

THE IMPLEMENTATION OF EU LAW IN BELGIUM\*

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Judging by the European Commission scoreboard on the transposition of EU law, Belgium is traditionally a mediocre performer. The purpose of this paper is to look for the factors that explain this result, by identifying the actors involved in the implementation of EU law in Belgium, the problems they face and the instruments they have available. The complexity of the Belgian federal system and the fragmenting allocation of competences is an important factor for delay.<sup>1</sup> This manifests itself in particular where directives deal with mixed matters, touching the competences of the federal government as well as subnational entities. This, however, is not the most decisive explanatory factor, since the highest transposition deficit is located at the federal level. Political and administrative culture and attitude seem even more important.<sup>2</sup> For example, it has been reported that the considerable arrears in the transposition of financial directives are caused by strong administrative and political resistance in that sector.<sup>3</sup>

The paper is structured as follows. First, an analysis of the number of infraction procedures against Belgium will set the scene (Part 1 – Q7). The second part gives an overview of the Belgian toolbox for the implementation of laws at the constitutional (2.1. – Q2) and lower levels (2.2. – Q 1,3, 6). In the third part, the actors involved in the implementation of EU law are identified (Part 3 – Q4). Next, the paper discusses the federal arrangement in the case of non-compliance by regional entities and the partition of financial sanctions (Part 4 – Q5). The last part identifies the factors for success and failure in two case studies (Part 5 – Q8). As a conclusion, the decisive factors for a timely transposition of EU laws are repeated and applied to the Belgian case (Part 6 – Q9).

### **1. Setting the scene: the Belgian implementation score**

Belgium has never been a model student when it comes to the implementation of EU directives. Some progress was made since May 2010, triggered by the Belgian EU presidency in the second half of 2010 and its participation in the EU Pilot system since 2011, and as a result of the establishment of working groups and the regular presentation of specific reports on the implementation scores.<sup>4</sup> Meanwhile, Belgium experiences difficulties to retain progress. Especially with regard to Single Market rules, Belgium has re-entered the red

<sup>1</sup> G. DIERICKS, P. BURSENS and S. HELSEN, *How to Explain the Belgian Integration Paradox?* (University of Antwerp 2001) 126.

<sup>2</sup> G. DIERICKS, P. BURSENS and S. HELSEN, *How to Explain the Belgian Integration Paradox?* (University of Antwerp 2001) 127.

<sup>3</sup> Information report on the transposition of EU law in the Belgian legal system, Senate, *Parl.Doc.* 2014-2015, No 6-131/2, at p. 44.

<sup>4</sup> Information report on the transposition of EU law in the Belgian legal system, Senate, *Parl.Doc.* 2014-2015, No 6-131/2, at p. 101.

zone, with a new transposition deficit of 1.1 % by the end of 2015.<sup>5</sup> Pending and new infringement cases, however, are still decreasing. The most problematic policy domains are mobility and transport, environment, internal market and finance, especially direct taxes.<sup>6</sup>

## 2. The Belgian toolbox for the implementation of EU law

In this section, the instruments that allow a timely and correct transposition of EU directives are listed. Constitution and legislation do not prescribe special or simplified procedures for laws that implement EU law. The regular law making procedure applies, including the legality principle according to which implementation should, as a rule, occur by an Act of parliament; requirements to consult advisory bodies; and, in some cases, the drawing up of impact analyses. While the Flemish circular on impact analyses exempts implementation laws from a preparatory impact analysis if the EU directive does not give much room for discretion,<sup>7</sup> the federal law on impact analyses did not insert a similar exemption.<sup>8</sup> By contrast, while beneficial for a smooth implementation, no provision or guideline prescribes the drafting of an impact analysis to assess the national or regional socio-economic or administrative impact of the draft directive. Recommendations for special procedures have been issued in a Senate report but not implemented. For example, it was recommended to enable the Council of State to give early advice on who is competent for the transposition of a directive, instead of waiting until the very last phase according to the ordinary law making procedure<sup>9</sup>

In recent years, however, circulars have been focusing on the implementation of laws, spanning the entire cycle from the preparation of the EU directive to the infringement procedures. They also highlight tools for the implementation of EU law and the coordination of such processes, such as databases and concordance tables. Strikingly, although it had been brought to the attention that a concrete and structured follow-up procedure for the im-

<sup>5</sup> European Commission, *Single Market Scoreboard – Belgium (Reporting Period: 2015)*, [http://ec.europa.eu/internal\\_market/scoreboard/\\_docs/2016/member-states/2016-belgium\\_en.pdf](http://ec.europa.eu/internal_market/scoreboard/_docs/2016/member-states/2016-belgium_en.pdf) (last accessed; 14.04.2017) at p. 2.

<sup>6</sup> European Commission, *Monitoring the Application of European Union Law. Annual Report 2015*, [http://ec.europa.eu/atwork/applying-eu-law/docs/annual\\_report\\_33/country\\_sheet\\_be\\_en.pdf](http://ec.europa.eu/atwork/applying-eu-law/docs/annual_report_33/country_sheet_be_en.pdf) (last accessed 14.04.2017).

<sup>7</sup> Flemish Government, *Leidraad voor de opmaak van een Reguleringsimpactanalyse (Impact Assessment Guidelines)*, Brussels 2012, at p. 19.

<sup>8</sup> Art. 8 Law of 15 December 2013 holding diverse provisions on administrative simplification.

<sup>9</sup> Information report on the transposition of EU law in the Belgian legal system, Senate, *Parl.Doc.* 2014-2015, No 6-131/2, recommendation 27.

plementation of EU regulations is lacking,<sup>10</sup> even the most recent circulars are still focused on the transposition of directives alone.

According to a comparative study, special legal instruments and techniques for the transposition of EU directives are not the most determining factor for the improvement of timely transposition; delays are caused by a combination of several constitutional, legal, political and operational factors.<sup>11</sup> Legal factors that improve timely transposition are: anticipating transposition issues during the negotiation stage of the directive; the possibility to transpose through subordinated legislation, and avoiding gold-plating.<sup>12</sup> Political factors are the priority given to transposition and activating the national Parliament at the negotiation stage.<sup>13</sup> Administrative factors are clear-cut lines of administrative responsibilities for transposition; working with multidisciplinary project teams; and accurate and frequent monitoring of progress.<sup>14</sup> The importance of the preparatory phase of the EU directive has also been highlighted in other studies. Overall, strong presence at the early EU decision making phase, efforts in building alliances with other countries, and well-prepared impact assessments seem the most important factors for successful transposition of direction, but are lacking in Belgium.<sup>15</sup>

### **2.1. The constitutional framework and the delegation of the power to implement EU laws**

The Belgian Constitution does not reflect the extent to which the Belgian legal order is interwoven with the European Union. Article 34 of the Constitution provides a general constitutional basis for the transfer of powers to international institutions, but a specific Europe clause is lacking. Several articles were inserted to bring the Belgian legal system into conformity with EU obligations, e.g. to give non-Belgian foreigners the right to vote in local elections,<sup>16</sup> or to regulate elections issues: to secure linguistic interests in European Parliament elections,<sup>17</sup> or to align the term for national elections with the EU level.<sup>18</sup>

<sup>10</sup> Information report on the transposition of EU law in the Belgian legal system, Senate, *Parl.Doc.* 2014-2015, No 6-131/2, at p. 109

<sup>11</sup> B. STEUNENBERG and W. VOERMANS, *The Transposition of EC Directives. A Comparative Study of Instruments, Techniques and Processes in Six Member States*, The Hague, WODC and Leiden University, 2006, 3.

<sup>12</sup> *Ibid* 3.

<sup>13</sup> *Ibid* 3.

<sup>14</sup> *Ibid* 4.

<sup>15</sup> G. DIERICKS, P. BURSENS and S. HELSEN, *How to Explain the Belgian Integration Paradox?* (University of Antwerp 2001)

<sup>16</sup> Art. 8 Constitution.

<sup>17</sup> Art. 168*bis* Constitution.

<sup>18</sup> Art. 46 and 117 Constitution.

In the absence of specific EU-related clauses, the regular law making procedure laid down in the constitution applies to the implementation of EU laws. In the previous section, the possibility to transpose through subordinated legislation was mentioned as a determining factor for the timely transposition of EU Directives. The constitution does not explicitly lay down rules for the delegation of law making powers, but the Constitutional Court has deduced such rules from the constitutional framework:

- 1) Executive rules must always find a basis in the constitution or an Act of Parliament and must be in conformity with constitutional and statutory provisions.
- 2) The Act of parliament may delegate law making powers to the Executive.
- 3) The delegation may even allow the Executive to modify Acts of Parliament, if certain conditions are met: (1) the delegation is justified by special circumstances and is (2) temporary, (3) the authorization given to the Executive is explicit and unambiguous and (4) the Act requires parliamentary confirmation by the end of the term. If no confirmation is given within this term, the executive orders are no longer in force.
- 4) Delegation is restricted in matters reserved to Parliament by the Constitution, e.g. in the field of fundamental rights, educational matters or taxes. In these fields, Parliament may delegate non-essential aspects but has to regulate essential aspects in an Act of Parliament.
- 5) Delegation of essential aspects is nevertheless allowed if the conditions mentioned under 3) are met. In this case, the sanction for no or no timely confirmation is the retroactive removal of the executive orders.

Hence, Parliament is responsible for the implementation of EU laws in reserved matters, e.g. the homologation of foreign diplomas. In other matters, an Act of Parliament must delegate these powers to the Executive. If the transposition of an EU Directive requires the modification of existing Acts of Parliament, Parliament must act, or may delegate these powers to the Executive under four conditions mentioned above.

The Constitutional Court and the Council of State (in advisory opinions), however, give flexible interpretations to this framework where implementation laws are concerned.

According to the Council of State, if Parliament delegates implementing powers to the Executive, it may also give the power to modify existing laws without meeting the four requirements, on the condition that the matter concerns a restricted policy field and the Executive is only allowed to take the

‘necessary’ measures for the implementation of the EU directive, which do not imply broader policy choices.<sup>19</sup>

In turn, the Constitutional Court turns a blind eye to late confirmation of Executive measures that were taken to implement an EU directive and imply modification of statutory provisions, if the implementation concerns technical matters with little room for discretion.<sup>20</sup>

If the matter concerns a reserved matter such as tax law, Parliament can delegate the essential matters to the Executive under the conditions mentioned above. The first condition on ‘special circumstances’ is met if parliamentary procedures are incompatible with the urgency of the implementation, e.g. if proceedings for non-implementation are already initiated against the Belgian State. In this case as well, untimely confirmation is considered ‘regrettable’ but not unconstitutional, if the essential elements were already established in the EU Directive and subsequently copied in the Executive Orders.<sup>21</sup> Hence, although the legality principle in tax law is considered a principle to protect citizens against arbitrary taxes by confiding the matter to a representative Parliament, European norms may (at least temporarily) substitute for the requirement to lay down the essential elements in an Act of Parliament.

The recommendation to facilitate the delegation of powers to implement EU Directives was discussed in the Senate. It would allow (federal and subnational) Parliaments to delegate to the Executive the power to implement EU Directives if Parliament is unable to do so in a timely manner and provided that the Executive Orders are confirmed within a specific term. The recommendation, however, was rejected. It was considered that instruments to delegate implementing powers were already available and parliamentary involvement in the implementation of EU Directives was valuable for reasons of democratic legitimacy.<sup>22</sup>

## 2.2. Legal instruments

This section lists the legal instruments introduced to guide the implementation of EU law. Both formal and informal instruments are covered, i.e. legislative provisions and cooperation agreements, as well as consistent practices laid down in circulars and guidelines.

<sup>19</sup> See already the Council of State, legislative branch, advice of 14 July 1988, *Parl.Doc.* House of Representatives, Special Session 1988, 543/1 at p. 17.

<sup>20</sup> Const. Court No 60/2002, 28 March 2002.

<sup>21</sup> Const. Court No 107/2016, 23 August 2016.

<sup>22</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 249.

Legal instruments for the implementation of EU law are part of a broader regulatory management program. Regulatory management is about policies and processes that ensure that an organization can produce high quality regulation. EU Member States are embedded in the larger EU regulatory system, for example when they execute EU regulations or transpose EU directives. This makes them co-actors in the legislative cycle and gives them shared responsibility for the quality of EU law.<sup>23</sup> It is therefore for the Member States to put a regulatory management program in place with particular attention for the implementation of EU law. Factors determining failure and success surpass the mere legal instruments: they comprise regulatory culture, structures, processes, (legal and non-legal) instruments and competences. Where Belgium's regulatory policies score badly overall,<sup>24</sup> it is hardly a surprise to note that similar deficiencies typify the Belgian policies for the implementation of EU law.

*Phase 1. Pre-enactment phase: draft directives*

Formal provisions mostly concern the preparatory phase of EU laws. Constitutional and statutory provisions stipulate that proposals of EU laws are sent to the federal and subnational legislative assemblies<sup>25</sup> and that the legislative assemblies can advise their governments on these matters.<sup>26</sup> Procedural provisions regarding the parliaments' participation in the Early Warning System are laid down in some of the parliaments' Rules of Procedure<sup>27</sup> and in a cooperation agreement which technically has not entered into force but is applied in practice.<sup>28</sup>

Also, the participation of the regional governments in the European Council of Ministers is laid down in statutory rules and cooperation agree-

<sup>23</sup> L. SENDEN, 'The Member States and the Quality of European Legislation: Not Consumers, but Actors', in L. MADER and C. MOLL (eds) *The Learning Legislator* (Baden-Baden, Nomos 2009) 103-105.

<sup>24</sup> For a comparative overview, see P. POPELIER, 'The Management of Legislation', in H. XANTHAKI and U. KARPEN (eds) *Legislation in Europe* (Oxford, Hart 2017) 53-72.

<sup>25</sup> Art 168 Belgian Constitution and Art. 92*quater* Special majority law on the reform of the institutions.

<sup>26</sup> Art. 92*quater* Special majority law on the reform of the institutions.

<sup>27</sup> For an overview see W. VANDENBRUWAENE and P. POPELIER, 'Belgian Parliaments and the Early Warning System', in A. JONSSON CORNELL and M. GOLDONI (eds), *National and Regional Parliaments in the EU-Legislative Procedure Post-Losbon* (Oxford, Hart 2017) 185-190.

<sup>28</sup> Cooperation agreement signed in 2005 by the chairmen of the the Flemish parliament, the Brussels Parliament, the Parliament of the French Community, the Parliament of the Walloon Region, the Parliament of the German Community, the Assembly of the French Community Commission, the federal Chamber of representatives, and the federal Senate, and (slightly) amended in 2008.

ments.<sup>29</sup> Meetings between the different entities are held on a regular basis coordinated by the federal department of foreign affairs, to establish the Belgian position.<sup>30</sup> For decisions in the field of agriculture, such consultations are a legal obligation inserted in a special majority law.<sup>31</sup> Direct representation of the Communities and Regions in the Council of Ministers is the rule if matters conferred to the federated entities on the basis of exclusivity are being discussed.<sup>32</sup> In mixed matters, a mixed delegation led by either the federal or the regional Minister is sent to the Council, depending on whether the agenda concerns mainly federal or federated matters.<sup>33</sup> In both cases, the Council meeting is preceded by a coordination meeting so as to agree upon the Belgian stance.<sup>34</sup> In this meeting, every actor has a veto right, although a gentlemen's agreement inhibits the use of a veto by an actor who is not competent in the concrete case.<sup>35</sup> The agreement is binding, unless in the course of the meeting of the Council of Ministers a change of direction is required for a meaningful say in the deliberations. If no compromise can be made, Belgium needs to abstain. In most cases, concerning more technical issues, an agreement can be made, but in issues of greater political interest, discord may inhibit Belgium from adopting a position.<sup>36</sup>

Nonetheless, in practice, Belgium is not very watchful or combative in the preparatory process of EU law.<sup>37</sup> For example, the number of reasoned opinions issued by Belgium under the Early Warning System is below average.<sup>38</sup> This is in line with the more general observation that Member States with a positive attitude towards European integration – like Belgium – are less ade-

<sup>29</sup> Art. 81§6 Special majority law on the reform of the institutions, Cooperation Agreement of 8 March 1994

<sup>30</sup> See also the federal circular: Instructions for the transposition of European directives in Belgium, February 2016, 14 and 33. Further: Instructions 2016.

<sup>31</sup> Art. 6§2bis Special majority law on the reform of the institutions.

<sup>32</sup> On the basis of a rotation system: see Art. 7 Cooperation Agreement of 8 March 1994.

<sup>33</sup> Annex 1 Cooperation Agreement.

<sup>34</sup> Art. 2 Cooperation Agreement.

<sup>35</sup> P. BURSENS, 'Het Europese beleid in de Belgische federatie. Standpuntbepaling en vertegenwoordiging van Belgische belangen' (2005) *Res Publica* 67.

<sup>36</sup> See S. HAPPAERTS, S. SCHUNZ and H. BRUYNINCKX, *Federalism and Intergovernmental Relations: The Multi-Level Politics of Climate Change in Belgium*, Leuven Centre for Global Governance Studies Working Paper No 58, January 2011, 452, with illustrations in the field of climate change.

<sup>37</sup> This was confirmed in the Senate's report on the implementation of EU law in domestic law, *Parl. Doc.* Senate 2014-2015, 6-131/2, p. 114.

<sup>38</sup> W. VANDENBRUWAENE EN P. POPELIER, 'Belgian Parliaments and the Early Warning System', in A. JONSSON CORNELL and M. GOLDONI (eds), *National and Regional Parliaments in the EU-Legislative Procedure Post-Lisbon* (Oxford, Hart 2017) 189.



quately involved in EU affairs.<sup>39</sup> Illustrative is a Belgian MP's comment that issuing a reasoned opinion would harm Belgium's image in Europe.<sup>40</sup>

In the Belgian legal system the involvement of the regional entities is of central importance. Compared to other EU member states, the regional entities in Belgium (Regions and Communities) are deeply involved in the EU decision making procedure. Their ministers can represent Belgium in the Council of Ministers, they participate in the Commission's and Council's working groups, and they have regional representatives as part of the Belgian Permanent Representation. This is not only a matter of principle in a federal system that stresses the equality of federal and regional entities. It is also important for the implementation of EU law, as powers are allocated, as a rule, on the basis of exclusivity. This means that in many cases, regional entities are the sole actors responsible for the transposition of a EU directive.

For the Walloon Region and the French-Speaking Community a circular was enacted to prescribe the procedure and responsible actors for the transposition of directives.<sup>41</sup> In February 2016, the federal government enacted a similar circular.<sup>42</sup> Recently, the Flemish Government followed suit,<sup>43</sup> to codify existing practices, but also to implement recommendations in recent studies.<sup>44</sup> All three circulars start the procedure from the notification of the draft directive and indicate in an early phase which departments are responsible for the transposition and which will act as a leading or 'pilot' department. According to the federal circular, the pilot department is designated only after the publication of the directive. Nonetheless, the circular stresses the importance for every government to verify its competence from the moment of notification of the draft directive instead of the publication of the enacted di-

<sup>39</sup> C Sprungk, 'National Parliamentary Scrutiny in the European Union: The German Bundestag and the French Assemblée Nationale – Key Players or Side-Shows?', Paper presented at the EUSA Conference, Nashville TN, 27-30 March 2003, p. 28.

<sup>40</sup> *Parl. Doc.* House of Representatives, 2011-2012, No 53-2068/1, p. 16. See also the observation in the FIDE report, : 'The general pro-European consensus yields little parliamentary interest in a mechanism that is perceived to be biased in a negative sense towards the EU', T. MARTIN, H. DUMONT and W. VANDENBRUWAENE in C. ROMAINVILLE, W VANDENBRUWAENE ET AL., 'Belgium', in J. CZUCZAI, P. DARÁK ET AL. (eds), *Division of Competences and Regulatory Powers between the EU and the Member States*, FIDE Congress Proceedings Vol. 3, Budapest, Wolters Kluwer 2016, at p. 172.

<sup>41</sup> Circulaire relative à la coordination et au suivi de la transposition des directives européennes, of 20 October 2005 (Walloon Region) and 18 November 2005 (French-speaking Community). Further: Circulaire 2005.

<sup>42</sup> Instructions 2016.

<sup>43</sup> Circular VR 2016/41 of 21 November 2016 on the coordination of the transposition of EU law and measures concerning infringement procedures. Further: Circular 2016/41.

<sup>44</sup> Communication from the Minister-President to the Flemish Government, VR 2016 2511 MED.0450/1

rective.<sup>45</sup> Monthly meetings with the euro-coordinators (linking officers between the department of foreign affairs and other actors, see further) are held to run through new draft directives and discuss competence issues.<sup>46</sup> It has been noticed, however, that nonetheless initiatives to adapt Belgian legislation are delayed until the directive is adopted.<sup>47</sup>

According to the Flemish circular, the first step is to assess whether the Flemish Community is responsible for the transposition. A first assessment is made by the euro-coordinator; next, the implementation managers within the relevant department(s) indicate within ten days whether they are responsible for the transposition or not, and if not, whether they need to advise the transposing federal government or wish to follow-up negotiations; then, the euro-coordinator informs the federal government.<sup>48</sup> If discussion arises concerning the allocation of competences, the implementation manager proactively seeks a settlement with the federal and other regional governments.<sup>49</sup> The same procedure is repeated after the adoption of the directive.

In a second step, within three months after notification of the draft directive, the implementation managers draw up a more elaborated legal analysis on the competence of the Flemish community, on the need to initiate or amend legislation or to conclude a cooperation agreement, on the position the Flemish Government is advised to take in the Council of Ministers, and including an assessment of possible technical or political problems and of whether a timely transposition is probable.<sup>50</sup>

The Walloon Circular is less concerned with problems of competence – it merely states what to do ‘if’ the Walloon Region or French-speaking Community is responsible for the transposition. It requires, within one month, a legal impact analysis to detect possible implementation problems, including a table comparing future provisions with existing law.<sup>51</sup>

Consequently, both the Walloon and the Flemish circular prescribe the drafting of a legal analysis. The federal circular expects that the euro-coordinators draft their own impact assessment,<sup>52</sup> but what it really means is precisely this legal analysis: the identification of legal provisions to be amend-

<sup>45</sup> Instructions 2016, 15-16.

<sup>46</sup> Instructions 2016, 35-36.

<sup>47</sup> Information report on the transposition of EU law in the Belgizn legal system, *Parl.Doc.* 2014-2015, No 6-131/2, at p. 113.

<sup>48</sup> Art. 3.1.1.2-3.1.1.4 of Circular VR 2016/41.

<sup>49</sup> Art. 3.1.2.3 of Circular VR 2016/41.

<sup>50</sup> 3.1.1.7 of Circular 2016/41.

<sup>51</sup> Art. 1 of Circular 2005.

<sup>52</sup> Instructions 2016, 35.

ed, enacted or removed in order to implement the directive.<sup>53</sup> This means that legal analyses are drafted for each separate entity. Likewise, the federal euro-coordinator is to produce a legal analysis of the federal laws that have to be amended.<sup>54</sup>

Hence, much attention goes to a legal analysis, but an assessment of the regional socio-economic impact and administrative costs of the draft directive is lacking. Recommendations to make use of such instrument and to do this in a coordinated way, at the federal level, have been written,<sup>55</sup> but remained unexecuted.

### *Phase 2. Implementation process*

Much less attention has been paid to the regulation of the implementation phase. The normal rules on the lawmaking procedure apply, implying consultations with advisory bodies and the Council of State, and, where required by law or the federal loyalty principle, consultation with the Communities or Regions. In some cases, the Constitutional Court even infers from the loyalty principle the requirement to conclude a cooperation agreement in converging but fragmented competences, such as electronic transmission infrastructures<sup>56</sup> and emission norms.<sup>57</sup> In both matters, the underlying EU directive, which imposed cooperation between the instances competent for the matter at stake, was an additional argument to require a cooperation agreement.

Specific procedural rules for implementation laws are not laid down in hard law, but inserted in policy briefs and circulars. In the federal, the Walloon and the Flemish circulars central roles are assigned to the euro-coordinators and to the implementation managers in each department and cabinet.

According to the Walloon Circular, as soon as the implementation phase has started, implementation managers (called ‘euro-correspondents’) continuously inform the euro-coordinators of the state of affairs, providing time schedules, draft texts and concordance tables.<sup>58</sup> In the Flemish Community as well, the implementation managers (called ‘policy domain coordinators’) are

<sup>53</sup> Instructions 2016, 36. Confusingly, the circular does refer to the form of the regular impact analysis.

<sup>54</sup> Instructions 2016, 36.

<sup>55</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 131 and Recommendation 25-26.; G. Dierickx, P. Bursens and S. Helsen, *Omzetting, toepassing en toepassingscontrole van het Europees beleid in 282-283.*

<sup>56</sup> Const. Court Nos 132/2004, 14 July 2004 and 128/2005, 13 July 2005. In 2014 the competence allocating rules were adjusted accordingly.

<sup>57</sup> Const. Court No 33/2011, 2 March 2011.

<sup>58</sup> Art. 2A of the Circular 2005.

responsible for the coordination of the transposition procedure and the information flow.<sup>59</sup>

Two instruments are identified in Walloon and the Flemish circular: concordance tables and time schedules. The first is also mentioned in the federal circular.

The recommendation to draft concordance tables were already inserted in the Council of State's guidelines on drafting techniques<sup>60</sup> and the Flemish circular on drafting technique.<sup>61</sup> In a 2015 report on the implementation of EU directives, the Senate recommended once more to list in a concordance table which provision of the directive is to be transposed by which norms.<sup>62</sup> The federal and the Flemish circular, in their efforts to implement these recommendations, now dedicate a separate section on concordance tables. Consistent with the Flemish circular on drafting techniques, two tables need to be drafted, one starting from the provisions in the directive and indicating the corresponding implementation rules, the other starting from the statutory provisions and indicating the corresponding provisions in the directive.<sup>63</sup> The latter table, moreover, identifies possible measures that are stricter or wider than required by the EU directive. Both circulars discourage gold-plating.<sup>64</sup> These are clear efforts to turn a trend – for example, a EU directive with limited scope was seized to reform the entire insurance law<sup>65</sup> - but no enforcement mechanisms are in place. The Senate has recommended that in the event of gold-plating (i.e. when stricter rules are adopted), the explanatory notes should justify why this was necessary and did not hamper timely transposition. Also, it recommended to avoid additional regulations, unless justified by exceptional circumstances and based on regulatory impact analyses and consultation with stakeholders.<sup>66</sup> These recommendations have not been implemented. The Flemish circular, however, does require explicit reasons if such measures are proposed.

<sup>59</sup> Art. 3.2.2.4 Circular 2016/41.

<sup>60</sup> Council of State, *Beginselen van de wetgevingstechniek (Guidelines Drafting Techniques)*, Brussels 2008, Recomm. 191-191.2.

<sup>61</sup> Flemish Government, Circular VR /014/4 on drafting techniques, Brussels 2014, Recomm. 328, 4°.

<sup>62</sup> Report on the implementation of EU law in domestic law, *Parl. Doc.* Senate 2014-2015, 6-131/2, recommendation 28.

<sup>63</sup> Art. 3.3.1.1 Circular 2016/4; Instructions 2016, 55.

<sup>64</sup> Art. 3.3.1.2 Circular 2016/4; Instructions 2016, 42.

<sup>65</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 43.

<sup>66</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, Recommendations 30-32.

Both circulars demand the drafting of a time table, with a timing for each consecutive step.<sup>67</sup> The Flemish circular explicitly identifies each step: the preparation phase, the first provisional approval, the second provisional approval, the final approval, the parliamentary phase, ratification and promulgation, publication in the Official Gazette, and notification in the MNE-database.<sup>68</sup> The timing for each step is to be determined in reverse order, starting from the transposition deadline. The implementation manager is responsible for the observance (and, if need be, adjustment) of the time table, under supervision of the minister responsible for this department.<sup>69</sup>

*Phase 3. Coordination and monitoring*

In Belgium, the principles of equality of the federal and regional entities and of power allocation on a basis of exclusivity, may hinder the transposition of directives where several entities are involved. In particular, an intrafederal coordination body is lacking,<sup>70</sup> nor is one political actor assigned with the responsibility of coordinating and supervising the implementation of EU directives, overseeing all transposing entities. The federal circular explicitly admits – and deplores – that a formal coordination mechanism to harmonize the transposition by the various actors, is missing.<sup>71</sup> Instead, each separate entity reports on the process of implementation files within their own entity. For example, the Flemish minister for foreign affairs gives a monthly report to the Flemish Government, including a summary of the concordance tables and time tables.<sup>72</sup> The Flemish circular adds that the euro-coordinator also informs the other entities.<sup>73</sup> The Brussels Region has laid down an obligation in a Brussels law for the Government to report yearly to the Brussels Parliament on the implementation of European directives, delays and infringement procedures.<sup>74</sup>

A central instrument in the monitoring phase is Eurtransbel, a database that tracks transposition projects from the draft directive to the enactment of the transposition law and further to possible litigation phases.<sup>75</sup> Euro-coordinators are responsible for the input. However, several problems have

<sup>67</sup> Art. 2A Circular 2005; Art. 3.3.1.3 Circular 2016/4.

<sup>68</sup> Art. 3.3.1.3 Circular 2016/41.

<sup>69</sup> Art. 3.1.1.4-3.1.1.5 and 3.3.2.1. Circular 2016/41.

<sup>70</sup> See the recommendation by G. DIERICKS, P. BURSENS AND S. HELSEN, *How to Explain the Belgian Integration Paradox?* (University of Antwerp 2001).

<sup>71</sup> Instructions 2016, 37.

<sup>72</sup> Art. 3.3.2.2. Circular 2016/41.

<sup>73</sup> Art 3.3.2.4. Circular 2016/41.

<sup>74</sup> Brussels Ordinance of 13 February 2014.

<sup>75</sup> See the Instructions 2016, 2.3.4.

been reported concerning the database: it is not user-friendly<sup>76</sup> and regional entities are invited but not obliged to feed the database with implementation activities.<sup>77</sup> In fact, while the Walloon Region makes use of Eurtransbel, the Flemish Community does not.<sup>78</sup> Instead, it has its own database to report on draft directives, adopted directives, transposition files, EU pilot files and infringement files.<sup>79</sup>

Likewise, the actual monitoring of infringement procedures rests with each separate entity. In the French Community and Walloon Region as well as the Flemish Community, the euro-coordinator is assigned with the task to draw up a monthly report on delayed transpositions and infringement procedures.<sup>80</sup> On a regularly basis, the governments discuss implementation and infringement files. Each month, a Committee of federal and regional ministers ('Overlegcomité') discusses such files with mixed competences.

At the parliamentary level as well, coordinating structures are lacking. A draft cooperation agreements was drafted in 2005 and amended in 2008 but has never entered into force. As the Senate has lost most of its powers since the sixth state reform in 2014, a new agreement is necessary but negotiations have not started. Meanwhile, the 2008 draft cooperation agreement is applied. In this system, reasoned opinions of the several parliaments are simply gathered in a non-deliberative way. As a result, the two votes falling to Belgium are not adequately used.<sup>81</sup>

A yearly meeting of the Federal Advisory Committee for European Affairs is dedicated to the transposition of EU directives. In this meeting, the Minister of Foreign Affairs reports on the implementation progress, the infringement procedures and plans to improve the current system.<sup>82</sup>

### 3. Key actors in the implementation process

#### *a. The Government and administration*

Leadership is of major importance to shape a culture<sup>83</sup> that is keen on the correct and timely implementation of EU law. This implies, in the first place,

<sup>76</sup> Report on the implementation of EU law in domestic law, *Parl. Doc.* Senate 2014-2015, 6-131/2, p. 32, 90.

<sup>77</sup> *Ibid* p. 48, 90.

<sup>78</sup> *Ibid*, p. 90.

<sup>79</sup> Art. 2.1.14 Circular 2016/41.

<sup>80</sup> Art. 4 of the Circulaire 2005; Art 3.3.2.3. Circular 2016/41.

<sup>81</sup> P. POPELIER and W. VANDENBRUWAENE, 'The subsidiary mechanism as a tool for inter-level dialogue in Belgium : on 'regional blindness' and cooperative flaws' (2011) *European Constitutional Law Review* 223.

<sup>82</sup> Information report on the transposition of EU law in the Belgizn legal system, *Parl.Doc.* 2014-2015, No 6-131/2, at p. 32

<sup>83</sup> T. CHRISTENSEN, P. LAEGREID, P.G. RONESS and K.A. ROVIK, *Organization Theory and the Pulic Sector*, 47.

that a political actor is assigned with this responsibility and, secondly, that he or she considers the timely and correct implementation of EU directives a priority action point. Telling in this respect is the temporary improvement of Belgium's implementation score during Belgium's presidency in 2010, during which extra efforts were made to improve Belgium's reputation.<sup>84</sup>

In 2015, the Senate advised the federal and subnational Executives to appoint a 'Minister of European Affairs' to supervise the implementation processes.<sup>85</sup> Today, the federal Minister of International Affairs is also competent for European Affairs, but no specific coordinating role is assigned to him. At the subnational levels, no Minister has 'European Affairs' in his or her portfolio.

At the administrative level, the lines of administrative responsibilities for transposition have been clarified in recent circulars.<sup>86</sup> Within the federal as well as the regional Executives, so-called 'euro-coordinators', agents of the department of foreign affairs assigned with the supervision and follow-up of the transposition of EU-directives, act as linking officers between their department, the other departments, and Parliament. It is their responsibility to supervise the timely and correct transposition of directives and to raise the alarm if structural problems are identified, for example through the EU SOLVIT-program. The euro-coordinators, however, have no formal status – and therefore sometimes miss the authority to steer the administration<sup>87</sup> – and were usually not involved in the negotiations.<sup>88</sup> The latter is the responsibility of diplomats and experts in the Permanent Representation to the EU. The disconnection between these actors has been criticized for hindering timely detection of possible implementation problems and fluent information flow.<sup>89</sup> The federal circular recognizes the 'lack of a proactive attitude' as a 'problem of culture' and tries to address this by inviting the euro-coordinators to coordination meetings; in turn, the euro-coordinators should identify the implementation managers, assigned with the actual task of transposing the direc-

<sup>84</sup> Report on the implementation of EU law in domestic law, *Parl. Doc.* Senate 2014-2015, 6-131/2, p. 101.

<sup>85</sup> Report on the implementation of EU law in domestic law, *Parl. Doc.* Senate 2014-2015, 6-131/2, 121-122, 202-203.

<sup>86</sup> For an overview, see also C. ROMAINVILLE and W. VANDENBRUWAENE in C. ROMAINVILLE, W. VANDENBRUWAENE ET AL., 'Belgium', in J. CZUCZAI, P. DARÁK ET AL. (eds), *Division of Competences and Regulatory Powers between the EU and the Member States*, FIDE Congress Proceedings Vol. 3, Budapest, Wolters Kluwer 2016, 183.

<sup>87</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2.

<sup>88</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 43.

<sup>89</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 34

tives, and bring them into contact with the negotiators.<sup>90</sup> Also, the federal circular ‘proposes’ to give the euro-coordinators a more formal status to strengthen their authority and to enlarge the importance of their function as euro-coordinator next to other tasks assigned to these persons.<sup>91</sup>

*b. The Parliament*

At the parliamentary level, a Federal Advisory Committee is established, consisting of ten senators, ten members of the House of Representatives and ten Belgian members of the European parliament. This Committee gives advice on European Affairs, hears the government before and after each meeting of the European Council, examines the implementation progress, etc. However, no briefings and debriefings are held on concrete files discussed in the Council of Ministers.<sup>92</sup> Also, the Committee contends with absenteeism, signaling a lack of interest for European Affairs.<sup>93</sup> Also, meetings are often organized when the European Parliament is meeting in Strasbourg, which explains why members of the EP in the Committee are often absent.<sup>94</sup>

In the House of Representatives and the French Community Parliament, so-called ‘Euro-promoters’ are assigned in the Parliamentary Committee on International and European Affairs to follow up European questions and documents.<sup>95</sup> This (potentially) enhances the MP’s expertise in and commitment to EU affairs.<sup>96</sup> Out of the Belgian federal and subnational legislative assemblies, the House of Representatives seems best structured to follow up EU Affairs, participate in the Political Dialogue and the Early Warning System: apart from the Euro-promoter, it relies on an analysis center for administrative support, which screens the EU documents, selects and reports on the most important issues and drafts opinions, and it has a fast-track procedure, with a majority approval requirement of reasoned opinions in the standing

<sup>90</sup> Instructions 2016, 33-34.

<sup>91</sup> Instructions 2016, 41.

<sup>92</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 176.

<sup>93</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 43

<sup>94</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 175.

<sup>95</sup> Art. 37 Rules of Procedures of the House of Representatives; Art. 31 Rules of Procedure of the French Community Parliament.

<sup>96</sup> T. DELREUX and F. RANDOUT, Belgium: Institutional and Administrative Adaptation’, in C. HEFTER, C. NEUHOLD, O. ROZENBERG and J. SMITH (eds), *The Palgrave Handbook of National Parliaments and the European Union* (London, Palgrave MacMillan 2015) 159.



committee unless one-third of the members requests referral to the plenary.<sup>97</sup> This may explain why the House of Representatives, out of all legislative assemblies in Belgium, has the highest participation rate in the Early Warning System.

#### **4. The federal system in the case of non-compliance by regional entities**

If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Treaties and this Member State has not taken the necessary measures to comply with that judgment, the Court can impose a lump sum or penalty payment upon the Member State.<sup>98</sup> The obligation to pay this sum falls upon the Member State, even if one or more sub-national entities are responsible for the delay. It is for the Member States to deal with this problem internally.

In Belgium, the question became urgent when an action was brought before the Court of Justice for non-compliance with an earlier infringement declaration against Belgium in the field of waste water treatment.<sup>99</sup> The implementation of the EU directive was the exclusive responsibility of three subnational entities: the Flemish Region, the Brussels Region and the Walloon Region. While in the initial infringement proceedings all Regions were at fault to some extent, ultimately the financial sanctions were imposed with regard to five municipalities located in the Walloon Region. When imposing a financial sanction, however, the Court of Justice also took into account the past behavior of the other Regions.<sup>100</sup>

Federal Member States have established various mechanisms for the partition of financial sanctions.<sup>101</sup> In Belgium, however, the federal and subnational entities were unable to agree upon a structural partition instrument, even in the face of the proceedings under 260 TFEU. The only mechanism set in place is Art. 16 § 3 of the Special Act on Institutional Reform, which allows the federal government under certain conditions to substitute itself or the regional government, responding to an international judgment.

<sup>97</sup> W. VANDENBRUWAENE, P. POPELIER, 'Belgian Parliaments and the Early Warning System', in A. JONSSON CORNELL and M. GOLDONI (eds), *National and Regional Parliaments in the EU-Legislative Procedure Post-Lisbon* (Oxford, Hart 2017) 189.

<sup>98</sup> Art. 260 TFEU.

<sup>99</sup> C-27/03, *Commission v Belgium*, 8 July 2004; C-533/11, *Commission v Belgium*, 17 October 2013.

<sup>100</sup> C-533/11, *Commission v Belgium*, 17 October 2013, para 54, 71.

<sup>101</sup> For a comparison, see W. VANDENBRUWAENE, P. POPELIER and C. JANSSENS, 'Art. 260 TFEU Sanctions in Multi-Tiered Member States', (2015) 7 *Perspectives on Federalism*, 147-150.

This article enables the federal government to intervene already after the first infringement judgment. However, the federal government has never made use of this possibility, for two reasons. First, as matters in Belgium are allocated mainly on the basis of exclusivity, the federal government lacks the necessary expertise to take the appropriate measures. Next, in the light of the dyadic type of Belgian federalism, such substantive interference in regional matters would probably meet with sharp criticism.

The federal government can also use this article to redress the fine, and has probably done so in the case of urban waste water treatment.<sup>102</sup> However, despite a recent call in the Senate to take a legislative initiative,<sup>103</sup> no mechanism is set in place to calculate each share, based on relevant criteria such as tax revenue, the size of population, and the share in and continuation of the infraction.

### 5. Cases: Best Practices and Bad Practices

Transposition in environmental law is often problematic. In 2015, environment was the policy field in which most infringement cases were opened.<sup>104</sup> Environmental law was also the policy field in which the Council Directive of 21 May 1991 concerning urban waste water treatment<sup>105</sup> was situated. The transposition of this directive illustrates how several deficiencies such as the lack of a proactive approach and insufficient coordination result in infringement proceedings imposing financial sanctions on Belgium for regional failures.

The directive required, amongst others, the Member States to ensure that all agglomerations are provided with collecting systems for urban waste water at the latest by 31 December of 2000 or 2005, or depending on the population size. In Belgium, urban waste water is an exclusive regional competence. Hence, three regions were responsible for the implementation of the directive: the Flemish Region, the Walloon Region and the Brussels Region.

None of the Regions managed to comply with the directive in time. In a judgment of 8 July 2004, the Court of Justice issued an infringement declaration against Belgium on the ground that 114 agglomerations in the Flemish Area, 60 agglomerations in the Walloon Region and the Brussels-Capital Region failed to comply with the requirements of Directive 91/271. After two

<sup>102</sup> See Senate, *Parliamentary Dealings*, October 24th, 2013, question nr. 5-1141.

<sup>103</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 167 and 288.

<sup>104</sup> European Commission, *Monitoring the Application of European Union Law*, Annual Report 2015.

<sup>105</sup> *Off. J.* 30 May 1991, L135/40.

letters of formal notice and a reasoned opinion, the Commission, finding that 1 agglomerations in the Flemish Region did still not comply with Article 5 of the Directive and 21 agglomerations in the Walloon and the Brussels Region had failed complied with the judgment, brought an action before the Court of Justice, leading to the judgment of 17 October 2013 ordering the payment of a penalty payment and a daily lump sum.<sup>106</sup>

The case revealed the problem of the distribution of financial sanctions for failures by the Regions or Communities to comply, discussed in Section 4. Here, the question is what exactly caused the delay. Commentators suggested that during the drafting process of the directive, the Belgian authorities were not sufficiently aware of its budgetary impact.<sup>107</sup> A Belgian or regional impact analysis could have brought this to their attention.<sup>108</sup> This, however, would also have required some coordination between the different entities. In reality, each Region transposes directives in a rather isolated way, avoiding coordination and collaboration as much as possible.<sup>109</sup>

Conversely, the Flemish Region proved in the EU Water Directive case that directives can be transposed in a timely and correct way despite several obstacles. First, this was a complex directive with several vague and ambiguous provisions resulting from difficult and conflictual negotiations. Secondly, the government decided to not simply transpose the directive as such, but linked this with a more general reform of Flemish water policy. Thirdly, competence over the matter was internally fragmented between different departments (environment, mobility and urban development)<sup>110</sup> and, fourthly, also concerned decentralized administrations which were eager to protect their autonomy.<sup>111</sup> Fifthly, there was no proactive strategy, and only at the end of the EU policy making cycle did the Flemish authorities get actively involved.<sup>112</sup>

A case study performed by two political scientists lay bare the factors that explain why, despite these obstacles, the Flemish Region was one of the first to transpose the EU Water Directive.<sup>113</sup>

<sup>106</sup> C-533/11, *Commission v Belgium*, 17 October 2013.

<sup>107</sup> Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 56

<sup>108</sup> See also Information report on the transposition of EU law in the Belgian legal system, Senate *Parl.Doc.* 2014-2015, No 6-131/2, at p. 131.

<sup>109</sup> G. DIERICKS, P. BURSENS and S. HELSEN, *How to Explain the Belgian Integration Paradox?* (University of Antwerp 2001) 57-58.

<sup>110</sup> K. GEERAERTS and P. BURSENS, 'Van Kaderrichtlijn water tot decreet integraal waterbeheer. Impact van binnenlandse factoren op de Vlaamse aanpassing aan Europese regelgeving', (2007) 4 *Burger bestuur & beleid* 135.

<sup>111</sup> *Ibid* 135, 137.

<sup>112</sup> *Ibid* 136.

<sup>113</sup> *Ibid* 125-139.

One reason was the good coordination of the transposition process between the different Flemish departments.<sup>114</sup> Apart from structural coordination mechanisms, *ad hoc* coordination structures were established especially for this project.<sup>115</sup> The coordination with the decentralized entities was also efficient, but met with more difficulties. As a result, no compromise was found with regard to district water boards.<sup>116</sup>

Most importantly, there was a clear political will to transpose the Directive, resulting in political leadership: the ministerial cabinet responsible for Environment took the lead and monitored the transposition process.<sup>117</sup> The transposition of this directive was considered a political priority for two reasons: the Green Party, especially concerned with environmental issues, was a coalition partner in the government at that point in time, and the directive was used as a lever to force through a broader reform of water policy.<sup>118</sup> As a result, the administration was prepared for the legislative work and cabinets and administration pulled in the same direction.<sup>119</sup> Hence, while the present circulars stress the avoidance of additional provisions as a device for timely implementation, the linking with larger reform projects may just as well accelerate the implementation process.

## 6. Conclusions

Eight factors were identified to improve timely transposition of EU directives. While these factors are relevant in any form of government, the federal structure of the Belgian state brings a complicating factor as the implementation of EU directives and regulations implies the taking into account of all these factors at the different levels of authority, and some overall coordination mechanism to deal with the implementation in mixed matters on top. While in practice some attention is paid to all these factors, for each of them there is still much room for improvement.

First of all, the priority given to transposition is a relevant factor. The Belgian EU presidency helped to bring the implementation of EU law on the political agenda resulting in important progress in the following years. However, supervision and coordination of the implementation process is spread over the various political entities and only part of the federal and regional ministers' portfolio. The case studies show that the accidental political will to lead

<sup>114</sup> *Ibid* 135-136.

<sup>115</sup> *Ibid* 135.

<sup>116</sup> *Ibid* 136.

<sup>117</sup> *Ibid* 136.

<sup>118</sup> *Ibid* 136, 137.

<sup>119</sup> *Ibid* 137.

an implementation project, for example when it fits in with the domestic governance agenda, is an important factor for success.

Next, it was recommended to activate the national or regional parliament at the negotiation stage. The Federal Advisory Committee, however, is not very active, and only the federal House of Representatives and the French Community Parliament have assigned 'Euro-promoters' to follow up European questions and documents. Also, the involvement of the various parliaments in the Early Warning System has been minimal.

Third, it was advised to anticipate transposition issues during the negotiation stage of the directive. Because of the federal structure and the intense involvement of the subnational entities, Council meetings are always preceded by coordination meetings. Also, the various circulars pay a lot of attention to the pre-enactment phase, in particular in order to deal with issues of competence. Nonetheless, in practice, Belgium does not stand out as an assertive negotiator in the preparatory process of EU law. Also, the circulars do not prescribe the assessment of the socio-economic impact and administrative costs of the draft EU directive or regulation.

The fourth recommendation was to transpose through subordinated legislation. As there are no specific EU-related procedural or delegation clauses, the regular law making procedure applies, with a strict regime for the delegation of law making power to the executive in reserved matters. The Courts, however, are very flexible in the interpretation of the constitutional framework where the implementation of EU laws is concerned.

Fifth, avoiding gold-plating is recommended in both the federal and the Flemish circulars, but no enforcement mechanisms are in place. It is therefore uncertain whether these recommendations will suffice to turn a trend of gold-plating. On the other hand, the case study shows that gold-plating is not at all times a delaying factor. Instead, if the transposition of a EU directive opens a window of opportunity for a larger reform, this might even accelerate the implementation process.

The next two factors involve clear-cut lines of administrative responsibilities for the transposition and working with multidisciplinary project teams. The circulars put much effort in clarifying the organization chart, with the Permanent Representation, the euro-coordinators and the implementation managers as key actors. The Permanent Representation follow-up on the negotiations; the euro-coordinators acts as linking officers between the department of foreign affairs and the other administrative departments and Parliament and supervise the transposition procedure; the implementation managers coordinate the transposition procedure within their own departments. However, the euro-coordinators have no formal status and the Permanent Representation is too insulated from the euro-coordinators and implementa-

tion managers. Also, a formal coordination mechanism to harmonize the transposition of EU directives at the different levels of authority, is lacking.<sup>120</sup> Lastly, the case studies showed that even within one level of authority, fragmentation between different departments can cause delays, whereas structural and ad hoc coordination mechanisms are determining factors for success.

Accurate and frequent monitoring of progress is a last determining factor. Here as well, Belgium has made some progress, with regular reports on the process of implementation files delays and infringement procedures, and a database as the central instrument in the monitoring phase. However, as the reporting mainly remains limited to each level of authority, the regular reporting of the comprehensive, overall picture remains wanting. Also, the Eurtransbel database is not deemed user-friendly and, more importantly, is not complete, as the Flemish Community makes use of its own, separate database.

<sup>120</sup> See also C. ROMAINVILLE and W. VANDENBRUWAENE in C. ROMAINVILLE, W. VANDENBRUWAENE ET AL., 'Belgium', in J CZUCZAI, P DARÁK ET AL. (eds), *Division of Competences and Regulatory Powers between the EU and the Member States*, FIDE Congress Proceedings Vol. 3, Budapest, Wolters Kluwer 2016, 182.