

**Better Regulation:
a regional perspective**

EPC Issue Paper No.53

May 2007

By Catarina Persson and Marie-Hélène Fandel

EPC Issue Papers reflect the views of the authors and not necessarily those of the EPC.

Table of Contents

Foreword by Pavel Telicka	5
I. The role of the regions in the EU	6
II. The survey's key findings	12
III. Conclusions and recommendations	16
Endnotes	20
Annex	21

About the authors

Catarina Persson is a Consultant Analyst and Marie-Hélène Fandel is a Policy Analyst at the European Policy Centre.

Foreword

By Pavel Telicka

In recent decades, Europe has witnessed a dynamic trend of decentralisation and devolution of powers from central to regional administrations. One example of this was in the United Kingdom, with the signing of the Scotland Act and the Government of Wales Act in 1998.

Although Europe's system of multi-level governance is often criticised for being overly cumbersome, this devolution of power has been successful in safeguarding the subsidiarity principle first introduced in the early 1990s in the Maastricht Treaty, which stipulates that decisions should be taken as closely as possible to the citizens.

The Maastricht Treaty also put flesh on the bones of this principle, increasing the regions' involvement in the Union's political and legislative process by creating the Committee of the Regions and enabling regional ministers to sit in the Council of Ministers for the first time.

In the context of the Better Regulation initiative, empowering the regions has generally resulted in better scrutiny of EU legislation, and its transposition and implementation.

There are 74 regions in the EU with legislative competences, which means that they have direct responsibility for the transposition of all, or part of, some EU directives.

Following up on the conclusions of the 2006 EPC Working Paper on *Making Europe work: improving the transposition, implementation and enforcement of EU legislation*, the EPC, with the kind support of the Scottish Executive, carried out a survey of these regions.

This Issue Paper, which is based on the findings of that survey, addresses the many opportunities and challenges resulting from the transfer of legislative competences to the regional level. It also outlines a number of steps which could be taken to improve the way regions with legislative competences, national governments and European institutions work together and raise governance standards in the EU.

It is intended as a modest contribution to the general debate on Better Regulation, which is now widely recognised as a crucial part of the Lisbon Agenda for boosting Europe's economic growth and competitiveness. The regions have a key role to play in this and their contribution cannot – and must not – be overlooked.

Pavel Telicka is Chair of the EPC's Better Regulation Task Force.

I. The role of the regions in the EU

Over the past two decades, the role of the regions in European policy-making and the transposition and implementation of EU legislation has been highlighted in Treaties, White Papers and reports.

This Issue Paper, which analyses the findings of a survey of regions with legislative competences carried out by the European Policy Centre with the support of the Scottish Executive, assesses how the process of transposing EU directives works at regional level and considers how it could be improved.

It follows on from a previous EPC Working Paper, published last year,¹ which highlighted the fact that, to date, the European Commission's Better Regulation initiative has focused on assessing the impact of planned legislation, cutting red tape and simplifying EU laws, while paying relatively little attention to ensuring that EU legislation is correctly applied.

Furthermore, when this issue has been considered, the focus has tended to be on assessing the progress on transposition and implementation at national level. This paper attempts to redress the balance by considering the regional aspect.

Background

To put the issues addressed in this paper in context, it is useful to have an overview of how the role of the EU's regions in transposition has evolved over the years.

In an attempt to bring the EU closer to its citizens at the local and regional levels, and to enable the regions to influence the development of EU policies, the 1993 Maastricht Treaty established the Committee of the Regions.

The Treaty stipulates that the Committee of the Regions shall be consulted by the Council or the European Commission in policy areas specified by the Treaty,² that it may also be consulted by the European Parliament, and that it can issue an opinion on its own initiative in cases where it considers this to be appropriate.³

The Maastricht Treaty also contained a separate provision which significantly enhanced the role of the regions in EU decision-making, stating that the Council shall consist of a "representative" of each Member State at ministerial level, who is authorised to commit the government concerned.⁴ This enabled regional ministers to sit in the Council as and when appropriate for the first time.⁵

Almost a decade later, the Commission's 2001 White Paper on European Governance focused on improving the preparation and implementation of EU legislation and policies, and on establishing a stronger interaction between the Commission and regional and local governments.

The White Paper stated that, despite their increased responsibility for implementing EU policies, the role of regions and cities as "elected and representative channels" interacting with the public on EU policy was not being "exploited". It argued that the Commission should ensure that regional and local knowledge and conditions were taken into account in the policy-making process, and should organise a "systematic dialogue" with European and national associations of regional and local government.⁶

The White Paper emphasised that the "principal" responsibility for involving the regional and local levels in EU policy "remains and should remain" with national administrations. But it added that there was often a perception that national governments were failing to involve regional and local actors adequately in EU policy-making.⁷ The White Paper therefore concluded that "each Member State should foresee adequate mechanisms for wide consultation when discussing EU decisions and implementing EU policies with a territorial dimension".⁸

In the same year, the Mandelkern report on Better Regulation stressed that high-quality regulation “forms a chain from the earliest stages of its preparation through to its implementation”. It argued that more attention should be paid at the European level to addressing concerns about implementation to ensure that “the full consequences are understood and considered”.⁹

The report also emphasised that incorporating European legislation into national law should be seen as an extension of the negotiating process, rather than as a distinct process. In addition, it stressed that cultural differences, such as informal procedures, should be taken into account in the negotiation and incorporation processes.¹⁰

Furthermore, the report underlined the importance of “effective structures” and specifically pointed to the need for coordination between different levels of government (regional administrations and local authorities), and between the national and EU levels, in order to ensure a better regulatory structure.¹¹

To sum up, by establishing the Committee of the Regions, the EU acknowledged the need to take regional concerns into account in European policy-making. At the same time, while the Commission’s White Paper on European Governance acknowledged that it was the responsibility of national governments to involve the regional and local levels, it stressed the need for a more systematic dialogue with these levels of governance. The Mandelkern report then linked these issues to Better Regulation, and highlighted the importance of coordination between local, regional, national and EU levels in order to ensure Europe-wide regulation of the highest possible quality.

Better Regulation

In order to achieve the goals laid down in the Lisbon Agenda, it is generally agreed that it is essential to have a regulatory framework which is conducive to economic growth and competitiveness in Europe.

This means creating an environment capable of ensuring effective market access and a level playing field for businesses, as well as protecting consumers and taking other key issues into account. The Commission’s Better Regulation initiative was designed to achieve this.

The Commission is responsible for ensuring the proper functioning and development of the internal market. However, it has only limited powers and resources at its disposal to control how EU directives are translated into national and regional laws and regulations, and relies heavily on national governments to ensure that this is done properly.

The EU Treaties make Member States responsible for the transposition, implementation and enforcement of EU legislation.¹² Given that some regions have legislative competence in several policy areas, timely transposition and correct implementation are just as important at regional level as they are at national level. If transposition is late or carried out incorrectly either in a legislative region or in the Member State as a whole, the country concerned could face infringement proceedings.

Aim, scope and methodology

This Issue Paper focuses on the transposition of EU directives in EU’s 74 regions with legislative powers.¹³ These regions are responsible for transposing EU legislation in specific policy areas, which vary from region to region and from Member State to Member State.

To assess the current state of play in this area, and identify potential problems which need to be addressed, the EPC carried out a survey of regions in Austria, Belgium, Finland, Germany, Italy, Portugal, Spain and the United Kingdom – the only EU Member States which have regions with legislative powers.

Questionnaires were sent to these regions, backed up by a series of structured interviews with regional representations in Brussels to get more detailed information about current procedures and problems.

Details of the responses given by specific regions in the survey and interviews have been kept confidential, in order to ensure frank replies.

This paper attempts to map out the main features of regional transposition procedures, to examine whether regional transposition strategies exist, to identify the major transposition challenges and to consider how these might be addressed.

To put the survey responses into context, the next section of this chapter provides an overview of the central features of the different systems in each Member State for conferring powers to regions. Chapter II outlines the findings of the survey, and Chapter III sets out some conclusions and recommendations on measures that could be taken in order to improve transposition procedures.

Remits of the regions

Austria

Austria's 1945 Federal Constitution (Art. 2) declares that it is a federal state consisting of nine states (Länder), each with legislative and executive autonomy. The nine states are Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna. Each state (Land) has a state parliament (Landtag) and a state government (Landesregierung). Länder participate in the federal legislative process through the Federal Council (Bundesrat), to which the members are elected by the nine state legislatures.

However, Austria has a strongly centralised system of governance and the Bundesrat can only delay legislation passed by the Nationalrat. It does not have a general right of veto, although it can block legislation in exceptional circumstances.

Under the general clause of Article 15 of the Federal Constitution, all legislative and executive powers not explicitly attributed to the federal level are the responsibility of the Länder.¹⁴ For example, foreign affairs, defence and justice are federal competences.

Belgium

Belgium transformed itself from a unitary into a federal state in the course of one political generation.¹⁵ Belgian federalism uses 'regional territory', as well as a non-territorial component, as the basis of its federal structure and is a multinational federation with political parties divided along linguistic lines.¹⁶

The federal Constitution which came into force in 1993 states that Belgium is a federal state made up of Communities (Flemish, French and German) and Regions (Flanders, Wallonia and Brussels Capital). Each of these federal entities has its own Executive and Parliament.

The Belgian regions all have similar competences. There is no hierarchy between the federal and sub-national levels, and legislation enacted by sub-state levels enjoys equal legal status with legislation enacted by the federal government.¹⁷

Defence, justice, internal security, taxation policy and social security remain federal competences. The 1993 Constitution gave the federal entities rights to pursue external policies and to conclude international treaties in policy areas where they have exclusive competences.¹⁸

Germany

The Federal Republic of Germany is made up of 16 states (Länder), each with varying degrees of legislative and executive autonomy: Baden-Württemberg, Free State of Bavaria, Berlin, Brandenburg, Free Hanseatic City of Bremen, Free and Hanseatic City of Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower

Saxony, North-Rhine Westphalia, Rhineland-Palatinate, Saarland, Free State of Saxony, Saxony-Anhalt, Schleswig-Holstein and the Free State of Thuringia.

The Federal Council (Bundesrat), which consists of members of each Land's cabinet, represents state governments at a federal level. The Federal Council has 69 members, with the number of representatives per state varying between three and six depending on the size of its population. In constitutional terms, German Länder are states in their own right and cannot therefore be treated as subordinate or solely administrative authorities.¹⁹

Article 23 of the German Basic Law (Grundgesetz) states that "before participating in legislative acts of the European Union, the Federal government shall provide the Bundestag with an opportunity to state its opinion". It adds that the Bundesrat shall participate in the decision-making process of the Federation "insofar as it would have been competent to do so in a comparable domestic matter, or insofar as the subject falls within the competence of the Länder".

It also states that when legislative powers exclusive to the Länder are primarily affected by a proposal, the exercise of the Federal Republic of Germany's rights as an EU Member State "shall be delegated to a representative of the Länder designated by the Bundesrat".

The recent federal reform (Föderalismusreform) of the German Basic law addresses the relationship between the Länder and the federal level. It focuses on the complexity of the existing German federal system and the impact this has on Germany's effectiveness and efficiency in EU negotiations, and aims to clarify which policy areas are regional competences and which are exclusive federal competences.

Finland

Åland, a Swedish-speaking province which was granted status as an autonomous region by the Finnish Parliament in 1920, is the only Finnish region with legislative powers.

Finland has sovereignty over Åland, which elects one representative to the Finnish Parliament. Åland is governed according to the Act of Autonomy and has its own executive body (Landskapsregering) and legislative body (Lagting).

The Autonomy Act empowers the regional government to contribute to the formulation of Finland's responses to EU policy initiatives insofar as they concern the application of EU policy in Åland. Each Finnish Ministry has a civil servant who is responsible for EU affairs related to the region.

If Finland enters into an international treaty which contains a provision that conflicts with the Autonomy Act or falls within Åland's authority, the regional Parliament must approve this provision for it to be valid in Åland.²⁰

Italy

The Italian Constitution provides what it describes as "extended" powers to 20 regions: Abruzzo, Aosta Valley, Apulia, Basilicata, Calabria, Campania, Emilia-Romagna, Friuli-Venezia Giulia, Lazio, Liguria, Lombardy, Marche, Molise, Piedmont, Sardinia, Sicily, Trentino-Alto Adige/Südtirol, Tuscany, Umbria and Veneto. Each region has an elected legislative body and an executive body, the Giunta Regionale, which is led by a directly elected president.

Five of these regions have a special autonomous status: Aosta Valley, Friuli-Venezia Giulia, Sardinia, Sicily and Trentino-Alto Adige/Südtirol.

The principle of strong local and regional government is laid down in the 1947 Constitution, which "recognises and promotes the local autonomies and implements the widest possible decentralisation in the services that depend on the State".

The 2001 constitutional reform paved the way for changes to Italy's administrative architecture and also outlined the policy areas in which central government has exclusive competence: public order and security, defence, foreign policy, monetary policy and savings, justice, electoral rules and citizenship, immigration, relations with religious institutions, general education standards, social security, and protecting the environment and cultural resources.

Italy does not have a 'Chamber of the Regions'. Instead, the principal forum for dialogue, collaboration and political negotiation between the different levels of government (state-regional-local) is the 'Conference', which is presided over by the Minister of the Regions on behalf of the Prime Minister. The conference system is currently being reviewed to improve its efficiency and ensure parliamentary follow-up on decisions taken.²¹

Portugal

Article 161 of the 1976 Portuguese Constitution states that Azores and Madeira are autonomous Portuguese regions and Article 227 outlines their regional powers.

Both have an executive body (Governo Regional) and a legislative one (Assembleia legislativa). The Estatuto Político-Administrativo da Região Autónoma dos Açores and Estatuto Político-Administrativo da Região Autónoma da Madeira define the autonomous competences of these two regions and the functions of their political administrations.

Both statutes outline the policy areas in which the regions have legislative competence. These include agriculture, fisheries, environment, education, health and employment.

Spain

Spain is divided into 17 autonomous communities which all have legislative and executive autonomy: Andalusia, Aragón, Asturias, Balearic Islands, Basque Country, Catalonia, Canary Islands, Cantabria, Castilla-La Mancha, Castile and León, Extremadura, Galicia, La Rioja, Madrid, Murcia, Navarra and Land of Valencia.

The 1978 Constitution (Art. 2) recognises and guarantees the nationalities and regions' right to self-government. It states: "The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards, and recognises and guarantees the right to autonomy of the nationalities and regions which make it up and the solidarity among all of them." The autonomous communities are represented in the Upper House (Senate), in which approximately 20% of the members are appointed by their regional legislatures.

Article 149 of the Spanish Constitution outlines the central government's exclusive competences and Article 148 sets out the competences that the self-governing communities may assume. Autonomy statutes (Estatutos de Autonomía) set out the powers of each region, but the system is asymmetrical and some regions, such as the Basque Country, Navarra and Catalonia have greater autonomy than others.

In June 2006, the Statute of Autonomy of Catalonia was amended following a referendum, further expanding the authority of the Catalan government (Generalitat de Catalunya). The Generalitat has competence in policy areas such as culture, agriculture, commerce, environment, communications, housing and transport, and shares competence in several others.²² The Basque Country's powers are set out in the Statute of Gernika (Estatuto de Guernica) and the Basque government (Eusko Jurlaritzza) has competence in policy areas such as agriculture, culture, education, environment, health, industry, transport and taxation. Navarra has similar competences to the Basque Country and these are set out in the "Ley Orgánica de Reintegración y Amejoramiento del Régimen Foral de Navarra."

United Kingdom

Devolution in the UK differs from a federal system, as its devolved institutions are constitutionally subordinate to the British Parliament and, in theory, devolution is reversible. The system is also 'asymmetrical', with different arrangements in Scotland, Northern Ireland, Wales and England.

The Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998 set out the legislative frameworks for devolution.

Scotland has an executive body (Scottish Executive) and a legislative body (Scottish Parliament). The Scottish Parliament can pass primary and secondary legislation in areas which are not explicitly reserved for Westminster (although the UK Parliament can legislate for Scotland in devolved matters if asked to do so by the Scottish Parliament, in cases where it would be more convenient to have UK-wide legislation). Policy areas explicitly listed as "reserved" for central government in the Scotland Act 1998 include foreign policy, defence, national security, fiscal and economic policy, immigration and social security.

Wales has a Welsh Assembly government, which is the Executive body of the National Assembly for Wales. The National Assembly can pass secondary legislation in areas where competence has been transferred through the Government of Wales Act of 1998, including agriculture, fisheries, environment, tourism, education and culture. However, the central government retains responsibility for primary legislation in both transferred and reserved areas.²³

In Northern Ireland, the Assembly (when not suspended) has power to legislate on "transferred matters" – those policy areas not explicitly retained by Westminster in the Northern Ireland Act 1998, such as international relations, immigration and nuclear energy.

A common challenge?

Most regions with legislative powers in the EU have similar, or identical, basic institutional features, and each has its own executive and legislative bodies. However, there are also significant differences in the way such systems operate in different parts of the Union.

While some Member States are made up entirely of regions with legislative powers, others have granted this status to some regions and not others, and some have no regions with legislative powers at all.

The extent to which powers are conferred on these regions by central government also varies and while some regions are geographically separated from the 'mainland', others are neighbours within the same Member State, but have different languages and cultures.

However, whatever the differences in individual systems, it is clear that the whole issue of the relationship between the EU, national and regional levels of governance is multilayered, complex and constantly evolving. This makes it important to analyse how the transposition procedure works at regional level, highlight its strengths and weaknesses, and identify areas where there is room for improvement.

II. The survey's key findings

Systems for transposing EU directives in regions with legislative competence vary across the Union and are far from straightforward.

Some regions have very formalised systems for cooperating with other regions within the same country and with the central government. Others tend to cooperate within structures which are based on a common understanding rather than a statutory framework.

As illustrated in the previous chapter, responsibility for transposing EU directives in several policy areas often lies with the regions alone. However, on other occasions, this responsibility is shared between regional and central governments, and it is not always clear which parts of the directive fall within the region's competence and which must be dealt with at national level.

Transposition strategies

The EPC's survey focused on the question of whether regions with legislative powers have a transposition strategy and if so, what it contains and how it is structured.

In this paper, the term "transposition strategy" refers to a formal strategy which outlines the intra-and inter-governmental procedures included in the transposition process, such as the channels for ensuring that information about EU directives reaches the regions and the existence of a central unit pro-actively monitoring new EU legislation.

The survey's findings suggest that only a minority of regions (30%) have a formal transposition strategy in place. In regions which do not have an explicit strategy, the main reason given (by 60% of respondents) is that the current arrangements are adequate. However, a few regions indicated that they have been focusing on other priorities and have therefore not had time to develop a transposition strategy yet.

Similarities and differences

The survey reveals that regional transposition strategies have some common features, but there are also significant differences in procedures.

Most regions receive information about new EU directives, which may have an impact on their fields of competence, from either the central government, the regional government's legal services department, or from a common 'platform' made up of the legal services departments of the different regions across the country. In some regions, officials working in the relevant policy area receive information about new directives from their transposition unit, as well as being informed by their central government.

A small number of regions indicated that in cases where directives touch on a range of policy areas and therefore involve a number of departments, the transposition units occasionally organise meetings to identify which department is responsible for what. In one Member State, the legal services departments in the different regions cooperate with each other and meet to discuss transposition options.

Only a few regions reported the existence of specific departmental contact points to ensure that information about EU directives flows smoothly between the different departments and the regional government's transposition unit.

In some regions, either the legal services department or the transposition unit keeps a list or database of 'active' EU directives and monitors the process to see if transposition is proceeding according to schedule.

Generally speaking, it is the central government which notifies the European Commission when the transposition process has been completed (based on the information it receives from the regional government). However, in a few cases, the region's transposition unit notifies the Commission directly.

Very few regions indicated that they evaluate their transposition procedure regularly to assess its effectiveness and highlight any weaknesses.

How transposition strategies are formulated

In those regions where transposition strategies do exist, there is no consistent pattern in the way they are formulated. In some cases, the transposition strategy is part of broader regulatory policy at the regional level (22%); in others, it is part of broader EU-law implementation policy at the national level (33%) and in a third group (45%), this is done on the basis of a regional government policy statement (a non-binding declaration of intentions).

The most common challenge and constraint facing regional policy-makers in developing a transposition strategy is resistance – or a lack of interest – from different departments within the administration. This is closely followed by both a lack of resources and a lack of methodology.

Transposition and monitoring units

Nine out of ten of the regions surveyed said they have a dedicated transposition and monitoring unit.

All those which have a transposition strategy in place have a central unit responsible for implementing the strategy and for monitoring the transposition process.

Of the regions which do *not* have a formal strategy, most have a dedicated unit which coordinates and monitors the implementation of EU directives. However, in some cases, there is no specific coordinating unit as such and the region relies instead on its central legal service to give advice on the law-making process.

Guidelines on transposition

About half of the regional governments surveyed do not provide specific regional guidelines on the transposition process. However, in some cases, respondents indicated that their region uses the guidelines prepared by the central government, which apply to all regions in that country.

As indicated above, regions' legal departments also play a significant role in providing advice on the law-making process.

Correlation tables

The survey suggests that correlation tables, outlining how EU directives have been transposed and illustrating compliance with a specific EU directive, are not widely used. Only a small number of regional governments (20%) use such tables.

However, some other regions reported that a small number of departments within their administration do keep correlation tables, but only in cases where they are considered to provide 'added value', because of the time they take to prepare. Others said correlation tables are provided in cases where this is specifically required by a directive.

One region reported that it intends to provide 'transposition notes' in future, which will outline the articles of the EU directives which are being transposed and highlight any incidences of 'gold-plating' (when the legislation transposing a directive goes further than legally required by the directive).

Most of the regions which use correlation tables regard them as an administrative burden, and those which do not use them fear that they would become one, putting an additional strain on administrative resources, especially in legal departments.

Some regions also argue that correlation tables are unnecessary and are only likely to be of benefit to the European Commission. They also voiced concern about the Commission's reporting demands and some feared that correlation tables could be used against them, notably by being cited as evidence in court proceedings for alleged infringements, although none provided any examples of this actually happening.

Challenges

Most regions said they were facing a number of challenges in the transposition process. Some of these relate to internal procedures in the regional and/or central administrations, and others to the relationship between the regional and central government and the Commission.

Internal procedures in regional or national administrations

Some regions said delays in transposition are sometimes caused by a lack of clarity over which sections of an EU directive fall within the competence of the regional government and which should be transposed by the central administration.

In some cases, conflicts have arisen between regional and national governments over this issue. One region reported that such conflicts over competence frequently have to be resolved by the Constitutional Court, as its national government usually assumes that a directive falls within its competence and only exceptionally considers that this competence can be shared.

In cases where the division of competences between the regional and national levels is not entirely clear, and this is not clarified before the region transposes all or part of the directive, complications can arise. If the central government also transposes the same provision(s) of the directive, the region may have to modify its transposing measure, risking a delay to the complete transposition of the directive by the Member State as a whole.

Some regions also reported procedural difficulties in their relationship with central government. They specifically mentioned cases in which transposition is delayed because regional officials have to wait for draft regulations from central government experts before pressing ahead with the transposition process. If the region does not receive these draft regulations until close to the transposition deadline, then there is a significant risk that the process will not be completed until after that deadline has expired. This difficulty is magnified in regions where texts have to be translated before the legislation can be passed.

These delays can also affect a Member State's performance in the Commission's Internal Market Scoreboard, with a delay in one region, because of the types of problems mentioned above, resulting in the entire Member State achieving a worse result.

Some regions also argued that central governments have an advantage over the regions in the transposition process because the former participate more frequently in Council negotiations and therefore have more influence over the shaping of EU directives.

Although the relationship between the regions and their country's Permanent Representation in Brussels usually works well, the regions' sense of being at a disadvantage is sometimes compounded by the fact that they usually have to communicate with the Commission through the Permanent Representation, rather than directly, if they need to clarify details of a directive before it is transposed.

The role of the European Commission

Some regions complained that EU directives are often written in a vague language and could be interpreted in very different ways (and sometimes incorrectly) in different Member States because of different cultural and political contexts.

Others also lamented that in some cases, they receive guidelines from the Commission after the process of transposing the directive has begun and the necessary legislation is already being drafted, adding to transposition problems.

As the transposition process takes longer in some regions than in others, some also complained that the Commission does not always take specific regional circumstances into account when setting deadlines for transposition.

Lessons for the future

The survey's findings provide some clear pointers to ways in which the transposition process could be improved by making some relatively simple changes to procedures at regional, national and European level.

The final chapter of this paper analyses these findings, draws some conclusions from them and sets out recommendations for action in this area.

III. Conclusions and recommendations

The transposition of EU directives at regional level is a complex process, with a combination of factors contributing to some of the problems which can arise.

While the Maastricht Treaty considerably strengthened the powers of regions with legislative competences, EU directives have become more detailed and some give national governments and regions little leeway in terms of how they transpose and implement them. In other instances, the wording of a directive is open to interpretation, and the way this is done at national or regional level does not always (intentionally or unintentionally) correspond with the spirit of the directive.

The tendency for national and regional politicians to use Europe as a ‘political football’ – with disagreements between political parties or between regional and central governments over specific directives sometimes contributing to a reluctance to implement them fully – complicates the process still further.

Recognising this, the European Commission has made efforts to advise and guide the regions on this aspect of their work by, for example, organising workshops and conferences to discuss general transposition issues and potential problems in transposing and implementing specific directives. However, this has also prompted complaints from some regional authorities that the Commission is going beyond its role as guardian of the EU Treaties by trying to tell them how to do their job.

The findings of this survey underline the need for more attention to be paid to transposition issues in regions with legislative powers. The EU’s Member States, its institutions and the regions themselves need to work together to modernise and improve the process at the regional level.

In the light of the increased powers given to legislative regions in some Member States in recent years, clear procedures are needed to govern how these competences are administered. The survey suggests that while regions with legislative competences have acquired a significant range of responsibilities, there is a great deal of scope for improvement to ensure that they can carry out those responsibilities efficiently and effectively.

One of the areas which the survey focused on was the role of explicit, formal transposition strategies in this process.

The main advantage of having such a strategy is that roles and responsibilities within the regional government, and in relation to the central government, are clearly defined. Yet only just under a third of the regions surveyed said they had a transposition strategy in place. (It is important to note, however, that this figure could be somewhat misleading given that there may be different interpretations of what constitutes an ‘explicit transposition strategy’. It may well be that many more regions have arrangements in place which include elements of what we refer to as a ‘transposition strategy’, without having one formal document in which this strategy is set out.)

Furthermore, the survey showed that where formalised transposition strategies do exist, these tend to be set out in a regional government policy statement, i.e. a non-binding declaration of intentions. This suggests that transposition issues are not always given the importance they merit – such statements are helpful in terms of providing guidance and direction, but they do not always necessarily carry much weight.

It is also clear that the most common challenge facing regional policy-makers in establishing a formalised transposition strategy is resistance, or a lack of interest, from regional governments. This creates an unfavourable climate for introducing such strategies, and the underlying reasons for this resistance or lack of interest need to be analysed.

As well as financial constraints and concerns over the administrative changes which might be required when introducing a transposition strategy, a lack of awareness of the importance of EU policy (including EU directives) as an integral part of regional policy – rather than a distinct and separate issue – may also be a key factor.

Recommendations

Measures to improve the transposition process should be taken at all levels of governance, since regional and national governments and the European Commission all have a role to play, and the recommendations set out below are aimed at all three.²⁴ It is, however, important to note that the extent to which these recommendations are applicable varies between countries and regions.

Steps to be taken by regional and national governments

Given the variety of different regional systems across the EU Member States, there is no single framework of transposition procedures which could be applied to all the regions with legislative powers. However, there are some steps which could be taken by all regional and central governments to facilitate the transposition process, and to ensure efficient and correct transposition.

While these steps would lead to more streamlined, inclusive and efficient transposition, a balance has to be struck between the potential benefits and the additional costs and administrative requirements (although greatly increased costs in the long term should not be necessary).

A regional transposition strategy could include the following:

A specific transposition and monitoring unit responsible for:

- monitoring new EU legislation and informing relevant regional departments when directives fall within their competence;
- monitoring the current status of all directives which need to be transposed in the region by, for example, establishing a database and producing correlation tables;
- organising coordination meetings with policy officials when necessary, especially in cases where directives are complex and touch on a number of policy areas and therefore involve more than one department;
- establishing and maintaining contact points in all departments to facilitate communication and the exchange of information related to directives;
- informing relevant ministers about the region's performance in relation to transposition and the implications of this for regional policy;
- providing detailed guidelines on transposition procedures for policy officials;
- raising awareness of the EU in general and specific EU policies, and how they affect regional policy, in order to help regional officials understand the reasons for, and aims of, specific directives.

Better coordination of regional and central government cooperation:

Efficient and timely transposition appears to depend, to a significant extent, on efficient and clearly defined procedures within the different regional departments, as well as between the regional and central government. Efficient internal procedures could include the following:

- ensuring that central government officials have a clear understanding of the regions' remits and recognise that some regions have considerable powers, and therefore play a very important role in the transposition process;
- developing a structured approach at central and regional government levels to communicate and coordinate work on EU directives and on EU affairs in general, both at administrative and ministerial

levels. This is of central importance to regions: access to the right channels at the right time enables them to influence EU policy-making in areas where they have exclusive or shared competence, and thereby have an input into shaping new EU legislation. Early input through formal channels increases the chances of EU directives being drawn up which reflect regional priorities; this in turn increases the chances of correct and timely transposition;

- encouraging the regions to recognise that they could benefit significantly from playing a more pro-active role in the negotiation and transposition of EU directives, and should therefore take the initiative and make the necessary changes to their internal procedures;
- providing adequate staffing for regional legal departments to ensure they can cope with the demands placed upon them;
- putting formal systems in place to identify, at the earliest possible stage, which directives should be transposed at a regional level, which should be transposed centrally and which are a shared competence. A 'dispute settlement system' could also be useful to deal swiftly with cases where the division of competences is unclear and disputes arise between the different levels of governance;
- working to ensure that the regional and central government have the most efficient working relationship possible with the Commission, as this is in all their interests. This implies that central governments need to be less protective of their 'monopoly' to engage with the Commission.

Correlation tables:

The survey found only one in five regional governments use correlation tables to keep track of how directives have been transposed. (Again, this figure may be slightly misleading, as the term 'correlation table' may not have been understood equally by all respondents, so the percentage of regions which have some sort of system to monitor the transposition process may be higher. When using the term in this paper, we are referring to a table outlining each article of a directive and the corresponding piece of regional legislation.)

Most regions regarded correlation tables as an additional administrative burden and felt that the 'added value' provided by such tables would not be worth the effort. However, even though producing correlation tables might mean extra work for regional governments, it could be time well-spent for two reasons:

- the introduction of correlation tables would provide an ideal opportunity to streamline internal and intergovernmental transposition strategies. If transposition strategies are established and formalised, correlation tables would be an integrated part of this and would therefore not necessarily create an additional administrative burden;
- correlation tables can play an important role in responding to demands for greater transparency and public accountability. The division of powers between central and regional governments is often very complex, and correlation tables help to clarify this, providing details of who was responsible for transposing which articles of a particular EU directive.

Seen from a wider perspective, correlation tables therefore have the potential to 'connect' citizens with the European level of governance and help them to understand how EU legislation is applied at the regional level on issues of regional importance.

Steps to be taken at EU level

Most regions surveyed felt that the Commission is not sufficiently aware of how transposition works at the regional level. They argued that much more account needs to be taken of regional political structures and other circumstances with the potential to affect the process when setting transposition deadlines.

The survey's findings suggest that the Commission could introduce a number of measures to create a more conducive framework which would allow regions be more actively and pro-actively involved both before and during the transposition process. This would increase the chances of timely and correct transposition, and would be beneficial not only to the regions, but also to the Member States and to the EU as a whole.

The Commission could:

- *Use a clearer language when drafting directives:* this would decrease the chances of misinterpretation which could lead to delayed or incorrect transposition.
- *Make these guidelines part of a more extensive initiative:* this would improve the provision of information about transposition and infringement proceedings, by, for example, revamping the section of the Commission's Secretariat-General's website devoted to the application of Community Law²⁵ to make it easier to track the status of infringement proceedings.
- *Pay more attention to timing:* this is crucial when providing guidelines on the transposition of specific directives. Such guidelines should be published at the same time as the directive itself so that regional governments can take account of them before launching the transposition process, and do not have to amend transposing measures at a later stage.
- *Provide contact details of the Commission units responsible for each directive:* this would ensure that officials (both national and regional) know who to contact if they have any questions or require clarifications about a specific directive;
- *Organise working groups and conferences:* these could bring together officials from the central and regional governments to share information and experiences of best practice with each other and with the Commission.²⁶ These could be held before and during the transposition process, enabling participants to raise initial questions as well as problems which arise during the process. This might not be welcomed by some central or regional actors, who resent Commission 'interference' in the process, but good legislation should be the first priority.

Implementing the recommendations outlined above could significantly strengthen the transposition process at regional level, and contribute to wider efforts to ensure that EU directives are transposed in a correct and timely fashion in all the Union's Member States.

This would not only be beneficial for the quality of the legislation introduced in regions, but would also help to ensure the proper functioning of the EU's internal market.

Better Regulation is now widely recognised as a crucial aspect of the drive to make Europe more competitive and to boost economic growth – and the effective, timely and correct transposition and implementation of EU legislation is an essential part of this.

As this paper makes clear, regions with legislative powers now play a crucial role in this process and far more attention needs to be paid to this issue than has been the case so far.

Endnotes

1. Lorenzo Allio and Marie-Hélène Fandel (2006) 'Making Europe Work: improving the transposition, implementation and enforcement of EU legislation', Brussels: *EPC Working Paper* No.25, p. 36.
2. The Maastricht Treaty provided for consultation on economic and social cohesion, trans-European infrastructure networks, health and education and culture. The Amsterdam Treaty added employment policy, social policy, environment, vocational training and transport to the areas in which the Council and the Commission are obliged to consult the Committee of the Regions.
3. Article 198a (263 following renumbering in the Amsterdam Treaty).
4. Article 146 (203 following renumbering in the Amsterdam Treaty).
5. See Drew Scott, article 'Constitutional Regions and the European Union', presented in Aberystwyth (October 2002) as evidence to the Richard Commission. It draws on a research project entitled 'Asymmetric Devolution and European Policy in the UK' undertaken by Drew Scott, Martin Burch, Simon Bulmer and Ricardo Gomez (University of Manchester); Patricia Hogwood (University of Glasgow) and Cairtriona Cater (University of Edinburgh).
6. European Commission 'White Paper on European Governance', 25 July 2001, p. 13.
7. *Ibid.*, p. 12.
8. *Ibid.*, p. 12.
9. Mandelkern Group Report on Better Regulation, published 13 November 2010, p. ii in the Executive summary.
10. *Ibid.*, p. 71.
11. *Ibid.*, p. 49.
12. Article 10 of the Treaty Establishing the European Community (TEC) states: "Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks." (See: http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html).
13. Many, but not all, of these 74 are part of REGLEG (the Conference of European Regions with legislative power). REGLEG is designed to increase the political and legal status of these regions in all domains of EU-governance (legislative, executive and judicial power), according to their competences and responsibilities. (See: www.regleg.org/default.asp).
14. Article 15 of Austria's Constitution can be accessed: www.austria.gv.at/DocView.axd?CobId=21360
15. A. Alen and R. Erceg (1994) *Federal Belgium after the Fourth State Reform of 1993*, Brussels: Ministry of Foreign Affairs.
16. Wilfried Swenden (2003) *Belgian Federalism. Basic Institutional Features and Potential as a Model for the European Union*, London: Royal Institute of International Affairs, p. 6.
17. Patricia Hogwood, Ricardo Gomez, Simon Bulmer, Martin Burch, Cairtriona Carter and Andrew Scott (2003) 'Regional Actors and European policy making: lessons for the UK? Manchester Papers in Politics' *Devolution and European Policy Series* No.8, p. 3.
18. *Ibid.*, p. 4.
19. *Ibid.*, p. 4.
20. Ålands Parliament "Åland and the EU": www.lagtinget.aland.fi/eng/eu.html
21. Linda Lanzillotta, Italian Minister for Regional Affairs and local communities 'Evolution and Transformation of the Italian Federalism', Speech at London School of Economics, 12 March 2007.
22. See Chapter 2 of the statute: www.parlament.cat.net/porteso/estatut/estatut_angles_100506.pdf
23. However, the Wales Act 2006 (that will enter into force after the Welsh elections in May this year) will formally separate the Assembly and the Assembly government. Under the new Act, a procedure similar to the negative resolution procedure will be introduced which will enable legislation to get through parliament quicker than under the 1998 Government of Wales Act. It will also give the Assembly limited power to modify primary legislation.
24. Measures could also be taken by the legislative bodies. For example, regional parliaments could be more intensively involved in scrutinising transposition. This would put pressure on governments to transpose effectively, and on time.
25. The Commission's website on the Application of Community Law is: http://ec.europa.eu/community_law/index_en.htm
26. A good example is the IMPEL network (European Network for the Implementation and Enforcement of Environmental Law) which is an informal network of environmental authorities of EU Member States, acceding and candidate countries, and Norway. It promotes the exchange of information and experience and the development of environmental legislation.

Annex

This annex contains the key questions asked in the survey sent out to regions with legislative powers in Austria, Belgium, Finland, Germany, Italy, Portugal, Spain and the United Kingdom and the answers given (in quantitative terms).

Does an explicit transposition strategy exist in your region?

Yes: 30 % No: 70%

If YES, how is your transposition strategy formulated?

As part of a broader regulatory policy at regional level:	22%
As part of a broader EU law implementation policy at national level:	33%
Following a regional government policy statement:	45%

What have been the most significant drivers in the process of improving the transposition process?*

Citizens' concerns	0%
Business concerns	14%
Political pressure at regional level	43%
Political pressure at national level	24%
Political pressure at EU level	19%

* Note: respondents were able to specify more than one driver

If no explicit transposition strategy exists in your region, please specify the main obstacles to the development of such a strategy*:

Lack of political will	13%
Lack of resources	20%
Current arrangements work well	60%
Other priorities at the moment	7%

* Note: respondents were able to specify more than one obstacle

Is there a dedicated unit/body responsible for implementing the transposition strategy and for monitoring the transposition process?

Yes: 85% No: 15%

Do you provide guidelines on how to transpose EU directives?

Yes: 30% No: 55%

Note: 15% said general non-region specific guidelines exist, with assistance available from legal services

Does your region generally prepare correlation tables as part of its work on transposition?

Yes: 20% No: 80%