



How much legislation comes from Europe?

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The former European Commission President, Jacques Delors, predicted in July 1988 that within ten years 80% of economic legislation, and perhaps also fiscal and social legislation, would be of European origin. Since then, Treaty amendments have given the European Union a role in several additional policy areas, which has contributed to a view that national legislatures are becoming 'Europeanised', both in terms of the quantity of EU laws and their impact on domestic law- and policy-making.

In the UK data suggest that from 1997 to 2009 6.8% of primary legislation (Statutes) and 14.1% of secondary legislation (Statutory Instruments) had a role in implementing EU obligations, although the degree of involvement varied from passing reference to explicit implementation. Estimates of the proportion of national laws based on EU laws in other EU Member States vary widely, ranging from around 6% to 84%.

This paper explores various approaches to the question of how much national law is based on or influenced by EU law.

Vaughne Miller

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Summary

Between 1958 and 2010 the range of areas in which there has been a European Community/Union role has increased. Generally speaking, successive Treaty amendments have introduced new areas of European action, giving rise to more EU measures. The number of EU laws reached a peak of over 14,000 instruments in the early 1980s and there was a lower peak in the mid-1990s, with the enactment of the remainder of a raft of legislation to complete the internal market. The volume has generally fallen since then.

The former Commission President, Jacques Delors, predicted in July 1988 that within ten years 80% of economic legislation, and perhaps also fiscal and social legislation, would be of EC/EU origin.

Using statistics from national law databases and the EU's *EUR-Lex* database, it is possible to estimate the proportion of national laws based on EU laws. In the UK data from these sources provided estimates that suggest that over the twelve-year period from 1997 to 2009 6.8% of primary legislation (Statutes) and 14.1% of secondary legislation (Statutory Instruments) had a role in implementing EU obligations, although the degree of involvement varied from passing reference to explicit implementation. Sectoral studies suggest that the agriculture forms the highest area of EU influence and defence the lowest. The British Government estimates that around 50% of UK legislation with a significant economic impact originates from EU legislation.

Estimates of the proportion of national laws based on EU laws vary widely in other EU Member States, ranging from 6.3% to 84%. However, there is no totally accurate, rational or useful way of calculating the percentage of national laws based on or influenced by the EU.

It is not clear to what extent the figures alone indicate the degree of European influence or "Europeanisation", without a qualitative evaluation of the effect of EU output. This might include some analysis of the purpose and relative impact of EU measures, changes or adaptations in national policy-making and government structures, parliamentary scrutiny and transposition¹ or implementation methods. Other factors which should be taken into account in tackling this question include the following:

- Even with advances in technology and highly efficient search engines and techniques, it remains virtually impossible to give an accurate answer to the question about the number of national measures based on EU requirements, let alone the more complex matter of a Europeanising impact. Sources for data collection, including the EU's own *EUR-Lex* website and national databases, are not totally reliable. Several analysts note that there were missing values in the national and/or EU databases they used. Electronic databases used to trace EU legislation tend not to go back beyond the early 1990s, making it difficult to measure accurately the institutional output. Also, data collection methods vary among the Member States. For example, some do not record amending EU directives (i.e. directives which change earlier directives), only the original directive.
- It is difficult to differentiate between EU-induced and nationally induced changes to the law. Governments might have intended to implement legislation in areas in which

¹ The process by which EU law is turned into national law. .

the EU decides to act, or have legislated in anticipation of the adoption of an EU law. These do not then show up as EU-based, even though they might have been EU-influenced. In addition, if calculations focus on politically defined sectors, they may vary over time and across Member States. What is meant by 'economics' in one State, for example, may differ from what is called 'economics' in another.

- The proportion of EU-based national law will vary from year to year, depending on how much legislation the EU and the Member States adopt overall, how many directives apply to each State and what existing measures each State has in place in the area concerned. The process of Europeanisation is uneven among the Member States; they are affected to a different extent by the same EU laws. Federal States may implement fewer measures at federal level than unitary States, or they may implement the same EU measure at both state and sub-state levels in different ways.
- Figures don't give an insight into relative importance or salience of EU or national legislative acts. For example, the UK's *European Communities (Finance) Act 2001* to adopt the Council Decision on the EU's system of own resources was more significant in terms of its impact than, for example, the *Olympic Symbol etc (Protection) Act 1995*. Figures don't give information on how EU laws affect the daily lives of citizens or businesses - the relative material impact. For example, the 'working time directive' is arguably of far greater significance to the working population of the Member States than, for example, the Commission Regulation on "the classification of padded waistcoats in the Combined Nomenclature".
- Length of EU membership may be relevant. The proportion of EU-based national laws is likely to be higher for a new Member State than for an older one, as the new State will have adopted all the existing *acquis communautaire* (with the exception of some transitional exemptions) in a short time frame in order to qualify for membership. As formal membership requires that most adaptation of national law to the *acquis* has already been made before entry in a pre-accession policy alignment, in theory, a new Member State starts off on an equal footing with other Members. In practice, the initial adoption of the vast body of the EU *acquis* has a significant impact on new Members.
- EU legislative instruments have a different significance depending on whether they are agreed by the Council or the Commission. The latter adopts a great many 'soft' instruments under delegated powers. Council acts are also more significant than Commission acts: compare, for example, a Council decision to admit a new Member State to the EU with a Commission regulation on the size of strawberries.
- EU regulations, unlike directives, are not usually transposed into legislation at national level, but rather into quasi-legislative measures, administrative rules, regulations or procedures etc which do not pass through a national parliamentary process. How, then, can one be worked out as a proportion of the other? The term 'national obligation' might be more appropriate, but is it possible to identify the sum of national obligations arising from EU laws? Increasing use of regulations, particularly Commission regulations, "decouples national transposition procedures" (Christensen), thereby increasing the unquantifiable element of EU activity. All measurements have their problems. To exclude EU regulations from the calculation is likely to be an under-estimation of the proportion of EU-based national laws, while to include all EU regulations in the calculation is probably an

over-estimation. The answer in numerical terms lies somewhere in between the two approaches, and it is possible to justify any measure between 15% and 50% or thereabouts. Other EU ‘soft law’ measures under the Open Method of Coordination are difficult to quantify as they often take the form of objectives and common targets. Analyses rarely look into EU soft law, the role of EU standard setting or self-regulatory measures.

- The limitations of data also make it impossible to achieve an accurate measure. We do not know, for example, how many regulations have direct application in the UK - olive and tobacco growing regulations are unlikely to have much impact here, but the UK implements such regulations along with olive and tobacco-growing Member States.
- The methods of transposition and implementation of EU law may affect a statistical calculation. Some Member States - Italy, for example - implement several EU laws in one omnibus instrument (the annual Community Act transposes Community directives into Italian law and implements any other EU legal act and case-law: see European Parliament and ECPRD “[Comparative Study on the Transposition of EC Law in the Member States](#)”, June 2007), while others implement laws individually. In the UK almost all EU directives are implemented by means of Statutory Instruments (SIs), although a few are incorporated by Acts of Parliament. Do both instruments carry the same weight in the calculation? In the UK there is no direct correlation between the number of EC legislative instruments adopted and the number of SIs needed to implement them. For example, 26 separate SIs were needed to implement the Council Directive “on the approximation of the laws of the Member States relating to the permissible sound level and the exhaust system of motor vehicles” (EEC/70/157, OJL 42, 23 February 1970), whereas only one SI was needed to implement the Council directive concerning the minimum safety and health requirements for the workplace (EEC/89/654, OJL 393, 30 December 1989). Furthermore, SIs as a measuring tool do not reflect the Europeanisation of policies in the Common Foreign and Security Policy or the former Justice and Home Affairs area, where the EU’s influence has largely not been exercised by legislation but by Member States acting intergovernmentally.
- The different state structures and legal traditions in some Member States may affect figures for EU-based laws. For example, Marcelo Jenny and Wolfgang C. Müller consider that Austria’s “positivist legal culture manifests itself in a share of laws among EU-related norms that is relatively high compared to other member states” ((*Public Administration* Vol. 88 No 1, 2010 p.36, “[From the Europeanization of Lawmaking to the Europeanization of National Legal Orders: The Case of Austria](#)”, Marcelo Jenny and Wolfgang C. Müller. Advocates of ‘legal positivism’ believe that the only legitimate sources of law are those written rules, regulations, and principles that have been expressly enacted, adopted or recognised by a governmental entity or political institution, including administrative, executive, legislative and judicial bodies). Also, Member States sometimes implement more than what is required by EU law (‘gold-plating’).
- EU laws may be introduced when domestic legislation is amended primarily for other purposes; or there may be no need for any implementing legislation in some Member States because the requirements of the directive are covered by existing national law

(“convergence, but no influence”: Bovens & Yesilkagit, *Public Administration* Vol. 88, No. 1, 2010, “[The EU as Lawmaker: the Impact of EU Directives on National Regulation in the Netherlands](#)”).

1 Introduction

In a speech to the European Parliament (EP) in July 1988, the then Commission President, Jacques Delors, predicted that within ten years (i.e. by 1998) 80% of economic legislation and perhaps also fiscal and social legislation, would be of EU origin.² Since this statement, the amount and impact of EU law has been the subject of considerable, often passionate and critical, debate, linked to issues such as the loss of national sovereignty and decision-making powers, the regulatory burden for business and industry, administrative mechanisms for agriculture and fisheries, and the effect on national culture and identity.

EU law undoubtedly forms or influences a significant element of national legislation in the now 27 Member States, although figures cited for the proportion of national laws based on EU laws vary widely throughout the EU, ranging from 6.3% to 84%. Some commentators use purely quantitative hooks on which to hang arguments about the impact of the EU, or what is often called the “Europeanisation”³ of national public policy areas, pointing to the ever increasing amount of EU legislation and the expanding remit of the EU’s legislative competence and activity. Others have attempted to look at the more complex qualitative, political and cultural effects of Europeanisation, and the path from the Europeanisation of law-making to the Europeanisation of the national legal order itself.

The quantitative starting point is convenient because it is possible, using statistics from national databases and the EU’s *EUR-Lex* database,⁴ to draw conclusions about the proportion of national laws made as a result of EU laws. However, for a number of reasons this method is only partially useful. There is no totally accurate or rational way of calculating what percentage of national laws EU instruments represent and it is not clear to what extent the figures alone indicate a European influence without a qualitative evaluation of EU effects, an analysis of changes and adaptations in national policy-making, government structures, parliamentary scrutiny and transposition procedures. One expert has described the attempt to estimate the impact of EU regulation on national regulation as “an analytically complex task to be approached with a judicious balance of technical finesse and prudence”.⁵

This paper looks at the amount of EU legislation in the UK and other Member States. It is concerned primarily with “legal Europeanisation” rather than the more complex concept of Europeanisation as a process of standardising and converging cultural practices and lifestyles.⁶

1.1 More European activity

² OJC 4 July 1988 p124

³ ‘Europeanisation’ has been used rather loosely to define a number of different things. For interesting discussions of the concept and practice, see [“Whither Europeanization? Concept stretching and substantive change”](#), Claudio M. Radaelli, European Integration online Papers (EIoP) Vol. 4 (2000) N° 8; 17 July 2000, and [“How Europe Matters. Different Mechanisms of Europeanization”](#), Christoph Knill and Dirk Lehmkuhl, European Integration online Papers (EIoP) Vol. 3 (1999) N° 7; 15 June 1999, and [Governance: An International Journal of Policy and Administration, Vol. 12, No. 1, January 1999](#), “The Europeanization of National Administrations: A Comparative Study of France and the Netherlands”, Robert Harmsen, 1999.

⁴ [EurLex](#) is the EU’s law directory, where legislative documents can be found using the EU’s Celex numbering system.

⁵ Jørgen Grønnegaard Christensen, [Public Administration Vol.88 Issue 1, pp3-17](#), published online 22 February 2010

⁶ Peter Mair “The Europeanisation dimension”, [Journal of European Public Policy](#), 11(2) pp 337- 348.

When the UK joined the European Economic Community (EEC) in 1973, the EEC's

In 1957 the Community had a role in the following 11 areas under Article 3 of the EC Treaty:

- eliminating customs duties and quantitative restrictions on imports and exports between Member States
- establishing a common customs tariff and common commercial policy
- abolishing obstacles to freedom of movement for persons, services and capital
- adopting common policies in agriculture and transport
- making sure competition in the common market is not distorted
- ensuring the economic policies of the Member States can be coordinated and balance of payment issues remedied
- approximating laws to ensure functioning of the common market
- creating the European Social Fund to improve employment situation and raise standards of living
- establishing the European Investment Bank for the EC's economic expansion
- associating overseas countries and territories to increase trade and promote development

'Principles' and its areas of activity were set out in Articles 2 and 3 of the 1957 *Treaty of Rome* (The *Treaty Establishing the European Community* or TEC). Article 2 stated that the Community would establish a common market and by progressively approximating Member States' economic policies promote "a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it".

In 1993 new 'Common Provisions' in the intergovernmental *Treaty on*

European Union (TEU or Maastricht Treaty) introduced provisions on a Common Foreign and Security Policy (the so-called 'Second Pillar'), citizenship of the Union and cooperation in justice and home affairs (the so-called 'Third Pillar'), matters which hitherto had been the subjects of informal intergovernmental discussions and agreements under European Political Cooperation (EPC) or in groups such as the TREVI group of Member States' justice and interior ministers. Amended Articles 2 and 3 included new EU aims and areas of activity in sustainable development, social protection and human rights. Subsequent Treaty amendments adopted by Member State governments⁷ extended Article 3 TEC by ten more areas.

Furthermore, successive Treaty amendments have moved Third Pillar matters into the Community (First) Pillar, making them subject to the decision-making procedures of the EU institutions - often qualified majority voting (QMV) rather than the unanimous agreement of Member State governments - and to the jurisdiction of the EU Courts. The *Treaty of Lisbon* completed this process by making all remaining third pillar matters subject to the EU

By 2003, under the *Treaty of Nice*, Article 3 included the following additional areas:

- an explicit common policy in fisheries (previously included under agriculture)
- an environment policy
- strengthening competitiveness in industry
- promotion of research and technological development
- encouraging the establishment and development of trans-European networks
- attaining a high level of health protection
- contributing to quality education and training and to the "flowering" of cultures
- a policy in development cooperation
- strengthening consumer protection
- measures in energy, civil protection and tourism.

⁷ The *Single European Act* (1986), the *Treaty on European Union* (1993), the *Treaty of Amsterdam* (1997) and the *Treaty of Nice* (2002). The *Treaty of Lisbon*, which came into force in December 2009, includes a list of subject areas within a division of competences and adds new areas of EU involvement. The Lisbon amendments are not considered in detail in this paper, but some comment is made on its implications.

decision-making procedures under Title V, the “Area of Freedom, Security and Justice” and the EU gained competence to make laws in a range of criminal justice matters.⁸

The increase in the areas of EC/EU activity led to a steady increase in the number of pieces of legislation until the 1990s. In a paper published by the Robert Schuman Centre,⁹ Professor Carol Harlow of the London School of Economics, noted: “On the regulatory side, an average of 25 directives and 600 regulations per annum in the 1970s rose to 80 directives and 1.5 thousand regulations by the early 1990s”.¹⁰ In a study of the evolution of European integration, EU academics Wolfgang Wessels and Andreas Maurer¹¹ observed that the increase in legislation had been accompanied by an increase in the EU’s institutional structures and sub-structures:

... the total number of treaty articles dealing with specific competencies and decision-making rules – the enumerative empowerments - in an increasing amount of specific policy fields, has grown considerably from 86 (EEC Treaty 1957) to 254 (Nice Treaty 2000). Further illustrations of this broad scope can be seen in the expansion of the number of Commission DG’s (from nine in 1958 to twenty-four in 1999) and of autonomous executive agencies (from two in 1975 to eleven in 1998)(FN 35), the agendas of the European Parliament at its plenary sessions and especially the presidency conclusions published after each session of the European Council.¹² Also the increasing number of sectoral forms of the Council of Ministers (from four in 1958 to twenty-three in 1998)¹³ as well as the extension of the administrative substructure, indicates that governmental actors have become more and more involved in using their Brussels networks extensively and intensively.¹⁴

However, in spite of the increase in EU opportunities for action brought about by Treaty changes over the years, there is evidence of a fall in the EU’s legislative output since the completion of the internal market. Output peaked in 1986 with the single market legislative programme and fell thereafter until 1993, which was the final phase of the programme. The use of directives decreased until 1995-1996, fell again and then stabilised, with the occasional blip. Jørgen Christensen has also noted that despite the expansion of policy areas in which the EU is involved, “the EU by and large remains the customs union with a common agricultural policy designed in the 1950s and early 1960s”.¹⁵ Using the EU’s *CELEX* and *EUR-lex* databases in 2003, he found the highest numbers of directives and regulations in the area of customs union/third country relations, followed by the Common Agricultural Policy (CAP) and fisheries, and then by the internal market.¹⁶ More recent analyses of sectoral activity indicate that agriculture remains the area of most EU action.¹⁷

⁸ The UK has an opt-in provision allowing it to join in with such commitments or not.

⁹ Part of the European University Institute, a postgraduate and postdoctoral research institute for economics, history, law, political and social sciences based in Florence.

¹⁰ [RSC Working Paper, No 98/23](#), “European Administrative Law and the Global Challenge” May 1998

¹¹ Wessels: Jean Monnet Professor, Universität zu Köln, Forschungsinstitut für Politische Wissenschaft und Europäische Fragen; Maurer: currently working for the General Secretariat of the European Parliament

¹² FN 36: See e.g. the Presidency conclusions of the Cologne (June 1999) and Helsinki (December 1999) summits: <http://ue.eu.int>.

¹³ FN 37: See Martin Westlake, *The Council of the European Union*, (London: Cartermill, 1995), pp 164-167.

¹⁴ FN 38: See also: Wolfgang Wessels, *Die Öffnung des Staates. Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960-1995*, (Opladen: Leske & Budrich, 2000), pp 195-260.

¹⁵ [Public Administration Vol 88 Issue 1](#), Jørgen Grønnegaard Christensen, “EU Legislation and National Regulation: uncertain steps towards a European public policy”, published online 22 February 2010

¹⁶ Christensen Figure 1

¹⁷ See sectoral information in Appendix 2 and country studies in Appendix 3.

In a study in 2009 Yves Bertoncini used *EUR-lex* data for EU acts in force on 1 July 2008 to compare the EU's legislative activity in different sectors:

- Agriculture accounted for the largest proportion of EU law, at 42.6%.
- Internal market legislation was just under 10%, but including all legislation in the “four freedoms” (free movement of goods, capital, services and persons), it rose to 20%.
- External relations (technical, economic and financial) accounted for around 10% of the EU total.¹⁸
- All the other sectors represented less than 25% of Community acts in force (of which more than 6% was for fisheries)
- Fiscal legislation and laws in the areas of energy, science, information, education and culture represented less than 1% of Community acts in force.¹⁹

1.2 The *acquis communautaire*

The *acquis communautaire* comprises the whole body or stock of EU law to date, including the Treaties, regulations, directives and decisions, and judgments of the Court of Justice. According to the European Commission's 26th *Annual Report on Monitoring the Application of Community Law (2008)*, “At the end of 2008, the rules of the Treaty were supplemented by some 8,200 regulations and just under 1,900 directives in force throughout the 27 Member States”.²⁰

There are different ways of measuring the *Acquis*; one way - often used by eurosceptics - is to count the number of pages rather than the numbers of instruments. This gives higher totals than those for laws, partly because of the drafting style of EU laws, which are usually preceded by lengthy preambles. The EU-critical organisation, Open Europe, counted the pages in the Official Journal “L” (legislation) series up to 2005, and found that the EU had passed “a staggering 666,879 pages of law since its inception in 1957”.²¹ The authors calculated that by 2005 the EU's *acquis communautaire* consisted of around 170,000 pages of active legislation (26% of the total *acquis*). The EU's own estimate at the time was around 80,000, compared with around 2,500 in 1973, when the UK joined the EEC. Open Europe predicted that “If the EU continues to legislate at current trends the *acquis communautaire* will have more than doubled by 2020 to 351,000 pages”,²² conceding, however, that the number of pages of the *acquis* will also depend on which language it is translated into.

¹⁸ “External relations” includes instruments on multilateral relations, bilateral agreements with non-member states, commercial and development policies.

¹⁹ Notre Europe, Les Brefs No. 13 May 2009, “La législation nationale d'origine communautaire : briser le mythe des 80%”, at http://www.notre-europe.eu/uploads/tx_publication/Bref13-YBertoncini_01.pdf

²⁰ COM(2009) 675/3, 15 December 2009, at http://ec.europa.eu/community_law/docs/docs_infringements/annual_report_26/com_2009_675_en.pdf. These figures coincide roughly with those of Dr Tilman Hoppe, a legal adviser in the German Parliament, who calculated that in the period January 1951 until the end of 2008, 10,279 EU primary and secondary laws (Treaties, Directives, Regulations) were in force in all Member States. Source: Hoppe, “Die Europäisierung der Gesetzgebung: Der 80-Prozent-Mythos lebt”, *Europäische Zeitschrift für Wirtschaftsrecht* March 2009.

²¹ *Briefing Note* “Just how big is the *acquis communautaire*?”. Open Europe describes itself as “an independent think tank [...] to contribute bold new thinking to the debate about the direction of the EU”.

²² *Ibid*

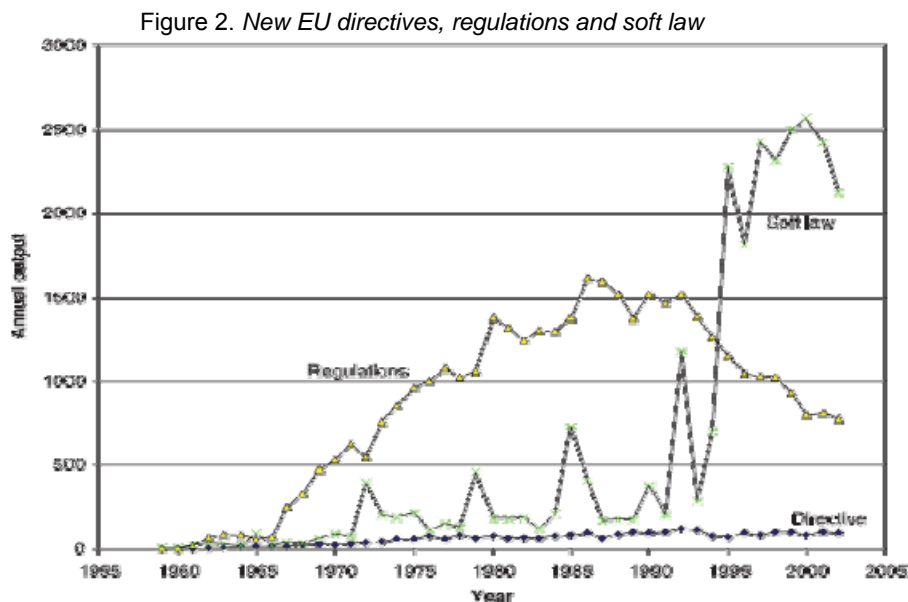
2 The impact of non-legislative EU action

This section looks at instruments of EU policy that may shape domestic law but are not easily counted or their impact readily assessed.

2.1 Soft law and the Open Method of Coordination

EU “soft law” includes the communications, declarations, recommendations, resolutions, statements, guidelines and special reports of the EU institutions. These are not legally binding and are often taken forward informally through dialogue and negotiation among the Member States or between the EU institutions and Member States. The “Open Method of Coordination” or OMC, which was defined as an instrument of the Lisbon Strategy for Growth and Jobs by the Lisbon European Council in 2000,²³ encourages co-operation, the exchange of best practice, voluntary harmonisation and the agreement of common targets and guidelines among Member States.²⁴ In a contribution to the Commission White Paper on European governance and better law-making in 2001, a Commission Working Group described the OMC as standing “half way between pure legislative integration and straightforward cooperation”, adding that “recent experience has shown that the instruments it offers can be effective in furthering European integration”.²⁵

The OMC may have an impact, but it has to be excluded from any calculations. While there is evidence of a slight decrease in EU legislative output in recent years, there has been an increase, particularly since 2000, in EU soft law measures, particularly through the use of the OMC. Christensen’s graph below shows from 1996 a gradual, small increase in EU directives, a decrease in EU regulations and a significant increase in EU soft law measures until 2000, followed by a decline until 2003, albeit at levels still well above average levels from the 1960s until 1995.²⁶



²³ For a summary of the Lisbon Strategy, see [press release](#) 12 December 2006

²⁴ For an interesting account of the use of the OMC, see *Journal of European Public Policy* 17:6 September 2010: 874–890, “EU soft law and the functioning of representative democracy: the use of methods of open co-ordination by Dutch and British parliamentarians”, Rik de Ruiter

²⁵ “Involving experts in the process of national policy convergence”, Report by Working Group 4a, Pilot: D. Coyne, Rapporteur: F. Pierini, June 2001, at http://ec.europa.eu/governance/areas/group8/report_en.pdf

²⁶ Christensen, “EU Legislation and National Regulation: uncertain steps towards a European Public Policy”

2.2 Court of Justice rulings

Rulings of the EU's Court of Justice contribute to the EU *Acquis* and are therefore relevant to this discussion. The table shows how many infringements were declared against Member States for failing to fulfil EU obligations from 2005 to 2009.²⁷

| | 2005 | | 2006 | | 2007 | | 2008 | | 2009 | |
|----------------|-----------------------|-----------|-----------------------|-----------|-----------------------|-----------|-----------------------|-----------|-----------------------|-----------|
| | Infringement declared | Dismissed | Infringement declared | Dismissed | Infringement declared | Dismissed | Infringement declared | Dismissed | Infringement declared | Dismissed |
| Belgium | 10 | 1 | 7 | | 9 | 1 | 7 | | 15 | 1 |
| Bulgaria | | | | | | | | | | |
| Czech Republic | | | | | 6 | | 2 | | 1 | |
| Denmark | 3 | 1 | | | 3 | | | | 1 | |
| Germany | 12 | | 7 | | 7 | 1 | 3 | 3 | 6 | 2 |
| Estonia | | | | | | | | | 1 | |
| Greece | 20 | | 6 | | 10 | 3 | 8 | 1 | 22 | |
| Spain | 10 | 1 | 10 | 1 | 13 | 1 | 15 | 1 | 11 | |
| France | 13 | | 5 | | 7 | | 9 | 1 | 6 | |
| Ireland | 3 | | 2 | 1 | 7 | 2 | 4 | | 7 | |
| Italy | 11 | 1 | 13 | 1 | 23 | 2 | 14 | 1 | 11 | 4 |
| Cyprus | | | | | | | | | | |
| Latvia | | | | | | | | | | |
| Lithuania | | | | | | | 1 | | | |
| Luxembourg | 16 | | 19 | | 12 | | 12 | | 7 | |
| Hungary | | | | | | | | | | |
| Malta | | | | | 1 | | | | 2 | |
| Netherlands | 4 | | 1 | 1 | 3 | 1 | 3 | | 3 | |
| Austria | 10 | | 10 | | 6 | | 3 | | 6 | |
| Poland | | | | | | | 2 | | 5 | |
| Portugal | 6 | | 7 | | 9 | | 6 | | 7 | 1 |
| Romania | | | | | | | | | | |
| Slovenia | | | | | | | | | 1 | |
| Slovakia | | | | | 1 | | 1 | | | |
| Finland | 5 | | 7 | | 3 | 1 | 1 | 1 | 6 | 1 |
| Sweden | 2 | | 2 | 1 | 5 | | 2 | 1 | 7 | |
| United Kingdom | 6 | 1 | 7 | 3 | 2 | 4 | 1 | | 9 | |
| Total | 131 | 5 | 103 | 8 | 127 | 16 | 94 | 9 | 134 | 9 |

Court of Justice decisions cannot overturn national laws, but they may oblige the State concerned to amend or withdraw a domestic law that is found to be incompatible with EU law, and in such instances the EU's impact is felt more strongly than in the routine adoption of EU laws. They also dissuade Member States from enacting laws that might conflict with a Court ruling. In the UK one of the most significant examples of an acute impact was the *Factortame* case, which tested the constitutional basis of parliamentary sovereignty. The case concerned the UK's obligation under EC law and the terms of Spain's 1985 Act of Accession to allow Spanish fishermen to fish in UK waters within the prescribed EC quotas. Following a ruling by the ECJ,²⁸ the House of Lords 'disapplied' the *Merchant Shipping Act 1988* in so far as it conflicted with EU obligations and based on the assumption that Parliament had not deliberately contravened EU law.

Karen Alter of Northwestern University, Chicago, observed a different trend in the effect of the Court of Justice on EU Member States. In a study of the EU's legal system and Member States' domestic policy, she found that "there is much to suggest that the very factors that have led to the success of the EU legal process in expanding and penetrating the national order have provoked national courts and European governments to create limits on the legal process and to repatriate powers back to the national level".²⁹ Some Member States, she concluded, have sought to constrain Court of Justice activism by adopting Treaty protocols that qualify or limit the application of the Treaties or EU law. For example, the "Barber

²⁷ Court of Justice [Annual Report 2009](#)

²⁸ The *Factortame* case (Case C-221-89) was lengthy and complex, involving three ECJ rulings.

²⁹ [International Organization 54, 3, Summer 2000, pp. 489–518](#) "The European Union's Legal System and Domestic Policy: Spillover or Backlash?" Karen J. Alter

protocol” to the Maastricht Treaty in 1992-93 limited the retrospective effects of the 1990 Court ruling in the *Barber* pensions case.³⁰ The Danish Government secured a protocol on the acquisition of second homes in Denmark, while Ireland obtained a protocol establishing that EU law would not undermine Ireland’s constitutional ban on abortion.

Member States also negotiate opt-outs from individual legislative proposals in order to limit the effects of EU law and avoid amending national policy or law. Some States have adopted constitutional brakes against the perceived judicial activism of the European Court.³¹ The German Constitutional Court ruled in 1993 that Court of Justice rulings that extended the remit of the Treaty would not be valid in Germany,³² while France’s Constitutional Court ruled that the French Parliament could not ratify or authorise any international obligation that was contrary to the Constitution.³³ The Spanish Constitutional Court also affirmed in 2004³⁴ that in the case of irreconcilable conflict between EU law and the Spanish Constitution, the Spanish Court would address the issue, preserving the sovereignty of the Spanish people and the supremacy of the Spanish Constitution.³⁵ The intended effect of these constitutional rulings, it is argued, has been to encourage the Court of Justice to scrutinise more carefully the validity of EU law and to respect national judicial and sovereignty concerns.

3 Statistics for adopted and repealed EU legislation

The EU’s *EUR-lex* (and earlier *CELEX*) database provides statistical information on EU legislation that has been adopted, repealed or has expired. The following table shows European Commission figures for adopted EU directives, decisions and regulations annually covering the period January to December from 1980 to 2009.³⁶ The figures are for both Council and Commission instruments, excluding acts of day-to-day management, which are generally valid only for a limited period.

³⁰ *Barber v Guardian Royal Exchange Assurance Group*, C 262/88, 17 May 1990

³¹ Bill Cash’s [parliamentary sovereignty bill](#) would have tackled this in the UK if it had been passed. The ‘sovereignty clause’ in the forthcoming EU referendum lock bill is also intended to make it impossible to argue in a British court that ultimate sovereignty had shifted to the EU (William Hague, Conservative Party Conference, 6 October 2010).

³² *Brunner and Others v. The European Union Treaty*, BVerfG decision of 12 October 1993, 2 BvR 2134/92 and 2 BvR 2159/92

³³ *Maastricht I* Conseil Constitutionnel, decision 9 April 1992, 92–308 DC; Case 91-294 Conseil Constitutionnel, decision 25 July 1991, *Schengen Decision*, 1991,

³⁴ Opinion 1/2004 13 December 2004 on the *Treaty establishing a Constitution for Europe*

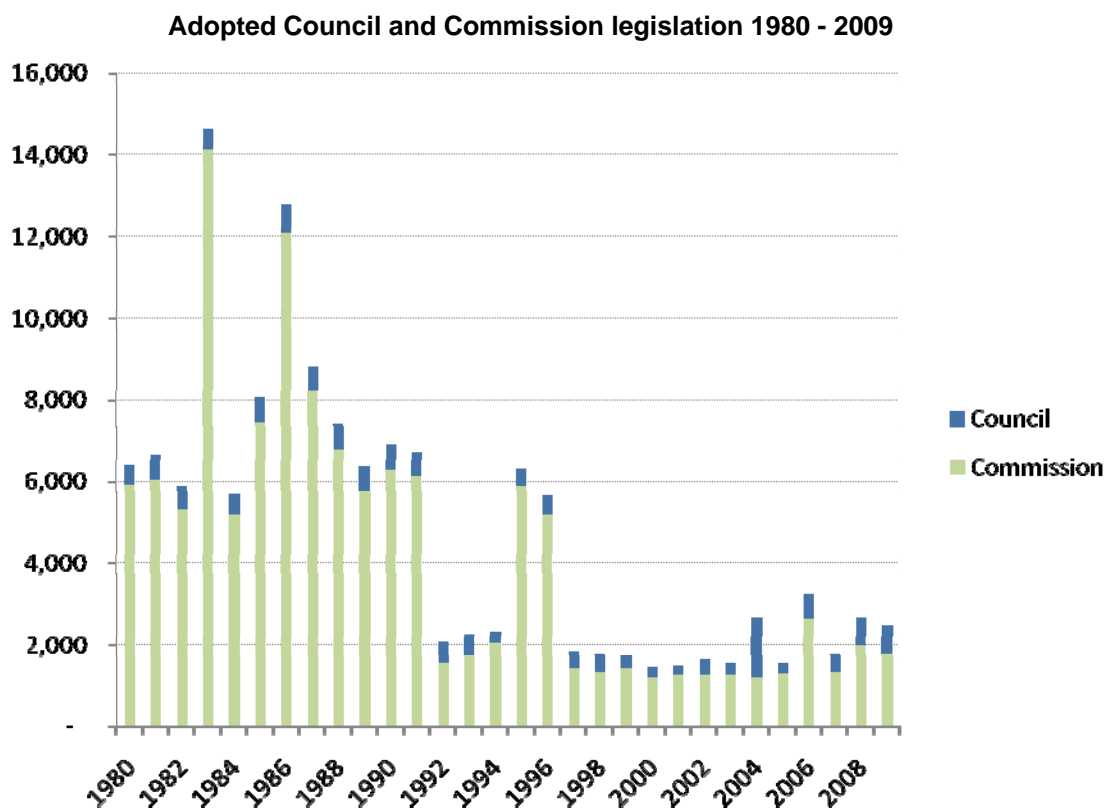
³⁵ It is not clear how these national efforts to limit the effects of EU and ECJ decisions stand in relation to the *Foto-Frost* judgment (Case 314/85 *Foto-Frost v Hauptzollamt Lübeck-Ost* 22 October 1987), according to which national courts may consider the validity of an EC act, but have no jurisdiction to declare it invalid; only the Court of Justice has the jurisdiction to declare void or invalid an act of an EU Institution.

³⁶ The figures are taken from the “Institutions and other Bodies” section of Commission Reports on the Activities of the European Union and from 2005 were provided directly by the European Commission Secretariat.

3.1 Adopted legislation

Adopted EU legislation 1980 to 2009: number of directives, regulations and decisions

| | Commission | | | Council | | | Total |
|------|------------|-------------|-----------|------------|-------------|-----------|--------|
| | Directives | Regulations | Decisions | Directives | Regulation: | Decisions | |
| 1980 | | 5,901 | | 51 | 312 | 136 | 6,400 |
| 1981 | | 6,044 | | 45 | 414 | 150 | 6,653 |
| 1982 | | 5,321 | | 42 | 393 | 128 | 5,884 |
| 1983 | | 14,123 | | 41 | 395 | 108 | 14,667 |
| 1984 | | 5,190 | | 53 | 351 | 99 | 5,693 |
| 1985 | | 7,442 | | 59 | 447 | 109 | 8,057 |
| 1986 | | 12,081 | | 74 | 473 | 184 | 12,812 |
| 1987 | | 8,212 | | 40 | 458 | 125 | 8,835 |
| 1988 | | 6,799 | | 63 | 434 | 131 | 7,427 |
| 1989 | | 5,737 | | 79 | 394 | 161 | 6,371 |
| 1990 | | 6,298 | | 65 | 380 | 169 | 6,912 |
| 1991 | | 6,130 | | 72 | 335 | 174 | 6,711 |
| 1992 | 34 | 1,137 | 385 | 95 | 381 | 134 | 2,166 |
| 1993 | 52 | 1,160 | 520 | 65 | 325 | 135 | 2,257 |
| 1994 | 24 | 1,579 | 445 | 17 | 180 | 72 | 2,317 |
| 1995 | 35 | 2,801 | 3,025 | 39 | 242 | 175 | 6,317 |
| 1996 | 39 | 2,341 | 2,806 | 58 | 247 | 170 | 5,661 |
| 1997 | 35 | 760 | 635 | 34 | 209 | 164 | 1,837 |
| 1998 | 44 | 733 | 537 | 53 | 202 | 196 | 1,765 |
| 1999 | 55 | 842 | 516 | 44 | 144 | 139 | 1,740 |
| 2000 | 38 | 606 | 557 | 43 | 182 | 24 | 1,450 |
| 2001 | 18 | 600 | 651 | 45 | 152 | 30 | 1,496 |
| 2002 | 44 | 602 | 610 | 149 | 164 | 57 | 1,626 |
| 2003 | 61 | 648 | 560 | 60 | 189 | 39 | 1,557 |
| 2004 | 59 | 672 | 468 | 107 | 858 | 512 | 2,676 |
| 2005 | 54 | 599 | 634 | 62 | 134 | 51 | 1,534 |
| 2006 | 76 | 1,795 | 781 | 101 | 238 | 264 | 3,255 |
| 2007 | 53 | 630 | 644 | 23 | 143 | 277 | 1,770 |
| 2008 | 57 | 1,145 | 791 | 120 | 239 | 315 | 2,667 |
| 2009 | 69 | 1,103 | 606 | 176 | 226 | 295 | 2,475 |



In numerical terms, the Commission, particularly Commission regulations, is the main source of EU law.³⁷ In 2009 the Commission was responsible for 72% of EU legislation; Commission regulations alone were 45% of the grand total. Christensen notes an increase in Commission laws in economic and social legislation since the *Treaty of Rome* and particularly since 1993.³⁸

3.2 Repealed or expired legislation

The figures for EU legislation that has expired or been repealed annually from 1997 to 2009 are set out in the table below.³⁹ This legislation may have become obsolete or invalid, or was time-limited or transitional in the first place, in some cases with a view to later implementing amended or longer-term measures. For example, Commission Regulation (EC) No. 372/2007, which concerned plasticisers in gaskets in lids intended to come into contact with food, was designed to expire in April 2008 and provided temporary arrangements to clear up an ambiguity until a detailed directive came into force. Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of certain Treaty Articles in the motor vehicle sector expired on 31 May 2010, and was followed by a revised regulation. Regulation (EC) No 717/2007 on public mobile telephone networks within the Community (the so-called “Roaming Regulation”), which was due to expire in June 2010, was amended in June 2009 by a new regulation (544/2009), which prolonged its validity until June 2012.

³⁷ The Commission has delegated powers to enact legislation which is usually of a routine or mundane nature.

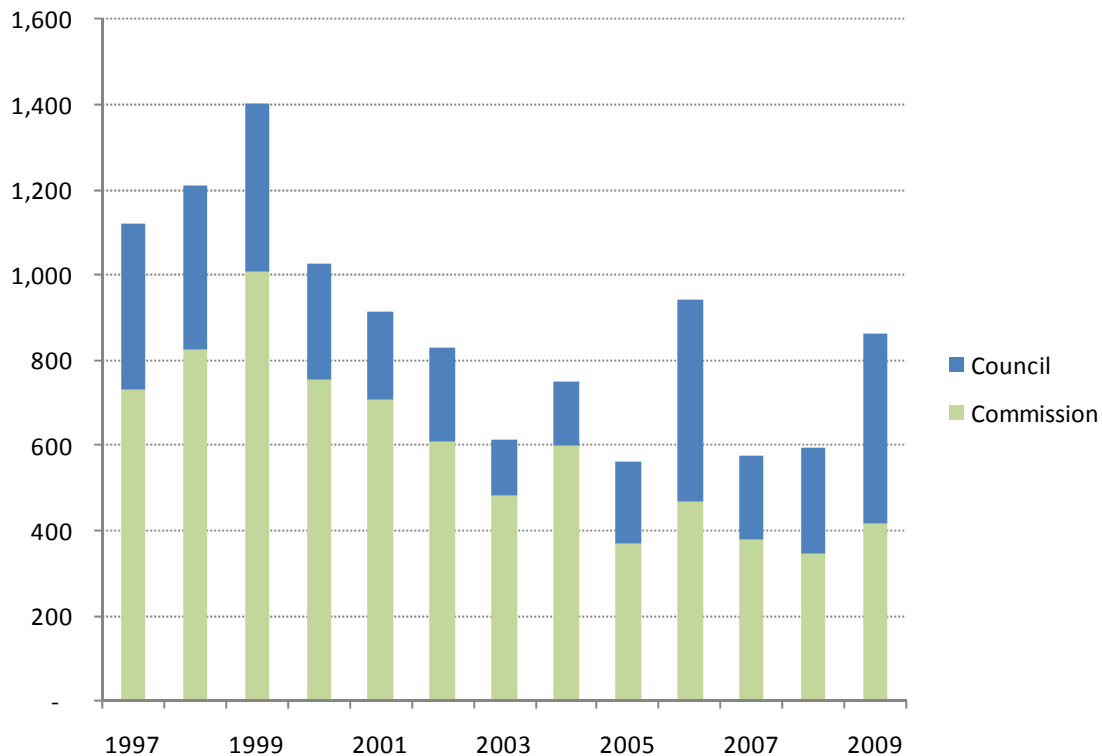
³⁸ See Table 3, *Public Administration Vol 88 Issue 1*, “EU Legislation and National Regulation: uncertain steps towards a European public policy”. A detailed breakdown of individual EU instruments can be found in Standard Note 5419, “EU Legislation”, updated 24 March 2010.

³⁹ Until 2005 the Commission published the figures in its annual General Report on the Activities of the European Union; since then they have been provided to the DIS directly by the Commission Secretariat.

Repealed or expired EU legislation 1997 to 2009: number of directives, regulations and decisions

| | Commission | | | Council | | | Total |
|------|------------|-------------|-----------|------------|----------------------|-----|-------|
| | Directives | Regulations | Decisions | Directives | Regulation:Decisions | | |
| 1997 | 27 | 503 | 199 | 39 | 271 | 83 | 1,122 |
| 1998 | 13 | 551 | 260 | 46 | 146 | 192 | 1,208 |
| 1999 | 17 | 612 | 381 | 57 | 193 | 141 | 1,401 |
| 2000 | 21 | 602 | 131 | 43 | 201 | 29 | 1,027 |
| 2001 | 10 | 555 | 143 | 49 | 147 | 11 | 915 |
| 2002 | 32 | 398 | 178 | 51 | 149 | 21 | 829 |
| 2003 | 33 | 328 | 122 | 38 | 69 | 25 | 615 |
| 2004 | 18 | 391 | 190 | 26 | 107 | 18 | 750 |
| 2005 | 6 | 267 | 97 | 32 | 136 | 22 | 560 |
| 2006 | 11 | 222 | 236 | 49 | 129 | 296 | 943 |
| 2007 | 21 | 181 | 179 | 41 | 86 | 67 | 575 |
| 2008 | 31 | 235 | 79 | 32 | 175 | 42 | 594 |
| 2009 | 66 | 262 | 88 | 167 | 163 | 115 | 861 |

Council and Commission laws repealed 1997 - 2009



Net figures for EU legislation adopted 1997 - 2009

| <i>Year</i> | <i>Adopted</i> | <i>Repealed</i> | <i>Net</i> |
|-------------|----------------|-----------------|------------|
| 1997 | 1837 | 1122 | 715 |
| 1998 | 1765 | 1208 | 557 |
| 1999 | 1740 | 1401 | 339 |
| 2000 | 1450 | 1027 | 423 |
| 2001 | 1496 | 915 | 581 |
| 2002 | 1626 | 829 | 797 |
| 2003 | 1557 | 615 | 942 |
| 2004 | 2676 | 750 | 1926 |
| 2005 | 1534 | 560 | 974 |
| 2006 | 3255 | 943 | 2312 |
| 2007 | 1770 | 575 | 1195 |
| 2008 | 2667 | 594 | 2073 |
| 2009 | 2475 | 861 | 1614 |

4 Quantitative assessments in the United Kingdom

4.1 Previous Labour Government estimates

Enabling Acts for SIs have been recorded electronically since 2001 by the British Government, and by the Commons Library for a great deal longer. In December 2002 the then Labour Minister for Europe, Denis MacShane, said it would “entail disproportionate cost to research and compile the number of legislative measures enacted each year in the UK directly implementing EC legislation”, and he drew attention to inherent problems in assessing the amount:

The picture is complicated. Some EC measures are directly applicable in the member states. Others require incorporation into national law. This is sometimes done by legislation, but on other occasions by administrative means. In yet other situations, domestic legislation which is being amended for other purposes, may also incorporate changes to reflect EU directives. This makes it extremely difficult to determine how many legislative measures have been introduced in the UK as a result of EC measures.⁴⁰

⁴⁰ HC Deb 17 December 2002 c 756W at http://pubs1.tso.parliament.uk/pa/cm200203/cmhansrd/vo021217/text/21217w21.htm#21217w21.html_sbhd1

In March 2005, in reply to a question about the proportion of national law based on EU law, the Government gave an average figure of 9%.⁴¹ This was taken from a Library Standard Note on EU Legislation which gave figures for UK laws made under the authority of the *European Communities Act 1972* (ECA) as a percentage of total SIs. In June 2005 the then Europe Minister, Douglas Alexander, referred to the same figure but pointed to difficulties in calculating the amount of UK legislation because “There is no central register of UK legislation wholly or partly implementing EU legislation. EU legislation may be directly applicable, implemented by administrative means, or introduced when domestic legislation is amended for other purposes”.⁴² In November 2005 Douglas Alexander told Michael Gove the FCO did not hold information centrally on the number of EU measures that had been repealed each month in 2005, but referred Members to the Library’s Standard Note.⁴³ In June 2006 Lord Stevens asked how much UK legislation had its origins in EU legislation, to which the FCO Minister, Lord Triesman estimated “that around half of all UK legislation with an impact on business, charities and the voluntary sector stems from legislation agreed by Ministers in Brussels”. He too referred to the 9% figure.⁴⁴

In January 2006, in the light of a claim by the German Federal Department of Justice that an estimated 80% of German laws or regulations from 1998 to 2006 originated in the EU (see below), Lord Triesman, replied:

Many EU regulations have a purely technical or temporary effect. We estimate that around 50 per cent of UK legislation with a significant economic impact has its origins in EU legislation. OECD analysis of regulation in Europe yields similar results. In 2002, they estimated that 40 per cent of all new UK regulations with a significant impact on business were derived from Community legislation. Despite reports that 80 per cent of German regulation emanates from the EU, the German Government estimates that the proportion is about 50 per cent.⁴⁵

In May 2007 Europe Minister Geoffrey Hoon drew on the Library’s Standard Note for figures for EU laws adopted by SI under the ECA,⁴⁶ while in May 2009 another Minister for Europe, Caroline Flint, questioned a claim by the United Kingdom Independence Party (UKIP) that 75% of UK laws came from the EU.⁴⁷ Lord Malloch-Brown answered questions from Lord Stoddart about research into the amount of EU-based legislation and the 75% claim, to which the Government replied that it had “not assessed the likely cost of research into this issue” and that it believed “any expenditure would be disproportionate given the limited purpose such figures would serve”. The Government did not, he insisted, believe that the figure of 75% was accurate, and he referred to the 9.1% in the Note.⁴⁸

On 25 June 2009 Lord Stoddart asked why the Government had not mentioned in their answers that EU regulations had direct effect, and whether they would “reconsider their decision not to undertake research into the proportion of United Kingdom legislation

⁴¹ HC Deb 22 March 2005 c 795-6W at <http://www.publications.parliament.uk/pa/cm200405/cmhansrd/vo050322/text/50322w46.htm>.

⁴² HC Deb 7 June 2005 cc548-9W at

⁴³ [HC Deb 22 November 2005 c1899W](#)

⁴⁴ [HL Deb 29 June 2006 WA184](#)

⁴⁵ [HL Deb 9 January 2006 c WA10-11](#)

⁴⁶ [HC Deb 3 May 2007 c 1824W](#)

⁴⁷ [HC Deb 19 May 2009 c 1341](#). Caroline Flint referred again in June 2009 to the Note ([HC Deb 3 June 2009 c 511W](#)) and in a BBC Question Time Broadcast in May 2009.

⁴⁸ [HL Deb 4 June 2009 c WA107](#)

originating in the European Union".⁴⁹ The Government replied that it had always been clear that EU regulations were directly applicable in the UK. However, it has not always been made clear that the 9% frequently cited in parliamentary answers refers only to SIs laid under the ECA and does not include SIs laid under other Acts or the overwhelming majority of EU regulations.

4.2 The Conservatives

In a speech in May 2009 the then leader of the Opposition, David Cameron, maintained that almost half of all the regulations affecting UK businesses came from the EU.⁵⁰ During debates on the EU, other Conservative Members referred to the German 80% claim. David Cameron also said before taking office that he wanted to return the previous Conservative Government's UK opt-out from social and employment legislation in areas he believed had most damaged the British economy and public services. However, it appears that the Coalition Government does not intend to try and secure opt-outs from these EU policies.

4.3 Other estimates

British Chambers of Commerce

In "[Worlds Apart: the British and EU Regulatory Systems](#)", published by the British Chambers of Commerce in May 2009, Tim Ambler of the London Business School and Francis Chittenden of the Manchester Business School, conclude:

In terms of the number of regulations, the EU this year accounted for only 20%. The reduction from the previous EU level of about 30% is the primary reason for the overall decline in 2007/8. By value, EU legislation was only responsible for about £1.9m net costs to business (0.1%). It would appear that, for this year, virtually all regulatory activity can be attributed to Whitehall. With a developing single market, business regulation should be needed for the EU as a whole or not at all. UK regulations that are additional to those enacted across the EU reduce British business competitiveness.

Institute of Directors

EU policies have a huge impact on IoD members and their businesses. Although estimates vary, roughly half of new regulations on British businesses originate at EU level.⁵¹

BBC Question Time

Figures were quoted by contributors to a BBC Question Time programme on 28 May 2009, which included Caroline Flint, Conservative MEP Daniel Hannan, Liberal Democrat Foreign Affairs Spokesman Jo Swinson, Green Party leader Caroline Lucas and UKIP Leader Nigel Farage.⁵² Nigel Farage referred to the 75% flagged up by the EP President, Hans Gert Pöttering, as the percentage of EU legislation in which the EP had a say, mistaking it for an estimate of EU-based national legislation. The Conservative MEP Daniel Hannan mentioned the 84% conclusion of a German Federal Government study (see below). Caroline Flint referred to the Library Note.⁵³

⁴⁹ [HL Deb 25 June 2009 c WA299](#)

⁵⁰ Speech, David Cameron "[Fixing Broken Politics](#)", 26 May 2009

⁵¹ "[Getting Europe's priorities right](#)"

⁵² See <http://www.bbc.co.uk/programmes/b00kq22c> or YouTube at <http://www.youtube.com/watch?v=3Ffgdb-M2fk>. See also blog by J Clive Matthews, [Liberal Conspiracy](#) 3 June 2009

⁵³ [BBC Question Time 28 May 2009](#)

4.4 The devolved administrations

Devolved administrations in the EU Member States, including the UK, implement some EU laws separately, particularly in the areas of environmental law (unsurprising, given its territorial aspect) and social policy, public administration, agriculture and industry.⁵⁴ These were among the findings of Enrico Borghetto and Fabio Franchino in a study of sub-national authority (SNA) involvement in the transposition of EU directives. In general they found that “formal subnational involvement in the transposition of EU directives has been quite a limited phenomenon so far”, but also that “there has been an increase in subnational participation over the years”,⁵⁵ particularly since the mid-1990s. In their sample study⁵⁶ the UK devolved administrations came out second to top in terms of involvement in the implementation of EU law (behind Finland but ahead of Germany, Austria and Belgium, for example). The authors comment:

... it is somewhat surprising that Britain has the second-largest share of SNA measures. Besides the measures of the overseas territory of Gibraltar, which also enjoys a special status, the creation of devolved governments with significant policy competence in Wales, Scotland and Northern Ireland in the late 1990s strongly regionalized the process of transposition here. On the other hand, the presence of an upper chamber representing the regions (or states) could explain the lower involvement of SNAs in Germany, Austria and, to a lesser extent, Belgium, compared to that in Britain and Finland. Directives may be transposed through federal measures even when policies fall within regional competence.⁵⁷

The authors find that “with the exception of Gibraltar, the Italian and Dutch provinces, the authorities most involved are from regions that belong to the Conference of European regions with legislative power (REGLEG)”,⁵⁸ with no substantial measures found in the remaining Member States.⁵⁹ They conclude:

Although more decentralized states display higher levels of subnational involvement, regional participation in national policy-making and a large number of regional authorities decrease the likelihood of finding subnational measures of transposition. Furthermore, there is more subnational involvement in states with territories that have both an elected government and special relations with the EU.⁶⁰

Implementation by devolved legislatures may affect calculations of “national” legislation in Member States. For example, the *Conservation (Natural Habitats &c.) Amendment (No.2) (Scotland) Regulations 2008* (SSI 2008/425) amended the *Conservation (Natural Habitats, &c.) Regulations 1994* by extending to Scotland only further provisions for the transposition of the so-called “Habitats Directive”.⁶¹ In the calculation of UK EU-related SIs in Section 5.2

⁵⁴ There is a smaller sub-national government role in measures concerning home affairs, public health, market transactions and transport, and none in the area of taxation.

⁵⁵ *Journal of European Public Policy* 17:6 September 2010: 759–780, “The role of subnational authorities in the implementation of EU directives”, Enrico Borghetto and Fabio Franchino

⁵⁶ The study sample was of 11,859 national measures transposing 733 Directives adopted in 15 Member States between December 1978 and December 2004.

⁵⁷ Enrico Borghetto and Fabio Franchino p.765

⁵⁸ FN 10: REGLEG is an association of 73 regions with legislative power across eight member states (Austria, Belgium, Finland, Germany, Italy, Portugal, Spain and the UK).

⁵⁹ Ibid p.766

⁶⁰ Ibid p.776

⁶¹ Council Directive 92/43/EEC, OJL 206, 22 July 1992.

of this paper, SIs such as this Scottish SI have not been included, while other studies have compared the implementation of EU law at central or federal and sub-national levels (see, for example, Austrian study in Section 6).

5 UK legislation implementing EU law

5.1 UK primary legislation implementing EU law

The *European Communities Act 1972* (the ECA) authorises the Government to implement EU law by either primary or secondary legislation.⁶² Relatively little primary legislation is needed to implement directives, regulations or decisions, although some EU obligations, especially Common Foreign and Security Policy (CFSP) and Justice and Home Affairs commitments, have required primary legislation for their implementation. For example, the *Anti-Terrorism Crime and Security Act 2001* implemented *inter alia* EU anti-terrorism measures. The *Crime (International Cooperation) Act 2003* included provisions designed to fulfil UK commitments under a number of EC agreements.⁶³

Based on data from the UK *Statute Law* database, from 1980 to the end of 2009, out of 1,302 UK Acts between 1980 and 2009 (excluding those later repealed), 186 Acts or 14.3% incorporated a degree of EU influence. The breakdown was as follows:

- 55 made passing reference to EU obligations.
- 96 implemented one or more EU laws but not as the main elements of the law.
- 17 implemented three or more EU measures.
- 18 implemented EU obligations as the main purpose of the Act.⁶⁴

Excluding those Acts that made only a passing reference to the EU, 10.1% of UK Acts included the incorporation of one or more EU obligations. Only 1.4% exclusively implemented EU obligations and this category includes the five Treaty amendment Acts and five accession Acts passed during the period. These are a distinct kind of Act: they have far-reaching legal and political consequences, but do not implement individual EU laws. Amendment acts give rise to many new obligations both directly (e.g. citizenship of the Union, the principles of equal treatment, freedom of movement and respect for human rights) and indirectly (through subsequent legislation). Accession acts, which authorise the entry of new members to the EU, have a considerable impact in areas such as employment, the internal market and EU structural funding. They may affect relations between Member States, by providing new fisheries rights, for example, or by extending benefits linked to the freedom of movement. They also alter institutional provisions, such as voting weights in the

⁶² In so far as the devolved legislatures are responsible for implementing EU law falling within their remit, these are implemented as English, Welsh, Scottish and Northern Irish laws separately.

⁶³ The Schengen Convention (1990), The Convention on Simplified Extradition Procedure between the Member States of the European Union, (1995), The Convention relating to Extradition between the Member States of the European Union, (1996), The Convention on Driving Disqualifications (1998), Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000), Council Framework Decision on combating fraud and counterfeiting of non-cash means of payment (2001), Protocol to the Convention on mutual assistance in criminal matters between the Member States of the European Union (2001), Council Framework Decision on combating terrorism (2002) and Draft Council Framework Decision on the execution of orders freezing assets or evidence.

⁶⁴ Details of the relevant Acts can be found in **Appendix 1**.

Council, which may affect a Member State's overall ability to influence the decision-making process.

5.2 UK secondary legislation implementing EU law

The vast majority of EU laws are enacted by secondary legislation, Statutory Instrument (SI), under section 2(2) of the ECA.

Before EU statistics were available electronically, the House of Commons Library attempted to answer the question frequently asked by Members of Parliament about the amount of EC

“By examining the European origins of British SIs it is possible to trace an important indicator of the impact of European legislation on the British political system”.

Edward Page, *Public Administration* Vol. 76 Winter 1998, “The Impact of European Legislation on British Public Policy Making”

legislation by measuring the shelf-space occupied by the bound ‘L’ series (legislation) of the *Official Journal of the European Communities* (OJL). An estimate of the proportion this formed of national legislation was calculated by comparing the OJ shelf measurement with the shelf-space occupied by bound volumes of UK Acts and SIs. However, this was a crude and very rough guide, as the length and presentation of the two types of instruments are very different; also, the ‘L’

volumes contain the texts of **all** EC legislation, whether or not laws apply in the UK.

The number of SIs made under the ECA as a proportion of the total number of SIs adopted by Parliament in each parliamentary session (excluding local, Scottish, Welsh and Northern Ireland SIs) can be calculated using the former Parliamentary On-line Information System (POLIS),⁶⁵ and since 2005 the Parliamentary Information Management Services (PIMS) database.⁶⁶ The Government said in reply to parliamentary questions in 2009 and early 2010 that there is no record of SIs made under legislation other than the ECA to meet obligations arising from EU law.⁶⁷ The PIMS database *does* distinguish between SIs made under the ECA and those which implement EU law under the authority of other legislation.⁶⁸ A separate calculation can be made for SIs made under the authority of an Act other than the ECA, whose primary purpose was not to implement EU law, but which helped to implement EU law or was affected or constrained by it. For example, the “Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2010” were made under powers conferred by the *Pensions Act 2004*, but they also implement European obligations in that certain elements of the Act “shall not apply where it would give rise to State aid that is incompatible with the internal market within the meaning of Article 107 of the Treaty” [i.e. the *Treaty on the Functioning of the European Union*]. Furthermore, domestic laws that do not implement EU legislation may nevertheless be constrained by it in their drafting, to take account of the free movement of goods or internal market rules, for example.

⁶⁵ The figures generated by POLIS and PIMS vary from those on the Office of Public Sector Information (OPSI) website. From 2007 SIs on the OPSI website have included links to the originating directive and any other relevant EU legislation on EUR-Lex. This includes draft SIs.

⁶⁶ SIs are recorded on these systems with reference to their parent Act(s); the search therefore included a reference to the ECA, even if the SI was also made under another Act. For example, SI 293, “The Biocidal Products (Amendment) Regulations 2007” was made under powers conferred on the Government by both the ECA and the *Health and Safety at Work Act 1974* so both Acts are given as enabling Acts on the PIMS database.

⁶⁷ HC Deb 20 January 2010, c 354W.

⁶⁸ If SIs implement EU law(s), they are indexed using the thesaurus term “ec law”, with a reference to the particular directive(s) or decisions(s). A search for these SIs can be made, either including or excluding the ECA. Thus it is possible to extrapolate from all the SIs approved in a given session which ones implemented EC legislation under the ECA and which implemented EU laws under a different parent act.

The following figures from Library records give the total numbers of SIs adopted under the authority of the ECA and EU-related SIs adopted under the authority of other Acts over parliamentary sessions from 1997-98 to 2008-09.⁶⁹ In the latter category the EU element is not the main purpose of the SI. From these records the proportion of directives and decisions (and the few EU regulations that needed further legislative implementation)⁷⁰ can be calculated as a percentage of all UK SIs, excluding local and devolved SIs. However, it should be remembered that calculations of SIs do not take account of the vast majority EU regulations, which, but for a few, are implemented directly in all Member States without the need for further implementing measures.

Edward Page used a similar methodology to look at SIs with an EU influence over the ten-year period preceding the Library calculation (i.e. 1987-97). Excluding local SIs, of “the remaining 14,157 SIs which are both general and on which we have information, 2,125 or 15.0 per cent make reference to Europe. Thus even if only the types of SI most likely to show some European influence are taken into account, *European law is responsible for under one-sixth of general delegated legislation in Britain*”.⁷¹

| Session | Total SIs | ECA SIs | Non-ECA SIs | % UK ECA SIs | % non-ECA SIs | Total % |
|---------|-----------|---------|-------------|--------------|---------------|---------|
| 1997-98 | 2,028 | 139 | 113 | 6.9% | 5.6% | 12.4% |
| 1998-99 | 1,606 | 152 | 74 | 9.5% | 4.6% | 14.1% |
| 1999-00 | 2,133 | 173 | 137 | 8.1% | 6.4% | 14.5% |
| 2000-01 | 1,175 | 102 | 37 | 8.7% | 3.1% | 11.8% |
| 2001-02 | 2,369 | 243 | 111 | 10.3% | 4.7% | 14.9% |
| 2002-03 | 1,567 | 121 | 77 | 7.7% | 4.9% | 12.6% |
| 2003-04 | 1,403 | 132 | 99 | 9.4% | 7.1% | 16.5% |
| 2004-05 | 883 | 79 | 39 | 8.9% | 4.4% | 13.4% |
| 2005-06 | 2,122 | 236 | 99 | 11.1% | 4.7% | 15.8% |
| 2006-07 | 1,540 | 132 | 91 | 8.6% | 5.9% | 14.5% |
| 2007-08 | 1,476 | 153 | 65 | 10.4% | 4.4% | 14.8% |
| 2008-09 | 1,595 | 172 | 55 | 10.8% | 3.4% | 14.2% |

Over the twelve-year period from session 1997-98 to 2008-09 the percentage of SIs made under the European Communities Act 1973 was 9.1%, while the average including non-ECA SIs was 14.1%. The Library estimate is slightly lower than the 15.8% estimated by Page in his calculation of SIs for the preceding decade. This is broadly consistent with evidence showing a decrease in the EU’s legislative output after 1996.

⁶⁹ In some cases PIMS records are added after the end of a session. These figures are therefore subject to some amendment.

⁷⁰ According to data collected from *Lawtel*, over a period of six years from 2004 to 2009, only around 84 UK SIs out of a total of 7,110 Regulations (1.2%) adopted by the EU over that period implemented or gave effect to Council and Commission Regulations

⁷¹ Edward Page, p 805 at <http://www3.interscience.wiley.com/cgi-bin/fulltext/119112704/PDFSTART?CRETRY=1&SRETRY=0>

5.3 The sectoral impact

One of the advantages of using the SI measure is that sectoral calculations can be made. The EU acts in certain areas more than others, while its acts in some areas may be fewer but of more significance than in others. From December 2003 to January 2004 a number of Government Departments gave detailed answers in replies to questions put by John Redwood on the proportion of EU-related legislation within their areas of responsibility. The highest percentages of secondary legislation introduced to implement EU requirements were reported by Department for the Environment, Food and Rural Affairs (DEFRA - 57%) and the lowest by the Ministry of Defence (MOD) and the Cabinet Office (0%).

In 2009-10 the former Conservative and later independent MP, Bob Spink, and the Conservative, Gregory Barker, asked Government ministers from different Departments about UK obligations arising from EU obligations. In the first of Bob Spink's questions in June 2009, concerning the Foreign and Commonwealth Office (FCO), the Europe Minister, Caroline Flint, replied giving the 9.1% figure in the Library Note.⁷² Again, the highest proportion of EU-based policy areas was in DEFRA and the lowest in the MOD, although not all departments provided information.

Studies in other EU Member States have revealed similar results, indicating that agriculture remains the area of most EU action. In France the proportion of measures concerning agriculture was a little under half of EU-related measures and in Austria EU agriculture and environment measures were the most numerous. It should be borne in mind, however, that sectoral divisions of responsibility vary from State to State and that this might affect sectoral statistics. In the UK, for example, agriculture comes within DEFRA, while in France the ministry dealing with agriculture and fisheries is separate from the ministry responsible for the environment. In Germany there is a Ministry for the environment, nature protection and reactor security, with a separate ministry for consumer protection, food and agriculture. In Spain and Italy different ministries deal with agriculture and the environment, while in Austria they come under one ministry, as in the UK. Further information on sectoral impact can be found in Section 6).

5.4 Problems with the calculation

These figures are indicative of the impact of EU legislation on national law-making but they are not the full story. For example, they do not take account of EU "soft law" or the overwhelming majority of EU regulations, which can be several times the number of directives (see tables on page 12), and which are usually adopted in the Member States by measures other than laws.⁷³

⁷² [HC Deb 3 June 2009 c 513W](#). The parliamentary answers can be found in **Appendix 2** of this paper.

⁷³ EU Regulations apply uniformly across all Member States. In practice, some Regulations are implemented by SI in the UK. Most are implemented by administrative rules, regulations, departmental notes and documents, guidelines on procedures etc. For example, Regulation 2092/91, the basis for UK organic standards, is implemented under the Organic Products Regulations 2004 (an SI), through the Compendium of UK Organic Standards. This is a publication of DEFRA at <http://www.defra.gov.uk/farm/organic/standards/pdf/compendium.pdf>

As Professor Mark Bovens and Dr Kutsal Yesilkagit have noted, “Clearly, a case can be made that the EU has a very large impact on national policies if all those ‘products’ of the European integration, formal and informal, are taken into account”.⁷⁴ The term “products” is used to describe all the national laws, rules, regulations and other measures that emanate from EU law - and indicates the difficulties in assessing the EU’s influence in purely numeric terms.

Although EU regulations apply to all Member States, many do not need to be transposed or implemented because existing national provisions suffice. For example, the majority of the financial services measures set out in the Commission Communication “Regulating financial services for sustainable growth”⁷⁵ are implemented by Financial Services Authority (FSA)

Laws at EU level are not necessarily transposed into laws at national level, but into other ‘products’, such as administrative rules and regulations, measures on good practice or guidelines.

Rules. Other examples include implementation by a combination of legislative and non-legislative measures:

- The EU’s “Minimum Standards for the Reception of Asylum-seekers” (Council Directive 2003/9/EC of 27 January 2003) was implemented in the UK by a combination of the *Asylum Seekers (Reception Conditions) Regulations 2005*, the *Asylum Support (Amendment) Regulations 2005*, changes to the Immigration Rules and reliance on existing legislation.
- The “Qualification Directive” (2004/83/EC) was implemented in part by a combination of regulations (the *Refugee or Person in Need of International Protection (Qualification) Regulations 2006* (SI 3535/2006) and changes to the Immigration Rules (HC 395 as amended). Measures to implement other parts were not deemed to be necessary as they were considered to be already reflected in existing domestic legislation.
- The “Procedures Directive” (2005/85/EC) was transposed by the *Asylum (Procedures) Regulations 2007* (SI 2007/3187) and changes to the Immigration Rules.
- The Council Decision of 6 April 2009 establishing the European Police Office - Europol - (2009/371/JHA), like the Convention which preceded it, is implemented not by UK legislation or even any formal guidance, but as a matter of policy by the Serious Organised Crime Agency (SOCA) and the police, because it is in their interests to do so. The Home Office provides advice and encouragement both to SOCA and to the Association of Chief Police Officers (ACPO) to improve the sharing of information, which is the primary purpose of Europol, but there is no published guidance.
- In the higher education sector EU law states that EU students should have the same access to higher education as home students. This was initially interpreted as giving EU students the same right to loans for tuition fees as home students and the provision is set out in student support regulations. Subsequently, the *Bidar* case

⁷⁴ “The Impact of European Legislation on National Legislation in the Netherlands”, 2004 at <http://publishing.eur.nl/ir/repub/asset/1763/NIG1-11.pdf>

⁷⁵ COM(2010) 301 final, 2 June 2010

(Case C-209/03) extended this right to include maintenance loans for certain eligible students.

Using the formula
$$\frac{\text{EU regulations \& EU-related SIs}}{\text{EU regulations \& total SIs}}$$

it is possible to estimate what proportion EU regulations and EU-related UK laws form out of the total volume of UK laws, including all EU regulations, regardless of how or whether they are formally implemented.

| New laws affecting the UK | | | | | | |
|---------------------------------|----------------|------------|------------|------------|--------------------------|------------------------|
| Calendar year | EU regulations | UK SIs (a) | | | EU Regs & EU-related SIs | |
| | | Total | EU-related | | Number | % of regs plus all SIs |
| | | | Number | % of total | | |
| 1997 | 969 | 1,588 | 170 | 11% | 2,557 | 45% |
| 1998 | 935 | 1,382 | 138 | 10% | 2,317 | 46% |
| 1999 | 986 | 1,706 | 247 | 14% | 2,692 | 46% |
| 2000 | 788 | 1,993 | 289 | 15% | 2,781 | 39% |
| 2001 | 752 | 1,965 | 266 | 14% | 2,717 | 37% |
| 2002 | 766 | 1,763 | 251 | 14% | 2,529 | 40% |
| 2003 | 837 | 1,483 | 210 | 14% | 2,320 | 45% |
| 2004 | 1,530 | 1,450 | 236 | 16% | 2,980 | 59% |
| 2005 | 733 | 1,563 | 226 | 14% | 2,296 | 42% |
| 2006 | 2,033 | 1,464 | 229 | 16% | 3,497 | 65% |
| 2007 | 773 | 1,504 | 235 | 16% | 2,277 | 44% |
| 2008 | 1,384 | 1,414 | 178 | 13% | 2,798 | 56% |
| 2009 | 1,329 | 1,721 | 294 | 17% | 3,050 | 53% |
| Notes: (a) Excluding local SIs. | | | | | | |

All measurements have their problems and it is possible to justify any measure between 15% and 50% or thereabouts. To exclude EU regulations from the calculation is likely to be an under-estimation of the proportion of EU-based national laws (see table on page 20), while to include all EU regulations in the calculation is probably an over-estimation (see table above). The answer in numerical terms lies somewhere in between the two approaches. The limitations of data also make it impossible to achieve an accurate measure. We do not know, for example, how many regulations have direct application in the UK - olive and tobacco growing regulations are unlikely to have much impact here, but the UK implements such regulations along with olive and tobacco-growing Member States.

6 Studies in other Member States

6.1 Austria

Austria joined the European Union in 1995 after a long and close relationship with the European Community and having ratified treaties with the European Free Trade Association (EFTA) and the EC on mutual access to markets.

Marcelo Jenny and Wolfgang C. Müller⁷⁶ carried out a study of Europeanisation which focused on the period between January 1992 and July 2003.⁷⁷ The authors note the tendency to use legislation to measure the impact of the EU on Austria and they consider estimates for what they call “EU-induced” national laws. They report the results of interviews with Austrian parliamentarians, although it is not clear to what extent these were impressionistic:

According to the long-serving chairman of the finance committee of the Austrian parliament Ewald Nowotny (1998), about 70 per cent of all laws passed by the Austrian Parliament are either directly or indirectly the implementation of or adaptation to EU directives (see also Wohnout 1999). Likewise, in personal interviews conducted in 1997–98, several other Austrian MPs, in their responses to open-ended questions, have estimated shares of up to 70 per cent (Müller et al. 2001, p. 479). Similar estimates have been given by MPs interviewed in 2005. However, not all politicians share such extensive interpretations of Europeanization. The then president of the Austrian Parliament, Heinz Fischer, in an interview with Austrian television ('Hohes Haus' in 2002), explicitly rejected these estimates. Without providing precise figures, his own estimate was a share of EU-induced legislation of well below 50 per cent. [...].⁷⁸

The authors conclude that the interviews showed how little was really known about the extent of the EU's impact on national rules, even though it was a “highly relevant political question that, in turn, relates to issues such as the current degree of policy coordination, the potential for further integration, the popular response to 'Europe', and the relevant party political strategies”. They concede that “Although a simple question, providing answers requires both methodological rigour and painstaking empirical research”.⁷⁹

Jenny and Müller point out that “no attempt has been made to properly operationalize the term 'EU-induced'. Is a domestic law EU-induced only when it is exclusively devoted to the implementation of EU directives? Or, conversely, is a law EU-induced if it has any function of adaptation to EU rules?” The result of such definitional issues “can account for great variation in the number of EU-induced laws at the national level”.⁸⁰ They try to show in their study that “the choice of definition has a major impact on the result”.⁸¹ They outline the political framework of legal Europeanisation, address the impact of EU membership on the national laws passed just before Austria's accession (when it was assimilating the bulk of the EU *acquis*) up to 2003,⁸² and consider the cumulative effect of the EU on Austrian legislation. The study takes into account the federal nature of the Austrian system and Austria's particular brand of civil law tradition.

⁷⁶ Department of Political Science, University of Mannheim, Germany

⁷⁷ Research published in *Public Administration* January 2010

⁷⁸ *Public Administration* Vol. 88 No 1, 2010 p.36, “From the Europeanization of Lawmaking to the Europeanization of National Legal Orders: The Case of Austria”, Marcelo Jenny and Wolfgang C. Müller, p. 37

⁷⁹ *Ibid*

⁸⁰ Jenny and Müller, *ibid*

⁸¹ *Ibid* p. 38

⁸² For an interesting analysis of the impact of the EU on new Member States, see “How pervasive are Euro-Politics? Effects of EU Membership on a New Member State”, Gerda Falkner, *Journal of Common Market Studies* June 2000 Vol 38 No. 2 pp 223-50

In Austria EU law can be implemented by constitutional laws, laws or by delegated legislation in the form of Government decrees (*Verordnungen*), which are made by the various Government departments. The type of legal instrument is decided on a case-by-case basis. Typically, the authors note, new EU rules “require parliamentary legislation while the transposition of later changes of these EU rules by government decree is more likely”.⁸³

The study finds that the average yearly share of EU-related legislation from Austrian entry to the EU in 1995 until 2003 was slightly below 25%,⁸⁴ although it had been as high as 45% in 1993, when Austria was preparing for EU membership. They show how many EU-related federal decrees (delegated legislation) were passed during this period. The number of decrees exceeded that of laws by several times both in the pre-accession period and from 1995 to 2003, when the ratio of federal decrees to federal laws was 3.2:1.

The authors also estimate the quantitative impact of the EU on Austrian legislation in force in July 2003. At this point in time “slightly more than ten percent of the laws in force and about 14 percent of the Government decrees in force were EU-related. Putting laws and decrees in one basket, the degree of Europeanization was 12.4 percent”. The authors’ Table 4 (Austrian federal legislation in July 2003) illustrates this conclusion:

| Policy area | Federal laws | | | Federal decrees | | |
|--|--------------|--|------------------------|-----------------|--|------------------------|
| | No. | EU-related (Jan 1992– July 2003) | EU- related in % | No. | EU-related (Jan 1992– July 2003) | EU- related in % |
| Agriculture and forestry, veterinary law, health, environmental protection | 378 | 96 | 25.4 | 923 | 341 | 36.9 |
| Transport, technology, building, public procurement | 372 | 81 | 21.8 | 449 | 123 | 27.4 |
| Economic law | 386 | 48 | 12.4 | 612 | 85 | 13.9 |
| Education, science, religion, culture, sport | 312 | 22 | 7.1 | 751 | 3 | 0.4 |
| Administration law and military affairs | 213 | 14 | 6.6 | 257 | 13 | 5.1 |
| Labour law, social security | 1091 | 70 | 6.4 | 728 | 25 | 3.4 |
| Banking and monetary law | 720 | 42 | 5.8 | 305 | 16 | 5.2 |
| Civil law and criminal law | 704 | 36 | 5.1 | 209 | 16 | 7.7 |
| Constitution law and institutional law, media law | 627 | 27 | 4.3 | 277 | 2 | 0.7 |
| Total, multiple codings excluded | 4110 | 435 | 10.6 | 4416 | 623 | 14.1 |

*Federal laws published until the end of July 2003; numbers include neither EU law nor international law, multiple counting over policy areas possible.

Source: Authors' calculations based on the *Index 2004*.

The table shows clear sectoral differences, with EU agriculture and environment measures the most numerous. The study also shows, as would be expected, that the transposition of EU directives at federal level was higher than at state (*Land*) level. The authors’ assessment of the stock of EU-related national and sub-national measures in mid-2003 was that a “total of 92 per cent of the directives were transposed exclusively by federal level norms. Less than

⁸³ P. 46

⁸⁴ P. 44

3 per cent of the directives were dealt with exclusively by Land level norms. Even including the mixed cases, the overall involvement of the Länder is quite marginal”.⁸⁵

The analysis of the Europeanisation of the Austrian legal order takes into consideration EU-related “original laws” (i.e “laws regulating a topic for the first time or in a codified form”) going back to the laws of the Habsburg monarchy before 1918, and attempts to express the extent to which the content of such laws already implemented later EU rules. The authors found that “Notwithstanding some relevant exceptions, original laws specifically enacted to meet EU requirements tend to be substantially less important than previously existing original laws that were amended to conform to EU rules”.⁸⁶ They also suggest that a significant degree of Europeanisation in the pre-accession period might be attributable to “‘autonomous’ Austrian reaction to developments in the EU, its largest export market, and hence market-driven legal Europeanization or ‘learning from neighbours’”.⁸⁷ Jenny and Müller estimate that the “annual average [share of EU-related legislation] of the membership period is almost 25 per cent”, with EU-related rules constituting a much smaller share of delegated legislation (about 11%). The gross figures for new laws suggest that EU membership has “slightly increased the amount of legislation”, but they note that “the majority of laws classified as ‘EU-related’ do not contain EU rules exclusively but also norms of domestic origin”.⁸⁸

The authors suggest that Europeanising legislation “over time should lead to the Europeanization of legislation”, an effect which they judge “constitutes the core of the Delors statement”. Their evaluation of the Austrian legal order in 2003 showed that one in ten laws in force at that time and 1.4 of ten government decrees were EU-related, and they conclude that the “expectations about legal Europeanization were considerably exaggerated”. Acknowledging that “Austrian legislation is an extremely diverse universe, comprising landmark legislation and politically less relevant pieces, comprehensive laws and minute revisions”, they find marked sectoral differences in their analysis of “original laws”, with agriculture, health, the environment, labour law and transport the most affected. They note: “our research suggests that Europeanization, while missing some exaggerated expectations, is indeed a major feature of Austrian legislation. We are confident that this also holds true for the other member states”.

The Austrian study looks at original laws in sector groupings, concluding that the overall average of the stock of EU-related federal laws in force in 2003 was 42.6%. In economic and social legislation, the average was 36.3.⁸⁹ Table 8 showed *EU-related original laws* (‘Stammgesetze’) *in the entire body of Austrian legislation in force (July 2003) according to sector**

| Policy area | Original federal laws | EU-related federal laws (1992-July 2003) | EU-related (%) |
|-------------|-----------------------|--|----------------|
| | | | |

⁸⁵ Jenny and Müller p. 51. For information on how the Scottish Parliament implements EU law, see the European and External Relations Committee Report, SP Paper 89 EU/S3/08/R1, 1st Report, 2008 (Session 3), [“Report on an inquiry into the transposition of EU directives”](#)

⁸⁶ *Public Administration* Vol. 88 No 1 2010, p 52, [“From the Europeanization of Lawmaking to the Europeanization of National Legal Orders: The Case of Austria”](#), Marcelo Jenny and Wolfgang C. Müller

⁸⁷ Ibid p. 53

⁸⁸ Ibid pp54-5

⁸⁹ Ibid p. 54

| | | | |
|--|------|-----|------|
| Agriculture & forestry, veterinary law, health, environmental protection | 186 | 98 | 52.7 |
| Labour law, social security | 221 | 105 | 47.5 |
| Transport, technology, building, public procurement | 175 | 72 | 41.1 |
| Civil law & criminal law | 218 | 76 | 34.9 |
| Economic law | 275 | 95 | 34.5 |
| Administrative law & military affairs | 134 | 42 | 31.3 |
| Constitutional law & institutional law, media law | 274 | 62 | 22.6 |
| Banking and monetary law | 411 | 91 | 22.1 |
| Education, science, religion, culture, sport | 121 | 26 | 21.5 |
| TOTAL | 1520 | 646 | 42.5 |

*Federal laws published until end July 2003, excluding state treaties. Multiple counting of original laws in several policy areas is possible. The final row does not include the multiple counting of rules.

Source: Authors' calculation based on the *Index 2004*.

6.2 Denmark

A study in 2003 by Jens Blom-Hansen and Jørgen Grønnegaard Christensen⁹⁰ found that 9.6% of all primary and secondary laws in Denmark had a European origin.⁹¹ A subsequent detailed study by Christensen (Department of Political Science, University of Aarhus), was published in *Public Administration* in January 2010⁹² and includes an analysis of the impact of EU directives on Danish national public policy. The methodology for the data collection⁹³ provides, as it does in the UK analysis, “a fairly precise impact estimate in quantitative terms. However, neither EU directives nor national rules were weighted for salience”.⁹⁴ The methodology also registered “the national commitment to meet demands of EU legislation even in cases where Danish legislation already does so”. The analysis “neither delves into the possible impact of soft EU regulation nor the role played by European standard setting and self-regulatory measures”.⁹⁵

Denmark transposes EU directives into national law as formal laws, decrees, circulars or collective agreements. The study looks only at formal law making involving the government

⁹⁰ Blom-Hansen, J. & Christensen, J. G. (2004) “Den Europæiske forbindelse”

⁹¹ “The Impact of European Legislation on National Legislation in the Netherlands”, Prof. dr. Mark Bovens & Dr. Kutsal Yesilkagit, Utrecht School of Governance University of Utrecht, October 2004, at <http://publishing.eur.nl/ir/repub/asset/1763/NIG1-11.pdf>.

⁹² J.G.Christensen, “Keeping in control: the modest impact of the EU on Danish legislation”, *Public Administration* Vol. 88 Issue 1, pp 18-35.

⁹³ Data was collected on EU directives in force as of mid-2003, including CELEX-notifications of national rules transposing them. Then, information was collected on Danish legislation in force in order to estimate the share of national rules in force that transpose EU directives into Danish law.

⁹⁴ Christensen p 5

⁹⁵ Ibid, p 23

and parliament and delegated law making by ministerial decree. Christensen's Table 2 "presents the overall estimate of EU influence on Danish legislation in force. The general impact is limited to some 14 per cent, with an impact of 19.7 per cent for formal law and 13.2 per cent for the quantitatively much larger body of decrees. The variation, however, as can be seen, is strong between ministerial portfolios".⁹⁶

| Ministerial portfolios | Laws | | Decrees | | Total | | | |
|------------------------------|-------------|--------|-------------|-----------------|-------------|-------------|--------|-------------|
| | EU ratio | impact | Total | EU impact ratio | Total | EU ratio | impact | Total |
| Employment | 32.3 | | 65 | 21 | 448 | 22.4 | | 513 |
| Finance | 0.0 | | 51 | 0.0 | 70 | 0.0 | | 121 |
| Defence | 0.0 | | 14 | 0.0 | 32 | 0.0 | | 46 |
| Food, agriculture, fisheries | 13.4 | | 67 | 28.1 | 1154 | 27.3 | | 1221 |
| Interior & health | 3.7 | | 106 | 6.2 | 745 | 5.9 | | 851 |
| Justice | 12.3 | | 162 | 6.2 | 971 | 7.1 | | 1133 |
| Ecclesiastical affairs | 0.0 | | 19 | 0.0 | 106 | 0.0 | | 125 |
| Culture | 18.4 | | 38 | 0.9 | 115 | 5.2 | | 153 |
| Environmental protection | 54.5 | | 44 | 16.8 | 597 | 19.3 | | 641 |
| Immigration & refugees | 3.3 | | 61 | 13.7 | 51 | 8.0 | | 112 |
| Research & technology | 96.6 | | 29 | 9.8 | 205 | 20.5 | | 234 |
| Taxes | 21.8 | | 151 | 5.9 | 304 | 11.2 | | 455 |
| Social | 0.0 | | 14 | 0.0 | 147 | 0.0 | | 161 |
| Prime Minister's office | 0.0 | | 15 | 0.0 | 10 | 0.0 | | 25 |
| Transport | 2.6 | | 155 | 29.4 | 367 | 21.5 | | 522 |
| Foreign Affairs | 0.9 | | 109 | 5.2 | 57 | 2.4 | | 166 |
| Education | 0.0 | | 57 | 0.2 | 860 | 0.2 | | 917 |
| Economics & business | 59.9 | | 187 | 16.2 | 1274 | 21.8 | | 1461 |
| Overall EU impact | 19.7 | | 1344 | 13.2 | 7513 | 14.2 | | 8857 |

⁹⁶ Christensen p 25

Sources: Danish rules in force: *Retsinformation* (<http://retsinformation.dk>), November 2003. Rules transposing EU directives are counted on the basis of data retrieved from CELEX June 2003.

The author comments on the effect of the Danish transposition method on these ratios:

The transposition of directives is channelled through both formal and delegated legislation. This reveals a much varying pattern. For some portfolios, most formal legislation has been notified as transposing directives into national law. In contrast, EU legislation has had a relatively minor impact on their stock of decrees in force. The reason is to be found in the preferred legislative techniques. In some ministries, these involve broad framework laws that delegate to the minister, assisted by his agencies, the authority to regulate specific issues by decree. As a consequence, these ministries rely on relatively few formal laws. At the same time these relatively few laws have spurred a large number of more specific decrees, of which only a minor share is affected by EU legislation. For other portfolios, the preferred legislative technique relies on specialized legislation that may or may not be affected by EU legislation; it is typically combined with equally specific delegation to the minister to issue decrees. The implication is a low impact ratio for formal legislation combined with a varying impact for delegated legislation.⁹⁷

Christensen believes that because of the differences in these legislative transposition techniques, “valid estimates of the EU impact on Danish public policy can only be based on the general impact ratio shown in table 2” (see above). Information on the transposition methods “provides important information on how EU participation has influenced national legislative procedures, and thus on its wider implications for democratic and administrative decision making”. He concludes that “Since the early 1970s, the EU has developed as an important, but by no means dominant, player in the shaping of Danish public policy”⁹⁸ and that it is “important as an embryonic regulatory polity”. However, he also seeks to clarify that this is not the case in all policy areas:

In fact the EU has no influence on the welfare policies that receive constant and high political attention in Denmark. Even when it comes to regulatory policies, an important conclusion is that despite its importance as a source of policy, EU legislation has not replaced the need for national regulation that is not derived from EU directives. This is so for both economic and social regulation.

Christensen notes that “The relatively limited impact of EU regulation on Danish legislation and public policy does not divest the issue of political relevance” and the series of referendums on EU Treaties have been testimony to “the explosive character of the relationship”.⁹⁹

6.3 France

⁹⁷ Christensen, p. 26

⁹⁸ Ibid p. 34

⁹⁹ Ibid

The 1993 annual report of the French *Conseil d'Etat*, the supreme administrative court, contained a detailed analysis of the impact of EU legislation on French law and public policy. It claimed that by 1992 the European Community had become the main source of new law in France, with 54% of all new French laws originating in Brussels.¹⁰⁰

French Conseil d'Etat

By 1992 EC law included 22,445 regulations, 1,675 directives, 1,198 agreements and protocols, 185 Commission or Council recommendations, 291 Council resolutions, and 678 communications.

In a study published by *Notre Europe*, Yves Bertoncini¹⁰¹ acknowledges methodological difficulties in calculating EU influence in a national context, but concludes “on pourrait résumer d'une formule en disant qu'elle est sans doute globalement plus proche de 20% que de 80%, avec en outre de fortes

variations selon les secteurs”.¹⁰² (“we could summarise by saying that generally the figure is closer to 20% than 80%, with significant variations according to sector”). According to Bertoncini's figures from the French legislative database, *Legifrance*, on 1 July 2008, 26,777 national laws, orders and decrees were in force. The following table 7 from the study shows the percentage by sector of national measures based on EU laws:

Table 7: annual average figure for legislative regulations and directives and comparison with the number of French legislative acts

| Acts by year/sectors | Legislative regulations by year* | Legislative directives by year* | Laws and orders by year* | % EU legislative norms/total number legislative measures – median estimate*** |
|--|----------------------------------|---------------------------------|--------------------------|---|
| External relations (excl. commercial policy) & defence | 23.6 | 0 | 41.5 | 22.3% |
| Agriculture, fisheries | 48.2 | 0.55 | 2.85 | 89.5% |
| Economy, ecology | 28 | 13.85 | 14.85 | 58.5% |
| Employment, health, education, youth, sport, culture | 1.7 | 2.3 | 16.2 | 11% |
| Transport, amenities | 5.3 | 2.1 | 5 | 42.5% |
| Justice & interior | 1.5 | 3.6 | 25.95 | 8.8% |
| All sectors | 108.3 | 22.4 | 106.35** | 38% |

Source: SGAE data/Council of State, calculations of Y. Bertoncini

¹⁰⁰ *Conseil d'Etat* 1992, cited in “Establishing the supremacy of European Law: the making of an international Rule of Law in Europe”, Karen J. Alter, Oxford Studies in European Law, 2001, reprinted 2003

¹⁰¹ Yves Bertoncini teaches European Affairs at the IEP in Paris, at the Corps des Mines and the ENA, and is Secretary General of *Notre Europe*.

¹⁰² *Notre Europe*, *Les Brefs* No. 13 May 2009, “La législation nationale d'origine communautaire : briser le mythe des 80%”, at http://www.notre-europe.eu/uploads/tx_publication/Bref13-YBertoncini_01.pdf

* Period of reference for regulations = 1992-2008/Period of reference for directives = 2000-2008/The period of reference for the national laws and orders is 1987-2006, based on global and sectoral data in the “diachronic table” cited earlier.

** This total does not include laws and orders adopted in the sectors “public administration and state organisation” (2.45 per year) and “Prime Minister” (0.7 per year): their inclusion would result in a total of 109.5.

*** The median estimate preferred here means considering that only half of EC measures “with a legislative dimension” are of a legislative nature (as opposed to the body of national laws). The high estimate would mean considering that all Community norms “with a legislative dimension” are by nature legislative, which would increase the percentages in Figure 7.¹⁰³

Another table (6) shows that in the period 1987 - 2006 the relative global share of Community norms in the total norms applicable in France was “inférieure à 20% (elle s’établit à environ 12%)”, “less than 20% (around 12%)”. There were significant sectoral differences: the proportion was a little under half in agriculture; about 20% in economic and foreign affairs matters; just under 5% in environmental laws and less than 2% in ten other sectors.¹⁰⁴

6.4 Germany

In an article in 2007 called “Measuring the Europeanization of Public Policies”, Annette Elisabeth Töller¹⁰⁵ looked at definitions of an EU and a national “law” for the purposes of estimating Europeanisation. She defines a category for data collection to measure the Europeanisation of national laws called a “European impulse”:

“European impulse” is a category that was introduced by those who organize the data-base. It generally includes a broad variety of “impulses” and, for the aim of the analysis was “cleaned” from non-EU-impulses (e.g. measures stemming from the European Council etc.). It allows for a broader operationalization of Europeanization than just counting the number of measures that transpose directives.¹⁰⁶

Töller’s table 3 shows “The Percentage of German Federal Legislation influenced by a “European Impulse” from 1983 to 2005”. The average across sectors is 38.6% for 2002-05.¹⁰⁷

| Portfolio | Electoral term | | | | | |
|------------------------|----------------|---------|---------|---------|-----------|---------|
| | 1983-87 | 1987-90 | 1990-94 | 1994-98 | 1998-2002 | 2002-06 |
| Home Affairs | 4.4 | 2.3 | 14.5 | 11.9 | 19.2 | 12.9 |
| Justice | 9.8 | 35 | 20 | 21.6 | 34.1 | 42.2 |
| Finance | 22.9 | 25.6 | 22.7 | 25.0 | 38.0 | 42.6 |
| Economics | 16.7 | 15 | 9.5 | 34.8 | 42.4 | 40.0 |
| Food & Agriculture | 58.8 | 28.6 | 52.0 | 65.0 | 79.2 | 75.0 |
| Labour & Social Policy | 6.0 | 5.9 | 11.0 | 15.8 | 23.3 | 15.6 |

¹⁰³ Unofficial translation of Table 7, http://www.notre-europe.eu/uploads/tx_publication/Bref13-YBertoncini_01.pdf

¹⁰⁴ Bertoncini p. 6

¹⁰⁵ Helmut Schmidt-University/University of the Federal Armed Forces Hamburg

¹⁰⁶ Annette Elisabeth Töller, “Measuring the Europeanization of Public Policies – but How?” 07/07 at http://www.fojus.uni-oldenburg.de/download/diskussionspapier1_2007toeller.pdf

¹⁰⁷ http://www.fojus.uni-oldenburg.de/download/diskussionspapier1_2007toeller.pdf. See also: Center for European Studies Program for the Study of Germany and Europe, Working Paper Series 06.2 (2006), “How European Integration Impacts on National Legislatures: The Europeanization of The German Bundestag” by Annette Elisabeth Töller.

| | | | | | | |
|----------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Family & Health | 26.1 | 26.1 | 37.8 | 19.4 | 23.8 | 37.5 |
| Transport | 40 | 37.5 | 26.1 | 36.4 | 28.6 | 40.0 |
| Post & Telecomms | 33.3 | 0 | 50.0 | 71.4 | - | - |
| Regional planning | 0 | 10 | 9.1 | 9.1 | - | 50.0 |
| Education & Research | 0 | 0 | 25 | 12.5 | 0 | 0 |
| Environment | 20 | 66.7 | 75 | 54.6 | 69.2 | 81.3 |
| Average | 16.8 | 19.9 | 24.1 | 25.9 | 34.5 | 38.6 |

The author notes that the evaluation is based on GESTA (German Bundestag, Federal Legislative Update, <http://www.bundestag.de/bic/standgesetzgebung/index.html>) and covers only those areas with a genuinely 'domestic' task, as opposed to the areas of defence, foreign relations and development. A "-" represents departments that no longer existed in the respective electoral term. Changes in departmental portfolios occurred over the five electoral terms and the data was evaluated accordingly.

A flurry of comment followed an article by the former German President, Roman Herzog, in the German weekly, *Die Welt am Sonntag*, in January 2007.¹⁰⁸ Herzog cited a report by the German Ministry of Justice maintaining that between 1999 and 2004, only 16% of legislation in Germany came from the German Parliament, while 84% stemmed from "unelected EU institutions in Brussels". This estimate was given in a [written parliamentary reply by the Undersecretary of the German Bundestag, Alfred Hartenbach on 29 April 2005](#):

From 1998 until 2004 a total of 18,167 EU regulations and 750 directives were adopted in Germany (including amending regulations or directives).

During the same period the German Parliament passed in total 1,195 laws as well as 3,055 statutory instruments [Rechtsverordnungen are a form of secondary legislation].¹⁰⁹

In an article in the *Europäische Zeitschrift für Wirtschaftsrecht* (EuZW) in March 2009, Dr Tilman Hoppe¹¹⁰ thought the 80+ estimate was probably about right. He criticised the Töller estimate on several grounds:

Firstly, it examined only federal law-making and not the state role in this; secondly, what is crucial for the national influence of the EU is how many binding measures the EU makes for the national law-making (Rechtsetzung), and not whether the national Parliament takes up any European impulses for example, non-binding recommendations of the EU. Thirdly, national legislation is not the most appropriate starting-point, to depict (illustrate) the influence of EU law in internal/domestic law: measures from Brussels spread their domestic influence not only over national, "Europeanised" laws, but also immediately, in particular as Regulations. Thus the total amount of (domestic) binding EU

¹⁰⁸ [EUObserver 15 January 2007](#) and [Die Welt 13 January 2007](#)

¹⁰⁹ See also [Open Europe blog](#), "about the European Union, foreign policy, politics, etc "How many of our laws are made in Brussels?"

¹¹⁰ Dr Hoppe works in the parliamentary research service in Berlin. These are his own personal views and not those of the *Bundestag*.

legislation (primary law, Directives and Regulations) is more correctly compared with the amount of “autonomous” national laws¹¹¹

Hoppe looked at the period from January 1951 (when the first European Community, the European Coal and Steel Community was established) to the end of 2008. By December 2008 there were, according to his calculations, 10,279 EU “norms” compared with 2,391 German “norms” (of these 1,841 were German federal laws and 550 state laws – counting the 16 state legislatures as one, since they all transpose the same EU laws). Thus, EU norms represented 81% and national norms 19% of a total of 12,670 measures. Hoppe notes, however, that if the numerous very specific directives and regulations in the areas of agriculture and fisheries were eliminated, the picture would look different. His Table (d) illustrates this as follows:

| EU/EC Norms | Number |
|----------------------------------|---------------|
| Total | 10,297 |
| Minus Directives on agriculture | -620 |
| Minus Directives on fisheries | -3 |
| Minus Regulations on agriculture | -4,400 |
| Minus Regulations on fisheries | -791 |
| Total | 4,465 |

In this scenario table (e) draws a different conclusion on the overall relationship:

| Relationship EC/EU/German norms | | |
|--|-------|------|
| EC/EU norms | 4,465 | 65% |
| German laws | 2,391 | 35% |
| of which Federal | 1,871 | 29% |
| Of which States | 550 | 6% |
| Total | 6,886 | 100% |

Hoppe confirms the situation described above with regard to the UK – that there is not necessarily a one-to-one relationship between EU and national laws: several EU laws may be implemented by one national law and vice versa.¹¹²

Hoppe also points out that a number of German laws are based directly on the jurisprudence of the European Court of Justice (ECJ) or decisions of the Commission, and that the influence of directives and regulations on German laws is not only in the implementation of EU laws, which is obvious, but also tacitly in the general framing of national laws. He notes in particular the EU Treaty articles on discrimination and European Court of Justice jurisprudence, which force national law-makers, even in their “autonomous” law-making, towards formulating ‘Europeanised’ measures.

Finally, Hoppe draws attention to the quantitative and qualitative differences in any calculation of EU influence. In both groups there are extensive and less extensive rules, significant and less significant laws; as the numbers increase, so does the share in both groups in the comparison.

¹¹¹ Unofficial translation of *EuZW 6/2009*, Dr Tilman Hoppe, “Die Europäisierung der Gesetzgebung: Die 80-Prozent-Mythos lebt” (The Europeanisation of legislation: the 80% myth lives”).

¹¹² By way of example, take the so-called 2nd driving licence directive, [Council Directive 91/439/EEC](#) of 29 July 1991 on driving licences.

Other analysts disagree with the 80% figure, estimating that the proportion is considerably less. In an article in the *Frankfurter Allgemeine Zeitung* (FAZ) in September 2009 Hendrik Kafsack maintained that, based on government statistics, the overall percentage of EU-related German law was 31.5%. He pointed to significant differences between sectors: for example, 23% of Interior Ministry measures; 52% in agricultural legislation and 67% in the area of the environment. For the Finance Ministry it was 33% and roughly 38% in economic areas. The author compared the figures for the current legislature with earlier ones. In the preceding legislature the proportion of EU-based laws was 39.1%; in the one before this it was 34.5%; in the 1990s around 25%. Included in these figures are all laws which have an EU origin, including amendments to laws necessitated by a European Court of Justice judgment.

Kafsack considered the appeal of Jacques Delors' 80% figure to both pro- and anti-EU camps, outlining that while opponents used it as an indication of more and stronger EU centralisation, the German Confederation of Industry and organisations such as Greenpeace had used it to argue in favour of strengthening engagement with the EU. He maintains that it also motivated people to vote in the European Parliament elections in June 2009.¹¹³

Kafsack is critical of the 2005 84% claim for not distinguishing between the different types of EU legislation, i.e. Council and Commission - delegated - legislation. If the latter are included in the statistics, he maintains, the picture is skewed towards more EU influence because they are so numerous. A study in 2008 would appear to support this thesis. In "Das Regieren jenseits des Nationalstaates und der Mythos einer 80-Prozent-Europäisierung in Deutschland" (roughly "Supranational governance and the myth of 80% Europeanisation") Thomas König and Lars Mäder of Mannheim University look at the extent to which German legislation has been stimulated by "European impulses" over the previous 30 years. The abstract notes:

In contrast to previous studies, the analysis distinguishes between regular and important legislation and examines whether and to what extent European impulses are induced by EU legislation. The results reveal that previous estimates have dramatically overstated the influence of Europeanization on German legislation. According to our findings, a share of 80 percent has only once occurred in a single policy domain. Usually, this share is significantly lower, in particular for important legislation. Moreover, it is only possible to identify the reasons for half of the Europeanization impulses in the respective EU legislative database.¹¹⁴

In the following table König and Mäder show the proportion of EU-influenced German laws over eight parliamentary sessions from 1976 to 2005.

¹¹³ [FAZ.net, 3 September 2009](#)

¹¹⁴ "Das Regieren jenseits des Nationalstaates und der Mythos einer 80-Prozent-Europäisierung in Deutschland", Thomas König & Lars Mäder, *Politische Vierteljahresschrift* 49 (3): 438-463.

Europeanisation of German law

Total for 8th to 15th Parliamentary Session (1976 to 2005)

| Policy area | Law | EU "impulse" | Type of "impulse" | | |
|------------------------|--------------|-----------------|-------------------|------------|------------|
| | | | Directive | Regulation | ECJ ruling |
| Work & social security | 311 | 43 | 23 | 10 | 2 |
| Foreign affairs | 110 | 19 | - | - | - |
| Food & agriculture | 163 | 84 | 33 | 42 | 3 |
| Finance | 470 | 112 | 57 | 17 | 4 |
| Home affairs | 383 | 60 | 19 | 6 | 2 |
| Justice | 538 | 172 | 54 | 21 | 12 |
| Environment | 111 | 48 | 33 | 9 | 3 |
| Economy | 304 | 75 | 26 | 8 | 4 |
| Other | 707 | 129 | 82 | 24 | 11 |
| Total | 3,097 | 742 | 327 | 137 | 41 |
| % | 100% | 24% | 11% | 4% | 1% |

Source: GESTA-Datenbank; 8.–15. Wahlperiode.

Note: The classification of types of EU-impulse takes into account multiple entries, as it is theoretically possible for a law to contain an impulse from a directive, a regulation and an ECJ ruling.

The authors point out, in common with other commentators on this theme, "Ein weitaus schwierigeres Unterfangen als die bloße quantitative Darstellung dieser Entwicklung ist die Abschätzung ihrer Qualität für den deutschen Gesetzgeber" ("A much more difficult undertaking than the purely quantitative presentation of their development is the estimate of their quality for the German law maker"). In an attempt to tackle quality issues, the authors include in Table 2 an analysis of the cost implications of EU-related German laws and in Table 3 a selection of "key decisions" of the Bundestag that could be traced back to a European impulse:

Table 2: Share of the cost imposing laws with a European impulse (1980 to 2005)

| Policy area | Law | EU "impulse" | Type of "impulse" | | |
|------------------------|--------------|-----------------|-------------------|------------|------------|
| | | | Directive | Regulation | ECJ ruling |
| Work & social security | 88 | 17 | 7 | 5 | 1 |
| Foreign affairs | 53 | 10 | - | - | - |
| Food & agriculture | 81 | 36 | 11 | 19 | 3 |
| Finance | 87 | 23 | 13 | 2 | - |
| Home affairs | 118 | 21 | 5 | 2 | 2 |
| Justice | 299 | 106 | 33 | 15 | 9 |
| Environment | 46 | 13 | 7 | 4 | 1 |
| Economy | 165 | 27 | 12 | 2 | 3 |
| Other | 308 | 46 | 29 | 11 | 5 |
| Total | 1,245 | 299 | 117 | 60 | 24 |
| % | 100% | 24% | 9% | 5% | 2% |

König and Mäder note that there are no objective indicators for selecting which laws are more important than others. Drawing on a study by Klaus and Beyme of 150 so-called "key decisions" of the German Bundestag over the 12 legislatures, Table 3 shows that 12 out of 82 "key decisions" of the Bundestag from 1976 to 2005 originated in a European impulse.

Table 3: Share of the key decisions of the German Bundestag with a European "Impulse"
(1979 to 2005)

| Policy area | EU "impulse" | | |
|------------------------|-----------------|-----------|-------------|
| | Law | total | Regulations |
| Work & social security | 16 | 1 | 1 |
| Foreign affairs | 2 | - | - |
| Food & agriculture | 2 | 2 | 1 |
| Finance | 10 | - | - |
| Home affairs | 15 | 1 | - |
| Justice | 12 | 1 | 1 |
| Environment | 1 | - | - |
| Economy | 6 | 2 | - |
| Other | 18 | 5 | 5 |
| <i>Total</i> | <u>82</u> | <u>12</u> | <u>8</u> |
| % | 100% | 15% | 10% |

The authors acknowledge, however, that there is a question mark over the extent to which these European impulse-related laws can really be traced back to EU activities.

6.5 Netherlands

In an article in *Public Administration* in January 2010 Mark Bovens and Dr. Kutsal Yesilkagit examined the impact of "new" directives on the Dutch legislature on 31 July 2003. They found that 12.6% of all Parliamentary Acts, 19.7% of all Orders in Council and 10.1% of all valid Ministerial decisions were rules transposing EU directives. The total overall impact for the three types of national legislation was 12.6%. If amending EU acts were added to the calculation, the impact share rose to 18%.¹¹⁵

The authors point to the range of estimates about the EU's influence:

While concrete empirical evidence is largely lacking, in public debates, politicians have made guesstimates that vary between 30 and 70 per cent (Voermans 2004, p. 2). For example, the junior minister for EU affairs Nicolai stated that at least 60 per cent of Dutch legislation derives from Brussels. These relatively high percentages are also encountered in Dutch academic literature (Drijber 2001, p. 31). The '80 per cent' figure is also reported, this time within the context of environmental policy (Dijstelbloem *et al.* 2004, p. 103).¹¹⁶

The following Table (1) from their study shows the impact of European directives (in terms of a proportion percentage) on the total number of Dutch laws at the end of July 2003. The authors note that it "omits transpositions through a decree made by a statutory trade association (82 rules, 4.8 per cent) and those that fall under the category of 'others' (122 rules, 7.2 per cent), that is, a category consisting of non-binding legal instruments such as announcements and circulars". These omissions had no substantial effect on their findings.

¹¹⁵ The authors used *Europmaat*, an electronic database of the SDU, the former State Printing Office. This databank is a combination of CELEX and of the Register of Implementing Rules (Register Uitvoeringsregelingen Nederland) of the institute for international law, the T.M.C. Asser Institute.

¹¹⁶ "The EU as lawmaker: the impact of EU directives on national regulation in the Netherlands", Bovens and Yesilkagit, *Public Administration* vol 88 No.1, 2010, p. 60

| Type of rule | Total of national rules | Transposition rules | Impact (%) |
|-----------------------|-------------------------|---------------------|------------|
| Laws | 1.781 | 225 | 12.6 |
| Royal decrees | 2.625 | 517 | 19.7 |
| Ministerial decisions | 7.544 | 760 | 10.1 |
| Total | 11.950 | 1502 | 12.6 |

Bovens and Yesilkagit examine the impact of EU law on all national regulations and on each of the three legal instruments most often used, namely: formal laws (acts of parliament), orders in council and ministerial decisions (delegated or secondary legislation which does not involve Parliament, although Orders in Council are scrutinised by the Council of State and can be recalled by Parliament).

Table 2 shows the impact of national transposition measures of EU laws in different policy areas as a proportion of total output on 31 July 2003:¹¹⁷

TABLE 2 Share and distribution of implementing rules per ministry

| | Acts | | Orders in council | | Ministerial decrees | | Total | |
|-------------------------|------|----------|-------------------|----------|---------------------|----------|-------|----------|
| | EU % | N = 100% | EU % | N = 100% | EU % | N = 100% | EU % | N = 100% |
| Ministry | | | | | | | | |
| PM's office | 2.3 | 44 | 0.00 | 135 | 0.00 | 46 | 0.4 | 225 |
| Foreign affairs | 0.00 | 89 | 2.9 | 35 | 0.7 | 138 | 0.8 | 262 |
| Interior affairs | 2.2 | 230 | 2.9 | 309 | 1.3 | 553 | 1.9 | 1092 |
| Defence | 0.00 | 37 | 0.7 | 148 | 0.00 | 105 | 0.3 | 290 |
| Economic affairs | 17.3 | 81 | 33.3 | 135 | 16.1 | 434 | 19.9 | 650 |
| Finance | 15.2 | 231 | 9.1 | 154 | 12.2 | 410 | 12.5 | 795 |
| Justice | 9.7 | 360 | 5.4 | 294 | 5.4 | 636 | 6.6 | 1290 |
| Agriculture | 29.3 | 58 | 39.5 | 190 | 18.5 | 1122 | 21.9 | 1370 |
| Education | 3.5 | 144 | 2.6 | 233 | 0.4 | 1013 | 1.1 | 1390 |
| Social affairs | 12.1 | 165 | 9.8 | 236 | 6.0 | 586 | 7.9 | 987 |
| Traffic and water | 20.3 | 133 | 25.5 | 255 | 9.7 | 1098 | 13.4 | 1486 |
| Health | 10.0 | 110 | 30.0 | 313 | 18.4 | 852 | 20.6 | 1275 |
| Housing and environment | 14.1 | 99 | 28.7 | 223 | 14.9 | 551 | 18.3 | 873 |

The authors further note that “nearly 90% of the European directives in the Netherlands are transposed through delegated legislation (that is, 221 orders in council and 551 ministerial decisions against 99 laws), in which no involvement of parliament is required”.¹¹⁸ Although there are considerable differences in legislative tradition among the 14 Government departments in the Netherlands, Bovens and Yesilkagit find that departments “generally employ the same type of rules in similar proportions both when transposing EU directives and when producing national rules”. The authors emphasise “departmental autonomy” as a defining feature of Dutch central government both in general terms and in the implementation of EU directives, which is “reflected in the extensive use of ministerial decisions”. They conclude that if orders in council are included in the overall calculation of implementing measures, “the dominance of the executive *vis-à-vis* parliament is quite overwhelming”.¹¹⁹ Bovens and Yesilkagit note other factors and influences besides directives which should be taken into account in an analysis of EU influence:

¹¹⁷ Ibid p.64

¹¹⁸ Ibid p.65

¹¹⁹ Bovens and Yesilkagit, p. 68

The impact of EU directives on the Dutch legislature is fairly limited when compared to the claims that are made by academics and politicians. What do these low percentages say about the general impact of the EU on The Netherlands? No one will deny that the process of European unification has had an enormous influence on daily life in the member states. After all, the EU affects national systems not only via directives, but also via other instruments such as regulations, treaties, case law, ECJ jurisprudence and decrees. Of inestimable importance to daily life was, for example, the implementation of the EMU, which was accompanied by the introduction of a single currency, as a result of which the national member states who signed up to the EMU relinquished all monetary autonomy. In addition, the European Court of Justice plays an important role in interpreting these treaties and in the enforcement of regulations and directives. In the past, rulings handed down by the European Court – in areas such as social security, employment law and student loan systems – have regularly either caused new legislation to be enacted in The Netherlands, or existing legislation to be amended.¹²⁰

Researchers at the *TMC Asser Instituut* in the Netherlands expanded on this study of EU directives in a “[Research project on the influence of European law on Dutch national law](#)”. In February 2005 a group of experts decided to carry out quantitative research, taking into account not only EU directives, but EU regulations, decisions, joint actions and Court of Justice case law. In September 2005 the Dutch Ministries of Foreign Affairs and Justice asked the Asser Instituut to conduct pilot research in the policy fields of education and the environment. The project found that in the area of education it appeared that “at least 6% of the legislation applying in the Netherlands has been influenced by European legislation and jurisdiction”, while in the field of the environment “this percentage appeared to be remarkably higher, i.e. no less than 66%. That is including the influence of the regulations directly applying in the Netherlands”.

The authors believe that the research method developed and applied by the Asser Instituut would lend itself to application in other policy fields and could therefore be established as a way of monitoring developments and trends on a broad scale. They draw attention to the need to make the European influence on legislation in the Netherlands more clearly visible on the Dutch Government website <http://wetten.nl>, and recommend that the European influence on national legislation should be structurally and clearly mentioned in the Bulletins of Acts, Orders and Decrees and Dutch Government Gazettes

6.6 Ireland

[Fine Gael's European election manifesto 2009](#) included a section on the implementation of EU law and the 80% claim:

Most EU directives are incorporated into Irish law through what are called ‘Statutory Instruments’. Between 1992 and 2009 in Ireland 588 Acts and 10,725 Statutory Instruments were passed. 114 Acts contain at least one reference to European legislation while 3,050 of the 10,725 Statutory Instruments contain at least one reference to European legislation. That means that of Irish legislation from 1992 to 2009, then, only 3,164 out of 11,313 Acts and Instruments contain any reference whatsoever to European legislation. The actual total is 27.97%, far off the mythical 80%.

¹²⁰ Ibid

The eurosceptic academic, Anthony Coughlan, wrote an Open Letter to Mark Hennessy, Political correspondent of the *Irish Times*, about “inaccurate Fine Gael claim on EU laws”, pointing to the inherent difficulties posed by the absence of figures for regulations, many of which relate to agriculture and fisheries, and decisions. He makes other objections to the Fine Gael figure of 28%:

Another point undermining Fine Gael's figure is that all Acts of the Oireachtas implementing EU directives do not mention the EU or refer to the relevant EU directive as their source, although certainly some do. So the Fine Gael statement that only one-fifth of Acts of the Oireachtas make reference to EU legislation does not cover all EU-derived Acts. [...]

Moreover, all EU-derived Acts of the Oireachtas and statutory instruments should be counted, not just those that explicitly mention the EU.¹²¹

6.7 Belgium

In 2008 Alexandra Colen, a *Vlaams Belang* Member of the Belgian Federal Chamber of Representatives, asked the Belgian “authorities” about the number of EU-based Belgian laws:

They informed me that between 2000 and 2005, 1,395 laws were passed in Belgium, of which 551 were bills that incorporate EU directives into Belgian legislation. That is 39.5 percent. The ratio is increasing, however. While the figure was 31.3% in 2000, it had increased to 51.8% by 2005.¹²²

6.8 Non-EU States

Norway

Norway has twice rejected EU membership in referendums, but is a member of the European Economic Area and therefore implements single market legislation. The study by Ellen Mastenbroek and Aebastiaan Princen of January 2010 found that some 45% of Norwegian civil servants stated that they were affected “to some extent or more” by the EU and/or EEA Agreement.¹²³

Iceland

Iceland is a potential candidate country for EU membership and an EEA member. Reports in the foreign press at the end of July 2009 stated that the country had adopted two-thirds of existing EU legislation. However, this has been questioned by Hjörtur J. Guðmundsson, a board member of Heimssýn, the Icelandic organisation opposing EU membership:

In the spring of 2005 research carried out by the EFTA [European Free Trade Association] secretariat in Brussels at the request of the Icelandic foreign ministry, however, revealed that only 6.5 percent of all EU legislation was subjected to the EEA agreement between 1994 (when it came into force) and 2004.

In March 2007 a report published by a special committee on Europe commissioned by the Icelandic prime minister, showed that some 2,500 pieces

¹²¹ 25 May 2009 at <http://www.politics.ie/europe/71638-irish-times-wrong-about-30-eu-laws-claim.html>

¹²² 18 November 2008 *SOS Europe: Outsourcing Democracy* at <http://www.hudsonny.org/2008/11/sos-europe-outsourcing-democracy.php>

¹²³ *Public Administration*, Vol. 88 Issue 1 2010

of EU legislation had been adopted in Iceland during the first decade of the EEA agreement. The study also found that about 22 percent of Icelandic laws passed by the parliament originated from the EU during the same p

The totality of EU legislation is according to various sources around 25,000 to 30,000 legal acts. Total Icelandic laws and regulations, however, are around 5,000. Of those there are less than 1,000 laws, the rest is regulations. Even if the entire legislation of Iceland came from the EU it would only be around 20 percent of the total *acquis communautaire*.

So how is it possible to reach the conclusion that Iceland has already adopted "at least two-thirds of European legislation"?¹²⁴

¹²⁴ *EUObserver* 29 July 2009 at <http://euobserver.com/9/28502/?rk=1>

Appendix 1 UK Acts implementing EU obligations

The following list is of UK Acts from 1980 to 2009 that have been in any way constrained or affected by an EU law or Treaty obligation. It includes Acts which have implemented an EU law or Treaty Article wholly or in part, including those which simply refer to an EU obligation or define an EU term for the purposes of an Act.¹²⁵ For the most part, the EU element of these Acts is minimal and has been introduced when domestic legislation was amended for other purposes.¹²⁶ The importance of the EU element of each Act is indicated by asterisks as set out below, and where there is no asterisk, the EU element is no more than a passing reference:

* Act which implements one or two EU directives, regulations or decisions, or aspects of these, but not as the main element or purpose of the Act.

** Act which implements three or more EU instruments, or aspects of these, but not as the main elements of the Act.

*** Act whose main purpose is to implement EU legislation

| Year | Total number of Acts | Acts linked to an EU obligation |
|------|----------------------|---|
| 1980 | 44 | *Magistrates' Courts Act 1980 Solicitors (Scotland) Act 1980 *Highways Act 1980 *Highlands and Islands Air Services (Scotland) Act 1980 *Finance Act 1980 |
| 1981 | 49 | Animal Health Act 1981 *Fisheries Act 1981 *Public Passenger Vehicles Act 1981 *Wildlife and Countryside Act 1981 ***European Communities (Greek Accession) Act 1981 |
| 1982 | 37 | *Civil Aviation Act 1982 *Civil Jurisdiction and Judgments Act 1982 *Merchant Shipping(Liner Conferences) Act 1982 |
| 1983 | 41 | *Medical Act 1983 |
| 1984 | 47 | *Finance Act 1984 *Health and Social Security Act 1984 *Telecommunications Act 1984 *Dentists Act 1984 *Matrimonial and Family Proceedings Act 1984 Parliamentary Pensions etc. Act 1984 (*Roads (Scotland) Act 1984) |
| 1985 | 63 | *Companies Act 1985 *Child Abduction and Custody Act 1985 Administration of Justice Act 1985 *Weights and Measures Act 1985 ***European Communities (Spanish and Portuguese Accession) Act 1985 |
| 1986 | 55 | *Agriculture Act 1986 Company Directors Disqualification Act 1986 |

¹²⁵ For example, "Financial holding company" has the meaning given by Article 1(21) of Council Directive 2000/12/EC of the European Parliament and the Council", *Bank of England Act 1998*

¹²⁶ Source: LexisNexis Butterworths and the UK Statute Law databases

| Year | Total number of Acts | Acts linked to an EU obligation |
|------|----------------------|---|
| | | Gas Act 1986 *Insolvency Act 1986 *Building Societies Act 1986 **Animals (Scientific Procedures) Act 1986 *Finance Act 1986 ***European Communities (Amendment) Act 1986 (Single European Act) |
| 1987 | 42 | *Consumer Protection Act 1987 |
| 1988 | 48 | *Copyright, Designs and Patents Act 1988 Income and Corporation Taxes Act 1988 **Road Traffic Act 1988 Merchant Shipping Act 1988 Immigration Act 1988 Firearms (Amendment) Act 1988 ***European Communities (Finance) Act 1988 |
| 1989 | 38 | Electricity Act 1989 *Water Act 1989 *Social Security Act 1989 Representation of the People Act 1989 Extradition Act 1989 ***Employment Act 1989 *Companies Act 1989 |
| 1990 | 41 | *Finance Act 1990 **Environmental Protection Act 1990 Town and Country Planning Act 1990 Contracts (Applicable Law) Act 1990 *Broadcasting Act 1990 |
| 1991 | 57 | Water Industry Act 1991 *Water Resources Act 1991 Civil Jurisdiction and Judgments Act 1991 *Agriculture and Forestry (Financial Provisions) Act 1991 Planning and Compensation Act 1991 |
| 1992 | 54 | **Friendly Societies Act 1992 Taxation of Chargeable Gains Act 1992 *Transport and Works Act 1992 *Finance (No. 2) Act 1992 *Social Security Administration (Northern Ireland) Act 1992 |
| 1993 | 44 | **Finance Act 1993 **Railways Act 1993 **/**Criminal Justice Act 1993 Agriculture Act 1993 ***European Parliamentary Elections Act 1993 ***European Economic Area Act 1993 ***European Communities (Amendment) Act 1993 (Treaty on European Union) |
| 1994 | 37 | *Finance Act 1994 *Coal Industry Act 1994 Criminal Justice and Public Order Act 1994 **/**Trade Marks Act 1994 *Value Added Tax Act 1994 *Vehicle Excise and Registration Act 1994 ***European Union (Accessions) Act 1994 (Austria, Finland and Sweden + Norway) |

| Year | Total number of Acts | Acts linked to an EU obligation |
|------|----------------------|---|
| 1995 | 48 | *Finance Act 1995 *Environment Act 1995 **Goods Vehicles (Licensing of Operators) Act 1995 Merchant Shipping Act 1995 Olympic Symbol etc (Protection) Act 1995 Criminal Procedure (Scotland) Act 1995 *Children (Scotland) Act 1995 |
| 1996 | 54 | **Finance Act 1996 Police Act 1996 *Employment Rights Act 1996 Defamation Act 1996 *Broadcasting Act 1996 |
| 1997 | 65 | *Finance Act 1997 Police Act 1997 *Nurses, Midwives and Health Visitors Act 1997 *Plant Varieties Act 1997 Special Immigration Appeals Commission Act 1997 *Architects Act 1997 |
| 1998 | 43 | *Bank of England Act 1998 **Competition Act 1998 Police (Northern Ireland) Act 1998 *Data Protection Act 1998 ***European Communities (Amendment) Act 1998 (Treaty of Amsterdam) |
| 1999 | 30 | *Finance Act 1999 *Employment Relations Act 1999 Greater London Authority Act 1999 Immigration and Asylum Act 1999 ***Pollution Prevention and Control Act 1999 *Food Standards Act 1999 *Welfare Reform and Pensions Act 1999 |
| 2000 | 42 | **Finance Act 2000 **Financial Services and Markets Act 2000 Political Parties, Elections and Referendums Act 2000 Postal Services Act 2000 Regulation of Investigatory Powers Act 2000 **Terrorism Act 2000 Transport Act 2000 **Countryside and Rights of Way Act 2000 |
| 2001 | 25 | ***European Communities (Finance) Act 2001 *Anti-terrorism, Crime and Security Act 2001 **Capital Allowances Act 2001 *Appropriation Act 2001 (and No. 2) *Finance Act 2001 *Social Security Fraud Act 2001 |
| 2002 | 44 | Copyright (Visually Impaired Persons) Act 2002 **Enterprise Act 2002 ***European Parliamentary Elections Act 2002 Nationality, Immigration and Asylum Act 2002 Police Reform Act 2002 *Proceeds of Crime Act 2002 *Finance Act 2002 Export Control Act 2002 ***European Communities (Amendment) Act 2002 (Treaty of Nice) |

| Year | Total number of Acts | Acts linked to an EU obligation |
|------|----------------------|---|
| 2003 | 45 | *Finance Act 2003 Communications Act 2003 *European Parliament (Representation) Act 2003 *Income Tax (Earnings and Pensions) Act 2003 Sexual Offences Act 2003 *Crime (International Cooperation) Act 2003 *Extradition Act 2003 *Criminal Justice Act 2003 *Communications Act 2003 *Waste and Emissions Trading Act 2003 ***European Union (Accessions) Act 2003 (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and the Slovak Republic) |
| 2004 | 38 | Patents Act 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 *Employment Relations Act 2004 *Civil Partnership Act 2004 *Pensions Act 2004 *Finance Act 2004 *Human Tissue Act 2004 *Civil Contingencies Act 2004 |
| 2005 | 24 | *Income Tax (Trading and Other Income) Act 2005 International Organisations Act 2005 Railways Act 2005 Serious Organised Crime and Police Act 2005 *Finance Act *Finance Act (No. 2) Act 2005 |
| 2006 | 56 | *Finance Act 2006 *Companies Act 2006 *Violent Crime Reduction Act 2006 *Natural Environment and Rural Communities Act 2006 Government of Wales Act 2006 *Police and Justice Act 2006 *Animal Welfare Act 2006 *London Olympic Games and Paralympic Games Act 2006 ***European Union (Accessions) Act 2006 (Bulgaria and Romania) |
| 2007 | 31 | *Finance Act 2007 Greater London Authority Act 2007 *Legal Services Act 2007 *Serious Crime Act 2007 *Income Tax Act 2007 *Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 |
| 2008 | 33 | ***European Communities (Finance) Act 2008 **Counter-Terrorism Act 2008 *Criminal Justice and Immigration Act 2008 Energy Act 2008 *Banking (Special Provisions) Act 2008 Employment Act 2008 Climate Change Act 2008 *Pensions Act 2008 **Finance Act 2008 ***European Union (Amendment) Act 2008 (Treaty of Lisbon) |
| 2009 | 27 | Banking Act 2009 *Appropriations Acts I and II **Corporation Tax Act 2009 *Finance Act 2009 Borders, Citizenship and Immigration Act |

| Year | Total number of Acts | Acts linked to an EU obligation |
|-------------|-----------------------------|--|
| | | Political Parties and Elections Act Parliamentary Standards Act *Marine and Coastal Access Act 2009 Coroners and Justice Act 2009 |

Appendix 2 Sectoral snapshots

2003-04 'snapshot'

Ministry of Defence

Mr. Ingram: The Ministry of Defence did not sponsor any primary legislation during the 2002-03 session. In the case of secondary legislation the Department was responsible for the making of 11 general statutory instruments, none of which was introduced to implement EU requirements.¹²⁷

Department of Transport

Dr. Howells: No primary legislation sponsored by the Department for Transport in the 2002-03 Parliamentary session was introduced to implement EU requirements. The secondary legislation sponsored by the Department comprised both general and local instruments. The proportion of all these instruments which were introduced to implement EU requirements was approximately 1 per cent. In the case of general instruments alone the proportion was approximately 13 per cent.¹²⁸

Department for Trade and Industry

Ms Hewitt: My Department sponsored four Bills during the 2002-03 session, of which 25 per cent. implemented EU requirements. Of the 141 statutory instruments put through Parliament by my Department in 2002-03 session, 26 per cent. were introduced to implement EU requirements.¹²⁹

Department for Environment, Food and Rural Affairs

Mr. Bradshaw: The information is as follows:

(a) In 2002-03, 50 per cent. of primary legislation sponsored by the Department was introduced to implement EU requirements.

(b) During the same period, in the case of secondary legislation my Department was responsible for the making of 120 Statutory Instruments, of which, 57 per cent. were introduced to implement EU requirements.¹³⁰

Department for Education and Skills

Alan Johnson: In 2002 and to date in 2003, the percentage of (a) primary and (b) secondary legislation sponsored by the Department for Education and Skills introduced to implement EU requirements is as follows: (a) 0 per cent. Primary legislation (b) 1.2 per cent. Secondary legislation.¹³¹

Department for Work and Pensions

Mr. Pond: The Department did not sponsor any primary legislation during the 2002-03 Session (13 November 2002-20 November 2003). The Department was responsible for the making of 97 General Statutory Instruments during the 2002-03 Session (including 11 from the Health and Safety Executive), some of which consolidated and revoked previous instruments. 9.27 per cent. of the

¹²⁷ HC Deb 5 January 2004 c 31W

¹²⁸ HC Deb 5 January 2004 c49W

¹²⁹ HC Deb 5 January 2004 cc117-8W

¹³⁰ HC Deb 18 December 2003, c1027W

¹³¹ HC Deb 17 December 2003, c959W

total (nine Statutory Instruments, including seven from the Health and Safety Executive) give effect to EU requirements.¹³²

Office of the Deputy Prime Minister

Yvette Cooper: The Office of the Deputy Prime Minister did not sponsor any primary or secondary legislation during the 2002-03 session that implemented EU requirements.¹³³

Department of Health

Mr. Hutton: During 2002-03, the Department sponsored no primary legislation to implement European Union measures and three per cent of the 208 pieces of secondary legislation were of EU origin.¹³⁴

Cabinet Office

Mr. Alexander: None.¹³⁵

Department for Culture, Media and Sport

Mr. Caborn: The information is as follows:

(a) As regards primary legislation sponsored by my Department during the 2002-03 session, none of the provisions for which my Department was responsible implemented EU requirements. This answer excludes the provisions in the Communications Act which were the responsibility of the Department of Trade and Industry. It also excludes provisions in that Act which were the responsibility of my Department, but which re-enacted previous provisions implementing EC requirements.

(b) As regards secondary legislation for which my Department was responsible during the 2002-03 session, one statutory instrument of four pages implemented EC requirements. This equated roughly to 12 per cent. of the secondary legislation which my Department was responsible for making during the period (calculated by reference to the total number of pages of such secondary legislation).¹³⁶

Home Office

Caroline Flint: The Home Office sponsored five Bills during the 2002-03 Session, which made a total of approximately 868 pages once enacted. One of the Bills (now the Crime (International Co-operation) Act 2003, 90 pages) predominantly implements EU requirements. Another (now the Extradition Act, 136 pages long) partly implements EU requirements. The other three Bills were not introduced to implement EU requirements.

Of the 240 Statutory Instruments produced by the Home Office during the same Session that fell to be considered by the Joint Committee on Statutory Instruments only five were introduced to implement EU requirements. These Instruments made up only 74 pages out of the total of 438 pages of Instruments produced during the Session.¹³⁷

¹³² HC Deb 15 December 2003, c695W

¹³³ HC Deb 15 December 2003, c751W

¹³⁴ HC Deb 15 December 2003, c766W

¹³⁵ HC Deb 4 December 2003, c114W

¹³⁶ HC Deb 4 December 2003, c165W

¹³⁷ HC Deb 3 December 2003, c69W

2009-10 snapshot

The timeframe for this snapshot varied, depending on Government sources:

Treasury

Sarah McCarthy-Fry said estimates were not available for the Treasury.¹³⁸

Energy and climate change

David Kidney said it was “very difficult to provide precise figures for the proportion of UK legislation that stems from the European Union” and did not give a figure for his department.¹³⁹

Foreign and Commonwealth Office

Chris Bryant said the same as David Kidney.¹⁴⁰

Culture, Media and Sport

Siôn Simon listed three statutory instruments (including regulations) arising from obligations in EU law in 2005.¹⁴¹

Communities and Local Government

Barbara Follett listed 17 SIs made by her department.¹⁴²

Justice

Michael Wills: [...] Since 2001, the Ministry of Justice and its predecessor departments (the Lord Chancellor's Department and the Department for Constitutional Affairs) have been responsible for 17 statutory instruments made using the powers in the European Communities Act 1972.¹⁴³

Health

Phil Hope: [...] Since 2001 the Department has made 139 statutory instruments in order to meet obligations arising from EU Law, under powers contained in the European Communities Act 1972.¹⁴⁴

Home Office

David Hanson: Central records of statutory instruments made under specific powers have only been maintained by the Statutory Instruments Registrar since 2001. There are no central records maintained of "other regulations". Since that time the Home Office has made 33 statutory instruments to meet obligations arising from EU law, under powers contained in the European Communities Act 1972.¹⁴⁵

Children, Schools and Families

Ms Diana R. Johnson: The Department for Children, Schools and Families has made one set of regulations by way of statutory instrument in this Parliament to meet obligations arising from EU law.¹⁴⁶

¹³⁸ [HC Deb 25 June 2009 c1062W](#)

¹³⁹ [HC Deb 16 July 2009 c 594W](#)

¹⁴⁰ [HC Deb 16 July 2009 c 608W](#)

¹⁴¹ [HC Deb 7 December 2009 c 102W](#)

¹⁴² [HC Deb 7 December 2009 c 61W](#)

¹⁴³ [HC Deb 9 December 2009 c 433W](#)

¹⁴⁴ [HC Deb 9 December 2009 c 476W](#)

¹⁴⁵ [HC Deb 10 December 2009 c565W](#)

¹⁴⁶ [HC Deb 14 December 2009 c 686W](#)

Defence

Bill Rammell: Since [2001], the Department has made no statutory instruments to meet obligations arising under EU Law, under powers contained in the European Communities Act 1972.¹⁴⁷

Business, Innovation and Skills

Pat McFadden: [...] Since that time [2001] the Department and its predecessors have made 235 statutory instruments to meet obligations arising from EU Law, under powers contained in the European Communities Act 1972.¹⁴⁸

Transport

Sadiq Khan: [...] Central records show that since the Department for Transport was created in May 2002, it has made 138 statutory instruments to meet obligations arising from EU Law, under powers contained in the European Communities Act 1972.

EU law obligations may also be met by statutory instruments made under Acts other than the 1972 Act. According to a database held by the Department for Transport, the Department has made a total of 171 statutory instruments since the beginning of 2004 to meet EU law obligations. This number includes those instruments made under the 1972 Act as well as other Acts. The cut-off date used for measuring the number of statutory instruments made was 4 December 2009.¹⁴⁹

Environment, Food and Rural Affairs

Dan Norris: [...] Since that time my Department has made 445 statutory instruments to meet obligations arising from EU Law, under powers contained in the European Communities Act 1972

DEFRA has maintained internal statistics on statutory instruments for the years 2007, 2008 and 2009, but not "other regulations", made in connection with obligations arising from EU law. These statistics do not distinguish between those made under the European Communities Act 1972 and other powers, or between those that implement EU Law and those otherwise connected with it (e.g. fees).¹⁵⁰

Work and Pensions

Jonathan Shaw: [...] Since 2001 my department has made 39 statutory instruments (including one for which the Privy Council Office was technically responsible) under powers contained in the European Communities Act 1972.¹⁵¹

¹⁴⁷ [HC Deb14 Dec 2009 c 832W](#)

¹⁴⁸ [HC Deb 14 December 2009 c 940W](#)

¹⁴⁹ [HC Deb 15 December 2009 c 970W](#)

¹⁵⁰ [HC Deb 28 January 2010 c 1007W](#)

¹⁵¹ [HC Deb 20 January 2010, cc354W-356W](#)

Appendix 3 Other views and studies

European institutions

European Commission

Jacques Delors, the European Commission President from 1985 to 1994, predicted in a speech to the European Parliament in 1988 that by 1998 80% of economic legislation, and perhaps even fiscal and social legislation, would be of Community origin.¹⁵² These figures were reiterated the following year by M. Delors when he addressed the Trades Union Congress.

European Parliament

Hans-Gert Pöttering

The European People's Party (EPP) MEP and former EP President, Hans-Gert Pöttering, said just ahead of the June 2009 EP elections:

Elections will decide the composition of the European Parliament for the next five years. Today approximately 75% of the European Union legislation is decided by the European Parliament together with the Council of Ministers and has a direct impact in our daily lives.¹⁵³

The context of his 75% claim, apparently misunderstood by some observers, is the approximate percentage of EU laws in which the EP has a decision-making role; not the proportion of national laws based on EU legislation. Mr Pöttering was using the figure to emphasise the legislative importance of the EP as an EU institution and co-legislator.

Richard Corbett

The former European Socialist MEP, Richard Corbett, analysed claims by Open Europe (see below) in an article called "Open Europe - Statistical distortion, factual inaccuracy and contradiction". In addition to citing the German claims mentioned above, he comments on studies in other EU Member States:

The Poles have, since 2008, used an innovative feature, by putting an EU sign next to those laws which implement EU agreements and obligations. According to the data, 32 of the 128 legal acts adopted by the Polish Sejm (Senate) that year were dealing with EU issues, giving us a figure of 25% (in a new Member State, still catching up on its backlog). The Swedes use a similar system to measure the proportion of EU legislation, looking at laws adopted with a reference to a Celex database number to define whether a law is of EU origin - producing an average figure of 6.3% between 1995 and 2005.

Of equal interest is the data for Lithuania, which only joined the EU in 2004, and has figures for both before (when they were implementing the EU's *acquis communautaire* that all countries must adopt before becoming a member state) and after their accession. The data provided by the Lithuanian parliament states that 12.77% of Lithuanian laws were "eurointegration laws" between 2000-2004, with this figure having increased to 19% between 2004 and 2008, when they too were catching up. [...]

¹⁵² EP Debates, 367/140, 6 July 1988

¹⁵³ EP press release 4 June 2009 at http://www.europarl.europa.eu/news/expert/infopress_page/008-56662-155-06-23-901-20090604IPR56661-04-06-2009-2009-false/default_en.htm. See also See <http://www.youtube.com/watch?v=dmK-f88gcx8>

Meanwhile, a study by the Finnish Parliament looking at Finnish legislation found that, on average, 12% of national law was "EU influenced" (600 out of a total number of 5000 laws) between 1995 and 2003.¹⁵⁴

Think tanks and academic studies

Open Europe

In an Open Europe paper called "Out of Control? Measuring a decade of EU regulation", February 2009, Mats Persson, Stephen Booth and Sarah Gaskell look in particular at the amount of EU legislation with an economic impact on business, the public sector or the "third sector". Their assessment concludes:

The average annual proportion of the absolute number of regulations coming from the EU is 50.4 percent, with a range of 63.2 percent in 1998, to 38.3 percent in 2002. In this measure, we have only included regulations which, according to the corresponding IA, have any economic impact on business, the public sector or the third sector. We have therefore avoided the fallacy of comparing regulations of economic significance to those with a minor or merely administrative function.¹⁵⁵

Arena working paper

The Finnish academic, Tapio Raunio, explored Europeanisation in a paper in January 2009, commenting on the tendency towards purely statistical assessments and attempting to explain national disparities:

[...] we lack agreement on how to measure or operationalize the Europeanization of national parliaments. The existing literature has exclusively focused on law production. [...]

One must also be aware of the measurement problems involved in attempting to conduct comparative research on the share of 'EU-related' legislation enacted by national parliaments.¹⁵⁶ The production of laws differs between EU member states, with some parliaments approving considerably less laws than others. In some EU countries the adoption of legislation may be delegated more extensively to the government that issues decrees in the place of laws processed by parliaments. Perhaps the most significant problem is measuring the indirect or implicit influence of European integration. Apart from policy diffusion resulting from OMC and other forms of intergovernmental policy coordination, governments may import policies from other EU countries or follow EU's recommendations without explicitly acknowledging this. This applies particularly to policy sectors – most notably foreign and defence policies – where the outputs are normally not laws but other types of decisions.¹⁵⁷

¹⁵⁴ "What is the truth about EU legislation?" European Movement at http://www.euromove.org.uk/fileadmin/files_euromove/downloads/090223_open_europe_regulation.doc

¹⁵⁵ *Open Europe* "Out of Control? Measuring a decade of EU regulation", February 2009, Mats Persson with Stephen Booth & Sarah Gaskell Edited by Lorraine Mullally, at <http://www.openeurope.org.uk/research/outofcontrol.pdf>

¹⁵⁶ FN 25: For a review of this literature and a thoughtful discussion on the methodological problems and how to overcome them, see Töller (2007, 2008).

¹⁵⁷ Tapio Raunio, "National parliaments and European integration: What we know and what we should know", ARENA Working Paper 02/2009, January 2009 at http://www.arena.uio.no/publications/working-papers2009/papers/WP_02_09.pdf

University of North Carolina

In a paper prepared for the European Union Studies Association (EUSA) Tenth Biennial International Conference in May 2007, Ellen Mastenbroek and Sebastiaan Princen comment on research trends in the area of Europeanisation:

In recent years, the question of the EU's net impact has increasingly been recognized as an important one. First, various studies have sought to address the EU's share in domestic legislation. They have done so by counting the share of domestic laws and regulations that result from European directives (Blom-Hansen and Christensen 2004; Bovens and Yesilkagit forthcoming; Page 1998). These studies have consistently found shares of EU-inspired legislation ranging from 10 to 20%— a relatively small share when compared to the estimates of 70% or more that are often mentioned by Europhoric officials and even in well-established textbooks on the EU. However, these quantitative studies have been criticized for their narrow focus: they only look at the impact of EU directives, whereas the EU also has a (direct) effect through regulations and arguably an (indirect) effect through the 'pre-structuring' of domestic policy options (cf. Knill and Lehmkuhl 2002).

A second way of assessing the EU's actual impact on the member states has focused on the effect on domestic institutions rather than policies. Recent years have seen a proliferation of research seeking to estimate the overall extent to which domestic administrations have been affected by European integration. Most of these surveys have been conducted in Nordic countries. In a survey among 'EU specialists' in the civil service of four Nordic countries, 31 to 64% of the respondents indicated that 'the overall consequences of EU/EEA policies and regulations on their department' was 'fairly large' or 'very large' (Lægneid et al. 2004). In another survey among a random sample of civil servants in Norwegian central government ministries and directorates, around 45% of all respondents stated that they were affected 'to some extent or more' by the EU and/or EEA Agreement (Egeberg and Trondal 1999, 135).¹⁵⁸

Edward Page points out that counting the national laws that implement EU laws (SIs in the case of the UK) is interesting, but is not the final word in assessing the impact of the EU:

SIs offer an interesting means of assessing the scope of the impact of EU legislation on British public policy. This method cannot replace the more conventional approach of examining the contribution of European legislation to the framework of public policy in particular functional areas, but offers a useful additional perspective.¹⁵⁹

Bovens and Yesilkagit make the point that while generalisations about the impact are possible, the overall picture is much more complicated:

[...] if we read the claims above more closely, it is clear that with the impact of the European Union is meant the impact of formal legal outputs of the various institutions of the European Union. Meant are the combined effects of regulations, directives, decisions, recommendations, and the decisions and jurisprudence of the European Court of Justice. If we confine ourselves to this more narrow form of Europeanisation, we agree that for certain policy areas,

¹⁵⁸ "More than an add-on? The Europeanization of the Dutch civil service", Montreal, Canada, 17-19 May 2007 at <http://www.unc.edu/euce/eusa2007/papers/mastenbroek-e-08j.pdf> NB Work in progress, not to be quoted.

¹⁵⁹ Edward Page, "The Impact of European Legislation on British Public Policy Making: A Research Note", Winter 1998, *Public Administration*, 76, 803-809. Page p 808

e.g. agriculture, it is likely that the combined impact of, say, regulations and directives yield a very high impact factor. But then again, there exists no empirical evidence that this impact is about 80 per cent, and that certain other policy areas have a lower impact degree, or that each member state is affected to the same extent. What is needed therefore, is a more specific operationalization of what is exactly meant by impact, followed by an empirical assessment of the degree of impact. This is, however, an enormous task.¹⁶⁰

And:

Our figures also offer no insight into the extent to which the rules originating from a European directive affect the daily lives of citizens and enterprises. Although it may be true that only a limited part of the rules derives from ‘Brussels’, these could well be the rules with relatively the greatest impact on daily affairs in the Netherlands. An indication that this is not as far-fetched as it may sound can be found in a departmental study that examined the administrative burdens caused by legislation produced by the Ministry of Justice. It concluded that nearly 75% of the administrative burdens imposed on Dutch businesses stem from regulations imposed by European rules or other international agreements. The main culprit was, however, one single act, i.e. the Annual Accounts Act. Had they left this Act out of consideration, less than 40% of the administrative burden would have had an international origin.¹⁶¹

FN: Cf. the Joint report of the Mixed Justice Committee, the Steering Group RIVer and the baseline measurement Guidance Committee (2004), Project Reductie Informatieverplichtingen (RIVer), The Hague: Ministry of Justice, in particular pages 27 and 34.

Annette Elisabeth Töller is critical of an approach which equates Europeanisation with the transposition of directives - finding Europeanisation where searching for it and neglecting many other “more contingent or even idiosyncratic forms of Europeanization”. She prefers the broader category of “European impulse”, which allows for a consideration of “all kinds of (possibly unexpected) sources of Europeanization”. She notes that the quantitative approaches do not take account of qualitative aspects: they do not make clear whether Europeanised laws are important or irrelevant, or whether the European impulse caused only minor changes or forced the State to introduce totally new regulation, for example.¹⁶² Finally, Töller considers the important matter of “soft law” both in the form of Commission delegated legislation and via the OMC:

... we have a broad range of legally non binding measures, which nonetheless can be relevant sources of Europeanization. It makes sense to distinguish those measures that are adopted (mostly by the Commission) in the context of existing Community competences in the form of soft law, which although not legally binding is usually followed by the member states or individuals (e.g. Hofmann 2006)¹⁶³ from those in fields where there are no community competences and “soft” coordination methods, such as the OMC, are applied. Here the mechanisms of Europeanization range from policy-learning¹⁶⁴ to deliberate adaptation of policies (Bulmer/Radaelli 2005: 349).¹⁶⁵ [...] What

¹⁶⁰ Bovens and Yesilkagit, 2004

¹⁶¹ Bovens and Yesilkagit, 2009

¹⁶² http://www.fojus.uni-oldenburg.de/download/diskussionspapier1_2007toeller.pdf

¹⁶³ FN 19: On the Europeanization effects of such soft law in the field of state aid policy see e.g. Schmidt et al. 2007: 21.

¹⁶⁴ FN 20: Learning as a mechanism of Europeanization can of course occur as a consequence of all other sources of Europeanization, too (e.g. Bulmer/Radaelli 2005: 343).

¹⁶⁵ http://www.fojus.uni-oldenburg.de/download/diskussionspapier1_2007toeller.pdf

would it mean if finally we could say that e.g. the policy of finance service in the UK between 2000 and 2005 has been Europeanized by only 3 points whereas the same policy in Germany has been Europeanized by 5 points? If such data were the result of our method, this would mean that policy-decisions in German in this field were shaped by European policies to a greater extent than in the UK. If this was the case because the British regulations were already close to the European policies beforehand (and thus there was a low degree of mismatch) or because¹⁶⁶ Germany was reluctant to follow the European policies and for what reasons could, however, not be reflected by this kind of figures. Thus qualitative studies remain a necessary complement to the kind of qualitative studies I have suggested here.¹⁶⁷

Even if an accurate numerical calculation of all EU-based national measures were feasible, a more useful evaluation of the EU's influence would include an analysis of the purpose and relative impact of EU measures and the nature, scope and implementation methods of the national measures which implement them. As Christensen points out, "the EU may influence and constrain national policy-makers in more subtle ways, for instance, by inducing them to adapt their administrative regimes in order to meet the implicit demands of EU policy or anticipation of future EU policy".¹⁶⁸

¹⁶⁶ FN 21: The fact that this striking Europeanization effect cannot be traced in the GESTA-data base on German legislation when looking at the Hochschulrahmengesetz that implemented the Bologna reform in Germany (<http://dip.bundestag.de/gesta/14/K012.pdf>) provides a strong argument for not working any longer with this – otherwise very compelling system of "European impulses".

¹⁶⁷ Ibid

¹⁶⁸ Christensen, "EU Legislation and National Regulation: uncertain steps towards a European public policy"