Legal Europeanization: Comparative Perspectives

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Abstract
The legal orders of three EU member states – Austria, Denmark, the Netherlands – by mid-2003 contained between 10.5 and 14.2 percent rules devoted to the transposition of EU directives. Only few ministerial jurisdictions contain more than 20 percent of Europeanized rules. The member states show remarkable differences in the use of parliamentary vs. delegated legislation as means of transposition. The comparison of the three cases tentatively suggests that different legal traditions and the parliamentary involvement in EU affairs are important factors that account for the cross-national differences.

1. Introduction
Europeanization is a multi-faceted concept, ranging from the formal agreements of EU member states to ‘the standardization and convergence of cultural practices and lifestyles’ across Europe (Mair 2004: 341; for a systematic discussion of the ‘universe’ of ‘Europeanization’ see Olsen 2002). The articles in this mini-symposium take a narrow approach and focus on legal Europeanization – the shaping of national legal orders by EU rules and directives in particular. Given the nature of the EU as a regulatory confederation (Majone 2005) much of its impact on member states necessarily takes the form of regulation ('hard law'). Legal Europeanization therefore constitutes an appropriate angle to the study of Europeanization – though certainly not the only one. In order to assess the global impact of
the EU on its member states we adopt a quantitative approach, measuring how much of the national legal order is affected by EU regulation, mostly by transposing EU rules. Jacques Delors’s prophetic claim from 1988, that the European Community would be the source of 80 percent of its member states’ economic and perhaps even fiscal and social legislation by 1998, provides a yardstick of ‘common sense’ expectations for the present research. This is so because of the history of its perception: politicians, journalists, and academics alike have taken it as a fact (with or without Delors’ qualification). Clearly, such perceptions of reality shape the actual behaviour of actors and commentators. Replacing wild guesses by precise figures can hence be very important, and this is particularly so when the gap between perceptions and reality is great.

The country studies assembled in this mini-symposium try to measure the EU’s impact on specific national legal orders. Given the number and complexity of measurement problems and the required amount of original data collection the case study approach is appropriate for initial research. Ultimately, however, a comparative analysis is required in order to move from description to explanation. This concluding piece is a first step in this direction. We proceed by first placing Austria, Denmark, and the Netherlands relative to each other with regard to the Europeanization of their legal orders. Next we discuss possible explanations for the differences between these countries. We then move on to sector differences. In the conclusion we summarize the main results and suggest how this line of research might be extended.

2. EU Impact on National Regulatory Regimes: Global Results

Table 1 summarizes the main results on the Europeanization of the legal orders of three EU member states at one point in time. Before we discuss the substantive meaning of the results
and explain existing differences, we briefly discuss measurement issues. Table 1 contains transposition measures that take the form of parliamentary or delegated legislation. Third parties agreements and third party norms that transpose EU directives play a very limited role in transposition in Denmark, no role in Austria and, for reasons of data access, were not counted in the Netherlands. We have omitted them from the analysis. We also omitted administrative circulars and references to administrative publications that can be found in the Eur-Lex (former CELEX) database.

The country studies on which this article builds are quite different in their data collection approaches, but that should not affect the results more than marginally. The main remaining difference between the country studies relates to amending EU directives (i.e. directives that change earlier directives). These were excluded in the Danish case. The Dutch study for the most part also excludes amending directives, but provides some results including them. In contrast, the Austrian study includes amending directives for the period from 1992 to mid-2003 (i.e. the period when Austria continuously adapted to EU rules). The use of this more inclusive measure implies that the Austrian numbers are loaded to indicate a slightly higher degree of Europeanization than the Dutch and Danish ones.

Table 1 contains three indicators of legal Europeanization: (1) the raw number of national legal acts transposing European norms, (2) the proportion of national legal acts transposing European norms, and (3) the hierarchical quality of these acts as either parliamentary or secondary legislation (Table 1).

--- Table 1 about here ---

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1 The Danish and Dutch studies compare aggregates of national and EU rules on the basis of single authoritative sources for each of the levels. The Austrian study uses data on individual legal acts on both levels and draws on many sources to establish specific relations between EU and national rules.
The main message of Table 1 is that the Europeanization of the legal orders is far away from the inflationed expectations. When compared to the ‘benchmark’ of 80 percent the country results are not only sobering but also remarkably similar. With the single exception of law shares in Denmark, the differences between the three countries in each row are smaller than four percent (directives only). By mid-2003 between 10.5 and 14.2 percent of the national rules were devoted to transposing, at least in part, EU directives to the national level. The range is reduced to 1.8 percent, if we also consider other EU rules in the Austrian case (what may be justified because of the specifics of a latecomer’s adaptation). The main message is that legal Europeanization, measured by the number of national rules that have a European imprint, in each country is limited to less than 15 percent of all rules in force in mid-2003. Studies of legislation in Austria (YYY) and Germany (Töller 2008) that measure the dynamics of the Europanization process rather than its consequences for the national legal orders, support the magnitude of this result.

3. Explaining Differences in Legal Europanization

Although the country results appear similar when considered before the background of the notorious ‘80 percent’, all country differences, save the ones for government decrees, are statistically significant (at the 0.05 level) in pair-wise comparison and hence merit explanation. It is worth looking also at EU-related rules in absolute terms. The three countries clearly differ with regard to the total number of national rules devoted to the transposition of EU directives. The Dutch legal order includes 1502 transposition rules, the Danish 1258, and the Austrian 1059. Recall that the gap between Austria and the older member states would be greater, if the former would not include amending directives for the 1992–2003 period.
Finally, the countries show great variation in the choice of the legal instruments employed for the transposition of EU rules. How can these differences be explained?

Our three cases – Austria, Denmark, and the Netherlands – have in common that they are small countries, belonging to the wealthier members of the EU. They also tend to have ‘big government’. At the same time, the three countries display some potentially important differences. In the remainder of this section we discuss how the length of EU membership, the depth of integration, parliamentary involvement in EU affairs, state structure, and legal tradition may impinge on legal Europeanization. First, we derive general hypotheses – to be read as *ceteris paribus* – from these factors (Table 2). These expectations should be relevant beyond the range of countries discussed here. Then we discuss the country specifics before the background of these hypotheses and check whether our data confirm to the expectations. As we have more potentially relevant independent variables than cases, our conclusions necessarily will remain tentative and somewhat speculative.

--- Table 2 about here ---

*Length of EU membership*

As all member states must adapt their legal order to the *acquis communautaire* membership dates as such should not affect the impact of EU rules on the national legal orders in substantive terms. Yet, latecomers have to incorporate more EU rules in a shorter period. This may invite economy with regard to transposition measures. While member states are forced to adapt continuously to a changing European order (and hence require a continuous stream of transposition measures), new members can catch up by employing a smaller number of (more comprehensive) transposition measures. Thus, the share and number of transposition
measures in the national legal order should increase with membership duration. Therefore, Austria can be expected to have less EU-related rules on the book than Denmark, and Denmark less than the Netherlands.

The differences between the countries in terms of the shares of all ‘Europeanized’ rules are not related to the length of EU membership. Although the most recent member state Austria comes last, Denmark has devoted a greater share of national rules to the transposition of EU directives than the Netherlands, a founding member. While the Netherlands comes first in absolute numbers of transposition measures, this only reflects the fact that the Dutch legal order contains 35 percent more rules than the Danish and about 40 percent more than the Austrian.

Our initial argument has related to the specific opportunities emerging from coming late. Yet, we can also address coming late from the institutional development point of view (Cowles et al. 2001; Jacobsson et al. 2003). According to the imprinting hypothesis of organizational theory (Stinchcombe 1965: 154) we can expect a country’s transposition process to be the more routinized and economized the longer a country has been a member of the EU. Our data contain one relevant indicator: the laws–decrees ratio. It shows that the share of secondary legislation increases with the length of membership. Without time-series data, however, we cannot establish whether the national differences are indeed dependent on the time the countries did not fully participate in the European integration process. In other words, we cannot see from our quantitative data whether the gaps would be smaller if Austria and Denmark had been founding members or joined earlier. Yet, the Austrian case study suggests that things are already changing (YYY). Gradually, the country enacts legal provisions allowing for more delegated (rather than parliamentary) legislation. While a longer duration of membership by itself may not be sufficient to even differences in the countries’
legal traditions (see below) and to overcome other factors,\(^2\) we can expect some degree of convergence.

*Depth of integration*

European integration has produced several partially overlapping communities. The more European layers a country belongs to, the more Europeanized we expect its legal order to be. Denmark is the only country included in our analysis that does not belong to the Euro zone and that has opted out of the Second and Third Pillars of European integration (though with regard to justice and home affairs Denmark does engage in EU cooperation if decisions are based on intergovernmental principles). Yet, neither monetary integration nor common foreign and security policy cause extensive EU legislation (see Tables 3 and 4 below). Third Pillar cooperation, in turn, is based on inter-governmental cooperation rather than EU directives. As we are focussing on transpositions, we would not expect the differences in the depth of integration to cause significant differences between our countries. This is indeed the case, as Denmark, the least integrated country, has a greater share of transposition rules than the two other cases.

*Parliamentary involvement in EU affairs*

Membership in what is today the European Union has been uncontroversial until very recently in the Netherlands. Indeed this country was always very supportive of European integration and the referendum rejecting the European Constitutional Treaty came as a big surprise in 2005 (and after the end point of our analysis). Generally supportive of EU integration and always facing majority cabinets, the Dutch parliament has left EU affairs largely to the

\(^2\) This is testified by the British case. According to the analysis of Page (1998: 804) the UK relies more on secondary legislation than any of our countries.
government (Timmermans and Andeweg 2003: 518; Maurer and Wessels 2001; Saalfeld 2005; Raunio 2005).

In Austria membership was contested and the overwhelming support for European integration that initially prevailed has faded away. The country now is among those with the most Eurosceptical citizens and EU affairs are relevant in party competition. Early on parliament has ensured a potentially strong role in EU affairs. Although executive predominance and coalition discipline typically prevent that much of this potential is played out in the legislative process, the government is certainly more challenged than the Dutch cabinet used to be (Müller et al. 2001: ch. 11; Maurer and Wessels 2001; Pollack and Slominski 2003; Raunio 2005; Saalfeld 2005).

EU membership has been most controversial in Denmark. The EU has become an important domestic cleavage that plays itself out in elections (particularly to the European Parliament) and in EU referendums. The salience of the EU dimension and the frequency of minority governments have affected the rules and practice of parliamentary scrutiny of EU affairs. Denmark has strong rules (i.e. strong parliamentary rights) and activist practice (Bergman 1997, 2000; Damgaard and Nørgaard 2000; Maurer and Wessels 2001; Raunio 2005; Saalfeld 2005).

The more European integration is contested and the more the parliament involves itself in EU rule making, the greater we might expect the share of laws among transpositions. This is indeed the case when we compare Denmark to the Netherlands, but Austria does not fit in, as it occupies a middle position with regard to the independent variables but clearly outranks the other countries with regard to the laws–decrees ratio.

State structure: unitarism vs. federalism
Although not directly linked to EU membership, the difference between unitary and federal organization of government is potentially relevant in our context. A textbook federal country divides government tasks between the states and the federation and hence should require fewer rules at the federal level. Both the states and the federation transpose their share of EU rules. This, in turn, implies that federal countries should have fewer EU rules on the book (at the federal level) than unitary states (in absolute numbers). With regard to the relative impact of legal Europeanization, however, the federal level should be affected no less than unitary states (as the federation also should also have fewer tasks to fulfil and fewer rules). Indeed, to the extent that the federation is in charge of those tasks that can better be served by larger units, we should expect to find a greater share of Europeanized rules there than in unitary states, as these tasks may particularly invite their Europeanization. This argument, of course, assumes ‘big government’, as a central government largely confined to the classic state functions of foreign policy, defence, and internal security would be hardly affected by EU directives.

Only one of our cases, Austria, is a federal country, and it is a far cry from fully-blown textbook federalism (Duchacek 1997; Swenden 2005). Indeed, the central government clearly prevails over the Länder in the allocation of jurisdictions. Moreover, where the Länder have competences these are to a large extent shared with the central government. EU regulation should thus often require the adaptation of national rules at both the federal and Land level. Consequently, the total of EU-related rules at both levels combined should be higher in Austria than in the unitary states. At the same time, federalism should reduce the number of relevant rules at the national level only marginally.

Although our data show that federal Austria has fewer rules at the national level than the two unitary countries (all rules), the opposite is the case when we confine ourselves to laws.
With regard to Europeanization, none of the hypothesized effects of federalism is borne out by the data.

**Legal tradition**

Legal traditions constitute another factor that might affect the results. Austria, Denmark, and the Netherlands belong to different sub-types of civil law systems: the Austro-German type, the more pragmatic Scandinavian type (Denmark), and one strongly influenced by the Napoleonic type (the Netherlands) (Zweigert and Kötz 1987; Merryman 1969). In our context it seems most relevant what demands these legal traditions place on legislation. More than any other the Austro-German type is committed to legal positivism. Accordingly, the law itself rather than those who implement it shall determine the precise content of regulation (Green 2003). Historically, the Scandinavian type was closer to the common law system than any other sub-type within the civil law family. Law-makers were less inclined to anticipate all future applications of the law. Rather such adaptations to context could be left to those applying the law (whose decisions could be tested before the courts). Although, with the rise of the post-war welfare state, this legal tradition increasingly gave way to legal positivism, laws never became as casuistic as in the Austro-German tradition (Evald 2005). The pragmatic attitude of the Scandinavian law interpreters was probably helpful here (Sundberg 1969) and since the 1970s legal scholars have recognized again a tendency in the opposite direction – towards framework legislation and the delegation of considerable powers to the bureaucracy (Revsbech 1992; Zahle 2007). However, the combination of pragmatism and extensive ministerial autonomy gives way to considerable variation between different portfolios in the Danish system. Finally, such delegation of powers has always been the
hallmark of the Dutch legal system where a flexible constitution allows for a great amount of secondary legislation (Besselink 2005).

The differences outlined here are partly self-enforcing as rule-making is subject to constitutional review in Austria while it is not in the Netherlands. In Denmark the Supreme Court has only recently made use of its formal constitutional powers to review legislation. The rulings of the Austrian Constitutional Court indeed have helped upholding the high standards of legalistic formalism flowing from Kelsen’s Pure Theory of Law.

While legal tradition, as defined here, should not affect the shares of national rules that carry the imprint of EU membership, it might explain the mix in legal instruments used for transposition. Specifically, we can expect a greater share of parliamentary (as opposed to secondary) legislation in Austria than in the two other countries.

According to Table 1 Austria clearly distinguishes itself as the most legalistic country of our sample. It has more than the double share of laws on the book than the two other countries. While a mere 15 percent of the Dutch national rules transposing EU directives have taken the form of law, the corresponding numbers are 21 percent for Denmark and 41 percent for Austria. In absolute terms, the legal order of Austria (365–390) includes more laws devoted to the transposition of EU directives than those of Denmark (264) and the Netherlands (224). The relevance of parliamentary legislation as a means of transposition in Austria is most clearly expressed in the ratio of laws and secondary legislation among transposition acts in the bottom row of Table 1. While all countries use more government decrees than laws, the gap between Austria (0.7) and the two other countries (0.18 and 0.24, respectively) is remarkable. Clearly, legal tradition is the major factor driving this result.

Summary
Our discussion of five possible (partial) explanations of the statistically significant differences in the Europeanization of the legal orders of Austria, Denmark, and the Netherlands suggests that neither the length of EU membership nor the depth of integration or the territorial organization of government account for the variation. Differences in the parliamentary involvement in EU affairs can partially account for differences in the choice of legal instruments. It is the differences in national legal tradition that can explain both the differences in the absolute number of transposition measures and the relative weight of parliamentary and secondary legislation.

4. The Impact of EU Regulation on National Policy Sectors

EU regulation influences national public policy in more than one ways. First, there are policy areas where according to the treaties the EU has assumed the authority to act on behalf of its member states. In these areas, most importantly the negotiation of international trade agreements, no formal authority has been left to the governments of the member states. Second, there are areas where the EU has developed a common policy that applies directly to business and citizens in the member countries. Consequently, regulations are the preferred legal instrument of the EU. The common policies for agriculture and fisheries are the most important examples. Finally, there are policy areas where the EU defines goals and agrees on rules that the member states have to transpose in their national policies. The legal instrument at the EU level is the directive. The EU employs directives to govern such fields as the internal market, environmental policy, and consumers and health protection. This has been the common core of the country studies on which this article draws. Yet, focussing on the transposition of directives exclusively clearly underestimates the total impact of EU
membership on the national legal orders. This can be seen from the last two columns in Table 1. Here, we compare the more narrowly defined measure, based exclusively on transpositions, with a measure that contains all national rules that bear EU imprint (see XXXX). Depending on whether we look at laws, government decrees, or all rules, the more comprehensive count increases the EU impact on the national legal order between 11 and 19 percent.

– Table 3 ABOUT HERE –

Table 3 ranks the five most important policy areas at the EU level according to the legal instrument used. It shows that, regardless of the instrument used, the EU contribution to public policy is concentrated within a few fields. These are the creation and upholding of the customs union, and internal market and common policies for agriculture and fisheries, including important policies covering externalities created within these fields. It is the global impact of EU regulations in these sectors that ultimately determines the influence of the EU on national public policy.

Even if EU policy creates exactly the same obligations for the governments of the member states its relative impact within different policy portfolios varies considerably between the three countries. This is seen from Table 4 that ranks the share of national rules transposing EU directives. Note that the national rankings differ considerably from the EU level ranking presented in Table 3.

– Table 4 ABOUT HERE –
Variation between the countries is due to two factors – regulatory density (i.e. the total number of rules in specific policy areas) and the design of the ministerial division of labour. The more lightly a policy area is regulated at the national level, the heavier the impact of the EU. Yet, our comparison suffers from the differences in ministerial structures (i.e. the numbers of ministries and their individual tasks). Moreover, these parameters are often changed over time. Changes in the allocation of policy responsibilities between ministries signal current priorities of the incumbent government, but also result of the need to establish a political equilibrium within the cabinet. This is particularly important in countries characterized by coalition governments. The three countries included in this analysis most often have coalitions of two or more parties and have indeed varied their ministerial structure considerably over time (Christensen, Christiansen, and Ibsen 2006; Müller 2006: 169–72). Such reorganizations of the ministerial structure can exercise considerable effect on the measured EU impact on a policy domain. If, for instance, heavily EU-regulated jurisdictions are combined under the umbrella of a specific ministry with jurisdictions that are also heavily EU-regulated, the overall EU impact will be considerable. If, however, heavily EU-regulated jurisdictions are combined with ones that are unaffected by EU rules, the overall measured EU impact is likely to be modest. The timing of data collection hence is potentially important and may influence the EU impact ratios for individual ministries. As the Austrian ministerial structure was particularly volatile in the last decade we have created ‘synthetic’ ministries to enhance comparability with the other countries. With the help of the annual Index of valid legal norms and their policy area classification we created policy areas that resembled the ministerial denominations which exhibited the highest share of EU-related norms in the other two countries.
Another factor accounting for national variation is policy styles varying from one portfolio to another. Such differences may influence the denominator heavily. If some policy areas are subject to intensive national regulation employing many and detailed national rules a given number of EU directives will have a modest impact. If, however, regulation in a specific ministry relies on a few broad framework laws delegating regulatory authority to the minister, the same number of EU directives will have a much greater impact.

Given all these limitations, not too much should be inferred from Table 4. The rankings and relative shares of individual ministries simply demonstrate how EU legislation is integrated into national public policy at a given point in time. Even if the food and agriculture portfolios are ranked first or second in any of the three countries, two observations can be made. First, in any of the countries it is only for a handful of ministerial portfolios that the EU impact exceeds ten percent. Second, the precise ranking of portfolios varies considerably from country to country. Perhaps the main message of Table 4 is that even in the areas where the EU has considerable legislative powers and has been very active in making rules, the share of Europeanized rules does not exceed 30%.

5. Conclusion: Limitations and Extensions

Numbers sometimes have a magical quality. The public debate on the Europeanization of national legal orders is a case in point. When Jacques Delors made his claim that soon 80 percent of the EU’s economic and social policies would be governed by rules based on community legislation, this number’s spell worked on politicians, civil servants, members of interest groups, and even academics. For some, ‘80 percent’ exemplifies the (growing) importance of European integration that underscores the necessity for better coordination.
mechanisms within the EU. For others, the connotations with this ‘80 percent’ were quite the opposite. This number alarmed the critics of the EU for a creeping, unwanted Leviathan. To some it usurped the autonomy of the nation state. To others it meant the imposition of a neo-liberal globalist ideology, undermining Europe’s welfare states. Notably to academics, ‘80 percent’ was simply a fact that illustrated the relevance of their study object (cf. Hix 1999: 3). The contributions to this mini-symposium were an attempt, first, to demystify this number and, second, to put the academic debate on the impact of the EU on its member states on a somewhat firmer empirical basis than other approaches provide (see XXXX). We believe that we have succeeded in these two goals, but we end with some caveats and a few suggestions for an agenda for future studies.

First, future research should invest in the systematic testing of a number of potential causal effects. In this concluding article, we have discussed the potential influence of various factors for the variations of the patterns of legal impact of the EU we found in these countries. While global and sector comparisons have shown remarkable similarities, we also found significant cross-national differences, in particular with regard to the instruments used for ‘Europeanizing’ the national legal orders. Part of the explanations, we argue, may be found in the different role and involvement of the countries’ national parliaments on the EU legislative process (before the background of different public evaluations of the EU) and above all the differences between their legal traditions. In addition, the reported variations are also a function of specific national allocation of governmental portfolios and changes in portfolio allocations over time. Member states process EU rules in different ways across policy sectors. This is a source of variation that is difficult to control for, as it reflects a historically grown variation in the institutional patterns of governance systems. One future line of research should therefore be the development of refined research designs with which the causal effects...
of political, institutional and temporal factors can be described and tested systematically. Most obviously, this will require analyzing more cases.

Second, we need a more grounded understanding of what the ‘EU impact’ really is. In our research we confined the analysis to directives. But as one may rightly object, directives are not the only sources of EU influence that have an impact on the legal and political orders of member states. Regulations are directly binding and some regulations even require the adjustment of national rules. The same is true for primary law and the decisions of the European Court of Justice: binding but difficult to trace in national legislation. Although the Austrian study has separated out the first of these effects, it is difficult to generalize from the experience of a single case that also happens to be a newcomer.

While all the EU-level instruments discussed thus far constitute ‘hard law’, the introductory piece to this mini-symposium (XXX) has highlighted the fact that the 1990s have seen an explosion in the numbers of ‘soft law’. ‘Soft law’ comprises rules of ambiguous legal status which nevertheless often have a steering function, including Green and White Papers, Commission communications about rule interpretation, and agreements made by the Open Method of Coordination (Klabbers 1998; Senden 2004, 2005; Trubek et al. 2005). These acts may constitute a first step towards ‘hard law’, and much Europeanization nowadays takes place via this avenue. Important ‘Europeanization’ also occurs through standardization – the voluntary agreement of non-state actors on technical or other communalities. While this process is not confined to Europe, the EU plays an important role in promoting and funding European standardization organizations (Brunsson and Jacobsson 2002; Mattli and Büthe 2003). Our focus on legal Europeanization via ‘hard law’ thus by no means exhausts the deliberate attempts of government and economic actors to replace national rules by European ones. Yet, it affects the very core of state functions and is more political ‘sensitive’ than
voluntary agreements at the political or economic level, even when these are backed-up by moral or economic pressure.

Perhaps the most important limitation of the present studies is that they do not measure the substantive impact of EU legislation on member states. Clearly, some rules are more important than others and single provisions in a directive/transposition rule can have effects that upset established national policy sectors. While the Austrian study has tried to move closer to that issue by separating out the EU impact on ‘original laws’, we fall short of directly addressing that topic. While we can comfort ourselves that, as in many quantitative studies, largely irrelevant cases will be outweighed by important ones, it would mean a great leap forward to come to grips with that issue empirically. Yet, we do not see that any other approach has provided better answers to date on the question of the EU’s global impact on member states. Various studies of the domestic impact of Europeanization have shown that individual directives can have a substantive impact, but because these studies are based on case study analysis of policy areas that are to some extent Europeanized, these studies do not give us a comprehensive answer to how much the EU affects member states substantively. Conversely, other studies have stressed the limited impact of the EU on other policy areas. Studies that address the issue of Europeanization in a cross-sectoral manner, e.g. by focussing on administrative adaptation to EU policies (Knill 2001; Jacobsson et al. 2003) or role perceptions of ‘Europeanized’ national civil servants (Trondal 2002), like the articles of this mini-symposium, tap only into one of the several dimensions of this research question.

Future research along the lines professed in this issue should both further attempt to grasp the multiple dimensions of the EU’s impact as well as develop and systematically test the various potential effects of institutional, cultural, and temporal context on the impact of the EU on the legal orders of member states.
References


XXX

YYY
Table 1. Global EU impact on the legal order of three EU member states (mid-2003)<sup>1</sup>  
(Percentage of laws and government decrees transposing EU directives and other EU rules)

<table>
<thead>
<tr>
<th></th>
<th>Netherlands Transpositions</th>
<th>Denmark Transpositions</th>
<th>Austria Transpositions&lt;sup&gt;2&lt;/sup&gt;</th>
<th>Austria All EU-related rules&lt;sup&gt;3&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laws</td>
<td>n 225</td>
<td>265</td>
<td>366–392</td>
<td>435</td>
</tr>
<tr>
<td>%</td>
<td>12.6</td>
<td>19.7</td>
<td>8.9–9.5</td>
<td>10.6</td>
</tr>
<tr>
<td>N</td>
<td>1781</td>
<td>1344</td>
<td>4110</td>
<td>4110</td>
</tr>
<tr>
<td>Government decrees</td>
<td>n 1277</td>
<td>992</td>
<td>526–563</td>
<td>623</td>
</tr>
<tr>
<td>%</td>
<td>12.5</td>
<td>13.2</td>
<td>11.9–12.7</td>
<td>14.1</td>
</tr>
<tr>
<td>N</td>
<td>10169</td>
<td>7513</td>
<td>4416</td>
<td>4416</td>
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<tr>
<td>All rules</td>
<td>n 1502</td>
<td>1257</td>
<td>892–955</td>
<td>1058</td>
</tr>
<tr>
<td>%</td>
<td>12.6</td>
<td>14.2</td>
<td>10.5–11.2</td>
<td>12.4</td>
</tr>
<tr>
<td>N</td>
<td>11950</td>
<td>8857</td>
<td>8526</td>
<td>8526</td>
</tr>
<tr>
<td>Ratio laws:decrees</td>
<td>0.18</td>
<td>0.24</td>
<td>0.70 / 0.70</td>
<td>0.70</td>
</tr>
</tbody>
</table>

Note:
1 Pair-wise comparisons of the transpositions of the three countries in Chi<sup>2</sup> tests show that the differences (in percent) are statistically significant at the 0.05 level of error for the categories ‘Laws’ and ‘All rules’, but not for the ‘Government decrees’.
2 We provide a range as our data is less good for the 1992–94 period.
3 The national norms transposing EU law other than directives relate to regulations, decisions, and primary law. With regard to the latter, it is only the initial adaptation to EU primary law in the context of EU admission and subsequent treaty revisions that have caused new national norms in relevant number. EU regulations and decisions for the most part have been taken care of by the same national norms that transpose EU directives and hence have not significantly increased the number of transposition measures.
**Table 2. Factors explaining legal Europeanization: hypotheses**

<table>
<thead>
<tr>
<th>Explanatory variable</th>
<th>Expected consequence</th>
<th>Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Length of EU membership</td>
<td>More recent members have fewer EU-related rules and use more secondary legislation</td>
<td>Number and share of national rules transposing EU rules, ratio of parliamentary and secondary legislation</td>
</tr>
<tr>
<td>Depth of integration</td>
<td>Less deeply integrated members have fewer EU-related rules on their books</td>
<td>Share of national rules transposing EU rules</td>
</tr>
<tr>
<td>Legal tradition</td>
<td>Countries with strong legal positivism have more parliamentary legislation</td>
<td>Ratio of parliamentary and secondary legislation</td>
</tr>
<tr>
<td>Political controversy and parliamentary role</td>
<td>Countries in which the parliament claims a strong role in EU affairs EU have more parliamentary legislation</td>
<td>Ratio of parliamentary and secondary legislation</td>
</tr>
<tr>
<td>Unitary vs. federal states</td>
<td>Federal states have fewer EU rules at the federal level than unitary states</td>
<td>Number and share of national rules transposing EU rules.</td>
</tr>
</tbody>
</table>
Table 3. EU policy sector and the use of legal instruments
(Rank order of five most important policy areas at the EU-level\textsuperscript{1})

<table>
<thead>
<tr>
<th>Directives</th>
<th>Regulations</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial policy and internal market</td>
<td>Agricultural policy</td>
<td>Agricultural policy</td>
</tr>
<tr>
<td>Agricultural policy</td>
<td>34.9</td>
<td>39.7</td>
</tr>
<tr>
<td>Environmental, consumers and health protection</td>
<td>19.6</td>
<td>Third country relations</td>
</tr>
<tr>
<td>Third country relations</td>
<td>20.5</td>
<td>Customs union and free movement of goods</td>
</tr>
<tr>
<td>Customs union and free movement of goods</td>
<td>18.0</td>
<td></td>
</tr>
<tr>
<td>Free movement and services and right of establishment</td>
<td>8.0</td>
<td>Fisheries</td>
</tr>
<tr>
<td>Transport</td>
<td>7.7</td>
<td>Transport</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total N\textsuperscript{2}</td>
<td>(1355)</td>
<td>(3615)</td>
</tr>
</tbody>
</table>

Notes:
1 The figures show the percentage of all EU-rules in force for the five most important EU-policy areas in the official EU-policy classification.
2 Total number of general and binding rules in force in mid-2003. General, institutional and financial issues omitted.
Table 4. Ministerial portfolios most affected by EU-rules
(Percent of the total number of rules in force for different ministerial portfolios.)

<table>
<thead>
<tr>
<th>Austria(^1)</th>
<th>Denmark</th>
<th>The Netherlands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport, Technology, Building &amp; Public Procurement</td>
<td>23.9</td>
<td>Food, Agriculture &amp; Fisheries</td>
</tr>
<tr>
<td>Agriculture &amp; Forestry</td>
<td>19.5</td>
<td>Employment</td>
</tr>
<tr>
<td>Environment and Water Management</td>
<td>19.3</td>
<td>Economics &amp; Business</td>
</tr>
<tr>
<td>Health</td>
<td>17.6</td>
<td>Transport</td>
</tr>
<tr>
<td>Economic Affairs</td>
<td>13.3</td>
<td>Research &amp; Technology</td>
</tr>
<tr>
<td>Justice</td>
<td>5.8</td>
<td>Environmental Protection</td>
</tr>
<tr>
<td>Finance</td>
<td>5.7</td>
<td>Immigration &amp; Refugees</td>
</tr>
<tr>
<td>Employment and Social Affairs</td>
<td>5.2</td>
<td>Justice</td>
</tr>
<tr>
<td><strong>Total EU impact(^2)</strong></td>
<td><strong>14.8</strong></td>
<td></td>
</tr>
</tbody>
</table>

Notes:
1 Synthetic ministries (see text).
2 Total EU impact: Percentage of all national rules in force under the jurisdiction of these ministries affected by EU rules.