

The Impact of European Legislation on National Legislation in the Netherlands

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1. Introduction¹

How much legislation at the member state level is affected by European legislation?

According to several leading scholars, at least 80 percent of member states' legislation is derived from European legislation, suggesting a very high impact of the EU on national legislative and administrative systems. But is this true? Are member states really so much affected by European legislation? Have national states really 'devolved' so much of their legislative discretion to the supranational level? We have grounded reason to doubt the figures that are uttered in political debates and the media. A recent Danish study found that less than 30 percent of all Danish national legislation in force on 31 July 2003 did actually have a European directive as its source (Blom-Hansen & Christensen 2003). The policy area most-affected by Europeanisation, agriculture, had the highest score of 'only' 27,3 %. Although different in certain respects, a similar pattern emerges from a British study on the impact of European legislation on national legislation (Page 1998). Given the public opinion about the impact of 'Brussels' on national administrative systems, these findings urge students of Europeanisation to examine the impact of Europeanisation in more systematic and empirical ways.

Our study is part of a joint research project between researchers from the universities of Aarhus (Denmark), Mannheim (Germany) and our institute in Utrecht (Netherlands). To be more precise, the latter two projects are replications of the Danish study. In the light of this project, we are interested in the impact of European legislation on national legislation across a diverse group of countries. The Netherlands is a founding member state of the EU and it is a unitary decentralised parliamentary system. Denmark is also a unitary decentralised parliamentary system, but it entered the EEC in 1973 and has maintained a sceptic position towards European integration. Austria, the third country in this project, entered the EU in 1995 and, above all, is federal system. Besides assessing the '80% thesis' one of our main aims is to examine the effects of varying institutional settings on the observed variation in national legislative autonomy between various European countries. At this stage, our aims are rather modest, as the Dutch study's findings are preliminary and the Austrian study is still underway. We present some first observations for the Netherlands and compare these with those of the Danish and British studies on a preliminary basis.

The structure of paper is as follows. First, in section 2, we offer a brief overview of European implementation literature. We argue that this literature has tried to answer two kinds of questions: how fast do member states implement European directives and to what

extent do they adapt to them? The question how much member states are Europeanised is not as thoroughly researched as one expects on the basis of the widespread claim that 80% of national policies have their origin on the supranational level. In section 3 we compile these claims and critically discuss the different implicit assumptions that exist about the ‘impact’ and the empirical evidence that is available about legislative impact. Section 4 then explains our methods and describes our databases, and section 5 presents findings for the Dutch case. Next to some general descriptive data on the directives and national rules in our database, the data we present show how the EU directives in our database are allocated over ministerial portfolios, the legislative instruments used to transpose them, and of course the impact figure for the separate sectors. The paper ends with a conclusion and a discussion of caveats (section 6).

2. Europeanisation through The Implementation of European Directives

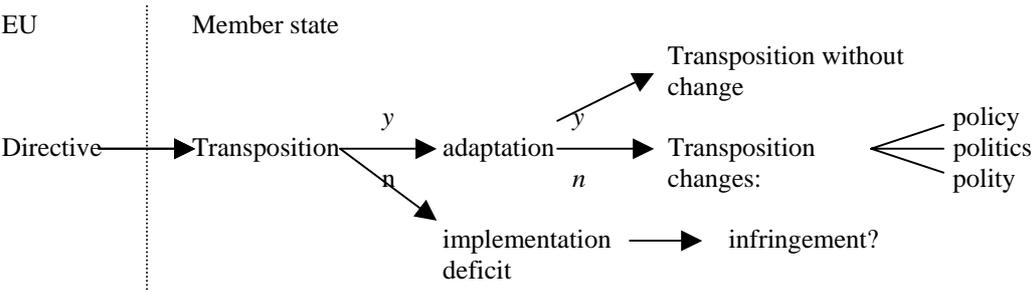
Europeanisation studies examine how and to what extent European integration affects the policies, politics and, polity of national member states (Richardson 1996; Peters 1997; Börzel & Risse 2003).² With the rise of Europeanisation studies, the main focus of EU-research is no longer limited to studies on the influence of member states on the evolution of supranational institutions, but has shifted to studies of the impact of European supranational institutions and decision-making processes on national states. This shift is partly welcomed as an expression of the maturity of the European Union, having become a fully fledged political system that is no longer the extension or instrument of its constituent members, like it is depicted in the liberal intergovernmentalist paradigm (Moravcsik 1993). On the other hand, the growing predominance of the domestic impact perspective is perhaps also an indication that the dusk has settled and ‘Europeanisation’ is being looked upon as another manifestation of the internationalisation of national politics (Gourevitch 1978; Katzenstein 1985; Goetz 2001; Mair 2004).³

European integration can affect the policies, politics, and polities of national member states in a variety of ways. Some of these ways are informal and indirect, for example through policy convergence and policy mimicry or through voluntary agreements, such as the Bologna agreements to uniform the higher education systems. Also through the free travel of goods, services and persons within the EU there has occurred a gradual convergence of cultures, tastes and life styles (Mair 2004). Many other ways are more direct and formalized. EU policymaking is highly legalistic and much of the European integration has been brought

about through legal instruments: directly binding regulations, directives, decisions, recommendations, and of course the case law of the European Court of Justice.

The implementation of European directives is perhaps the most popular branch of Europeanisation studies (Olsen 2002). The focus in the different fields of impact studies varies from examining the timeliness and correctness of the implementation of directives, i.e. the incorporation of EEC directives in national legislation and estimating ‘the implementation deficit’ (Siedentopf & Ziller 1988; Tallberg 2002; Mastenbroek 2003), to to what extent national policies, politics, and institutions have adapted to those directives that have actually been transposed, as well as the mechanisms through which they have been affected (Knill & Lehmkuhl 2002; Featherstone & Radaelli 2003). Both these strands have in common that they focus exclusively on how Europe ‘hits’ national states, but they differ in the stage of implementation where they focus on. Schematically:

Figure 1. A schematic representation of European implementation literature



The main difference between implementation deficit studies and domestic impact studies is that the former primarily focuses on the success and failure of transposition measured in timeliness and correctness of transposition, and addresses the causes of the implementation deficit. Domestic impact studies examine, once the directive is transposed, successfully or not, the impact measured in the degree of adaptation at various levels of the national state.

The starting point of implementation deficit studies is the legal requirement that member states of the European Union, for the sake of harmonization of the European political and economic space, should implement European directives on time and do such correctly. The main criteria – the requirements set up by the ECJ – for the transposition of European directives are whether member states have incorporated or transposed directives (a) on time, that is as specified in the directive and (b) the directive is transposed by a national legal instruments that has a binding legal effect (Mastenbroek 2002).

A pioneering study on the domestic impact of Europeanisation, is the comparative research project edited by Siedentopf and Ziller (1988: Vol. 1, 2). Through clearly delineating different phases in the European policy process,⁴ this study identified formal and informal processes of European policy-making, with a special reference to the performance of the individual member states in successfully ‘incorporating’ and enforcing European directives in their national political systems. Their main hypotheses were that implementation of EU legislation is a process highly influenced by the complex multi-level and inter-organizational nature of its structure, national politico-administrative cultures, and policy styles (see also Peters 1997; Richardson 1996; Hooghe & Marks 2001). As far as their observations on the process of incorporation are concerned, they discerned substantial variation between the member states in delegating the implementation of European policies to national actors, the procedures for incorporating, i.e. transposing, European directives, and the incorporation performance.

However thoroughly, the studies that were produced under the auspices of these authors remained limited to a sample of 17 directives. It has had follow-ups in a number of more recent studies on the implementation deficit. The EC, moreover, keeps periodic scoreboards tracking the delayed or on time transpositions of directives. It also provides lists of infringement procedures against member states that have failed to implement the directives on time. The Commission and with it several researchers have in this respect found substantial ‘implementation deficits’ (Bursens 2002; Lampinen and Uusikylä 1998; Mastebroek 2003). The most comprehensive and rigorous of these studies is that of Mastebroek (2003). She studied 229 directives enacted between 1995 and 1998 and measured the timeliness of the transposition of directives in the Netherlands. She concludes that a serious implementation deficit existed in the Netherlands, because 60 percent of the directives in her sample were transposed too late. Her analysis corroborates findings of Bursens (2002) who compared the transposition performance of Belgium and Denmark.

Domestic impact studies take adaptation as its main dependent variable. This strand is concerned with what happens after a directive is transposed. It focuses on the effects of the implementation of directives on national states, and on whether European integration means convergence. Domestic impact in this strand thus means first and foremost how national states are responding to European policies and to what extent these states’ policies are converging towards a common point. The growing body of literature on this aspect of Europeanisation has generated substantial insights into how and to what extent European integration has ‘hit’ member states, as well as a set of distinctive conceptual tools with which to study these

processes (Cowles et al 2001; Knill & Lehmkuhl 2002; Börzel & Risse 2003; Radaelli & Featherstone 2003).

Europeanisation can hit national states at three dimensions: policy, politics, and polity (Börzel & Risse 2003). The Europeanisation of national policy areas is the consequence of the implementation of European policies. European policies can either be formal European legislation on areas that are formal part of the *acquis communautaire*, or fairly informal processes of negotiation and agreement on issues that are not formal part of the *acquis*, i.e. codes of conduct, voluntary agreements, benchmarking etcetera (Zito et al 2003; Mair 2004: 341). The impact of European integration on domestic politics and polities, it is claimed, is far less researched than Europe's policy impact (Sciarini et al 2004), but there is no doubt among students of European politics that the impact of European integration on these dimensions is no less substantial than at the more basic policy level (Bergman & Damgaard 2000; Holzacker 2002). European integration is said to decidedly affect processes of societal interest formation, aggregation, and representation (Börzel & Risse 2003). The same is claimed about the EU's effect on the polity as it changes relationships between the branches of the state, i.e. the judiciary (Conant 2001), between territorial units of the state and the state and supranational institutions (Hooghe & Marks 2001), the national administrative systems (Kassim et al 2002; Hanf & Soetendorp 1998; Page & Wouters 1995; Knill 2001).⁵

In this brief overview of Europeanisation studies we could not do justice to the rich variety of studies dealing with this important issue. The literature is growing by the day and the field harbours edgy theoretical debates. Our main point should however be clear: the main focus of both the implementation deficit and adaptation studies is the question of how Europe has hit the national member state and what the consequences have been for, respectively, the timeliness and correctness of implementation, and the national policies, politics and the polity. One of the striking conclusions of this literature survey is that none has examined the relative impact of European legislation on national legislation. One of the big questions in public and scholarly debate is still left unanswered and is instead left to become a myth, the 80% myth. Instead of asking how or how fast member states become Europeanized, we pose the question *how much* European member states have become Europeanized.

3. The Impact of European Directives on National Legislation

3.1 The 80%-Myth⁶

The Europeanisation literature is haunted by the persistent assertion that 80% of all policies of member states is the result of European policies. This figure is generally ascribed to the former President of the European Commission, Jacques Delors, who in 1985 proposed the creation of a Single Market in Europe, proclaimed that 80% of the internal market of the member states would become governed by European legislation. Amazingly, this claim was unscrupulously taken over and repeated by a large number of students of the European Union. Hix (1999), for example, asserts that 'In fact, the EU sets over 80 per cent of rules governing the exchange of goods services and capital in the member states' markets' (p. 3). Later, he claims that 'Approximately 80 per cent of all social, economic and environmental regulation applicable in the member states is adopted through the EU policy process' (p. 211). In both instances there is no reference to a source or research where these assertions can be substantiated. This is the more problematic as his claims are taken over by other scholars (Richardson 2001: 4).⁷

Some students are somewhat more careful, but the 80% figure still recurs in their accounts. Börzel and Risse (2003), two leading scholars of the domestic impact school of Europeanisation studies, confine their claim to specific sectors: 'The Europeanisation of some policy areas, such as environment and agriculture, reached a degree where more than 80% of existing policies are made at the European level' (Börzel & Risse 2003 [*in working paper on p 3*]). Another recent example, confined only to the Dutch environmental policy area, is the 'estimation' that 'for 80%, Dutch environmental policy is effectively determined by Brussels' (Dijstelbloem et al 2004: 103). Most cautious, finally, has been Majone (1996:57):

according to some estimates, today only 20 to 25 per cent of the legal texts applicable in France are produced by the parliament or the government in complete autonomy, that is, without any previous consultation in Brussels (Conseil d'Etat 1993)⁸.

Presumably, an analogous situation prevails in all the other member states.

According to these authors, national policy-making in EU member states is a mere shadow of policy-making at the supranational level. Apart from the lack of empirical evidence, a problem with these assertions is that there is no clear definition of what is meant by the 'EU' or 'EU policies'. Clearly, a case can be made that the EU has a very large impact on national policies if all those 'products' of the European integration, formal and informal, are taken into account. That is, if we follow a very broad definition of Europeanisation. There is no dispute that, as Mair (2004) for example wrote, there is a convergence of cultures, life styles and

tastes within the European Union, and that many societal and economic problems that are not regulated by the *acquis communautaire* are taken up voluntarily by the national governments with the EU, through a host of so-called “new policy instruments” (Zito et al 2003).

But if we read the claims above more closely, it is clear that with the impact of the European Union is meant the impact of formal legal outputs of the various institutions of the European Union. Meant are the combined effects of regulations, directives, decisions, recommendations, and the decisions and jurisprudence of the European Court of Justice. If we confine ourselves to this more narrow form of Europeanisation, we agree that for certain policy areas, e.g. agriculture, it is likely that the combined impact of, say, regulations and directives yield a very high impact factor. But then again, there exists no empirical evidence that this impact is about 80 per cent, and that certain other policy areas have a lower impact degree, or that each member state is affected to the same extent. What is needed therefore, is a more specific operationalization of what is exactly meant by impact, followed by an empirical assessment of the degree of impact. This is, however, an enormous task. In this study we chose to limit ourselves to measure the degree of legislative impact that is the result of the implementation of European directives. By measuring the impact generated by directives on national legislation we are not able to conclude anything about how other formal and informal outputs of the process of European integration influence member states.

3.2 Recent Studies on the National Impact of Directives

Two studies precede our work in measuring the legislative impact of European directives on the single member states’ legislative process. The first study is conducted by Page on the United Kingdom (Page 1998), the second focused on Denmark (Blom-Hansen & Christensen 2004). Our study will replicate the Danish study in order to generate comparable findings. Although carried out in different time periods (UK 1987-1997; DK July 2003) their findings convincingly rebut the 80%-claim. Page found for the UK that European legislation is responsible for 15.8 % of all Statutory Instruments, the most common legislative procedure through which European legislation in the UK is transposed. The Danish study measured overall that 9.6 % of all primary and secondary laws in Denmark had a European origin. There were nevertheless major variations per sector within as well as between the countries. In both countries, the policy sector ‘hit’ most by European legislation was, as could be expected, agriculture. Still, in the UK 51 percent of the agricultural SIs had a European origin, whereas in Denmark the overall (primary and secondary) legislative impact of the EU on

agriculture was not higher than 27 percent. Given the fact that the studies measured different time periods we must be cautious in making comparative assessments on the basis of these figures. Nevertheless, the results of both studies seriously question the claimed impact of European legislation on national legislation.

However, we aim to go beyond a mere debunking of the '80%-myth'. The fundamental question is what the actual impact figures actually mean. Equally interesting are the implications for theory-testing and hypothesis building this kind of study will generate. A quantitative and comparative assessment of European legislative impact allows us to go beyond mere 'mechanism' studies and offers opportunities to assess more rigorously the 'goodness of fit'-hypothesis that so far has been tested merely case-wise. Our study, for example, generates an overall view of the extent to which different policy sectors went through an institutional compliance process, allowing impact analysis to go beyond the 'usual suspect' sectors such as environment and transport. Moreover, if future studies will find that the cross-national European legislative impact is low, this may affect current and past thinking on the nature and future of European integration. In any case, especially at the sectoral level, we expect to find substantial variation in the degree of Europeanisation between different sectors within the same country as well as between similar sectors across the member states.

4. Methods and data

Before we explicate our methods and databases, we briefly describe the general approach of our study through a brief account of the Danish and British studies, which are basically the same. Both use the available national and or European databases to identify all directives that have been implemented through a national rule. In the end both studies divide the number of national rules that implement EU directives by the total number of national rules present in the national database. There are several notable differences as well. The British study uses HMSO's *Statutory Instruments on CD ROM* (Context 1997) as its single and main database, whereas the Danish study couples CELEX, which contains European directives with references to the national rule which implements them, and the national legal database *Retsinformation* for identifying all national rules. Both studies however acknowledge the imperfectness of CELEX. According to Page, CELEX omits a substantial number of statutory instruments, especially those that amend, apply, or are a consequence of national rules that implement European legislation (Page 1998: 804). Blom-Hansen and Christensen (2003:

143), too, have noted the mistakes in CELEX, but considered them as too minor to have biased their measurement.

In our Dutch study we use similar databases for identifying European legislation and the national rules that implement these, and a database for identifying all national rules that were in force at 31 July 2003. As for European legislation, we use the Dutch *Europmaat* database. This database is built and maintained by the former State Printing Office, the now privatized SDU Uitgevers, and consists of a coupling of CELEX and the Register on Dutch Implementing Rules (*Register Uitvoeringsregelingen Nederland*). This register is developed and maintained by the T.M.C. Asser Institute, which is an ‘Institute for Private and Public International Law, International Commercial Arbitration and European Law’. The coupling of these databases circumvents the shortcomings of the CELEX database and is seemingly more accurate. The database we use for national legislation is also published by SDU, the *SDU Wettenbank*. This database contains all national rules, and enables searches for rules in force since 1 January 1995. It also allows for distinguishing between ministerial portfolios and types of legislation.

As already mentioned, our study is a replication of the Danish study. Having identified all the European directives that were in force on July 31, 2003, we coded for each directive the date on which it was enacted, the European institution that enacted it, the policy area in which it was issued, and the fact whether the directive was an original piece of legislation or that it revised or amended a directive already in force. As for policy area, we started from Eur-lex’s classification system, which is also reproduced in *Europmaat*, for identifying policy areas. Currently, the classification system contains twenty main policy categories.⁹ These categories are further refined in subpolicy areas, a feature which makes it possible to fine tune the different policy groupings, caused by regularly changing portfolio allocations, at the national level. In addition to these official categories, we also coded for the type of regulatory function of the directive.¹⁰

For each directive then, we coded the national rule through which it is implemented. In the Dutch legal system, directives can be implemented through four different types of national rule (see Mastenbroek 2002). The first type of national rule is statutory or primary law. These are enacted by parliament and cabinet together and send for scrutiny to the Council of State (*Raad van State*). The second type of national rule through which directives can be transposed are orders in council (*Algemene Maatregel van Bestuur*) or royal decrees (*Koninklijk Besluit*). These rules are generally binding acts, like primary laws, and need approval from the Council of State, with the difference that the adoption of orders in council are delegated to the cabinet,

either through constitutional provisions or primary laws. Third come ministerial decrees. These are only binding to a limited extent and do not need scrutiny from the Council of State. Finally, a number of administrative authorities, i.e. Public Bodies (*Openbare Lichamen voor Beroep en Bestuur*), have the (delegated) authority to issue orders. For each rule, the date of enactment and the ministerial department or administrative authority under which they are administered are coded. Having identified the national rules, the total number of national and specific rules that implements the directives is counted and compared to the total number of national and specific rules that are in force at 31 July 2003. Thus we can assess which part of the national rules that are in force have their origin in a European directive.

What kind of impact do our data allow us to observe? First of all, of course, we are able to calculate the relative impact of European directives on national legislation. As discussed above, this will allow us to assess the degree of Europeanisation, as far as legislation concerns, of a founding member of the European Union and ‘test’ 80%-thesis. We can furthermore test the impact for the country as a whole, but also assess the relative impact at sector level in order to distinguish the impact degrees across different policy sectors. Second, our data also allow us to reconstruct the legislative process through which European directives are implemented in the Netherlands. In addition, our data will also reveal the different legislative traditions that prevail among the Dutch ministerial departments. Finally, we can observe the degree of coordination between different ministerial departments that is required to implement European legislation, as our database contains findings on the number of ministerial departments that were involved in the implementation of European legislation.

When we juxtapose our data next to the Danish and (later) the Austrian databases, we are able to extend towards a comparative analysis of legislative impact. First, the above data are also available for Denmark, which allows us to proceed by cross-national cross-sector analyses of legislative impact. These findings allow us to measure of what can be termed a country’s or sector’s ‘legislative autonomy’ from European legislation. Second, these data also allow to map national and sectoral styles of legislation. In the UK, for example, 92 % of all European legislation is implemented through statutory instruments, i.e. secondary or delegated legislation (Page 1998: 804). The Danish figures display a more mixed picture of primary and secondary legislation, albeit that delegated legislation, i.e. *bekendtgørelser*, are more often used than laws (Blom-Hansen and Christensen 2004: 68).

5. Findings

5.1 EU directives and policy areas

Our database contains 1367 directives in force on 31 July 2003. More than half of these are ‘new’ directives, i.e. directives addressing a specific issue for the first time (744 directives, 54.4%); the remaining are ‘revision’ directives: they are enacted with the purpose of revising (provisions within) directives in force. To measure national impact figures, we have filtered the latter from the dataset. In the majority of the cases, revisions of existing directives usually change marginally the content of the initial directives and therefore hardly exert a material impact on the substances of the rules and subsequent policies at the national level. We are aware that we herewith risk missing substantial changes on national rules that are the result of revisions of existing directives, but the number of significant revisions will be small. Of the ‘new’ directives that were in force on July 2003, the Council issued the vast majority. The Council alone was responsible for 580 directives (78%), another 65 directives (8.7%) were issued by the Council in co-decision with the European Parliament. The Commission is responsible for the remaining 99 or 13.3% of the new or initial directives in force on July 31, 2003.

-- Figure 1 about here --

Figure 1, displays the directives according to EU policy areas. With 166 directives (22.3 %), EU agricultural policy has the largest share, directly followed by Industrial policy and internal market (160 directives, 21.5%). With directives on the free movement of services and right of establishment in third place (111, 14.9%), it becomes clear that rules pertaining to economic regulation are dominant in our database. Directives on workers and social affairs on the one hand and the protection of the environment, consumers, and health represent only 26% of all the directives in force.

5.2 EU policy areas and national jurisdictions

Directives can be implemented in various ways through various institutional actors. There is no automatic match between the EU policy areas and the national portfolios. Directives often touch upon the jurisdiction of several ministries, which can cause delays in the transposition process (Mastenbroek 2003:378). Our 744 initial directives were transposed by 3187 national rules. The majority of these directives is implemented by one or two rules (respectively, 221

and 136 directives); one directive was implemented by no less than 38 national rules.¹¹ Figure 2 shows how much of these transposition rules each ministry has produced. We see that about 23% of these transposition rules (728) has been produced by the Ministry of Agriculture, Nature Management and Fisheries, followed by the Ministry of Traffic and Waterworks (600, 19%) and the Ministry of Health, Welfare and Sports (417, 13%). This means that roughly just three ministries produce half of all transposition rules. The chart shows that the jurisdictional ‘homes’ of a quite an amount of transposition rules is missing (390, 12%). This figure can largely be attributed to missing information concerning the ministerial bases of transposition rules *Europmaat*.

-- Figure 2 about here --

Table 1 lists the distribution of transposition rules over various national ministries. Three observations are possible. First, table 1 shows how directives enter the national domain. There is quite a variation between EU policy areas whose directives affect legislative processes across a number of national portfolios and EU policy areas where directives are more or less confined to one or two national portfolios. Especially, environmental directives and directives pertaining to industrial policy and the internal market have cross-sectoral or cross-jurisdictional impact at the national level.

Second, the table shows how well national jurisdictions are fine-tuned to European policy areas. Unfortunately, we lack longitudinal data to check whether there has occurred an adaptation of national portfolio allocations to EU policy area designations, but such data could reveal how national governments deemed this ‘fit’ as an important factor for the coordination of EU policies: the more fit, the more easy becomes the coordination of EU policies (cf. Mastebroek 2003). A nearly perfect match exists between EU’s transport directives and the Dutch Ministry of Traffic and Waterworks: responsible for about 90 percent of all transport related transposition rules, EU transport directives are clearly the competence of this ministry. A smaller domain but with a more perfect fit between supranational and national jurisdictions is that of tax policy, as virtually all of the directives in this domain (99%) are implemented by the Ministry of Finance. A quite a good match exists between EU’s agricultural directives and the Ministry of Agriculture. However, the Ministry of Health, Welfare and Sports is responsible for about 20 percent of the agricultural transposition rules, an observation which we can ascribe to (increased importance of) issues of food safety and (consumer) health.

-- Table 1 about here --

A final observation this table enables is that it offers an approximate indication of how many Europeanised sub-fields are sheltered by the different ministries. Ministries that appear several times in the table, but under different EU policy areas are apparently responsible for different areas that are more or less affected by European policymaking. In our case, we see that the Ministry of Finance and the Ministry of Traffic and Waterworks appear three times each as the most affected ministry. Finance has the lead in tax policy, customs union and free movement of goods, and the free movement of services and right of establishment,¹² and Traffic and Waterworks is ranked as the most affected ministry in transport policy, industrial policy and internal market, and competition policy. It is an interesting fact, given the official role of the Ministry of Economic Affairs as the national coordinator of the EU economic policies, that this ministry, except in the energy domain, is not the most affected Dutch ministry in the economically most important EU policy areas. In fact, it is the Traffic department that has the highest number of appearances in the overall top-3 (six times). This implies that on July 31, 2003, this ministry compared to other ministries sheltered the most and significantly EU-affected jurisdictions of Dutch central government.

5.3 The transposition of EU directives

Our database does reveal the legislative techniques used to implement EU directives (Table 2a). The main observation here is which legal instruments the Dutch parliament apparently ‘prefers’ to transpose European directives with. Table 2a is clear: the majority of European directives are implemented by a ministerial decree (45.5%). This is interesting as this means that the implementation of about the half of ‘European’ rules belongs to the discretionary authority of individual ministers. In only 11 % of the cases, transposition occurs through forma law, and in one-third of the cases (31%), transposition occurs through a royal decree, meaning by the Dutch cabinet. A typical Dutch legal instrument forms the PBO decree. These decrees are issued by Statutory Trade Associations (van Waarden 2002) to bind their members (e.g. producer groups, firms and trade unions) in mainly industrial and agricultural sectors. Circulars, announcements (*bekendmaking*), covenant are grouped under ‘Others’. In sum: leaving aside what this implies for the parliamentary control of government’s

implementation of EU policies, our findings clearly show that about 90% of the transposition of EU directives takes place by legislative delegation.

-- Table 2a about here --

The Dutch central government departments were once referred to as the ‘fourteen legal families’. A uniform approach to legal production is lacking and each department has its own distinct preferences for a mix of legal instruments. Table 2b¹³ presents the types of legal instruments used by the thirteen departments that existed in July 2003. Overall, the table shows, more than half of all departments use ministerial decrees more frequently than formal laws and royal decrees. The champion of ministerial decrees is the Ministry of Health, Welfare and Sports (58.3%), followed by the Ministry of Agriculture, Nature Management and Fisheries (57.1%) and the Ministry of Traffic and Waterworks (56.3%). The Ministry of Education, Culture and Sciences is the only ministry that has used predominantly laws (even more than another instrument) to transpose its directives (34.3%), and is followed by the Ministry of Justice (34.3%) and the Ministry of Finance (30.6%).

These findings match to a large extent with the findings of De Jong and Herweijer (2004). In their study of central governmental rule production in the Netherlands, they found that ministries of Agriculture and Traffic and Waterworks were indeed the ministries with not only the highest production level of rules, but specifically of ministerial decrees. Our finding with regard to the Ministry of Justice matches also, as their research found that this department was largest formal law producer among all ministries. For these ministries we can conclude that the transposition patterns they display can be traced back to their ways of legislating rules in general. Surprising, however, is the case of the Ministry of Education. This ministry is criticized for over-producing decrees, i.e. circulars, a pattern also found by De Jong and Herweijer (2004: 227-228). As regards the transposition of EU directives, this ministry has used laws more often than decrees.

The ministries regulating corporatist policy sectors, finally and as expected, most often used PBO-decrees: Social Affairs and Employment, Agriculture, and Economic Affairs. From a comparative perspective, this expected outcome is of course quite remarkable. This means that European policies concerning industrial policies and internal market are largely co-governed by interest groups. Interest groups in the Netherlands are formally integrated in the formulation and (here) implementation of EU policies (Dijkstra et al 1995), whereas in, for example, Denmark interest groups have been deliberately kept out from the EU arenas as the

country entered the EEC, because the EU demands that only official civil servants partake in the formulation and execution of EU policies (see Hjelmar 2003).

-- Table 2b about here --

5.4 The National Impact of EU Directives

But how much is the legislative output of this and the other ministries actually affected by EU directives? The total amount of legislative output by individual ministries does not entirely stem from the transposition of EU directives. There is still substantial room for national legislative production, as the Danish and British studies have shown, and the question here is how much Dutch legislation actually finds its source in the EU. Or: to what extent is the 80%-myth true for the Netherlands? For the calculation of the EU-impact we only looked at formal laws and royal decrees. The reason why we left out ministerial decrees and PBO-decrees is that the laws and royal decrees are generally binding legal instruments, with the most and broadest impact on Dutch citizens and enterprises. Moreover, we also would have had a problem of measurement if we would have wanted to include PBO-decrees, as figures about this instrument was not available at the legal databases on internet at the time we collected our data.

-- Table 3 about here --

Table 3 immediately reveals that, except for agriculture, the 80%-myth is definitively a myth. Agricultural policy-making in the Netherlands is European policy-making. Furthermore, the table shows that the Ministry of Traffic and Waterworks' legislative output consists for more than 60% of transposition laws and royal decrees, which makes this ministry a highly Europeanised ministry, something about which we on the basis of the previous results we should not be surprised about. However, more than 60-70 % of all legislation of the remaining ministries is a nationally produced law or royal decree.

If we calculate the overall impact, we find for laws 18%, for royal decrees 28%; and for both 25%. This means that of all the national general binding rules that were in force on 31 July 2003, 75% was 'home made'. Of course this is a somewhat distorted figure, as we also have included the impact ratios of ministries and policy areas that fall outside the first pillar. If we take only those policy areas falling under the first pillar, we get an overall impact

of 38%.¹⁴ This is still impressively lower than the impact figures estimated by other scholars and uttered in public debates.

Finally, how do these figures for the Netherlands compare with those of Denmark? Remind that our data are collected in an identical fashion. Table 4 ranks and compares the impact ratios of the core ministries for both countries.

-- Table 4 about here --

We immediately see that the largest impact figure for Denmark is substantially lower than for the Netherlands: 27.3 % for Agriculture (i.e. Department of Food Stuffs). A large gap also exists between Netherlands' second-ranked department and its Danish counterpart, the Ministry of Traffic (63.2 % against 21.5 %). Despite the closeness of the Danish Employment Department and the Dutch Social Affairs and Employment Department (about 20%), there exist substantial distances in impact ratios between counterpart departments. Not all Danish ministries are included here (see Blom-Hansen and Christensen 2003: 68), but the overall impact figure substantially lower for Denmark is 9.6% (primary and secondary laws). Even when we exclude the ministries with 0-impact ratios and those outside the first pillar (e.g. the Ministry for Churches, Prime Minister's office, etc) the impact ratio remains still as low as 13.3 %.

However, we should be cautious with this list, as the figures are not directly comparable. First, as one sees are ministerial jurisdictions different in both countries. For example, Denmark has a Ministry for Asylum Seekers and Immigrants in 2003, an area that in the Netherlands is dealt with by the Ministry of Justice. A next example is environment: Denmark has a distinct ministry for this area, whereas this in the Netherlands is a part of a ministry that also harbours housing and spatial planning. Other differences have to do with the location of authority for certain policy issues. In Denmark, health care and education belong to the exclusive competence of local government (e.g. the Ministry of Interior Affairs and Health Care), whereas in the Netherlands policy-making in these areas is in the hands of the central government. Perhaps a more fundamental caveat may be the fact that because Denmark entered the EU in 1973, it has lesser directives than the Netherlands: through endorsing the *acquis communautaire*, Denmark transposed several directives at once. Finally, again pointing out to the finding of De Jong and Herweijer (2004), it may be the case that Danish rules contain more articles than Dutch rules, herewith bringing down the total number of transposed rules as compared to the Netherlands.

6. Conclusion

Debunking has not been the main or sole purpose of conducting this study. But still, together with the Danish, British and the forthcoming Austrian study on legislative impact our study contributes to the debunking of the 80% - myth that has become a mantra in political science and European politics. National states in the EU enjoy more legislative autonomy than was hitherto claimed. However, we repeat, we have only examined the impact of directives and neglected for practical reasons other formal as well as much subtler mechanisms of Europeanisation.

There are a number of caveats, indeed. The first is that what is measured here are numbers of rules. As De Jong and Herweijer (2004) show, the impact of individual rules may be mitigated by the number of articles that each rule contains. This is an important caveat to remember when international comparisons of impact figures are to be made. For example, the Jong/Herweijer study found that the Dutch Ministry of Agriculture made extensive use of ministerial decrees, but with an average of 5 articles. It is quite possible that agriculture ministries in Denmark (27.3% !) and Austria have issued relatively few rules but with a large number of articles. Second, we have only measured the formal impact of European directives, not the material impact. Rules differ from each other with regard to the social and economic costs they impose on citizens or firms. Some of the transposition rules may be more important than other transposition rules. Third, we do not know whether the directives are materially more important than the national rules. Again, we have not assessed the material impact of transposition rules, and we also have not examined the material significance of the national rules. It is thus possible that the directives and the rules through which they have been transposed are significantly more important, materially, than the majority of national rules.

A final important caveat we mention here is that we have only measured a single point in time. We do not know whether our findings fit within a trend or not. It could be possible that by choosing July 2003 as our point of measurement, that we missed a 'golden age' of European impact on national legislation. Studies of rule production at the supranational level do point at the possibility that we missed such an age. Blom-Hansen and Christensen show that the number of regulations issued by the EU has dropped from 1600 in 1986 to 800 in 2002 (2003: 37-38). Similar findings emanate from the study of Maurer et al (2003: 62). They have found that rule production at the EU level has peaked in 1986/1987. From this year onward, they registered a step-by-step decline of legal output and a sharp decline from 1998

onwards, a trend which they ascribe to a decline in agricultural, trade and customs legislation. With 2003, we are clearly in the low end of this trend. Unfortunately, the electronic legal databases that we can use to examine the legal impact of the EU have no digital records that go beyond 1995. This makes examining the possible existence of a 'golden age' quite a costly enterprise.

Apart from these caveats, there exists empirical evidence for the decline of the golden age. It may thus well be the case that soft law and the open method of coordination have partly taken over the place of regulations and directives, allowing the national states to reclaim a fair share of formal legislative autonomy.

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Figure 1. EU directives per grouped policy area

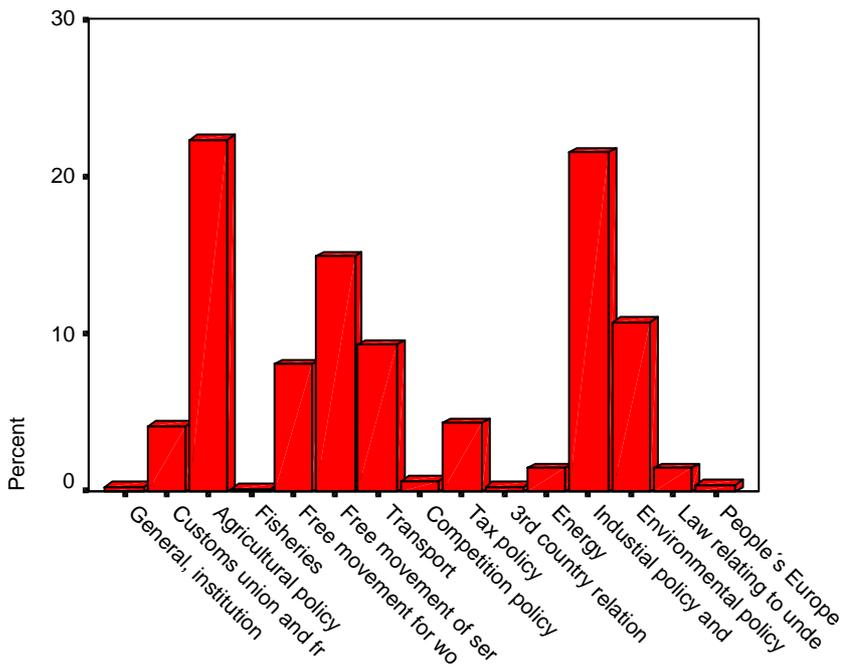


Figure 2. Distribution of transposition rules over national ministries

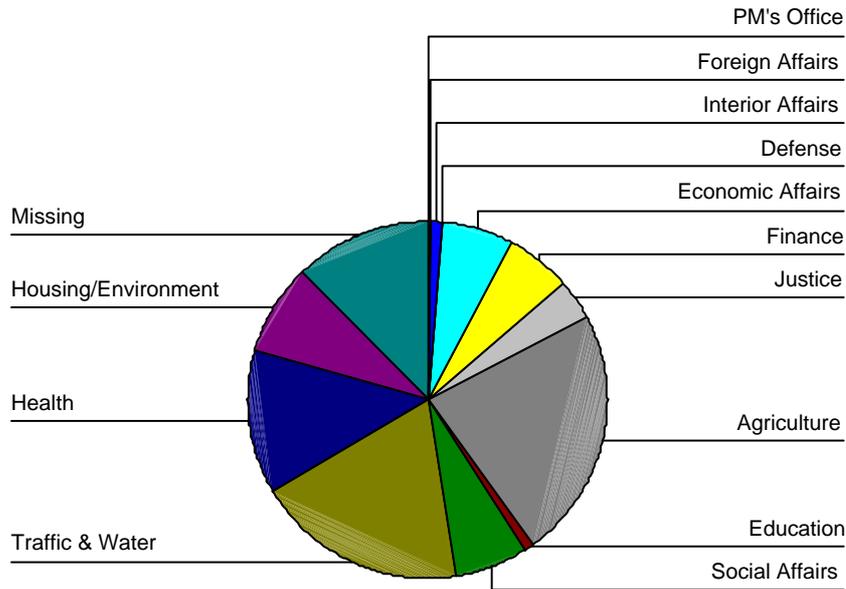


Table 1. The dispersal of transposition rules over ministries, July 2003 (percentages)

EU policy area	Most affected ministry	Second most affected ministry	Third most affected ministry	Total number of national rules
General, institutional and financial issues	Interior Affairs (66.7)	Housing, Spatial Planning & Environment (33.3)		3
Customs union and free movement of goods	Finance (51.4)	Agriculture, Nature Management & Fisheries (43.2)	Justice; Education, Culture & Sciences (2.7)	37
Agricultural policy	Agriculture, Nature Management & Fisheries (71.7)	Health, Welfare & Sports (19.5)	Social Affairs & Employment (6.4)	769
Fisheries	Agriculture, Nature Management & Fisheries (100)			1
Free movement for workers and social affairs	Social Affairs & Employment (45.0)	Economic Affairs (11.9)	Traffic & Waterworks (11.5)	218
Free movement of services and right of establishment	Finance (36.0)	Economic Affairs (18.0)	Traffic & Waterworks (15.9)	283
Transport	Traffic & Waterworks (92.1)	Finance/Housing, Spatial Planning & Environment (2.5)		202
Competition policy	Traffic & Waterworks (70.6)	Economic Affairs (29.4)		17
Tax policy	Finance (98.3)	Justice (1.7)		60
Third country relations	Finance (100)			2
Energy	Economic Affairs (61.9)	Housing, Spatial Planning & Environment (14.3)	Traffic & Waterworks/Health, Welfare & Sports (9.5)	21
Industrial policy and internal market	Traffic & Waterworks (38.0)	Health, Welfare & Sports (23.9)	Agriculture, Nature Management & Fisheries (9.8)	844
Environmental policy, consumer and health protection	Housing, Spatial Planning & Environment (51.7)	Agriculture, Nature Management & Fisheries (24.5)	Health, Welfare & Sports (9.6)	302
Laws relating to enterprises	Justice (82.6)	Economic Affairs (13.0)	Education, Culture & Sciences (4.3)	23
People's Europe	Justice (61.5)	Interior Affairs (30.8)	Foreign Affairs (7.7)	13

Table 2a. Types of national rules (overall), July 2003

Type of rule	N	Percentage
Law	361	11.3
Royal decree	1001	31.4
Ministerial decree	1451	45.5
PBO-decree	176	5.5
Other	198	6.2
<i>Total</i>	<i>3187</i>	<i>100</i>

Table 2b. Type of national rule used for transposition per ministry, July 2003

	Type of national rule					Total
	Law	Royal Decree	Ministerial Decree	PBO decree	Others	
Prime Minister's Office	12.5%	12.5%	.0%	50.0%	25.0%	8
Foreign Affairs	.0%	33.3%	33.3%	.0%	33.3%	3
Interior Affairs	20.6%	41.2%	23.5%	.0%	14.7%	34
Defense	.0%	50.0%	50.0%	.0%	.0%	2
Economic Affairs	8.1%	33.0%	47.7%	6.1%	5.1%	197
Finance	30.6%	16.6%	51.3%	.0%	1.6%	193
Justice	34.3%	20.4%	36.1%	.0%	9.3%	108
Agriculture, Nature Management & Fisheries	6.0%	22.9%	57.1%	12.4%	1.5%	728
Education, Culture & Sciences	36.0%	36.0%	24.0%	.0%	4.0%	25
Social Affairs & Employment	11.4%	30.0%	28.2%	30.0%	.5%	220
Traffic & Waterworks	8.3%	32.0%	56.3%	2.3%	1.0%	600
Health, Welfare & Sports	4.8%	33.3%	58.3%	2.2%	1.4%	417
Housing, Spatial Planning & Environment	9.2%	38.7%	50.2%	.0%	1.9%	261

Table 3. Impact of European directives on laws and royal decrees, July 2003

Ministry	Laws		Royal decrees		Total	
	EU %	N = 100%	EU %	N = 100%	EU %	N = 100%
General Affairs	2.4	42	0.9	112	1.3	154
Foreign Affairs	0	53	2.9	34	1.1	87
Interior Affairs	3.2	222	4.2	334	3.8	556
Defense	0	32	0.7	145	0.6	177
Economic Affairs	18.4	87	48.1	135	36.5	222
Finance	26.9	219	20.6	155	24.3	374
Justice	12.4	299	7.5	293	10.0	592
Agriculture. Natural Resources & Fisheries	74.6	59	87.9	190	84.7	249
Education. Culture & Science	5.4	166	2.5	363	3.4	529
Social Affairs & Employment	14.7	170	29.5	224	23.1	394
Traffic & Waterworks	38.5	130	75.9	253	63.2	383
Health. Welfare & Sports	15.5	129	39.7	350	33.2	479
Housing. Spatial Planning & Environment	24.7	97	42.1	240	37.1	337

Table 4. Comparative findings impact ratios, Denmark & the Netherlands

Denmark	The Netherlands
Agriculture (27.3%)	Agriculture (84.7%)
Employment (22.4%)	Traffic and Waterworks (63.2%)
Economic & Industrial Affairs (21.8%)	Housing, Spatial Planning & Environment (37.1%)
Traffic (21.5%)	Economic Affairs (36.5%)
Sciences & Technology (20.5%)	Health, Welfare & Sports (33.2%)
Environment (19.3%)	Finance (24.3%)
Treasury (11.2%)	Social Affairs & Employment (23.1%)
Asylum Seekers & Immigrants (8.0%)	Justice (10.0%)
Justice (7.1%)	Interior Affairs (3.8%)
Interior Affairs and Health (5.9%)	Education, Culture & Sciences (3.4%)

Source Danish figures: Blom-Hansen & Christensen, p. 68

Endnotes

¹ We are especially thankful to our research assistants Sebastiaan Steenman and Sjoerd Hogenbirk for coding the data, as well as to our colleague Sebastiaan Princen for his comments, information, and advice. All mistakes are ours, of course.

² Next to members states, European integration has also an evident impact on non-member states, such as Norway and Switzerland, and the Eastern European states before accession.

³ A similar problematique can be found in New Public Management studies. NPM is best described as a soft form of internationalization as it concerns the spread and penetration of international business and management ideas by national administrative systems (see for a comparison with Europeanisation Knill 2001).

⁴ They discern (1) the preparatory phase, (2) the incorporation phase and (3) the phase of administrative enforcement and control.

⁵ To prevent overstretch, we do not discuss the recent debate about the salience of the central misfit-thesis in domestic impact variants of Europeanisation studies. There is growing disagreement among Europeanists as to what the mechanism of Europeanisation are, or, especially, to what extent the ‘misfit’-thesis is viable or not (Falkner et al 2005 *forthcoming*; Treib 2003). For a period, there seemed to have existed consensus on the basic mechanisms of Europeanisation (Héritier et al 1996; Knill & Lehmkuhl 2002; Börzel & Risse 2003): that adaptation requires a “mismatch” (or: “misfit”) between European directives and the domestic policies, politics, and polity in force at the time of the enactment of the European directive. Without a “mismatch” between European and domestic policies, there is no “adaptation pressure” and hence no impact on domestic policies, politics or polity. Others have argued and demonstrated that adaptation occurred in circumstances where there was no misfit between directives’ requirements and the national status quo (Treib 2003; Falkner et al 2005).

⁶ The authors thank Sebastiaan Princen for providing us the references to the ‘80%-claim’ throughout the literature.

⁷ The exact citation is: ‘Empirically, it is beyond dispute that the EU level is now the level at which a high proportion of what used to be regarded as purely domestic policy-making takes place. Hix suggests that the EU sets over 80 per cent of the rules governing the exchange of goods, services and capital in the member states’ markets (Hix 1999: 3)’ (Richardson 2001: 4).

⁸ Majone refers to Conseil d'Etat: Report of the Conseil d'Etat 1992, Paris: Documentation Francaise. Thanks to Sebastiaan Princen for this detail.

⁹ These categories are: 01: General, institutional and financial issues; 02: Customs union and free movement of goods; 03: Agricultural policy; 04: Fisheries; 05: Free movement for workers and social affairs; 06: Free movement for services and right of establishment; 07: Transport; 08: Competition policy; 09: Tax policy; 10: Economic and monetary policy; 11: 3rd country relations; 12: Energy; 13: Industrial policy and internal market; 14: Regional policy and coordination of structural instruments; 15: Environmental policy, consumer and health protection; 16: Research, information, education and culture; 17: Law relating to enterprises; 18: Common foreign and security policy; 19: Area of freedom, security and justice; 20: People’s Europe.

¹⁰ Following the Danish scheme, we distinguish between six types of regulatory functions: (1) economic regulation; (2) social regulation; (3) general legal regulation; (4) redistribution, subsidies and transfers; (5) provision and production of services; and (6) coordination.

¹¹ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

¹² Also in third country relations, but there are only directives in that domain.

¹³ Table 2b counts lesser national rules than in table 2a, because of a large number of national rules the enacting ministry was missing in *Europaat*.

¹⁴ We exclude the Ministry of Justice although it has transposed directives related to the internal market, such laws relating to enterprises. If it had been included, our impact figure would have decreased to 35%.