

## Chapter 1 Introduction

### **Implementation in the EU**

Getting an idea of what the EU *actually* does is problematic because so much of its activities are being carried out by the member states. In its constitutional essence the European Union is a form of co-operation that finds its origins in a customs union, first for coal and steel alone but expanded to other markets and industries later, between the six original founding member states. On a variety of policy fields the now fifteen members voluntarily agreed to some communal rules, that do not only, as with “normal” international law, arrange affairs *between* countries but also *in* countries.

An important and unique feature of the EU is that the member states have given the political institutions of the EU the power to make laws<sup>1</sup> to be implemented by the member states. There are three types of “hard” EU legislation: directly applicable *regulations* that do not require the intervention of national governments and become part of the national legal systems of the member states immediately; *directives*, that require national measures to be implemented, and *decisions*, a lesser form of regulation usually not intended for all members but for one or a few states or for undertakings. Decisions are for instance important in competition law. *Recommendations and opinions* are “soft” laws. They have no binding force, and “cannot be cited as sources of Community law but (they) can be regarded as auxiliary elements of the lawmaking process of the Community, or even as part of an evolution towards hard law” (Baldwin, 1995:226-7).

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<sup>1</sup> For an overview of the legislative process, political institutions and legal system of the EU see: Weatherill, S. and Beaumont, P. (1999) *EU Law, The Essential Guide to the Legal Workings of the European Union*, Harmondsworth: Penguin, and: Baldwin, R. (1995). *Rules and Government*. Oxford: Clarendon Press, Part III: The European Dimension, pp 219-90.

This research focuses on *directives*. To become part of the national legal systems of the member states directives have to be transposed into national law, hence they require legislative action by all member states' governments. They do not specify how or in what kind of statute member states should transpose them. Usually they specify a date before which the member state should have legally implemented the directive. They are binding "as to the result to be achieved", not to form<sup>2</sup>. So where one member state could choose to change its constitution to implement a directive another could decide to implement it by a ministerial decision. Any method will satisfy the EU as long as the legislative technique is an instrument of lawmaking in the member state<sup>3</sup>.

**Table 1-1: Instruments of lawmaking used in the EU.**

	Decisions <sup>4</sup>	Regulations	Directives
1996	754	2525	95
1997	878	2653	73
1998	746	2866	100
1999	881	2820	102
2000	825	2909	105
2001	938	2611	103

*Source: Indexes to the Official Journal, Volume 2, methodological table, 1996 - 2001.*

Directives are the most important form of legislation in nature, although not in number (see table 1-1). Routine and administrative matters form the bulk of the regulations and decisions, but the important policies are more often than not implemented through directives. For instance the momentous economic transitions of the 1980s and 1990s, consisting of the privatisation of utilities, deregulation, and the opening of markets have been arranged in directives.

How effective are directives, and to what extent are the policies they contain implemented? The European Commission monitors the legal implementation of directives. Annually it publishes an extensive account<sup>5</sup> containing a statistical overview (per sector) of transposition, and an overview of the legal measures taken under article

<sup>2</sup> Art 249 EC.

<sup>3</sup> Acceptable implementing measures are not restricted to formal laws. Even self regulatory measures can be accepted as transposition (ECJ: Case 246/80, C. Broekmeulen v. Huisartsenregistratiecommissie and Case 91/81, Commission v. Italy).

<sup>4</sup> Decisions whose publication is obligatory. Not included: EEA Joint Committee decisions, EFTA Surveillance Authority and Standing Committee of the EFTA States.

<sup>5</sup> The four most recent are: XIXth Report on monitoring the application of Community law: COM(2002)324 provisional version, 28/6/2001, XVIIIth Report: COM(2001)309 final, 16/07/2001, XVIIth Report: COM(2000)92 final, 23/6/2000, XVIth Report: COM(1999)301 final, 9/07/1999.

226 of the Treaty<sup>6</sup>. But there the matter largely rests. From and Stava noted (in 1993) that monitoring of administrative implementation - what happens at the street-level - was not regularly, structurally or comprehensively carried out by the Commission (From and Stava, 1993:63). Five years later not much had changed: “Despite the circulation and analysis of data on formal state ratification and conversion of EU obligations into domestic obligations, it remains unclear if these commitments are enforced after implementing legislation has been passed” (Haas, 1998:17).

The need for studies into the effect or impact of EU law has not abated. As From and Stava (1993:62) noted: “Without information on how well EC law is practiced by member states’ administrations and to what effect, it is of course impossible to learn from past experience and improve lawmaking”. And with the EU present in an ever-increasing number of fields the need for a more accurate picture of actual implementation has only increased.

Traditionally, it is not a popular field of scholarship: “The focus in the academic literature has usually been directed either towards what the EU has done and how, or towards the politics of membership of individual countries. The actual consequences of Euro level action have not been a matter of empirical investigation.” (Kassim and Menon, 1996:1). And although there is now a “growing number of studies explicitly concerned with the Europeanization of domestic institutions” (Knill and Lehmkuhl, 2002:255), the evidence is “puzzling and inconsistent” (Knill and Lehmkuhl, 2002:255).

Current knowledge of the street-level effects of EU policy is far from satisfactory. As far as legal implementation is concerned, the Commission gives ample information, but what happens after implementation is less clear (Haas, 1998:17). As Weatherill and Beaumont say: “All the member states notify over 90 per cent of national measures needed to implement the directives applicable, with Sweden being the best at

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<sup>6</sup> If the European Commission finds that a member state fails to fulfil its obligations it can on the basis of article 226 of the Treaty start infringement proceedings against the member state. There are three failures: failure to notify, (the member state has not given the European Commission notice of transposition), failure to conform, (instruments transposing the directive do not conform to the intention of the directive) and failure to apply (the intention of the law is not carried out). The Article 226 proceedings have four stages. In the informal stage (level: officials to permanent representative) the European Commission will object to the member state, asking to respond within one year. If not resolved the Commission will send a letter of formal notice (level: Commission member to foreign secretary) which formally defines the scope of the case. If not resolved a reasoned opinion is given defining the legal merits of the case and stating how the European Commission finds the member state in violation of the Treaty. If not resolved: Court referral. The Court has the possibility to impose fines

over 97 percent. However, this does not reveal how well directives have been implemented” (1999:152). That so little is known about national implementation, the core policy instrument of the European Union, stands in the way of a good understanding of the European polity, and opens the door to frivolous claims by scholars, politicians and journalists alike about the member states’ implementation abilities.

### **Current perspectives on EU implementation**

Scholarship has not totally ignored EU implementation. Specific EU-related research has been done, albeit too little, and general implementation literature can also be applied to the EU context. Specific research and application of general research form the basis of a body of generalisations about EU implementation. There are three broad groupings of notions that have come to be regarded as actual descriptions of EU implementation, focusing on deficiency, variation and obstruction.

#### *Deficiency*

Ever since implementation rose to a prominence of sorts on the research agenda in the 1970s it has been treated as a problem: “It is by now a commonplace that policy ‘implementation’, ‘execution’, or ‘administration’ is a class of problems” (Hood, 1976:190). Many causes have been suggested. Pressman and Wildavsky (1984) argue that good intentions themselves can already be flawed because they do not take real-world circumstances into account. An oversimplified view of the intricacies of policy implementation leads to inadequate policy design. Lipsky (1980) has argued that inadequate resources for agencies create uncertainties and work pressures on individual bureaucrats that make them look for ways to ease their work, usually in the form of rules of thumb which cause an actual public policy to differ from stated public policy. Gunn (1978) argues that the logical prerequisites of perfect implementation, “perfect control” and “perfect obedience” do not match the values of a pluralist open society, and are impossible to attain. Hogwood and Gunn (1984) extend this analysis to other unavailable or unrealistic logical prerequisites, such as ample time and resources, peaceful circumstances, perfect knowledge of the problem, agreement, perfect communication.

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or penalty payments under Article 228 of the Treaty. See further: Weatherill and Beaumont, 1999:212ff.

This body of literature can be, and *has* been, applied to implementation and is the main source of ideas on the deficiency of street-level implementation in the EU context. For instance From and Stava (1993:61) anticipate that the growth in the number of EU policies will lead to an increase in non-implementation or problematic implementation, but this expectation is based on the application of the general implementation literature, which is, as Hjern and Porter (1993:248) note, “deficiency oriented”. It should further be noted that federalism is seen as an “obvious factor inhibiting control” (Peters, 1995:323) aggravating existing problems in the European Union. What is explicitly not known is the extent to which the member states fail to implement European policy.

### *Variation*

Implementation research is understandably interested in variations between member states. Differences between member states in implementing measures and the effects of policy undermine the unifying and integrating effect that European law is supposed to have, so differences between member states go to the heart of the European project and are thus of more than academic interest. If there is a consistent and predictable pattern of weak versus strong implementing member states, legislative and implementing capacities could be enhanced where needed. Unfortunately the picture is far from clear, and many types of variation are mentioned in the literature. These may be grouped in two categories. The first is *unsystematic variation*. This is the notion that deficiencies of implementing measures and/or their effects are not spread equally across Europe, and that the unevenness does not occur according to some understandable pattern. A number of recent studies seems to confirm that “the domestic impact of Europe varies somewhat unsystematically across both policy sectors and countries” (Knill and Lehmkuhl, 2002:255). As Hérítier and Knill (2000:1) remark: the countries “respond differently to identical European policy demands and similar external and internal conditions”. Or, as Schmidt (2002) says: “Countries have responded to the pressures of Europeanization at different times to differing degrees with different results. Given such differences, one cannot make any simple generalizations about the impact of Europeanization on EU member-states”.

The second category is *systematic variation*. Logically at odds with unsystematic variation, there is nevertheless a body of literature that finds that the variation in implementation records is systematic, that some countries are always or more often

better at implementation than others, and that the pattern can be understood and predicted in specific cases of implementation. The north v. south conflict is the most common form this notion takes. It explains differences in the effectiveness of administration and the depth of policy impact from differences in persisting and structural socio-economic and development characteristics: “The failure to effectively implement international and European environmental regulations is often considered as a ‘Southern problem’. It is argued that developing countries and the southern member states of the European union lack the capacity for compliance. Insufficient economic, administrative, and political capacity and a civic culture inclined to individualism, clientelism, and corruption are believed to undermine the ability and willingness of southern states to comply with environmental law” (Börzel and Gupta, 2000). According to Collier and Golub (1997) there exists a “Mediterranean Syndrome” consisting of a lack of public interests, frail ethics and pre-modern political values. This literature echoes older literature on modernisation (E.g. Chirot, 1977) that places countries as Italy, Spain, Portugal and Greece in a category of countries called the periphery, as opposed to the “core” nations of north-western Europe.

#### *National obstruction*

Implementation literature has few good words for the member states, who are frequently presented as obstructing implementation. From and Stava, applying Pressman and Wildavsky (1984) to the EU, predict that the “split” implementation structure, with decision making in Brussels and execution in the member states, necessarily adds to implementation problems: “implementation of EC law is the responsibility of the member states acting as implementers in a quite independent capacity. According to the theory, serious implementation problems are to be expected in the Community. The root of these problems lies in the absence of institutionalised interdependencies between the decision making level (the EC) and the implementing level (the member states)” (From and Stava 1993:58). What is lacking is a good and effective system of enforcement and control that would enable the European Union to force its will onto the member states. In the absence of such a system the member states are free to bend implementation of European laws in their own direction. For instance B. Guy Peters argues that “losing at the policymaking stage may not be so important if there is a second round at the implementation stage when the national

government, through its bureaucracy, has an opportunity to determine what will actually happen in the policy area in that country” (Peters, 1991:104).

The focus on the member states is justified - they hold the key to successful implementation - but what could be termed the “obstructionist assumption” shown in the literature is rejected for the moment, not because it could not be true possibly or logically, but because it has not been proven to be a true and complete description of the role of the member states. For instance B. Guy Peters cited above supports his claim with references to the general implementation literature rather than to research in the EU, so his assertion is a likelihood rather than a substantiated fact. This line of arguing is right in placing emphasis on the member states, but wrong, or too fast, in making specific predictions of their role. That role is likely more subtle and diverse. Since the Treaty places the responsibility for implementation in the hands of the member states it is important to include their actions in research on implementation. How, and with which emphasis will be worked out separately, in the next paragraph.

## **Towards factors explaining national policy implementation in the EU**

### *The nature of implementation*

What factors could explain variation in implementation? Before coming to specific factors it is worth reflecting upon the nature of the causes of variation in implementation. EU implementation is often regarded as an administrative or even legal matter and the world of national politics, politicians and elections is strangely absent from the EU implementation literature, as if what happens on the national political front does not have a bearing on European affairs, and as if European policies are devoid of ideology. To a certain extent this is understandable. Already in 1887 Wilson declared political science and public administration separate disciplines, noting that “The field of administration is a field of business. It is removed from the hurry and strife of politics” (Wilson, 1978:18). More recent scholarship confirmed that politics and administration were separate worlds, justifying a separation of disciplines and interests. E.g. Richard Rose (1980) concluded that political parties have little influence over that what matters to the economy. A number of studies has however found that politics has more influence over in particular economic policy than Rose suggested. Schmidt (1982) for instance attributes partial (but no comprehensive) control

to political parties. Furthermore, on a number of specific aspects of economic policy the partisan composition of government *does* affect policy. Income inequality (Muller, 1989) and the level of public sector employment (Cusack et. al, 1989) seem to be affected by the party composition of governments. More recent is a finding of Neumayer<sup>7</sup> who found that a presence of greens in parliament has a strong negative effect on air pollution levels. It follows that politics and administration, or politics and implementation cannot be separated. If the presence of political parties in parliament affect pollution levels, than a clear connection between the worlds of politics and administration cannot be denied, and separations do seem to be rather artificial. Hence, both political and administrative aspects will be analysed.

The second question then becomes: whose politics and administration? More specifically: how much attention should be devoted to Brussels? A compelling case can be made to restrict the study of implementation to the study of implementation *in the member states*. While it cannot be denied that Brussels plays a large part in planning and preparing policies, the implementation structure of the EU makes the member states the relevant actor in implementation. If, as Chrysochoou (1999:4) argues, for many students the EU “remains a halfway house between ‘federal state’ and ‘federal union of states’, the system and logic of implementation make it imperative to choose for the latter option when looking at implementation. Power lies explicitly and legally in the hands of the member states. Hence, the focus will be on national government in the sense of political *and* administrative systems of the member states.

### *The integrative perspective of Kingdon*

Whereas in some countries political science and public administration seem to have gone their separate ways<sup>8</sup> this study wants to stress that in reality there are no Chinese walls separating politics and policy. Kingdon (1995) stresses that public policy making includes at least the setting of the agenda, the specification of alternatives, the choice between alternatives and the implementation of the decision, and thus integrates processes traditionally belonging to the domain of political science and to the domain of public administration. Kingdon bridges the gap between domains in

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<sup>7</sup> E. Neumayer, “Are left-wing party strength and corporatism good for the environment? A panel analysis of air pollution in OECD countries”. LSE, Department of Geography and Environment, Working Paper.

<sup>8</sup> For instance the American Society of Public Administration (ASPA) and American Political Science Association (APSA) in the US.



other respects also. For instance under the header “participants” he brings together president, congress, media, interest groups and the general public (firmly within the domain of political science) and bureaucrats (the object of public administration) as possible agenda setters. This integrative approach has guided the choice of factors researching implementation.

### **The Factors**

European policies enter the national polity as an obligation to change or create national laws, and to use political and administrative resources to implement those national laws. The following factors are proposed as being able to influence the extent to which a policy is implemented.

#### *Factor 1: the “big” political current*

Kingdon (1995) describes how the national mood affects the process of agenda setting. The national mood creates “fertile ground” for some options or alternatives over others, and affects policy outcomes (1995:146). Kingdon reports for example that in his research “Many respondents pointed to a general climate of hostility to government regulation as one factor that made it possible for deregulation proposals in transportation to get a sympathetic hearing in the 1970s” (1995:147). The most important change of political currents in the post-war years is probably the shift to which Kingdon’s respondents also allude: from interventionist, anti-cyclical Keynesian consensus to limited intervention, free market consensus, a shift that occurred somewhere between the late 1970s and mid 1980s (e.g. Hood, 1994; Majone, 1997). The relation between “national mood” or political current is not normally investigated in implementation research, and Kingdon introduces the idea more as a condition for agenda setting, leading to implementation at some later stage, than as an explanatory factor for the extent of implementation. Nevertheless, investigating that relation, would be a logical next step, which would add to the work of Kingdon. Hence: what could be the effect of these currents or moods, that are part dissatisfaction with an earlier current, part new insights, and part fashion, on the implementation of EU law?

First, they will likely favour certain proposals and solutions over others within the Commission and the European scene in general, ideologically colouring measures

coming out of Brussels. Second, in the member states, they will likely confront governments of differing political colour. How governments of differing colour react to the ideological tide from Brussels could be a factor in implementation. On one hand a left-wing government faced with an EU policy that carries a strong right-wing signature could react hostilely and give little if any attention to the implementation, with the effect that the policy is not executed or not executed well. On the other hand, the tide could be too strong to ignore, and governments of whatever political colour could be or feel forced to implement a policy because it is in line with the national or international mood. Either way, there is a direct relationship between the national mood and the extent of policy implementation, which will be analysed in this study by characterising the “political colour” of EU policies and governments executing them, and by seeing if any structural relationship between the political colour of the policy and the implementing government occurs.

#### *Factor 2: politicians*

Participants inside government, both elected representatives and civil servants, play a large role in the work of Kingdon, and he does not distinguish between the participants typically falling in the domain of public administration (civil servants) and political science (elected representatives), thereby bridging the gap between the two disciplines. There are studies exploring the relationship between civil servants and implementation (e.g. Lipsky, 1980) and between external pressure groups and implementation (e.g. Selznick, 1949) and in the wake of these seminal studies many more studies have been carried out. The relationship between politicians and implementation however is not well explored. However, politics is, in part, a “prima donna business”, and some member states’ governments are led by politicians with great influence, both on the national and the European scene. Government leaders like Helmut Kohl, François Mitterrand, Margaret Thatcher and their more recent equals are clearly what Kingdon (1995:68-70) calls “visible participants”, who have large agenda-setting powers. In terms of implementing European policies they could influence the prominence of an implementation trajectory in a member state, thereby securing more attention and resources, and thus favouring successful implementation. This is of course but one possible effect of activities at the highest level of the national governments, but seeing when and how high-level attention helps - or hampers - implementation will be evaluated in the conclusion in Chapter 6.

### *Factor 3: existing national policies*

For reasons difficult to reconstruct (Kingdon, 1995:2), new ideas and agendas come up and need to be executed, and in the European context this usually means that the idea comes up in Brussels and needs to be executed in the capitals. Much classic public administration literature stresses that public institutions favour stability, either because the officials themselves resist change (Merton, 1940) or because the system (Lindblom, 1965) is not able to create radical changes. As Downs says: “Bureaus learn to perform given tasks better with experience” (Downs, 1978:356). For this reason, it is reasonable to assume that the implementation of European law in a member state fares better when a Brussels’ measure resembles an existing national policy. The bureaucracy will know the goals of the policy, and will know what means may lead to that end. The “discourse” or the “paradigm” may be familiar, and there may already be institutions or agencies working on the problem, knowing the field and the participants. Maybe there is even existing national legislation that for a large part implements the European law by default. So, when Brussels comes up with a policy that is radically new classic public administration literature predicts that its execution will be problematic because it is at odds with the need for stability and will require new ways of thinking and new solutions for new problems. In this research the policies implemented will also be categorised so as to enable a comparison to existing policies in the member states. In the conclusion, in Chapter 6, the relation between the familiarity with a policy and the extent of implementation will be evaluated.

### **Research questions**

#### *Shortcomings in the knowledge of EU implementation*

Deficiency, variation and obstruction are, as argued, the terms that broadly describe how implementation is regarded in the literature. There are however shortcomings in the knowledge of EU implementation.

The first point is that if and to what extent EU implementation is deficient is still not clear. The general implementation literature predicts it will be, but some idea of the size of the “real implementation deficit”, so the lack of impact after transposition, would improve the general assessment of the strengths and weaknesses of the EU

policy process. Assessments of implementation now largely rest on the Commission data on legal implementation published in the annual law application reports mentioned earlier and on literature. What this research wants to contribute specifically is an assessment of the implementation deficit by comparing actual implementation to some standard of perfect implementation.

The second point is that knowledge of variation is incomplete. Research on more sectors and more countries would add to empirical knowledge and would strengthen the case for one or some of the variations mentioned in the literature. This research wants to see if there are clear patterns of uneven implementation or not, and wants to evaluate the north *v.* south conflict.

The third point is that the treatment of the role of the member states is largely incomplete. If attention goes out to the member states, it is somewhat one-sided, focusing on the way member states use the EU for their own purposes. While it is not denied that this may occur, a more balanced evaluation of the role and effect of member states' policies, politics and circumstances on implementation is badly needed. This research wants to improve and broaden the knowledge of the policies, politics and circumstances in the member states and explore if this knowledge can contribute to the understanding of how existing policies, national political support, politicians and the big political current are implicated in the implementation of EU law directives.

#### *Research questions*

- (1) What is the average extent of implementation?
- (2) What, if any, is the pattern of implementation? Is there a north *v.* south pattern?
- (3) How do national political circumstances affect the implementation of EU policies? Are the following factors in particular implicated: the *political current*, *politicians* and *existing national politics*.

#### **Research and choice of policies**

Establishing the extent of implementation is less straightforward than it seems. The term "implementation" implies establishing whether goals are accomplished, but since the goal of this study is not just to report on what takes place in the member states, but also to be able to make some assessment of how national responses fall

short of expectations and how national political circumstances are a factor in that result, not just any policy will do.

First, the policy must have a reasonably clear and measurable set of goals or pre-specified effects. If there is to be reflection on why member states' implementation falls short it has to be established *that* it falls short, and preferably *by how much*. Second, the hand of government must be present and clear to a large extent. Since much of the discussion on European implementation focuses on what national governments do and do not do, the activities and the consequences of these activities must be theirs. Third, the "causal theory" of the policy should be valid and robust. It is of little use to measure legal implementation and its effects if there is no certainty about a relation between law and impact. Fourth, if more policies are investigated they should be alike in term of goals, instruments and underlying policy theory, so as to be able to compare the policies.

The deregulation of telecommunication, broadcasting, rail transport and electricity that dominated the policy agenda in the 1980s and 1990s seems to satisfy the demands. These policies have clear and measurable sets of goals in the privatisation of state companies and the openings of markets that can be expressed quantitatively. Further, these are all natural monopolies, meaning that their cost structure is such that if governments do not intervene in the free market monopolies would emerge naturally. Utility economics, third, is a field that with reasonable certainty can state causes and effects. And fourth, the fact that so many industries were deregulated gives the possibility of investigating more comparable cases<sup>9</sup>.

### **Utility reform**

Changes in legislation and regulation affecting utilities worldwide originate in the changing political economy in Western countries. From the late 1970s on major changes in economic policymaking have taken place (Hood, 1994). Keynesian thinking that had dominated economic policy making in Western Europe and the US (Krugman, 1994a:23ff) for most of the post-war period was unable to solve the economic puzzle of the day: *stagflation*, the co-existence of high inflation and economic stagnation. Regarded as no longer having explanatory value, Keynesian theory lost

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<sup>9</sup> Regulatory policy and utilities are fully discussed in the Appendix.

its appeal to policymakers<sup>10</sup> and had to give way to the implementation of the economic ideals of the New Right, exemplified in *Reaganomics* in the US and the policies of the ruling Conservative party in Thatcher's UK (Adams, 1993:256ff).

The consequence was that Western Europe and the US set out on a major economic restructuring, characterised by privatisation of public and state-owned telecommunications, railroad, water, energy, broadcasting and other enterprises, deregulation, tax cuts, smaller collective sectors, and "lean and mean" government agencies. By 1989 the economic landscape of Europe and the US was in the process of profound economic and regulatory change, a process that has continued through the 1990s.

International changes focused on opening borders for cross-border trade and investment, at the same time facilitating and a consequence of "globalisation" of trade and enterprise. In this respect the conclusion of the Uruguay round of the GATT that led to the formation of the World Trade Organisation and the foundation of the North American Free Trade Agreement (NAFTA) exemplify the major changes in international trade regulation.

The privatisation of utilities raises special concerns (Denkhaus and Schneider, 1997:69). Simply allowing commercial operation in unregulated markets would, whatever the starting position of the industry, eventually lead to private monopolies<sup>11</sup> because of the nature of utilities and would in all likelihood cause monopolistic behaviour. The deregulation of European utilities had a seriously problematic starting point of course because utilities had matured into public monopolies, well connected to policymakers, central to welfare politics and enjoying legal protection of their status. Without regulation ensuring transparent pricing, easy access for new entrants, and market reform<sup>12</sup> serious competition would be out of the question. Government intervention, albeit more in the form of rule making rather than taxing and spending (Majone, 1997:139), remains important for the smooth supply and distribution of utility services.

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<sup>10</sup> Dispatches of Keynes' death are premature however. Notwithstanding his being out of vogue with politicians, policymakers came to rely on Keynesian measures soon after his policies were declared obsolete. For instance, the effects of the 1987 stock crash were mitigated by traditional Keynesian monetary expansionist measures, and in academic economics a Keynesian rebirth began in the early 1990s (Krugman, 1994a:197ff).

<sup>11</sup> Utilities are natural monopolies. Unregulated they become monopolies, a consequence of their cost structure (Wolf, 1990:23).

## Assessing EU utility reform: research set up and practicalities

How successful were the member states in implementing the directives on utility deregulation is what might be termed the “operational” question in this research. To investigate this question the measurable consequences of utility reform, the variables, need to be defined. Since investigating all utility reforms in all member states would far exceed the resources for this research a selection of member states and policy fields needs to be made also.

### *Variables*

The projected consequences of utility liberalisation are the main variables. There is ample literature on liberalisation<sup>13</sup> but since the implementation of EU policies is to be investigated projections of liberalisation, as put forward by the European Commission, either in general policy papers or in directives, are the basis of the variables<sup>14</sup>. Of course the specific projections of the European Union vary from sector to sector, so at the level of measurable and observable indicators there will be differences per sector. The specific choices will be dealt with at the appropriate places.

In the context of a more “competitive” Europe, and a rediscovery of the market as a way out of the economic malaise of the 1980s (Tsoukalis, 1997:34), the Commission wanted the traditional utilities to be ruled by the logic of the market, rather than as large bureaucracies within the sphere of government. To do so, however, is not just a matter of privatisation because utilities have a tendency to become monopolies because of their cost structure (see Appendix, and Wolf, 1988:23). So a system of government regulation needs to be in place to ascertain that a government monopoly does not turn into a private and largely unchecked monopoly. the variable *regulatory renewal* evaluates how well national governments have implemented requirements following from the “natural monopoly” tendency of utilities. The directives require the member states - in addition to transposition, which will also be assessed here - to change the organisation of the utility industries. What this generally means is a change from close political management of public utility companies (or even government departments responsible for utility production) to a situation in which the

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<sup>12</sup> “In the shark pond”, *The Economist*, 01-01-1998.

<sup>13</sup> For instance: Denkhau and Schneider, 1997:64-73; Lane, 1997:1-16; Wolf, 1988, and Lavigne, 1995:111-15.

production is left to private organisations, broad policy is made by the ministry, and the enforcement of fair trading and competition principles, necessary because of the natural monopoly, is left to an independent national regulatory agency (See: Melody, 1997:22). The crucial aspects are access and competition arrangements and the organisation of regulation, and the specific indicators per sectors vary on those themes. The variable entails an assessment of the quality of the regulatory framework, an assessment based on the potential of the national arrangements to separate policy, production and regulation. Each indicator receives an *assessment score* generally from one (lowest) to four (highest)<sup>15</sup> to be able to measure the extent of implementation, which, in this case, is an assessment of quality.

The market solution that the Commission favoured should work. The variable *Market renewal* assesses the most directly observable consequences of market reform: changes in the structure and operation of the market. Depending on the specific situation of the sector, the indicators measure some or all of the following elements: the decrease of the marketshare of the former national public utility company, the privatisation of the national public utility company, and the marketshare of new entrants. Member states again receive scores (from one to four) for their relative position.

The increase of efficiency and innovation are projected consequences of liberalisation (see: Lane, 1997:7-11, and Appendix), and the variable *Efficiency and/or innovation* establishes the extent to which these projected consequences occur. The mechanism, also favoured by the Commission (Steinfeld, 1994:9), is that competition forces participants, the former public utility companies, used to monopoly and protection in particular, to be as cheap and as innovative as possible to survive competition on prices and to attract customers with better products. Indicators are scored from one to four. In the end, competition should drive down prices for all clients. The *price development* will, where possible, be assessed, and scored from one to four.

Together the four variables, scored from one to four, will give a complete picture of the changes in policy and regulation, and the actual consequences in industry. Since

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<sup>14</sup> Of course the ideas of the Commission were shaped in large part by (academic) discussions on utility economics, so for good understanding the Appendix contains a description of the main economic reasoning behind utility reform.

<sup>15</sup> In sporadic cases where zero would be the more natural lowest score the assessment ranges from zero to four.



changes in national regulatory structures and actual consequences on the market and industry are in the end what the Commission aims for in the directives containing the policies, they measure the extent to which a policy has been implemented.

### *Member states*

The selection of member states should, if generalisations are to be applicable to the European Union as a whole, be representative. The problem here is, however, that because this research is more exploring than testing there are few specific criteria to come to a selection. Ideally all the member states should be included in an exploration. Part of the goal however is to look at national political circumstances, which entails putting together more detailed pictures of national circumstances, politics and reactions to European measures, and this limits the number of member states that can reasonably be included. So, a selection has to be made. In the absence of specific criteria the selected countries will together have to capture the political, economic and cultural variation in Europe. That meant that the following choices were made, with the following considerations.

First, the big founding members, Germany and France, with political clout and with influence over the political course of the EU, should be included. Germany and France (and the relation they maintain) are not synonymous to the EU, but do to a large extent represent the politics and political economy of the EU. Talking about the EU without referring to France and Germany, comes down to leaving out the centre. Second, the United Kingdom<sup>16</sup> should be a part of the selection. First because it represents the Anglo-Saxon, non-Rhineland economic tradition, and, second, although it does not belong to the Franco-German axis, because its decisions and attitudes toward Europe influence the course of events in Europe.

This leaves only a few other member states to be included, and if some of the richness of Europe relevant to public sector reform and economic policy should be represented. So all administrative cultures or systems currently in the EU must be represented. Page (1995:257ff) mentions six administrative cultures: Scandinavian, French, Germanic, southern European, British / Irish, and the eastern-European administrative culture. The latter can be excluded because it is not currently represented

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<sup>16</sup> In spite of the problematic fact that the UK started liberalising some utilities before the EU initiatives. This caused some minor problems in the course of the research, which will be dealt with at the appropriate places.

in the EU. That leaves five, of which the French, Germanic and British / Irish is already represented, which means that one Southern European and one Scandinavian member state should be included.

The Scandinavian member state to be added is Denmark. The selection would then also include a small member state, and Finland and Sweden joined the EU when utility reform was already being executed. For the Southern member state to be added Spain has been chosen over Italy and Portugal. Portugal is another small member, and one small member was thought to suffice. Italy was not selected because the political turmoil - operation clean hands, the many mafia scandals and trials - in the late 1980s and early 1990s<sup>17</sup>, the period most important for this research, were believed to have disrupted the normal state of affairs too much .

### *Utilities*

The utility sectors selected were: telecommunications, broadcasting, rail transport and electricity. Telecommunications seems a logical choice. In most member states telecommunications reform was the first big deregulation operation, and the debates and solutions in that sector shaped much of the general debate on deregulation and privatisation. Rail transport and electricity were chosen because they are classic utilities, and because their reform was governed by European law, and by directives, the focus of this research, in particular. Broadcasting, perhaps a less obvious choice, shares many of the characteristics of traditional utilities, including the central and guiding role of national governments in the shaping of broadcasting policy in European countries and the cost structure of utilities. Yet, the fact that the product, information, is not a homogenous product like electricity or gas makes it an interesting sector.

### *Plan of the dissertation*

There are four substantive chapters, each treating one sector. Chapter 2 treats telecommunication reform, chapter 3 broadcasting reform, chapter 4 rail transport reform, and chapter 5 electricity reform.

Each substantive chapter consists of three parts. In the first part the national (pre-EU) reform initiative or standing policies and the European reform initiative will be

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<sup>17</sup> “Why the gloom lingers”, *The Economist*, 05-23-2001.

treated, including the reactions of the member states. The second part is the assessment of the extent of implementation according to the four variables treated above. The sector-specific indicators are treated. Part two does not just give an overview of the state of the variables, but also treats social and political circumstances that explain the results or give context, perspective and general understanding. The third part gives an overview of the findings, and explains the relative positions of the member states. Chapter 6 is the concluding chapter, in which the research questions will be answered. The more technical aspects of utility industries and utility policy are described in the appendix.

#### *Approach to research*

It should be noted that this is not a purely quantitative investigation. The quantitative measurement of variables is important - but in the Weberian tradition of the social sciences *Verstehen*, understanding the results in context and circumstances is equally - or even more important. This research did thus not only consist of the collection of quantitative data, but also of making descriptions of political and economic contexts and circumstances. Together they will be used to analyse the variation, both between member states and between sectors, to gain understanding of how EU implementation fares, and of the factors that drive implementation.