The process of infringement procedures: purposeful delay or temporary hiccup?

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ABSTRACT

The European Commission, as the guardian of the treaties, has a powerful tool of infringement procedure to enforce the EU Member States to comply with European commitments. In some cases, the infringement dies down soon after it is initiated, and in other cases, the Member States and the Commission solve their disputes in the European Court of Justice. Most commonly, procedures are related to one specific legislation type – directives – due to their binding, but flexible nature to interpret laws negotiated at the supranational level. The non-compliance stems from a variety of reasons, some connected with Member States` inability, others – with the unwillingness to implement. However, how do these reasons relate to the process of infringement procedures? This thesis brings light to the political nature of the topic to reveal the motives behind the Commission`s actions to escalate or give up infringements. While substantial financial and administrative challenges of the Member State are viewed as a temporary hiccup for implementation, the Commission does not tolerate purposeful delay to align domestic preferences and administrative coordination with European provisions. Interestingly, the thesis reveals an important role of informal negotiations between the Member States and the Commission before the start of official infringement procedures. Finally, the thesis concludes that the Commission aims to assure that every EU citizen has access to the same opportunities, and infringement procedures allow it to do exactly that.

CONTENTS

CHAPTER 1: INTRODUCTION

Directives are special legal instruments that combine mandatory features and flexibility, thus resulting in discrepancies among the Member States (S. S. Andersen & Sitter, 2006; Duttle et al., 2017; Kroll & Leuffen, 2015; Zhelyazkova et al., 2016). They offer implementing actors discretion to identify most fitting tools and interpretations to achieve successful transposition and implementation of legislations (Zhelyazkova et al., 2016). Regardless, many Member States face difficulties with compliance due to the lack of abilities and willingness within the national setting (Duttle et al., 2017; Zhelyazkova et al., 2016). While differentiation in transposition and implementation is expected and in some situations can be desired by the Member States (Holzinger & Tosun, 2019), non-compliance brings challenges of assuring equal standards and possibilities among all Member States (European Parliament, 2019).

The Commission as 'the guardian of the treaties' has undertaken a task to recognise implementation gaps and enforce correct and timely implementation (A. Hofmann, 2018; van Voorst & Mastenbroek, 2017). It applies to other legislative instruments other than directives, nevertheless, the data proves significantly larger number of enforcement mechanisms used specifically for directives (European Commission, 2021). These mechanisms include financial, agency or networks assistance, naming and shaming or influencing the change in values (Schmälter, 2018). However, the most prominent and codified measure is infringement procedures (Börzel et al., 2012; A. Hofmann, 2018; Schmälter, 2018).

Infringement procedure consists of formalised stages through which the Commission investigates and holds the Member States accountable for their non-compliance with EU laws (S. Andersen, 2012). The information about these procedures is structurally codified and published via the Commission`s website (European Commission, 2021). It comprises three independent phases – the letter of formal notice, reasoned opinion and referral to the European Court of Justice (S. Andersen, 2012). It has to be noted that some infringement procedures are resolved during the first stages while for others the non-compliance is addressed only after the ECJ issues a specific ruling.

The relationship between non-compliance and transposition or/and implementation is well researched, however, there is a knowledge gap in understanding the connection of these variables to the decision-making of the Commission during different stages of the infringement procedure. Therefore, this thesis aims to answer the following research question:

What factors influence the Commission`s decision to either escalate or give up the infringement procedure in response to the Member States non-compliance?

Chapter 2 will begin by discussing the institutional context of the EU policy-making process. After that, Chapter 3 will draw a theoretical framework on infringement procedures to arrive at hypotheses. Next, the methodological framework will be discussed in Chapter 4. Chapter 5 and Chapter 6 will provide an empirical analysis of interviews about infringement procedures and a particular within-case study of Lithuania. Chapter 7 will discuss the findings of the analyses while Chapter 8 will draw conclusions.

CHAPTER 2: INSTITUTIONAL CONTEXT

2.1. THE EU POLICY-MAKING PROCESS

The policy-making process portrays a struggle between multiple actors who have conflicting values and decision preferences but aim to achieve a collective goal in a specific policy field (Bekkers et al., 2017). A traditional policy cycle distinguishes agenda setting, policy development, decision-making, implementation and evaluation stages, which happen simultaneously (Bekkers et al., 2017). In the case of the EU, the process overtakes immense complexity due to the inclusion of supranational, national, regional and local jurisdictions, thus consensus-finding has to take into account excessive levels of conflicting interests (Marks & Hooghe, 2004). Since directives leave the Member States considerable discretion in implementation policy stage (Zhelyazkova, 2014), the EU has split their implementation into three phases – legal, practical and monitoring (Lelieveldt & Princen, 2015).

Legal implementation is called 'transposition' to describe a process of the Member States adding the legislation`s text into their national legal systems (Zhelyazkova & Torenvlied, 2009). Practical implementation concerns the practical aspects of the application and enforcement of directives (Lelieveldt & Princen, 2015). Lastly, monitoring implementation discusses the Commission efforts to reassure the conformity and completeness of implementation (Lelieveldt & Princen, 2015). To avoid confusion, the thesis will refer to implementation when considering both – transposition and practical implementation, while in other cases the type will be specified.

2.1.1. Transposition

As mentioned above, transposition is the process during which the Member States have to transfer directives into their national legal systems. The Member States can choose to either reword the text of directives to fit the national legal systems or to adopt the text without any modifications (Steunenberg, 2007; Zhelyazkova et al., 2016). During transposition check, the Commission analyses whether the Member State transposed before the deadline and examines the quality of transposition (European Commission, 2017).

The inability to correctly or fully transpose directives most often stem from the way administrations interpret EU legislations and co-ordinate between different administrative levels (Steunenberg & Toshkov, 2009; Toshkov, 2010). On the other hand, unwillingness to transpose is related to efforts of securing national interests (König & Mäder, 2013). Steunenberg (2007) argues that if national actors disagree with directive`s provisions, they will choose to alter the text of directives, thus missing

deadlines set by the Commission. However, in some instances delay does not signal inability or unwillingness, rather, it shows that countries need more time to make the directive`s provisions work for their national systems (Steunenberg, 2007; Steunenberg & Voermans, 2006).

2.1.2. Practical implementation

The practical implementation defines the extent to which the Member States implements the goals of directives in practice (Versluis, 2007; Zhelyazkova et al., 2018; Zhelyazkova & Thomann, 2022). Importantly, timely and conformable transposition does not automatically lead to practical implementation (Versluis, 2007). This is strongly related to the willingness and ability of domestic actors (S. S. Andersen & Sitter, 2006; Duttle et al., 2017; Jensen & Slapin, 2012; Zhelyazkova et al., 2016; Zhelyazkova & Thomann, 2022). The willingness factor is similar to the one explained in transposition sub-section – in case the European rules differentiate substantially from national priorities, there is a high chance of incomplete or unsuccessful practical implementation (Zhelyazkova et al., 2016). In addition to this, coordination between implementing actors significantly improves the implementation through information exchange and harmonized approach (A. Dimitrova & Steunenberg, 2017).

The ability to practically implement entails short- and long-term lack of financial and institutional or expertise (Stubb, 1996; Zhelyazkova et al., 2016). While problems with securing required funds can be fixed in the short-term, insufficient knowledge and bureaucratic features can hurdle the practical implementation in a long run (Zhelyazkova et al., 2016).

2.1.3. Monitoring implementation

Monitoring or enforcing implementation is the third phase of implementation (Lelieveldt & Princen, 2015). While the enforcement can take place at the national level by domestic actors (Schmälter, 2018), the Commission has the most prominent role as the ‘guardian of the treaties' (S. Andersen, 2012).

The infringement procedure is the most notable procedure among scholars as it has its own database and codification system. While the Commission uses other enforcement mechanisms (Schmälter, 2018) due to their informal nature and lack of reporting, it is difficult to collect collection and distinguish between these mechanisms.

There are several challenges the Commission faces when performing its enforcement duties. Firstly, the information asymmetry about implementation hinders the Commission`s effectiveness to make

its assessments. While some directives oblige the Member States to produce annual implementation reports, others do not have a concrete framework for their assessment (S. Andersen, 2012). Secondly, even though directives are binding, they allow Member States to interpret a legislation according to their context (Lelieveldt & Princen, 2015). Due to this reason, the Commission has to learn about Member State`s implementation decisions and compare them with directive`s requirements.

To respond to aforementioned challenges, the Commission carries out analyses. However, they are time-consuming and expensive, and require a lot of administrative capacity and formal powers (Mastenbroek & Martinsen, 2018). As these resources are limited, the Commission has started to rely on outsourcing private companies. Zhelyazkova (2022) argues that this trend "damages the unique reputation of the Commission as the main monitoring institution in the EU" (p.423) thus bringing the trade-off between authority and efficiency into the discussion about enforcement mechanisms.

2.2. INFRINGEMENT PROCEDURES

Infringement procedure is a formal series of steps by the Commission to react to a failure of the Member State to complete its legal obligations (S. Andersen, 2012; Lelieveldt & Princen, 2015). These obligations are described under Article 4 of the Treaty on the Functioning of the European Union (TFEU) which binds the Member States to fulfil EU laws (S. Andersen, 2012). They are considered disobeyed if there is a non-communication about the transposition and if the transposition or implementation is incomplete or incorrect (Lelieveldt & Princen, 2015).

2.2.1. The legal framework of infringement procedures

The Commission`s power to initiate infringement procedures is laid down in Article 258 of the TFEU. The Article enables the Commission to "deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations" (European Union, 2012). In case the Member State does not resolve the breach, the Commission can bring the issue to the Court of Justice. According to TFEU Article 260, in case Court rules against the favour of the Member State, the Commission issues a penalty (European Union, 2012).

2.2.2. Stages of infringement procedures

2.2.2.1. Letter of formal notice

Letter of formal notice is a short summary which presents the Commission`s complaints about Member States` implementation and asks for clarifications (S. Andersen, 2012; Lelieveldt & Princen,

2015). It is an opportunity for the Member State to showcase its position and provide information. In most cases, formal notice encourages the Member States to make alterations to their implementation thus finalising the infringement process (Zhelyazkova & Torenvlied, 2009). The Commission can send up to three letters of formal notice before it moves to the later stage.

2.2.2.2. Reasoned opinion

If the formal letter does not yield desired results, the Commission prepares a legal opinion, which entails specific grievances that led the Commission to believe the Member State has breached EU law (T. Hofmann, 2018). During the period between the formal notice and the legal opinion, there is room for the Commission to engage in informal meetings with the representatives of the Member States to settle the disputes and negotiate (T. Hofmann, 2018). While formal notice can be sent to receive assurance from the Member States regarding its non-compliance, reasoned opinion is a clear indication that the Commission recognises an infringement against the EU law (Zhelyazkova & Yordanova, 2015). Consequently, reasoned opinion is considered to be the first formalised step of the infringement procedure as the Commission has to clearly state the issues which cannot be amended at later stages (S. Andersen, 2012; Bogdanowicz & Schmidt, 2018). Nevertheless, there is room for negotiation between the Commission and the Member States to resolve issues (T. Hofmann, 2018).

Reasoned opinions do not carry any binding legal effects as it is a formal request of the Commission for the Member States to take action in regards to the implementation of the directive (S. Andersen, 2012). However, reasoned opinion comes with a clear deadline for the Member State to settle the breach (Lelieveldt and Princen, 2015). While the time frames differ depending on the policy sector and the nature of the infringement, the Member States are usually given 60 days to respond to the first reasoned opinion (Andersen, 2012). However, if there are multiple interactions between the state and the Commission without any positive results, shorter deadlines can be applied in order to pressure the Member State to take action (Andersen, 2012). It has to be emphasised that only one out of three reasoned opinions reach the next - judicial - stage (T. Hofmann, 2018).

2.2.2.3. Referral to the European Court of Justice

The last resort of the Commission is to bring the case of non-compliance to the Court of Justice. The ECJ does not have the power to advise the Commission whether the case is worth being reviewed by the Court (S. Andersen, 2012). It is a unanimous decision by the Commission on which cases will be

brought against the court. However, the Court has a possibility to question whether the conditions of Article 258 are satisfied in the Commission`s case (S. Andersen, 2012).

The referral to the ECJ is a structural process that follows the common court procedure (Lelieveld and Princen, 2015). After the Courts ruling, the Member States have a legally binding obligation to conform to the decision of the Court (S. Andersen, 2012; Lelieveldt and Princen, 2015). Failure to comply results in the initiation of the further process, as laid down by Article 260 of TFEU.

There are major consequences for the Member States after the official start of the ECJ procedure. T. Hofmann (2018) argues that the state experiences pressure from not only the EU institutions but also the public. Moreover, it is a costly and inflexible process that does not provide any room for negotiation. As a result, it is emphasised that political actors choose to ignore the Commission request in the reasoned opinion stage only if court ruling "can provide large numbers of votes and are big enough to make substantial financial contributions" (T. Hofmann, 2018, p. 798).

CHAPTER 3: THEORETICAL FRAMEWORK

3.1. REASONS FOR NON-COMPLIANCE

This thesis defines compliance as "the extent to which agents act in accordance with and fulfilment of the prescriptions contained in rules and norms" (Versluis, 2007, p.51). The most prominent signal that the Member State is not complying with European provisions is a transposition or practical implementation delay (European Commission, 2017). If the Commission identifies that national implementing actors failed to implement EU laws before the deadline, there is a high chance for non-compliance. More specifically to directives, the discretion given to the Member States increases the likelihood of incorrect or incomplete transposition or practical implementation (Zhelyazkova et al., 2016). There are also non-communication cases, however, they simply concern lack of reporting regarding implementation (European Commission, 2017).

In the scholarly literature, lack of ability and willingness of the Member States have been identified as the most common reasons of non-compliance (Börzel et al., 2012; A. L. Dimitrova & Steunenberg, 2017; Heidtmann & Selck, 2021; Zhelyazkova et al., 2016). There are several factors that stem from each reason, which will be further presented in this chapter to formulate hypotheses, related to the research question.

3.1.1. Lack of ability

To start with factors related with ability, the Member State needs to have access to sufficient financial resources in order to successfully implement EU laws (Vasev & Vrangbæk, 2014; Zhelyazkova et al., 2016). It is self-explanatory given that EU policies aim to achieve sector-wide changes in the Member States, thus requires substantial financial investments. Consequently, monetary assistance has been a long-term priority of the Commission to assure that countries have the same possibilities of achieving EU legislations (Börzel et al., 2012). In case the infringement procedure is initiated due to the lack of money to complete implementation, the Commission is likely to provide assistance as "capacities increase the likelihood of early settlement" (Börzel et al., 2012, p. 467).

H1: If the Member State is unable to completely/correctly transpose or practically implement a directive due to the lack of financial resources, the Commission will give up the infringement procedure.

Apart from financial resources, administrative capabilities play a strong role in complete and successful implementation of European provisions (Zhelyazkova et al., 2016). An meta-analysis of

scientific papers prove a negative relationship between administrative capacity and implementation, meaning that lack of administrative capabilities hinder Member State`s ability to implement (Toshkov et al., 2010). These capacities include the number of civil servants, structure of national bureaucracies, effective judicial systems to enforce administrative provisions, legitimacy of civil servants to make independent decisions and act (Zhelyazkova et al., 2016).

H2: If the Member State is unable completely/correctly transpose or practically implement a directive due to lack of administrative capabilities, the Commission will give up the infringement procedure

Another dimension is the expertise of civil servants (A. Dimitrova & Steunenberg, 2017; Lelieveldt & Princen, 2015; Zhelyazkova et al., 2016). It has to be noted that due to the nature of directives, national administrations are given discretion to make decisions and plan implementation process (Steunenberg and Toshkov, 2009). Essentially, EU directives are interpretations of street-level bureaucrats about the best "policy-fit" for their national setting (A. Dimitrova & Steunenberg, 2017). However, to arrive at such decisions, administrations require highly-technical and unique expertise about the policy field (Littoz-Monnet, 2017).

H3: If the Member State is unable to completely/correctly transpose or implement a directive due to lack of administrative expertise, the Commission will give up the infringement procedure

3.2.2. Lack of willingness

While Member State`s ability is strongly related with resources and characteristics of administration, the lack of willingness describes psychological decision-making of national implementing actors.

First of all, if domestic preferences are in active conflict with the European provisions, there is a strong likelihood that implementing actors will not comply with EU directives (T. Hofmann, 2018). In the case of transposition, it results in strong deviation and interpretation of the official directive`s provisions (Steunenberg, 2007). Regarding practical implementation, the effects of the policy reflect national or subnational goals rather than the position of the EU.

H4: If the Member State is unwilling to completely/correctly transpose or implement a directive due to domestic preferences, the Commission will escalate the infringement procedure.

Secondly, implementation requires strong administrative coordination between domestic actors (Zhelyazkova et al., 2016). Likelihood of conflict and decoupling increases if multiple national ministries are involved in the matter (Steunenberg & Toshkov, 2009; Zhelyazkova et al., 2016). Due to the complexity of implementation of EU provisions, the administrative coordination is a key to assure correct implementation tools and information sharing (Toshkov et al., 2010). However, lack of it signals unwillingness of domestic actors to fulfil European commitments.

H5: If the Member State is unwilling to completely/correctly transpose or implement a directive due to lack of administrative coordination, the Commission will escalate the infringement procedure.

Thirdly, non-state actors are active players during the implementation process of EU policy (A. Dimitrova & Steunenberg, 2013; Kaya, 2018). More specifically, non-state actors include businesses, trade union, NGOs, religious groups and more field-specific stakeholders (Toshkov et al., 2010). While the participation of these interests groups in some cases brings administrative support for implementation (Vasev and Vrangbæk, 2014), it is also a chance for aforementioned actors to promote their interests and influence political agenda (A. Dimitrova & Steunenberg, 2013). Kaya (2018) argues that the Member States are more likely "to satisfy domestic stakeholders by engaging in legal deviations at the risk of sanctions from the EU" (p.581), thus bringing another dimensions of unwillingness to implement.

H6: If the Member State is unwilling to completely/correctly transpose or implement a directive due to non-state actors` influence, the Commission will escalate infringement procedure.

Figure 1 illustrates the connection between the knowledge gap and specific factors of non-compliance regarding incomplete/incorrect transposition and implementation.

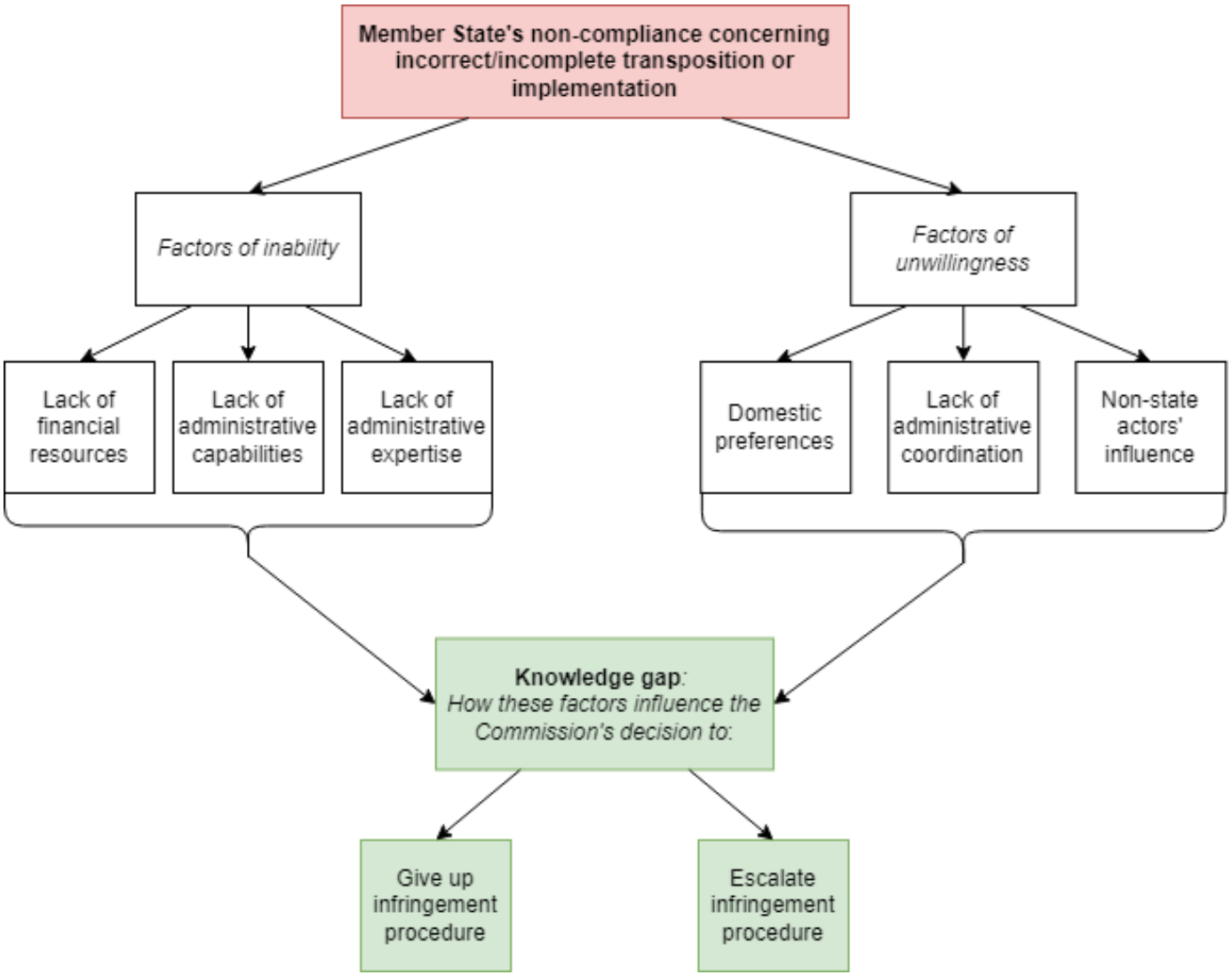

Figure 1: the relationship between theoretical non-compliance factors and the knowledge gap of the thesis

CHAPTER 4: METHODOLOGICAL FRAMEWORK

4.1. RESEARCH DESIGN

This Master thesis is a theory-driven research which aims to establish factors of Member States` non-compliance that directly influence the process of infringement procedures. To achieve the research goal, thesis will apply inductive Most Similar System Research Design to "discover a difference between the cases that can account for the difference in outcomes" (Toshkov, 2016, p.266). For that reason, I selected to analyse infringement procedures started against Lithuania regarding Directive 2004/49 and Directive 2006/126. Both of these directives had several features, which I was able to keep constant – both concerned the Mobility and Transport policy area and Lithuania, infringements were regarding incorrect implementation and they both required Lithuania`s Ministry of Transport and Communication to repeal the infringement constant variables. However, they had different outcomes during infringement procedure - one was escalated, the other was not, thus this variable was allowed to vary. More concretely, the procedure against Directive 2004/29 was the only one to reach referral to court stage in the past ten years, while breaches of Directive 2006/126 were settled after Lithuania received reasoned opinion.

During this research, I will aim to explain why these outcome variables were different. To both cases I applied predetermined factors, established in Chapter 3. They include lack of financial and administrative resources and expertise, strong domestic preferences, lack of administrative coordination and the influence of non-state actors. My research will analyse which of these factors have an impact on the outcome variable - Commission`s decision to give up or escalate infringement procedure, and which do not.

4.2. CASE SELECTION

This comparative study concerns infringement procedures started against the EU Member State Lithuania. The main reason for selecting infringement procedures is their codified nature. While there are other more informal enforcement mechanisms available at the Commission`s disposal (Schmälter, 2018), the infringement procedures have a database and a system of public reporting. From a methodological point of view, infringement procedure is the only enforcement mechanism that carries systematic and comparative features necessary for valid and reliable research (Robson & McCartan, 2016).

The selection of Lithuania is based upon two arguments. Firstly, Lithuania is one of the countries that joined the EU during the Eastern enlargement in 2004. During the accession process, the state was required to bring its national laws up to European standards (Maniokas, 2009). Several years after joining the EU, it was reported that Lithuania has shown strong compliance with EU legislations (Maniokas, 2009; Toshkov, 2009). Nevertheless, there have been 60 infringement procedures started against Lithuania after 2012. This conflict between early successes and recent hurdles encouraged me to dwell more in-depth into Lithuania`s non-compliance. Secondly, the research question requires to collect information that is publicly unavailable. As Lithuanian language is my mother-tongue, I was able to read internal governmental and ministerial documents and carry out interviews with Lithuanian officials.

The thesis analysed infringement cases that have been started due to incomplete or incorrect transposition or practical implementation between 2012 01 01 – 2022 04 01. The cases of non-communication have been excluded since they are not relevant for the research question. While information has been collected about infringement procedures concerning all types of legal acts, the thesis will focus on directives due to their flexible nature.

4.3. RESEARCH METHOD

For the first part of the analysis, I relied on publicly available Commission`s database and press releases about infringement procedures to collect general information about infringement procedures started against Lithuania.

After that, I carried out qualitative interviews to gain better understanding about infringement procedures and the procedure started against Directive 2004/49. The method of interviews was selected to acquire personal evaluations of administrative officials necessary for answering the research question of this thesis (Robson and McCartan, 2016). I carried out semi-formal interviews by preparing guiding questions in advance but most of the time, my questions were based on the responses of the interviewees. As a result, I was able to encourage elaboration and more in-depth discussions about the topic (Robson and McCartan, 2016).

I have conducted in total 8 online interviews. There were 5 interviews with representatives of the Ministry of Transport and Communications of Lithuania and 1 interview with a Senior Advisor of Lithuanian Government. Remaining 2 interviews were held with the European Commission`s officials: one with an infringement coordinator in the Secretary General and the other with a policy officer of DG for Mobility and Transport. A full list of interviewees can be found in Appendix A.

The interviews were carried in either in Lithuanian or English, depending on the preference, recorded and transcribed according to data-safety regulations. They were coded using three types of coding – open, axial and selective – to ensure stronger validity and reliability of the data (Robson and McCartan, 2016). During the first phase I created short codes in the transcriptions to represent the ideas of interviewees. As suggested by axial coding, I grouped the codes into categories. Lastly, I established the most common features of each category.

CHAPTER 5: EMPIRICAL ANALYSIS OF INFRINGEMENT PROCEDURES

5.1. THE INTERNAL PROCESS PRIOR TO INFRINGEMENT PROCEDURES

The infringement procedure, while officially consisting of three distinct stages, has additional informal and less codified steps. They were revealed in the interviews with infringement coordinator at the Secretary General and policy officer at the Directorate-General (DG) for Mobility and Transport.

5.1.1. Ways European Commission discovers plausible breaches of EU law

According to two Commission officials, there are three most prominent avenues for the Commission to receive information about the transposition and implementation of the EU law in the Member States. Firstly, the Commission can be presented with a complaint from a citizen, association, legal entity or NGO. These actors have a possibility to contact the Commission through filling an official complaint on the EU`s website. As stated by the policy officer, complaints reveal the most realistic situation about practical implementation of EU directives.

The second approach is Commission`s own initiative cases. When compared with complaint-based cases, the latter is a more common approach as they are initiated by the Commission due to its legal responsibility as the 'guardian of the treaties'. These cases are mostly referred to as transposition or conformity check to investigate the status of transposition and analyse the correctness of transposition and implementation. Also, the Commission can decide to investigate implementation if it receives concerning signals from the Member State, media or the European Parliament about the case.

Third approach is related to the monitoring done by European agencies. While it is used less often, the agencies have access to data about transposition and implementation of their area of interest. Thus, for some occasions, the Commission uses their assistance to discover plausible non-compliance in the Member States.

The number of people working on infringement procedures strongly depend on a policy sector. Infringement coordinator argued that DGs with infringement inducing legislations will have more pressure related with infringement cases, more concretely, DG Environment, Justice and Mobility and Transport. In most cases, four people are responsible for drafting the infringement, while the team expands further in the process.

5.1.2. The Commission`s selection of cases worth pursuing

As discussed in theoretical section, the Commission has limited resources, thus it cannot pursue every single case of incorrect or incomplete application of EU law. This position was supported by interviewees, who argued that the Commission aims to tackle systematic cases of non-compliance rather than focusing on individual cases. European Commission (2017) released an official Communication about its approach towards non-compliance and infringement procedures. In the Communication, a strong focus was placed for monitoring transposition as a prerequisite for successful implementation. However, both interviewees agreed that there are more problems with incorrect implementation. As a consequence, the Commission has wide discretion regarding cases it decides to pursue (European Commission, 2017). According to the respondents, at the end it is up to the political decisions of the Commission`s higher-ups regarding which cases to start an infringement procedure.

5.1.3. EU pilot

Before the official start of the infringement procedure, the Commission often utilizes its informal tool called the EU pilot. This IT application allows for a "structured problem-solving dialogue between the Commission and Member States" (European Commission, 2017). Even though the Commission has full responsibility to start the infringement procedure right away, they use EU pilot extensively. However, if the infringement is based on a complaint, the Commission initiates the letter of formal notice immediately. Interviewees from Lithuanian institutions were familiar with EU Pilot and gave it positive reviews as a helpful tool to explain Lithuania`s choices for transposing or implementing a directive in a certain way.

5.2. THE PROCESS OF AN OFFICIAL INFRINGEMENT PROCEDURE

The institutional context chapter established that infringements consist of three distinct stages – letter of formal notice, reasoned opinion and referral to Court. This sections will enrich existing theoretical knowledge with insights from interviews with the Commission and Lithuania`s officials about factors that influence the form and length of infringement procedure.

5.2.1. Commission`s position on infringement procedures

According to two interviewees from the Commission, they have three legitimate reasons for starting an official infringement procedure. The first objective is to assure that the citizens in the EU get the

full benefits of the EU law. The procedure is viewed as an opportunity for the Member State to improve its legislations, consequently, the standard of living of their citizens.

Secondly, the Commission views transposition and implementation of the EU law as a responsibility of the Member States. It was explained that the Member States have signed and agreed to EU treaties, thus they have to be willing to implement EU wide legislation. Nevertheless, interviewees mentioned on-going confrontation in the rule of law cases between certain Member States and the Commission. However, they argued, that generally the Commission does not experience resistance since the Council is the core legislator, therefore the Member State have many opportunities to negotiate and bargain for a legislation that fits their interests.

Thirdly, interviewees acknowledge the political reasoning behind launching infringements. In spite of it, it was stated that a punishment or a fine is never a reason for starting the procedure. Rather, the decisions vary depending on every Member State and legislation in question.

5.2.3. Reasons for moving to the next stage of infringement procedure

The interviewees from the Commission recognised that slow and unproductive Member States` actions encourage the Commission to move from letter of formal notice to reasoned opinion, and from there to referral to court. It is claimed that the Commission has to identify a sense of urgency in the Member States` actions regarding finding necessary solutions to fix implementation problems. The policy officer argued that it is not sufficient for the Commission to receive assurance about willingness to change its laws. Rather, the Commission waits for an actual change in the national legal system to update the status of infringement procedure. While it was assured that there is a degree of flexibility applied in every situation, if the Commission perceives that the Member State is stalling the process with formal responses to its inquiries about the infringement, it moves forward in the process.

It has to be noted that in some cases, rather than moving to the next stage of infringement procedure, the Commission issues additional letter of formal notice or additional reasoned opinion. According to infringement coordinator, by doing so the Commission aims to extent the scope of grievances. For instance, the Commission identified additional breaches after receiving the Member State`s response to the formal notice which were not included in the original letter of formal notice. Thus, the Commission adds extra provisions in the additional appeals to the Member State.

5.2.3. Reasons for on-hold status of infringements

In the analysis of all infringement procedures opened against Lithuania in the past 10 years, I have noticed that some remain unsolved for a considerably long time, i.e., more than 2 years. According to Commission`s officials, there are two prominent reasons. The first one is related with the lack of resources when the Commission does not have necessary staff to analyse infringements. However, in most cases the Commission is willing to keep infringement cases on hold if the Member State makes a convincing argument about the time needed to change the situation. In return, Member State has to send constant updates about its progress towards achieving milestones the Commission has set.

Importantly, on-hold cases are more common in regards to incorrect practical implementation as it requires the Commission more time and resources to collect information about the realistic situation in the Member States. On the contrary, the Commission very rarely leaves cases on incorrect or incomplete transposition on-hold. The reason for that is previously mentioned Commission`s focus to solve transposition problems as a perquisite for successful practical implementation.

5.3. LITHUANIA AND INFRINGEMENT PROCEDURES

5.3.1. Overview of infringement procedures against Lithuania

There have been in total 60 infringement procedures started against Lithuania during 2012 01 01 – 2022 04 01 period. This number does not include cases of non-communication as they do not contribute to the research question. Out of 60 procedures, 45 of them were started due to non-compliance with directives, while remaining 15 infringements concerned regulations, decisions or TFEU articles. In period of the analysis, 23 infringements cases were identified as active, the majority of them being infringement cases that have been started in the past year.

In the past 10 years, Lithuania has received only 1 referral to the European Court of Justice. There were 14 infringement cases that have reached the second – reasoned opinion – stage, while remaining 45 infringements either were solved or remained active in letter of formal notice stage. Out of 60 infringement procedures, the majority were initiated due to incorrect implementation – in total 36 procedures. Concerning transposition, 16 cases were about incorrect, and 8 cases discussed incomplete transposition. The most common policy areas included Environment (14 cases), Mobility and Transport (12 cases), Internal Market, Industry, Entrepreneurship and SMEs (10 cases) and Energy (7 cases).

5.3.2. Lithuania`s trends on transposition and practical implementation

As in the rest of the EU (Commission, 2021), most infringement procedures are started against implementation of directives. In the opinion of three interviewees, Lithuanian transposition and implementation is particularly thorough. It is argued that Lithuanian bureaucrats do not make decisions which could lead to infringements on purpose. However, there are several reasons that lead to delay in implementing EU laws.

5.3.2.1. Reasons for transposition delay

Most of the respondents identified time as the most challenging factor in properly transposing EU directives. It is explained that EU legislation often effects large groups of citizens. Thus, to adequately inform them about upcoming changes, there is a need for thorough dialogue and information in the media. While it is not common to actively involve civil society or NGOs in decision-making process, associations and confederations often play an important role in addressing their concerns about EU legislation. Moreover, dialogues in ministries and government are time-consuming, therefore delaying the process.

These discussions become especially lengthy when dealing with ambiguous EU directives. Interviewees argued that transposition delay very often stems from directive`s articles that can be interpreted in many different ways. Regardless of flexibility offered by directives, the European Law Department requires implementing actors to show the full transposition of each sentence. In case the department does not find a literal reference of a directive in Lithuanian legislation, they categorize transposition as incomplete. As argued by one policy officers of the Ministry of Transport and Communications, most of these provisions are already being implemented through other channels, for instance, professionalism as a criterion for a civil servant is identified in a codified rule of Lithuanian administrations.

Lastly, transposition requires Lithuania to change existing legislations. To do so, the country has to fit the transposition into a legislative cycle which by nature imposes challenges due to the lengthy discussions in the ministries and parliament and required approval by voting in the parliament.

5.3.2.2. Reasons for implementation delay

In regards to implementation, Lithuania generally faces difficulties with securing necessary resources and dealing with political implications. Considering the former, large European projects require the Member State to find significant financial investments. It is applicable to buildings, creating new

infrastructure or other financially liable EU legislations. The administrative capacity was also mentioned as a significant delay in implementation process.

The latter factor is related to lack of political will to implement certain policies. As mentioned before, European policies often affect large groups of citizens. As a result, politicians might not be willing to make necessary decisions as they could lead to a decrease in their popularity and likelihood of re-elections.

5.3.3. Lithuania`s reaction towards infringement procedures

In general, interviewees argued that Lithuania is willing to engage into discussion with the Commission to solve an infringement. Lithuanian officials emphasised that there is a constant dialogue with the Commission, especially if laws affect sensitive questions. Many participants argued that the Commissions tends to wait and not escalate infringement procedure if Lithuania proves it is working towards implementation, for example, securing necessary financing or aligning its legislative cycle.

Based on the experience of the Commission`s policy officer, who is originally from Lithuania, the country respects the Commission`s insights and is willing to amend its legislation to fit the Commission`s understanding. The policy officer argued that *"if Lithuania receives a signal that there is a breach, it is likely to go and solve it"*. However, she noted that if the provisions in question touch upon politically or financially sensitive areas, for instance, relationship with Russia, Lithuania will defend its position. The policy officer also compared Lithuania with Poland, arguing that *"Lithuania is not one of the countries that fights no matter what"*.

She also discussed that in early stages, Lithuania tends take upon a defensive strategy to prove that their interpretation of EU law is correct. Nevertheless, in most cases reasoned opinion becomes a necessary push for Lithuania to start making amends to its position. It was argued by several interviewees that Lithuania makes necessary changes to assure that the Commission`s does not pass the infringement to Court. The interviewee who works in Lithuanian government focused on the negative media attention and financial penalties as main reasons for Lithuania`s effort to avoid referral to court stage.

5.4. OVERVIEW OF CHAPTER 5

In Chapter 5, the thesis has shed a light on infringement procedures from the Commission`s perspective and has given an overview of infringement procedures in Lithuania. In connection with

hypotheses, there is substantial proof to argue for the importance of willingness of the Member States (H4, H5 and H6). The interviews with the Commission`s officials show that unless the institution receives substantial arguments from the Member State to show their inability to adhere with EU directives, it will escalate infringement procedure. Also, the Commission is more inclined to escalate the procedure if it is connected with incomplete or incorrect transposition rather than implementation. From the Commission`s perspective, successful implementation is impossible without appropriate transposition, thus it becomes the focus of Commission`s attention. Additionally, it has been mentioned that breaches of transposition are more common due to the procedure of transposition checks. In contrast, incorrect implementation is much harder to observe and, in many cases, requires to be reported by others.

Financial (H1) and administrative (H2) capacities were mentioned as factors that are tolerated by the Commission in regards to implementation delay. There is no substantial evidence to argue for the effect of administrative expertise (H3) on Commission`s decision-making. However, it has to be noted that when discussing on-hold status of infringement procedures, Commission`s officials emphasised that delay is only eligible if the Member State shows improvements. In case there is no progress regarding the implementation, the Commission does not hesitate to move forward in the infringement procedures. In conclusion, it shows that the Commission does not necessarily give up infringements, as phrased in the hypotheses. Rather, it creates milestones for the Member States and equips it with resources necessary for implementation.

There are a few important insights regarding Lithuania which will help to understand Chapter 6. In general, Lithuania tends to solve infringement procedures before referral to court stage due to financial hurdles and negative media attention. However, if the breach concerns a politically sensitive question, Lithuania will defend its position. Lastly, reasoned opinion has been named as a stage during which Lithuania makes most important adjustments for solving the infringement.

CHAPTER 6: ANALYSIS OF INFRINGEMENT PROCEDURE AGAINST IMPLEMENTATION OF DIRECTIVE 2004/49

In this chapter, thesis will provide an in-depth within-case analysis of implementation and infringement procedure against Directive 2004/49 in Lithuania. The empirical information was collected from interviews with 5 Lithuania`s officials from the Ministry of Transport and Communications, a Chief Advisor of Lithuanian government and a policy officer of DG for Mobility and Transport. It was decided to focus on this particular directive since it was the only infringement procedure which has reached referral to ECJ stage in the past 10 years in Lithuania.

6.1. INTRODUCTION TO DIRECTIVE 2004/49

Directive 2004/49 was introduced in Mobility and Transport policy area and established new rules for railway safety in the Member States. Along with improving technical standards, creating a uniform approach for safety requirements and harmonising requirements for train drivers, the directive introduced new guidelines for national safety authorities (Directive 2004/49/EC). These guidelines emphasised the importance for independency of investigators who inspect railway accidents. The Member States had to ensure that the investigatory body does not have a conflict of interest with other ministries or institutions. Moreover, it had to be equipped with necessary resources to carry out independent investigations (Directive 2004/49/EC). This directive has been since replaced with Directive 2016/798.

6.1.1. Implementation of Directive 2004/49 prior to infringement procedure

Before the implementation of the directive, investigators of accidents were working in the Ministry of Transport and Communications. To fulfil the requirement of independence of investigatory body, Lithuania created a separate structural unit within the Ministry of Transport and Communications, thus investigators were directly accountable to the minister. Implementing actors argued that the competency of the ministry was the most suitable for the purpose of investigating railway accidents. To be more precise, while the directive required investigators to be established only for railway sector, all interviewees confirmed that these rules were applicable to the investigators working with accidents of ships and aircrafts.

According to the Commission`s policy officer, the knowledge Lithuania has received during the Twinning project played a crucial role in the decision to create a separate unit within the same

ministry. Twinning project creates a medium for new Member State to learn from the experiences of older Member States. Before joining the EU in 2004, Lithuania was an active participant of this project. Policy Officer argued that during the Twinning project, the Member States received information that in order to fulfil independence requirements, positions can be established as separate units under ministries.

6.1.2. Reasons for the initiation of infringement procedure

After the Commission analysed Lithuania`s interpretation of independence of investigatory body, it concluded that it does not match its expectations. It was argued that since the Ministry of Transport and Communications owns shares of a national railway company Lietuvos Geležinkeliai, there were significant threats to independence of investigators. Interviewees explained that the Commission feared that in the case of an accident, the Ministry could pressure investigators to alter their findings to be less demanding on the national railway company.

Given the Commission`s analysis, Lithuania was expected to find a more suitable institution for investigators. The infringement procedure was initiated to pressure Lithuania to make appropriate adjustments, with a letter of formal notice being sent in 2013 and the reasoned opinion a year later. In 2015, Lithuania received a referral to Court. It has to be noted that the infringement procedure was solved before reaching the official Court hearing.

6.2. DISCUSSION REGARDING THE RELOCATION OF INVESTIGATORS

There were three main types of institutions suggested. Firstly, Lithuania considered to create a separate institution of accident investigators. It was the most fitting interpretation of the directive`s requirements. According to interviewees from the Ministry of Transport and Communications, this option received considerable criticisms due to the common Lithuania`s policy to reduce the bureaucratic apparatus. Institutions require considerable financial, administrative and technical resources. It was argued that regardless of the political party in power, Lithuanian government aims to minimize the number of independent institutions in order to achieve more effective and less expensive policy-making process.

Implementing actors also considered to establish investigators under already existing institution. Interviewees identified various suggestions - National Labour Inspectorate, Technical Maintenance Service, Railway Inspection, among which the most prominent was the Chancellery of the Government. Ultimately, these choice options were rejected as they did not match the nature of investigatory body and its qualifications.

Lastly, Lithuania decided to create a separate department under a different ministry. The implementing actors preferred this option as it assures access to resources and legal capacities. As specified by interviewees, the considered ministries included: Ministry of National Defence, Ministry of Social Security and Labour, Ministry of Interior and Ministry of Justice.

6.3. DELAY TO SOLVE INFRINGEMENT PROCEDURES

The delay in solving the infringement procedure occurred due to lengthy discussion which ministry is the most fitting choice for the establishment of independent investigatory body. It was essential to assure legal and financial independence. Moreover, Lithuania aimed to find a ministry that would have a connection with investigations. An advisor from the Ministry of Transport and Communications argued that *"the search for the most similar institution automatically created problems as conflict of interests was more likely".* The unusual length of this infringement procedures in Lithuania occurred due to a variety of reasons, which can be split into two categories – lack of ability and lack of willingness.

6.3.1. Lack of ability

The first reason for prolonged infringement procedure was the ambiguity of Commission`s directives. According to the ex-vice minister of Ministry of Transport and Communications, Lithuania was convinced that they interpreted the directive`s provisions correctly. He emphasised that *"when it comes to EU directives, the extensive compromises "wash-away the ideas", thus opening possibilities for countries to interpret the text according to their understanding".* This argument also reflects the Commission Policy Officer`s argument about the knowledge Lithuania acquired during the Twinning project.

Secondly, the establishment of investigators resulted in additional expenses, which were not planned in the annual budget. Many argued that investigators required sufficient technical and financial support to fulfil their activities.

6.3.2. Lack of willingness

Despite financial and legal hurdles, most of the interviewees named the unwillingness of implementing actors as the main cause for prolonged infringement procedure. First of all, the previously discussed ministries, which were considered as most fitting options for the relocation of investigators, were not keen on bearing additional responsibility. During the discussions, the representatives of ministries of National Defence, Interior or Social Security and Labour had

"reasons why not them" (ex-vice minister of Ministry of Transport and Communications) or asked a question *"why us?*" (Advisor of Ministry of Transport and Communications). The most common argument given by ministries was that carrying out investigations is not a function that is connected to their competencies.

Additionally, personal preferences of civil servants had an effect on decision-making. For instance, ex-vice minister argued that investigators preferred to keep working in the same ministry as they already knew the team and their leaders. Also, a Senior Advisor emphasised the importance of fitting the new legislation with a voting cycle in a parliament for the question to receive political support.

6.4. LITHUANIA`S DECISION-MAKING DURING INFRINGEMENT PROCEDURE

After receiving the Commission`s assessment via the letter of formal notice, Lithuania took a defensive strategy arguing that their interpretation of the directive is correct. When the Commission decided to move to the reasoned opinion stage, Lithuania acknowledged the problem with its chosen model. Interviewees argued that Lithuania would have not gone to court to prove that investigators under the Ministry of Transport and Communication are correct, thus reasoned opinion acted as pressure to make decisions. Also, it was mentioned that the role of non-state actors did not play a role in the decision-making of solving the infringement procedure.

Interestingly, representatives from Ministry of Transport and Communications emphasised that there was no significant change between receiving reasoned opinion and after being referred to the ECJ. They motivated such behaviour with the argument that after being presented with a reasoned opinion, Lithuania already took strict actions to repeal the infringement. On the contrary, the Policy Officer from the Commission argued that referral to Court played a significant role in forcing Lithuanian government and ministries to settle their discussions about the most fitting choice to relocate investigators.

At last, Lithuania solved the infringement procedure by moving the investigatory body under the Ministry of Justice. Among interviewees, there were conflicting opinions about the reasons behind choosing this ministry. On one hand, some argued that the Ministry of Justice was the only ministry, apart from Transport and Communication, which had any connection with investigations and held necessary resources.

On the other hand, others were convinced that it was a political agreement between the ministers of aforementioned ministries. The Senior Advisor from Lithuanian government remembered the meeting during which it was settled to relocate investigators to the Ministry of Justice. From his point

of view, it seemed as a spontaneous decision from the Minister of Justice as he agreed by saying "*If no one else can take them, then we will"*. According to the Senior Advisor, ministers of Justice and Transport and Communications were like-minded politicians, thus the interviewee supposes they made an internal agreement in order to liquidate the infringement procedure.

6.5. COMPARISON WITH DIRECTIVE 2006/126

To understand the deciding factors for a delay in solving the infringement procedure regarding Directive 2004/49, the thesis has compared it with a similar infringement procedure against Directive 2006/126 from Mobility and Transport policy area. However, the latter was solved after reaching reasoned opinion stage.

The aim of Directive 2006/126 was to update the procedure of acquiring a driving licence. It introduced new licence categories, established uniform rules regarding the validity and created the RESPER network for easier sharing of information about driving licences (Directive 2006/126/EC). It was introduced in 2006 with a transposition deadline of January 19th, 2011.

One of the most significant features of the directive was the RESPER network. It allowed the Member States to use a unified platform to store information about driving licences. The main purpose of RESPER was to assure that one person has only one licence in all EU Member States (Polders et al., 2017). As a result, the Commission hoped to reduce the number of fraud cases and simplify the verification process of licences, that have been issued in other Member States (Polders et al., 2017).

In 2014, Lithuania received a formal notice regarding the incorrect implementation of the Directive, which was followed with reasoned opinion in 2015. The infringement procedure was started due to the fact that Lithuania did not join the RESPER network (BNS, 2015). According to official Commission`s report on implementation of the directive (Polders et al., 2017), Lithuania established a different interface for RESPER than described in the document. Also, before joining RESPER, Lithuania used EUCARIS system to exchange information about driving licences with 10 Member States.

In February 2015, Lithuanian media announced that the State Enterprise Regitra, responsible for issuing driving licences, will join the RESPER network (15min, 2015). The enterprise became a member of the RESPER system on March 31, 2015 (Regitra, 2015). Consequently, the Commission closed the infringement procedure in June 18, 2015.

The factors for a delay for the implementation of RESPER are unknown. However, from the questionnaires acquired by the Commission`s report, Lithuanian national authorities indicated that

RESPER had no effects on the red tape (Polders et al., 2017). Also, EUCARIS system was used widely to exchange information with other Member States. It can be assumed that Lithuania did not have a strong incentive to work towards implementation of RESPER. However, after receiving reasoned opinion, the implementing actors pressured Regitra to take action in adapting the network. From the timeline it can be concluded that infringement procedure was solved without additional conflicts within the Member State as the implementation of RESPER was mandatory.

6.6. OVERVIEW OF CHAPTER 6

Chapter 6 focused on analysis of infringement procedure started against Lithuania due to practical implementation of Directives 2004/49 and 2006/126. For the former, the breach was initiated as Lithuania did not assure independence of investigatory body, while for the latter RESPER network was not established. Main difference between these infringements procedures is the outcome – the one regarding Directive 2004/49 reached the final referral to court stage, while the other was settled during reasoned opinion.

The main factors that lead to escalation of the procedure about investigatory body concern strong domestic preferences (H4) and administrative coordination (H5). Regarding the last two factors, it was very clear from interviews that Lithuania had long internal negotiations with various ministries and institutions. Since the relocation of investigators was not desired due to additional responsibilities, increased financial hurdles and personal preferences, domestic actors showed strong persistence. Interestingly, Lithuania`s officials from Ministry of Transport and Communications argued that referral to court stage did not have significant impact on the decision to relocate investigators to the Ministry of Justice, while the Commission`s policy officer and Government`s Senior Advisor argued that it pressured Lithuania to find a political agreement.

Additionally, financial resources (H1) and administrative capabilities (H2) were important factors for an implementation delay, however, they did not play a role in Commission`s decision regarding the infringement. There was no evidence found to support H3 and H6.

When comparing infringements of Directives 2004/49 and 2006/126, the latter did not contain inter-ministerial hurdles regarding the implementation of directive`s provisions. While Directive 2004/49 required ministries and implementing actors to communicate and find the most fitting solutions, Directive 2006/126 obliged a specific State Enterprise to implement a network which already had clear guidelines and goals. After Lithuania incorporated the RESPER network, the infringement procedure was closed. Regarding establishment of investigators, even though Lithuania fulfilled

directive`s provisions, they did not fit Commission`s expectation for assuring independence. As a result, lengthy discussions and negotiations followed to meet Commission`s standards.

CHAPTER 7: FINDINGS

There were 6 hypotheses established in the beginning of thesis, three of them connected with the Commission`s decision to give up, and other three – with a decision to escalate infringement procedures given the Member States non-compliance. This chapter will discuss the findings related to these hypotheses and beyond.

The most important finding regarding the hypotheses 1, 2 and 3 is a change in understanding the Commission`s actions. Rather than "giving up the infringement procedure", the Commission is more likely to provide levy and assistance for the Member States. The Commission`s officials in the interviews emphasised that it is essential for the EU law to be completely/correctly transposed and implemented to assure that all EU citizens receive access to same opportunities. As a result, the thesis observed a different understanding about the hypotheses H1, H2 and H3.

More precisely, there were also notable differences when comparing breaches in transposition and implementation. While the former receives considerably more attention from the Commission due to constant transposition checks, the inability to implement is harder to observe and make conclusions. Moreover, the Commission`s officials emphasised the importance for assuring successful transposition as a perquisite for practical implementation. For that reason, Commission is more likely to allow the Member State to experience delays when implementing directives` provisions, especially if it lacks necessary financial (H1) and administrative (H2) resources. On the other hand, inability to correctly/completely transpose directives does not yield the same reaction – in these cases the Commission will escalate infringement procedure to assure that the Member State transposes the directives fully.

Additionally, there was no substantial proof to confirm H3. However, the policy officer from the Commission explained that Lithuania`s bureaucrats received extensive guidance during the Twinning project before joining the EU, therefore, there were possibilities for administrations to gain necessary expertise.

Likewise, the Member State`s unwillingness to implement plays a strong role in the Commission`s decision to escalate. In cases when national implementing actors prolong transposition and implementation due to conflicting domestic interests (H4) or administrative coordination (H5), the Commission will use infringement procedure to pressure the Member State into adhering to its commitments.

Within-case study of practical implementation of Directive 2004/49 portrays the relationship between the Commission`s decision to escalate and Lithuania`s actions. Firstly, Lithuania`s officials were convinced that their interpretation about assuring independence of investigators was correct while Commission disagreed (H4). Secondly, when Lithuania agreed that the infringement has to be settled, there was strong resistance from other ministries to allow investigators to join their institution (H5). Consequentially, the Commission escalated the procedure to other stages in order to pressure Lithuanian bureaucrats to negotiate and find an agreement.

Also, the interviews and the analysis of Directive 2006/126 prove that reasoned opinion is the stage that puts the most pressure for Lithuania to make changes and settle the infringement. Moreover, in most cases, Lithuania avoids going to Court unless it concerns politically sensitive questions.

However, there was no proof to support the impact of non-state actors for the Commission`s decision to escalate (H6). Börzel & Buzogány (2010) argue that there is a trend for more recent EU Member States to have weak non-state actors which lack significant resources to influence national decision-making process.

When comparing ability and willingness, the latter is more prominent in the interviewees with Lithuania`s officials. They discussed the impact of political agreements, personal preferences of bureaucrats and a calculated approach towards implementation to fit a voting cycle. On the other hand, interviewees from the Commission supported inability argument as substantial to delay implementation. Also, they argued that confrontation between the Commission and the Member State is more likely regarding nationally sensitive legislations. Regardless, both interviewees agreed that all things considered, infringement procedures are political decisions of the Commission, thus particular context strongly influences their process.

There are a few significant findings that are not connected with the hypotheses. Firstly, the Commission and Lithuania gave significant evidence for the importance of informal processes before the official infringement procedure. Not only there is extensive cooperation with the Member State, but also the Commission has established its own process to decide whether the breach of EU law is pursued or not. Significantly, the Commission will always conduct a further analysis and most likely, will start an infringement procedure when it receives a complaint from a private entity. Secondly, the thesis discussed the role of EU Pilot as an important tool for the Commission to collect more information about a possible infringement and make decisions about its pursuit.

CHAPTER 8: CONCLUSIONS

Infringement procedure remains a crucial enforcement mechanism for the Commission to fulfil its duties as a "guardian of the treaties". The procedure consists of three distinct stages – letter of formal notice, reasoned opinion and referral to ECJ. The purpose of a formal notice is to inform the Member State about the possible breach and to collect more information from the Member State, while reasoned opinion is a clear indication about the Member State`s non-compliance. If the infringement procedure reaches referral to court stage, the dispute is solved in the European Court of Justice.

In most cases, the breach concerns transposition or practical implementation of directives as they allow for Member State`s discretion. Due to existence of transposition check, the Commission is more likely to focus on assuring correct and complete transposition rather than practical implementation. While the literature argues that complete and timely transposition does not guarantee success in practical implementation, the Commission voices a conflicting approach. It is mostly related to the fact that analysis of practical implementation requires in-depth information and longer investigation. For that reason, the Commission often uses informal channels, such as EU Pilot, to question the Member States about their progress.

In conclusion, infringement procedure is a political process during which supranational, national and subnational actors emerge with their preferences and challenges. From the Member State`s point of view, settling infringement procedures not only concerns securing financing and administrative resources, but also aligning the European policy with national political agenda and settling internal disputes between bureaucrats. When it comes to lack of resources, the Commission has to receive a substantial proof that it is only a temporary hiccup in order to allow for a delay in implementation. However, if the Member State is showing signs of purposeful delay due to domestic preferences and unwillingness to coordinate within national administrations, the Commission will escalate the infringement procedure until the Member State solves the problem or it is settled in the ECJ. At the end of day, the main purpose of infringement procedures is to set uniform standards for the EU citizens to enjoy equal opportunities in every Member State. For that reason, the Commission takes into account specific reasons behind non-compliance when making a decision on further process of infringement procedures.

There are a few limitations of the thesis. Firstly, Most Similar Systems research design of imposes problems with reliability as some findings might be irrelevant for the outcomes. Secondly, the infringement procedures available for the analysis were connected with breaches on practical

implementation. Thus, this thesis cannot provide comparison with transposition cases. For this reason, future research should compare a couple Member States based on the same topic to establish differences between transposition and practical implementation, policy sectors and contrasting national contexts.

APPENDICES

APPENDIX A: LIST OF INTERVIEWS

1. April 27th, 2022: Arijandas Šliupas, ex-vice minister of Ministry of Transport and Communications of Lithuania between 2012-2016, online interview;

2. May 3rd, 2022: Vilius Veitas, Senior Advisor of Road and Air Transport Policy Group of Ministry of Transport and Communications of Lithuania; online interview;

3. May 3rd, 2022: Monika Žilinskaitė-Veželienė, Advisor of Water and Railway Transport Policy Group of Ministry of Transport and Communications of Lithuania, online interview;

4. May 9rd, 2022; anonymous interviewee, Director of Water and Railway transport Policy Group of Ministry of Transport and Communications of Lithuania; online interview;

5. May 10th, 2022: Clementine Leroy, an infringement coordinator in the Secretary General of the European Commission; online interview;

6. May 11th, 2022: anonymous interviewee, Chief Adviser of Water and Railway Transport Policy Group of Ministry of Transport and Communications of Lithuania; online interview;

7. May 11th, 2022: anonymous interviewee; Policy Officer of Directorate-General for Mobility and Transport, Rail Safety and Interoperability Unit, online interview;

8. May 16th, 2022: Deividas Kriaučiūnas, Senior Advisor of Government of Lithuania, online interview.

REFERENCES

15min. (2015, February 27). *„Regitra“ prisijungs prie ES keitimosi vairuotojo pažymėjimo duomenimis sistemos RESPER*. https://www.15min.lt/gazas/naujiena/gatve/regitra-prisijungs-prie-es-keitimosi-vairuotojo-pazymejimo-duomenimis-sistemos-resper-221-487844?copid

Andersen, S. (2012). *The Enforcement of EU Law: The Role of the European Commission*. Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199645442.001.0001

Andersen, S. S., & Sitter, N. (2006). Differentiated Integration: What is it and How Much Can the EU Accommodate? *Journal of European Integration*, *28*(4), 313–330. https://doi.org/10.1080/07036330600853919

Bekkers, V., Fenger, M., & Scholten, P. (2017). *Public Policy in Action: Perspectives on the policy process*. Edward Elgar Publishing

BNS. (2015, February 26). *EK ragina Lietuvą prisijungti prie ES vairuotojo pažymėjimų tinklo.* https://www.bns.lt/topic/886/news/47184429/

Bogdanowicz, P., & Schmidt, M. (2018). The infringement procedure in the rule of law crisis: How to make effective use of Article 258 TFEU. *Common Market Law Review*, 1061–1100.

Börzel, T. A., & Buzogány, A. (2010). Governing EU accession in transition countries: The role of non-state actors. *Acta Politica*, *45*(1–2), 158–182. https://doi.org/10.1057/ap.2009.26

Börzel, T. A., Hofmann, T., & Panke, D. (2012). Caving in or sitting it out? *Longitudinal* patterns of non-compliance in the European Union. *Journal of European Public Policy*, *19*(4), 454–471. https://doi.org/10.1080/13501763.2011.607338

Dimitrova, A., & Steunenberg, B. (2013). Living in Parallel Universes? Implementing European Movable Cultural Heritage Policy in Bulgaria: Living in parallel universes? *JCMS: Journal of Common Market Studies*, *51*(2), 246–263. https://doi.org/10.1111/jcms.12000

Dimitrova, A., & Steunenberg, B. (2017). The power of implementers: A three-level game model of compliance with EU policy and its application to cultural heritage. *Journal of European Public Policy*, *24*(8), 1211–1232. https://doi.org/10.1080/13501763.2016.1223156

Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), European Parliament and the Council, 164 OJ L (2004). http://data.europa.eu/eli/dir/2004/49/oj/eng

Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast) (Text with EEA relevance), European Parliament, the Council, 403 OJ L (2006). http://data.europa.eu/eli/dir/2006/126/oj/eng

Duttle, T., Holzinger, K., Malang, T., Schäubli, T., Schimmelfennig, F., & Winzen, T. (2017). Opting out from European Union legislation: The differentiation of secondary law. *Journal of European Public Policy*, *24*(3), 406–428. https://doi.org/10.1080/13501763.2016.1149206

European Commission. (2017). *Communication from the Commission — EU law: Better results through better application*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2017.018.01.0010.01.ENG&toc=OJ%3AC%3A2017%3A018%3ATOC

European Commission. (2021). *2020 Annual Report on monitoring the application of EU law* [Text]. European Commission. https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure/2020-annual-report-monitoring-application-eu-law_en

European Parliament. (2019, January 17). *Texts adopted—Differentiated integration—Thursday, 17 January 2019*. https://www.europarl.europa.eu/doceo/document/TA-8-2019-0044_EN.html

Consolidated version of the Treaty on the Functioning of the European Union, 326 OJ C (2012). http://data.europa.eu/eli/treaty/tfeu_2012/oj/eng

Heidtmann, K. F. F., & Selck, T. J. (2021). Local level failure? Non-compliance of EU environmental policy within EU multi-level governance. *Regional & Federal Studies*, 1–20. https://doi.org/10.1080/13597566.2021.1998006

Hofmann, A. (2018). Is the Commission levelling the playing field? Rights enforcement in the European Union. *Journal of European Integration*, *40*(6), 737–751. https://doi.org/10.1080/07036337.2018.1501368

Hofmann, T. (2018). How long to compliance? Escalating infringement proceedings and the *diminishing* power of special interests. *Journal of European Integration*, *40*(6), 785–801. https://doi.org/10.1080/07036337.2018.1500564

Holzinger, K., & Tosun, J. (2019). Why differentiated integration is such a common practice in Europe: A rational explanation. *Journal of Theoretical Politics*, *31*(4), 642–659. https://doi.org/10.1177/0951629819875522

Jensen, C. B., & Slapin, J. B. (2012). Institutional hokey-pokey: The politics of multispeed integration in the European Union. *Journal of European Public Policy*, *19*(6), 779–795. https://doi.org/10.1080/13501763.2011.610694

Kaya, C. (2018). The impact of interest group diversity on legal implementation in the European Union. *Journal of European Public Policy*, *25*(4), 567–585. https://doi.org/10.1080/13501763.2016.1268195

König, T., & Mäder, L. (2013). Non-conformable, partial and conformable transposition: A competing risk analysis of the transposition process of directives in the EU15. *European Union Politics*, *14*(1), 46–69. https://doi.org/10.1177/1465116512447703

Kroll, D. A., & Leuffen, D. (2015). Enhanced cooperation in practice. An analysis of differentiated integration in EU secondary law. *Journal of European Public Policy*, *22*(3), 353–373. https://doi.org/10.1080/13501763.2014.956781

Lelieveldt, H., & Princen, S. (2015). *The politics of the European Union* (Second edition). Cambridge University Press.

Littoz-Monnet, A. (2017). Production and uses of expertise by international bureaucracies. In *Littoz-Monnet, A. (ed.), The Politics of Expertise in International Organizations. How International Bureaucracies Produce and Mobilize Knowledge* (pp. 1–18). London: Routledge.

Maniokas, K. (2009). Conditionality and compliance in Lithuania: The case of the best performer. *European Integration Online Papers*, *2009–020*. https://doi.org/10.1695/2009020

Marks, G., & Hooghe, L. (2004). Contrasting visions of multi-level governance. In I. Bache & F. Flinders, *Multi-level governance: Interdisciplinary Perspectives*. Oxford University Press.

Mastenbroek, E., & Martinsen, D. S. (2018). Filling the gap in the European administrative space: The role of administrative networks in EU implementation and enforcement. *Journal of European Public Policy*, *25*(3), 422–435. https://doi.org/10.1080/13501763.2017.1298147

Polders, E., Brijs, K., Brijs, T., Pavlou, D., Yannis, G., Winkelbauer, M., Salamon, B., Hausmann, M., Jost, G., & Calinescu, T. (2017). *The implementation of Directive 2006/126/EC on driving licences: Final report.* Luxembourg: Publications Office of the European Union. https://data.europa.eu/doi/10.2832/47575

Regitra. (2015, March 31). *VĮ „Regitra“ prisijungė prie Europos Sąjungos vairuotojo pažymėjimų tinklo*. https://www.regitra.lt/lt/naujienos/vi_regitra_prisijunge_prie_europos_sajungos_vairuotojo_pazymejimu_tinklo

Robson, C., & McCartan, K. (2016). *Real world research: A resource for users of social research methods in applied settings* (Fourth Edition). Wiley.

Schmälter, J. (2018). A European response to non-compliance: The Commission's enforcement efforts and the Common European Asylum System. *West European Politics*, *41*(6), 1330–1353. https://doi.org/10.1080/01402382.2018.1427947

Steunenberg, B. (2007). A policy solution to the European Union's transposition puzzle: Interaction of interests in different domestic arenas. *West European Politics*, *30*, 23–49. https://doi.org/10.1080/01402380601019639

Steunenberg, B., & Toshkov, D. (2009). Comparing transposition in the 27 member states of the EU: The impact of discretion and legal fit. *Journal of European Public Policy*, *16*(7), 951–970. https://doi.org/10.1080/13501760903226625

Steunenberg, B., & Voermans, W. J. M. (2006). The Transposition of EC Directives: A Comparative Study of Instruments, Techniques and Processes in Six EU Member States. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.1215542

Stubb, A. C.-G. (1996). A Categorization of Differentiated Integration. *JCMS: Journal of Common Market Studies*, *34*(2), 283–295. https://doi.org/10.1111/j.1468-5965.1996.tb00573.x

Toshkov, D. (2009). *Between politics and administration: Compliance with EU Law in Central and Eastern Europe*.

Toshkov, D. (2010). *Taking stock: A review of quantitative studies of transposition and implementation of EU law*. 33.

Toshkov, D. (2016). *Research Design in Political Science*. Macmillan Education UK. https://doi.org/10.1007/978-1-137-34284-3

Toshkov, D., Knoll, M., & Wewerka, L. (2010). Connecting the Dots: Case Studies and EU Implementation Research. *Working Paper 10, Vienna: Institute for European Integration Researc*.

van Voorst, S., & Mastenbroek, E. (2017). Enforcement tool or strategic *instrument*? The initiation of ex-post legislative evaluations *by* the European Commission. *European Union Politics*, *18*(4), 640–657. https://doi.org/10.1177/1465116517725901

Vasev, N., & Vrangbæk, K. (2014). Transposition and National-Level Resources: Introducing the Cross-Border Healthcare Directive in Eastern Europe. *West European Politics*, *37*(4), 693–710. https://doi.org/10.1080/01402382.2014.919776

Versluis, E. (2007). Even rules, uneven practices: Opening the 'black box' of EU law in action. *West European Politics*, *30*(1), 50–67. https://doi.org/10.1080/01402380601019647

Zhelyazkova, A. (2014). From selective integration into selective implementation: The link between differentiated integration and conformity with EU laws: From selective integration into selective implementation. *European Journal of Political Research*, *53*(4), 727–746. https://doi.org/10.1111/1475-6765.12062

Zhelyazkova, A. (2022). Justifying enforcement or avoiding blame? The transparency of compliance assessments in the European Union. *West European Politics*, *45*(2), 403–429. https://doi.org/10.1080/01402382.2020.1845943

Zhelyazkova, A., Kaya, C., & Schrama, R. (2016). Decoupling practical and legal compliance: Analysis of member states' implementation of EU policy: DECOUPLING PRACTICAL AND LEGAL COMPLIANCE. *European Journal of Political Research*, *55*(4), 827–846. https://doi.org/10.1111/1475-6765.12154

Zhelyazkova, A., Kaya, C., & Schrama, R. (2018). When Practice Goes beyond Legislators' Expectations: Analysis of Practical Implementation Exceeding Legal Compliance with EU Directives: When practice goes beyond Legislators' expectations. *JCMS: Journal of Common Market Studies*, *56*(3), 520–538. https://doi.org/10.1111/jcms.12637

Zhelyazkova, A., & Thomann, E. (2022). ‘I did it my way’: Customisation and practical compliance with EU policies. *Journal of European Public Policy*, *29*(3), 427–447. https://doi.org/10.1080/13501763.2020.1859599

Zhelyazkova, A., & Torenvlied, R. (2009). The Time-Dependent Effect of Conflict in the Council on Delays in the Transposition of EU Directives. *European Union Politics*, *10*(1), 35–62. https://doi.org/10.1177/1465116508099760

Zhelyazkova, A., & Yordanova, N. (2015). Signalling ‘compliance’: The link between notified EU directive implementation and infringement cases. *European Union Politics*, *16*(3), 408–428. https://doi.org/10.1177/1465116515576394