FORMAL TRANSPOSITION OF EUROPEAN LEGISLATION.

HOW TO EXPLAIN THE DIFFERENCES IN SUCCESS IN ENVIRONMENTAL POLICY BETWEEN MEMBER-STATES ?

(first draft, comments welcome)

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1 Introduction

Implementation of European policies within the legal and political systems of the member states has become a growing concern for European institutions as well as for European scholars. Both have recently recognised that there exists a substantive implementation gap. This perception has forced the European Commission to redirect its priorities from issuing more legislation towards better monitoring the already existing legislation. European scholars for their part also redirected part of their work towards looking for the factors that cause implementation failure. Until now, mostly large member states have been analysed in this respect. However, statistics show that also small member states may be interesting to study in this respect (cf. infra). This paper therefore focuses on two countries that are in many respects interesting from the perspective of implementation: Belgium and Denmark[1].

We hold the opinion that a comparative analysis of these two member states can provide additional understanding of implementation failure of European environmental policies in Belgium. First of all, Belgium and Denmark differ from each other with respect to their European profile and implementation performance. Both countries face a paradoxical situation, but in opposite ways. While Belgium is known as the champion of European integration, it is quite often confronted with implementation problems. Denmark, on the other hand, is regarded as one of the more sceptical member states but seems to be a very good at implementing European policies (Eliason, 2001: 199). Both countries also differ with respect to many other features, which have major impact on their European policies and politics: Belgium is a federal state, Denmark a centralised one; Belgium is a founding father of the EU, Denmark only joined in 1973; Belgium lies on the border of northern and southern culture, Denmark is the prototype of the northern culture.

Especially with respect to environmental policy, the two countries are interesting to study: Denmark is considered to be an environmental leader, while Belgium is rather known as an environmental laggard; also the national organisation of environmental policy is quite different, mainly due to the totally different state structure; finally, also attitudes of public opinion and political elites towards environmental policy (and politics in general) differ substantially. These differences become even more interesting when they are linked to both countries' performance with respect to implementation of European environmental policies. In this paper, we explore why Denmark seems to be more capable than Belgium to implement environmental directives. In order to assess their performance, we proceed as follows. We start with some conceptual clarifications on the issue of implementation. Secondly, we provide some statistics illustrating the performance gap between Belgium and Denmark. Thirdly, we review possible European causes

[1] The exercise to compare the Danish and the Belgian situation is the first output of a currently ongoing comparative study between Belgium, Denmark, the Netherlands, Germany and Austria. This project is sponsored by the Belgian Federal Government and is part of a broad research program to support the current administrative reform. Altough the main objective therefore is to supply practical recommendations, we tried to frame the suggestions in an institutional framework. This paper, however, mainly deals with the empirical part of the project.

for implementation failure, concluding that these can explain a certain degree of implementation failure in general, but cannot explain the differences between member states. To overcome this problem, we introduce an institutional framework which focuses on hard and soft national institutions in order to explain the divergent performance of both countries.

2 Setting the conceptual and empirical scene

2.1 The concepts of implementation and transposition

An extensive definition of the concept considers implementation as the whole of actions put up by the different involved authorities of the member state in order to realise the European legislation within that member state. Consequently, the implementation of European regulation encloses four different phases: (1) formal transposition, (2) practical application, (3) enforcement control and (4) outcome / results (Figure 1).

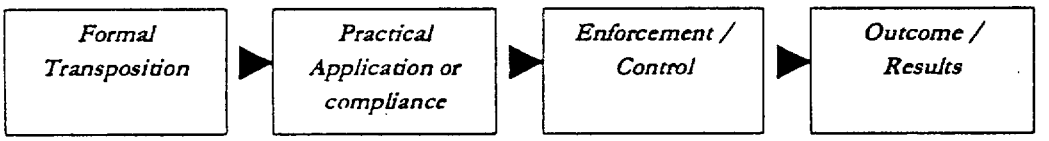

Figure 1: The phases of implementation

Firstly, Formal transposition is defined as the whole of necessary measures to incorporate European legislation into national law, i.e. the legislative process. From & Stava and Duina define this phase as 'legal implementation' (Duina, 1997: 155; From, 1993: 60). This phase only occurs when European legislation is not directly applicable in the member state, i.e. in the case of European directives. Secondly, practical application or final implementation (From, 1993: 60) deals with the compliance with European legislation, either directly applicable in the member state (e.g. regulations) or transposed into national law (directives). Organisations, individuals or authorities upon whom the legislation is addressed, have to expose behaviour that conforms to the legislation. The third phase contains the control of the compliance and the sanctions imposed on violation of the compliance. Mostly, member states establish special agencies to control practical application of transposed legislation. The extent and nature of these agencies (private, quasi-private and quasi-public agencies) has increased over the years since more EU legislation must be controlled. The final stage evaluates the outcomes and results of European legislation in the member states.

In EC parlance, however, the concept of implementation has been given a new meaning: implementation is referred to as European legislation correctly transposed into national legislation of member states. In other words, the concept is mainly confined to the formal transposition phase as described above. As a result, a directive which has been implemented in the 'Community sense' may not have been implemented in the usual sense of the term. According to From & Stava the two main reasons for the use of this abbreviated definition of

implementation in EC literature are (1) the tension between intergovernmental co-operation and the supranational sovereignty and (2) the predominance of the legal framework in the European Community (From, 1993: 60-61)[2].

This paper is confined to the formal transposition of directives. This means that we don't deal with practical application, nor with enforcement or with the output phase. Formal transposition can be defined as the elaboration of all necessary legislative, regulatory and administrative measures in order to incorporate European legislation into national law (Knill, 1997c: 12). This definition implies that also the policy correction procedure or infringement procedure with regard to non-transposition can be seen as a part of this formal transposition. In addition, in order to have a comprehensive view on formal transposition and its problems, we also take into consideration the preparatory phase within the European Commission, the European Parliament and the Council of Ministers. We hold the opinion that the process at the European level must be considered as the start-up phase of formal transposition that eventually affects the procedure within the member states. Figure 2 shows the different phases passed by European directives and the different actors involved. The shaded boxes represent the phases enclosed in this paper.

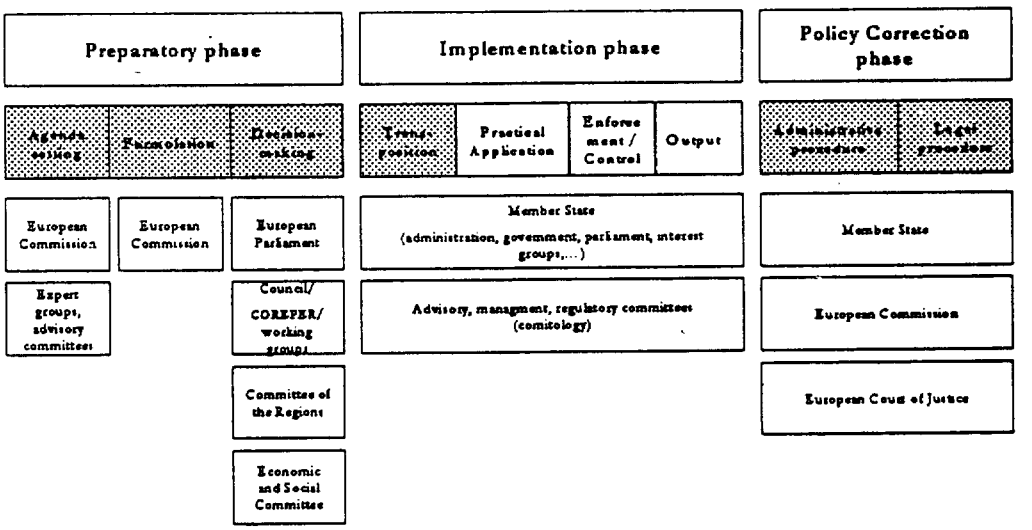

Figure 2: Flow chart of the different phases, passed by European directives

[2] Firstly, to many EC bureaucrats and certainly politicians, the formal transposition is where Community interest should stop. The Community has no mandate to ask the next logical question: 'are the transposed laws actually implemented in the member states?'. The follow-up on this question is the responsibility of the member state itself, and not of the Community. The other reason for the reduction of implementation to formal transposition in EC literature, is the strong legal basis of Community politics. This may, in part, be a consequence of the lack of a common European identity. Most nation states can build on a strong national loyalty among their citizens, using lawmaking as a supplementary instrument. The EC is almost solely dependent on the latter.

2.2 The implementation situation today

Monitoring the implementation of Community law is a primary task assigned by the Treaty to the European Commission. In order to do so, the Commission has several means of collecting information concerning implementation in the member states. Firstly, there is the notification of the member states' actions, during which the member states themselves inform the Commission about the implementation of European directives. In addition, the Commission can evaluate implementation by own research and initiative, e.g. through parliamentary questions and petitions. Since 1989 newspapers and other news media of member states are being scrutinised by the Commission in order to pick up information relevant to implementation. Also direct and indirect contacts with the member states are important sources of information to the Commission. Lastly, monitoring implementation can be based on complaints from citizens and enterprises, which consider their rights according to EC law to be violated (From, 1993: 63).

Table 1 shows that by the end of 1999 Belgium had notified the legal transposition of 94.9 % of all directives and was situated at the 9th rank. Two years before Belgium found itself totally at the bottom, having notified only 91.8% of all directives. On the contrary, Denmark has been ranked second in 1997 and even first in 1998 and 1999.

	notification rate 31/12/99	notification rate 31/12/98	notification rate 31/12/97
Denmark	97.1	98.2	97.0
Spain	96.5	97.3	95.1
Netherlands	96.2	96.7	96.4
Finland	95.9	97.1	96.3
Sweden	95.8	97.0	97.3
Germany	95.5	96.7	93.6
United Kingdom	95.4	96.4	94.7
Austria	94.9	95.0	94.3
Belgium	94.9	94.7	91.8
Italy	94.2	93.6	92.5
Ireland	94.1	95.5	94.1
France	93.8	94.4	93.6
Portugal	93.4	94.8	93.5
Luxembourg	93.3	94.2	94.2
Greece	92.0	93.8	92.8
Community Average	94.5	95.7	94

Source: XVIIth Report on Monitoring the Application of Community Law, 1999

Table 1: Notification rate of transposition of directives (percentages)

Of course, these figures must be treated very carefully. First of all, the difference between the best scoring (Denmark) and the worst scoring member state (Greece) is not so high and even Greece still notifies the transposition of 92% of all directives. Secondly, notification doesn't tell the full story since it does not take into account the Commission's examination of the notification but only the subjective national perception that a particular directive has been transposed in a legally correct manner. It is therefore quite possible that some member states are more severe for themselves than others or that member states with better notification rates are confronted with worse practical implementation situations causing more infringement procedures. The latter, however, could also be true for Belgium, making its total record even worse. Let us, then, consider those infringement figures, based on the infringement procedures which consist of an administrative procedure (a letter of formal notice and a reasoned opinion) and, if necessary, also of a legal procedure (a referral to the Court of Justice).

Table 2 shows the number of infringements against member states established in 1998 and 1999 (Commissie, 1999a; Commissie, 1999b). In 1999 the Belgian infringements consisted of 22 regulations, decisions or treaty articles and 103 directives. 15 cases had already been referred to the Court, which is less then the year before but still considerably high. Denmark, on the contrary, faced only 51 infringement cases, including only one Court referral. In relative terms, Denmark is again situated at the top of the list.

Although infringement figures are less biased than notification data, they still must be treated carefully. First of all, they reflect the opinion of the European Commission which is not necessary identical to the opinion of the member states or of the European Court of Justice. In some cases member states dispute the opinion of the Commission which means that an evaluation of the implementation must wait until a judgement has been delivered by the Court. Secondly, infringement figures don't say anything about the exact contents of the cases or the nature of the infringements. It might be possible, for instance, that the majority of the cases deals with rather unimportant directives or with minor infringements. Thirdly, these data also don't contain any infringement procedures still pending in a particular year. The mentioned figures thus only reveal a static picture of the implementation backlog, which in reality is even higher[3].

However, no matter how careful these figures must be treated, they still point out that implementation is insufficient. From a legal point of view, every directive must be translated fully and correctly into the national legal system. Also from a political point of view, effective implementation is important because in the long run insufficient implementation will undoubtedly undermine the credibility and legitimacy of both the member states and the EU (Knill, 1997c).

[3] For example, at the end of 1999 the Belgian Federal Government counted a total of 181 infringement cases. This number also includes the 56 infringement cases that had already been established in the years before.

	infringements started		letters of formal notice		reasoned opinions		referrals to the Court	
	1999	1998	1999	1998	1999	1998	1999	1998
Denmark	51	51	46	40	4	10	1	1
Finland	51	69	44	52	5	16	0	1
Sweden	72	70	57	54	14	15	1	1
Netherlands	85	54	68	28	16	23	1	3
Spain	100	120	72	78	21	36	7	6
Unit. Kingd.	102	102	61	66	33	35	8	1
Ireland	114	129	67	63	32	46	15	10
Luxembourg	121	112	65	62	38	39	18	11
Germany	123	139	84	88	30	46	9	5
Belgium	125	186	80	88	30	78	15	20
Austria	131	118	85	76	37	38	9	4
Portugal	150	142	87	80	50	57	13	5
Greece	150	162	88	95	48	51	14	16
Italy	158	217	85	110	41	91	32	16
France	182	238	86	121	61	94	35	23
TOTAL	1713	1899	1075	1101	460	675	178	123

Source: XVIIth Report on Monitoring the application of Community Law, 1999

Table 2: Infringements established in 1998/1999 (absolute numbers)

2.3 Environmental directives versus labour directives

In this paper we concentrate on European directives, because they differ in a number of ways from other types of secondary legislation. Directives set merely final attainment levels, which are binding upon the member states. The national authorities are left the choice of form and methods to achieve the common goals. Within that legal system, the directive requires that the member states proceed with implementation before a specific deadline, in dual supervision of the national courts and the European Court of Justice (Quermonne, 1997: 1-4). As we will discuss further, these features seem to be part of the problem with regard to correct and on time transposition.

In addition, we limit our scope to environmental policy and use labour policy as a control policy field. These sectors are chosen for several reasons. Firstly, in Belgium and in Denmark, environmental policy is one of the most problematic policy fields when it comes to transposition. Implementation of EU environmental directives is also by the OECD considered to be one of the major challenges within Belgian environmental policy. 'While Belgium has made very significant progress over the last ten years, there are nevertheless areas where greater efforts would be needed to meet its EU and other international commitments. Implementation of all EU directives (...) is a major challenge in both political and financial terms (OESO, 1998: 31)'. Secondly, although both countries are confronted with problems, they differ with respect to notification figures, which make them even more interesting to compare (Table 3). While Belgium is situated in the lower half (and also beneath the average), Denmark is on top of the list.

With respect to our control policy field, both countries under study are placed in the top half, comfortably above the EU average. This is no surprise since, as we will discuss later, Belgian and Danish labour policies share characteristics that favour implementation. These figures are only presented to illustrate why the choice of the policy fields. As has been said before, they must be treated very carefully. However, national data and perceptions of respondents both confirm the different performance of both member states, just as they confirm that they both perform equally well with respect to labour policy[4].

	% of environment directives notified to the Commission	% of labour policy directives notified to the Commission	Total % of directives notified to the Commission
Denmark	95.1	94.7	97.1
Spain	93.8	96.5	96.5
Netherlands	94.4	96.5	96.2
Finland	93.1	94.7	95.9
Sweden	94.4	94.7	95.8
Germany	90.9	96.5	95.5
United Kingdom	91.0	94.8	95.4
Austria	93.7	89.5	94.9
Belgium	92.4	94.7	94.9
Italy	94.4	89.7	94.2
Ireland	95.1	89.5	94.1
France	92.3	89.5	93.8
Portugal	94.4	96.5	93.4
Luxembourg	94.4	89.7	93.3
Greece	90.9	94.8	92
EU Average	93.4	93.5	94.5

Source: XVIIth Report on Monitoring the Application of Community Law, 1999

Table 3 notification figures of environmental and labour policy

3 EU-level explanations are insufficient to explain the differences

Several features which stem directly from the European setting are considered to attribute to implementation failure. These features can be divided into governance-related and content-related factors. The latter points to the contents of European directives in terms of clarity and consistency; the former to procedural and institutional aspects of the European level such as the style of communication and the pace of reacting to member states' questions. However, it is clear that these factors alone cannot explain the difference in performance of Belgium and Denmark, because in that situation all member states should be equally affected by poor implementation

[4] Infringement statistics for each policy field were not available for 1999. However, contacts with the European Commission Secretariat-General revealed that the upcoming 2001 report on the monitoring of the implementation will contain such figures confirming that environmental policy is the most problematic sector, especially for Belgium.

(Börzel, 2000b: 6). European factors only come into play when they are strengthened or compensated by other variables, i.e. internal Belgian or Danish factors (cf. infra). Before we go into the national context of both countries, we briefly summarise how the European level attributes to implementation problems.

3.1 The Commission as a transposition monitor

Besides proposing EU legislation, the Commission also acts as the guardian of the treaties to ensure that EU legislation is applied correctly by the member states. Where necessary, it takes action against those who fail to respect their treaty obligations. However, the Commission is faced with many difficulties when carrying out its supervising and monitoring tasks. To begin with, the Commission has very limited resources. It just doesn't have enough staff to watch over the activities of national administrative agencies as closely as is ideally desirable. Therefore the Commission depends heavily on the willing co-operation of national bureaucracies. Because communication is not always well ordered and often irregular, it is almost impossible for Commission officials to have a very accurate idea of what is happening (Nugent, 2001: 276). Moreover, due to understaffing, the Commission sometimes reacts too slow to questions of member states, which makes it difficult for the latter to respect transposition deadlines. This happened, for instance, with respect to the transposition of the packaging waste directive in Belgium. The directive states in principal that member states cannot take more stringent measures than those set in the directive. However, if member states wish to do so, they can ask the Commission for a derogation. Since the Belgian proposal was more stringent, the Belgian PR asked for such a derogation, which was given, but only after months. The slow reaction of the Commission delayed the adoption of the co-operation agreement between the three Regions and consequently also the adoption of the necessary decrees (de Sadeleer, 1998: 410).

3.2 Disadvantages of EU regulatory policy

In addition, the Community is bound to privilege regulatory policies, since the characteristics of regulatory policies are most adapted to the structures and properties of the European institutions. However, the particularities of such regulatory policy pose problems with regard to co-ordination and executive control, as has been argued extensively by Majone and others.

Firstly, the EU faces the absence of a regulatory budget procedure, which normally influences the activities of regulators. The size of the regulatory programmes is not significantly constrained by legislative appropriations and by level of tax revenues, as in case of non-regulatory programmes. No mechanism exists for regulation that requires policy makers throughout the government to solve the two-level budget problem: how much to spend during a given period and then how to allocate this amount among alternative uses. The result is both (economic) inefficiency and inadequate political oversight. (Majone, 1994: 95). This is particularly evident in the case of EU rule-making. The decision-making procedure at European level concentrates less than national decision-making processes on the real costs of adopting directives and on cost effectiveness, since the real costs of most regulatory programmes are borne directly by firms and individuals

who have to comply with them. Although serious technical difficulties would be encountered in estimating the full social costs of directives (especially when they restrict outputs or behaviour rather than merely outlays for compliance), nevertheless the budget procedure is such a useful analogy for highlighting the defects in the current regulatory process and develops methods of regulatory oversight and control (Majone, 1994: 960).

Secondly, there is also the absence of a central European political authority, who must guarantee a form of coherence and certainty in decision-making. According to the policy sector and the particular moment in time, the configuration of the system of actors may vary, restructuring itself in terms of alliances and modes of governance. Beyond the institutional aspects linked with new forms of co-operation between the three principal actors (the Commission and its network of committees, the Council, its working groups and COREPER, and the Parliament), it is the absence of any leadership in the decision-making which is most striking: it is more a system based on compromise ((Meny, 1994: 14). In consequence the policy agenda in most policy sectors is very unpredictable - hence the reference to the 'garbage-can' model (Mazey, 1994: 42). Because of the lack of central authority, regulatory issues are dealt with sector by sector, with little attempt to achieve overall policy coherence. The piecemeal procedure of the Commission in proposing new regulatory measures has resulted in directives in areas where harmonisation is a low priority, while neglecting other areas which need considerable amount of harmonisation (Majone, 1994: 95).

Finally, regulatory measures tend to operate in a top-down fashion, focusing attention on the policy formulation and legislative process, with little regard to outcomes. This stress on the creation of legal instruments suggests that the success of a policy rests on the enactment of a piece of regulation rather than on its capacity for enforcement or its potential as an effective reaction to problems (Weale, 2000: 118).

3.3 Contents of the directives

Not only EU governance, but also the contents of directives can make it difficult for member states to transpose. First of all, EU directives can be unclear and inconsistent. The reason for this is mostly the political context and the political process that generates the directive (Donkers, 1993: 58). Or, as Knill has put it, 'the reason for specific regulatory features is to be found the fact that directives are compromises between the interests of the member states (Knill, 1998: 37)'. Indeed, the complexity of European policy formulation and the EU's dependence on member states when it tries to develop Commission proposals into directives can give rise to many problems (Lampinen, 1998: 223). Since decisions are usually taken by unanimity or qualified majority, the final versions of directives are political compromises, often with vague objectives. This leaves a lot of room for interpretation, sometimes even to the extent that negotiations have to start all over again, but this time on the national level (Bekkers, 1993: 192-193). This problem is hihgly related to the adaptation pressure (cf. infra) which is affected by the (un)clearness of the content and design of the directive.

In addition, technically accurate directives with clear objectives are expected to be more easily implemented. Directives that fail to consider the technical prerequisites necessary for their implementation and identify overly broad objectives are expected to be poorly implemented (Duina, 1996: 24). Also too detailed directives - in terms of how to reach the proposed goals - are difficult to implement. Such detailed technical information can better be formulated in a regulation. These so called 'false directives' do not leave much space for own interpretation and require a literal transposition. Directives are not meant to include such detailed implementation suggestions, since they should leave more leeway to the member states themselves. Regulations, on the other hand, are directly legally binding in the member states without needing transposition (Demain, 1999: 267-268; Willemot, 1999: 544).

A third factor which endangers the relevance of contents is the stringent requirement for similarity across the member states. The European Union, being a vast territory with different geographical, administrative, social, cultural,... features, can hardly be 'harmonised' by one directive, covering the diversity in all member states. A less stringent answer to the uniformity question might permit member states much greater latitude to define their own patterns of adherence to the spirit, if not the letter, of EU legislation (Peters, 2000: 204). The nitrates directive is a typical example of such bad legislation. The directive imposes for the whole European area the same nitrate quota and limits for ground water. 'This is ridiculous since the growth season in Finland is much shorter then in Italy, in addition more cattle can be held per unit land. Nitrate pollution is not only caused by animal manure, but also by artificial manure, rivers, leakage in sewers,... (Van Putten, 2001).

4 Institutional constraints on a smooth transposition process

The remaining of the paper argues that the differences in transposition performance between Belgium and Denmark are due to a list of constraining institutions. We start from the assumption that most domestic actors involved in transposition processes are willing to carry out transposition correctly and on time. However, while doing so, they bump into institutional obstacles which sometimes prevent them from reaching their goals. These constraining domestic institutions can be both formal ('hard') and informal ('soft'). Focussing on such institutions brings our analysis in line with earlier attempts to understand transposition failures from an institutionalist point of view (cf. Börzel, 2000b; Duina, 1996; Knill, 1997b; Lenschow, 1997). They all have in common that they try to accentuate one or more institutions as explanatory variables. None of them pretends to present the ultimate parsimonious model. Neither does our analysis. What is presented here therefore, is a regrouping of explanatory variables into five categories: the constitutional and administrative context, the preparatory stage, the transposition stage, adaptation pressure and communication features. It is particularly important to note that all five categories comprise both hard and soft aspects which interact with each other causing different degrees of transposition problems. Throughout the analysis, we will discuss several institutional mechanisms that have been introduced by the authors mentioned and apply them to the two member states under study.

4.1 The constitutional and administrative context

Divsion of competencies and co-ordination mechanisms

Successful transposition depends, among other aspects, on the competencies that are addressed by a directive. If the internal division of competencies is complex, the transposition can be seriously hampered. What is the situation in this respect in the two countries? One of the guiding principles of Belgian federalism is the far-stretching in foro interno, in foro externo rule, which implies that the sub-national Regions and Communities have the right to conduct foreign policy with respect to the competencies they possess within the federal state. This puts an enormous co-ordination challenge on foreign policy and above all on EU policies, which touch upon nearly all sub-national competencies, while at the same time the EU only formally recognises the member state Belgium. In addition, with respect to environmental policy, Belgium is subject to an intermingled, i.e. mixed vertical and horizontal type of competence division. Vertically, environmental issues mainly fall within the jurisdiction of the three Regions (Flanders, Wallonia, Brussels), but the federal level is still responsible for product standards, protection of radio-active radiation, transit of waste materials and the maritime environment (Boes, 1997: 344). Consequently, many European directives are dealt with on both policy levels, i.e. among four actors (e.g. the packaging waste directive). Horizontally, environmental policy in Belgium touches upon numerous other policy fields such as agriculture, transport, public health and industrial policy. The division is made even more complex when a regional environmental matter touches upon federal flanking policies (e.g. the EIA directive). Denmark, on the contrary, only faces horizontal co-ordination between different departments of the national administration. This means that the environmental department only has to co-ordinate with other functional departments (and agencies) of the same national level. Labour policy is in both member states subject to the national/federal authorities, hence only potentially causing horizontal co-ordination problems within one and the same level.

This factor is not only relevant for the transposition stage, but also for the policy preparation and correction stages. This is highly important because a successful policy preparation, in terms of being able to 'upload' national policies to the EU-level, creates more favourable implementation conditions. With respect to the overall European policy preparation, the federal Belgian government concluded a Co-operation Agreement with the sub-national Regions and Communities (1994) in order to establish an elaborated co-ordination mechanism with respect to the formulation of the Belgian position and the representation of Belgium in the European arena[5]. This general co-ordination system is fairly complicated, involving actors from all policy levels (even granting them formal veto-rights), from as much as functional departments as deemed necessary and from both administrations and ministerial cabinets. Remarkably though, it hardly involves parliaments or private stake-holders. Nevertheless, the numerous players cause such an overload of the general system forcing specialised and functionally differentiated co-ordination mechanisms to be set up. The specialised system with respect to environmental policy

[5] For an elaborated description of the overall Belgian co-ordination mechanism see Beyers, 2001)

(the Co-ordination Committee on International Environmental Policy - CCIEP) reflects the complex situation in the policy field, involving civil servants and 'cabinetards' from regional and federal departments (including several agencies) and regional and federal attachés within the PR. The CCIEP is furthermore subdivided in dozens of functional working groups (Kerremans, 2000). It is this system that has to work out one single mandate for the Belgian negotiator. It would lead us too far to go into the operational details here. Let us just add that the system can lead to an abstention of Belgium in case no agreement could be reached (Bribosia, 1999). In order to avoid such a position, environmental co-ordination is highly formalised (in contrast to the much less complex labour co-ordination, which is highly informal). In addition, the appointment of the negotiator on behalf of Belgium, is subject to an elaborated representational rotation, which not always guarantees that the best expert is sent to Europe.

Complex administrative structures are also manifestly present during the transposition and correction stages of European environmental policy. Regions can only transpose in their own right when the contents touch only upon their exclusive regional competencies. In all other cases, co-operation is necessary with the other regions and with the federal level, resulting in a compromise that in the end rarely satisfies all involved authorities. In addition, horizontal co-ordination (e.g. the designation of pilot services) crosscut the Belgian vertical arrangements. Denmark, as has been said before, is only confronted with the horizontal co-ordination challenges. The policy correction poses even bigger co-ordination problems since - regardless of the internal division of competencies - only the member state Belgium is held responsible by the European Commission. It is the federal level that has to defend Belgium and has to pay the fines after a second conviction by the Court. Substantial sub-national input is required when it concerns regional competencies. In addition, this leaves the sub-national levels with the default option of not complying with EU-law, not being held politically responsible or not having to pay anyway. To avoid this, a substitution mechanism was installed which allows the federal level to temporally take over the task of stubborn sub-national units after a conviction by the Court. In Denmark, of course, no such mechanisms had to be invented since the Danish policy correction stage only has to overcome horizontal co-ordination challenges. In addition, although the Danes have established an elaborated scenario in case of infringements, they have not been obliged to use it often, thanks to their excellent implementation record.

Political and Administrative Culture

It is clear by now that the complexity of the administrative and constitutional reforms forced Belgium to install a large set of formal institutions that can become major obstacles for smooth transposition. However, the defederalisation process has also generated several informal practices and habits that constrain the capacity of transposition actors. We would like to introduce the concept of institutional jealousy to describe the overall Belgian political culture in this respect. Indeed, the ongoing struggle for more autonomy has turned the division of competencies in a very sensitive issue. Every level is cautious with respect to the acquired competencies and interference is not tolerated. Successful transposition therefore requires not only formally institutionalised mechanisms, but also the willingness of all actors to participate and to make the

formal institutional provisions work adequately. The latter, however, is not always present: especially Regions and Communities don't want to 'be co-ordinated'. Environmental policy, being subject to a vertical division of competencies, is very vulnerable to this cultural logic, especially because it prohibits actors from elaborating the additional necessary informal contacts. This stands in high contrast to labour policy, which is largely run by informal co-ordination on the federal level alone. The labour network is much smaller and culturally less diverse which allows for a high degree of informal communication.

The Danish administrative system is in many ways the opposite of the Belgian system. To begin with, Denmark is characterised by an overall highly centralised policy-making system. With regard to EU policy-co-ordination, it is even considered to have the highest co-ordination score (de Berranger, 1997; Nedergaard, 1994; Pedersen, 2000). Pedersen attributes this to different features: the strength of the national bureaucracy, the perception that Denmark, being a small country, cannot afford to present contradictory negotiation positions, the high degree of politicisation and the early and substantial involvement of the European affairs committee of the Danish parliament (cf. infra) (Pedersen, 2000: 220). The idea of institutional jealousy is strange to Danish politics. Both in environmental and social policy, the respective functional departments seem to be strongly in the lead and able to co-ordinate horizontally rather effectively. Moreover, the centralised co-ordination is adequately completed by smooth informal contacts when necessary.

4.2 Performance during the preparatory phase

The preparatory institutional framework

As has been mentioned above, the capacity to upload national policies to the European level creates a more favourable implementation situation (Börzel, 2000b). Within Belgium, this capacity is endangered by the complexity of the political and administrative structures and the related co-ordination mechanisms[6]. Below we will also discuss the fact that member states with less advanced environmental policies - such as Belgium - face more upload policies than others. In addition to these, several other formal shortcomings can be identified, especially within the environmental policy field. First of all, the agenda-setting stage is crucial because member states can exercise powers either to make European policies happen or to prevent anything from happening that would diminish the well-being of their constituency (Peters, 1994: 9). Secondly, the consultations by the Commission in the early stages of policy formulation (through the expert groups) offer additional opportunities to influence the contents of possible future legislation. However, the absence (in the 1994 Co-operation Agreement) of any rules with respect to the Belgian participation in these settings, prevents Belgium from effectively influencing European policy in early stages. This formal shortcoming is no problem for labour policy since informal arrangements combined with Belgium's leading role in labour policy enable a rather effective

[6] It must be admitted that external factors such as voting procedures in the Council play also a role, but we will not deal those institutional constraints here.

participation anyway. However, in environmental policy the absence of formal rules causes confusion which can result in non-participation (Leclercq, 1999b). The same lack of provisions is encountered with respect to policy implementation through comitology committees (Leclercq, 1999a). Although in environmental policy these gaps are theoretically filled by the CIEEP rules, in practice co-ordination doesn't occur systematically. This is a very remarkable observation given the fact that these executive committees often play a substantial role in European policy-making.

Although Denmark is also a small member state, it has remarkably succeeded in uploading its environmental policy to the European level (cf. Barnes, 1996). It has clearly played a leadership role, managing to have Danish environmental policy measures adopted all or in part by the EU (Eliason, 2001). According to several authors, this performance is partly due to the Danish co-ordination system. A presentation of some striking institutional features of the Danish EU policy preparation stage point to the facilitating character of many of them (see annex). First of all, the rather unique special committees come into the picture. These committees largely reflect the division of policy areas on the EU level - in stead of the Danish functional division between ministries and departments - and are composed of civil servants from different ministries and representatives of concerned interest groups. 'Il ya donc un parallel entre les compétences de ces comités et celles des différents groupes de travail gravitant autour du Conseil, ainsi que des directions générales de la Commission' (de Berranger, 1997: 121). Due to the tradition of corporatist policy-making, Danish interest groups play a key role in policy-formulation and implementation in general and in EU matters in particular. Also regional and local authorities can be members of these committees, which increases even further the legitimacy of the decisions taken and the chance that local entities will co-operate smoothly during the transposition stage (Nedergaard, 1995). The special committee for environmental policy for instance regroups officials from various concerned ministries and from a broad range interest groups (some 75 members in total (Pedersen, 2000: 223)). In this committee interest groups co-decide on the Danish position. The overall co-ordination on the level of the special committees is guaranteed by the membership of Foreign Affairs in all committees. In fact, the Foreign Affairs Ministry supervises all discussions during the preparatory stage. This way of working ensures the Danish negotiator that his mandate is supported by a large community of public and private stakeholders. Interest groups furthermore deliver expertise and information about the 'political hinterland' (von Dosenrode, 1997). It also creates a basis for later stages, both policy preparation (the Folketinget can hardly afford to oppose a consensus among interest groups) and policy transposition. Usually, agreement on a position is already reached within these special committees. Only in rare cases of disagreement a dossier is passed on to the EC Committee (composed of higher officials) or even to the Government Foreign Policy Committee (which decides on politically sensitive issues anyway).

Moreover, the Danish functional ministries seem to be very well equipped to deal with EU policy preparation. The Ministry of the Environment, for instance, has got a specialist office and a co-ordinating unit for EU affairs, to ensure consistency, to supply expertise to negotiators and to handle the relationships with the European Committee of the Folketinget (Pedersen, 2000: 228). This brings us to maybe the most unique aspect of the Danish case: the extensive role of the

Folketinget. The origin is to be found in the Danish tradition of minority governments. The scrutiny of the Parliament thus serves as a warning system with respect to EU issues that can possibly lead to a defeat in a Parliament vote. The composition of the European Committee reflects the political strength of the political parties in the Folketinget. Opinions therefore represent the opinion of a majority in the Folketinget, hence constituting a workable European mandate for the Danish government. It also creates a high degree of loyalty towards European outcomes. Danish parties who were opposed feel themselves obliged to follow the majority, not only with respect to negotiations, but also with respect to implementation afterward (cf. infra). The government has to present all positions to the European Committee and ensure that no majority is formed against. In doing so, the European Committee is assisted by the functional committees supplying expertise in highly technical dossiers and lifting some of the burden of the enormous workload. In this respect it must also be added that the European Committee has both the best staffed secretariat of the whole parliament, including a special EU counsellor (von Dosenrode, 1997). Usually, the government anticipates the opinion of the Committee, thus preparing itself extremely well and de facto asking for a fairly narrow mandate. This implies that the dynamics of Brussels negotiations sometimes oblige Danish representatives to phone home and inform themselves with respect to the margins within which they can proceed the negotiations. 'Phoning home', of course, means in the Danish case phoning the Folketing, and not the government[7]. In addition, the European Committee is - in contradiction to the Belgian situation - highly involved in the EU's comitology system, preparing and scrutinising the Danish position. In addition, when the Danish representative returns home after negotiations in Brussels, he is obliged to report to the European Committee and thus sometimes has to defend his why he has been outvoted. This practice not only informs the members of parliament of the political context in Brussels, it also works as an incitement 'to do one's best' (von Dosenrode, 1998: 63). Although the participation of the European Committee is subject to a number of criticisms (work overload, late involvement and information deficit), its substantial input remains crucial in terms of creating a political basis legitimising the Danish opinions and forcing the government 'to get its act together' (Pedersen, 2000: 233).

European awareness and knowledge

In addition to formal constraining institutions, also informal features prevent Belgium - more than Denmark - from efficient behaviour on the European level, especially while negotiating within the different layers of the Council of Ministers. In order to negotiate efficiently, one has to have a workable mandate which in its turn is affected by a thorough knowledge of the dossier and a strategic perception of the political environment. The latter requires a detailed study of the (financial, political and practical) consequences of the proposal. Until recently, this only happened when an individual civil servant took the initiative to do so (Demain, 1999). Moreover, Belgian negotiators also seem to have a low self-esteem, which doesn't enhance their performance (Beyers, 1997), and share the attitude of 'waiting for ideas from the European Commission'

[7] Commenting on this situation, Jacques Delors once put that the EU has got thirteen member states: the twelve member states and the Danish Folketing (de Berranger, 1997: 125).

(Kerremans, 1996). Own interviews confirm the findings from the literature and add that environmental actors seem to be much less satisfied with their negotiators than labour actors.

The centralised Danish co-ordination system is facilitated by the existence of a politico-administrative culture supporting co-ordination. 'Danish pragmatism and informality facilitates co-ordination in that the distance between the top and the bottom of the pyramid is not very great (Pedersen, 2000: 220)'. In other words, the informal political habits compensate for and complement the formal procedures. In addition, the Danish co-ordination philosophy is rooted in a search for consensus, which reflects the overall corporatist tradition and the wish that EU policies are effective and enjoy wide support.

4.3 The transposition procedures

Formal Transposition Mechanisms

Transposition is characterised by a multi-actor process. The number of actors involved and their behaviour contributes to the success of transposition (Pressman, 1984). Let us give a brief overview of the actors involved and discuss the formal and informal characteristics that can put constraints on a smooth transposition. Directives formally enter the Belgian political scene through the PR, which is - unlike in most other member states - understaffed and hence not capable to fulfil a co-ordinating role. Subsequently, directives pass through Foreign Affairs (J12 Legal Service) which is supposed to distribute the directives and to have a co-ordination role for the federal and the regional aspects of transposition. However, analysis of J12 shows that it cannot raise to the expectations. The J12 service consists of one (!) diplomat (assisted by one (!) member of the cabinet of the competent state secretary for foreign affairs), who regularly changes posts destroying informal contacts and continuity efforts, and who only presents quarterly reports simply summarising the problematic cases. Next, the departmental European co-ordinators become involved since they are supposed to distribute the directives within their department and to co-ordinate the transposition work. Again, these crucial actors sometimes don't seem to be able to steer the process because their European tasks are only complementary to their daily tasks, there are too few of them and they often lack authority within their services. Furthermore civil servants preparing transposition drafts have to take into account the substantive opinion of advisory bodies and the opinion of the Council of State on legal issues. The consultation of advisory councils is often obligatory and time-consuming because the involved actors tend to discuss the fundamental issues (which they can't alter anyway) in stead of the transposition modalities. The consultation of the Council of State causes even more delays due to enormous overload (Demain, 1999: 271). If directives are transposed through laws or regional decrees the respective parliamentary bodies have to approve the texts. While in theory, involvement of the parliaments can be substantive (Vandevivere, 1999: 343), in practice their participation is very low-key and limited to highly politicised cases (e.g. the nitrates directive). With respect to the latter, also blunt political opposition can delay the adoption of the necessary acts (cf. infra).

In Denmark, the Minister of Foreign Affairs supervises the transposition and application of EU policies (de Berranger, 1997: 120), as well as the rare cases of infringement (de Berranger, 1997: 131). This co-ordinating role facilitates the detection of possible problems during the transposition stage. As in other member states, Denmark has got different tools at its disposition to transpose EU directives. However, Denmark, more often than other member states, uses executive in stead of legislative measures, as long as this is allowed within EU-law restraints. At first sight this seems to contradict the prominent role of the parliament in EU policies. However, a more close look reveals that, exactly because it is intensively involved during policy preparation, the Folketinget holds the opinion that it has had its say already and that it is now up to the executive branch to implement what has been scrutinised politically before. This leaves the transposition largely in the hands of civil servants, hence reducing it to a technical and legal matter and not - as it is sometimes the case in Belgium - a political matter.

Europeanisation of Transposition Actors

Following the logic of hard and soft institutional impediments for smooth implementation, the transposition process in Belgium is not only confronted with the above mentioned constraining rules of procedure, but also with an ill-adapted political and administrative culture which is rooted in a lack of European awareness of public opinion, politicians and civil servants. This seems somewhat surprising given the overall support of political elites for the integration process. Nevertheless, the fact that internal institutional issues (the consecutive state reforms) have always dominated the Belgian political agenda, gave political actors little opportunities to give attention to European affairs and the general public even less opportunities to become informed about the impact of European policies on their daily life. The lack of interest in (and mobilisation against) European policies refrains parliamentarians from addressing European issues and - more importantly - from putting administrations under pressure to perform efficiently during European policy preparation and transposition. European issues are simply no priority, and transposition in particular is regarded as an inferior task. To make the situation even worse, our data suggest that knowledge about essential European issues (such as European law having priority over national law) is not very high, which sometimes causes errors during transposition. In short, Belgian political actors seem to be insufficiently europeanised to cope with their European duties.

Danish politicians seem to be more europeanised than their Belgian counterparts. Partly because they are rather sceptical towards the EU, they are highly interested and well-informed. The members of the European Committee of the Folketinget, for instance, are all senior parliamentarians with extensive experience and knowledge about EU affairs (von Dosenrode, 1997). The Europeanisation of Danish political actors is also reflected in 'the basic Danish attitude concerning the implementation [...], that when the lawmaking process has been completed, the law must be obeyed and thus must be implemented. [...] The Danes take pride in living up to agreements (von Dosenrode, 1997: 25-26)'. It must be stressed though that the latter is not only a cultural attitude, but also a rational attitude which stems from the argument that

showing its good-will in implementation serves the credibility and thus the long term interest of the country.

4.4 Adaptation pressure

Institutional and Legal Pressure

Knill (Knill, 1997a), Heritier (Heritier, 1996), Börzel (Börzel, 2000a) and others have all argued that high legal, administrative and political adaptation pressures trigger major internal reforms potentially causing delays and problems during transposition processes. With respect to environmental policy, Belgium faced major legal adaptation pressure. This was not due to a clash between existing internal and new European policies, but due to the fact that the total absence of environmental legislation obliged Belgium to install new structures to adopt European policies. When environmental policy was subsequently transferred to the regional level, the whole institutional process had to be repeated, leaving virtually no room to engage in modern environmental policy-making itself, causing in the long term even higher substantive adaptation pressure. With regard to labour policy, the situation is totally different, because Belgium, being a leader in this field, was able to set the European standards itself, facilitating transposition afterwards. However, although transposition of labour policy encountered less problems, it also has to cope with an organisational setting in Belgium that is ill-adapted to European affairs. This is caused by the fact that the Belgian political and administrative setting is nearly exclusively moulded by the efforts to guarantee and preserve smooth relations between the federal and the sub-national levels. Adaptations to Europe were often not incorporated in state reforms and only established post-factum, which made it difficult to incorporate them in the existing structures (Kerremans, 1998). The latter not only affects administrative structures (EU policy preparation and implementation), but also governmental structures (the lack of well established European affairs services) and parliamentary assemblies (the organisation and functioning of European advisory committees) (Franck, 1999).

Denmark faces a lower adaptational pressure with respect to the contents of European policies. Especially in the fields of environmental and social policies, Denmark traditionally has got very strict standards. Since European directives regarding these regulatory policies often consist of minimum requirements, Denmark is not often forced to upgrade its legislation. Moreover, in environmental policy Denmark has succeeded to become a 'green' leader (together with the Netherlands and Germany), being able to push its own policies through at the EU level ('the uploading mechanism'), hence establishing compatibility between EU and Danish policies (Eliason, 2001: 209).

Political Pressure

Adaptation pressure also occurs with respect to political adaptation, i.e. the willingness of political decision-makers to change their behaviour to meet European demands or the internalisation of the European dimension by political parties and interest groups (Hanf, 1998)

(Duina, 1997) (Lampinen, 1998). Belgian interest groups, for instance, are not always able to influence European legislation, neither through their European umbrella organisations, nor through the participation of the federal government in the Council of Ministers. In addition, they seem to be insufficiently europeanised to deal with the transposition within European constraints which leads to the - belated - promotion of their interests during the implementation process (Beyers, 2000).

Danish political parties, on the other hand, feel politically bound by European directives, because they have had the possibility to influence the Danish negotiation position in the Folketinget Europe Committee. In addition, the proportional representation within this committee ensures that all parties exert loyalty to the European decisions, even when Denmark has been outvoted in the Council (Eliason, 2001: 201-202). The same argument explains the early participation of interest groups: their involvement ensures also a consensus among the private stakeholders preventing them from disagreeing with or even opposing transposition of EU-law afterwards (de Berranger, 1997: 129). In short, 'the Danish case reveals the residual adaptive capacity of institutions based on structured consultation and negotiation predicated on an expectation of pragmatic compromises among competing interests (Eliason, 2001: 211))'.

4.5 Communication and Continuity

Finally, adequate communication between the involved administrative and political actors is considered to create favourable transposition conditions. Especially formal and informal contacts between 'negotiators' and 'implementators' are crucial. The former must know what kind of legislation can be implemented without causing major delays, the latter need information about the contents of the negotiations and the philosophy behind the proposals. Provisions to guarantee such a continuity have long been absent in Belgium. Only recently reforms have introduced 'fiches' and 'transposition managers' to ensure that relevant information circulates and that at least one person or service is made responsible to monitor the complete route. It goes without saying that problems to establish the necessary contacts depend on the complexity of the policy field, making environmental policy more subject to communication gaps than labour policy.

In Denmark, already the special committees concentrate on the positive and negative consequences of a proposal for Denmark, thus identifying in a very early stage whether implementation of a particular European directive would pose large difficulties or not. The special committees are described as a radar that seek to spot problems at an early stage (Pedersen, 2000: 225). From these early stages, continuity is guarded by the overall supervising role of the Foreign Affairs Ministry, aiming explicitly at consistency 'being particularly important for a small country (Pedersen, 2000: 226)'. Danish civil servants are also - contrary to their Belgian counterparts - reported to contact EU institutions directly and with increasing frequency (Pedersen, 2000: 229). Such bilateral contacts have been encouraged because they give quick access to information as well as the possibility to influence the Commission's drafting at an early stage (von Dosenrode, 1997).

5 Conclusions

Smooth transposition is more likely when a range of institutional conditions are more favourable. Firstly, a simple constitutional and administrative setting, mainly in terms of the horizontal and vertical division of competencies, favours successful implementation. Especially the environmental setting in Belgium suffers from the opposite, while labour policy in both countries scores rather well in this respect. Both formal and informal aspects present similar pictures.

Secondly, we argued that a successful preparatory phase increases the chances for correct and on time transposition. The complexity of the Belgian institutional context has lead to the creation of an extremely complex co-ordination mechanism, which surprisingly overlooks several crucial stages of EU policy-making (such as the consultations by the European Commission and the comitology system). In Denmark, on the contrary, the preparatory stage is run through a rather simple but highly efficient process, especially due to the use and the composition of the special committees and the substantive involvement of the European Committee of the Folketinget. Also informally the political environment in Belgium is less favourable than in Denmark, where a combined pragmatist and consensus-seeking tradition sets rather favourable conditions.

Thirdly, both formal and informal features of the transposition process reveal a different picture for the two member states. Whereas several Belgian actors show problematic characteristics (especially Foreign Affairs and the parliaments), The Danish setting is rather promising (mainly due to the central supervising role of Foreign Affairs). Also with respect to the degree of europeanisation Belgian and Danish actors differ, the former being surprisingly much less europeanised than the latter.

	Belgium		Denmark	
	environment	labour	environment	labour
administrative setting (formal)	--	+	+	+
administrative setting (informal)	--	+	+	+
preparatory performance (formal)	--	+	++	++
preparatory performance (informal)	-	-	+	++
transposition process (formal)	--	-	+	+
transposition process (informal)	--	--	++	++
adaptation pressure (formal)	--	++	++	++
adaptation pressure (informal)	-	-	+	+
Communication (formal)	-	+	+	+
Communication (informal)	-	+	+	+

Table 4 Belgian and Danish transposition conditions

Fourthly, differences can be observed in terms of formal and informal adaptational pressure. Especially the environmental sector in Belgium seems to be confronted with high adaptation

pressure. In Denmark, both sectors reveal high protection levels, hence not facing large changes. On the informal side, Danish political actors were found to be more europeanised than Belgians.

Finally, hard and soft communication structures differ between the countries, creating more favourable conditions in Denmark than in Belgium, mainly due to the elaborated use of the 'fiche' system and the tradition to consult various actors in an informal way whenever necessary.

Table 4 summarises the evaluation of the Belgian and Danish conditions with respect to the possibility for smooth transposition. The results confirm the figures and hypotheses presented at the beginning of the paper: Denmark performs better than Belgium and, within Belgium transposition of labour policy runs more smoothly than environmental policy. Comparing the favourable conditions for the two countries and the two policy fields, these are not surprising results. The rough evaluations show that especially the Belgian environmental policy sector is confronted with major institutional and cultural obstacles, while the Danish context is rather promising.

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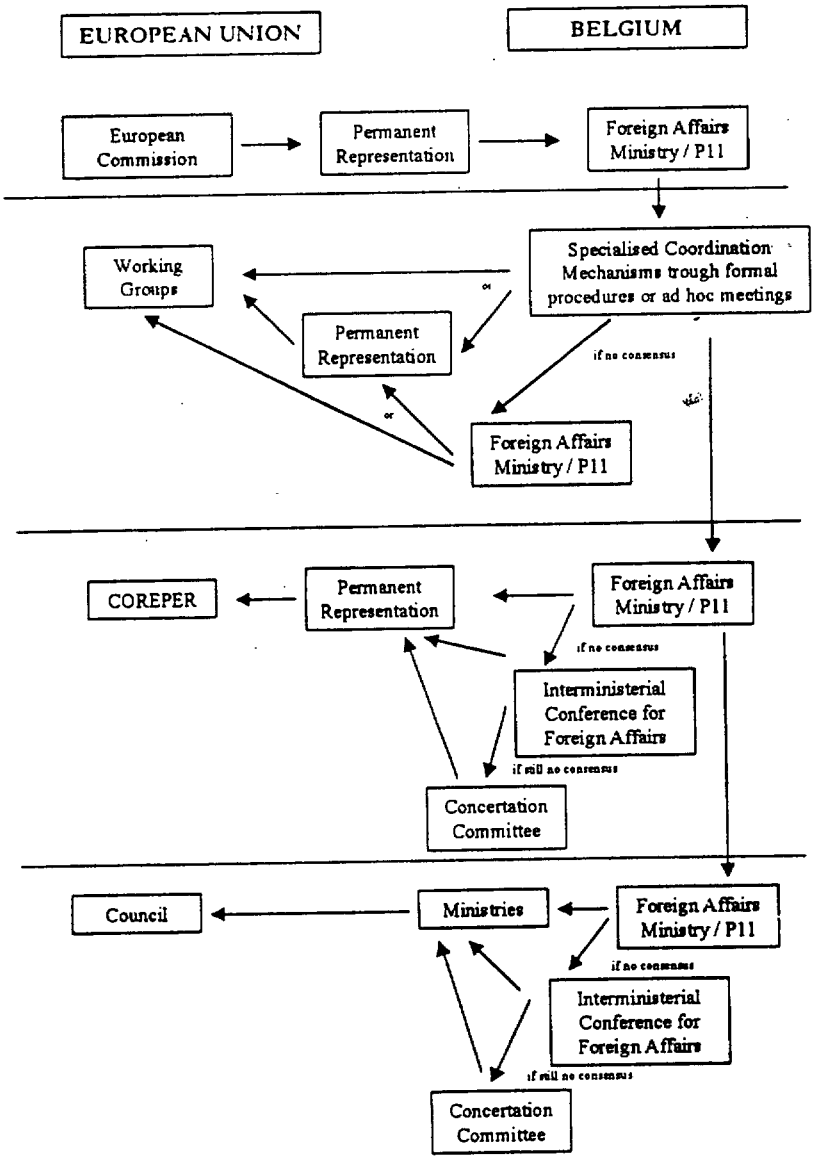
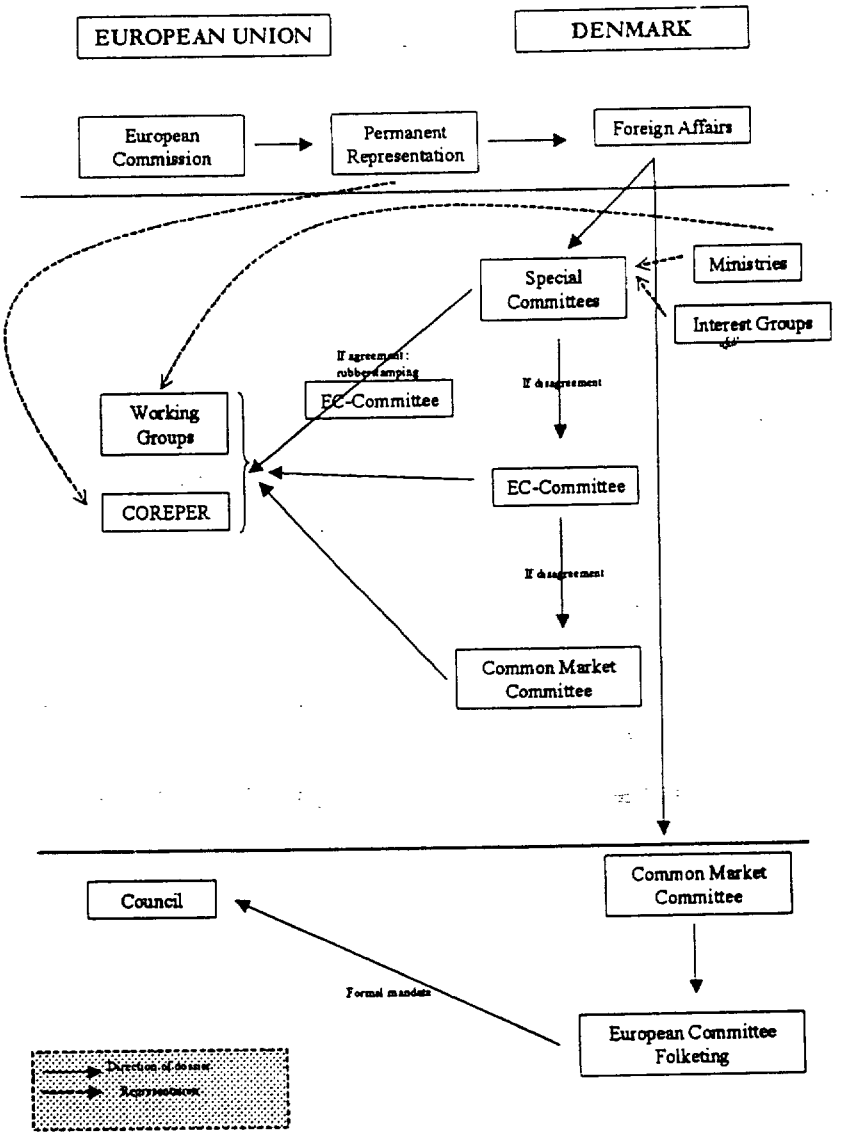
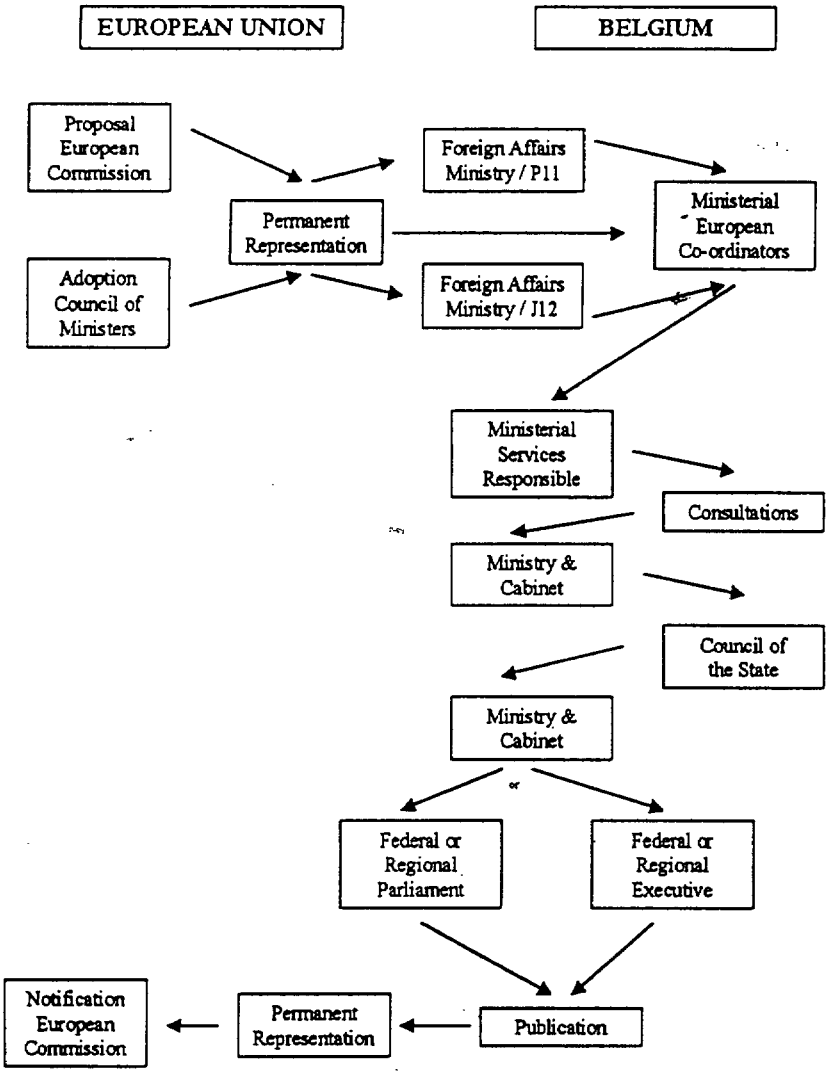


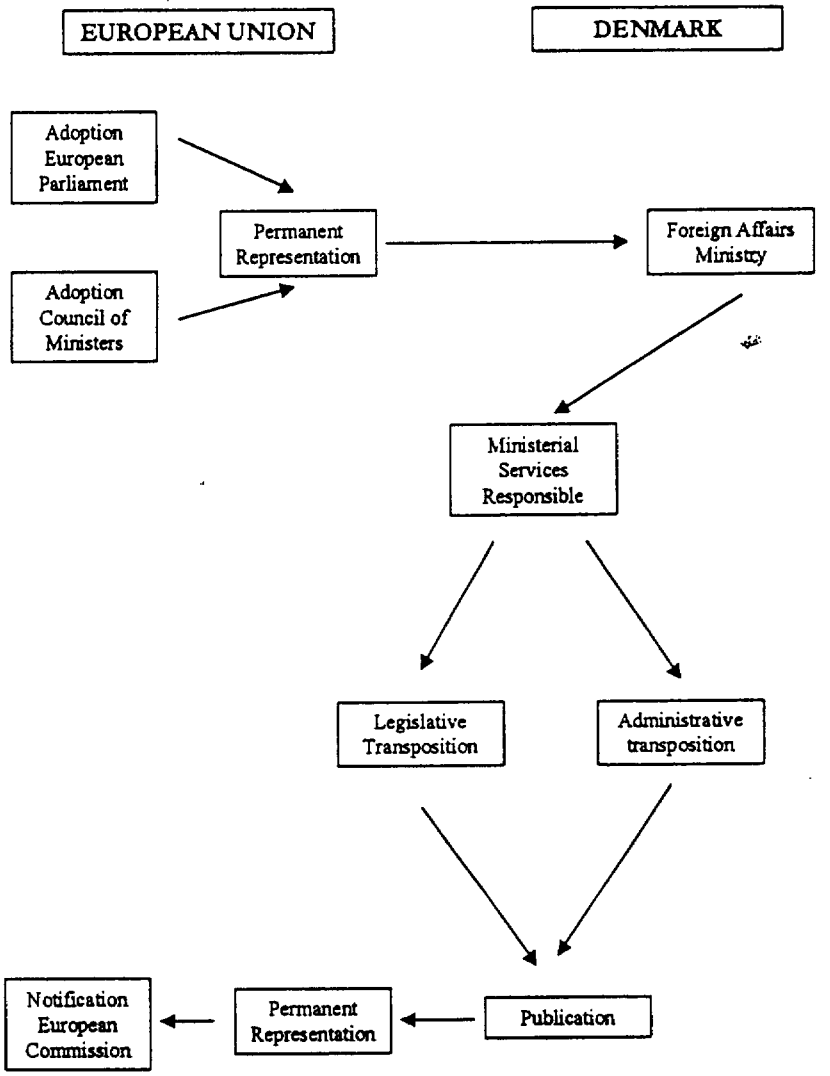
The Belgian preparatory stage



The Danish preparatory stage



The Belgian transposition stage



The Danish transposition stage