Chapter 7

The interface between member states and the European Union

An increasing proportion of national regulations originate at EU level. Whilst EU regulations have direct application in member states and do not have to be transposed into national regulations, EU directives need to be transposed, raising the issue of how to ensure that the regulations implementing EU legislation are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market and avoid "gold plating" and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and sub-national) perspective on how the production of regulations is managed in Brussels itself is important. The view from "below" on the effectiveness of these policies may be a valuable input to improving them further.

Assessment and recommendations

The establishment of an Office for International and European Affairs with a mandate to focus on improving transposition of EU directives has already borne fruit. Greece successfully met the European Commission's transposition deficit target for the first time in the second half of 2010 and has continued to maintain this target. The success of the Office is due in no small part to the level of political support it has been given: the Government identified correct and timely transposition of EU law as a top national priority. Sustaining the successes achieved in the transposition area will require ongoing political support.

A focus on timely transposition must be matched by increased efforts to deal with incorrect application of EU laws. Greece currently has the second highest number of open infringement proceedings at EU level. This is an area that the Office is mandated to focus on. Greater use by ministries of evidence-based approaches and the use of impact assessment during the negotiation and transposition phases could help to reduce the number of future infringement cases for incorrect application of EU law.

Recommendation 7.1: To assist in efforts to reduce the number of open infringement proceedings at EU level and to sustain successes achieved in reducing the transposition deficit, Greece should extend the scope of the Law on Better Regulation to require application at an early stage of RIA during the negotiation and transposition process. This will help ensure both timely and correct transposition of EU law.

Other EU member states have benefited from establishing cross ministerial working groups to better co-ordinate strengthen domestic management of national policy approaches on EU law. Greater awareness across ministries of developments elsewhere which they may have a policy interest in, will help to ensure coherence.

Recommendation 7.2: Establish a standing cross-ministerial working group at senior administrative level focused on the management and strategic co-ordination of EU legislation. This will help ensure greater coherence as regards negotiation and the application of Better Regulation principles at an early stage in the transposition process. Greece should examine how other member states have approached this (e.g. Ireland, Finland).

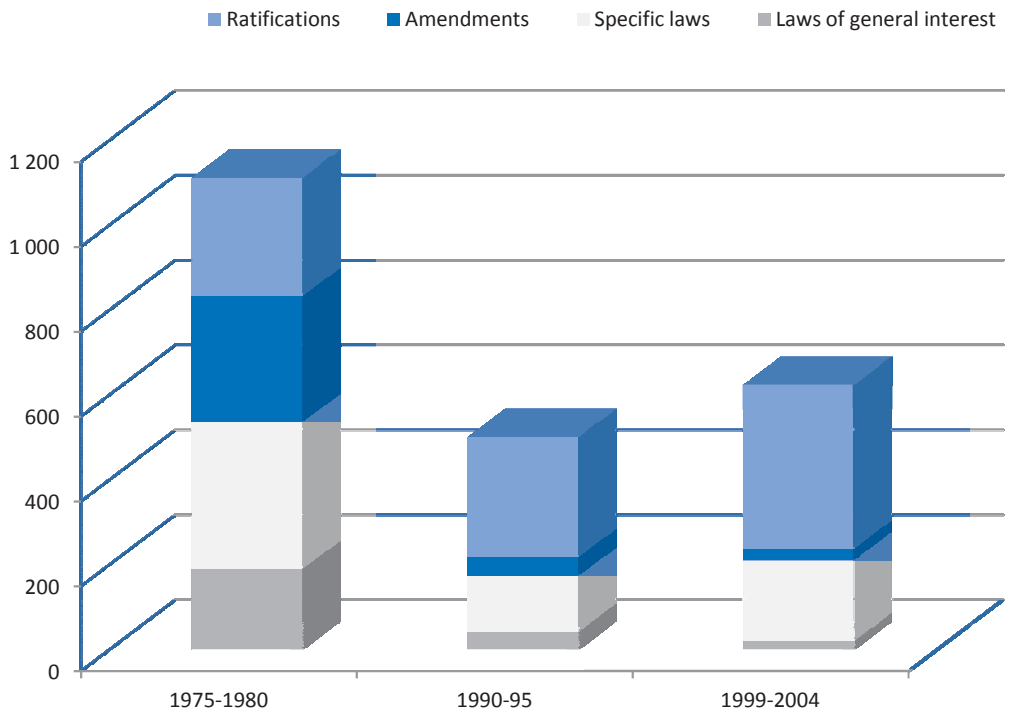
Background

General context

A significant proportion of the regulations enacted on an annual basis in Greece relate to its membership of the EU (see Figure 7.1). The percentage of subordinate regulations and regulations relating to ratification or transposition of EU or international laws increased significantly in the period 1999-2004, compared with the period 1975-80, prior to Greece's accession to the EU in 1981.

The need to implement EU directives had a positive influence on the market orientation of Greece's regulatory system. In many cases, this effort has brought impetus and commitment for reform within Greece. Transposition of EU law has allowed Greece to implement laws that would otherwise have been extremely difficult, such as in liberalisation of telecommunications, and electricity. However, implementing the *acquis communautaire* has been difficult in terms of the content and speed of transpositions, and Greece has often appeared reluctant to take advantage of the opportunities offered by the European Single Market. In some areas, Greece has sought derogations that delayed important reforms and the benefits for Greek consumers and workers that they would have brought.

Figure 7.1. Breakdown of type of laws enacted in Greece



Source: Hellenic Ministry of the Interior 2008.

An Office for International and European Affairs was established in March 2010,[1] becoming fully operational in July 2010. This Office is based in the General Secretariat and works under the auspice of the Prime Minister: it enjoys significant political support. It has responsibility for:

- Monitoring and co-ordination of EU and international issues;
- Provision of legal and technical assistance to line ministries and other Greek authorities in regarding transposition of EU law;

- Surveillance and follow-up of EU infringement proceedings: the Office has a primary role regarding the handling of non-transposition and late transposition infringements. Incorrect or "bad" transposition infringements are handled by the Ministry of Foreign Affairs; and

- Developing initiatives to better and more timely implementation of EU law.

Negotiating EU regulations

Institutional framework and processes

For the preparation and negotiation of new directives, the responsibility is delegated to competent ministries. In principle, the line ministries are responsible for organising public consultation on draft directives and co-ordinating with the Greek delegation in Brussels. In practice, as with national legislation, public or external stakeholder consultation has been limited.

The ministries are supervised when necessary by the Ministry of Foreign Affairs and/or the Ministry of Finance. These two ministries have alternated as the centre of European policy co-ordination, while their relations have sometimes been tense (Spanou, 1998, p. 475). The Ministry for Foreign Affairs may initiate meetings between ministries, where they have identified issues regarding the assignment of leadership responsibility for EU directives to one ministry, or where there are challenges in co-ordinating the transposition of EU Directives. The EU DG within the Ministry of Finance prepares the dossiers for the Greek participation to the ECOFIN, Internal Market and Competitiveness Councils. It also runs the SOLVIT application. It usually has no interference to the regulatory process at EU level, although it is among its competences to "co-ordinate all interested parties in order to conclude to specific thesis in certain areas such as the Lisbon strategy."[2] Such meetings with line ministries occur on an *ad hoc*/needs basis.

Greece does not have any standing or formal inter-ministerial committee focused on the management or strategic oversight of EU legislation.

The role of the Parliament

The Parliament has a European Affairs Committee. Established in 1990, it is chaired by a vice president of the Parliament and has 30 MPs as members. As soon as draft EU regulations are received and circulated by the Commission, the Government sends the drafts to the president of the Parliament, along with any accompanying documents (e.g. the Commission's own Impact Assessment). The president of the Parliament assigns the case to the relevant parliamentary committee and/or to the European Affairs Committee. The Committees, following discussion, agree on a position which is then communicated to both the Minister responsible and to the Parliament. MEPs can be invited to participate to the meetings of the European Affairs Parliamentary Committee. The European Affairs Parliamentary Committee also represents the Hellenic Parliament to the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC).

Ex ante *impact assessment (negotiation stage)*

Greece does not apply RIA in the preparation and negotiation of new directives.

Transposing EU regulations

Institutional framework and processes

These are essentially the same as for the negotiation of directives (see above).

Legal provisions and the role of the Parliament

Since Greece's accession to the EU, the Parliament has delegated to the government the task of transposing EU Directives (Law 1338/83). This law provides discretion to enact EU obligations using a fast track procedure through amendments of Bills, Presidential Decrees or Ministerial Decisions. In practice, the choice of instrument to transpose an EU directive depends on long-standing tradition or the discretion of the ministry's legal services.[3] Very often, ministries use Presidential Decrees or Ministerial Decisions, as they speed up the adoption process.

Ex ante *impact assessment (transposition stage)*

Greece does not apply RIA in the transposition of directives. Article 13 of the Law on Better Regulation (see Chapter 1) will require following enactment, that during transposition of EU law, the ministries adhere to the principles of Better Regulation, ensure timely transposition and avoid gold plating of the regulation as it is transposed.

Monitoring transposition

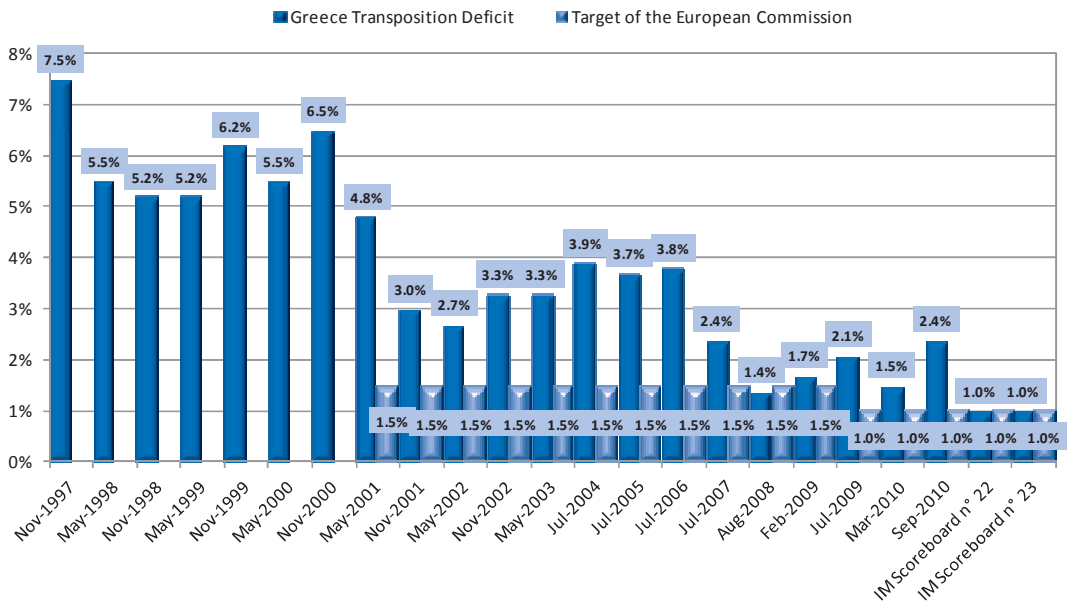
A significant number of Internal Market Directives issue each year from the EU, aimed at improving the competitiveness of the EU, which must be transposed by each Member State. Greece faces challenges in ensuring that Directives are transposed correctly and on time: it had been one of the poorest performers regarding transposition. The significant efforts and work by the Office for International and European Affairs however have proved highly successful. Since November 2010, Greece has achieved and sustained the European Commission's 1% transposition deficit – the first time it has achieved this target and a significant improvement on its previous score of 2.4% which was the highest among the 27 EU member states.[4]

The Office for International and European Affairs, operational since July 2010, monitors progress in transposition on a daily basis and offers assistance to line ministries to facilitate the completion of the necessary work (logistical/technical support and legal advice). Twice a month, the Office circulates tables listing all non-transposed EU Directives to the competent national authorities/ministries. Quality control and consistency across the government is provided via Law 1338/83, which requires the Ministry of Finance to sign off on all EU measures. The Ministry of Foreign Affairs tends to become involved in transposing EU regulations only where there is a dispute between line ministries on who has responsibility for a Directive. The Ministry also has a co-ordinating role in the case of infringement procedures.

Between July 2010 and December 2011, 204 EU Directives have been transposed into Greek law, while 88 infringement proceedings (due to non-transposition or late transposition) were successfully closed. The Office communicates all new Directives to the competent national authorities/ministries the day these are published in the Official Journal of the European Union. Thereafter it monitors progress with transposition on a daily basis and offers assistance (technical support and legal advice) to line ministries to aid in timely transposition. Figure 7.2 depicts the progress Greece has achieved in improving implementation of EU law since 1997.

The Office is also in charge of surveying and following up on all infringement cases linked to non-transposition, or incorrect transposition, of EU Directives. This is an area where Greece needs additional focus. It is currently one of the worst performers as regards the number of open infringement proceedings by EU member states, second only to Belgium.[5] While the number of cases is dropping, it is significantly higher than the EU average (81 pending cases as of September 2011 versus an EU average of 37). An increased focus on the principles of Better Regulation when transposing EU law, combined with greater use of an evidence-based approach and use of impact assessment could help Greece to address this issue.

Figure 7.2. Internal Market Scoreboards: Greece performance, November 1997 – May 2011



Source: Greek Office for International and European Affairs, extracted from Internal Market Scoreboard reports, also at available at: *http://ec.europa.eu/internal_market/top_layer/docs/workshops/presentation_8-2_en.pdf*.

Interface with Better Regulation policies at EU level

Jointly with the EU, the Greek government established an advisory group of international experts whose role is to provide a strategic overview of ongoing initiatives from the OP, including BR.

The National School of Public Administration has signed a bilateral agreement with the European Institute of Public Administration (EIPA – Maastricht) in the framework of which groups of civil servants have been trained on BR issues during week-long seminars.

Greece is a member of the SCM network.

Greek officials have also been highly active at the broader international level in the area of BR. Senior officials from the Ministry of the Interior regularly participate and make presentations at the OECD's Regulatory Policy Committee meetings. In the framework of its membership to the Black Sea Economic Co-operation (BSEC), Greece has pushed forward the BR agenda through the organisation of workshops and seminars.

Greece hosted a 17 member delegation of high level officials (including deputy ministers) from different Russian oblasts to exchange good practices on simplification. The Russian interest was mainly focused on simplification efforts in Greece and in particular, the one-stop shops (KEPs). A Greek Delegation was as result invited to Moscow and Rostov-on-Don in Central Russia to further share the KEP practice.

Greek experts also teach a course on BR at the Cypriot Academy of Public Administration.

Notes

1. Established by Presidential Decree 18/2010, March 16th 2010
2. The Lisbon strategy has now been superseded by Europe 2020.
3. Issues relating to taxation, fundamental rights and external relations can only be introduced via legislation.
4. European Commission Internal Market Scoreboard No. 22, p. 27; and European Commission Internal Market Scoreboard No. 23.
5. European Commission Internal Market Scoreboard No. 23, p. 21.

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