

Bachelorthesis:

The slow implementation of EC Directives



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Abstract

This paper focuses on the implementation of EU directives. The transposition of directives in the national law is an important stage of the implementation of the European law. Directives must be transposed into national policies in order to give effect to EU law, but many EU Member States have difficulties transposing directives despite their obligation to comply. There are a growing number of studies with the subject of non-compliance. These investigations are giving a number of variables explaining the non-compliance of directives. Some of these researches are providing solutions for the problems of transposing directives. The approach of this paper is to discuss the different studies about the implementation problems in the Member States.

Introduction

The European Union has three different legislative instruments. These are regulations, directives and decisions. These legislative instruments must be transposed into national policies. Most of interest is the implementation of directives. Directives are not directly applicable at the national level, but have to be incorporated into national law first. According to article 249 of the EC treaty, a directive shall be binding as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. When the Member States of the European Union eventually agree on a new directive, it still takes a long time before the new directive has been implemented. At the national level of the Member States, an EU directive is not effective before it has been transposed into national law. After transposing the directive, national or subnational administrations or agencies can begin to apply the directive. *“Without proper transposition, a directive will not be fully integrated into the national legal order and the EU’s acquis communautaire risks becoming fragmented and unevenly applied”*¹.

Presently, there is much attention for directives. Many EU Member States have difficulties with transposing directives despite their obligation to comply. There is lack of transposition that leads to backlogs. The European Commission monitors the performance of the Member States of the transpositions of the internal market directives. The European Commission publishes scoreboards with data on the progress of transposition of the EU directives. At the Stockholm European Council in 2001, the Member States stressed the importance of transposition. The Member States agreed that the implementation backlogs must be reduced to less than 1.5% of the total number of directives in 2002. According to Steunenberg (2005), implementation backlogs means there is no proper transposition of the directive into national law. Even with the monitoring role of the European Commission, the performance of transposition of most Member States lags behind the goal, as indicated in table 1.

¹ B. Steunenberg, 2005, p. 2

EUROPEAN COMMISSION. Secretariat General.
Progress in notification of national measures implementing directives

Reference date 08/03/2007

Source: ASMODEE II

| Ranking | Member States | Directives whose deadline for implementation has passed by the reference date | Directives for which measures of implementation have been notified | Percentages of notifications |
|---------|----------------|---|--|------------------------------|
| 1 | Lithuania | 2832 | 2821 | 99.61% |
| 2 | Latvia | 2828 | 2809 | 99.33% |
| 3 | Slovakia | 2825 | 2804 | 99.26% |
| 4 | Germany | 2775 | 2752 | 99.17% |
| 5 | Denmark | 2772 | 2749 | 99.17% |
| 6 | United Kingdom | 2769 | 2745 | 99.13% |
| 7 | Estonia | 2804 | 2779 | 99.11% |
| 8 | Poland | 2813 | 2787 | 99.08% |
| 9 | Hungary | 2816 | 2786 | 98.93% |
| 10 | Netherlands | 2774 | 2744 | 98.92% |
| 11 | Czech Republic | 2825 | 2794 | 98.90% |
| 12 | Belgium | 2829 | 2796 | 98.83% |
| 13 | Cyprus | 2816 | 2782 | 98.79% |
| 14 | Ireland | 2787 | 2751 | 98.71% |
| 15 | Slovenia | 2822 | 2784 | 98.65% |
| 16 | Austria | 2778 | 2740 | 98.63% |
| 17 | Spain | 2792 | 2752 | 98.57% |
| 18 | Finland | 2770 | 2730 | 98.56% |
| 19 | Malta | 2816 | 2774 | 98.51% |
| 20 | Bulgaria | 2931 | 2886 | 98.46% |
| 21 | France | 2776 | 2733 | 98.45% |
| 22 | Sweden | 2758 | 2714 | 98.40% |
| 23 | Luxembourg | 2779 | 2722 | 97.95% |
| 24 | Greece | 2778 | 2710 | 97.55% |
| 25 | Italy | 2783 | 2706 | 97.23% |
| 26 | Portugal | 2814 | 2732 | 97.09% |
| 27 | Romania | 2931 | 2679 | 91.40% |
| | average EC | 2802 | 2765 | 98.65% |

Source: http://ec.europa.eu/community_law/eulaw/pdf/mne_country_20070308_en.pdf

The average backlog of all the Member States is 1.35%. Looking at the ten Member States that joined the EU in 2004, the average backlog is 0.98%. The average backlog of the two new Member States that joined the EU in 2007, Bulgaria and Romania, is 5.07%. The Netherlands has a backlog of 1.08%, while Germany has a backlog of 0.83%. The Member State that stands on top with the transposition of directives is Lithuania with a backlog of 0.39%. The Member State who has the lowest transposition number of directives is Romania with a backlog of 8.6%.

The major aim of this paper is the implementation problem in Europe. The research question is: *How can the implementation problem be solved?* Through several sub questions, the research question will be answered. To be able to describe solutions, the implementation problem needs further explanation.

The first chapter deals with the question what does the term implementation actual means. When explaining the term implementation, I follow Bekkers (1993) who gives some elements for the implementation of EU directives and describes the process of implementation.

The second chapter deals with the question, which factors are the cause of the implementation problem. In this chapter, different researches are giving their opinions about the implementation problem. Mbaye (2001) argues that the number of veto players can adequately explain the implementation delays and not variables measured at a country-specific level. In addition, Falkner (2004) suggests that the opposition of national governments is one reason that Member States fail to comply

transposition. Steunenberg (2005) suggests that variables measured at a policy-specific level can explain implementation delays. He lists a number of variables that may have influence on national compliance. This is just a small number of researchers that are investigated. This chapter is divided in four clusters of factors that cause the implementation problem. Factors that are similar to each other are classified in the same cluster. The first cluster is the EU level cluster. The second cluster contains factors concentrating at the national legislation. The third cluster contains policy-specific factors. The fourth, and last, cluster contains the remaining factors that are mentioned in the different papers.

The third chapter is devoted to the factor “goodness of fit”. This is for some researchers an important factor for the cause of the implementation problem of EU directives. The question that stands central in this chapter is why the factor “goodness of fit” is so important for the cause of the implementation problem. In this chapter, there is also attention for the division between theory and practice about the role of the factor “goodness of fit”.

The situation of implementation problems for the Member states separately will not be discussed. Because of the limited time for this research, the focus is on the general picture of the implementation problem in Europe. Because of the limited time for writing this paper, it is not possible to conduct primary research. This paper only deals with secondary research.

1. The transposition problem described

Directives are directed to the legislators of the Member States. The result of a directive is binding, but there is a free choice of form and instruments. “*Directives leave the Member States a certain time limit, which varies each directive, to realise the implementation.*”² It takes some time before a directive is established. Different institutions of the European Union are a part of the bargaining process about the directive in the making. The European Commission comes with a proposal for a new directive. This proposal is drawn up by the official services of the European Commission, the Directorates-General. By the preparations of the new directive, there is often contact with national experts. Looking at the Member State the Netherlands as example, “*The Dutch ‘national experts’ have no instructions of the Dutch government.*”³ The proposal that is drawn up by the European Commission goes to the European Parliament. The proposal is discussed in the European Parliament and after that discussion, the European Parliament gives his advice. After this advice, the Council of Ministers determines a general position about the new directive. This general position is decided with a qualified majority. After the general position, the directive is adopted or rejected, or the European Commission has to make some changes in the directive.

However, what does the term implementation actual means? This chapter tries to explain the term implementation. In this chapter, I follow Bekkers (1993). Bekkers is an important source for the explanation of the term implementation and the implementation process of the Netherlands. The term implementation as explained in this chapter is valid for all states. The implementation process explained in this chapter is only valid for the Netherlands.

1.1 The term implementation

The term implementation has different meanings. Bekkers follows the meaning that states that “*Implementation indicates different kinds of processes and actions that take place by the introduction of community law in the national system of law.*”⁴ This chain of processes and actions starts with the process of the preparation of a directive. After the preparation, there is the process of establishing the directive. After this process, there is the process of the transposition of the directives in the national legislation. At the end of the chain, there is the process of the implementation and maintenance of the directive.

In some literature, the term implementation is used without making a distinction between the different elements of implementation. In this paper, the term implementation is used according to the “Commission for testing of legislation projects”. According to this testing commission, implementation exist of the record of guaranteed rights and duties of EC directives, adaptation of contradictorily national law and the creation of necessary implementation and maintenance structures.

² Koopmans, 2002, p. 40

³ V.J.J.M. Bekkers, 1993, p. 66

⁴ V.J.J.M. Bekkers, 1993, p. 6

With the implementation of EC law, we mean, “*to take all general and specially measures that are needed to assure the effect of the EC law of a state.*”⁵ The implementation of a directive is also called the transposition of a directive.

The European Court of Justice have determined in the course of the integration process of the European Union more demands for the implementation of directives. The first demand is on time implementation of directives in the national law. “*When the implementation of a directive is not on time, private persons can appeal for the national judge to allocated right of the directive against the negligent Member State.*”⁶ The second demand is the commitment of the Member States to execute the directive until the purpose is reached. The measures must be effective. The third and last demand is respecting the legal security principle by the Member States.

A directive offers Member States the possibility to implement the matter of the directive as good as and as efficient as possible in their own legislation. “*At the end of the implementation period, the content of the directive should be part of the national law – if this is transposed or not.*”⁷ Concerning the content of the directive, the directive should be completely and exact be implemented. “*Implementation is not creative labour.*”⁸ Because the implementation should be completely and exact, the implementation confiscate a great part of the legislative capacity of the government.

1.2 Elements implementation process

The implementation process has seven different elements: the transposition duty, reference to the executed directive, adaptation of national law, provisions that have effect on material law, indication of the competent execution institution, administrative execution regulation and the maintenance and the legal protection provisions (Bekkers, 1993). These elements will be discussed shortly.

The first element is the transposition duty. “*The transposition duty means that the guaranteed rights and obligations have to be recorded into the national law.*”⁹

The second element is the reference to the executed directive. The national provisions have to have a reference to the executed directive. Important characteristics of the institutional structure of the Community are the different principles. The Community law knows the principle of community loyalty. “*This principle brings along that Member States are always obligated to establish national measures that are necessary for the continued effect of the Community law.*”¹⁰ In the implementation process, the content of this principle is very problematic. Member states can still be competent to take measures on the field of the EC regulation, even when the implementation measures are not necessary for the continued effect of the Community law.

⁵ Steunenbergh, 2005, p. 18

⁶ M.A. Heldeweg, 2000, p. 375

⁷ R.A. Wessels, 2004, p. 93

⁸ J.C. de Moor-van Vught a.o., 1992, p. 602

⁹ V.J.J.M. Bekkers, 1993, p. 30

¹⁰ V.J.J.M. Bekkers, 1993, p. 15

The third element is the adaptation of national law. Directives contain provisions. These provisions must have an effect on the national regulations. These national regulations may not contradict with the EC law. The content of the directive determines which national provisions can or cannot be used for the implementation of a directive. The Member States may not frustrate the continued effect of the EC policy.

The fourth element is provisions that have effect on material law. Directives contain mainly material law. In most cases, the EU leaves to the Member States to establish administrative execution regulations and maintenance and legal protection provisions. Sometimes, the directive grants the competent to implement through a specific form. When the directive does not mention a specific form for the implementation, the choice of instruments depends on the nature and content of the directive.

The fifth element is the indication of the execution institution. The Member States have no choice which institution is going to execute the directive. The established directive points out the competent execution institution.

The sixth element is the administrative execution regulation. Directives are, in most cases, used for harmonisation of national legislation. There are two forms of harmonisation. With complete harmonisation, the provisions of the directive should be in principle working exhaustive. The national measures cannot fill up or deviate from the directive. There is also optional harmonisation and the establishment of minimum norms. By these elements of implementation, the Member States are competent to maintain their own norms.

The seventh element of the implementation process is the maintenance and the legal protection provisions. The duty to execute and maintain the Community law comes from the principle "community loyalty". Next to this principle, directives often contain assignments for national execution or maintenance system. For maintenance, the Member States are not in its entirety free in their choice for maintenance and sanction instruments. The Court of Justice has established four principles for maintenance measures. The first principle is the principle of efficiency or effectively. A sanction has to have an effective reaction on the offence. The second principle is the proportionality principle. There must be proportionality between the seriousness of the case and the weight of the sanction. The third principle is the assimilation principle. This principle means that violations of Community law must be dealt with the same or comparable way as violations of national law. The last principle is the principle of deter effect. This means that the by the judge enforced sanction must have a deter effect on future violators.

A legal protection provision means that when an EC regulation grants subjective rights, there must be an open way to court. Legal protection provisions cannot necessary be fund in implementation measures, but there is a possibility that they can.

1.3 Implementation process in the Netherlands

The implementation process of EC directive in the Netherlands has some special aspects. The EC law has no procedure in which is determined on how to implement. There is only something said about the form in which the regulations should be introduced in the national legislation. With directives, there are regulations of procedural nature. By regulations of procedural nature, you can think of the implementation period. There are no separate procedures in the Netherlands for the type of implementation of EC regulations. With directives, the chosen implementation form determines the procedure. There is a choice for implementation in the form of a 'law in formal sense' or in the form of a 'general measure of administration'. These forms have their own procedures. Because there is no separate procedure for implementation of EC regulations, there is little procedural grip during the implementation process. Many decisions, like the moment of bringing in different persons into the implementation process, should be solved internal.

Two spheres

Two separate spheres recognize the implementation process of directives. There is a sphere on international level, Brussels, and a sphere on national level, within the Member States. The preparations and establishment of directives by the competent community institutions and organs for regulations instruments is made in Brussels. For the Netherlands, the task to execute the measure is coming from Brussels. The Dutch implementation is a process of community policy preparations and policy execution. With the implementation of EC regulation, the relation between community policy formation, the policy execution, and the way on which these relations are formed in the EC treaty are of great importance. When problems appear, you want to know what the consequences are but also what the causes are.

Actors

The main course for national implementation lays with the central government. The central government takes decisions about the forms, instruments and other measures who secure the result of the directive the central government have to justify about the implementation to the Court of Justice and to the Commission. This does not mean that decentral governments do not have any implementation duties when the central government delegates the implementation to them. In the implementation process of directives, the central government is the central actor. Next to the central government, there are other actors important. On legal grounds, the "Staten Generaal" as co legislator and the "Raad van State" as advice organ are formal actors who must be concerned into the implementation process of the Netherlands. There are also informal actors active in the implementation process of the Netherlands. These informal actors want to be included into the implementation process on free will. These informal actors are for example political parties and interest groups. These actors are influencing each other.

Procedure

As mentioned before, the Netherlands has no special legal procedure for implementation of EC regulations. The chosen regulation instruments determines the processes. The main regulation instruments are laws in "formele zin", general measures of administration and ministry regulations. The procedure regulations are

very small. The legislation processes are more difficult than these procedure regulations does suspect. Bekker uses the different phases of Eijlander for the division of the legislation processes. These phases are the preparation of a legal regulation, the determination or establishment of a legal regulation, the execution of the legal regulation, the evaluation of the legal regulation and the feedback of the results of the evaluation. Bekker is mainly interested in the preparation and establishment phase, because in these phase the main implementation decisions are being made. Next to this, *“the general assumption is that the implementation process of EC directives is on the end when the Ministry of Foreign Affairs reports to the Commission in Brussels of the taken implementation measures.”*¹¹

The preparation phase

The most crucial phase of the implementation process is the preparation phase. In this phase, there are preparations for the establishment of the regulation instrument. The central government is a central actor in this phase. When a directive, directed to the Netherlands, is established, immediately preparations must be taken for the implementation legislation. These preparations are in most cases taken place in specialised departments of ministries. These specialised departments drawn up a proposal for their minister. This minister can take that proposal to the cabinet or can establish it. The preparation phase does not always begin with the assignment of the minister towards his officials. The Dutch government can also begin the preparations on EC directives through two prenatal lines.

The two prenatal lines

The first line begins with the influence of the Dutch government through the Comity of Permanent Representatives during the negotiation phase. The proposals of directives of the Commission are submitted to the Council of Ministers for establishment. During this phase, the preparations begin for positioning of the Dutch government towards the commission proposal. Next to this, there are attempts to try to arrange on official level different matters of the preparation of the treatment by the Council of Ministers. This early preparation is important, because problems of implementation can be spotted early and there is a possibility that they can be solved.

The second prenatal line starts when the Commission submits a proposal by the Council. When this happens, the Dutch government is informed. After this, the “Workgroup Judgement new Commission proposals” is informed. *“This interdepartmental commission, included all ministries, looks at the proposal en tries to determine which ministry what the consequences of a directive for the Dutch legal system are, which financial consequences a proposed EC regulation brings along and whether there is need for coordination between different concerned ministries.”*¹² Looking to the consequences of an EC regulation, the ministries who are a subject of the EC regulation are pointed out to be the first responsible ministry. The Workgroup delivers the request to the ministry to fill in “fiche”. The minister fills in on the “fiche”, the content of the proposal and what the consequences are for the national law. Filling in the “fiche” helps the first responsible ministry to reflect on an early stage on measures to be taken by implementation of a directive. The implementation plan must be established after a month after the Council of Ministers has established a general position.

¹¹ V.J.J.M. Bekkers, 1993, p. 135

¹² V.J.J.M. Bekkers, 1993, p. 137

Information

The opinion of the ministries and the contribution of the Dutch parliament, who act as co-legislator by possible implementation, are of great importance. The Dutch parliament is informed monthly by an overview of “fiches” of the ministry of Foreign Affairs about EC regulations that affect the Dutch legal system. Because of this information, the parliament can discuss with the government about which position to take concerning the handling of the plan in Brussels. In addition, the Dutch parliament can be informed in other ways about EC directives. The Lower House gets from every minister an agenda and reports of EC Council of Ministers meetings, which is attended by this minister. The Ministry of Finance goes a bit further with this. The Lower Chamber gets from this ministry a periodic progress reporting about a set of directives concerning financial services in preparation. The Lower Chamber insists that other ministries do the same. Next to this, the parliament has always the possibility to ask for texts and explanation of the government and ministers if the parliament knows of an EC regulation through a different way.

1.4 Conclusion

What does the term implementation of EU directives actual mean? Implementation indicates different kinds of processes and actions that take place by the introduction of community law in the national system of law. The term implementation that is used in this paper is according to the testing commission. Implementation exists of the record of guaranteed rights and duties of EC directives, adaptation of contradictorily national law and the creation of necessary implementation and maintenance structures. According to Bekkers (1993), the term implementation has seven elements. These elements are the transposition duty, reference to the executed directive, adaptation of national law, provisions that have effect on material law, indication of the competent execution institution, administrative execution regulation and the maintenance and the legal protection provisions.

The EC law has no procedures in which is determined how to implement. Because there is no separate procedure for implementation of EC regulations, there is little procedural grip during the implementation process. Many decisions should be solved internal. There are two spheres in the implementation process of directives. There is a sphere on international level, Brussels, and a sphere on national level, within the Member States. The central actor in the implementation process is the central government. The central government takes decisions about the forms, instruments and other measures who secure the result of the directive and the central government have to justify about the implementation to the Court of Justice and to the Commission. The “Staten Generaal” as co legislator and the “Raad van State” as advice organ are formal actors who must be concerned into the implementation process of the Netherlands. There are different phases of the legislation process. These phases are the preparation of a legal regulation, the determination or establishment of a legal regulation, the execution of the legal regulation, the evaluation of the legal regulation and the feedback of the results of the evaluation. The most crucial phase of the implementation process is the preparation phase. The preparations take, in most cases, place in specialised departments of ministries. These specialised departments drawn up a proposal for their minister. This minister can take that proposal to the cabinet or can establish it. The preparation phase does not always begin with the assignment of the minister towards his officials. The Dutch

government can also begin the preparations on EC directives through two prenatal lines. The first line begins with the influence of the Dutch government through the Comity of Permanent Representatives during the negotiation phase. The proposals of directives of the Commission are submitted to the Council of Ministers for establishment. The second prenatal line starts when the Commission submits a proposal by the Council. When this happens, the Dutch government is informed. After this, the “Workgroup Judgement new Commission proposals” is informed. The Dutch parliament is informed monthly by an overview of “fiches” of the ministry of Foreign Affairs about EC regulations that affect the Dutch legal system. Because of this information, the parliament can discuss with the government about which position to take concerning the handling of the plan in Brussels. In addition, the Dutch parliament can be informed in other ways about EC directives.

2. Which factors create to the transposition problem?

Since the transposition problem is put on the agenda of the European Commission, many studies are conducted, investigating the causes of the transposition problem. This chapter will try to get an answer on the question which factors are the cause of the implementation problem. Papers on this subject by different authors are studied. The factors mentioned by these authors are divided into four clusters. Factors that are similar to each other are classified in the same cluster. The first cluster is the EU level cluster. This cluster contains factors concentrating on EU level. The second cluster contains factors concentrating at the national legislation. The third cluster contains policy-specific factors. These factors are concentrated on department level. The fourth cluster contains the remaining factors that are mentioned in the different papers.

2.1 Factors on EU level

The factors that are concentrated on European level can be divided into four groups. These groups are the directive itself, problems in the communication, legislation problem and the European Court of Justice.

2.1.1 The directive itself

The first group is the directive itself. The main idea of this group is that the character of the directive causes the problems in the implementation process. Steunenberg (2005) suggests that the factor complexity of a directive is an import cause of delay. The number of pages of a directive does not provide a suitable explanation of complexity. The number of recitals does. *“The expectation is that the more recitals a directive has, the more time is needed to transpose the directive.”*¹³

Not only the complexity of the directive has causes the delays. The amount of time available according to the directive is also a factor for delay. When a Member State has the opportunity to spend more time for implementing directives, the more time the Member State might take to transpose them, this according to Steunenberg (2005).

According to Van Kreveld, the community deadline in the directive is a problem. The deadline of the implementation period is too short. In the case of the Netherlands, the implementation deadline stands in many cases about 18 months. This means a too short period of time considering for many legislations procedures. These 18 months are necessary for the legislations procedure, for the implementation is no time. A result of this is the late implementation of an EC directive. Next to the deadline in the directive, van Kreveld suggests that the transposition duty is also a factor of delay. The Member States have the duty to transpose, even global and special detailed directives. The European Commission looks on the transposition of directives in every Member State. The directives should be working in the same way in every Member State. The case is that some parts of the directive provisions are hard to transpose, because of the bad connection to national legislation. The

¹³ Steunenberg, 2005, p. 13

Netherlands cannot deal with very global and detailed directives. These directives are not easy to execute. There are contradiction towards others directives and the provisions are not clear.

In the paper by Bekkers (1993), “*a much heard complaint of legislation officers is the faulty quality of directives.*”¹⁴ The directives are often unclear and/or the formulation is complicated. This recurs in the paper by Voermans, Eijlander, a.o. the argument is that there are some accessibility problems in the directives. This means that the directives are unclear, the terminology that is used in confusing, the regulations are incomplete and inconsistent, vague terms are used and there are different legislative cultures within the EC with their own traditions. De Moor-van Vught and others calls this a lack of information about the directives. The directives are unclear and/or the formulation is complicated. The directives are internal contradictorily or contradict with other community legislation. The content of directives stands full of vaguely and for more interpretations possible. There is no explanation included by the directive. This argument also joins with Bekkers argument. Bekkers suggests that directives are often internal contradictorily or are in contrary with other Community legislation. As a result, the legislation jurists have to deal with interpretation problems. When there is a conflict about the interpretation of a directive, the European Commission can be consulted. The information of the European Commission is not always distributed so quickly. Next to this, the information is some times vague and not so trustworthy and the answering of question is not always timely. Faulty implementation is created by two factors. The first factor concerns “*the political-administrative context in what the directive is formulated.*”¹⁵ In this context, there is the matter of compromise forming. This leads to vague objectives and norms. The second factor concerns the division between the policy preparation in Brussels and the national policy execution. This is a result of the mechanic vision on policy processes. Typical for this vision is that the policy formation is a political process and the policy execution an administrative-bureaucratic process is.

2.1.2 Communication problems

The second group contains problems in the communication on European level. According to Voermans, Eijlander, a.o., the implementation process and the enforcement process have problems. It is difficult to communicate with Brussels about the problem of implementation or enforcement of EC directives. “*A qualitative problem not covered as such by the review based on the (Dutch) qualitative criteria is the lack of feedback of experiences with the implementation of EC legislation.*”¹⁶ The combination of the communication problems with Brussels and the lack of feedback between decision-makers in Brussels and the implementation and enforcement bodies in the Member States leads to ‘silent losses’. ‘Silent losses’ are created in the form of non-application or non-enforcement with quality defects. The communication problem on European level causes difficulties in the implementation process on national level.

¹⁴ Bekkers, 1993, p. 193

¹⁵ Bekkers, 1993, p. 193

¹⁶ Voermans, 2000, p. 69

2.1.3 Legislation problems

Voermans, Eijlander, a.o. suggests that the DG's in Brussels focus on their own legislation. The idea is that the DG's focuses only exclusively to their own activities. They are not willing to discuss one another's competences. This leads to lack of awareness of one another's legislative products, conflicting requirements in the directives and not much direction to the subject of mutual harmonization of EC regulation.

2.1.4 European Court of Justice

The fourth group is the European Court of Justice. According to De Moor-van Vught and others, the criteria of the European Court of Justice on the judgement of implementation measures are a factor that causes implementation problems. The Court has the freedom of the choice for form and instruments for implementation limited by obligating the Member State to implement the directives with the most suitable form and instruments to make sure that the directive has useful effect. The judgement of the Court brings about the implementation measure must have in most case the form of a general connected regulation. The restriction of the choice for instruments and form, made up the European Court of Justice, means that implementation by means of self-regulation or regulations by decentral governments is permitted in limited extent. The implementation of directives is no creative work. The implementation should be complete and exact. *"The implementation of directives therefore confiscates a great part of the legislation capacity of the central government."*¹⁷ The jurisdiction of the Court contributes to the problems of implementation.

¹⁷ J.C. de Moor-van Vught a.o., 1992, p. 602

2.2 National legislation

EC directives must be transposed into the national legislation. Delays in the implementation process can emerge because of the structure of the national legislation. This cluster is divided into three groups: the national legal order, structure and connection.

2.2.1 National legal order

The national constitutional law is a cause of delay for the implementation process, according to De Moor-van Vught and others. Not only the community law has his demands about the implementation form, but also the national constitutional law has his demands. *“By the choice of a proper implementation form the constitution systematic and the constitution terminology, as the primate of the legislator can play an important role.”*¹⁸ With the implementation of EC directives, the national government is bound to these constitutional regulations.

Steunenberg (2005) suggests that a directive amending an earlier one is easier to implement than that a directive is issued by the Commission, because it concerns some adaptations of existing policy. Directives that are issued by the Commission fit into a broader policy. Mastebroek (2005) does agree with Steunenberg about transposition through existing legislation. Transposition through legislation in *“formele zin”* does not differ as for transposition through general measure of government. What is important is the character of the transposition process. Transposition through adaptation of existing legislation is quicker than transposition through new legislation.

Van Kreveld (1993) focuses on the combination of the transposition of EC directives and national measures. Not long ago, this combination had two forms. *“With the first form, it seems practical to wait with the implementation until the concerned national regulations should be adapted and the implementation can hook on to that.”*¹⁹ The second form was that the implementation measures take along new national policy what already was waiting for some time. The idea was that these forms were efficient. However, this was not the case. This combination leads to delays because several links in the legislation process take a long time for the new national policy.

2.2.2 Structure

The quality of EC regulations are determined by *“the necessity of the regulation, the proportionality and subsidiarity, the selection of the instruments, the volume of regulations, the coherency with existing measures, the requirement of due care, the implementation and enforcement, the editorial quality and the accessibility.”*²⁰

Sometimes, special instruments are introduced in the implementation process of EC directives. These special instruments can help some specific cases, but they do not determine the general performance of state. The negative side of the introduction of special instruments is that these special instruments may cause delays in the implementation, according to Steunenberg.

¹⁸ J.C. de Moor-van Vught a.o., 1992, p. 604

¹⁹ J.H. van Kreveld, 1993, p. 2

²⁰ Voermans, 2000, p. 6

In some cases, the national government determines to wait with the implementation of new directives. This happens when the national government is convinced that it is for the best to implement the new directive on the same time with new national measure that is related to the new directive. Doing it this way, you do not have to go through the implementation process twice. On the first side, this seems like a smart plan. However, according to Steunenberg, this will only lead to more delays in the implementation process.

In close relation to the previous argument, is the argument about issue linkage by Falkner (2004). He argues that issue linkage can cause, in some cases, implementation delays. Issue linkage means that Member States transpose or tries to transpose a directive in connection with other issues. Issue linkage is not always negative. It can also have a positive effect on the implementation.

Haverland (1999) states that the first systematic cross-national studies on European integration and domestic policy change started with a hypothesis about the importance of stickiness of national policies and regulatory styles. Adaptation pressure is essential to this argument. Adaptation pressure is defined as the degree of institutional incompatibility between national structures and practices and EU requirements. High adaptation pressures cause ineffective implementation of EU requirements. *“The degree of adaptation is shaped by the preferences and resources of domestic coalitions, mediated by institutional structures, such as veto points.”*²¹ Veto points refer to all stage on which agreement is required for a policy change in the decision-making process. European requirements are quasi veto points, because European legislation is mostly packed with additional provisions to ensure effective implementation. Such provisions often depend on the assent of other institutional players. Veto points, regardless of the differential gaps in the goodness of fit, determine the quality and timing of the implementation.

Duina (1999) argues that the national legislative process is a determining factor on the speed of the implementation process. *“Member States that require long legislative processes to pass domestic laws and introduce numerous revisions during those processes transpose EU directives tardily and incompletely; Member States that apply domestic laws with delays and loopholes apply directives similarly.”*²²

2.2.3 Connection

Looking at the field of competences, van Kreveld (1993) suggests that some directives do not go together with the definition of competencies of the national ministers. In many cases, by implementing directives, national regulations should be adapted. This falls under the competences of some ministers. This can result in discussions and delays in the implementation. *“This applies in particular if the tasks definition between the concerned ministers is unclear.”*²³

The connection between Community law and the national legal system is of importance to the delays in the implementation process. Mastenbroek (2005) explains that the transposition depends on the goodness of fit or the degree of compatibility between EU and national policies and institutions. The implementation is worse if the fit is low. Low fit means higher costs of adaptation for the Member States.

²¹ Haverland, 1999, p. 2

²² F. Duina and F. Blithe, 1999, p. 519

²³ J.H. van Kreveld, 1993, p. 3

2.3 Policy-specific factors

The third cluster contains policy-specific factors. Steunenberg (2005) explains the term policy-specific as follow: “*a policy-specific process takes place more within ministerial agencies rather than across government systems.*”²⁴ The administrative bodies perform the actual work of adapting and changing national legal rules. There are different, not uniform, organized administrative procedures for transposition. There are different patterns of consultation, coordination and decision making. Sometimes external stakeholders could be involved in the administrative procedure in a policy area. When a directive requires a change in law or is subject to a back procedure, the parliament is involved. Therefore, the content of transposition is policy-specific.

This cluster of factors is divided in seven groups. These groups are the legislation jurists, the preparation phase, coordination problems, internal problems, interpretation problems, priority and the civil servants.

2.3.1 Legislation jurists

Van Kreveld (1993) argues that the legislation jurists should not be brought in during the community phase, but in the preparation phase in Brussels. Exclusively policy departments or even international departments conducts the negotiations in Brussels in the preparation phase. Delay in the implementation process is created because the legislation jurists are not involved in the preparation phase and problems are not detected in an early phase. In the preparation phase, the legislation jurists can detect problems early and can put these problems to the front. Problems that were detected in the preparation phase are easier to solve than problems that were detected in later phases.

Next to the early bring in of the legislation jurists, van Kreveld (1993) argues that the national legislation jurists have too little implementation knowledge available. For a long time, there was not enough information available about the right way of implementing EC directives. Without enough available information, there were no answers on difficult questions that came across by the process of implementation of EC directives.

2.3.2 Preparation phase

The preparation phase of the new directive is an important phase. According to Bekkers (1993), a successful implementation needs an early preparation. Early preparation has two advantages. The first advantage is that the national government still exerts influence on the directive in the making. The second advantage is the early establishing of different competences with the implementation. The Dutch Commission for Testing of Legislation Projects argues that the role of the parliament in the implementation process has to be restricted. However, the parliament appears in many cases not the most important cause of delay. The quality and the network character of the departments are in deed important factors of delays. However, the network character has also some disadvantages. The execution activities have a weak bureau-political status within the different departments. The policy content preparations have a higher status. A result of this is the structural undermanning of the legislation departments and the overload of these departments.

²⁴ Steunenberg, 2005, p. 1

The preparation of a directive may include some problems. Voermans (2000) suggests that in the preparation of a Directive, “*insufficient attention is drawn to the implementation and enforcement of the Directive itself, and/or the implementation measures required based on the Directive.*”²⁵ The implementation process runs into delays because of this. Voermans (2000) also suggests that there is another problem in the implementation process and the enforcement process of EC directives. There is non-systematic involvement of implementation and enforcement institutions in the preparation of the implementation. A result of this is that problems are not signalled and therefore not resolved in an early stage. Problem solving is harder in a later stage of establishing the directive.

De Moor-van Vught and others (1992) are looking at the role of advice organs in the preparation phase of implementing a directive. The Dutch government gets, in the national preparation phase of implementation, advice from different advice organs and social organisations. These advices are useful, but cause implementation delays. The advice organs and social organisations take some time to conduct their own investigations. This means that the deadline for the implementation of a directive is forced into a corner. De Moor-van Vught and others (1992) conclude in their investigation that the division between preparation of community policy and the making of rules of national implementation is also a cause of delays in the implementation process. For a long time, the thought was that there is a sharp division between making policy and execution of policy. Nowadays, the meaning is that the division between the different phases of policymaking and execution of policy is not so sharp, and the different phases should not be divided at all. “*The implementation of policy is not a mechanic process, but a politic process in the content of mutual influence of actors.*”²⁶ For formulating a directive, the legislation jurists and the executor are working together in the preparation phase. However, this does not caught up in practice.

2.3.3 Coordination problem

The coordination with the different departments is not of high quality. There are coordination problems. De Moor-van Vught and others (1992) suggests that there are coordination problems with implementation at inter-departments. The horizontal character of the directives collides with the vertical structure of policy fields of the different departments. All departments have a different style of approach, interests and culture. Working together is not an easy task. The difficulties result also from disputed competences concerning the content of directives. Mastenbroek (2003) suggests that there are coordination problems between departments. Different departments have to work together. This may bring problems with them. In the Netherlands, this problem is created by the differences in policy styles. Mastenbroek (2003) concludes that the hazard is the same between directive that deals with one department and those that deals with two departments. However, the hazard is different when there are three or more departments needed to incorporate. Therefore, the coordination problem between the departments is not always even bad. Two departments that are working together have less coordination problems than three or more departments working together. Steunenberg (2005) also sees these coordination problems. Steunenberg (2005) explains the term coordination as an analyse between different actors in the process of transposition. “*If a single player*

²⁵ Voermans, 2000, p. 65

²⁶ J.C. de Moor-van Vught a.o., 1992, p. 603

*coordinates the transposition process – which is called hierarchical coordination - no substantial delays are expected.*²⁷ The coordinating player sees the directives being transposed according to his preferences or shaped by the lower-level players. When there are several coordinating players involved in the transposition process – this is called multiplayer or horizontal coordination- delays occurs if the directives divides these players. In this case, *“the domestic political and administrative arena is confronted with a deadlock, which makes it impossible for any player to suggest an acceptable and successful way to transpose the directive.”*²⁸ Steunenberg (2005) formulates different hypotheses about the transposition process. The first hypothesis concerns the power of the coordinator. *“A directive is transposed according to the coordinator’s preferred implementing policy if: this policy is found between the most preferred positions of the lower-level players, or the directive equals the coordinator’s most preferred policy, or preferred proposals of the lower-level players are not sustainable, that is, not legally supported.”*²⁹ The second hypothesis concerns the discretion of the lower-level players. Under the conditions mentioned in the corollary, *“a directive is transposed according to a policy adopted by the lower-level players, which is the feasible policy closest to the most preferred position of the lower-level agenda setter.”*³⁰ The third hypothesis concerns the multiple coordinating players. *“Under a system of horizontal coordination, transposition is delayed if the directive is found between the ideal positions of the coordinating players.”*³¹ The first finding of his research is that hierarchical coordination is better capable of resolving the inability of lower-level actors to transpose a directive than horizontal coordination. Typical for horizontal coordination is the drawback of deadlock and delay. Hierarchical coordination does not suffer from this.

2.3.4 Interpretation problems

Next to coordination problems, there are interpretation problems. According to Falkner (2004), problems with the interpretation of a directive can cause implementation delays. *“Due to multitude of actors and arenas involved in the EU decision-making process, and to the ensuing variety of different views, which have to be taken on board in the course of those process, European directives, are often loosely worded in order to accommodate differences in the decision-making process.”*³² The directives are, as result of this, open for different interpretations. When a Member State is not involved in the negotiations about the directive, interpretation problems are more likely. Bekkers (1993) also concludes that interpretation problems affect the implementation process. Interpretation problems can be a result of the demands about implementation of the national legal system. *“Important by this is the interpretation of the constitution systematic and terminology as the primate of the legislator.”*³³

²⁷ Steunenberg, February 3 2005, p. 6

²⁸ Steunenberg, February 3 2005, p. 6

²⁹ Steunenberg, February 3 2005, p. 13

³⁰ Steunenberg, February 3 2005, p. 15

³¹ Steunenberg, February 3 2005, p. 17

³² G. Falkner a.o., 2004, p. 463

³³ Bekkers, 1993, p. 194

2.3.5 Internal problems

Within the wall of the departments, there are also problems to be found that affect the implementation process. Mastenbroek (2003) suggest that there can be “Chinese Walls” found within the structure of the department. These structures are different for each department. There are “Chinese Walls” between the stages of preparation and transposition. There are obstacles between the negotiators and the implementers of EU legislation and the number of governmental departments. The existence of “Chinese Walls” seems to make some difference to transposition speed, but it does not explain all variance.

Next to the factor of “Chinese Walls”, there are administrative problems within the different departments. Falkner (2004) concludes that the administrative problems are an important cause of delays in the implementation process. Administrative shortcomings can cause implementation delays even when the necessary adaptations are not so important and magnitude and even when the government is not unwilling to transpose. Bekkers (1993) investigated the structure of the departments. He concludes that the transformation of a directive has to deal with inter-departmental competence and coordination problems. Next to this, a directive is some times used to regulate additional wishes of a department. The problems are coming more intensive because of disputed coordination centrums. The competence problems are also related to the different policy styles and policy cultures of the different departments.

2.3.6 Priority of EC directives

Van Kreveld (1993) mentions in his paper nine legislation problems. One of these legislation problems is the priority of the EC directives. Directives are implemented late, because the priority of the ministers and his officers lays not with the EC directives but with the drawn up of own national policy. The implementation of EC directives had little prestige and low priority. In addition, the implementation of EC directives is in many cases not in time. Voermans (1993) and Steunenberg (2005) agree with van Kreveld. Steunenberg calls the priority of EC directive, political priority. When there is political priority for the transposition of directive, there is acceleration on the transposition speed. Voermans concludes that the low priority of editorial and enforcement issues in the decision-making and preparation phases and difference in approach and implementation between Member States creates distortions of implementation with different regimes concerning the directive.

2.3.7 The civil servants

Steunenberg (2005) suggests that the civil servant also play a part in the problems of the implementation process. The experience with transposition of the civil servants is of importance. Steunenberg (2005) suspect that if the civil servants have more experience with transposition, less time is needed to transpose a directive. Next to this, Steunenberg (2005) argues that the project teams of the departments play a role in the delays of the implementation process. *“Project teams in the phase of the preparation of the national opinion and the transposition can have a positive effect on the transposition speed.”*³⁴ A downside to this is, that these project teams confiscate a lot of time.

³⁴ Steunenberg and Voermans, 2005, p. 69

2.4 Remaining factors

The last cluster is the cluster of the remaining factors. This cluster contains factors that do not belong in the other clusters. It may happen that some of the factors in this cluster are related to other factors of the other clusters. This cluster is also divided into groups. There are six groups, namely the parliament, deliberate opposition or incapacity?, actors, responsibility, discouragement and the power of the state.

2.4.1 Parliament

According to different authors, the national parliament is a factor that causes delays in the implementation process. Van Kreveld (1993) argues that the Dutch parliament, advice organs and execution organs has a late commitment to the legislation process. In most cases, these institutions are brought in too late. Bringing in these institutions too late in the legislation process makes it not being useful. These institutions have the most influence in the phase of community decision-making process. Bringing in too late and be therefore not useful, causes delays in the implementation process. Next to van Kreveld, Steunenberg also suggests that the commitment of the Dutch parliament is important. When the national parliament is involved in the negotiation phase, the transposition speed can accelerate.

2.4.2 Deliberate opposition or incapacity?

Peters (2001) argues in his paper that the state's interests as a voluntary decision of the state against the implementation of directives due to a rational calculation of costs and benefits may explain to some degree non-implementation. Mastenbroek (2005) focuses on deliberate opposition of the national government. The maintenance approach considers compliance problems are a result of political calculation. States will comply with international agreements if this is in their own interest. Looking to transposition, "*transposition that does not happen can be seen as a conscious refusal of a Member State to transpose displeases directives.*"³⁵ Falkner (2004) adds to this argument, that deliberate opposition could cause the delay in implementation of directives by national governments. National governments could implement a directive late, when the national government not had wanted this directive. However, another deliberate opposition is also possible. The other possibility is that national governments want to protect the older national patterns but without any dispute at the prior decision-making stage.

Incapacity can also cause delays in the implementation process, instead of deliberate opposition of the national governments. Mastenbroek (2005) suggests that compliance problems are a result of incapacity. Member States are negligent by execution of international agreements because they are incapable of that. Different interviews about the transposition of the Netherlands show the idea that incapacity is the main factor of non-compliance. "*Wilful preventing of transposition of directives in the Netherlands by the parliament, government, or interest groups is a rare phenomenon.*"³⁶ Voermans (1993) suggests that implementation and enforcement institutions can be incapable. The incapacity or inability causes stagnation of the implementation of EC directives.

³⁵ E. Mastenbroek, 2005, p. 16

³⁶ E. Mastenbroek, 2005, p. 16

2.4.3 Actors

In the implementation process, veto player are important actors, according to Peters (2001). This paper regards implementation as an outcome of a complex decision-making process. In this process there are some societal actors participating with their own preferences. There is a veto player approach. Two types of veto players are to be distinguished, institutional and partisan veto players. With institutional veto player, their veto power is laid down in the constitution and are the main actors in the final phase of the decision making process. With partisan veto players, their veto power is not formal but they have de facto veto power. The preferences of the veto players determine the implementation decisions. There is the concept of 'win set'. "*With regard to the negotiations on an EC directive, the win set of a member state is the set of all possible agreements (directives) that would be implemented in that state, i.e. that would gain the support of all veto players.*"³⁷ Peters (2001) formulates two hypotheses. The first hypothesis is: the larger the number of veto players is in a country, the lower is its implementation rate. The second hypothesis is: "*the better the national delegation of a state is informed about the preferences of the domestic veto players, the higher is the implementation rate of his state.*"³⁸ Looking to the liberal model, the testing countries are divided into three groups. In the countries where the national delegations are well informed about the national veto players preferences, the highest implementation rate are on average detected. "*Those, in which the delegation has no information about the win set, clearly have the lowest implementation rates, and those in which there is only some information about the national veto players' preferences take the middle ground.*"³⁹ The number of veto players does not affect implementation rates in the first group.

Steunenberg (2005) add to the previous argument that "*the expectation is that the more veto players are involved the more time transposition will take.*"⁴⁰ He sees also that there is a matter of mismatch. Different domestic actors can be regarded as relevant players. This corresponds with some claims that national political parties play an important role in the transposition. Steunenberg (2005) shows the complexity of the relationship between characteristic of the decision-making process and the actor involved. First, "*the preferences of the domestic actors as well as the way in which national policy coordination is organized matter.*"⁴¹ Second, "*the relationship between the preferences of these actors, the contents of a directive and outcomes is not linear and sometimes even not continuous.*"⁴² Problems with transposition are suddenly triggered when some key features of the domestic arena changes. Delays in the transposition process are due to a 'mismatch' in terms of opposing preferences. These opposing preferences disappear when actor's preferences change.

According to Duina (1999), the interests of the leading political actors are important in the implementation process of directives. Directives are fully implemented when they are in line with the interests of the leading political actors. Directives that are not fully in line with the interests of the leading political actors are implemented with delays and are only partially applied by the national government.

³⁷ D. Peters, 2001, p. 17

³⁸ D. Peters, 2001, p. 18

³⁹ D. Peters, 2001, p. 23

⁴⁰ Steunenberg, 2005, p. 14

⁴¹ Steunenberg, February 3 2005, p. 31

⁴² Steunenberg, February 3 2005, p. 31

Mbaye (2001) suggests that the number of actors is important in the case of problems creating. Mbaye (2001) argues that implementation process is affected by the institutional design and the actions of the elite in adapting to the institute. Mbaye sees the European Union as a multi-level governance. More problems will emerge if more actors are involved in the implementation process. In the paper by Mbaye of 2003, the number of veto players is important. When the number of institutional and coalitional veto players increase, the non-compliance of a Member States is expected to increase also.

2.4.4 Responsibility

According to Steunenberg, clear official responsibilities will help the implementation process. To be on time with the transposition of directives, unambiguous and clear official responsibility can help. The unambiguous and clear responsibility comes forward in the fact to work with one department that is responsible for the process of transposition, in the structure within the department and the frequent marking of the priority of transposing directives.

2.4.5 Discouragement

Van Kreveld (1993) suggests that discouragement has a negative influence on implementation. There is discouragement because other Member States do not decent executes the EC regulations. This has a negative influence on the national implementation process and the national implementation maintenance. Why should one Member State implement correctly and on time if other Member States will not do this? With a result, the implementation rate will decreases.

2.4.6 The power of the state

Some authors suggest that the power of the national state is a factor that determines the implementation rate. Peters (2001) and Mbaye (2001) both expected that the rate of the economic power of a state determine the implementation rate. According to Peters (2001) his findings, the economic capabilities of a country do not affect the implementation rate. Mbaye's (2001) findings are not the same. On the contrary, Mbaye's expectation that more economic power is positive for implementation is correct. States with more economic power have fewer cases of non-compliance.

In close relation with economic power is the state capacity. Mbaye (2003) expected that the state capacity have a positive influence on compliance. However, this was not correct. State capacity has a negative influence on compliance. States with more money do not comply as well as states with less money.

The power of the state is not only determent by the economic power of a state. The question whether the bureaucracies in the state are efficient or inefficient is important, according to Mbaye (2001). Mbaye claims that "*efficient bureaucracies are better able to translate edicts into acts than inefficient bureaucracies are.*"⁴³ In the paper by Mbaye of 2003, efficient bureaucracies came back. The conclusion was that when the bureaucratic efficiency and corporatism increase, the number of compliance increases also.

⁴³ A.D. Mbaye, 2001, p. 274

2.5 Conclusion

After comprising the different researches on the subject of implementation of EC directives, the conclusion could be drawn that the view about the factors related to the problematic of the implementation is different between the researches. The researches Mbaye (2001/2003) and Steunenbergh (2005) focus on compliance. Compliance is a broader term as transposition. These researches see compliance as an indicator for implementation. Voermans and Eijlander (1993), only look to the quality of a directive. Missing good quality is effecting implementation. With the different views on implementation, different factors of delays in the implementation process are given. Some factors are not called the same in every research. The factors indicate the same problem, only the researches give it a different name. The factors mentioned in de different papers are divided into four clusters. The first cluster contains factors that are concentrated on European level. The second cluster contains factors concentrated on national legal system level. The third cluster contains factors concentrating on policy-specific level. This means that processes takes place more within ministerial agencies. The fourth cluster contains factors who were not assigned to the other three clusters. The four clusters are all divided into different groups. The cluster EU level is divided into four groups. These groups are the directive itself, problems in the communication, legislation problem and the European Court of Justice. The cluster national legislation is divided into three groups: the national legal order, structure and connection. The cluster policy-specific is divided in seven groups. These groups are the legislation jurists, the preparation phase, coordination problems, internal problems, interpretation problems, priority and the civil servants. The last cluster, the remaining factors, is divided into six groups, namely the parliament, deliberate opposition or incapacity?, actors, responsibility, discouragement and the power of the state.

Some factors often came back in the literature. I consider these factors the most important factors for the cause of the implementation problems. Four major factors come out all the papers.

The first major factor the directive itself, located in the cluster EU level, is one of the main causes of the implementation problem. Related to the problems within the directive itself, are the interpretation problems, located in the cluster policy-specific factors. The second major factor is the interpretation problems.

The directive is to complex and unclear and complicated formulated. It is not clear what the directive comprehend, which means that there must spend some time for asking question to the people in Brussels over the content of the directive. Results are delays in the implementation. Because of the unclear and complicated directive, the implementation has to do with delays and can be insufficient. Using the world of van Kreveld (1993), Member States have the duty to transpose even global and specific detailed directives. The factor interpretation problem, which is of importance of the implementation problem, is closely connected to the content problems of directives. Because the directive is unclear formulated, the interpretation is very open. This leads to interpretation problems. For getting the right interpretation of the directive, the Commission has to be approached. The Commission is not quick with answering question, and in the mean time, the implementation process cannot go on.

The third major factor is the coordination problem, located in the cluster policy-specific factors. There are coordination problems within the department itself but also between the national level and the European level. Coordination problems at national level occur between two or more ministries working together for the

implementation of a directive. However, coordination problems also occur in inter-departments. According to De Moor-van Vught and others (1992), this is because the horizontal character of the directives collides with the vertical structure of policy fields of the different departments. Coordination problems on European level occur because the communication with the Brussels representatives is difficult. Coordination problems lead to implementation problems because the working environment is not perfect.

The fourth, and last, major factor is the low priority of the implementation of directives. The low priority of directives is located in the cluster policy-specific factors. The implementation of a directive is repeatedly shoved aside because other national regulation has more priority. This means that the implementation deadline is coming rapidly closer, without any progress in the implementation process.

Next to the four major factors for the implementation problems that come out the different papers, I think that “the goodness of fit” between European provisions and national rules and practice, that is argued by Mastebroek and Haverland (1999), is just an important factor for the implementation problem. When there is no good goodness of fit, the implementation is immediately a bit harder. The directive does not fit in the national legislation. As a reaction to that, there are many adaptations in the national legislation. This takes a lot of time and manpower to get it done. More time needed for the implementation means also late implementation.

The third chapter stands still on the factor “goodness of fit”. The question why this factor is important and how to solve problems around the factor “goodness of fit” are to be discussed.

3. The “goodness of fit” hypothesis

Concluded from chapter 2, an important factor for the implementation problem next to the problems concerning the directive itself, is the “goodness of fit”. The term “goodness of fit” is often used in relation with the term Europeanization. *“The conceptualization of the term Europeanization is the emerge and the development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem solving that formalizes interactions among the actors, and of policy networks specializing in the creation of authoritative European rules.”*⁴⁴ If a Member State is not successful in uploading its national institutions and policies, there are problems in the adaptation to the decision-making result from European level. The problem around “goodness of fit” can be concentrated around EU policy demands versus existing national policies and around EU policy demands versus the national preferences. Mastenbroek (2005) concludes that there are two dimensions important for “goodness of fit”. The first dimension is between institutional and policy misfit. *“The policy dimension relates to the content of the policies, whereas the institutional dimension relates to the regulatory style and structure of a particular policy sector.”*⁴⁵ The second dimension is between the legal and practical status quo. This means that certain rules are not laid down in the law but exist informally.

The “goodness of fit” hypothesis formulates that *“if a directive requires only minor changes to the arrangements already in place at the domestic level, we should therefore expect smooth implementation without any major problems. If considerable reforms to the existing rules and regulations are called for, however, domestic resistance is likely to arise and implementation should hence be seriously hampered by long delays or significant flaws in terms of substantive accuracy.”*⁴⁶ The “goodness of fit” hypothesis is also called the cost hypothesis. The lower the goodness of fit, the higher the costs for adaptation and the implementation performance is negatively influenced. The costs of adapting to the EU policy demands must be as low as possible.

This chapter is concerned about the different opinions of researches about the “goodness of fit” hypothesis. Some researches argue that the “goodness of fit” hypothesis can be used on its own, while other researches argue that the “goodness of fit” is only useful in combination with other theories. The theory about the “goodness of fit” hypothesis does not always correspond with the practice. Problems occur in the decision what to measure and what kind of variables to use to find “goodness of fit”.

⁴⁴ T. Börzel and T. Risse, 2003, p. 3

⁴⁵ E. Mastenbroek, 2005, p. 1109

⁴⁶ O. Treib, 2003, p. 3

3.1 The theory of the “goodness of fit” hypothesis

The basis of the “goodness of fit” theory is the “goodness of fit” hypothesis. This hypothesis is already mentioned before. There is a smooth implementation if there are no major changes in the national arrangements. The implementation is slow when the EU directive requires much change in the national arrangements. The researches have different opinions about the “goodness of fit” hypothesis.

Bailey (1997) reconsiders whether “goodness of fit” theories can illuminate why some member states adjust more successfully to EU environmental law than others. *“In terms of implementing EU environmental objectives, goodness-of-fit has been a primary determinant of successful adaptation.”*⁴⁷ The key factor between the German and the British implementation strategies was the “goodness of fit” with prevailing national policy styles. “Goodness of fit” is more important than institutional vetoes. Evidence of this is the way that the two governments have managed implementation difficulties. Domestic institutional role have played a minimal role in ensuring practical implementation. The differences in experience of and fit with EU regulatory styles influenced national adaptation to Europeanization.

Duina and Blithe (1999) argues that institutional fit is a gradual matter, some changes does take place. The idea of Duina and Blithe is *“that common markets can erode the authority of the nation-state through a second venue: with the promulgation of rules that, upon proper implementation, reach deep into national legislative and administrative authority and strip the nation-state of its ability to regulate important aspects of social life.”*⁴⁸ Duina and Blithe argue that the fit between a rule and two domestic institutions determines the implementation process. The two domestic institutions are the policy legacy of a nation and the organization of its interest groups. Further, Duina and Blithe argues that historical institutionalism explains the degree of fit of certain institutions that is translated into good or poor implementation. Historical institutionalism focuses on the constraints affecting political, administrative, and social actors. Duina and Blithe hypothesize that the implementation depends primarily on the fit between rules and the policy legacy and the organization of interest groups in the nation state. The implementation is not completed and on time when the rules require significant changes of the national policy legacies and the organization of interest groups. The implementation goes smoothly and reaches deep into the national state when the rules suggest principles consistent with those found in the national institutions. Duina and Blithe argue that *“variables other than institutional fit may come into play; their importance is minor. However, and his is especially so when the institutions being challenged are deeply rooted in society and carry much legitimacy.”*⁴⁹

According to Börzel (2003) there must be some degree of misfit or mismatch between European and domestic policies, processes, and institutions. The “goodness of fit” between the European and the domestic level determines the degree of adaptation pressure generated by Europeanization on the Member States. *“The lower the compatibility between European and domestic processes, policies, and*

⁴⁷ I. Bailey, 1997, p. 805

⁴⁸ F. Duina and F. Blithe, 1999, p. 494

⁴⁹ Duina and Blithe, 1999, p. 499

*institutions, the higher the adaptational pressure.*⁵⁰ Börzel (2003) also concludes that there are two types of misfits by which Europeanization exerts adaptational pressure on the Member States. There is policy misfit, essentially equal compliance problems, and the institutional misfit, challenging domestic rules and procedures and the collective understandings attached to them. Institutional misfit is less direct than policy misfit is.

Börzel (2000) argues that the domestic institutions and the specific features of EU environmental policies cannot account for the compliance problems only in the EU. *“If an EU policy does not fit the regulatory structures in the member state, its legal transposition, practical application, and enforcement impose considerable costs of adaptation, which domestic actors hardly inclined to bear.”*⁵¹ Börzel (2000) argues firstly, that the implementation most likely to fail or non-compliance is a result of not fitting EU policies with domestic policies. *“Second, policy misfit is only the necessary cause of implementation failure and non-compliance.”*⁵² Börzel uses the “Pull-and-Push” model for arguing that there is no “Southern Problem”. This “Southern Problem” contains the idea that the Southern countries have more implementation problems than the Northern countries. The “Push-and-Pull” model is a combination of the goodness-of-fit hypothesis and the term adaptation pressure. The “Push-and-Pull” model generates the hypothesis that *“compliance with policies that incur significant adaptational costs (policy misfit), is more likely, the higher the adaptational pressure from below and from above (domestic mobilization, infringement proceedings).”*⁵³ The “Push-and-Pull” model has two propositions. First, when the implementation of the EU policies imposes substantial costs, compliance problems arise. When there is a high misfit between European policies and the domestic situation, the adaptational costs are higher and the willingness of public and private actors to comply is low. Second, the adaptation pressure from below is influenced by the willingness and-or ability of private and public actors to bear the poor implementation costs, and the adaptation pressure from above is influenced by the EC and its infringement procedures. The advantage of the “Push-and-Pull” model is that the causes of the implementation failure or the non-compliance are not geographically bound or are static. Having a policy misfit does not necessarily mean that there is an implementation failure and non-compliance. The “Push-and-Pull” model explains that the policy misfit causes compliance costs and that the mobilization of national and European actors increases the costs of non-compliance. Börzel (2000) argues that *“while policy misfit is a general (necessary) condition for non-compliance, pressure from below and from above is only one possibility to overcome the resistance of actors to face the costs.”*⁵⁴ For the resistance against the misfitting norms, processes of social learning and persuasion may be useful. An important issue is to balance the policy misfit and not to avoid policy misfit.

The arguments by Green Cowles, Caporaso and Risse et al. (2001) are in line with the arguments about adaptational pressure by Börzel (2000). Green Cowles, Caporaso and Risse et al. (2001) created a conceptual three step framework for domestic change. The first step is to identify the Europeanization process. The second step is to identify the “goodness of fit” between the European level and the domestic

⁵⁰ T.A. Börzel and T. Risse, 2003, p. 5

⁵¹ T. Börzel, 2000, p. 2

⁵² T. Börzel, 2000, p. 2

⁵³ T. Börzel, 2000, p. 4

⁵⁴ T. Börzel, 2000, p. 36

level. Green Cowles, Caporaso and Risse et al. (2001) identifies the degree of fit with adaptational pressure. *“In principle, the degree of adaptational pressure determines the extent to which domestic institutions would have to change in order to comply with European rules and policies.”*⁵⁵ The degree of fit or misfit is determined by the degree of adaptational pressure. If the adaptational pressure is low, the fit is high and not much structural adaptation is required. However, if the adaptation pressure is high, there is a high level of misfit and many structural changes are required. The third step is institutions and actor strategies. The institutional and actor strategies facilitating or impeding structural changes must be examined. Green Cowles, Caporaso and Risse et al. (2001) conclude that there is no noticeable pattern of fit or misfit. There are two explanations for this. The first explanation is that the domestic institutions vary notably depending on the policy area. The second explanation is that the fits or misfits could result from the Europeanization process itself.

Not all researches see the “goodness of fit” hypothesis as important. Mastenbroek and van Keulen (2004) conclude that the will to comply by the government is more important than the “goodness of fit”. The “goodness of fit” cannot explain the different transposition time needed by the Member States.

There is a limited use of the “goodness of fit” hypothesis. Mastenbroek and van Keulen (2004) mention two reasons for this limited use. The first reason is that the assessment of the actual “goodness of fit” highly depends on the view of the stakeholders. The second reason is *“that even when the Member States upload their existing national policies, and are reluctant to change these in the face of a high goodness of fit, it is not much the goodness of fit that should interest us, but the preferences underlying this.”*⁵⁶

However, there are advantages of the use of the “goodness of fit” theory. Mastenbroek (2005) mentioned two advantages of the “goodness of fit” hypothesis. One advantage of the “goodness of fit” hypothesis is the strong theoretical character of this hypothesis. This strong theoretical character leads to precise empirical expectations. Next to the strong theoretical character, a second advantage is the empirical diligence. Many researches have conducted comparative research about the “goodness of fit” hypothesis.

⁵⁵ Green Cowles, Caporaso and Risse et al. , 2001, p. 7

⁵⁶ Mastenbroek and van Keulen, 2004, p. 24/25

3.2 The “goodness of fit” hypothesis in practice

Is the theory working in the real world? Not all theories are correct when looking at the reality. Does the “goodness of fit” theory work in practice?

Mastenbroek (2005) argues that the result of the “goodness of fit” hypothesis is rather disappointing. Comments are that the “goodness of fit” hypothesis is rather static and has a limited explanatory value. The conclusions of various studies are that the “goodness of fit” hypothesis is neither a necessary nor a sufficient condition for smooth compliance.

Haverland (2000) researched the packing waste directive in the Netherlands, Germany and the UK. The UK with the highest misfit, the implementation of the directives went fast and well. A reason for this is the strong support for harmonise in the environment field by the UK. Germany had a low misfit, but the implementation was late and not correct. There was support for the harmonisation, but the different governments levels did not agree with each other.

Falkner et al. (2004) investigated six labour law directives. France and Germany, who had a high fit, did not so well in the implementation of these six labour law directives. In the contrary, the UK and Ireland had a high misfit and they did very well in the implementation process.

Treib (2003) studied six social policy directives in four Member States. He concludes that from the total 24 cases, only 16 cases can be explained by the “goodness of fit” hypothesis.

In the working paper by Knill and Lenschow (1997) the hypothesis is “*that the implementation performance is directly linked to the “match” or “mismatch” between European policy requirements and existing arrangements at the national level.*”⁵⁷ The implementation is expected to be low if the required number of national adaptations is high and there is effective implementation when EU policy is corresponding to the national policies. Knill and Lenschow investigated five environment policies in Germany and Great Brittan. In the case of Germany, only two of the three cases confirm the expectation about the implementation problems. In Great Brittan, this was the case in only one of the cases. Knill and Lenschow conclude, “*that implementation effectiveness depends on the level of correspondence between national regulatory patterns and those implied in the EU legislation, is not sufficient to explain German and British implementation performance with respect to the five environmental policies.*”⁵⁸ Knill and Lenschow suggest that the adaptation pressure is also important for the problems around the implementation. When the institutional embeddedness of the existing regulatory arrangements increases, the adaptation pressure is also rising. The institutional embeddedness helps to explain further the expectation of effective implementation. Next to the institutional embeddedness, the policy context is the second filter in terms of effective implementation. The policy context determines the actually perceived pressure of the policy actors and their implementation performances. For a successful implementation, there must be a new institutional framework in combination with a favourable policy context. The conclusion of the research done by Knill and Lenschow is “*that the impact of national administrative arrangements on the implementation*

⁵⁷ Knill and Lenschow, 1997, p. 2

⁵⁸ Knill and Lenschow, 1997, p. 10

*of European policies depends on the perception of adaptation pressure on the national level.*⁵⁹ The extent of the adaptation pressure is determined by the conflict between European and national traditions and by the institutional and policy perception filters.

Problems occur concerning the measurement of the “goodness of fit”. The “goodness of fit” is not measured in the same way in all the studies. Some of the studies measure the “goodness of fit” as the (mis)match between European regulation and existing national arrangements, like the study by Börzel (2000). Other studies use adaptation pressure to measure the “goodness of fit”. An example is the study by Börzel (2003) and the study by Green Cowles, Caporaso and Risse et al. (2001).

3.3 Getting around the problems of the “goodness of fit” theory

In spite of the fact that there are disappointing results coming from the “goodness of fit” hypothesis, the “goodness of fit” hypothesis does not have to be rejected. According to some researches, there are ways to get around the problems of the “goodness of fit” hypothesis.

Mastenbroek and van Keulen (2004) provide two strategies for dealing with the disappointing results of the “goodness of fit” hypothesis.

*“The first strategy is to uphold the “goodness of fit” hypothesis by complementing it with additional or intervening variables despite the heavy empirical weather.”*⁶⁰ The researches can look, for instance, to the effect of the institutions that are embedded. This strategy is not only positive. There is a downside to this strategy. When you added variables to a framework, this framework will become less cost-conscious. Including new variables has a consequent that no longer clear hypothesis can be formulated ex ante, but only the outcomes can be interpreted ex post by using the theory as a heuristic device. Close to this strategy, is the need to provide more dynamic explanations. *“Most advocates of the “goodness of fit” hypothesis have done so by maintaining the hypothesis, while introducing auxiliary hypotheses allowing for change of domestic policy positions.”*⁶¹ The auxiliary hypothesis can concern, for instance, the policy context or dynamics of compliance.

The second strategy makes the framework more cost-conscious, in contrast to the first strategy. The second strategy looks at the preferences of the Member States regarding the issue at hand. The existing domestic policies can be changed by means of the EU legislation. By leaving the policy preferences of a Member State unspecified, a more cost-conscious model could be formulated.

⁵⁹ Knill and Lenschow, 1997, p. 29

⁶⁰ Mastenbroek and van Keulen, 2004, p. 7

⁶¹ Mastenbroek, 2005, p. 1110

3.4 Conclusion

The “goodness of fit” hypothesis formulates that *if a directive requires only minor changes to the arrangements already in place at the domestic level, we should therefore expect smooth implementation without any major problems. If considerable reforms to the existing rules and regulations are called for, however, domestic resistance is likely to arise and implementation should hence be seriously hampered by long delays or significant flaws in terms of substantive accuracy.*⁶²

The “goodness of fit” hypothesis is not always correct. The “goodness of fit” theory cannot always be found back in practice. Researches like Treib, Falkner and Knill and Lenschow demonstrate that the “goodness of fit” hypothesis cannot always explain why an implementation of EU directive went smooth or slow. Haverland (2000) concluded that countries with a high misfit might do well in the implementation of the directives. Treib (2003) concludes that from the total 24 cases, only 16 cases can be explained by the “goodness of fit” hypothesis.

Using the “goodness of fit” hypothesis has some advantage. According to Mastebroek (2005) it has two advantages. One advantage of the “goodness of fit” hypothesis is the strong theoretical character of this hypothesis. The second advantage is the empirical diligence.

According to some researches, there are ways to get around the problems of the “goodness of fit” hypothesis. Mastebroek and van Keulen (2004) provide two strategies for dealing with the disappointing results of the “goodness of fit” hypothesis.

The first strategy is to uphold the “goodness of fit” hypothesis by complementing it with additional or intervening variables. The second strategy looks at the preferences of the Member States regarding the issue at hand. The use of the “goodness of fit” hypothesis is limited. Mastebroek and van Keulen (2004) mention two reasons for this limited use. The first reason is that the assessment of the actual goodness of fit highly depends on the view of the stakeholders. The second reason is that the Member States are reluctant to change in the face of a high goodness of fit.

⁶² O. Treib, 2003, p. 3

Conclusion

Directives are directed to every legislator in the Member States. The purposed result is binding, however, every Member States is free in the choice of form and instruments. Directives include a certain time limit or deadline for the implementation of that directive. If the implementation is not yet completed after expiring the deadline, the Commission is competent to take against that Member State. This paper argues that when community law is introduced in the national law, implementation indicates the different process and actions. The implementation process exist of the record of guaranteed rights and duties of EC directives, adaptation of contradictorily national law and the creation of necessary implementation and maintenance structures. With the implementation of EC law, we mean, *“to take all general and specially measures that are needed to assure the effect of the EC law of a state.”*⁶³ Concerning the implementation of EC directives, the Court of Justice have determines that the implementation into national law must be on time. Next to this, the Court of Justice determined that the Member States must be committed until the purpose is reached and that the Member States must respect the legal security principle.

According to Bekkers (2003), implementation contains seven elements. The first element is the transposition duty. The second element is the reference to the executed directive. The national provisions have to have a reference to the executed directive. The third element is the adaptation of national law. National law must be adapted when it contradicts EC law. The fourth element is provisions that have effect on material law. Directives contain mainly material law. The fifth element is the indication of the execution institution. The established directive points out the competent execution institution. The sixth element is the administrative execution regulation. The seventh , and least, element is the maintenance and the legal protection provisions. For maintenance, the Member States are not in its entirety free in their choice for maintenance and sanction instruments. A legal protection provision means that when an EC regulation grants subjective rights, there must be an open way to court.

The EC law has no procedures in which is determined how to implement. Because there is no separate procedure for implementation of EC regulations, there is little procedural grip during the implementation process. There are two spheres in the implementation process of directives. There is a sphere on international level, Brussels, and a sphere on national level, within the Member States. The central actor in the implementation process of the Netherlands is the central government. The central government takes decisions about the forms, instruments and other measures who secure the result of the directive and the central government have to justify about the implementation to the Court of Justice and to the Commission. The most crucial phase of the implementation process is the preparation phase. In the Netherlands, the preparations take, in most cases, place in specialised departments of ministries.

⁶³ Steunenberg, 2005, p. 18

It is not always the case that the implementation of EC directives happens on time. Some delays in the implementation process occur. Unfortunately, the delays in the implementation process have more than one cause. Looking at the European level, there are problems in the field of the directive itself, in the field of communication, in the field of legislation and there are problems at the European Court of Justice. On national level, there are problems in the field of legislation, structure and policy.

Much heard complaints are the complexity and the vaguely and unclear formulations of the directives. Directives are, because of that, often internal contradictorily or are in contrary with other Community legislation. From this follows interpretation problems. There is no good communication with Brussels. It is difficult to communicate with Brussels about the problem of implementation or enforcement of EC directives. The feedback from Brussels to the enforcement bodies in the Member States is also not well established.

On the national level, there are also factor for delay of the implementation process. The national constitutional law may well be a cause of delay. Not only the community law has his demands about the implementation form, but also the national constitutional law has his demands. The need of adapting national legislation is also a factor of delay. Directive amending an earlier one is easier to implement than that a directive is issued by the Commission, because it concerns some adaptations of existing policy. Sometimes, the national government on purpose puts off the implementation of a directive. The connection between the EC directive and the national legislation is another factor of delay. The transposition depends on the goodness of fit or the degree of compatibility between EU and national policies and institutions. The implementation is worse if the goodness of fit is low.

Factors that cause delays in the implementation can be policy-specific. An example is the early preparation. A successful implementation needs an early preparation. Early preparation has two advantages. The first advantage is that the national government still exerts influence on the directive in the making. The second advantage is the early establishing of different competences with the implementation. Another policy-specific factor of delay is the coordination problem. Different policy styles between the national departments create coordination problems. There is a higher hazard on problems if there are three or more departments needed to corporate. The low priority is another policy-specific factor of delay. Directives are implemented late, because the priority of the ministers and his officers lays not with the EC directives but with the drawn up of own national policy. The implementation of EC directives had little prestige and low priority.

Deliberate opposition and/or incapacity may also cause implementation delays. The Member States can take a voluntary decision against the implementation of directives due to a rational calculation of costs and benefits may explain to some degree non-implementation. Sometimes, Member States are just not capable of implementing directives on time. Member States are negligent by execution of international agreements because they are incapable of that. Member States can also be discouraged to implement on time. If another Member States is not implementing on time, why should the other Member States do implement on time? There is suggested that the economic power of a Member State influence the implementation rate of that

Member State. When the Member State has great economic power, the implementation of EC directives will be on time.

Because there are many factors causing the delays in the implementation process, the question on how to solve it is difficult. This paper went deeper in on the factor of “goodness of fit” for looking for answer on how to solve this factor of delay. The “goodness of fit” hypothesis formulates that *if a directive requires only minor changes to the arrangements already in place at the domestic level, we should therefore expect smooth implementation without any major problems. If considerable reforms to the existing rules and regulations are called for, however, domestic resistance is likely to arise and implementation should hence be seriously hampered by long delays or significant flaws in terms of substantive accuracy.*⁶⁴ The use of the “goodness of fit” theory has some advantages. According to Mastenbroek (2005), the “goodness of fit” theory has two advantages. One advantage of the “goodness of fit” hypothesis is the strong theoretical character of this hypothesis. The second advantage is the empirical diligence. However, is the “goodness of fit” theory working in practice? Haverland (2000) concluded that countries with a high misfit might do well in the implementation of the directives. A reason for this is the strong support for harmonisation. Countries with a low misfit may do badly in the implementation of directives. A reason for this may be the disagreement between actors. Börzel (2003) concludes that some degree of misfit or mismatch between European and domestic policies, processes, and institutions is not wrong. There must be some degree of misfit or mismatch because this leads to more adaptation pressure. There is more adaptation pressure if the compatibility between European and domestic processes, policies, and institutions are low.

The theory on the “goodness of fit” brings problems along with it. Mastenbroek and van Keulen (2004) provide two strategies for dealing with the disappointing results of the “goodness of fit” hypothesis. The first strategy is to uphold the “goodness of fit” hypothesis by complementing it with additional or intervening variables. Close to this strategy, is the need to provide explanations that are more dynamic. The “goodness of fit” hypothesis still exists but it has auxiliary hypotheses allowing for change of domestic policy positions. The second strategy looks at the preferences of the Member States regarding the issue at hand. The use of the “goodness of fit” hypothesis is limited. Mastenbroek and van Keulen mention two reasons for this limited use. The first reason is that the assessment of the actual goodness of fit highly depends on the view of the stakeholders. The second reason is that the Member States are reluctant to change in the face of a high goodness of fit.

The research question of this paper was: *How can the implementation problem be solved?* The implementation problems in the EU are due to several causes. Research that is more precise was conducted on the factor of delay, the “goodness of fit”. However, getting a good “goodness of fit” between the EC directive and the national legislation is very difficult. There are now 27 Member States with all different national legislation. A good “goodness of fit” for one Member States can be for another Member State a bad “goodness of fit”. Following from this, I agree with Börzel (2003) that some degree of misfit or mismatch between European and domestic policies, processes, and institutions is not wrong.

⁶⁴ O. Treib, 2003, p. 3

Considering the time at hand for doing this research, conducting secondary research was the best option. However, getting all the necessary literature was sometimes difficult. Not all the literature was available for me.

What would be very interesting is further research on the subject of implementation problems in the EU. With this research, other factors of delay can be more in detail be researched.

For further research on the subject of implementation of EC directives, only secondary research is not enough. Next to the secondary research, a primary research/ a field study can be conducted. A possibility for this are interviews with important persons involved in the implementation process on European and national level.

What will be interesting is more specific research on the implementation problems for some Member States separately. An example of a possible Member State for that research is Lithuania. This country has the best implementation rate. Another interesting Member State is Romania. This country has the worst implementation rate. It will be very interesting to see what the causes of good or bad implementation are important in these Member States.

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