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Integration of the European Single Market Thirty Years After Its Creation

Abstract

The European single market was launched on 1st January 1993. Presumably, it is at that time that three fundamental barriers (physical control at the border, various technical requirements, and differing systems of indirect taxation) were formally removed to ensure four treaty-based freedoms: free movement of goods, freedom to provide services, free movement of people and free movement of capital. The EU single market is characteristic in nature due to the scope of legislation governing businesses and consumers, which is largely subject not to unification, rather only harmonisation. Regrettably, this has resulted in EU legislation being (deliberately at times) not always correctly implemented into the national legal system. This leads to market fragmentation and creates barriers, rather than eliminating them. This study aims to identify the relationship between full and correct implementation of EU legislation into the Member States' legal systems versus progress in European single market integration. Therefore, the evolution of indicators defining how much EU single market legislation in the Member States has been implemented was examined. At the same time, changes in transposition deficit (from 1997 to 2021) and conformity deficit (from 2004 to 2021) for particular Member States were critically analysed. Further, it was analysed how much the single market was integrated from the perspective of goods being the main components of the single European market. To this end, intra-EU trade was analysed as broken down into exports and imports of goods, versus the global trade of individual Member States (including trade with non-EU partners). The outcome of the study shows that both transposition and conformity deficit levels are quite high. In turn, intra-EU trade in goods does not largely correspond to the extent of implementation of EU legislation, which may

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be caused by growing interest in non-EU partners without compromising EU presence.

Keywords: Single European Market, Transposition Deficit, European Union, Trade in Goods

Introduction

The European single market is definitely one of the most important achievements of economic integration within the European Union. This is because it ensures not only the free flow of products, i.e. manufactured goods and offered services, but also the factors of production necessary to produce them, i.e., capital and labour. The European single market was launched on 1st January 1993 in its expanded form as defined by Béllа Balassa. Presumably, it is at that time that three fundamental barriers were formally removed to ensure four treaty-based freedoms: physical control at the border, various technical requirements, and differing systems of indirect taxation. This undertaking posed a huge challenge to Member States' economies, as it aimed to eliminate the remaining barriers that businesses, consumers and employees faced in effectively functioning on the EU market.

The adoption of political decisions and operational documents across European institutions relating to the functioning of the EU internal market shows how important it was. Within only a few months of the 1993 launch of the single market, the European Council underscored in EU membership criteria that each candidate country was required to ensure "the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union" (EUCO, 1993). Subsequently, as the extensive 2004 enlargement, including Poland's accession, approached, the EU institutions repeatedly stressed the nature and essence of the single European market. The quintessence of these activities is the reports (scoreboards) currently prepared by the European Commission on the implementation of market legislation in national legal systems by all Member States (EC, 2013). It shows the special nature of the EU internal market which, being subject to shared competences between the European Union and the Member States, is not largely unified, rather harmonised. Regrettably, this resulted in the EU legislation being (deliberately at times) not always correctly implemented into national laws. This leads to market fragmentation and creates barriers, rather than eliminating them. Hence, it is not surprising that thirty years after the market's symbolic implementation the European Council still "supports the renewed focus on enforcing existing Single Market rules and on removing barriers" (EUCO, 2023), whereas the Commission devises subsequent strategies and communications (EC, 2023b, Ambroziak, 2012; Kurczewska, Stefaniak, 2022). That the European market is attractive and it plays a role in the global economy is also shown by numerous non-EU countries being interested in closer integration through contracts establishing free trade zones or even joining the market (Norway, Iceland, Liechtenstein), without being an EU member.

The reason for EU institutions continuing to claim it is necessary to eliminate barriers in the internal market may be down to four factors: a) the existing EU legislation has not been fully or correctly implemented, b) there is a lack of adequate legislation for the rapidly developing digital market, for instance, c) EU legislation is not able to cover all aspects of economic activity, as some of them fall under the exclusive competence of Member States, and d) the existing impediments are not barriers in the sense of the EU treaties, but are administrative burdens applied by Member States on a non-discriminatory basis.

The study on EU legislation transposition has so far primarily focused on the analysis of the legislative process (Haverland, Romeijn, 2007), including with respect to particular countries or country groups (Sverdrup, 2004; De Coninck, 2015; Lazar, Lazar, 2015; Musiałkowska, 2017; Toshkov, 2008), the determinants of delays in implementation (Kaeding, 2006), including for selected sectors (Kaeding, 2008; Michelsen, 2008), as well as with respect to economic or political turbulences (Pircher, Loxbo, 2020). Other studies ventured to analyse the outcome of EU directive transposition from the perspective of the Commission affecting the efforts of Member States (Moriana et al., 2017) and integration processes in the EU (Ručinská, Fečko, 2019; Howarth, 2022). To the best of the author's knowledge, however, the lacking aspect is the relationship between the extent of the implementation of EU legislation (i.e., the extent of market unification) and economic links in the form of intra-EU trade.

Therefore, this study aims to identify the relationship between full and correct implementation of the EU legislation into the Member States' legal systems versus progress in European single market integration. Therefore, the evolution of indicators defining how much EU single market legislation in the Member States has been implemented was examined. At the same time, changes in transposition deficit and conformity deficit for particular Member States (from 1997 to 2021 as well as from 2004 to 2021, respectively) were critically analysed. Further, it was analysed how much the internal market was integrated from the perspective of goods being the main components of the single European market. To this end, intra-

EU trade was analysed as broken down into exports and imports of goods, versus the global trade of individual Member States (including trade with non-EU partners). The resulting data were compared with the extent of EU legislation transposition into EU Member States' legal systems.

This study employed the available European Commission's data published as part of annual Scoreboard reports, as well as data in international trade statistics and the balance of payments of EU Member States. The period from 2004 to 2021 was taken as the main period surveyed (unless otherwise indicated), since it encompassed all the EU Member States excluding the UK.

The first part of the paper presents the evolution of indicators defining the extent of implementation of EU legislation into Member States' legal systems. The follow-up part describes the extent of integration of the market of goods. A comparative analysis was employed of intra- and extra-EU trade in goods along with trends in trade versus transposition parameters of market legislation. Conclusions are provided in the final part.

Evolution of Transposition and Implementation of EU Law

The legislation on the European single market (ESM) consists of the Treaty on the European Union, the Treaty on the Functioning of the European Union, and the entire secondary law of the EU, from regulations, directives, and decisions, to guidelines and notices of individual EU institutions. The legal basis for the introduction of the ESM became the Single European Act of 1986, which introduced Article 8a into the then Treaty establishing the European Economic Community, which stipulated that "the Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992", and that "the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured". While treaty provisions do not fundamentally change, the regulations adopted across various EU institutions do, and this occurs much more often. The changes address the needs of politicians, businesses, as well as the CJEU case law. Consequently, bureaucracy escalation or even inflation of EU legislation are often noted. This is because of two parallel processes: increasing regulation due to bureaucratisation of economic life (Berglund et al., 2006) and the need to introduce new solutions to rectify the identified shortcomings in existing legislation on account of ever deeper and broader integration. In the first case, the new legislation is conducive to increasing harmonisation and to expanding it over successive elements in a given area, e.g., free flow of goods, whereas in the other case, EU legislation is implemented in new activity domains, e.g., digital trade. Consequently, it is now very difficult to clearly determine the scope of an internal market, which covers not only four treaty-based freedoms, but it also elements of industrial policy, competition and consumer protection, and health, environmental, climate and energy policies.

The original process of developing the internal market chiefly envisaged directives being acts in law leading to harmonisation of Member States' laws. This is because the intention was to eliminate severe discrepancies in the national regulations. A perfect legal basis for that was the current Article 26 of TFEU, which holds that "the Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties" and Article 114, which refers to "the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market". Such an attitude implied it was necessary for Member States to introduce complex legislative procedures into the national legal system. Thus transposition, which is incorporating EU legislation into the national law, and then implementing the laws adopted, was vital. The quality and efficiency of the process, however, may have varied depending on the procedure model in particular Member States (Steunberg, Rhinard, 2010), political will, and the so-called state failure. A significant delay in transposition and delays in keeping the prescribed deadlines were yet another issue (Borghetto et al., 2006).

In fact, the problem was acknowledged at the very beginning of the ESM. As early as in 1996, i.e. three years after the launch of the ESM, the European Council noted that "whilst noting the progress that has been accomplished in this area, it remains concerned with the delays in the transposition and implementation of a number of Directives" (EUCO, 1996). In response, the European Commission, as guardian of the treaties and of compliance with EU legislation, prepared the first Action Plan for better implementation of EU Legislation (EC, 1997a) which was fully endorsed by the European Council in 1997 (EUCO, 1997). It is at that time that the Commission noted that it was necessary to take up "renewed political effort to remove remaining obstacles", and underlined "the crucial importance of timely and correct transposition of all agreed legislation into national law (…) and the necessity of active enforcement of Community law in the Member States". It is also worth noting that the EU leaders agreed to request "the Commission to examine ways and means of guaranteeing in an effective manner the free movement of goods, including the possibility of imposing sanctions on Member States". Given the European Council's aforesaid instructions, the Commission launched multi-layered and growing ever more complex annual examination of the extent of transposition and implementation of EU legislation. The main indicator analysed by all the parties concerned is transposition deficit. It is calculated as the percentage of single market directives not yet completely notified to the Commission as a ratio of the total number of directives that should have been notified by the deadline. Internal Market directives covered by the aforementioned calculations are those that have an impact on the functioning of the internal market as defined in Articles 26 and 114 (1) of the TFEU. This includes the four freedoms and the supporting policies having a direct impact on the functioning of the Internal Market (such as taxation, employment and social policy, education and culture, public health and consumer protection, energy, and transport and environment, except nature protection) (EC, 2023).

In the first study of 1997, the transposition deficit was estimated at 6.3% for the whole EU, while it varied markedly, ranging from 3% in Denmark to 10% in Austria (EC, 1997b). From that moment on, the European Commission started to use the Scoreboard, more or less openly, to "name and shame" the Member States which, politically, had so far endorsed transposition improvement and the implementation of EU legislation. Consequently, as early as the next year, the average transposition deficit fell to 3.9% (the lowest in Finland at 1.2% and the highest in Belgium at 7.1%) (EC, 1998).

The years that followed saw a further decline in the transposition deficit of EU directives, reaching 3% in November 2000. At that time, countries such as Denmark, Sweden and Finland recorded a rate of 1.1–1.3%, while the three countries with the highest rate were Greece, France, and Portugal (4.4–6.5%) (EC, 2000). In a wave of this rather radical reduction in the transposition deficit, in the spring of 2001, the European Council (under the Swedish presidency) urged "Member States to accord high priority to transposing internal market directives into national law, aiming at an interim transposition target of 98.5% for the 2002 Spring Council" (EUCO, 2001), which was seen as determining the maximum deficit level at 1.5%. By the next year, the EU had reached a level of 2%. This was due to a large reduction in the rate of unimplemented directives in countries with the highest transposition deficits to date (Greece, France and Austria down to 2.9–3%) and an even greater reduction in the lowest-rate countries, that is Sweden, Denmark and Finland (down to 0.7–0.8%)

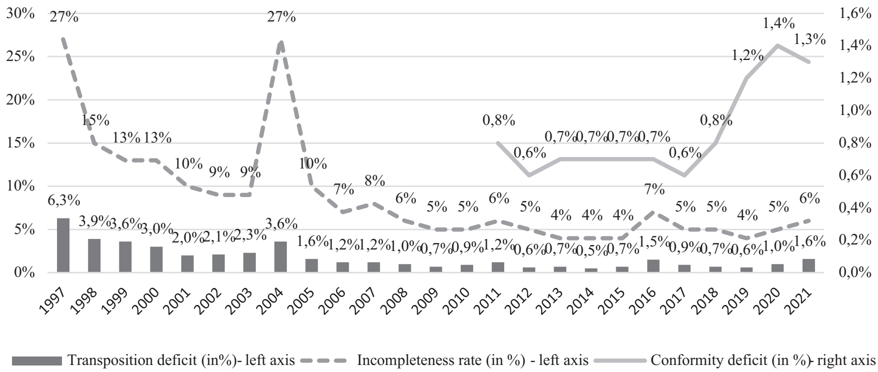

Figure 1. Evolution of the Transposition Deficit in the European Union from 1997 to 2021 (%)

Source: EC 2023a.

(EC, 2001). This inspired the EU leaders to agree that the Member States should "make further efforts to meet that target and for a transposition target of 100% to be achieved by the Spring European Council in 2003 in the case of directives whose implementation is more than two years overdue" (EUCO, 2002). This was a departure from solely quantitative analysis to a kind of political analysis. This is because not only a general number of unimplemented, but also severely delayed directives came under scrutiny. The two-year period indeed demonstrates not so much a prolonged and perhaps more complicated legislative process in a given Member State, but an intentional postponement. This is important because, in deciding to use directives as the legal acts governing the ESM, qualified majority voting was introduced under the Single European Act for their adoption. Consequently, it was assumed, apparently wrongly, that in spite of the failure to approve a given act in the EU decision-making process, relevant provisions would be incorporated into the national systems.

A downward trend in the transposition deficit continued until 2000, when the rate was at 2%. In turn, in the following years, a growing tendency became conspicuous, which prompted the European Council in 2003 to repeat that "Member States must make a renewed effort (…) to meet the Stockholm and Barcelona targets for transposing Internal Market legislation", this time by July 2003 (EUCO, 2003). In its 2003 Scoreboard, the European Commission recorded further deficit growth up to 2.3%. At that time, the highest deficits were recorded for France, Greece and

Germany (4.1–3.5%), whereas the lowest were for the United Kingdom, Spain and Denmark (1.2–0.7%) (EC, 2004). In view of the approaching enlargement, this was an alarming trend. Hence, at the beginning of the next year, the European Council underlined "the need to address the unacceptably high deficits in transposing agreed measures into national law, and to complete the legislative programme arising from the Lisbon Agenda" (EUCO, 2004).

The enlargement of 2004 not only markedly increased the number of Member States, but it also raised the deficit to 7.1% in May. In November that year, however, the deficit rebounded to 3.6%, due to delays not so much in implementation as in the administrations of the new Member States giving notification of the implementation (EC, 2005). Consequently, it was primarily the new Member States (Lithuania, Hungary and Slovenia at 0.7%) that in mid-2005 had already become the leaders in implementing market directives, the worst performers being Greece, Luxembourg and Italy (3.7–4.1%).

Four years into enlargement, in 2008, the average transposition deficit of ESM legislation fell to 1%, demonstrating that, in spite of twelve new Member States joining, the 2003 target result could be achieved. At that time, a decision was made to adopt an even more ambitious goal of 1% by 2009 at the latest, while stressing the importance of determining relevant transposition deadlines. The rationale was that "clear and consistent EU rules are a prerequisite for a well-functioning Internal Market as are timely, correct and high-quality transposition of Community legislation and effective application and enforcement of common rules" (EUCO, 2007). The level reached in 2009 was 0.7%, much as the following years saw a rise to 1.2% in 2011, to which the ongoing economic and financial crisis probably partly contributed. It was at that time that the Commission proposed in its "Single Market Act" to initiate "a more determined policy in this field" and announced that it "will call on the Member States to improve the transposition of – and compliance with – their national legislation, using numerical targets." The Commission also noted that "this approach has already enabled the transposition deficit to be reduced to 1%." (EC, 2011). This proposal was not, however, repeated in any other document of the European Council, so it did not gain political approval, which is not to say the Member States failed to make efforts to reduce the transposition deficit, which went down to as much as 0.5% in 2014. At that time, it was Croatia, Malta, Greece, Sweden, and Denmark which posted particularly low levels of the said indicator (0.1–0.2%) with Cyprus, Romania and Slovenia recording the highest numbers (1–1.4%) (EC, 2015). The year 2016 was noteworthy, when the deficit exceeded 1.5% with a number of countries contributing whose national rates went even beyond 2%, including, for example, Romania, Finland, Croatia, Luxembourg, Bulgaria, Spain, Cyprus and Portugal (EC, 2017). This was mainly due to the adoption of a significant number of new directives, which definitely caused the statistical performance of some Member States to worsen. On the other hand, however, there were also countries that maintained a low deficit level of 0.4–0.7% (Malta, Denmark, Slovakia).

A return to markedly lower deficit values of 0.6–0.7% up to 1% will be seen in 2020 and 1.6% in 2021. The most recent doubling of values can be linked to the COVID-19 pandemic and the shift in priorities of Member States from implementing new legal solutions to pursuing autonomous policies to support entrepreneurs (Ambroziak, 2022) despite ensuring a relatively smooth functioning of the EU market (Ambroziak, 2021).

Given how the transposition deficit is spread among the Member States, in fact the deficit went down over the 2004–2021 period in the vast majority of them. For such countries as Germany, Italy, Greece, and Luxembourg, as well as Czechia, Latvia, Estonia and Slovakia, the deficit fluctuated considerably. Ultimately, following almost thirty years of the European single market, the lowest average transposition deficits were recorded for Latvia, Poland, Bulgaria, Croatia and Hungary, as well as Germany, Spain and the Netherlands (below 1%), and the highest for Cyprus, Greece, Ireland and Belgium (over 1.5%).

That analysis shows that it is impossible to clearly demarcate between the best and the worst countries with respect to EU membership compliance construed as transposition of EU legislation into the national systems. In the following years of the surveyed period, the composition of country groups with the highest and the lowest ratio varied. Both of these groups included the countries that joined the EU somewhat later and the founders of the EU and ESM. Both of these groups included countries big and small, of the South and North, or West and East, as well as those of a better or worse level of development, more and less affluent.

The foregoing is due to a number of reasons. First, the study date was not correlated with the adoption dates of new regulations and the necessity to implement them. Such an argument is rather ill-founded, as all the countries faced similar legislative challenges. Second, the reasons for deficit should be identified, including the links to electoral cycles in particular Member States, and the resulting delays, for instance, in the parliamentary legislative process. Third, not all legislation adopted at the EU level was a priority for all the Member States. Thus the national processes could be expected to be obstructed by governments that did not

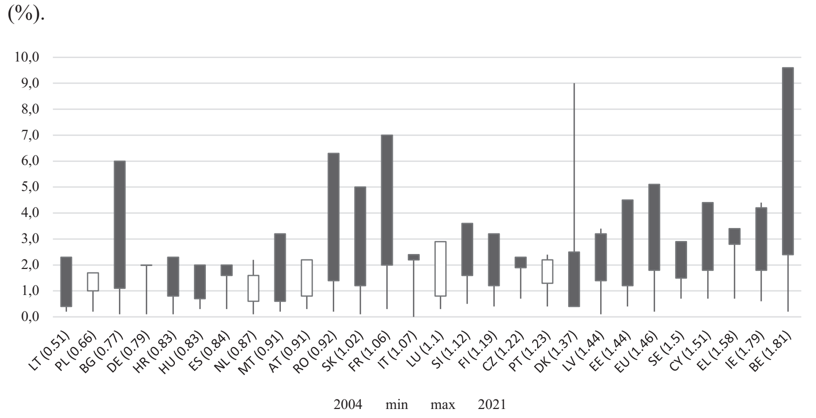

Figure 2. Evolution of the Transposition Deficit in the EU Member States from 2004 to 2021

Black bar: a decrease, white bar: an increase in 2021 as compared to 2004.

Note: the value in parentheses is the average value of transposition deficit during the study from 1997 to 2021 (for countries which joined after 1997, the accession year is the start date).

Source: The author's own calculations based on EC 2023a.

necessarily support or which downright opposed the adoption of certain acts in law.

The qualified majority system in the Council and the very strong position of the European Parliament makes it very difficult or, in many cases, impossible, to block the adoption of given legislation at the EU level. In such cases, Member States resorted to certain solutions that blatantly defied EU law, but which were expected at the national level, and postponed the correct implementation of EU legislation. The legislation was unknowingly improperly implemented, or openly obstructed to some extent knowingly. In the first case, it is true that Member States notify the Commission of the implementation of EU legislation, including primarily directives, but based on information from businesses, consumers, other Member States, and sometimes national decision-makers' own enunciations, it turns out that it was implemented incorrectly. Due to a failure to align the national legislation with EU law, the Commission may initiate an infringement proceeding. In such a case, a particular legal act is classified as *conformity deficit*. The Commission only took notice of this problem in the latter years of the second decade of the ESM, hence the available data covers the period from 2011 to 2021. Initially during that period, the conformity deficit remained relatively low at 0.6–0.7%, however, as of 2018, it began to rise significantly in almost all Member States to 1.3% for the whole EU (Figures 1 and 3). The highest values were recorded by Italy and Poland, with Czechia, Germany, Bulgaria, Hungary, Greece and France joining in recent years. It should be borne in mind that this indicator does not necessarily reflect national regulations being actually inconsistent with EU law, as the ultimate adjudication in this regard is made by the European Court of Justice. However, the European Commission's inclusion of specific cases in these statistics means that it had serious doubts and there were reasons to initiate an infringement proceeding.

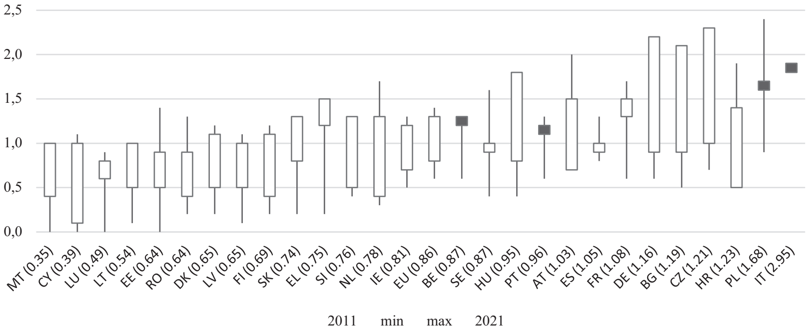

Figure 3. Evolution of the Conformity Deficit in 2004–2021 (%)

Black bar: a decrease, white bar: an increase in 2021 as compared to 2004.

Source: The author's own calculations based on EC 2023a.

Thus, with both the percentage demonstrating the transposition deficit and the percentage of incorrectly implemented directives, the overall indicator of failure to fully and correctly implement the directives of the single European market would be much higher. This hypothetical index, constructed by adding up the aforementioned indicators, presents national legislation implementing ESM directives differently (Figure 4). From the perspective of both a business and a consumer, it does not matter whether a directive has been ill-transposed or not implemented at all, as their rights are not secured uniformly across the European Union. This leads to a conclusion that there is internal market fragmentation. In 2021, the highest accumulated percentage for both of these indicators was posted for Romania, Spain, and Sweden (over 4%). It is only Denmark and Germany that did not exceed the critical threshold of 1.5%. At the same time, the highest averages were recorded for Italy (3.9%) and Poland (3.1%).

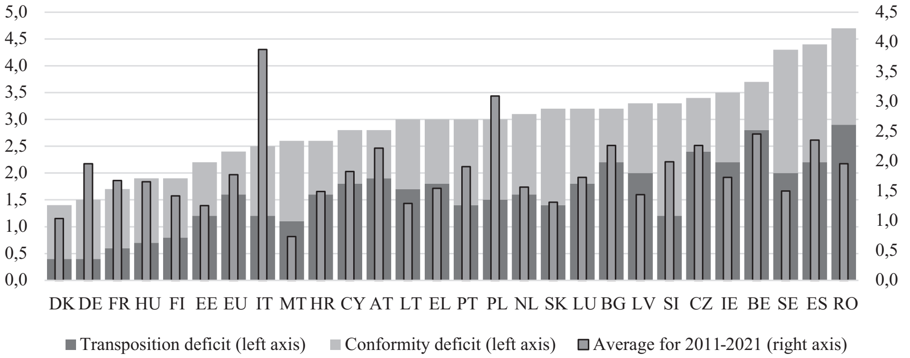

Figure 4. Summary (Transposition and Conformity) Indicator of a Failure to Fully and Correctly Implement EU Internal Market Directives in 2021 (%)

Source: The author's own calculations based on EC 2023a.

The European single market consists of 27 national markets, however the adoption of EU regulations should ensure similar/approximate business conditions across all the EU Member States. In fact, any derogations, whether regarding incorrect transposition, non-transposition, or late transposition, give rise to single market fragmentation. In order to encapsulate this trend, the European Commission introduced an incompleteness rate index which reflects the number of unimplemented directives as a percentage of all internal EU market directives (Figure 1). Evolution of this index follows a trajectory that coincides with the percentage of the transposition deficit, but at a much higher level. This is because it identifies any directive that has not been properly implemented (even in a single Member State) as market fragmentation. In recent years, this percentage ranged from 4 to 5%, although it rose to 6% at the EU level in 2021.

As a consequence of the above struggle with the process of transposition and implementation of EU directives, the European Commission is gradually replacing them with regulations, i.e., legal acts directly applicable in all EU Member States. The original plans for the creation of a single European market envisaged almost 300 directives. In subsequent years, the number increased rapidly until the culminating year of 2006, when the pool of internal market directives amounted to 1639 items. At that time, however, the rate of enactment of EU regulations i started to accelerate, to outnumber directives more than fivefold in 2021 (5669 versus 997) (Figure 5).

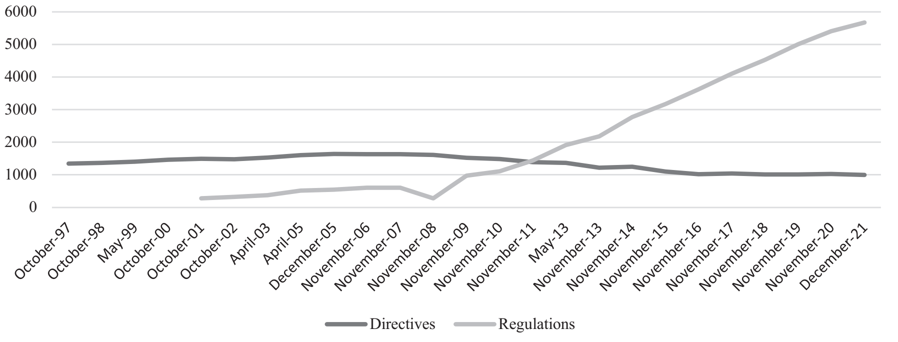

Figure 5. Number of Directives and Regulations in the European Union from 1997 to 2021

Source: EC 2023a.

Developments in Trade in Goods as an Example of the Integration of the European Single Market

The level of real integration of the European single market is evidenced by indicators defining the geographic location of trade in goods. Intra-EU exports increased from EUR 1.5 trillion in 2004 to EUR 4.2 trillion in 2022, or almost three times, while extra-EU exports went from EUR 1 trillion to EUR 2.6 trillion, an increase of 2.6. This implies a higher rate of growth of intra-EU exports in goods versus extra-EU exports from 2004 to 2021 (Figure 6). However, this was not a constant rate of growth throughout the surveyed period, and the rate of growth of extra-EU exports remained higher than intra-EU exports for years. Each change in the direction of goods exports occurred during an economic crisis: from 2009 to 2010 and from 2020 to 2021. Nonetheless, whatever the rate of growth, the share of intra-EU trade in the Member States' overall foreign exports of goods remained relatively high (over 60%, incl. 62.2% in 2021), much as it dropped to 57.5% in 2012. During the surveyed period, intra-EU imports also markedly exceeded extra-EU imports, although to a somewhat lesser extent than for exports. Also in this case, considerable growth was identified in 2022 versus 2004. It was, however, significantly lower, and the share of intra-EU imports fell to 57.7% in 2022 following a gradual increase between 2013 and 2019 to 61.4%.

It follows that both intra-EU exports and imports of goods remain a vital part of foreign trade in a majority of Member States. A particularly high percentage (more than 70%) of intra-EU sales versus the global exports was recorded for countries that have joined the EU since 2004, as well

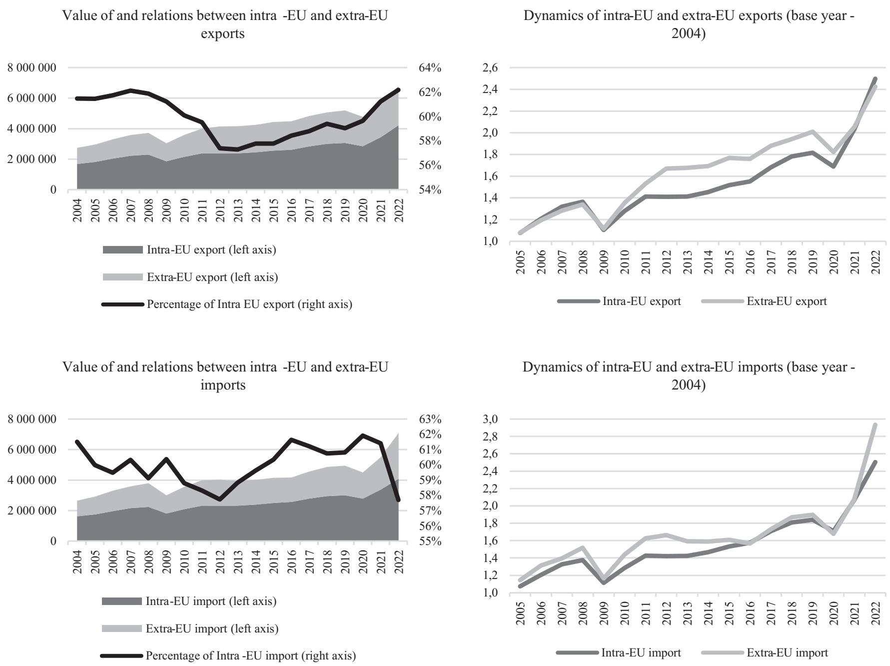

Figure 6. Intra-EU and Extra-EU Trade in Goods from 2004 to 2022 (in mln EUR)

Source: The author’s own calculations based on the Eurostat data.

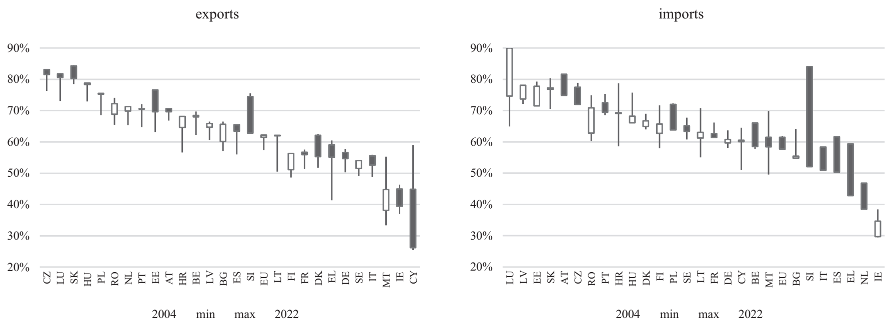

Figure 7. Share of Intra-EU Trade in Global Foreign Trade of EU Member States from 2004 to 2022

Black bar: a decrease, white bar: an increase in 2022 as compared to 2004.

Source: The author’s own calculations based on the Eurostat data.

as for smaller countries of the old EU, including, for example, Czechia, Luxembourg, Slovakia, Hungary and Poland. By contrast, in countries such as Italy, Sweden, Germany, Greece or Denmark and France, the share was lower, at 53–56%. The lowest rate was registered in island states, due to their ties with non-EU countries: Malta, Cyprus and Ireland. A similar trend was recorded for imports of goods: the highest share of intra-EU imports in goods in global foreign imports (more than 70%) was recorded for Luxembourg, Latvia, Estonia, Slovakia, Austria and Czechia, and the lowest (about 50%) for Slovenia, Italy, Spain, Greece, the Netherlands and Ireland (Figure 7).

Transposition Deficit and Trade in Goods in the EU

Along with the reduction in the transposition deficit of EU internal market directives, intensification of trade in goods is to be expected on the ESM. For the EU as a whole, this process was encapsulated by analysing the change in the share of intra-EU trade in the overall trade of EU Member States. This country-by-country approach is important because it is not the entire EU that trades with itself, rather businesses located in individual Member States that export and import goods. This trade follows regulations applicable for the exporter's and importer's country (the term *intra-EU trade* refers to trade between EU Member States). Consequently, the degree of trade intensification within the EU is presumably inversely proportional to the transposition deficit. It follows that the greater the conformity of national legislation with EU requirements for the internal market, the greater the intensity of trade with other Member States should be. At the same time, the relationship should work inversely, i.e. the lower the percentage of correctly implemented legislation, the more trade is obstructed, which translates into lower turnover within the EU. To verify this hypothesis, the evolution of the transposition deficit was compiled with changes in the share of Member States' intra-EU trade in their foreign trade overall.

Several comments need to be made regarding the proposed research solution. First, the transposition deficit data available and presented above refer to the number of unimplemented directives, not the degree of real unification. This is because a failure to implement a single directive can make it significantly more difficult or even impossible for a given product to enter a Member State's market. Second, the available data is aggregated at the level of all internal market directives, and a lack of transposition, if any, may not necessarily affect an area which directly impacts trade. On the other hand, any impediment to the recognition of qualifications, for example, which results in reduced movement of workers, may prompt reduced demand for certain goods (for example those from a country from which workers do not come) and ultimately translate into trade decline. Third, the identified transposition deficit did not necessarily affect trade in a given year, as the implementation problem data concern the end of a given year, whereas trade was ongoing throughout the year. Fourth, amid lacking disaggregation of the transposition deficit data, the trade data were not aggregated for individual groups of goods either. Fifth, primarily in the case of smaller countries, trade undergoes significant fluctuations which are not necessarily associated with the legal situation in the target country. Sixth, the shift in importance of intra-EU trade in the overall foreign trade of Member States may be due to increased trade with one or a group of third countries with which the EU has recently established preferential trade relations.

Therefore, a decision was made nevertheless to compile data (including those treated by simple statistical calculations) on transposition deficit and the share of intra-EU trade in goods in the overall foreign trade of Member States. Since the extent to which national legislation is unified can affect trade in various ways, exports (intra-EU sales) and imports (intra-EU acquisitions) were shown separately. In addition, the period from 2004 to 2021 was taken as the period under review to cover the trade of majority of current EU members (the UK was disregarded in the calculations). Having regard for the above limitations and the comments made, the study employed the following:

- 2021 transposition deficit;
- change in 2021 transposition deficit versus 2004;
- average transposition deficit in the period 2004–2021;
- share of intra-EU exports in goods in total exports of 2021;
- change in the share of intra-EU exports in goods in total exports of 2021 versus 2004;
- average share of intra-EU exports in goods in total exports from the period 2004–2021;
- share of intra-EU imports in goods in total imports of 2021;
- change in the share of intra-EU imports in goods in total imports of 2021 versus 2004;
- average share of intra-EU imports in goods in total imports from the period 2004–2021.

The above shares were determined on the basis of European Commission data included both in the Scoreboard of 2022 as well as in the Eurostat database. In order to encapsulate the changes and in an attempt to find links between the transposition deficit and intra-EU trade orientation, they were disaggregated at the level of EU Member States (Table 1).

In compiling data on the level of ESM integration and EU Member States' trade orientation towards the European single market, it can be concluded that the countries with the lowest values of the transposition indicator in 2021 (less than 1%) and average values for the period 2004–2021 include Denmark, France, Hungary and Finland, as well as Germany (with a one-off increase of up to 9% in 2007 left aside). They typically recorded a relatively low share of intra-EU exports in goods in their overall foreign sales (at 53.0 to 54.6% in 2021, save for Hungary at 78%). In the surveyed period, the values were gradually giving way to non-EU exports. In turn, intra-EU imports are strikingly different for the countries. In this case, the transposition leaders recorded above-average growth and the ultimate value of the share of intra-EU acquisition versus all the foreign imports of goods throughout the period from 2004 to 2021 under review. This may be down to the countries' legislation being radically adapted to the EU requirements.

It is hard to find common tendencies for those Member States which recorded the transposition deficit at 1–1.5% and 1.5–2% at the end of 2021. As for the exports, many countries recorded the highest shares of intra-EU sales of goods in overall foreign exports (Slovakia, Luxembourg, Poland, and Portugal at 71.5–80.5%), and also posted the transposition deficit at levels largely surpassing the political goals in place. It is also worth noting that a share of intra-EU exports well above the EU average was recorded for such countries as Czechia, Romania and Bulgaria (80.4%, 73.2% and 66.5%, respectively). At the same time, these countries recorded the highest transposition deficit (2.4%, 2.9% and 2.2%, respectively). In posting above an average transposition deficit, the above-mentioned countries with high intra-EU exports were joined by those for which the EU market was not as important as exports to non-EU partners (in the case of Cyprus, it accounted for only 27.8% of all foreign sales, Ireland – 28.1%, for Sweden and Greece – about 53% each).

The case is somewhat different for imports. Countries with the lowest transposition deficit at the end of 2021, as well as its value over the 2004–2021 period, being average (allowing for the comments made above regarding Germany), also recorded an above average share of intra-EU imports in their total imports of goods. However, the highest reliance on intra-EU acquisition was recorded by countries such as Luxembourg (88.7%), Slovakia (78.2%), Austria (76.4%), Czechia (73.7%), Latvia (73.2%) and Romania (72.5%), whose 2021 transposition deficit exceeded not only 1%, but 2% at times. Consequently, although the first group of countries could hint at a link between low transposition deficit and a high share of EU imports in these countries' global imports, the other group is completely random and it is difficult to find a clear link between these indicators.

Conclusions

This study makes it possible to formulate several conclusions and recommendations for further analysis. First, during the period under review, a general increase in transposition deficit was recorded with a concomitant increase in conformity deficit. This means that, in principle, Member States poorly transpose and implement EU internal market legislation. No genuine efforts at the national level to ensure harmonisation of laws follow the political guidelines of the European Council on the role of the single European market. With the single European market in place for thirty years, there is no clear demarcation line between the best and worst performers of EU membership obligations, i.e. transposing EU legislation into national law. In the subsequent years of the analysed period, the composition of groups of countries with the highest and the lowest indicators varied. Both of these groups included the countries that joined the EU somewhat later and the founders of the EU and ESM. Both of these groups include countries big and small, of the South and North, or West and East, as well as those of a better or worse level of development, more and less affluent. With not only transposition deficit, but also the conformity indicator being relatively high, progressive market fragmentation ensued. In response to this, the nature of the single European market legislation is gradually changing. Instead of directives requiring transposition and implementation, the European Commission is increasingly proposing regulations directly applicable in all Member States.

In this way, the traditional internal market model based on directives requiring transposition and implementation in the Member States as an element of harmonization (i.e., the elimination of significant differences between Member States' laws), is gradually being abandoned. In addition to the aforementioned weaknesses of having to implement EU legislation into national legislation, it turns out that the directives do not in fact leave, as previously thought, "space" for interpretation and adaptation of national law with regard to the substantive issues. Consequently, the Member States, albeit not blatantly, are increasingly embracing both the swap of existing directives for regulations (e.g., on technical provisions and product safety), as well as the regulations governing new areas of economic activity (roaming, digital commerce).

Contrary to the negative results of legislative transposition, the shares of intra-EU exports and imports in goods in total foreign sales of EU Member States are relatively high. This means that the relative harmonization currently underway to unify laws ensures that products from other Member States are included. However, the relationship between the compatibility of national regulations with EU law and the geographic orientation of trade in goods cannot be clearly identified.

In the former case, this may be due to the internal market for EU goods being free, as a rule, from major barriers, while those barriers that exist do not affect trade so much (much as it may slightly vary for individual goods). In addition, the value of intra-EU trade in goods continues to grow, and increasing trade with non-EU countries means a gradual improvement in the competitiveness of European goods and, thanks to EU trade policy, entry into new markets.

In order to more precisely encapsulate the link between the transposition of EU legislation, that is the openness of Member State economies to entities from other EU countries, data disintegration and analysis would be necessary for individual areas of legislation, groups of goods.

ANNEX

Table 1. Trade Deficit and Shares of Intra EU Trade in Goods in 2004–2021

	Transposition deficit			Share of intra EU export in total export			Share of intra EU export in total export		
	2021	Change 2021–2004	Average 2004–2021	2021	Change 2021–2004	Average 2004–2021	2021	Change 2021–2004	Average 2004–2021
DK	0.40	-1.90	0.51	53.0%	-9.15	56.9%	68.0%	3.11	65.9%
DE	0.40	-2.10	1.37	54.3%	-2.37	53.7%	63.7%	3.98	60.5%
FR	0.60	-2.60	0.91	54.6%	-2.09	54.1%	66.0%	3.35	63.8%
HU	0.70	-1.30	0.83	78.1%	-0.63	76.3%	71.2%	5.18	70.0%
FI	0.80	-1.50	0.83	56.2%	5.06	52.1%	69.7%	6.93	64.3%
MT	1.10	-4.90	0.77	48.1%	10.01	42.2%	59.7%	-1.76	60.6%
EE	1.20	-3.80	1.02	67.0%	-9.57	68.4%	72.0%	0.53	75.7%
IT	1.20	-3.30	1.44	52.7%	-2.82	52.2%	56.7%	-1.68	55.0%
SI	1.20	-2.00	1.19	67.7%	-6.78	73.4%	56.0%	-28.03	70.6%
PT	1.40	-1.80	1.44	71.5%	0.99	69.1%	73.6%	1.12	72.7%
SK	1.40	-4.90	0.92	80.5%	-3.78	81.1%	78.2%	0.99	75.5%
PL	1.50	-1.40	1.50	75.0%	-0.21	72.9%	66.4%	-5.60	68.4%
EU	**1.60**	**-2.00**	**1.12**	**61.2%**	**-0.24**	**59.8%**	**61.4%**	**-0.09**	**60.1%**
HR	1.60	1.60	0.87	67.4%	2.79	62.1%	74.3%	5.24	69.0%
NL	1.60	-0.40	0.84	69.4%	-0.45	68.2%	41.2%	-5.62	41.6%
LT	1.70	0.70	0.66	57.6%	-4.33	56.6%	68.5%	7.33	61.9%
CY	1.80	-2.60	1.51	27.8%	-17.08	45.7%	64.5%	3.99	59.6%
EL	1.80	-3.30	1.46	53.8%	-5.28	52.1%	51.6%	-7.72	52.4%
LU	1.80	-2.40	1.79	80.8%	-1.00	79.1%	88.7%	14.12	77.4%
AT	1.90	-0.40	1.22	69.1%	-1.52	68.6%	76.4%	-5.24	76.7%
LV	2.00	-5.00	1.06	63.7%	-1.07	63.8%	73.2%	-0.52	75.2%
SE	2.00	0.00	0.79	53.7%	2.16	51.9%	66.4%	1.27	64.0%
BG	2.20	2.20	0.91	66.5%	6.32	61.4%	60.5%	5.74	59.5%
IE	2.20	-0.20	1.07	38.1%	-6.85	41.6%	38.0%	8.27	33.5%
ES	2.20	0.90	1.23	62.1%	-3.37	60.8%	54.6%	-6.98	55.4%
CZ	2.40	-7.20	1.81	80.4%	-2.64	79.5%	73.7%	-3.71	74.9%
BE	2.80	-0.60	1.58	66.7%	-1.76	65.7%	62.6%	-3.35	62.1%
RO	2.90	2.90	1.10	73.2%	4.33	69.4%	72.5%	9.67	70.3%

Source: The author's own calculations based on EC (2023) and Eurostat.

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