree or another, related to EU rules is indeed not a novelty.¹ Nevertheless, the research on the process of implementation of EU rules into member states’ legal order, in other words the study of transposition, is still rather inconclusive.

A lot of research effort has been dedicated to the study of the impacts of various political, socioeconomic, legal and administrative factors and their influence on compliance with the rules which the EU uses as vehicles for the materialization of its policy goals. The study of transposition has always played a prominent role in this context. Researchers have come up with a plethora of explanation for the vitiation of transformation performance with respect to individual states as well as specific policy sectors. This research has generated a considerable body of literature that is available to newcomers to the field, who are thereby able to comprehend the complex interplay of factors that determine the eventual outcome of transposition of EU directives.

However, the more I immersed myself in the sea of theoretical postulates, the greater was my astonishment at the lack of attention paid to the domestic legislative processes. To be sure, before a successful transposition can be notified to the Commission, most directives have to be adopted by national legislatures. It is exactly the black box of domestic legislative process that still waits to be fully opened. I have undertaken to contribute to a better understanding of the mechanisms that are happening within this black box.

¹ For example Hix (2005, 211) claims that “approximately 80 per cent of all social, economic and environmental regulation applicable in the member states is adopted through the EU policy process.”

Therefore I would like to shed some light on the following question: How does the process of adoption of laws transposing EU directives differ from the adoption of purely domestic laws?

In order to answer the posed question, this thesis employs both qualitative and quantitative approaches that are based on extensive evaluation of available secondary literature on the topic; moreover it takes stock of the numerous documents and statistics produced by the EU institution. These sources are used mainly for the construction of the factors that can help explaining the patterns of the transposition of EU legislation within the Czech legislative process. Furthermore, I will take advantage of the database of draft bills and laws available from the website of the Czech Chamber of Deputies to construct a dataset of bills that I will use to test the validity of a number of proposed hypotheses. Finally, the last section of the present thesis, contains a quantitative content analysis of a set of Czech transposing laws with respect to the process of their adoption.

The thesis is structured as follows: the next section offers a brief review of the literature that has relevance to the topic of the present thesis. Subsequent chapter theocracies factors that I have, based on the study of existing literature, identified as having possible explanatory power with regards to the behavior of transposing laws in the Czech legislative process. Next, chapter 3 uses qualitative and quantitative analysis to evaluate the research value of the proposed explanations. Finally, the conclusion summarizes the thesis' main findings and suggests avenues for further research.

1.1. *Literature review*

This section introduces the contemporary scholarly debate on the implementation of EU law, especially in the new member states. A Review of the existing body of literature on the issue serves as the basis for posing a series of questions that are addressed later in this thesis. In order to analyze the topic comprehensively, it is also necessary to introduce to the basic concepts that

are used by scholars in the field and that are directly relevant to the various aspects of implementation being dealt with in the present thesis.

Identifying factors pertaining to implementation of EU law as well as both cross-national and cross-sectoral variation, in other words the independent variable, the implementation scholarship to date has produced two main suspects, namely, “the goodness of fit” and administrative capacity, in conjunction with a number of features of domestic policy process (see Mastenbroek 2005, 1104-1112; Treib 2008, 7-15).² However in the context of the present thesis I would like to point out the work by Steunenberg and Toshkov (2009, 951-952), in line with my research interest, observe that the research on transposition largely omits the administrative-legal factors in the rather technical and bureaucratic process of transposition. My thesis sets out in a similar direction to remedy this gap in our academic knowledge of EU compliance.

Besides plentiful explanatory variables, research into the implementation of EU legislation is further complicated by difficulties on the dependent variables. Indeed, Börzel (2001) doubts the extent of the alleged compliance deficit, that is often studied as the dependent variable (Börzel 2001, 804, 820). The operationalization of the dependent variable seems to be a major problem. Various studies come to contradicting conclusions, disparity of which can be explained by their different definition of the dependent variable (Hartlapp and Falkner 2009, 298). Some of those will be discussed below. All in all, the negative assessment of the methodological state of the art in the field is shared and repeatedly mentioned by many authors (Börzel 2001; Hartlapp and Falkner 2009; Treib 2008, 17-18; Mastenbroek 2005, 1112-1115). The following parts of my thesis bear these limitations in mind; however it is not possible to find an effective remedy to them given the limited scope of the work.

² A useful overview of EU implementation studies up to 2005 with basic description of their research design is provided in Mastenbroek (2005, 1105-1107, table 1).

The level of member states' compliance with European law can be studied in different manners that differ according to the selected methodological as well as theoretical positions. Nevertheless, in purely methodological terms, the empirical study of EU legislation compliance can be approached from several positions (Mastenbroek 2005). First, probably the most common approach consists in quantitative analysis of formal transposition data published by the European Commission (see Sedelmeier 2008; Toshkov 2008). Second, quantitative analysis of more sophisticated data, intended to better reflect the actual state of implementation understood as a complex process including not only transposition but also other aspects of compliance such as the achievement of the policy goals laid down in the directives (see Hille and Knill 2006). The third type of research is based on qualitative case studies with different levels of detail; a good example of possible methods for such research is provided in Falkner, Treib and Holzleithner (2008). Many authors tend to use official transposition notification records compiled by the European Commission. This approach is however disputed by some because it only reflects the level of formal compliance without exposing the underlying issues (Falkner and Treib 2008a, 164). The issue of the dependent variable is closely related to the diversity existing in terminology used in the field. The following section therefore sorts out the terms at hand and matches them with the offered dependent variables.

1.1. Terminology

However, prior to analyzing issues related to compliance and its extent, I will elucidate the meaning of this phenomenon. The literature on the topic offers various categorizations present; nevertheless, most of the authors distinguish among the three following terms: transposition, implementation, and compliance. Out of the available classifications I find Toshkov's (2008, 399, n. 2) particularly comprehensive:

[T]ransposition is a the process of formal adoption of rules and regulations that adapt the national legislation to the norms of European directives; implementation is a broader process that includes the formal legal aspects (transposition) as well as the practical application of the rules; compliance, defined as acting in accordance with certain standards, is broadly synonymous with implementation but emphasizes the exogenous source of the rules to be complied with.

The exact definition of the dependent variable usually also depends on the concrete focus of a particular study. For example, Falkner, Treib, and Holzleithner (2008b, 7-15), in their study inquiring specifically into application, point out the importance of the effectiveness of the enforcement of European law by courts and distinguish it from application with respect to final addressee of a norm. Implementation is then understood as the whole process comprising transposition, effective enforcement and application while compliance is more of a measure of the outcome of implementation (Treib 2008, 4). Tallberg (2002, 623), discusses the issue from a broader standpoint of international relations, compliance is a broader concept with two sources of non-compliance, namely the failure to implement and the failure to apply. I would like to subscribe to Tallberg's account. Nevertheless, the exact definition is not as important. What is important is, however, to see that the terms overlap and as such they are treated in the present thesis. The following section focuses on accounts of the level of EU law compliance in the existing literature.

1.2. Views on the overall level of compliance

As has been argued in section 1.1, a correct assessment of compliance is conditioned on a precise definition and operationalization of the subject of study. With respect to transposition of EU directives, two opposing views seem to emerge from the contemporary scholarly debate on the issue. On the one hand, a look at the official statistics of transposition suggests that the whole process is rather smooth in both new and old member states, with transposition rates at significantly over 95 percent (Börzel 2001; Falkner, Treib, and Holzleithner 2008). However a more in-depth examination reveals that the picture does not necessarily be all so bright. Indeed,

Falkner, Treib and Holzleithner. (2008b) give examples of 90 instances of implementation of social policy directives out of which only 11 percent proved to be correct and timely, while a significant 69 percent were delayed for two or more years (Falkner, Treib, and Holzleithner 2008b, 2). Therefore any final evaluation is highly dependent on the chosen operationalization of the dependent variable.

A shift of the research focus from transposition to application shows that the level of compliance with EU legislation can be even lower. It is appropriate to bear in mind that the EU has “a highly decentralized implementation structure” (Falkner, Treib, and Holzleithner 2008b, 7). Indeed, Directives, as the main legal tool of the EU, deliberately leave substantial room for discretion at the national level. It follows that member states are vested in the right to adjust implementing measures in a way, which suits their local conditions. Other stages of the policy implementation, such as enforcement and application of rules, are solely within the authority of the member states, with EU institutions (primarily the European Commission and ECJ) exercising only supervision of overall compliance.

The foregoing skeptical description of the “street-level” compliance is however not shared by all. Tallberg (2002), presents quite a different view of compliance in the (old) EU member states. He argues that, once spotted and pointed-out, cases of non-compliance are likely to be redeemed rather promptly by the respective member state (Tallberg 2002, 619-620). However, his interpretation is based mainly on data from the Commission’s monitoring reports, which only show the stages at which infringement cases are closed. Therefore, it can be criticized for being too superficial, which weakens the value of the assessment. Also here, the outcome of the study is closely related to the definition of the dependent variable. The correct application of EU law, especially in the new member states is, no doubt, “absolutely pivotal for the success of the integration endeavor” (Lazowski 2010, 26). Nevertheless, in the following parts of the present thesis I will focus on transposition *per se*.

Turning to the Czech Republic, the level of transposition does not seem to be the main problem in the Czech relationship to European laws. The same is, however, not true for the other aspects of compliance. Indeed, along with other three new and two old member states,³ the Czech Republic has been identified by Falkner and Treib (2008a) as part of the so called *World of Dead Letters*. This specific type of compliance pattern is characterized by poor enforcement of already implemented laws, which stems from a set of systemic shortcomings. Correspondingly, Falkner and Treib list these issues in the area of social policy: a lack of individual litigation, weak civil society involvement, the poor performance of public bodies tasked with the promotion of equality, inefficient judiciaries, and the incapacity of labor inspections (Falkner and Treib 2008b, 304-306). To sum up, “application of EU law in the Czech Republic is often hindered by a lack of information and specialized knowledge” (Wiedermann 2008, 45).

2. Theoretical framework

In this chapter, I will take up two factors that can influence the implementation of domestic transposition legislation, namely conditionality of EU enlargement and the impacts of transposition on domestic politics. In both cases, I first outline the concept and its expected relationship to domestic implementation. Then I offer theoretical explanation for the expected relationship, which is concluded with a proposed hypothesis capturing the expected relationship.

2.1. *Transposition and conditionality*

The objective of this section is to account for the various aspects of conditionality with respect to implementation of EU legislation and policies. Namely, this section argues that conditionality supported by the prospect of EU membership was crucial for successful accession, both from the EU’s and candidate states’ point of view. For this purpose, I first outline the overall use of conditionality in international relations; especially by international development organizations and then I contrast it with the specifics of EU enlargement conditionality. Further, the section discusses the dilemmas that the EU had to face, which is followed by a description of

³ Slovakia, Slovenia, Hungary, Ireland, and Italy (Falkner and Treib 2008)

policy tools that were used to deal with these dilemmas. The analytical part of the section is concluded by the identification of the full implementation of the *acquis* as the most important and successful goal of conditionality from the EU's perspective. The implications of the analytical part of the section are finally used to stipulate a hypothesis which reflects the outcome of the analysis of transposition in shaping domestic law-making. The section accomplishes its objective mostly by providing an overview of the scholarly discussions on these issues.

The pre-accession period was marked by an intensive approximation of the candidate states' political and legal standards to those of the EU. This effort was characterized by a high amount of legislation that had to be adopted, which in turn presented the candidate states with high demands in terms of administrative workload as well as political cooperation within national legislatures. However, at the beginning, there were nations that had just emerged from forty years of communist rule, nations that did not seem to be ready to deal with these demands related to re-entering Europe. Consequently, the fact that the CEE countries eventually did enter the EU may seem as a surprise. Nevertheless, Sedelmeier (2008, 806-807) together with Hille and Knill (2006, 532) while taking stock of the literature in the field argue that the EU enlargement conditionality is generally credited with contributing to wholesale changes. In other words, the prospects of future membership accompanied by more subtle administrative measures, such as close monitoring of the progress towards meeting the requirements, was the force that kept the whole endeavor moving forward.

Conditionality is, however, neither an automatic process nor the ultimate recipe for success. It can only work properly if certain conditions are met (Steunenberg and Dimitrova 2007). Broadly speaking, conditionality is a tool used by various international organizations (most notably the World Bank and the IMF), to incentivize nation states to comply with previously set requirements and change their behavior, which should eventually lead to the achievements of some policy objectives (Hollyer 2010, 388). In a model situation, a receiver, who wants to receive

something from a donor, has to commit himself to change some of his political features. More specifically, in the realm of international relation, these changes will often take the form of internal political or administrative changes. Such a definition distinguishes conditionality from a standard legal obligation that involves two parties exchanging two things so that the respective things change their owner. The aim of conditionality is not for the donor party to benefit from the deal *per se*, rather, the accepting parties should by implementing the requirements, improve its status and eventually benefit twice—first from the donation and then, and more importantly, from the fruits yielded by the implemented change. In consequence, the whole society will benefit from the outcome. As regards international organizations in general, the main incentive used is the allocation of resources to the respective nation states (Steunenberg and Dimitrova 2007, 2). All in all, conditionality is a well-established concept of international development assistance, the outcome of which is, however, dependent on a variety of factors.

Nevertheless, in the context of EU enlargement, conditionality has taken on somewhat different features. While financial motivation still had its place in the conditionality toolbox, the key source of motivation for the candidate countries had shifted to a more symbolic sphere. Indeed, the very prospect of joining the European Union has been identified as the single most important source of efforts towards the profound policy and especially legal changes prescribed to the candidate countries by the EU (Schimmelfennig and Sedelmeier 2004). Accordingly, the very membership of the EU was the main incentive that made EU enlargement conditionality possible.

In fact, Steunenberg and Dimitrova's (2007, 3) self-evident definition of conditionality confirms the resonance of EU membership. The authors identify two defining aspects of conditionality, namely the prospect of membership on one side of the deal and the candidate countries' implementation of far-reaching domestic reforms on the other. The practice of conditionality was also dubbed "carrot and stick approach" for its having imposed to the

candidate states a threat of slowing down or even aborting the accession process in case they did not progress with fulfilling the pre-accession requirements. The idea behind the whole setting of criteria for accession was to ensure that after the enlargement the EU remained the same supranational organization with a high level of democracy, the respect of the rule of law, and exhibiting a stable and functioning market economy (Lazowski 2010, 26). To achieve this goal, the European Council declared, as early as in June 1993, several general policy criteria, which newcomers were expected to meet (European Council 1993, 13).⁴ On the other hand, the question of accession became “if” rather than “when”, thus providing the candidate countries with a clear goal to pursue (European Commission).

This new approach towards accession was adopted in the light of the peculiarities of the eastern enlargement that was to include transitional countries. In particular, the sole implementation of EU legislation was not, unlike in the previous enlargements, perceived as sufficient for a future smooth functioning of the enlarged European Union.⁵ Thus the well known Copenhagen criteria involved more ambitious transformation targets (Steunenberg and Dimitrova 2007, 3). In the language of the European Council: “Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required” (European Council 1993, 13). These criteria were meant to initiate the building of stable institutions that would guarantee six targets of political nature: (1) democracy, (2) the rule of law, (3) human rights, and (4) respect for and protection of minorities; as well as economic nature: (5) the existence of a functioning market economy, and (6) the capacity to cope with competitive pressure and market forces within the Union. Consequently, the achievement of these goals was conditioned by the proper adoption of EU legislation – the *acquis*. The adoption of the *acquis* was necessary for the candidate states to

⁴ For a detailed account of the process of accession and the development of conditionality from a game theoretical perspective see Steunenberg and Dimitrova (2007, 11-13).

⁵ Additionally, Toshkov (2008, 399, n. 1) notes that some of the previously accepted countries were even allowed to fully harmonize their law after accession.

become eligible to join the EU. Moreover, the EU made clear that the *acquis* had to be adopted in its entirety and was not negotiable (Tallberg 2002, 389-390). In this way, the EU made clear its expectation of the candidate states *vis-à-vis* the specific nature of the eastern enlargement.

In order to make sure that the candidate states lived up to obligations they assumed under conditionality, the EU had to closely observe developments in these countries. During the pre-accession period the EU paid, close attention to the level of the candidate states' approximation to the body of European law in order to ensure that the candidate countries will be able to fully assume the obligations resulting from their would-be membership (see European Commission 1997). Moreover, the correct transposition of the EU legislation is crucial for the EU to achieve its goals. Indeed, in the context of policy cycle, the implementation phase is conducted mostly by the means of legal acts. The European Union is no exception in this respect, its legal and institutional, known as the *acquis*, is the single most important means through which the Union achieves its objectives. Therefore, the European Commission was charged with closely monitoring each candidate country's progress towards the full implementation of the existing body of EU legislation. The commission's reports served as indicators of the closeness of the carrot, or of the stick. In the end, the CEE countries managed to successfully fulfill their obligations with respect to the adoption of *acquis*. To sum up, in Schimmelfennig and Sedelmeier's (2004, 675-676) words "the effectiveness of *acquis* conditionality appears impressive: the legislative adoption of the EU's *acquis* by the CEECs is an astonishing achievement." The success of the adoption of the *acquis* due to conditionality, begs a question what happened after conditionality was gone?

Gray's (Gray 2009) study on the relationship between the accession progress of post-communist countries and their sovereign debt risk premium confirms that the effectiveness of EU conditionality can be proven also from a financial point of view. She finds that with increasing positive prospect of EU membership, the markets were more confident in the

candidate countries' economic condition and financial reliability. This effect is attributed to the belief of the markets that the EU can exercise credible pressure to facilitate the implementation of the necessary political as well as economic reforms. Nevertheless, she concludes that the EU's influence as perceived by the financial markets diminishes after candidate states acquire membership when "Brussels has far less direct influence on countries' behavior" (Gray 2009, 949). These findings correspond to the assumption that membership conditioned on the implementation of policy reforms mainly in the form of the adoption of the *acquis* is a powerful incentive. Conversely, after accession, the EU has less leverage to force the new member states to comply relative to the pre-accession stage. Indeed, after the candidate countries joined the EU, their incentive structure changed dramatically in the sense that any of the EU's enforcement mechanisms, such as infringement actions and direct effects, do not have the same magnitude as the possible denial of accession. Therefore I would like to propose the following hypothesis:

H1: Domestic transposing bills are more likely to be adopted during the pre-accession period relative to both other domestic legislation and the post-accession period.

2.2. Transposition and domestic politics

This section addresses the other of the two factors indicated at the beginning of the chapter, namely the concept of transposition partially changing domestic politics. I depart from an assumption that the fact that a bill transposes EU legislation can constrain the scope of political debate. In the next part, the section presents how findings of existing literature can be used to prove the abovementioned assumption. This part is followed by some accounts of domestic politics' implications for implementation at domestic level. Finally, the chapter concludes with the construction of a hypothesis which reflects the outcome of the analysis.

In order to substantiate the assumption about the interaction between the implementation of EU law and domestic politics I use an inverse logic. The influence of the implementation of EU is difficult to observe directly. Therefore I start off with the following auxiliary assumption. If domestic politics is projected to national preferences towards EU policies, than EU directives

that are compatible with nationally preferred policies are more likely to be properly transposed. It follows that the proof of a relationship between domestic preferences and the level of transposition is indicative of some degree of importance of domestic politics in transposition. In contrast, a lack of such a relationship indicates that transposing laws are perhaps not subject to pronounced political debate.

Fortunately, some qualitative studies on implementation have addressed the role of domestic preferences in the process of implementation (see Hille and Knill 2006; Toshkov 2008; Linos 2007). Hille and Knill (2006, 547) find no statistically significant correlation between their variable *government's position* towards the European Union and the level of implementation performance during the pre-accession period. Similarly, Linos' (2007, 257-258), regression analysis does not prove a relationship, at a statistically significant level, between either political orientation (left-right) of the government or its stance on European integration and the implementation of social policy related directives. This leads the author to the conclusion, that "[a]lthough national preferences matter, state structures unrelated to national interest on social policy matter more" (Linos 2007, 562). Toshkov, on the other hand, finds statistical support for his argument that "government preferences appear related to the rate of incorporating EU law" in the new member states (Toshkov 2008, 380). Therefore, he challenges the opinion of other authors, that implementation is dependent only on the quality of bureaucracies.

Conversely, Falkner Treib and Holzleithner (2008a, 11), argue that available quantitative research on the topic is rather inconclusive. Accordingly they propose that qualitative case studies can be more revealing as to the importance of political preferences of ruling parties. This is shown on the example of different approaches to the implementation of the Working Time Directive chosen by a left-wing Czech Government on the one hand, and a right-wing Slovak government on the other (Falkner and Treib 2008a, 162). To sum up, the lack of clear evidence of a strong relationship between domestic preferences and the level of transposition suggests, in

accordance to the above stated assumption, that domestic political struggle does not influence the level of transposition. This in turn, leads to the conclusion that transposing bills are not adopted based on their match with the legislators' preferences. Therefore, the reason for them to be adopted may be their EU origin.

At the national level, Dimitrova (2010, 144) seems to subscribe to this idea claiming that, prior to accession, EU legislation was somewhat removed from the realm of ordinary politics. Indeed, implementing laws were adopted with little political struggle as a matter of course. Additionally, Dimitrova (2010, 144) identifies two reasons for this. First, the magnitude of EU legislation that needed to be implemented was simply so overwhelming as to leave room to only "limited political and societal debate on [its] implications" (Dimitrova 2010, 144). Second, veto players' role was trimmed by "the strength of conditionality during accession negotiations" (Dimitrova 2010, 144). In line with the findings of the previous section's analysis of conditionality, applicant countries had a strong interest in joining the EU. This lend support the assumption that possible incorrect or delayed implementation in the pre-accession period, was not due to "a general lack of political commitment" (Hille and Knill 2006, 535). However, Dimitrova's (2010) claim is refined by Wiedermann's (2008, 37-38) observation on the implementation of social policy directives in the Czech Republic. He generally agrees that most of the transposing legislation is adopted as a matter of "an uncontroversial process/technical procedure" (Wiedermann 2008, 37-38). At the same time, he adds that implementation in some areas can run into problems as political actors want to promote their interests. In conclusion, the foregoing overview of secondary literature suggests that domestic transposing laws constitute a specific type of legislation, which receives a special treatment in national legislatures.

All in all, not only seem transposing laws little affected by domestic politics, they also seem to take up a prominent place within the domestic legislative process. The foregoing analysis leads to the following hypothesis:

H2: Bills that transpose EU legislation are more likely to be adopted.

By way of conclusion, I would like to propose a graphic representation of the expected outcome of both analyzed concepts and their interplay:

		Conditionality	
		yes	no
NEM	yes	2	1
	no	0	0

Table 1 Expected probability of adoption of national legislation. *Source:* Own elaboration

The table shows relative level of probability of the adoption of national legislation based on its relation to conditionality and European legislation. The numbers should be only understood as the expression of relative values, with the following mathematic meaning “ $2 > 1 > 0 = 0$ ”. First, in the two bottom cells are bills that do not transpose EU legislation (NEM – no). Hypothesis 2 suggests that these bills have a lower chance of adoption as compared to transposing bills. The two top cells display hypothesis 1 according to which transposing bills (NEM – yes) proposed during conditionality have a higher likelihood of adoption (2) than transposing bills proposed after the Czech Republic obtained full membership. The following chapter of the present thesis will check these hypotheses against empirical data.

3. Transposition in the Czech Republic

3.1. Compliance after accession

Section 2.1. has shown that the influence of EU conditionality in the pre-accession period is beyond doubts. In the context of the Czech Republic and three other Central European countries, Falkner and Treib (2008a, 164-165) come to the conclusion that conditionality played a crucial role in the correct transposition of several directives in the area of EU social standards. However, despite the assumption also discussed in section 2.1., that after accession the level of compliance in the new member states will decrease, recent research suggests otherwise. As

regards the level of legislative implementation, a number of quantitative studies have confirmed that the new member states do not perform worse than the old member states (Sedelmeier 2008; Lazowski 2008, 27; Steunenberg and Toshkov 2009).

Also Figure 1 confirms the foregoing conclusion of secondary literature discussion. It shows that the level of transposition deficit of the new member states declined swiftly. Five months after the enlargement, the Commission reported that the new member states had on average transposed 94 percent of all directives, while the average for the old member states was 98 percent. However, only one year after accession, the new member states had already reached the same level with the old member states which has remained the case ever since. In other words, no increase of non-compliance occurred, rather the opposite.

Figure 1 further shows that the Czech Republic came out of the pre-accession period with a significant backlog of non-transposed directives, which was second only to Malta's. This result is puzzling, especially given that the Czech Republic perform rather well during the pre-accession period in terms of Hille and Knill's (2006, 545, fig. 1) measure of pre-accession alignment. This measure tries to capture "the performance of the candidate countries in aligning their policies towards requirements" (Hille and Knill 2006, 540-541) by content analyzing the Commission reports on enlargement progress.⁶ Unfortunately, explanation of the Czech Republic's bad performance on the adoption of the *acquis* prior to enlargement is not manageable within the limitations of the present thesis.

⁶ For a detailed outline of the method used see Hille and Knill (2006, 540-542)

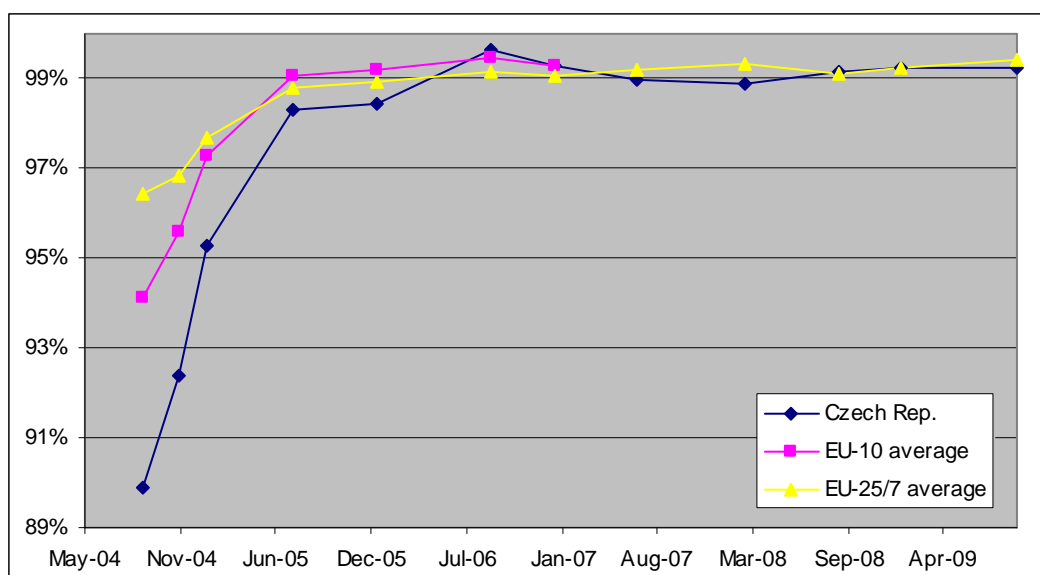


Figure 1 Transposition rates in the Czech Republic, EU-10 (until Jan 07), and EU-25/7. *Source:* Compiled from the data available at the website of the Commission's Secretariat General (various dates).

In the realm of EU political principles set forth in the Copenhagen criteria, the levels of compliance do not seem to be declining either (see Vachudova 2008; Epstein and Sedelmeier 2008). Indeed, research into the areas of democratic performance of new member states after accession confirms the suspicion that conditionality may bring about changes that remain in place, also after the immediate incentive have vanished. Namely, Hollyer (2010) shows that the changes in the composition of domestic interests caused by the fulfillment of EU accession policy requirements have so far prevented any significant return of state capture typical for the post-communist member states prior to the beginning of their accession process. Similarly, Levitz and Pop-Eleches' (2010) cross-national time-series cross-section regression analysis of a variety of democracy and governance measures suggests that the new member states have not experience any major deterioration in those areas. Therefore, EU enlargement conditionality appears to have impacts that go beyond simple incentive-based explanations.

The findings of this section necessarily lead to a reconsideration of hypothesis 1 states in section 2.1. Indeed, in the light of the lack of change in the patterns of compliance after accession, the expectation that bills transposing EU legislation will have a higher chance of

adoption is no longer so strong. In fact, the following quantitative analysis of the Czech legislative process confirms this concern fails by failing to verify hypothesis 1.

3.2. *Evidence from domestic legislative process*

This chapter of the present thesis sets out to analyse the process of transposing EU directives in the context of Czech legislative process. In order to cover this issue, the chapter is divided into two sections. The first part provides a brief quantitative overview of the Czech Republic's legislative process. The second part is based on content analysis of the process of adoption of several Czech laws transposing selected EU directives.

3.2.1. Quantitative analysis

The following quantitative, cross-tabular analysis presented in tables 2 and 3 analyses 1 357 bills that were introduced in the two legislative terms of the CDP-CR between 2002 and 2010.⁷ In terms of data collection, I took advantage of the database of all proposed bills available at the website of the Czech Chamber of Deputies. The database enables its user to filter the bills according to several categories. For the purpose of this analysis I coded the bills according to the author (government/others)—and EU-relevance (yes/no). Finally I separated successfully adopted bills from those that did not pass (yes/no). A word of warning is appropriate here; the category “EU-related” is problematic as it only indicates some relevance to EU law, without indicating the degree of relevance. Moreover, those bills will more often than not also include provisions not related to the EU. Therefore the category “EU-related bills” is unfortunately not free of endogeneity with government bills in general. Still, I believe that the use of this category is justified.

⁷ Cross-tabulation used in the present thesis was designed according to methodology described in Meier, Brudney and Bohte (2006, chs. 15-17).

Table 2⁸ represents the likelihood of a government bill's adoption based on whether or not the bill transposes EU legislation. Furthermore, the data in the table are broken down according to the respective legislative term. I do this to account for transposition under conditionality from 2002-2004, which is during the earlier legislative term.⁹ There is no table showing the same measure with respect to all bills regardless of their author. The reason is that, in the observed terms, all EU-related bills were moved by the government.

Table 3¹⁰ offers an alternative explanation for the likelihood of a bill being adopted. Unlike table 2 it includes all bills regardless of their author. The authorship of bills is, in fact, used to account for the likelihood of successful adoption. All bills were categorized as sponsored either by the government or others sponsors.¹¹ Thereby, the cross-tabulation shows the likelihood of the adoption of bills according to their respective category. The remaining part of the section deals with the implication of the performed cross-tabulation analysis.

⁸ There were a total of 457 government bills proposed in 2002-2007, out of which 206 had and 251 did not have EU relevance. In 2006-2010 the government proposed 314 bills in total; 143 bills with and 171 bills without EU relevance.

⁹ I have also tried a contingency analysis of government bills that were introduced before 1st May 2004 to make sure that the original result is not contaminated by legislation adopted after accession. However, the difference between EU-related laws and the rest was even smaller at 89 and 87 percent respectively.

¹⁰ The number of government bills in the whole observed period was 771, while other authors sponsored 586 bills.

¹¹ Besides the government the right of initiative is granted to individual deputies and groups of deputies, Senate as a whole, and regions (Art. 41 of the Constitution).

			EU-relevance	
Legislative term			no	yes
2006-2010	Adopted	no	23,4%	14,7%
		yes	76,6%	85,3%
	Total		100,0%	100,0%
2002-2006	Adopted	no	16,3%	12,1%
		yes	83,7%	87,9%
	Total		100,0%	100,0%
Total	Adopted	no	19,2%	13,2%
		yes	80,8%	86,8%
	Total		100,0%	100,0%

Table 2 Cross-tabulation of the relationship between the transposition, period, and the likelihood of adoption. *Source:* Compiled from data available in the database at the CDP-CR's website.

		Authorship	
		Others	Government
Adopted	no	67,4%	16,5%
	yes	32,6%	83,5%
Total		100,0%	100,0%

Table 3 Cross-tabulation of the relationship between authorship and the likelihood of adoption. *Source:* Compiled from data available in the database at the CDP-CR's website.

The cross-tabulation in table 2 fails to confirm either of the hypotheses proposed in chapter 2. Namely hypothesis that enlargement conditionality provided additional support to bills implementing the *acquis* (H1) is rebutted by comparing the percentage differences of 2002-2006 and 2006-2010 terms. During the 2002-2006 legislative term, when the main bulk of pre-accession transposition took place, implementing bills had only four percent higher probability of adoption compared with other government bills.¹² Conversely, in the 2006-2010 legislative term, the likelihood was nine percent higher. To be sure, these changes are far from significant; nonetheless the hypothesized influence of conditionality suggests the opposite development in the adoption of implementing measures. It follows that hypothesis has not been confirmed by empirical findings.

On the other, Hypothesis 2 seems to find some support in table 2. It states that transposing bills have a higher probability of adoption due to their special position within national legislation.

¹² As I have discussed in note 6, the difference was surprisingly even smaller in the period from 2002 to 2004, which better captures the effect conditionality.

Indeed, those government bills that have EU relevance had six percent higher chance of adoption. However, one should avoid jumping to a quick conclusion. The observed percentage difference is rather subtle in substantive terms and other possible explanations for its occurrence are at hand. Most notably, the variation can probably be ascribed to the different nature of legislation enacted by the EU and purely domestic policy areas. As opposed to the significant portion of EU legislation that is of rather technical nature, some policy areas with prevailing domestic discretion are highly sensitive. Consequently, bills reforming the pensions, the health care system and the like have an extremely high profile. They are hence subject to much more heated discussion and resistance, bringing the percentage of successfully adopted government bills down. In conclusion, the foregoing brief analysis cannot fully subscribe the hypothesis (H2) that implementing laws constitute a special category in the Czech legislative process.

The overall outcome of this section with respect to the two hypotheses derived from the analysis of the implications of conditionality and the role of transposition in domestic politics can be schematized in the following fashion:

		Conditionality	
		yes	no
NEM	yes	0,85	0,88
	no	0,84	0,77

Table 4 Actual probability of adoption of national legislation. *Source:* Own elaboration.

To sum up, a comparison of this table 4 with table 1 shows that the actual Czech legislative process does not exhibit the patterns predicted by the hypotheses 1 and 2. Mathematically expressed, the term “ $0,85 > 0,88 > 0,84 = 0,77$ ” is not valid.

Additionally, table 2 hints to the presence of a certain trend, namely a strengthening of the executive during conditionality, which is a conditionality effect suggested by, for example, Grabbe (2006, 207-208). To put it more precisely, moving from the conditionality period of

2002-2004 (87/89%) through 2004-2006 (86/80%) to the 2006-2010 (85/77%) legislative term, the proportion of adopted government bills decreased. However the validity of this trend is somewhat weakened by the following, rather anecdotal, observation. In the spring 2009 the then already weak coalition cabinet was voted out of power and was succeeded by a provisional government. Surprisingly enough, the percentage of government bills that were adopted after the coalition government's demise slightly increased and EU-related bills reached 95 percent adoption rate, which is the highest in the observed periods. Moreover, this finding is not at odds with the results of Steunenberg and Toshkov's (2009, 964) regressions, according to which a lack of stable government does not have any significant negative impact on the level of transposition.

Moving on to another possible explanation of the likelihood of adoption, table 2 suggests that the key aspect is authorship. Indeed, that government bills have more than 50 percent better chance of adoption than bills proposed by other actors. This outcome is however hardly surprising. Generally speaking, non-government bills are usually sponsored by the opposition, which logically has a smaller chance of getting laws passed. In the light of a failure to corroborate the originally devised hypotheses, I would like to use the contrast of the importance of the authorship and the relative insignificance of EU status of bills to propose the following hypothesis that will be further argued later in the text.

H3: Once the legislative process of a draft bill has been initiated, the MPs treat it in similar fashion to other government bills.

3.2.2. Qualitative analysis

A qualitative study of the process of EU directives' national transposition is hindered by a number of research challenges. First of all, directives are usually transposed by several NEMs. To make matters more complicated, national implementation laws often transpose more than one directive. This fact imposed a severe limitation on my research as I had to resort to analyzing only directives whose transposition was carried in a simple manner. In other words, I chose directives

that were implemented by one or two main laws. I am fully aware that this decision entails a strong selection bias since directives that are transposed by means exhibit specific features that are not present in the whole population of EU directives. Apart from this point, the selection process was more or less random. Obviously, the final sample is too small to genuinely represent the whole body of neither EU legislation nor all Czech implementing measures. To be sure, this selection process implies strong limitation on possible generalization of this thesis' findings.

After selecting the directives to be analyzed, I moved on to the domestic legislative process. Luckily, the path of every Czech law through the legislative process can be easily traced in the database of legislative acts adopted by the Czech Chamber of Deputies (CDP-CR). The following quantitative analysis thus relies primarily on the data regarding the introduction of bills and the minutes of the proceeding. Its findings are employed to re-assess the three hypotheses proposed above. Furthermore based on the implications of the analysis of the set of NEMs, I argue that the transposition deadline does not seem to have a significant impact on the speed of adoption in the legislature. Last but not least, I find some evidence for concept of legal misfit advanced in Steunenbergh and Toshkov (2009, 955-956), which suggests that higher complexity and legal misfit are related to transposition difficulties.

The studied set of directives and their NEMs include the following items. Directive 2006/23/EC on a Community air traffic controller licence transposed by Law no. 301/2009 Coll. Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage, that was transposed by Law no. 167/2008 Col. Directive 2005/44/EC on harmonised river information services (RIS) on inland waterways in the Community and Directive 2006/87/EC laying down technical requirements for inland waterway vessels were jointly implemented by law no. 309/2008 Coll. By the same token, Directive 98/81/EC amending on the contained use of genetically modified micro-organisms along with Directive 2001/19/EC on the deliberate release into the environment of genetically modified organisms

were transposed by means of Law no. 78/2004. In total, the sample consists of six directives and four NEMs.

Only two of the directives, namely Directive 98/81/EC and Directive 2001/19/EC were timely implemented. The fact that their NEM Law no. 78/2004 was the only bill from the sample that was passed before the enlargement, at the height of pre-accession implementation efforts in 2003 (Toshkov 2008, 388), seems to somewhat confirm hypothesis 2 about the influence of enlargement conditionality. However, such a conclusion is compromised by the way the transposing law was adopted. Namely, content analysis of the parliamentary debate reveals that the legislators gave significant room to domestic considerations, and on one occasion even complained about the implementing law being stricter than the directive. This suggests that future domestic impacts of the law were considered rather than omitted for the sake of a prompt adoption and the law was by no means adopted automatically.

In fact, all of the transposing laws save for Law 167/2008 Coll. that will be discussed below are characterized by a limited debate on issues related to the EU, or the transposed directives. Correspondingly, with a sole exception,¹³ I did not come across any comment or argument questioning the directives themselves, let alone any critique of European integration as such. Still, some conclusions can be drawn from the analysis. Typically, the EU origin of a bill was mentioned in its explanatory report and this fact was also pointed out by the responsible cabinet minister and the reporter on a few occasions. These mentions are, however, only meant to describe the draft bill. The rest of the deliberations usually revolved around domestic implications of the law. Law 309/2008 Coll. transposing Directive 2005/44/EC and Directive 2006/87/EC is interesting for the virtually non-existent discussion that accompanied its adoption. The draft bill was only presented by the minister and reporter to be eventually approved with nobody voting

¹³ The exception was Senator Jaroslav Kubera, who is nevertheless known for his controversial view on many issues and whose comment was still rather superficial (during the parliamentary debate on Law no. 167/2009, 20th March 2008).

against it. Interestingly, the deputies are sometimes unaware of the EU origin of a bill. This is attested by a rather anecdotal episode, where one deputy showed some degree of ignorance by claiming that “the present law is not one of those laws that (...) have to be adopted within some short time limit, it is not related to any requirements by the EU...”¹⁴

Law 167/2008 Coll. transposing Directive 2004/35/CE is perhaps the most complex piece of legislation out of the analyzed sample. Accordingly, the EU dimension of the law is mentioned more often compared to the other laws and is practically present throughout the whole legislative process. The main reason is that the government was continuously emphasizing the urgency with which the law should be adopted. The progress of the Commission art. 226 non-communication proceeding, from a letter of formal notice through the danger of impending case before the ECJ, was used to pressure the MPs¹⁵ to a speedy adoption. Especially the threat of monetary penalties appears to be used as an important argument. The acute situation resulting from the very real threat of an EU enforcement action could lead to the assumption that the adoption should be rather speedy.

While strong emphasis on the European origin of the law is present on the government’s side, the overall fashion of the parliamentary discussion does not seem to have been influenced by that. Indeed, similarly to other analyzed laws, the discussion is primarily concerned with domestic implications of the law. What is more, the MPs repeatedly expressed that the pressure on the Commission’s part is not a reason for a special treatment of the bill. In the end, not even the adoption of the law appears to have been essentially influenced by the fact that it was an implementing measure.

The implications of the foregoing analysis with regard to the three hypotheses 2 and 3 are not easy to disentangle. On the one hand, the absence of any serious discussion on EU-related

¹⁴ Petr Gandalovic, during the parliamentary debate on Law no. 301/2009, 13th May 2009.

¹⁵ Unlike in the case of the previous implementing laws, I also analyzed the debate in the Senate (upper chamber) because this time the law was amended there and returned to the Chamber of Deputies.

question does not disqualify the domestic politics hypothesis; on the other hand, it could lend some support to the hypothesis about the prevailing influence of the government authorship of the transposing laws. First, the overall lack of EU-specific discussion can be interpreted as a sign of perfectly standard position of transposing laws within the whole of Czech legislation. Moreover, the transposing laws were perhaps conceived and hence treated by the MPs as ordinary legal acts drafted by the government. This would in turn explain their high right of adoption. Nevertheless, this explanation does not fully account for the absence of critique on the opposition's part.

An alternative explanation would be that the EU is a sort of taboo, which cannot be violated in the mainstream political sphere, let alone the parliament. Nevertheless, this explanation is not very convincing given that the Czech Republic “has the highest percentage of voter casting their ballots for Eurosceptic or Euroneutral parties” (Vachudova 2008, 869). At the same time, Vachudova (2008, 869) argues that even in the Czech Republic, have the main political parties eventually taken up an EU-compatible agenda as is the case in other CEE member states (Vachudova 2008, 864). Such a domestic political development could probably explain the absence of substantial debate on EU-related issues.

Another revelation of this analysis is related to the role of administrative capacity. Specifically, three transposing laws could not be adopted within their respective transposition deadlines simply because the government failed to introduce the bills in time. Indeed, Laws nos. 301/2009, 309/2008 and 167/2008 Coll. were all introduced only after the transposition deadline has passed. Clearly, this cannot be most likely attributed to bureaucratic incapacity within the government. The concept of legal misfit presented by Steunenberg and Toshkov (2009, 955-956) has some explanatory validity here. A misfit between EU legislation and domestic legal order is probably a problem in terms of additional pressure put on administrative capacity of the implementing country. The complexity and completely new approach of Directive 2004/35/CE

of the European Parliament and of the Council of 21 April 2004, was mentioned by the sponsoring minister as the main reason why its drafting took a considerably long time. Indeed, the explanatory report explicitly states that the presented bill covers areas that had not been previously governed by the law and changes the whole concept of environmental damage and liability. In the words of compliance theory, there was a significant misfit between EU legislation and domestic state of play. As a result of that, the law implementing it (law no. 167/2008 Coll.) was introduced very late (by more than five months) and thus doomed to later transposition. Also, the complexity of the directive seems to have caused problems across the EU since as many as twenty-three member states received an art. 226 reasoned opinion and in 2009, nine cases (seven of which were eventually closed the same year) of non-implementation were still being dealt with (European Commission 2007; 2009). It follows that rather than to member states' preferences and costly application, legal misfit poses a problem to national bureaucracies that simply have to deal with more work.

Conclusion

In this thesis, I have analyzed the process of EU law transposition in the Czech Republic. Using a combination of qualitative and quantitative research, I have evaluated the validity of two factors that were suspected of having influence over the patterns of transposition in the Czech Republic. These factors are conditionality of EU membership prior to accession and the hypothesized specific position of transposing laws within the Czech legislative process. These factors were constructed on the basis of extensive study and critical evaluation of existing secondary literature. The analysis of both factors yielded two hypotheses as to the expected patterns governing the adoption of legislation implementing EU law. First, I hypothesized that conditionality have a positive effect on the likelihood of the adoption of transposing legislation. The second hypothesis was derived from the assumption that the European origin of content of implementing laws will constrain domestic political struggle over these laws, therefore increasing the probability of their adoption.

However the empirical test of the proposed hypotheses failed to corroborate their validity,. On the other had, the qualitative as well as quantitative assessment proved that the actual results of transposition are closer to the expectations suggested in the domestic politics hypothesis. Additionally, the quantitative findings prompted the formulation of a third hypothesis, which accounted for the specific features of transposition process. This hypothesis was based on the observation that government sponsored bills have generally much higher success rate as opposed to a modest record of other actors with a right of initiative. Connecting this observation to the previously reached conclusions, I suggested that transposing laws, which are proposed exclusively by the government, behave just as any other government bills. A slightly higher rate of adoption of EU-related bills was put into the perspective of broader domestic political issues.

Apart from the additional hypothesis yielded in the quantitative analysis, a number of interesting findings came out of the qualitative analysis. First of all, it reveled that the adoption of

transposing laws is usually not accompanied by a discussion of EU-related issues and that most transposing laws evoked debates about domestic implications of the bill. Also, a failure to transpose a directive on time was always caused by the government's inability to introduce the implementing draft bill before the expiration of deadlines. I attributed this finding to administrative shortcomings, which are further aggravated in case the transposed directive exhibit a high level of complexity and novelty. Such a directive can then invoke a significant legal misfit, which in turn puts additional pressure on the national bureaucracy, further hindering the process of transposition.

I also mentioned, in several places, methodological limitations of the present thesis. Most of all, the coding used in the quantitative analysis is rather superficial. Second, the selection of cases in the qualitative analysis is far from representative. To be sure, it is almost impossible to generalize the findings beyond the Czech Republic; nevertheless the outlined research design could be used in order to assess the implications of transposition in other member states' legislative process. Finally, the research design has a capacity for a significant deepening that would address the methodological issues indicated above.

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