

FIRST, PROVISIONAL DRAFT — TREAT ACCORDINGLY!

**Delors' Vision and the Sobering Reality of Europeanizing
the Legal Order
An Austrian Perspective**

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1. Introduction

Jacques Delors, speaking to the European Parliament in July 1988, predicted that by 1998 the European Community would be the source of 80 per cent of our economic legislation and perhaps even our fiscal and social legislation as well.

Delors' grand vision of an Europeanized legal order often has been taken as an actual description of reality. Thus, Simon Hix (1999:3) boldly states 'In fact, the EU sets over 80 per cent of rules governing the exchange of goods, services and capital in the member states' markets.'¹

Note that what Delors actually said and how his statement is often recollected are not quite the same. While Delors was careful to limit his claim to economic legislation (with the possible extension to fiscal and social legislation), the popular reading is just 'legislation'. Interestingly, this is reflected in the perception of Austrian political practitioners. According to the long-serving chairman of the budget committee of the Austrian parliament Ewald Nowotny (1998) about 70 percent of all laws passed by the Austrian parliament are either directly or indirectly the implementation of or adaptation to EU directives. Likewise, several other Austrian MPs have estimated shares of up to 70 percent in their responses to open-ended questions in personal interviews conducted in 1997–98 (Müller et al. 2001: 479). Similar estimates have been given by MPs interviewed in 2005. However, not all politicians share such extensive interpretations of Europeanization. The then president of parliament, Heinz Fischer, in an interview with the Austrian television program "Hohes Haus" in 2002 has explicitly rejected these estimates, however, without providing precise figures. His own estimate is a share of EU-induced legislation of well below 50 percent.

These different estimates of insiders may not necessarily conflict. Rather they may reflect the time of making these estimates and the ups and downs in the regulatory output of the European Union. Thus it is well known that the EU produces fewer directives after the

¹ Note that he is more guarded in the new edition of his book, where we read: 'In fact some scholars estimate that the EU sets over 80 per cent of the rules governing the production, distribution and exchange of goods, services and capital in the member states' market' (2005: 3), referring to Majone (1996).

completion of the Single Market program (Pollack 2000: 529–37; Dehousse 2002). Also no attempt has been made to operationalize ‘EU-induced’ properly. Is a domestic law EU-induced only when it is *exclusively* devoted to the implementation of EU directives? Or, conversely, is a law EU-induced if it has *any* function of implementation or adaptation? Obviously, such definitional issues can account for great variation in the number of EU-induced laws at the national level.

Almost two decades have passed by since Delors famous statement and almost one decade since the year to which the prediction was tied. However, as yet we have hardly any *systematic information* on the amount of Europeanization of member states’ legislation. This applies almost equally to the older and newer member states.

The absence of such information is curious, given that implementation studies have become a political science growth industry in recent years and ‘Europeanization’ of member states has become a fashionable topic. Yet, most of existing research has either focussed on the fate of individual directives in the national implementation processes or focussed on ‘Europeanization’ of specific sectors. As always, in-depth studies can help us to understand the micro logic of political decision-making and provide qualitative insights, but by their very nature cannot tell us about the frequency of events. To be sure, there is also a rapidly growing literature that employs quantitative data. These studies typically take the ‘Commission perspective’ by focussing on implementation deficits (non-implementation or delays in implementation) or the ‘European Court of Justice perspective’ (insufficient implementation). It may be somewhat frivolous to ask whether this emphasis has something to do with the simple fact that the European Union compiles most of the raw data required in these analyses.

This paper is a small step toward confronting Delors’ vision with data. We do so from an Austrian perspective. Clearly, the relative share of Europeanized regulations in the legal order of member states may vary because of opting-out clauses from European treaties and more or less national regulation. Hence, a member state with ‘lean government’ will experience the same amount of European rules that have to be implemented as a more significant change of its legal order than a country characterised by ‘big government’. Likewise, national legislation is likely to be affected differently by EU directives in unitary and federal states, with, of

course, much depending on the actual division of jurisdictions between the different layers of government.

Austria has not opted out of any aspect of European integration. It has traditionally been characterized by ‘big government’, and although constitutionally federal, its rule-making is relatively centralized. Hence, we would expect that within the spectrum of EU member states Austrian national law-making should be affected strongly.

Austria is a country with a strong legal positivism. Article 18 of the Constitution demands that all acts of the public administration must be based on law. The Constitutional Court traditionally has enforced this article rigorously. In simple words the legality principle of Article 18 means that all relevant contents of regulations need to take law form. The addressee of legal norms must be able to learn everything that is important to his or her position under the law from the law passed by parliament. Likewise, the law courts must be able to check administrative acts against the law (Adamovich et al. 1998: 114). This leaves little room for delegated legislation to introduce new norms, though the law may delegate the power of setting technical standards to delegate legislation.

The first objective of our research program is to establish the quantitative impact of EU directives on national law-making. This paper represents an early stage of this program and will be confined to a descriptive account. Our primary research interest is to present the share of current national law production that shows a clear connection to EU directives and to give a first estimate of the quantitative impact of EU directives on the national legal order.

Austria is a relatively recent member of the European Union. This fact complicates direct comparisons with older member states. When joining the EU in 1995 and even before that date, by accession to the European Economic Area in 1994, Austria had to incorporate a large body of EU law. The incorporation of EU law occurred partly before formal accession through national laws that were already substantively harmonized with EU law, but mainly through the regular process of law production since the membership became effective. Thus the en bloc implementation of the *acquis communautaire* gave way to the ‘normal’ transposition process of the current production of EU directives.

The paper's main sources of data are the European Union's CELEX database, which provides a list of directives in force together with the national measure(s) notified by the national government after transposing a EU directive, and the Austrian online database of the Federal Law Gazette, which allows searching for federal laws that are tagged as implementing an EU directive (Kleiser 2001). Neither of these databases is free of errors. In combination they produced a somewhat higher amount of national legal measures related to the transposition of EU directives than any single one of them would have given. Our source on the current legal order in Austria is the official guide to federal legislation in force which is published yearly (Republik Österreich 2004).

In the next sections we check for the impact of 'Europe' on the national legislation and the national legal order. A quantitative approach like ours is based on the crucial assumption of the equivalence of legal rules. Each law and each directive has the same weight. Indeed, each law and each directive has been passed through the political decision-making process as a unit. From a qualitative perspective, of course, the assumption of equivalence is grossly wrong as the importance of laws varies greatly. We recognize that. The assumption behind employing quantitative data, however, is that this difference between individual laws does not introduce a systematic bias to our results.

2. Europeanization of Law Production

The easiest approach to check for the Europeanization of national law production is to look at the new laws past. Only when a sizable proportion of these laws implement EU directives can we expect Europeanization to take place. To be sure, EU directives can be transposed by means chosen by the member state. Hence, pushing it to the extreme, no parliamentary legislation would be required. The British case conforms to this ideal type. In order to maintain the fiction of parliamentary sovereignty, implementation of EU directives is done by Statutory Instruments (Page 1998). Austria probably represents the other extreme case. There the use of delegated legislation is closely circumscribed by a tradition of legal positivism.

The decision on what type of legal instrument is required to implement a specific EU directive is taken on a case-by-case basis. According to the Constitution, the choice of the legal instrument should be exactly the same for EU-induced regulation as for regulation exclusively triggered by domestic concerns.

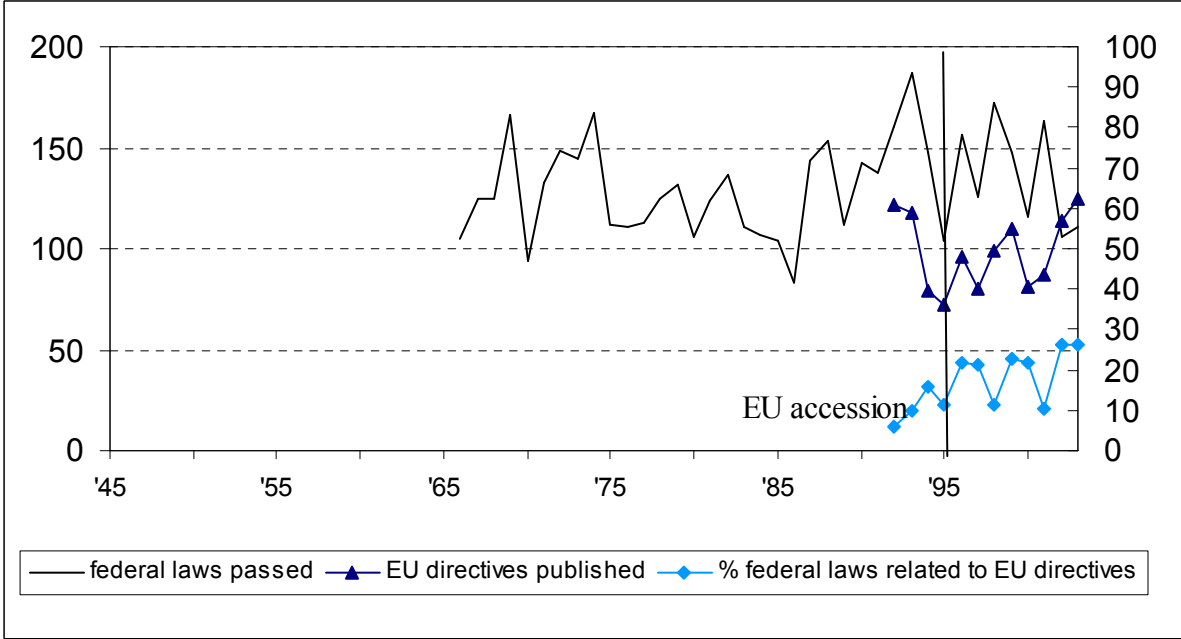
Thus whenever a new directive is enacted at the European level, the Austrian federal government has to check which of the following conditions apply. If there exists already a specific law dealing with a subject matter, several alternatives exist. First, the law (or laws plus further decree regulation) may already contain what is in the European directive. In this case no further domestic action is required (though the relevant laws and decrees need to be notified to the European Commission and a technical reference to the EU directive needs to be introduced in the already existing domestic legal acts). Second, if the law or even the Constitution contain regulations that conflict with those of the EU directive, amendments of the laws and/or the Constitution are required. Third, if a law exists that does neither conflict with nor exhaust the relevant EU directive, decree regulation may be sufficient for transposing the uncovered part of the directive provided that the content of the original law provides a framework for that. Wherever frequent changes in EU directives (mostly in their appendices) are anticipated, the general strategy is to empower the relevant minister to adapt to the changing European legal order by means of government decrees.

The national division of tasks, as laid down in the Constitution and the Federal Ministries Law, establishes responsibilities for the implementation of EU directives. Experience has taught that the obligation to become initiative in order to start the implementation process is not sufficient to make individual ministries or *Länder* act. Hence, the 2003 amendment to the Federal Ministries Law (that was introduced in the context of the formation of the second ÖVP-FPÖ government, Schüssel II), has introduced a new coordination competence for the Federal Chancellery. Based on this formal task, the Chancellery takes an active part in establishing the domestic responsibilities for making the initial steps in the transposition process and in monitoring that process.

Figure 1 provides an overview of the quantitative output of Austrian laws, EU directives, and those Austrian laws that implement EU directives. The share of EU-related laws varies

between 10 percent in 2001 (a year with high legislative output) and 26 percent in 2002 (a year with little legislative output).

Figure 1: Percentage of federal laws related to EU directives (1992–2003)



Evidence from other member states is meagre, but conforms to the trend outlined here. Klaus von Beyme (1997: 185–6), in his study of German legislation in the 1949–94 period (based on a total of 150 laws of great relevance), found a mere six percent to be EC/EU-induced laws. However, Töller (1995: 40–51), basing her study on all laws enacted by the German Bundestag in a shorter and more recent period, finds an increasing relevance of the European Union. The share of EU-induced laws increased from 16 percent in the 1983–87 parliamentary term to more than 20 percent in the 1987–90 and 1990–94 periods.

Studying the British Statutory Instruments (SIs, i.e. secondary legislation) for the 1987–97 period Edward Page (1998) found that European law is responsible for roughly one-sixth of them. Several studies of Italian implementation of EU directives have referred to the ‘La Pergola’ law of 1989 that introduced an annual Community Law (*legge comunitaria*), comprising all legal acts necessary to transpose extant community jurisprudence for the next 15 months (Fabrini and Donà 2003).

Table 1 gives provisional data on the choice of legal instruments in Austria. Rule production at the federal level is measured by year of publication in the Federal Law Gazette.

Table 1: Rule production and legal instruments used in the transposition of EU directives at the federal level¹

Type of instrument	'95	'96	'97	'98	'99	'00	'01	'02	'03	1995–2003
Total federal laws	115	138	112	167	179	116	135	139	105	1206
EU-related federal laws	12	34	27	21	34	25	17	33	31	234
% EU-related federal laws	10	25	24	13	19	22	13	26	26	19
Total government decrees	477	369	404	426	481	387	461	478	598	4081
EU-related government decrees	32	43	44	42	38	51	29	22	42	343
% EU-related government decrees	7	12	11	10	8	13	6	5	7	8

Note: ¹By year of publication in the Federal Law Gazette

Table 1 shows that the transposition of EU directives does have a considerably stronger impact on the production of federal laws than on government decrees. Though more government decrees were used than federal laws in the transposition of EU directives, in relative terms the share of EU-related federal laws is more than double the share of EU-related government decrees. The transposition of individual EU directives in many cases employs both laws and government decrees.

Table 2: The relationship between EU directives and EU-related laws¹

EU-related federal laws transposes	'95	'96	'97	'98	'99	'00	'01	'02	'03	1995–2003
1 directive	56	42	40	41	55	64	54	43	61	50
2–5 directives	44	48	32	35	31	32	46	50	39	40
6+ directives	0	10	28	24	14	5	0	7	0	11
Mean	1,7	2,6	3,9	5,1	3,0	2,0	1,5	2,8	1,5	2,8

Note: ¹By year of publication in the Federal Law Gazette

Table 2 shows how many directives were transposed per federal law. In the 1995–2003 period there was a one-to-one relationship between directives and federal laws in about 50 percent of the cases. While the government tended to pack several EU directives into one transposing law in first years of EU membership when the workload of adopting EU law was heavy, more recently it tends to use one law for each directive. Note, however, that laws transposing EU

directives may have many additional purposes. Often the need to implement EU law is used as a vehicle of introducing changes to laws that have nothing to do with EU demands.

The gross figures presented thus far, of course, speak more to the popular perception of Delors' vision than to the claim he actually made. In order to address this claim we need to employ sector-specific data. Tables 2 through 4 contain a breakdown by committee of the legislative acts passed by parliament (more precisely by the politically decisive lower chamber). The tables contain all permanent parliamentary committees, that were involved in law-making in the 1995–2003 period, plus one ad hoc committee, the only task of which was to deliberate the demand of a people's initiative to severely restrict genetic engineering by law.

Table 3 provides an account of the legislative output per committee and year since the first year of Austria's membership in the EU until 2003. In this time, the parliamentary committee system passed a total of 1197 bills, all of which subsequently became laws. The legislative workload of the committees was very uneven, with the Finance Committee being responsible for 204 laws, what is more than the combined output of the 14 committees least burdened with legislative work. Table 3 also shows considerable variation in legislative output from year to year.

Table 3: Federal laws by parliamentary committee (1995–2003)

Committee	'95	'96	'97	'98	'99	'00	'01	'02	'03	1995–2003
Finance	19	33	25	27	20	14	32	19	15	204
Labour & Social Affairs	8	19	12	27	20	9	24	13	5	137
Constitution	10	12	13	19	24	12	17	10	12	129
Justice	5	11	8	8	16	12	12	12	17	101
Budget	11	6	7	13	5	19	11	2	12	86
Economic affairs	10	14	3	12	9	7	10	9	4	78
Transport	5	7	16	13	9	1	6	7	13	77
Health	7	8	2	10	11	4	11	10	14	77
Education	3	15	10	9	9	3	4	5	3	61
Science & Research	7	5	4	11	3	6	6	2	2	46
Agriculture & Forestry	7	8	6	2	7	2	7	1	3	43
Interior	5	5	6	4	3	5	6	3	1	38
Environment	2	4	3	3	2	5	4	5	3	31
Public Works	0	2	3	0	4	3	1	3	1	17
Foreign Relations	2	3	3	1	1	0	3	1	2	16
Defence	3	0	1	3	0	3	3	1	1	15
Families	0	2	1	1	2	3	1	2	2	14
Culture	0	0	2	3	1	3	2	0	0	11
Equal Rights	0	0	0	4	1	0	1	0	0	6
Rules of Procedure	0	2	1	1	0	0	0	0	0	4
Industry	0	0	0	0	1	2	0	0	0	3
Human Rights	0	0	0	0	0	1	0	0	0	1
Sports	0	0	0	0	0	0	1	0	0	1
Ad hoc committee on the people's initiative on genetic engineering	0	0	0	1	0	0	0	0	0	1
N	104	156	126	172	148	114	162	105	110	1197

Tables 4 and 5 display how the 230 laws that implemented EU directives spread over the committee system. Eight of the 23 permanent committees were not affected at all by Europeanization. With the exception of the Culture Committee, these are the committees generally least active in legislation. They also include the Rules of Procedure Committee, which should not be affected by Europeanization. The remaining 15 permanent committees, over the 1995–2003 period have enacted between one and 33 laws based on EU directives each. In absolute terms the Health, Transport, and Finance committees were most busy with implementing EU directives.

Table 4: EU-related federal laws by parliamentary committee (1995–2003)

Committee	'95	'96	'97	'98	'99	'00	'01	'02	'03	1995–2003
Health	3	4	2	3	6	0	1	8	6	33
Transport	1	3	5	6	3	1	3	3	8	33
Finance	0	8	0	1	4	4	1	5	4	27
Justice	0	2	2	2	2	5	2	2	4	21
Economic affairs	2	3	2	3	3	3	1	3	1	21
Constitution	0	4	2	0	4	4	3	2	1	20
Labour & Social Affairs	1	3	4	1	4	2	1	3	0	19
Agriculture & Forestry	1	4	5	1	2	1	1	2	2	19
Environment	0	1	2	1	1	3	2	2	3	15
Science & Research	1	2	1	0	2	1	0	0	0	7
Public Works	0	0	1	0	1	0	0	2	0	4
Budget	1	0	0	0	0	1	1	0	1	4
Education	1	0	0	0	1		1	0	0	3
Interior	0	0	1	0	0	0	0	1	0	2
Culture	0	0	0	1	0	0	0	0	0	1
Ad hoc committee on the people's initiative on genetic engineering	0	0	0	1	0	0	0	0	0	1
N	11	34	27	20	33	25	17	33	30	230

Table 5: EU-related federal laws by parliamentary committee (1995–2003)
(in percent of EU-related laws)

Committee	'95	'96	'97	'98	'99	'00	'01	'02	'03	1995–2003
Health	27	12	7	15	18	0	6	24	20	14
Transport	9	9	19	30	9	4	18	9	27	14
Finance	0	24	0	5	12	16	6	15	13	12
Justice	0	6	7	10	6	20	12	6	13	9
Economic affairs	18	9	7	15	9	12	6	9	3	9
Constitution	0	12	7	0	12	16	18	6	3	9
Labour & Social Affairs	9	9	15	5	12	8	6	9	0	8
Agriculture & Forestry	9	12	19	5	6	4	6	6	7	8
Environment	0	3	7	5	3	12	12	6	10	7
Science and Research	9	6	4	0	6	4	0	0	0	3
Public Works	0	0	4	0	3	0	0	6	0	2
Budget	9	0	0	0	0	4	6	0	3	2
Education	9	0	0	0	3	0	6	0	0	1
Interior	0	0	4	0	0	0	0	3	0	1
Culture	0	0	0	5	0	0	0	0	0	0
Ad hoc committee on the people's initiative on genetic engineering	0	0	0	5	0	0	0	0	0	0
N	11	34	27	20	33	25	17	33	30	230

Table 6: EU-related federal laws as percentage of total committee legislative output (1995–2003)

Committee	'95	'96	'97	'98	'99	'00	'01	'02	'03	1995–2003
Ad hoc committee on the people's initiative on genetic engineering	0	0	0	100	0	0	0	0	0	100
Environment	0	25	67	33	50	60	50	40	100	48
Agriculture & Forestry	14	50	83	50	29	50	14	200	67	44
Health	43	50	100	30	55	0	9	80	43	43
Transport	20	43	31	46	33	100	50	43	62	43
Economic affairs	20	21	67	25	33	43	10	33	25	27
Public Works	0	0	33	0	25	0	0	67	0	24
Justice	0	18	25	25	13	42	17	17	24	21
Constitution	0	33	15	0	17	33	18	20	8	16
Science & Research	14	40	25	0	67	17	0	0	0	15
Labour & Social Affairs	13	16	33	4	20	22	4	23	0	14
Finance	0	24	0	4	20	29	3	26	27	13
Culture	0	0	0	33	0	0	0	0	0	9
Interior	0	0	17	0	0	0	0	33	0	5
Education	33	0	0	0	11	0	25	0	0	5
Budget	9	0	0	0	0	5	9	0	8	5
Foreign Relations	0	0	0	0	0	0	0	0	0	0
Defence	0	0	0	0	0	0	0	0	0	0
Families	0	0	0	0	0	0	0	0	0	0
Equal Rights	0	0	0	0	0	0	0	0	0	0
Rules of Procedure	0	0	0	0	0	0	0	0	0	0
Industry	0	0	0	0	0	0	0	0	0	0
Human Rights	0	0	0	0	0	0	0	0	0	0
Sports	0	0	0	0	0	0	0	0	0	0
% of total law output	11	22	21	12	22	22	10	31	27	20

Table 6 comes closest to produce figures that speak directly to the Delors vision. The output of the permanent committees shows very different levels of Europeanization. Over the 1995–2003 period, the range is from 0 to 48 percent, for all committees taken together it is at 20 percent.

Clearly, the output of the Environment, Agriculture & Forestry, Health, and Transport committees is heavily Europeanized: more than four out of ten pieces of legislation implement EU directives. Relevant, though considerably lower levels of Europeanization, can be inferred from the legislative output of the Economic Affairs, Public Works, and Justice committees (more than 20 %). Four more committees cross the ten-percent threshold. These include the Finance committee that ranked third in passing Europeanized legislation in absolute terms. For the other committees that are affected at all by Europeanization, the implementation of EU directives has been a rare or even singular event.

While a share of close to 50 percent comes sufficiently close to Delors' vision, overall the legislative output remains quite distant from this mark. This is true even when discounting all committees viz. policy sectors that are generally neither considered to be affected much by the creeping gain of jurisdictions by the EU (see Schmitter 1997) nor included in Delors' prediction.

3. The Cumulative Effect: Europeanizing the Legal Order

While there can be no Europeanization of the legal order without a Europeanization of legislation, large-scale Europeanization of the legal order does not result automatically from implementing a hundred or so directives per year. Assuming for the moment that all laws, purely domestic ones and those related to EU directives, are equally important, Europeanization of the legal order from scratch would demand a high (and probably increasing) share of EU-based laws among the newly enacted ones. And reaching a truly high level of Europeanization, as envisaged by Delors, would require the production of more laws

based on EU regulations than purely domestic ones. As we have seen in the previous section, this is not the case.

Alternatively, EU-based laws may simply be more durable. If EU-induced laws pertain and national-induced ones vanish quickly, Europeanization of the legal order may nevertheless take place. Given the complex decision-making process and the many veto players at the EU level we may indeed expect greater policy stability than in a parliamentary system that vests the majority in the popularly elected chamber with full control over policy-making, as the Austrian system does (Müller 2003).

Table 7: Percentage of yearly federal laws still in force at the end of 2003

Federal laws	'95	'96	'97	'98	'99	'00	'01	'02	'03	Mean 1995– 2003
EU-related	83	88	96	100	94	100	100	97	97	95
Not EU-related	72	82	86	86	91	89	91	95	100	88

Table 7 shows that EU-related laws indeed tend to exhibit a somewhat higher durability. With the exception of 2003, EU-related laws of each year have a greater survival rate than the purely national ones. This results in a 7 percent-points difference in the mean. 95 percent of the federal laws that transposed an EU directive were listed as still in force. The share was 88 percent among laws not related to EU directives.

Figure 2 shows the durability of Austrian laws. The values are percentage of laws published in the respective year and still in force at the end of 2003. Note that the values are partly influenced by attempts to codify what otherwise would be a mess of laws and law revisions. Bringing together the main text of a law and the often many revisions it has seen over the years (which relate to individual sections of paragraphs only), in a single document reduces the number of laws in listed in the register. We were able to correct for republications since 1983 to the present, but due to data limitations not for the period 1945–1982. Thus the real trend line should be less steep for the 1945–1991 period. Overall Figure 2 shows a recognizable dip in the survival rates of laws published shortly before and after Austria’s accession to the European Union in 1995.

Figure 2: Federal laws in force by year at the end of 2003 (in %) with trend line

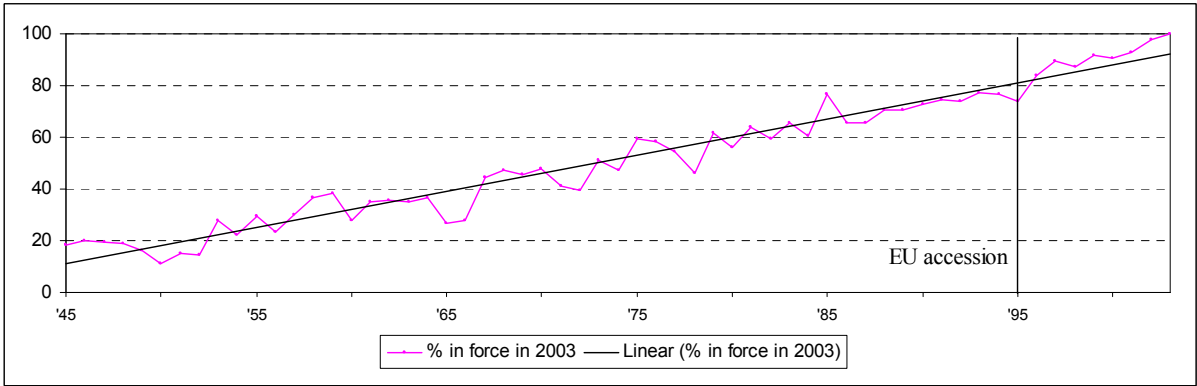


Table 8 provides a snapshot picture of the Europeanization of the Austrian legal order in 2003. To keep things simple, we exclude all legislation enacted before 1945 but still in force in 2003. Note that this loads the dice in favour of finding a high level of Europeanization. Nevertheless, in total no more than six percent of the laws relate to EU directives. Needless to

say that this is far off the 80 percent mark or, more realistically, any truly significant level of Europeanization.

Employing the official domestic classification of laws also allows for a breakdown by sector. This allows a more meaningful judgement with regard to the accuracy of Delors' vision. Clearly, two sectors that include some of the EU's main concerns such as agriculture, transport, public procurement, and environment stand out with 'Europeanization rates' of 15 and 17 percent. Economic law, what constitutes the core of the Delors vision, comes next with six percent. All other sectors show at least some level of Europeanization. Yet, in the Austrian case even the most affected sectors remain a far cry from the 80 percent mark that is so widely believed to be a true approximation of Europeanization.

Table 8: The Austrian federal legal order at the end of 2003

Sector	Federal laws in force (published 1945–2003)	Federal laws related to EU directives (published 1995–2003)	in %
Constitution law and institutional law, media law	633	7	1
Civil law and Penal law	539	15	3
Banking and Monetary law	719	14	2
Administration law and military affairs	206	3	1
Economic law	389	24	6
Labour law, social security	1129	32	3
Education, Science, Religion, Culture, Sports	312	9	3
Agriculture & Forestry, Veterinary Law, Health, Environmental Protection	378	66	17
Transport, Public Works, Public procurement	359	54	15
Federal laws in force	3809	230	6

Note: Multiple codings of laws possible.

Sources: Republik Österreich (2004), own data.

We may be overstating the case, as these low figures also reflect the fact of the country's late accession to the European Union. Had Austria joined in the 70s more national legal measures transposing EU directives would exist in relation to the total law output. Coming late meant that a great amount of directives had to be implemented at one point in time what could be done economically by using one law for the transposition of several directives (see Table 2).

Thus we expect that a smaller number of laws was devoted to implementation in Austria than in older member states that had to cope with a continuous stream of new directives.

The second important variable where significant variation is to be expected is the number of total legislative acts in force. The number of laws passed by parliament is higher in some parliaments than in others. Different legal traditions and techniques have an impact on the number of laws that will survive over time. A legal system in which multiple revisions of laws are followed by the occasional ‘cleaning up of the mess (i.e. the spreading of the law’s contend over many pieces of legislation) through a consolidated republication creates another pattern in the statute book than a legal system where a revised law steps into the place of the previous law. Legal techniques may also vary within the same country from sector to sector. Thus, a good part of the many federal laws dealing with labour and social security (as reported in Table 9) consists of yearly revisions of a few paragraphs that other countries would update via delegated legislation.

Findings from two other member states – Denmark and The Netherlands (Blom-Hansen and Christensen 2004, 68; Bovens and Yesilkagit 2004) – show considerably higher percentages of EU related laws and thus a higher impact of ‘Europeanization’ on the legal order.

Netherlands belongs to the founding members of the EU, Denmark joined in 1973. Yet Denmark has a much higher percentage of EU related laws in its legal order. The reason is that the Danish legal order seems to consist of a smaller number of laws (1343 laws in Denmark and 1705 in The Netherlands) (Blom-Hansen and Christensen 2004: 68; Bovens and Yesilkagit 2004: 27). Note that the Dutch figures (of July 2003) appear small compared to 3809 federal laws in force in Austria (in December 2003, counting only laws published since 1945).

Nevertheless, the ranking of the policy areas, which are classified by ministries in these two studies, by degree of coverage by EU related laws in these two countries is quite similar to the Austrian case. Agriculture is the most ‘Europeanized’ policy area in both countries: 84.7 percent in Denmark and 27.3 percent in the Netherlands. In Denmark it is followed by Employment (22.4%), Economic & Industrial Affairs (21.8%) and Traffic (21.5%), whereas in The Netherlands the ministries following next are Traffic and Waterworks (63.2%),

Housing, Spatial Planning & Environment (37.1%), and Economic Affairs (36.5%) (Bovens and Yesilkagit 2004: 27).

4. Conclusion

We have taken a quantitative approach to study the ‘Europeanization’ of national law production and the ‘Europeanization’ of the Austrian legal order based on an assumption of equivalence of laws.

Our preliminary results show that the current situation does not (yet) conform to Delors’ vision. In the period 1995–2003 less than 20 percent of the federal laws were directly related to EU directives. The percentages of EU-related laws were highest in the policy fields overseen by the committees for Environment (48%), Agriculture & Forestry (44%), Health (43%), and Transport (43%).

Looking at the Austrian legal order at the end of 2003 only 6 percent of the legislation in force was related to EU directives. The highest percentages of EU-related laws were again found in the above mentioned fields. 17 percent of valid laws for the regulatory sectors of Agriculture & Forestry, Veterinary Law, Health, and Environmental Protection combined, 15 percent of the laws in the fields of Transport, Public Works and Public procurement, and 6 percent of the economic laws were EU-related laws.

We have pointed to factors, which make Austria an extreme case compared to other EU countries, among them a strong legal positivism and a short period of membership. The few empirical studies that cover other countries show considerably higher values of ‘Europeanization’, but even these remain a far cry from the 80 percent. We may, therefore, conclude that the vision set out by Delors’ has not (yet) materialized.

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