

Claims that 80 per cent of laws adopted in the EU Member States originate in Brussels actually tell us very little about the impact of EU policy-making.

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How many national laws originate in Brussels? Does the European Union (EU) significantly shape the policy agenda of its Member States? [Annette Elisabeth Toeller](#) assesses current research on the Europeanization of public policies. She argues that such findings must be handled with great care because they have always been used for political purposes.



We are often told that many national laws in Europe are shaped to one degree or another by policy-making at the EU-level, and whenever there is a major Treaty change, implying changes in both EU-competences and procedures, this issue and the numbers involved are discussed by national media in Europe. But how many of these laws actually originate in Brussels? Data from research on the impact of EU-policy making on the Member State level has to be handled with great care. First, it has always been used for political purposes, and second, studies in this area are often far from providing a reliable picture.

Debates and discussion about the Europeanization of national legislation began when in 1988, shortly after the Single European Act became effective, the President of the European Commission, Jacques Delors to European Parliament that “in ten years 80 per cent of the legislation related to economics, maybe also to taxes and social affairs, will be of Community origin”. While this was no more than a prophecy, a forecast of the future that was not based on scientific data or methods, it gained momentum when only few years later the Maastricht Treaty was challenged in Germany before the German Constitutional Court. Then the prophecy was turned into a diagnosis of the actual situation: ““The claimant, referring to an assessment made by the President of the European Commission, Delors [. . .], brings forward that already now almost 80 per cent of all legislation in the field of economic law [. . .] is determined by Community law”.

At the same time in France, the Conseil d'État reacted to Delors' prophecy when considering how far French law had been penetrated by European law. In autumn 2004, the Netherlands experienced a heated public debate after the Secretary of the State for European Affairs, Atzo Nicolai, stated that 60 per cent of all laws and regulations that are in effect in the Netherlands have their origin in Brussels. Later on, [commentators suggested](#) that the share of Europeanized Dutch legislation was between 70 and 80 per cent. Similar figures were discussed in [Austria](#) and [again in Germany](#). In most cases national politicians used the figures to exaggerate and demonize the European impact on the policy-making autonomy of member states, while in some cases (in the context of European Parliamentary elections) they were used simply to emphasize the



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relevance of the European Union and to convince people to use their voting right.

When we looked at scholarly research in this field, we found that it was not only driven by the wish “to get the figures straight”, i.e. to rationalize the debates by producing reliable figures with a robust method. Rather, these numbers were seen as an indicator either of a loss in the decision making ability of national Parliaments or – in more general terms – of a transformation of the nation state.

We looked first at studies on [Germany](#), the [United Kingdom](#) (UK), the Netherlands and [Denmark](#). Others on France, Austria and [Finland](#) followed. The striking finding is that most of these studies showed rather low shares of Europeanized national legislation: 15.5 per cent for the UK, 14 per cent for Denmark, 10.6 per cent for Austria, between 3 and 27 per cent for France, between 1 and 24 per cent for Finland, yet [39.1 per cent for Germany](#).

Do these numbers tell us that the impact of European policy making is by and large minimal, while at the same time there are some interesting variations between member states? No – in fact, these figures can tell us very little about the impact of EU-policy-making.

First, looking at overall numbers on all policy fields make little sense. It is well known not only to experts of EU-policy-making that both EU competences and procedures can vary a great deal between policy fields and even within policy fields. Some policy fields (such as external trade, competition, agriculture, environment, financial markets) are strongly integrated while others (such as education, health, social security) are not at all or much less integrated. Thus the impact on national policy making should vary as well between these policy fields.

Second, one has to be aware that all such studies in this area are based on two assumptions: first that a policy is shaped to a relevant degree by legislation (this is the case in most policy fields except for external relations and defense); second that a European impact can be identified in this legislation. This assumption holds true especially in regulatory fields, such as environmental policy or the regulation of financial markets. Here, a high relevance of EU policy-making can be identified in high shares of Europeanized legislation. On the opposite side, there are areas like competition policy where the Commission has far reaching decision-making competences derived from the Treaty and does not need to go the cumbersome way of influencing national legislation. Thus here our methods cannot adequately spot the European influence in national legislation. The same holds true for national budgeted policy where we cannot identify the impact of the stability and growth pact in national budget acts.

Third, the low values that most studies show about do not indicate a low level of European level influence but are the result of a rather parsimonious measurement of Europeanization. For these studies a Europeanized piece of national legislation is a law that serves to implement a European directive. Apart for the many problems involved in identifying such legal acts this is a much too narrow a way, since so many other “things” coming from Brussels do have an impact: directly applicable regulations which usually do not materialize in national legislation but “bypass” it, decisions by the European Courts, the Treaty itself, just to mention the most important legally binding “European impulses”. Little surprisingly, the more encompassing the measurement, the higher the share of Europeanized legislation that it finds.

Fourth, the identification of a European impact is based on a purely formal argument (if a national legal act serves to implement a directive, it will most probably be influenced by it) while the causal impact as such is not certain. What is more, we can say nothing on the intensity of this impact. We cannot tell if a notational law is influenced by a directive only at the surface, or if it introduces a completely new policy due to the directive.

Finally, the focus of the research tends to reduce the complexity of multi-level politics and to bias the results. The question of Europeanization research is on the domestic impact in Europe, and the focus is on the Member States and how they are influenced, which tends to make us see Member States as victims of EU-policy-making while widely neglecting that without the activity of the same Member States on the European level there would be no European policy at all. However, if in a single case or a number of cases a member state was active in having a certain policy adopted on the European level, or whether it fought against it and succumbed in majority voting in the Council, cannot be identified in our figures even though intuition tells us that this plays a role.

Actual numbers presented in this sort of research should be handled with great care. All they can do is give us a first, very rough idea of the scope of the European impact on national legislation. Figures make only sense as long as they are differentiated between policy fields. Present data on the Europeanization of policy fields are not comparable between countries because they are based on (differently constructed) portfolios. Low numbers of Europeanized legislation do not necessarily mean a low European impact. The famous 80 per cent could be reality in fields like agriculture, environment or regulation of the financial market. Yet, rule production on EU level has been on the retreat since the late 1990s – so far we do not know if this will be reflected in less Europeanized national legislation. There are, however, areas in which there is a major European impact which we cannot measure. With the recent new policies for the stabilization of the European Currency at least for Euro-Countries the field in which Europeanization is not adequately reflected in national legislation is growing. While this is not a criticism, we must remember that when using figures for both, political or scholarly arguments we need to be aware what the figures can or cannot tell us.

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