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Working time?

- A sociological institutionalist account

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Abstract

The EU is characterised by a decentralised model of implementation, leaving significant space for the member states in the process. This paper seeks to advance a Sociological Institutionalism (SI), an under-represented approach on transposition studies. The frame of analysis deals with institutionalization, norms, logics of appropriateness and the concept of change; which in turn is applied on a case of delayed transposition: The Working Time Directive. The process in Sweden and the UK are studied.

The study shows that the process of transposition was politicized, with many and high level actors involved. The norms and rules in the directive together with national level logics of appropriateness were mapped, and clearly conflicted, giving rise to substantial conflict. Although the countries differ in several relevant aspects, the central conclusion is that the strongly institutionalized, political character of the policy field, together with the fact that the international rules and norms clashed with the national logics of appropriateness seem to have caused the delay. This in turn contributed to limited and incremental change.

Nyckelord: New institutionalism, Sociological Institutionalism, Transposition, Implementation, European Union (EU), Working Time Directive

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1 Introduction

The relation between the European Union (EU) and its member states is both complex and dynamic. Studying this relationship has received increasing attention and is exemplified by the growing literature on Europeanization, compliance and transposition. In a recent paper Johan P. Olsen discussed the notion of Europeanization, shedding light on the many meanings and approaches it holds (2002). This paper is closely related to at least one of these approaches: *Europeanization as a political project aiming at a unified and politically stronger Europe*. A clear and essential intention behind the EU is harmonization, something that as this paper will show does not come easy.

[...] a Minister's signature on a Directive should be a firm commitment, not a vague aspiration. (*Charlie McCreevy, European Commissioner Internal Market, 2005, Press Conference on the Internal Market Strategy Implementation - Scoreboard*)

Every international organization has problems with disobedience; the European Union is no exception. Implementation of the directives decided upon in the EU is not always smooth. As illustrated by the quote above, the problem is known. Seen from the perspective of implementation, the EU seems to be moving forward in a somewhat irregular fashion. Even though there has been improvement, several new quantitative studies are pointing in the direction of transposition problems exceeding those put forward by EU officials (e.g. Mastenbroek 2003, Haverland & Romeijn 2007, Berglund et al 2006). The Commission's own goal of a 1,5% transposition deficit is currently not reached (European Commission 2007). The extent of the transposition problem is still being debated.

Each year 50-70 new directives emerge from the EU (Berglund et al 2006:694) and even though only a few percent of these are not adopted in time, a total of 5-10% backlog can mean up to a 100 non-transposed directives (Tallberg, 2002:624). Although it should not be exaggerated, to some extent the implementation deficit constitutes a paradox (Tallberg, 2003:56). The undertaking to commit to EU policies is perhaps the most concrete meaning of the membership and is essentially voluntary through the decision to join the union. One of the driving forces behind the European Union is a joint interest in attending to common problems. Transposition is linked to how fast and far European integration will go and non-implementation may threaten the legitimacy of the whole project.

1.1 Aim and problem

Transposition studies are a fairly new field with a lot of new empirical data. Many of these new studies lack a clear theoretical approach, leaving room for developing the theoretical explanations. On an abstract level it is of interest to map the process of transposition. How come the member states in some cases do not implement policies jointly decided upon? Which factors influence correct transposition? Why do national governments apply European Union legislation even when it appears to strongly go against existing norms? How much does it matter to be shamed on the European level and how strong are the EU institutions? Without the claim to provide a definite answer, this paper to varying extent touches upon all these questions.

In this paper I aim to show that the process of transposition is not one completely secluded from politics. Supporting this claim, transposition involves several stages of interaction between supranational officials and national administrators, including ministerial actors and agency representatives (figure 1). Furthermore many EU directives contain new norms that must be absorbed into the institutionalized domestic settings of the member states. The actors and institutions involved in this process are to varying extent all able to influence the outcome, where delay and erroneous transposition are possible when international rules and norms are conflicting with national logics of appropriateness. In line with a study by Dimitrova & Rhinard (2005), I argue that most EU directives cover such a wide array of issue areas that norms influence the process of transposition. Some examples are legislation related to gender and racial equality, biotechnology, working time, and health and safety in the workplace. Moreover, even regulatory directives can have large consequences, involving clashes between different logics of appropriateness. In the light of this I have deliberately chosen to look at the working time directive, which involves a clash between international rules and norms and domestic logics of appropriateness.

There are difficulties associated with studying implementation processes between the EU and the member states. Transposition varies (i) over time, (ii) from directive to directive and (iii) from country to country. To tackle this, this paper leans quite heavily on theory. The explanations of the transposition deficit are far from unidirectional, shedding light on the fact that this is a complicated process to study. Yet the field of transposition is unbalanced in terms of theory, relying heavily on rational choice oriented studies (e.g. Tallberg 2003; Mastenbroek 2003; Mbaye 2001; Dimitrova & Steunenberg 2000).

Making sense of the fragmented field of sociological institutionalism (SI), a perspective which I ascribe good potential explaining transposition delay, partly leaning on previous SI studies, I develop a frame of analysis to be able to single out factors of relevance to the transposition process. To contribute to an explanation of the more abstract questions posed above I will compare two cases of non-implementation:

- *From a Sociological Institutional (SI) perspective, why was the European Working Time directive (EWTD) not transposed correctly in*

the case for the UK and Sweden? From this perspective, which factors can be considered relevant in explaining states differing in their implementation of international norms and rules?

1.2 Demarcation

I find it relevant to make one basic distinction of implementation that is of importance for this paper: (I) change with respect to formal or legal implementation (transposition) and (II) change with respect to practical or administrative implementation (enforcement) (Versluis 2004:5). Statistically they each account for about half of the infringement proceeding initiated by the commission (European Commission 2007). My focus in this essay lies on the former where, like enforcement, explanations are searched for (Mastenbroek, 2005). I place my analysis on a relatively high level (national and international). Transposition is of course just a first step towards implementation, but the process is still telling and connected to problems that seriously endanger the efficiency of policies and the EU-project on many levels (Dimitrova & Rhinard 2005:2). By doing this some insights are gained, and some are lost. A study with the same theoretical perspective but focusing on practical enforcement of EU directives could rewardingly be made.

1.3 Method and Material

The theoretical framework of this study is based on research that has been conducted from a sociological institutionalist perspective. I have read some papers covering SI generally (e.g. March & Olsen 1989; March & Olsen 1998; March & Olsen 2004), as well as in the context of transposition specifically (e.g. Falkner et al 2004; Dimitrova & Rhinard 2005; Berglund et al 2006; Sverdrup 2004). The working time directive has been chosen due to its rather long history of conflict - a still ongoing matter¹. I chose two countries where transposition has been delayed, namely the UK and Sweden. These two cases differ in several important aspects. Firstly the cases diverge in terms of the transposition process. Secondly the reasons why the working time directive was erroneously transposed diverge; with the labour markets differing in several important aspects. Thirdly in terms of compliance the countries have different reputations on an EU level. The UK has

¹DN: Nytt försök lösa arbetstidsbråk, Ekonominyheterna: Eu: misslyckas att enas om regler för arbetstid, bemanning, Svenskt näringsliv: EU fortfarande oense om arbetstiden, TCO: Oenighet kring arbetstider skapar problem

on numerous occasions been called ‘an awkward partner’ in the context of EU. Sweden, on the other hand, is known for compliance in terms of implementation.

Empirically the paper rests on written material on the subject by different actors, including many official government documents and papers written by other scholars. Covering the transposition problem more generally I have read a large number of papers on the subject (e.g. Haverland & Romeijn 2007; Mastenbroek 2003; Bursens 2002; Dimitrakopoulos 2001; Toschkov 2007). Furthermore I have discussed some issues with Mark Rhinard, one of the authors behind one of the few studies on transposition from a SI perspective. One interview of general character mapping the working time directive, has also been conducted (see chapter 6 for details).

2 Transposition

The first section gives a brief overview of directives as means of legislating and a summary of the different explanations in a selection of research on transposition delay and errors. Furthermore, in the second section, I briefly introduce the working time directive.

2.1 Explaining transposition delay

Legislation is the language of politics within the European Union (Tallberg 2001:37f). Directives, making up about eighty percent of the legislative output with the general purpose of harmonizing the EU, are legislation issued by the EU which is binding in terms of objective but leaves choice of method to the member states (TEC, Article 249, 3rd section). Directives, unlike regulation, assume legislative force only when they have been incorporated (i.e. transposed) into national law, whereby national administration can begin executing the aim(s) of the directives. (Haverland & Romeijn 2007:760). The time limits for this process are set by the Commission and research over time has revealed considerable delay in the transposition (See chapter 1). Delay and erroneous transposition both lead to so called infringement proceedings, initiated by the Commission (Bomberg et al 2003:114-6, Nugent 1999:374-7). Studying some explanations of transposition problems in the member states, the textbook answer is that the problem appears to be administrative irregularities or genuine difference over interpretation, which in turn often has to do with the effectiveness and experience with EU-law on a national level, rather than wilful ignorance (Nugent 1999:136-8). Lack of workforce and knowledge are pointed out as reasons (Dimitrakopoulos 2001:448-9). Other studies support these claims, establishing quantitatively that administrative efficiency (Haverland & Romeijn 2007, Toschkov 2007) and inter-ministerial coordination, i.e. the need for coordination between different ministries at the central government level, are correlated with transposition delay (Haverland & Romeijn 2007:768-75). Haverland & Romeijns study also quantitatively tests member state preferences, new vs. amendment, complexity of directive, national parliament involvement, federalism vs. unitarism, but fails to find any strong correlations (Haverland et al 2007). Another recent SI-oriented quantitative study successfully finds a correlation between routinized policy fields and successful transposition (Berglund et al 2006). Interesting findings are also made when comparing the member states in terms of resolving conflicts. The smaller states (especially the Nordic countries) pursue a more consensus-seeking approach while the larger states more often go to court, a fact that seems to

indicate that differences in domestic traditions are more interesting than participation and power in decision making at the European level, when wanting to explain differences in implementation (Svedrup 2004). The political aspect of transposition should not be overlooked. Even though outright rejection of a directive is uncommon, there is room for interpretation in the process (Dimitrakopoulos 2001:449-52). Quantitative studies pointing in this direction show that government support for European integration in fact has positive effects on transposition (Toschkov 2007; Trieb 2003). To some extent transpositional errors are associated with the complexity and vagueness of EU directives, which in turn has to do with the compromising nature of the negotiations behind some directives. The importance of indistinctness should however not be overestimated. It is argued that this is only a minor factor influencing the problems of transposition (Dimitrakopoulos 2001:443-4). The conclusion from reading these studies is that not one factor can explain transposition problems and the complexity of the process seems to draw the attention of different approaches and theories.²

2.2 The European working time directive (EWTD)

As previously stated the working time directive has been chosen due to its long and conflicting history. Turning to the transposition in England and Sweden, these countries constitute no exception. There are however exceptions (see Adnett & Hardy 2001:119-121), where e.g. Spain had no problems implementing the directive, while they practically already had the proper regulation prescribed by the directive.

Sweden met the deadline set by the Commission but was later convicted due to erroneous transposition and needed to change some national legislation to fully live up to the directive. In Sweden, from deadline set by the commission for implementing the directive (November 23 1996), it took more than eight years until Sweden got convicted in the European Court of Justice (ECJ) (May 26 2005), which marked one end of implementation problems. Difficulties in terms of implementation still subsist (ECJ verdict 1). January 1 1995 when Sweden joined the EU the directive already existed, thus Sweden had no chance to influence it. It is likely, however, that Sweden would have been against it (Essemyr 2007).

The United Kingdom had the transposition delayed with two years. The UK, however, opposed the directive in a direct and wilful fashion, both at the national and the EU level. Already in the early stages of negotiation the UK displayed itself as a clear contender of EU involvement in social policy. “Not since World

² For a good review see Oliver Trieb’s conclusion: “Implementing and complying with EU governance outputs. <http://europeangovernance.livingreviews.org/Articles/lreg-2006-1/> (Available 07/01-2007)

War II have they so greatly involved themselves in a question” (Essemyr 2007). Even for the current government the matter seems to be of great importance. First upon losing a case in the ECJ, the UK was forced to implement the directive (ECJ verdict 2).

3 Sociological institutionalism (SI)

The school of new institutionalism is not a unified body of thought but can rather be split into three perspectives: rational choice institutionalism, historical institutionalism and sociological institutionalism (Hall & Taylor 1996). One clear unifying factor is the view of that institutions play an important role in the determination of political and social events (Dimitrova & Rhinard 2005). Especially two of these perspectives: sociological and rational choice institutionalism, have had considerable influence in the ambition to understand transposition specifically and international influence on domestic levels more generally.

“/.../ [Rational choice institutionalism (RCI)] enjoys a relatively clear set of unifying assumptions, yet /.../ [Sociological institutionalism (SI)] is hampered by the sheer diversity of approaches. Sociological explanations of the domestic impact of international organizations generally, and Europeanization, specifically, employ a wide array of assumptions and methods.” (Dimitrova & Rhinard 2005:3) Thus my problem has been to establish a frame for analysing the transposition of the working time directive from a SI perspective.

Below I will try to establish a clear set of assumptions, and from these assumptions develop questions that will be further investigated in my case study. By doing so I hope to shed a different light on the process of transposition. A caveat in this context is that foundation on which SI rests reasonably brings about difficulties in demonstrating casual relationships (Toschkov 2007:337; Dimitrova & Rhinard 2005:3).

3.1 Frame of analysis

3.1.1 Degree of institutionalization

A fundamental SI argument is that no organization is created in a vacuum, but must be understood by looking at the institutional setting in which it develops. In this way even the most bureaucratic of practices can be explained in cultural terms (Hall & Taylor 1996:15). These cultural practises create more or less visible formal and informal norms of what constitutes proper behaviour in a given organization. Describing action along these lines has been named “the logic of appropriateness”, in contrast to the rational choice oriented “logic of consequentialism/instrumentality” (Hall & Taylor 1996:16). The norms and

practises according to this logic can be expected to grow stronger over time through the process of institutionalization, also assimilating new individuals into the accepted practises in a given organization through socialization. An interesting notion is thus the degree of institutionalization. A given social space is institutionalized when there is a widely shared system of rules and procedures to define who actors are, how they make sense of each others actions and what type of action is possible (Stone Sweet et al 2001:12). On a general level I am to discuss the degree of institutionalization, a notion that will have implications for the transposition process. An institutionalized policy area can be expected to have a stronger logic of appropriateness. Yet, institutionalization can be split into two levels: the EU level and the national level. When a policy field is institutionalized on an EU level, it can be expected to be more routinized on a national level (E.g. Berglund 2006). A routinized organization (e.g. a ministry) deals with tasks it is accustomed to dealing with (i.e. transposition) fast and efficiently (Berglund et al 2006:701). The notion of routinization can account for why transposition records have improved across the policy areas. Should the policy area not be institutionalized on an EU level national logics of appropriateness are assumed to influence the process of transposition to greater extent.

- On an (i) EU-level and on a (ii) national level, I aim to discuss the degree of institutionalization of the policy field, which in turn will have implications for the transposition process and the logics of appropriateness.

3.1.2 The rules, norms and logics of appropriateness

Sociological institutionalism has developed within the field of organization theory as a reaction against the claim that institutional behaviour, development and action more generally are to be understood through formal means-end rationality calculations (Hall and Taylor 1996:13-14). Sociological institutionalists oppose this way of depicting action and institutions. Many of the institutional forms used by modern organizations were not adopted because they constitute the most efficient way of doing things, but should rather be seen against a cultural backdrop in which the organization has grown. Comparing the SI perspective to the rational choice institutionalist perspective, it is not to say that individuals are not purposive, goal-oriented or rational but sociological institutionalists underline that what an actor sees as rational action is socially constituted and thus the individual goals are more broadly characterized. In this way SI endogenizes preferences and identities (Jupille & Caporaso 1999:436; Börzel & Risse 2000:13). In an institutionalized environment the actors know the answer to the questions “what is the appropriate behaviour here?” Many of these rules are followed automatically and unconsciously (Berglund et al 2006:699). The concept of “Logic of appropriateness” presupposes certain norms and rules. In this context I find it of relevance to account for my use of the notion *norm*. A distinction of relevance here is that norms constitute single standards of behaviour, while institutions, incorporating different logics of appropriateness, consist of multiple

norms, practices, and rules. Finnemore and Sikkink, define a norm as “a standard of appropriate behaviour for actors with a given identity” (1998:891). In the rational choice tradition a rule is often depicted as a neutral constraint, whereas a norm implicates both formal and informal dimensions as well as a non-neutral element of “oughtness”.

Singling out norms on different levels, I argue is of importance, when wanting to account for possible resistance. “Distinguishing rules from norms is helpful here even though rules, social norms, and routines are often used interchangeably in sociological accounts” (Dimitrova & Rhinard 2005:5; see also March & Olsen 1989:22).

The notion of adaptational pressure can be measured in terms of how many resources a directive demands and how policies resonate with the domestic norms and collective understandings; thus accounting for both capacity and will to act. If the adaptational pressure is high there is a higher risk of friction. This is of particular interest when one wants to study cases of transposition failure. An interesting question is what happens when new norms and rules associated with the European directive enters a national setting? In an institutionalized national setting, where strong logics of appropriateness can be expected, a directive containing a conflicting set of rules and norms risks more friction in the process of transposition. The probability for frictional transposition should thus increase, when strong norms are associated with the policy area. Focusing on the relationship between international rules and norms and national logics of appropriateness seems to be highly appropriate in the process of transposition. In the end all directives must be transposed. Directives can however be transposed in different ways and with different speed, thus affecting actual policy outcomes. From the section above I single out a number of relevant questions.

- What are the relevant norms and rules in the directive? A ranking will be made according to Dimitrova and Rhinards system (2005).
- On a general level what is the logic of appropriateness on the national level?
- Which actors were relevant to the delay and what were their roles? A higher norm tends to involve more actors, which in turn will lead to norm conflict and increase the possibility of transposition delay.
- How do the international norms and rules interact with national level logics of appropriateness and how strong is the adaptational pressure?

3.1.3 The concept of change

March and Olsen (2004) brings up the question about what will happen if different social logics collide. This fits well with European integration which, as they suggest, is highly conflicting when previously separated traditions collide in the EU. Thus the individual actor often finds action obscure, being squeezed between different logics of appropriateness. Sometimes they may know what to do but not be able to do it because “prescriptive rules and capabilities are incompatible” (2004:9). In those situations the actor is likely to refer to similar

situations in search for the most appropriate rule. Higher order rules are used to differentiate between lower order rules during times of ambiguity (2004: 9). From an SI perspective on a more general level a common way of referring to change within an organization is not in terms of speedy reform and transformation, but rather as slow and incremental change over time. Directives, of course, constitute only one source of change. However, which norms conflict, and how that conflict is reconciled, should determine how transposition will proceed. When a conflict arises between a directive and a higher order norm, there will be considerable difficulties involved in the transposition process. March and Olsen presupposes that these situations are only solved through time consuming processes (2004:13). New norms and practises do not simply replace existing ones. Profound change should only be expected under special conditions (e.g. high pressure or crisis) (Börzel & Risse 2000:8). The SI perspective thus claims that it is not always or even often that a reform, directive or other kinds of pressure for change is realized in a narrow sense, but instead tend to be shaped according to the norms and proper behaviour in the institution (March & Olsen 1989:159). The most obvious way of investigating this is to study enforcement rather than transposition. In this way the EU legislation may be adopted in line with the EU-agenda, but is enforced in line with organizational norms. However, signs of this should also be possible to see during the process of transposition.

- Which traces are there of this “socialized change” during the stage of transposition, i.e. adapting the directive as much as possible to previous existing logics of appropriateness?

The perspective does leave room for strong actors and formal institutions, capable of changing an organization in a more direct fashion. Change agents attempt to change actors’ interests and identities by social learning (March & Olsen 1989:47). One weakness of the perspective is however that: “claims that actors conform to logics of appropriateness say little about how standards of appropriateness might change” (Finnemore & Sikkink 1998:888). Although not being my primary focus, it is also of interest to study how these logics change. A more actor-centered approach would be to argue that there are socialization processes by which actors internalize new norms in order to enhance their social legitimacy as member of the international society in good standing (Finnemore & Sikkink 1998; Börzel & Risse 2000:8). This is most interesting when wanting to investigate how the infringement proceedings are resolved, i.e. the outcome of transposition problems.

- Firstly, turning to the international level, how strong was the EU in spreading values of compliance and changing institutional norms? Even when there is a norm or rule conflict, actors may be persuaded to adopt and adjust to EU norms.
- Secondly, are there any relevant influential actors (change agents) on the national level influencing the final transposition and, if so, what were their roles in the process?
- Thirdly, can the way in which the conflict was solved be linked to the political cultures in the different countries? The degree of consensus-seeking (on a very general level) in a country’s political culture can be

of interest when explaining if domestic norms are internalized by domestic actors giving rise to domestic change. (see Svedrup 2004).

4 Analyzing the transposition delay of the working time directive

Below the frame of analysis is tied to the empirics of the working time directive and the policy field of social policy.

4.1 Institutionalized policy fields?

The field of social policy is a relatively new, but growing field of influence in the European Union. This trend of growing aspirations on an EU level is illustrated when over viewing the steadily increasing number of directives related to social policy over time (see Appendix 7.2). These aspirations have however been a constant source of friction for the past decades, with the core issues being what strategy is the best economic and political model for the union. On one side the British government and the European employers have been strong advocates of a deregulated, flexible labour market. On the other side the European Commission and some member states regard social policy as a way of saving the European welfare model, ensuring equal rights across Europe. An illustrating example of this is the fight over the EU social charter and the social chapter of the Maastricht Treaty, an attempt to counterbalance the liberalizing initiatives granting a range of employment rights; with the UK strongly resisting this (Teague 1994:5-8).

At the national level social policy generally and the labour market policies specifically are both politically sensitive and well established. Of the two countries analysed in this study the most obvious example is the Swedish labour market system, which was established in the central agreement of Saltsjöbaden in the 1930s, implicating the strongly rooted character of this policy field. Therefore it is no understatement to say that the social policy field is a heavily institutionalized field on a national level, where there exists a widely shared system of rules and procedures to define who actors are, how they make sense of each others actions and what type of action is possible (Stone Sweet et al 2001:12). Thus, I would argue that the question of “What is appropriate here?” is one easily answered on a national level. This goes for the UK as well as for Sweden, with particular emphasis on the latter.

What is clear is that the EU has moved beyond the negative rights it once exclusively stood for, trying to make its way into areas that are traditionally national. This also involves stepping into deeply institutionalized areas of the nation state where norms, rules and procedures are long established. In this context particularly, national sovereignty is a powerful norm defining the

behaviour of the member states' governments. This is of course also influenced by the fact that domestic politicians can exercise autonomous influence over the domain, in contrast to for example environmental politics, where the external pressure is high. Furthermore more traditional EU areas involving negative rights, such as the internal market, are less associated with these kinds of clashes (Teague 1994:6). The institutionalized character of the policy field on a national level, combined with the fact that the EU is relatively new on the field competing with national logics of appropriateness, suggests increasing probability of transposition failure. On a theoretical level this would also indicate a non-routinized character of the transposition process.

4.2 Norm and rule clashes

4.2.1 The working time directive

European working time directive (93/104/EG) stems from an agreement in November 1993 by the Council of Ministers concerning the organization of working time. Similar to other directives the aim was to create a common set of standards in all the member states, leaving the possibility open for a better protection than that stated by the directive. Content-wise the directive contained standards that regulated rules for daily rest, breaks, weekly rest, the length of the working time and vacation, among other things (See appendix 7.3).³ The aim was to create a benchmark for all the member states, and thus not interfere with those member states that already fulfilled the goals of the directive (Blair et al 2001:64). I would argue that the directive constitutes a bold step, which can be linked to the broader EU development towards positive rights, granting workers a uniform set of standards across Europe. First and foremost it became clear that the directive demanded regulatory reform. Collective agreements were not sufficient to grant workers these minimum rights. Secondly it meant raising the bar in some countries in a number of areas. One of the more controversial is the crude definition of "working time" as including that of on-call duty, leading to protests among government and health care employers (Nuthall & Osbourne 2005). The directive was viewed as a way of implementing a social dimension into the cooperation (Commission 2000).

³ Note: Since the original directive (93/104/EG) there have been some updates of it, making it cover larger groups, and trying to solve some of the initial conflicts. The latest update is a directive from 2003. For a full list see: <http://europa.eu/scadplus/leg/en/cha/c10418.htm>

The norms and rules contained in the directive are summarized below:

- The social dimensions were to be prioritized before purely economical interests.
- The definition of work was tough and included that of on-call duty.
- The social dimensions were clearly specified, encompassing a number of concrete workers rights, which raised the bar in numerous countries (See appendix 7.3).
- The social dimensions were to be established through binding law, collective agreements were not sufficient to grant these rights (see below). Thus the norm is individual, rather than collective rights.

Tying this to a previously mentioned SI study on transposition, Dimitrova and Rhinard's model (2005) would qualify the norms contained in this directive as a second-order norm, which is a norm that spans policy sector boundaries and are held in common by actors from various parts of the government, interest organizations, social partners etc. These norms are broad and "guide general approaches to policymaking in certain areas, stipulate the goals and methods of regulatory approaches, and suggest appropriate policy instruments to achieve goals" (2005:5-6). In this case the directive contains norms and rules related to managing the labour market (liberal vs. interventionist), encompassing a trade-off between social and economic values.

4.2.2 National level logics of appropriateness

Turning to the national level, the next logical step is attempting to establish which logics of appropriateness that can be considered ruling. Mapping these cultures on a relatively high level (national level) is associated with potential difficulties, and involves an element of interpretation, which might jeopardize the results of such an analysis. Bearing this in mind, being a heavily institutionalized policy field on the national level, labour market policy should be possible to map in this way, whereas less institutionalized policy areas might bring difficulties due to hidden or less established logics. Due to the nature of this analysis, focusing on legal features, the logics of appropriateness should be visible in the regulation of the labour market as well as through the role of the social partners.

Sweden is known for the so called *Swedish model* implicating political efforts aiming at full employment, an equitable wage policy, low inflation and high growth. This model is also characterized by a high degree of corporatism, i.e. that e.g. the social partners and interest organizations are represented in the formal decision making (SOU 1999:121:22). The social partners are thus allowed to influence the content themselves (e.g. Proposition 1995/96:162 bilaga 3). Even though this model has been put under pressure, it is without controversy saying that it still holds a lot of relevance for understanding the Swedish labour market (SOU 1999:121:242-3). The changes on the labour market have not happened to such extent as in other areas of the EU membership (Svensson 2001:141). Initially

there were worries mainly coming from left-wing EU-sceptics that the Swedish welfare state would worsen by becoming members of the EU (Mattson & Jacobsson, 2002:208). Thus, upon joining, assurances came that the Swedish system of collective agreements would be sustained within the frame of EU-regulation. Characteristic for Sweden is a high union density, a high level of collective bargaining coverage and a “social dialogue” between the social partners. The norm in this model is the collective bargaining between social partners, which is the central mechanism for determining working time. The labour law has a dispositive character indicating that it can be foregone by the collective agreements. The norm is also for the government not to interfere in this system, implicating little government regulation (Svensson, 2001:119). This system is politically defended and contrasted with the Anglo-Saxon model of capitalism. The above mentioned are the central traits of the Swedish labour market policy and this system of highly autonomous social partners is something the political parties are rather united about (Essemyr 2007). Thus summarizing the Swedish system it is one of strong and high density trade union movements, characterized by dialogue between the social partners through centralized collective agreements. The social partners, mainly through the high density trade unions, ensure a well regulated labour market. The norm is for the government not to interfere through regulation, but to entrust this to the social partners. The discourse is, although somewhat weakened, dominated by that of the workers’ rights.

The United Kingdom is described as having the lowest level of protection and the least regulated industrial relations system in the EU (Smith 2003:282). The current system in the UK is directly related to the conservative government between 1979 and 1997 under Margaret Thatcher and later John Major. This system was established under Thatcher’s new approach to industrial relations in the UK, which involved diminishing union power and advocating free competition through a series of domestic reforms granting more power to the employers. As an illustration of this development, the part-time jobs increased by 31% between 1983 and 1993. British employees also had the longest working week in the European Union (Blair 2001:64-66). The limited labour market legislation as well as employment protection and trade union rights became eroded through these reforms (Smith 2003:280). Thus the norm is a strongly deregulated labour market, with little or no political influence, and with a relatively weak employee side, where negotiations are made on an individual, rather than a collective level. The discourse in the UK is dominated by ideals of flexibility as an advantage on a global market (House of Lords report 2004, Nuthall & Osbourne 2005).

4.2.3 The actors behind the transposition problems

Which actors were relevant for the problematic transposition process? The assumption is that a higher norm tends to go hand in hand with more actors involved, which in turn will lead to norm conflict and increase the possibility of

transposition delay. On a general level the transposition of the directive surrounded by difficulties and debates on different levels involving a multitude of actors. The nature of the directive has meant that the transposition process has been characterized by actors negotiating on a high level, i.e. with a substantial involvement from government officials and large influential actors such as confederations of trade unions and employer organization involved (See e.g. SOU, 1995:62, Prop. 1995/96:162, Blair et al 2001) . As described before, this makes sense because labour market policy is strongly a national and political question, being an issue of major importance in the general elections.

The Swedish transposition process involved three government inquiries, two before and one after the conviction in the European Court of Justice (ECJ). Generally the actors in these processes can be characterized as horizontally consulted, i.e. on equal grounds (Essemyr 2007). The parliamentary committee that was appointed to investigate the application of the directive in Swedish law consisted of many different actors, among others representatives from LO, TCO and SACO, representatives from the employer organizations and experts (SOU, 1995:62:3). There were also the consultative bodies (Essemyr 2007). Turning to the practical transposition process, the Swedish Ministry of Labour had the assignment to transpose the directive, and a first inquiry was initiated by the government to investigate the implications of the directive in Sweden, called "EG:s arbetstidsdirektiv och dess konsekvenser för det svenska regelsystemet" (SOU 1995:62). The far-going effects and application would be investigated during a longer period in the second inquiry "Arbets tid - längd, förläggning och inflytande" (SOU 1996:145). This inquiry was however never adopted. The first inquiry was adopted by the government in a proposition called "EG:s Arbetstidsdirektiv" (Prop. 1995/96:162). The law change that the first inquiry brought about was a so called EC-barrier (Swe: EG-spärr), which meant that the collective agreements could not bring less protection for the employees than what the directive stated (SOU 1995:62:101-104). The relevant actors for the erroneous transposition which later got Sweden convicted in the ECJ were the ones involved in the first inquiry. As soon as the infringement proceeding became known by the Swedish government, the process of implementation was speeded up (through the inquiry (Knas), SOU 2002:58) and a new proposition was announced which the parliament approved before the ECJ verdict was announced.

In the UK the debate encompassed the social partners but in effect it was the government that caused the delay. When the working time directive first came up the British government announced that it regarded working time a domestic matter which was to be decided between employer and employee (Department for Employment 1990:11; COM(90)317, 8073/90; Teague 1994). The government challenged the legal basis of the directive. In verdict the ECJ made clear that the progress to establish a social policy at the EU level could not be hindered by individual member states. A consequence of the court's ruling was that the government immediately had to start the process of transposing the directive at the national level, a process that went rather smoothly. Authors of a British study on the working time directive suggest the upcoming British election, in which labour won 1997, also influenced the lowering of British resistance and the transposition

process as a whole. At the end of July 1998 the final version was approved before the parliament (Blair et al 2001:64-68)

In the case for Sweden the assumption that a higher order norm seem to implicate more actors involved is true, both in the debate and in the transposition process. In the case for the UK, the higher order norm implicated a debate between the social partners, but it was foremost the British government that rather fiercely became involved. Thus many and, in particular, influential high level actors characterized the transposition process. The process also held many political actors; particularly the British process was politicized.

4.2.4 Norm and rule interaction

What is clear in the sections above is that the EWTD stood heavily in contrast to national logics of appropriateness. Against the above mapped actors responsible for the delay I will review and analyse the norm interaction, i.e. what happened when international norms and rules met with national level logics of appropriateness. Since the political, economical and social institutions differ between the member states the adaptational pressure also varied.

In Sweden an adaptation of existing regulation was needed and fear was that the Swedish system would be weakened (Essemyr 2007). By regulating by law collective bargaining would be replaced by generality which would strike hard against different sectors (especially the health sector). This system is still defended by the current government⁴. Increased law intensity on the labour market could in the long run hollow out the model of collective agreements (Prop. 1995/96:162). In a joint letter from The Swedish Agency for Government Employers, Swedish Enterprise and the Swedish Association of Local Authorities and Regions the directive was depicted as problematic while it took departure from a completely different model of labour market regulation (Lindsö et al 2004). Furthermore the government proposition and the first inquiry stressed that the directive was complex and that it would make labour laws more complex (Prop. 1995/96:162; SOU 1995:62). Many of the consultative bodies to which the directive was referred meant that the directive was complex and went against the Swedish model. The complexity of the directive could also lead to insecurity for the social partners when concluding the collective agreements (Essemyr 2007). However, the Social Democratic government at the time meant that the problems should not be overstated due to the fact that many differences from the directive were tolerated under article 17.3 in the directive (Prop. 1995/96:162:22). The view of the government was however that increasing law intensity would worsen the situation for the employees (SOU 1995:62). The directive was therefore implemented by changing regulation in the least possible way ensuring the power of the collective agreements; as shown in the first inquiry (SOU 1995:62). The

⁴ E.g. SR: Ekot. 18/12-2007. Littorin: Lagen måste ändras efter domen <http://www.sr.se/ekot/artikel.asp?artikel=1784875> (Available 07/01-2008)

intention of the government as well as the actors behind the first inquiry was that there should be room for implementing the directive within the frame of existing system with collective agreements (Prop. 1995/96:162:18).

A conclusion of the above is that the clashes of the norms and rules together with the alleged complexity of the directive meant high adaptational pressure stemming from the directive. Adaptational pressure was also increased by the fact that the first inquiry only had a year's time to come up with a solution. As stated in the inquiry (SOU 1995:62), the aim was very clear: to adapt the directive with the least possible change to the Swedish system. From the logic of appropriateness previously established this was the proper measure. There was clearly unwillingness by the dominant actors not to change the Swedish system. Reasonably this is also closely attached to the strong position of the Swedish trade unions. The government thought that the ECJ would have greater understanding for the Swedish system, than what turned out to be the case (Essemyr 2007). Sweden admitted itself guilty in the trial, indicating that it was not a matter of wilful ignorance on Sweden's part (ECJ verdict 1).

The employer side was a bit more sceptical to the Swedish system (see Lindsö et al 2004). It is however important to stress that views were not as polarized as to say that the trade unions were against and the employer organizations were in favour of abandoning the Swedish system (Essemyr 2007).

The hostile ways of the UK in the field of social policy generally and the EWTD specifically, can be traced back to the unwillingness of the conservative governments. Thatcher and Major were both unwilling to see EU policy spread into the areas of industrial relations. This view was illustrated domestically by Thatcher's reforms, with strong implications for industrial relations in the UK. On an EU level it was illustrated by resistance, which led to a slowing of the advancement in the social policy field. Britain had a lower level of protection of the employees compared to many other member states, which illustrates that variation between member states was substantial. This, in turn, demonstrates the dominance of member states in the field social policy. In accounting for the norm interaction in the case for the UK, it is highly valid to account for the political aspects of the policy field. Labour market policies are closely related to electoral success. The European Commission announced that it would give the same priority to the social as to the economic aspects of the single market. Britain opposed this, and showed it during the preliminary drafting of the social charter in 1989 (Teague 1994:5-8). Thatcher "considered it quite inappropriate for rules and regulation about working practices or welfare benefits to be set at the community level". Two arguments were put forward all along, the first being that the policy area is a national matter and the second being an economic argument stressing that it would reduce flexibility (Blair et al 2001:64-68).

In line with this John Major negotiated an opt-out from the social charter in December 1991. The opposition was also highlighted in the House of Commons. The UK lost the case in the ECJ in November of 1996 and was forced to transpose the directive. The result was that the directive could be approved on an EU level. The labour party profiled itself in the election of 1997 as in favour of the EWTD. The labour government has however continued to oppose central parts of the

social policy, once more stressing the need for flexibility on the British labour market. The root of the problem seems to be the strong norms associated with the British labour market policy. Because of the weak collective bargaining system in the UK, most of the negotiations are done on individual or workplace level. Thus, an essential win for the UK was the ability for an employer to opt-out from the 48 hour maximum working week, provided the worker agrees, proper records are kept, and worker health is respected (Now regulated through Article 21) (Blair et al 2001:66).

On the national level, the debate was more polarized than the corresponding in Sweden. This had a lot to do with the fact that the trade unions had been weakened. "Not only was government more receptive to business interests, there was no counterweight to this viewpoint" (Blair et al 2001:67). There was a declining fortune of the labour party and the trade unions membership and influence dropped. Upon comparing Sweden and Britain, Sweden had a union density on around 80% while the corresponding in the UK is around 30% 1995 (see e.g. Kjällberg 2007, Graiger 2007).

To sum up, the norms and rules clearly diverge between national and international levels, giving rise to substantial difficulties. In part because the differences in rules generate different systems which to some extent creates demanding adaptational pressure relating to resources of the process and secondly, and more importantly, in part a norm clash affecting the transposition process. It is however also worth mentioning that the cases diverge in the sense that Sweden implemented the directive in time, believing that it would be an acceptable solution, while the UK wilfully resisted. The arguments also diverged. In Britain the strongest arguments in the debate and in the transposition process was that of sustaining flexibility on the labour market. In Sweden the debate and the transposition process clearly leaned more towards preserving the Swedish model and the rights of the workers.

4.3 The concept of change

Below I will discuss the notion of change by looking at the EU level and the national level, establishing what changed through the process, who the change agents were and tie this to the SI perspective.

4.3.1 The executive power and the norms of compliance

As previously stated the process of transposition always ends with a transposed directive, although this process may vary to different extent. In this context, I would argue that the European formal institutions, namely the ECJ and the European Commission, can in a sense be regarded as change agents in the transposition process. These institutions tend to be forgotten in the studies I have read, where the authors almost exclusively focus on national level administration.

The question of their role in the process is to some extent related to the debate between neo-functionalists and intergovernmentalists. Modern-day neo-functionalists contend that they do play a bigger role than the member states delegated to them, and that they have substantial autonomy and are able to push integration forward (Tallberg 2003). In this section I join with this approach, arguing in favour of a holistic view of the supranational institutions. The argument here is that the Commission and the ECJ both acts to push integration in the transposition process generally.

The transposition problem does imply a rather weak executive system in the EU. Before proceeding I will briefly stop at the formal powers in the enforcement system. The guardian of the legal framework, which through its supervisory and implementing responsibilities, is to make sure that the EU-legislation is respected, is the European Commission. It does this more on a watch-dog- than a day-to-day-basis. The reason for this is that the Commission is restricted in several ways. First and foremost it has very limited resources in relation to its tasks. Second the Commission does not have perfect information and monitoring regulation is often hard since the member states do not have an interest in displaying their flaws. The member states are however obliged to notify the Commission on the measures taken implementing legislation. Thirdly, the Commission has to take political considerations; too harsh treatment might result in legitimacy harm or decrease in popular opinion (Nugent 1999:133-138). The EU has no administrative presence in the member states but must to large extent rely on complaints, most commonly from the public, e.g. media, private persons, organisations or companies (Bomberg 2003:116) and national SOLVIT-units⁵. Complaints can be made on grounds that the EU-legislation has not been transposed correctly (or not at all) or that the practical application of the regulation has fallen short (Tallberg 2001:89-98 168, see Article 226 TEC)⁶. It is important to stress that the ECJ itself cannot initiate cases but must wait for cases to be referred to it by e.g. the Commission or a member state (Nugent 1999:262-6). In sum, the Commission and the ECJ can best be described as restricted and weak when it comes to the supervision of the member states implementing EU legislation. The Commission only has direct implementing power in a few areas (e.g. fishery, competition). Furthermore it is restricted in several ways and has an unhealthy distance from the implementation itself. Once implementational errors are discovered it has rather strong muscles but the process itself is timely and rather inefficient. In the case for Sweden it took 8 years from the deadline until the EWTD was fully implemented. The EU has a system where the institutions are practically dependent on the cooperation of the member states for the success of Community policies. There is a national

⁵ SOLVIT is an on-line problem solving network in which EU Member States work together to solve problems caused by the misapplication of Internal Market law by public authorities.

⁶ The infringement procedures can be structured according to three formal steps: The first step is a letter of formal notice (LFN) is sent to the member state where it has the opportunity to present its view. If the European commission still considers it a breach the second step is a reasoned opinion (ROP), which contains a deadline for changing. If the state fails to comply with this deadline the Commission may refer the matter to ECJ. Under article 228 of the Maastricht treaty the ECJ can now issue sanctions (Svedrup 2004).

monopoly of power when it comes to execution that could be portrayed against the principle of subsidiarity; as clearly illustrated in the case of the EWTD.

This picture of the Commission's formal powers as rather modest can be contrasted with how the Commission has acted in different questions. In a study by Tallberg it is clear that the EU institutions have taken a number of measures to improve the transposition process and squeeze their power, leading to a more integrated union. Since the 1990s the EU's weak enforcement system has evolved as a result of non-compliance with EU-directives; delay and error in transposition and errors in the actual application of the EU-directives (2003:11). I would argue that the power of the EU institutions lie in their ability to create norms of compliance and squeeze their powers to speed up the process of transposition. Without lingering on the exact measures developed, I would like to illustrate the powers of the institutions in promoting a norm of compliance by discussing the EWTD.

When the institutions (rules and procedures) are in place, there are opportunities for unexpected events, which the makers can not foresee or control. The ECJ has disregarded all economic arguments in the face of protecting worker health, illustrated by the EWTD. This has created a power struggle between the European Institutions and national administration about which norms should be ruling. A narrow interpretation of directives as means of legislating, indicate that all national legislative sources may be used. The praxis suggests otherwise, illustrated by that the ECJ has demanded transposition through law or binding regulation. As previously mentioned, the collective agreements have played a substantial part in the traditional labour rights in Sweden. This is illustrated by the semi-dispositive character of the labour market law. The ECJ demands that everyone, also the ones not included in the collective agreements can be guaranteed equal protection. Looking at this particular case the Commission has successfully used the ECJ to expand the area of social policy. E.g. the compatibilities of national requirements with the wording and purpose of the directive came into question on two occasions. In the two cases concerned, referred to as SIMAP and Jaeger, the Court found that time spent on call should be classified as working time. Both ECJ judgements indicated that working time needs to be interpreted broadly by the national courts (European Commission 2000).

On a more general level the institutions has acted to expand the area of social policy. In March 1994, the United Kingdom brought action under Article 173 (now Article 230) of the Treaty, trying to annul the EWTD, arguing that the legal base of the directive was inconsistent. According to the UK, there was no scientific evidence to show that the directive was a health and safety measure within the meaning of Article 118a (now, Article 137) of the Treaty. Furthermore, the UK claimed that the directive did not respect the principles of subsidiarity and proportionality and that the Council had misused its powers as the directive allegedly was unconnected with its aims. In the judgement, the European Court of Justice did some minor changes to the content, but dismissed the rest of the application (ECJ verdict 2; European Commission 2000). As previously mentioned this case underlined EU's supremacy and made further advancement possible.

4.3.2 National change and change agents

The relatively modest changes that the directive brought about were made possible by the fact that the directive is a result of long and hard negotiations. While the member states have different traditions when it comes to labour market regulation the directive became a compromise. Thus in this case the directive has indeed opened up significant room for variation within and between member states, leaving a relatively high degree of freedom as to how the directive should be incorporated (Blair et al 2001:64). This is shown by the fact that there are substantial ways to avoid large parts of the content, even though the original thought naturally was to improve situations for the employees. The possibility of a member state to use the opt-out has led to debate and stalled any attempts for change. Great Britain takes advantage of this possibility and more member states have followed in its footsteps. The claim from the opposition is that the member states that use the opt-out can compete on other conditions and the European Trade Unions and a number of other member states have long demanded the removal of the opt-out (Essemyr 2007).

In the national transposition process incremental change or legislative socialization is shown in Sweden, where the idea seems to have been to do as little as possible and to keep the Swedish model. The new norm was socialised into existing regulation. The picture presented by the government action in the question, presented in the proposition 1995/96:162, shows that the government was well aware of the importance of fulfilling the directive, but that the responsibility was placed on the parties on the labour market.

In the UK change has been equally slow. British transposition of the directive was kept to a minimum and a study suggests there is a growing number of cases seeking clarification as a result of this (Adnett & Hardy 2001:121) The ability for individuals to opt-out is seen as a vital part of the flexibility on the British labour market and is important when competing on a global market. Views are also still polarized, where the CBI (Confederation of British Industry) claims that those in favour of ending the opt-out “simply do not understand the realities of the modern workplace”. Another spokesman has said that they do not want Brussels stating how many hours the individual worker can work, but that is rather a question for each and every individual to decide. The CBI thus welcomes the government refusal to weaken the opt-put. The Trades Union Congress (TUC), on the other hand, has been stressing that excess working hours can have serious health consequences (Nuthall & Osbourne 2005).

The nature of this issue seems to go in line with March & Olsen’s view of change as incremental and slow rather than transformative. There are different cultures and strong norms in different sectors, making it hard for change to occur. There would be a lot of fighting, if this was to change. In Sweden the system has stronger roots and thus perhaps a broader defence. In Britain the defence has however been fierce from the strongest actors. In the Swedish case the change agent relevant for correct transposition was essentially the government; ultimately through the third (Knas) inquiry. In the UK I dare to say that the key actor, or the

changing factor, was the ECJ through the verdict. Another actor was the newly elected government.

As shown, in this case one can hardly speak of change agents in the sense of transformative change of existing logics of appropriateness. Furthermore, I dare saying that the logics of appropriateness have not changed considerably. If change is occurring it is indeed gradual. The negotiating character of the directive made sure change has been minimized. This was in turn made possible through the negotiations leading up to the directive. Change has been equally stalled by the governments and other actors involved. As this section has shown, views are still polarized and the directive was socialized into existing settings as much as possible. This implicates strongly cemented norms in this policy area. The conclusion drawn is that it seems reasonable that incremental and gradual change applies to the heavily institutionalized national policy fields associated with strong norms and politics.

On a general level theories of that the small (Scandinavian) member states have a consensus culture in dealing with transposition is enforced, or perhaps more correctly, not rejected in this study. No sign of wilful resistance could be spotted in the Swedish case, while in the case for the UK, an influential and in some respect awkward partner, resistance was hard. This case illustrates the conflicting question of national sovereignty, but also the increasing EU activity on the area.

5 Conclusion

This paper has shed light on the transposition process of the working time directive, a new and in some respects non-institutionalized policy area on an EU level, where change has been unwanted and conflict has been a key word for advancement. The analysis generally has shed light on the fact that no single factor or approach can fully explain transposition delay. From a Sociological Institutional perspective factors under which difficulties can be expected have been mapped. The norm- and rule-based approach has helped to shed light on the transposition of the Working Time Directive.

Transposition in this case has been shown to be influenced by the rules and norms in the directive and in the institutions it targets. I argue that the EWTD has not demanded major transformations of these institutions, but rather introduced a norms and rules inconsistent with national logics of appropriateness. In a case where the directive had been compatible with institutional arrangements, transposition would likely have been smoother; supported by the fact that numerous countries which already met the regulatory demands had no problems with the transposition. Here I have shed light on the fact that politics on a national level play a role for transposing certain directives. The assumption being that in areas with a particularly close relationship to national politics and domestic norms of institutionalized policy fields, the transposition process is not entirely secluded from political wills. The European norm of compliance was shown to be strong in the Swedish process of transposition, where measures were taken when the infringement proceeding became known. The process was complicated by that logics of appropriateness clashed, squeezing the member state between (a) national systems, and (b) complying with the EU and its growing aspirations in the field of social policy. The analysis has also shown that change has indeed been gradual as the actors have strived to socialize the directive into existing regulation and minimize change, thus acting according to national logics of appropriateness.

Reviewing the SI perspective, a problem for achieving some kind of generality is that the analysis is placed on a high level, where it is difficult, not to say impossible, to capture all elements relevant for explaining transpositional success/failure. The downside of the analysis has been that it is hard to fully capture all elements of capacity, i.e. the economic/political resources demanded by a directive, while this would demand more factors to be considered and a deeper, process-oriented study. A technical, regulatory directive would require a partly different approach than the one developed here. Supporting the perspective, strength is that the preferences of the actors are specified endogenously. However in mapping these preferences a significant amount of interpretation was needed.

Sociological institutionalism is well equipped to address issues where the relations between institutions and actions are not instrumental. Even so, highly instrumental actors can be said to draw legitimacy for their action against the organizational culture. If a directive conflicts with national norms socialization might be needed to overcome stalemate. On the basis of this and other SI studies, it is likely that more conflicts of this character will arise, as EU pushes its way into areas associated with strong national logics of appropriateness. It seems reasonable that as the member states routinize the transposition process (E.g. Berglund et al 2006), of the few percent transposition delay still existing, a growing part might be associated with the type of delay mapped in this paper. However, as put forward in this paper the norm of compliance can be considered strong, ensuring transposition and gradual change.

Inviting to further research, I would suggest further studies to be conducted on enforcement of directives, which might yield promising insights from the SI perspective.

6 Sources

- Adnett, Nick; Hardy, Stephen. 2001. Reviewing the working time directive: rationale, implementation and case law. *Industrial Relations Journal*. 32:2.
- Berglund, Sara; Ieva, Gange; and Frans van Waarden, 2006. Mass Production of Law. Routinization in the Transposition of European Directives: A Sociological-Institutionalist Account. *Journal of European Public Policy* 13(5): 692-716.
- Blair, A; Leopold J; Karsten, L. 2001. An Awkward Partner? Britain's implementation of the Working Time Directive, *Time and Society*, Vol.10, No.1, pp.63-76.
- Bomberg, Elisabeth – Stubb, Alexander (eds), 2003. *The European Union: How Does it Work?* Oxford: Oxford University Press. 253 pp.
- Börzel, Tanja A.; Risse, Thomas. 2000. When Europe Hits Home: Europeanization and domestic change. *European integration online papers (EIoP)* 2000 Vol. 4 nr 15.
- Bursens, P. 2002. Why Denmark and Belgium Have Different Implementation Records: on Transposition Laggards and Leaders in the EU, *Scandinavian Political Studies*, 25, 2, 173–95.
- Dagens Nyheter. 30/11-07. DN: Nytt försök lösa arbetstidsbråk. <http://www.dn.se/DNet/jsp/polopoly.jsp?a=720506> Available: 07/01-08.
- Department for employment 1990. Consultative Document. Commission's draft Directives on Part-time and Temporary Work and Working Time. London HMSO.
- Dimitrakopoulos, D. 2001. The Transposition of EU Law: "Post-decisional Politics" and Institutional Autonomy, *European Law Journal* 7 (4): 442–58.
- Dimitrova, Antoaneta; Bernard Steunenberg. 2000. The Search for Convergence of National Policies in the European Union: An Impossible Quest? *European Union Politics* 1(2): 201-226.
- Dimitrova, Antoaneta; Rhinard, Mark, 2005. The power of norms in the transposition of EU directives. *European Integration online Papers (EIoP)* Vol. 9 (2005) N° 16. 22 p.
- ECJ (European Court of Justice) verdict 1. 2005. Mål C-287/04: Europeiska gemenskapernas kommission mot Konungariket Sverige.
- ECJ (European Court of Justice) verdict 2. Case C-84/94
- Ekonominyheterna. 05/12-07. Eu: misslyckas att enas om regler för arbetstid, bemanning, Available: 07/01-08
http://ekonominyheterna.se/nyheter/six/2007/12/05/eu_misslyckas_att_enas_om_regler_for_arbetstid_bemanning/index.xml

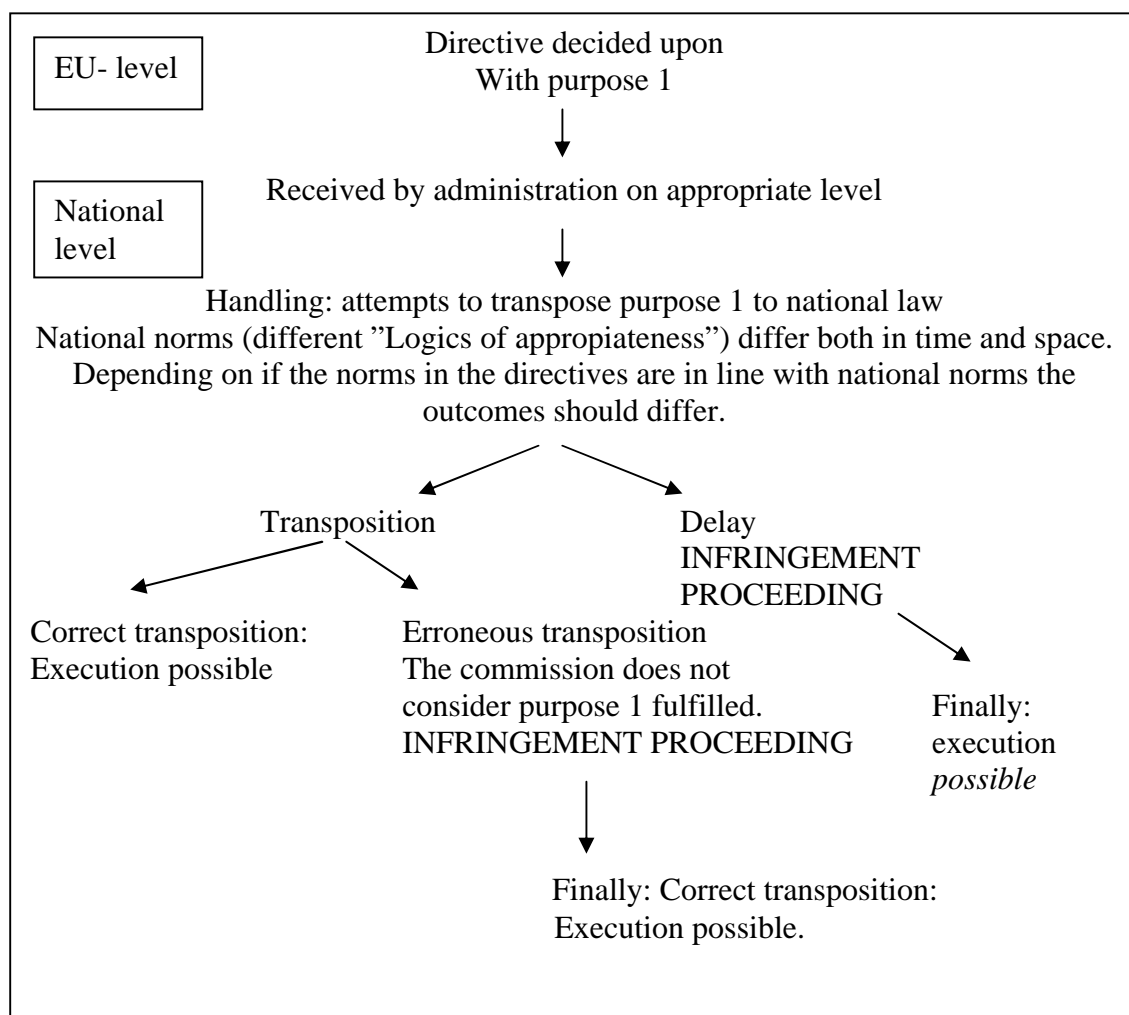
- Essemyr, Mats. 2007. Interviewed by phone 18/12-07. Essemyr is TCO's investigator on working time and is a representative in the European Trade Unions for LO, TCO and SACO. He was an active part in the third inquiry (Knas). The interview was semi-structured, involving questions of general character.
- EU deadlocked on working time. *The Safety & Health Practitioner*; Dec 2006; 24, 12; ABI/INFORM Global pg. 8
- European Commission, 2007. Internal market scoreboard. No 16, July 2007
- European Commission. 2000. State of Implementation of Council Directive 93/104/EC of 23 November 1993 Concerning certain aspects of the organisation of working time ('Working Time Directive').
- European Commission. 2005. European Commissioner Internal Market, 2005, Press Conference on the Internal Market Strategy Implementation – Scoreboard
- Falkner, Gerda. 2004. Complying with EU Law: Are there Different “Worlds of Compliance”? Paper presented at the ECPR Standing Group on the European Union, Bologna, 24-26 June 2004.
- Finnemore, Martha; Kathryn Sikkink. 1998. International Norm Dynamics and Political Change, *International Organization* 52, 4, 887-917.
- Grainger, Heidi; Crowther, Martin. 2007. TRADE UNION MEMBERSHIP 2006. Department of Trade and Industry. Available at <http://www.berr.gov.uk/files/file39006.pdf>, 07/01-2008.
- Hall, Peter A.; Taylor, Rosemary C.R. 1996. Political science and the three institutionalisms. Paper presented by prof Hall as a public lecture during the board's meeting on May 9, 1996.
- Haverland, Markus; Romeijn Merleen, 2007. Do member states make European policies work? Analysing the EU transposition deficit. *Public Administration* Vol. 85, No. 3, (757–778)
- House of Lords, 2004. The European Union Committee, The Working time directive: A response to the European Commission's Review. London: The Stationery Office Limited.
- Jupille, J.; Caporaso, J. A. 1999. INSTITUTIONALISM AND THE EUROPEAN UNION: Beyond International Relations and Comparative Politics *Annu. Rev. Polit. Sci.* 1999. 2: 429-44
- Kjellberg, Anders. 2007. Det fackliga medlemsraset i Sverige oktober 2006 - oktober 2007: en första översikt. Working paper.
- Lindsö, Ebba; Wetterberg, Ulf; Isaksson-Pérez, Birgitta; Lindholm, Evert. 2004. ”Brev till svenska regeringen från Svenskt Näringsliv, Landstingsförbundet, Arbetsgivarverket och Svenska Kommunförbundet”.
- March, James G., and Johan P. Olsen. 2004. ‘The Logic of Appropriateness’. ARENA Working Papers WP 04/09at.
- March, James G.; Olsen, Johan P. 1989. Rediscovering Institutions: The Organizational Basis of Politics. New York: The Free Press.
- March, James G.; Olsen, Johan P. 1998. The institutional Dynamics of International Political Orders. *International Organization*, Vol. 52, No. 4,

- International Organization at Fifry: Exploration and contestation in the study of World Politics.
- Mastenbroek, E. 2003. Surviving the Deadline, the Transposition of EU Directives in the Netherlands, *European Union Politics*, 4, 4, 371 – 95 .
- Mastenbroek, E. 2005. EU Compliance: Still a “Black Hole”?, *Journal of European Public Policy* 12 (6): 1103–20.
- Mattson, Ingvar och Jacobsson, Kerstin. 2002. Sverige och EU:s sociala dimension: marknad eller reglering? i Karl Magnus Johansson (red). Sverige i EU. Stockholm: SNS Förlag
- Mbaye, Heather A. D., 2001, “Why National States Comply with Supranational Law: Explaining Implementation Infringements in the European Union 1972-1993”, *European Union Politics*, 2(3): 259–281.
- Neill Nugent, The Government and Politics of the European Union, 1999. London: Macmillan press ltd.
- Nuthall, Keith; Osborne, Alan. 2005. Time for a rethink. *Occupational Health*; Feb 2005; ABI/INFORM Global pg. 22
- Olsen, Johan P. 2002. The many faces of Europeanization. *JCMS* 2002 Volume 40. Numver 5. p 921-52
- Proposition (1995/96:162) ”EG:s arbetstidsdirektiv” Stockholm, February 29 1996
- Smith, M. 2003. Re-regulating transitions? Continuity and change in the UK, *Regulating Working-time transitions in Europe*, O'REILLY J. (ed), Cheltenham, UK: Edward Elgar, 280-317
- SOU (1995:62) ”EG:s arbetstidsdirektiv och dess konsekvenser för det svenska regelsystemet” 1995. Stockholm: Fritzes. Available at: www.regeringen.se
- SOU (1996:145) ”Arbets tid - längd, förläggning och inflytande” 1996. Stockholm: Fritzes. Available at: www.regeringen.se
- SOU (1999:121) ”Av korporativisering och lobbyism – konturerna till en ny politisk modell”. Demokratiutredningens forskarvolym XIII. Available at: www.regeringen.se
- SOU (2002:58) Tid för arbete och ledighet: Delbetänkande av Kommittén för nya arbetstider och semesterregler (Knas). 2002. Stockholm: Fritzes. Available at: www.regeringen.se
- Stone Sweet, Alec; Sandholtz, Wayne; Fligstein, Neil. 2001. The Institutionalization of Europe. Oxford: Oxford University Press
- Svenskt näringsliv. 08/11-06. EU fortfarande oense om arbetstiden http://www.svensktnaringsliv.se/fragor/fakta_om_loner_och_arbets tid/article13560.ece Available: 07/01-08.
- Svensson, Torsten. 2001. Marknadsanpassningens politik: Den svenska modellens förändring 1980-2000. Uppsala: Statsvetenskapliga föreningen i Uppsala, 144.
- Sverdrup, U. 2004. Compliance and Conflict Management in the European Union: Nordic Exceptionalism. *Scandinavian Political Studies*, Vol. 27 – No. 1, 2004
- Tallberg J., 2001. EU:s politiska system. Lund: Studentlitteratur.
- Tallberg, J. 2002. Paths to compliance: enforcement, management, and the European Union. *International Organization* 56(3): 609–43.

- Tallberg, Jonas. 2003. *European Governance and Supranational Institutions: Making States Comply*. London: Routledge.
- TCO. 06/12-07. Oenighet kring arbetstider skapar problem. Available: 07/01-08. http://www.tco.se/Templates/Page1_681.aspx?DataID=6950
- Teague, Paul. 1994. Labour Market Governance in the New Europe. *The Evolution of EU Social Policy Employee Relations*, Vol. 16 No. 6, 1994, pp. 5-108. MCB University Press
- Toshkov, Dimitar 2007. Transposition of EU social policy in the new member states *Journal of European Social Policy* 2007; 17; 335
- Treib, Oliver, 2003. EU Governance, Misfit, and the Partisan Logic of Domestic Adaptation: An Actor-Centered Perspective on the Transposition of EU Directives. *EUSA 8th Biennial International Conference*, Nashville, Tennessee, conference paper. Related online version.
- Versluis, Esther. 2004. Explaining Variations in Implementation of EU Directives. *European Integration online Papers (EIoP)* Vol. 8 (2004) N° 19.

7 Appendix

7.1 Figure 1



7.2 Figure 2

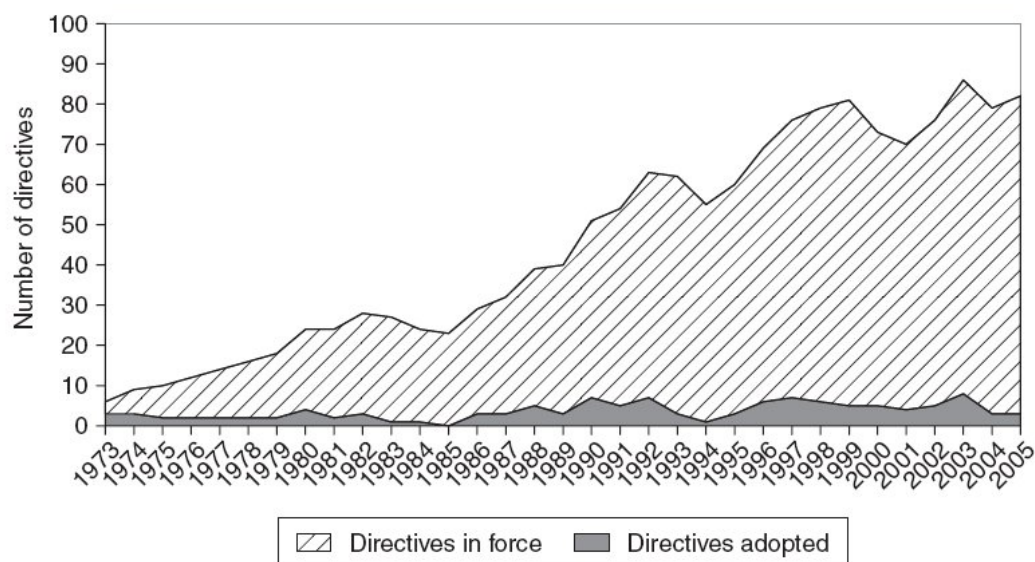


Figure 1 The growth of social policy directives

7.3 Table 1

TABLE 1
Key provisions of the Working Time Regulations

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- Maximum weekly working time of 48 hours (including overtime) averaged over 17 weeks.
 - A minimum of 11 consecutive hours rest period per 24-hour period.
 - A minimum weekly uninterrupted rest period of 24 hours, plus a daily rest period of 11 hours – amounting to 35 hours in total.
 - A rest break for workers whose working day is longer than six hours (details to be worked out by collective agreement).
 - A normal maximum working time of eight hours in any 24 for night workers and an actual maximum working time of eight hours in any 24 for night workers whose work involves special hazards or heavy physical or mental strain.
 - A minimum period of leave of three weeks per year, rising to four by 23 November 1999.
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