

# Explaining variation in implementation of EU directives

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# Explaining Variations in Implementation of EU Directives

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<b>Abstract</b>
Uneven implementation of Community law across the European Union is common practice. Differences in implementation of EU directives – differences in degree of domestic adjustment – are, according to variables identified in the Europeanization literature, to be explained by variations in the degree of fit and the availability of mediating factors. The analysis of the implementation of the Seveso II and Safety Data Sheets Directives in the Netherlands, Germany, the United Kingdom and Spain shows, however, that these identified factors alone do not suffice to explain the observed differences. This article pleads for a closer look at the role of 'issue salience' as a complementary factor that constraints or stimulates the existing mediating factors in the Europeanization literature.
<b>Kurzfassung</b>
Uneinheitliche Implementierung von Gemeinschaftsrecht ist quer durch die Europäische Union gängige Praxis. Unterschiede in der Umsetzung von EU-Richtlinien – Variationen im Grad nationaler Anpassungen – können, gemäß in der Europäisierung-Literatur identifizierter Variablen, durch Abweichung im Grad der Tauglichkeit ("Fit") und die Verfügbarkeit vermittelnder Faktoren erklärt werden. Die Analyse der Umsetzung der Seveso-II- und der Sicherheitsdatenblätter-Richtlinien in den Niederlanden, Deutschland, dem Vereinigten Königreich und Spanien zeigt jedoch, dass diese identifizierten Faktoren allein nicht ausreichen, um die beobachteten Unterschiede zu erklären. Dieser Artikel plädiert für einen genaueren Blick auf die Rolle der 'Wichtigkeit des Gegenstands' als komplementären Faktor, der die existierenden vermittelnden Faktoren in der Europäisierung-Literatur einschränkt oder stimuliert.
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<b>Explaining Variations in Implementation of EU Directives</b>
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## 1. Introduction <sup>↑</sup>

Uneven implementation of Community law across the European Union is a reality (e.g. Jordan, 1999; Knill, 1997; Mendrinou, 1996; Nicolaidis et al, 2003; Tallberg, 2002). A study of the Seveso II and Safety Data Sheets Directives in the Netherlands, Germany, the United Kingdom and Spain (Versluis, 2003) again exposes that implementation structures and practices differ per directive as well as per member state.(1) Uniform rule application is by no means common practice.

This outcome is not surprising. The same results have often been demonstrated in the Europeanization literature (e.g. Börzel and Risse, 2003; Bulmer and Lequesne, 2002; Cowles, Caporaso and Risse, 2001; Knill and Lehmkuhl, 2002; Olsen, 2002; Radaelli, 2000). For example, as the title of the volume by Héritier et al (2001) – *Differential Europe* – already suggests, the impact of European policy-making is ‘highly different across policies and countries’ and ‘European policy means different things in different domestic constellations’ (Héritier and Knill, 2001: 286).

Europeanization studies – concerned with analyzing the domestic impact of the European Union – start from the assumption that domestic adjustment is only to be expected in case of a misfit between the European and national level and when there are sufficient mediating factors available that can induce change (e.g. Börzel and Risse, 2003; Knill and Lehmkuhl, 2002). The above-mentioned research on the implementation of two specific EU directives shows differences in degree of domestic adjustment and it is thus to be expected that these differences can be explained by variations in the degree of fit and the availability of mediating factors. A thorough analysis shows, however, that the mediating factors identified in the Europeanization literature alone do not suffice to explain the observed differences. In order to fully understand domestic change in relation to implementation, this article pleads for extra attention for what Knill observed in cases of low political attention. He showed that in such cases ‘European adaptation pressure is not sufficient to motivate administrative adaptation at the national level’ (Knill, 1997: 14). In order for an existing implementation style to change, ‘issue salience’ seems to be at stake and thus needs to be taken into consideration.

To explicate the need for attention for issue salience when studying domestic change of implementation, this article analyzes the data available on implementation of the Seveso II and Safety Data Sheets Directives. First the explanatory power of the identified mediating factors within the existing framework is addressed and the observed shortcomings in relation to the case studies at stake are analyzed. Hereafter, the role and functioning of ‘issue salience’ is further elaborated and it is hypothesized how it can serve as a complementary factor in the Europeanization literature.

## 2. Goodness of fit<sup>(2)</sup> ↑

Knill and Lehmkuhl argue that the study of domestic change in the first place depends on the type of regulatory policy. They distinguish between three types of Europeanization mechanisms and the type of directives studied in this article fall under what they describe as ‘institutional compliance’ (Knill and Lehmkuhl, 2002: 257).<sup>(3)</sup> Such directives are a type of positive integration and ask for compliance with very prescriptive and detailed EU requirements. In order to study the domestic impact of such a type of policy, Knill and Lehmkuhl necessitate a two-step approach (Knill and Lehmkuhl, 2002: 259). First it needs to be analyzed whether domestic change can be expected at all. Domestic change can only be expected in case of a ‘misfit’ between European and national level.<sup>(4)</sup> If such a misfit occurs, the second step is to identify the mediating or facilitating factors that actually make the change possible.

Börzel and Risse identify two types of misfit: policy and institutional misfit (Börzel and Risse, 2003: 61-62). Policy misfit refers to the content of the directive and the compatibility with the relevant national law, whereas institutional misfit applies to matters of institutions or procedures.<sup>(5)</sup> In the context of this article, a policy misfit is characterized as a deviation between the content of the EU directive and the existing national legal framework, whereas an institutional misfit refers to the absence of an institutional framework (e.g. inspection agencies) necessary to practically implement a directive.

## 2.1. The degree of fit in relation to the Seveso II Directive

The ‘Seveso II Directive’ of 9 December 1996 concerns the control of major-accident hazards involving dangerous substances.<sup>(6)</sup> In the first place the directive aims to prevent major accidents. In case such accidents do happen, the directive also concentrates on the limitation of the consequences. On the one hand consequences for the environment, but on the other hand it also regulates the protection of employees of a company as well as people outside fences of, for example, a chemical plant. The crux of this directive is the safety report in which the ‘Seveso II companies’ have to demonstrate that they have implemented a major-accident prevention policy, an internal emergency plan and a safety management system.

The Seveso II Directive is a revision of the first Seveso Directive of 1982. One of the main reasons for the revision was a change in focus on more general management systems. This new focus occurred ‘(...) due to the recognition that approximately 85% of over 300 accidents reported under Seveso I have shown some deficiencies in the management system’ (Porter and Wettig, 1999: 3). To bring in this focus on management systems, Seveso II introduced a change from focusing on individual technical installations to focusing on entire establishments.<sup>(7)</sup>

### *Policy misfit?*

Since all member states transposed the first Seveso Directive into their national legislation, the introduction of Seveso II would at first sight not lead to a substantial policy misfit. In theory, countries would ‘only’ have to transpose the new requirements related to management systems as provided by the revised directive. This expectation applies to the Netherlands and the United Kingdom. Both countries did not have a problem with the required change as they both already had national legislation concentrated on regulating safety via management systems. In the other two countries this is not the case; Germany and Spain both show a substantial policy misfit.

For Germany the transition from a focus on individual installations to entire establishments caused considerable problems. Since all German legislation regulating major accident prevention was focused on individual installations, and did not even define the concept of establishments, the new directive led to a required adjustment of all national legislation in this area. Thus the deviating policy tradition of Germany led to a substantial policy misfit caused by the introduction of Seveso II. Spain also shows a policy misfit that is induced by the prevailing tradition. Spain had a tradition of regulating the prevention of major accidents from a ‘civil protection point of view’. With the emphasis on management systems (and thus on the safety report) in Seveso II, the occupational safety and environmental elements are crucial as well and the Spanish ‘civil protection’ approach turned out to be too one-sided.

### *Institutional misfit?*

This distinction between the four countries can also be seen with regard to the institutional misfit. In the Dutch and the British situation, the added requirements in Seveso II did not cause institutional deviations at all. The German policy misfit works on in the practical implementation; in the national inspection procedures. The overall institutional structure to implement Seveso II was available, but inspectors were used to especially checking the *technical details* of individual installations and now had to change their working practice in order to focus on the *general management* of the entire establishment. Especially Spain shows a substantial institutional misfit since it did not have suitable inspection agencies to check a requirement as the safety report. Because of the ‘civil protection’ approach, agencies checking major accident prevention legislation from an occupational safety and

environmental perspective were lacking.

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### Table 1

## **2.2. The degree of fit in relation to the Safety Data Sheets Directive [↑](#)**

The ‘Safety Data Sheets (SDS) Directive’ of 5 March 1991 regulates that persons responsible for placing dangerous preparations on the market, whether manufacturer, importer or distributor, must supply the recipients with information – in the form of a ‘safety data sheet’ – on how to deal with these dangerous preparations.<sup>(8)</sup> The information must be presented in 16 headings such as information on composition and ingredients (heading 2), fire-fighting measures (heading 5) or information on handling and storage (heading 7).

Of the four member states studied, Germany already had its own voluntary system for safety data sheets since the 1980s. The sheets in the German system were called ‘DIN – Sicherheitsdatenblätter’. DIN (‘Deutsches Institut für Normung’) is the German standardization organization that set up a standardized format for safety data sheets. The United Kingdom, Spain and the Netherlands did not have their own voluntary systems. However, most chemical companies, especially the larger ones and the multinationals, already had a system in place to provide some sort of safety data sheets. There already was a standard of the ‘International Standardization Organization’ – the ISO 11014-1 standard – and within the United States there also was a format for sheets with nine headings available. These already existing standards were less detailed and had fewer headings than the 16 headings prescribed by the EU directive, but at least most companies were aware of the existence of the sheets and were familiar with the concept. One can say that the European directive was an attempt to harmonize the sheets already available in Europe into one standard concept.

### *Policy misfit?*

The SDS Directive clearly led to a policy misfit in all member states. None of the countries already had legislation on safety data sheets and were therefore required to set up new legislation. The policy misfit in Germany is considered ‘medium’ – since this country already had experience with its sort-like voluntary system – and is considered ‘high’ in the three other countries because of their lack of experience with this topic.

### *Institutional misfit?*

None of the countries showed an existing enforcement practice. The system already in place in Germany was voluntary and thus not enforced. The institutional misfit in all four countries is categorized as ‘medium’ because they all used their already existing institutional structure; none of them were required to establish new inspection agencies since they all appointed their ‘health protection agencies’.

### Table 2

## 3. Domestic change in implementation?

### 3.1. How to measure domestic change in implementation?

Both cases show a misfit between the EU directive and the domestic practice in all four member states. So potentially domestic change can be expected. To what extent has change actually occurred in domestic implementation? Radaelli identifies four possible outcomes of Europeanization: retrenchment, inertia, absorption and transformation (Radaelli, 2003: 35-38). The ‘negative’ outcomes are retrenchment (a form of domestic change that makes the national situation less European) and inertia (a lack of change). The ‘positive’ outcomes are absorption (non-fundamental changes, also referred to as ‘accommodation’) and transformation (paradigmatic changes). In the case of a small misfit (e.g. Seveso II in the Netherlands and the United Kingdom), paradigmatic changes are not required, and therefore transformation is not to be expected (neither is a ‘strong’ reaction as retrenchment to be expected). In the example of a large misfit, the outcome of absorption is impossible since a large misfit implies a real modification.

Change in implementation can be measured on two separate levels: change with respect to formal or legal implementation (transposition) and change with respect to practical or administrative implementation (enforcement).<sup>(9)</sup> Transposition can be an extremely long and sometimes complicated process, but in the end member states do transpose EU directives into their national legal system (e.g. Börzel, 2001; Mastenbroek, 2003; Tallberg, 2002). Also in the case studies in this article, transposition does not form a problem; both directives are – in some countries later than in others – transposed into domestic legislation. Domestic change as regards to transposition is therefore noticeable in all cases and will not be explored further in this article. More interesting but more difficult to pinpoint is change with respect to enforcement.

Change can take place in both the ‘structure’ and in the ‘practice’ of enforcement. Structure refers to the institutional organization of enforcement. Change in the enforcement structure can be measured when the introduction of a European directive leads to the appointment (or even setting up) of new enforcement agencies and/or when existing agencies are to amend organizational elements such as size or working method.

A focus on the structure does not yet say anything about the practice of enforcement; the ‘law in action’. The law on paper only becomes a real law in action when it is actually complied with by the regulated and when this level of compliance is checked by inspectors and where necessary sanctioned.<sup>(10)</sup> Change with respect to enforcement practices is especially noticeable when a member state shows an enforcement practice that causes a break from the national tradition of enforcing (or not enforcing) a type of legislation; for example, when the introduction of a European directive increases (or decreases) the intensity of inspections, or when it leads to an entire new type of inspections.

### 3.2 . The Seveso II Directive

In all four member states domestic change with respect to enforcement is noticeable. The introduction of the Seveso II Directive led to a convergence of national enforcement practices. A harmonization of aspects such as the assessment of the safety report, the setting up of external emergency plans and the yearly inspections can be observed. The directive certainly made the former national enforcement practices more intensive.

However, there is a clear difference between the Netherlands and the United Kingdom on the one hand (absorption) and Germany and Spain on the other hand (slow transformation). In the first two countries the introduction of the directive did not require a complete break from the existing enforcement practice, whereas in the latter two countries this was the case.

The Netherlands and the United Kingdom could to a large extent rely on the existing enforcement practice. Inspection agencies already existed and inspectors were used to checking organizational management systems. The required changes were minimal compared to Germany and Spain. In Germany the (already existing) inspection agencies slowly but surely began to adapt to the new circumstances of inspecting the general management of establishments as required by Seveso II. The most obvious change in relation to the enforcement structure is noticeable in Spain. Here the existing enforcement agencies were not fully equipped and did not have the expertise to handle the enforcement of this new directive because of the deviating policy tradition. The Autonomous Communities therefore had to hire private, often foreign, agencies. Thus in Spain the introduction of the Seveso II Directive led to a renewal and updating of the existing enforcement structure. There are large differences between the Spanish Autonomous Communities, however. Catalonia clearly leads the way in this transformation. Other Communities somewhat lag behind and here the situation for the moment can better be described as ‘inertia’ since no change is noticeable yet.

### 3.3. The Safety Data Sheets Directive

During or after the transposition of the SDS Directive, all four countries immediately arranged the set-up of the necessary enforcement structure. In all cases the required inspection agencies already existed and the introduction of this particular directive did not lead to any changes in the organization of these agencies. There is a huge gap, however, between the enforcement structure on paper and the enforcement practice in reality. Reality shows that the enforcement of the SDS Directive is not high on everyone’s agenda. Companies that handle dangerous substances and preparations only have a very small chance of being inspected for their SDS compliance. Only special projects guarantee attention for this directive and such special projects are rare.<sup>(11)</sup> The Netherlands forms the positive exception. Here, since 1997, the health department of the ‘Inspectorate for the Environment’ organizes annual projects on ‘hazardous substances’ that include a focus on safety data sheets and it is likely that they continue doing so in the nearby future. However, even here, the eight to ten inspectors who actively enforce this directive hardly have an impact on the thousands of companies that potentially can be checked for their safety data sheets. It can be concluded that the introduction of the SDS Directive hardly brought about changes in the domestic enforcement practices; the coming into being of the directive only brought about a change on paper.

#### Table 3

## 4. The presence or absence of domestic change explained: explanatory strenghts and weaknesses of existing mediating factors

A misfit between both EU directives and the domestic traditions is noticeable in both cases. Generalizing, the outcome of the case studies shows a presence of domestic change in enforcement practices in the example of the Seveso II Directive and an absence of such a change when it comes to Safety Data Sheets. According to Knill and Lehmkuhl’s two-step approach these findings call for a further investigation of the mediating factors at work.

Different authors identify different frameworks of mediating factors.<sup>(12)</sup> Börzel and Risse have grouped the different propositions into two variants that cover most of the mediating factors identified by other authors. They argue that all frameworks depart from new institutionalism and that all different mediating factors can be accommodated under either *rational choice institutionalism* or *sociological institutionalism* (Börzel and Risse, 2003: 58). According to the rationalist perspective, the two mediating factors are multiple veto-points and facilitating formal institutions. The absence of multiple veto-points and the presence of facilitating formal institutions will lead to a redistribution of resources that in turn will induce domestic change ('logic of consequentialism'). The sociological perspective departs from two different mediators: change agents and a political culture based on consensus. The 'logic of appropriateness' behind these two factors is the process of persuasion in which persuasive change agents and a consensus-oriented or cooperative decision-making culture lead to socialization and social learning.

## 4.1. Explaining domestic change related to the Seveso II Directive

### 4.1.1. Veto-points and facilitating institutions

The Netherlands and the United Kingdom show ideal circumstances for domestic change. In both countries there is an absence of strong veto-points and a presence of facilitating formal institutions. The situation in both member states is comparable in the sense that there were no influential veto-points to resist adaptation. Industry did complain about the introduction of Seveso II but was not able to mobilize a powerful block. As well, both countries already had knowledgeable enforcement agencies (the facilitating institutions necessary to induce domestic change related to enforcement). Thus in these two countries, rational choice institutionalism is capable of explaining domestic change.

The situation is slightly different in the case of Germany. Due to the existence of powerful veto-points in the form of a few southern Länder (Baden-Württemberg, Bavaria and Rheinland-Pfalz), the federal economics and labour ministries and industry, the first two years after the entering into force of the Seveso II Directive did not show a change in the existing German enforcement practice. A negative attitude of these players on a proposal by the federal environment ministry to lower the thresholds of the dangerous substances allowed in chemical companies resulted in three years of 'hot debate' and thus 'vetoed' any change in the enforcement practice. Despite the delaying impact of the veto-points, Germany slowly but surely did overcome its misfit. An explanation for this is the availability of enforcement agencies such as the 'Gewerbeaufsichtamt' and the environmental departments of regional governments and local authorities. However, these agencies had large problems adjusting their enforcement practice to the new requirement to check management systems and can therefore only partly be described as *facilitating* institutions.

The analysis of the presence of rational choice mediating factors in Spain shows a similar situation. As in Germany, veto-points are present and facilitating formal institutions are hardly available. Veto-points that block change are present in the form of the Autonomous Communities. The national government transposed the Seveso II Directive rather quickly (and thus complied with the formal transposition requirements), but the 17 Autonomous Communities additionally needed to enact this national legislation in regional decrees specifying the relevant authorities and working structures. Three years after the entering into force of the directive, still none of the Autonomous Communities managed to set up such a decree. Especially the regional ministries, in this example, function as veto points by not laying down the formal requirements necessary for the enforcement. Despite this impeding impact of the regional ministries, especially Catalonia slowly but surely did overcome the misfit and saw the coming into being of a Seveso II enforcement practice.

This can hardly be explained by the presence of facilitating institutions. There were no available institutions with experience or expertise that could stimulate the change: Spain did not have its own enforcement agencies equipped to enforce major accident prevention legislation. Only in a late phase, Catalonia appointed private and foreign agencies to start the enforcement.

#### Table 4

### **4.1.2. Change agents and a co-operative political culture** ↑

In all four member states it can be said that change agents were present in the form of influential policy makers on national or regional level who stimulated and induced change. Especially in the Netherlands and the United Kingdom, responsible persons at the national ministry or in the enforcement agencies played a role in the ‘persuasion’ of other actors. To give one specific example, a group of senior officials within the Dutch ‘Labor Inspectorate’ operated as change agents by formulating detailed enforcement tools that initiated change by persuading the street-level inspectors to actively enforce the Seveso II Directive.

As well, all countries, to some extent, show a consensus-oriented culture that can explain domestic change. In Germany – after the heavy debates between the different Länder and the different ministries – the various actors cooperated on the enforcement of this directive in the federal ‘Installation Safety’ committee, which resulted in a rather consensus-oriented culture. Spain, however, shows the most ‘problematic’ case when it comes to a cooperative culture. On paper there is cooperation between the national government and the Autonomous Communities, and among the Autonomous Communities themselves, in the ‘National Commission on Civil Protection’. In practice, however, not all Communities are positive about cooperation on the establishment of an enforcement structure. Several interviewees indicated not to be willing to work together due to large variations in regional styles and approaches, leading to the situation in which each Community is ‘inventing its own wheel’.

#### Table 5

## **4.2 Explaining domestic change related to the Safety Data Sheets Directive** ↑

### **4.2.1. Veto-points and facilitating institutions**

The two mediating factors identified by rational choice institutionalism do not at all seem to explain why the introduction of the Safety Data Sheets Directive did not lead to the start of an enforcement practice in any of the four member states. None of the countries had to overcome the difficulty of multiple veto-points. Neither the German Länder nor the Spanish Autonomous Communities were involved in the transposition and in none of the countries industry formed a difficult ‘veto-point’. As well, all countries had enforcement agencies available with sufficient experience and expertise to enforce this type of legislation. Thus the absence of veto-points and the presence of facilitating institutions do not explain the state of inertia.

#### Table 6

#### 4.2.2. Change agents and a co-operative political culture

In none of the four member states there was a sign that there was no cooperative political culture. The presence or absence of change agents seems to form an important explanation for the slight absorption in the Netherlands and the inertia in the other three countries. The Netherlands was the only country with a change agent in the form of a civil servant of the ‘Inspectorate for the Environment’ who pushed for enforcement of the SDS Directive in the form of yearly projects on hazardous substances. In the other three countries no such change agents were visible, which might form a part of the explanation why there is no domestic change.

#### Table 7

#### 4.3. Conclusion

The data on Seveso II and SDS show that differences in enforcement practices exist. These findings are congruent with current Europeanization literature. Domestic implementation structures and practices are embedded within long-existing legal and administrative traditions. The way in which a country implements legislation is part of the national regulatory style. According to Van Waarden, such styles are deeply rooted in the institutions of countries. He argues that ‘given this institutional embeddedness, regulatory styles will be rather resistant to change’ (Van Waarden, 1995: 333).

In order to explain the extent of the changes that do occur, Europeanization theorists introduce a two-step approach. First, the existence of a policy or institutional misfit has to be shown. Second, a number of mediating factors has to be taken into account. The empirical findings on the identified mediating factors in relation to the Seveso II and Safety Data Sheets Directives show, however, that these mediating factors alone are insufficient to explain when, why and to what extent domestic change did occur. As can be seen in table 8, the study of the Seveso II Directive shows the situation in some countries in which there is a misfit and absence of strong mediating factors and still domestic change can be observed. Overall it can be concluded that the actual change in enforcement of the Seveso II directive was higher than was to be expected based on the mediating factors. The other way around, the SDS example as presented in table 9 shows a misfit and presence of mediating factors while no change in enforcement is noticeable. As opposed to the outcomes related to the Seveso II Directive, the actual changes found in relation to the Safety Data Sheets Directive are lower than was to be expected. An extra facilitating or constraining mechanism seems to be at work.

#### Table 8

#### Table 9

### 5. The presence or absence of domestic change explained: issue salience as a complementary factor

#### 5.1. The concept of ‘issue salience’

The number of regulations that inspectors have to enforce is enormous. Generally speaking, enforcement agencies are accountable for more regulations than the number of inspectors available can ever check. Choices have to be made. Noordegraaf describes these choice-making processes as the ‘distribution of attention’ (Noordegraaf, 2000).<sup>(13)</sup>

In order to make these choices, inspectors (or the heads of enforcement agencies, or ministerial departments responsible for the enforcement agencies, depending on the domestic situation) are forced to make a comparison. They compare the potentially to be enforced regulations in order to make a decision what topics to pay attention to and what topics to ignore. When a regulation is not 'selected', the enforcement practice of a country is unlikely to change. Obviously, the choice which regulations to enforce is not a daily decision made by individual inspectors based on their own preferences. Their daily proceedings – and therefore the way in which they distribute their attention – are greatly influenced by the institutional surroundings. The basic question therefore is: How do regulations influence the institutional attention-distribution mechanisms of organizations and/or how do they capture the attention of key-actors such as the European Commission, ministries, enforcement agencies or individual inspectors? The case studies in this article show that this choice to a large extent seems to be based on the salience of a particular regulation and that this salience influences whether or not the introduction of a European directive will lead to domestic change in enforcement practices. To put it more simply, the higher amount of change in relation to the Seveso II Directive and the lower amount of change with respect to SDS both seem to be induced by the same factor: the *high salience* of the Seveso II Directive and the *low salience* of the SDS Directive.

Issue salience in general terms refers to the visibility of and the importance attached to a topic and starts from the assumption that visibility of an issue conditions behavior. One of the firsts to refer to the concept of 'salience' were Miller and Stokes when they mentioned 'the charged and polarized nature' of a policy area to be of importance when explaining preferences of politicians (Miller and Stokes, 1963: 51). Issue salience is a concept that is hard to operationalize and examples can be found of cases in which the concept is used, but not defined (e.g. Ray, 1999; Roberts et al, 2002). In most cases, salience is 'measured' by news coverage where the amount of media coverage is to indicate the salience of a topic (Roberts et al, 2002: 452). When analyzing the salience of the two directives in this research based on news coverage, the Seveso II Directive that regularly reaches the news is salient whereas the SDS Directive is not.

But is news coverage alone an indicator of salience? Is it not the case that a topic will be covered in the news because it is salient? As stated before, the main indicator of salience is *attention*: an issue is salient when it receives much attention, i.e. news coverage. So what makes that an issue receives attention or is covered in the news? There potentially can be many elements that trigger attention, but in the case studies analyzed in this article, especially two elements seem to be of importance: risks and focusing events. Both these elements lead to the conclusion that the Seveso II Directive is considered salient whereas the SDS Directive is not.

First of all, *risks* – and especially the visibility of risks – trigger attention. Linked to this is the notion of 'risk perception'; what risks do we *have* to pay attention to? When analyzing the Seveso II and Safety Data Sheets Directives, an obvious distinction between both directives is noticeable. The risks regulated by the Seveso II Directive are higher and potentially have more impact on a wider public. The differences in domestic change in Seveso II enforcement between different Spanish Autonomous Communities seem to support the importance of risks. Approximately a quarter of all Spanish Seveso II companies are located in Catalonia and the fact that this Community is thus a densely 'Seveso-populated' area increases the risks<sup>(14)</sup> and thus increases the salience. The other Autonomous Communities only have a few Seveso II companies under their competence, which lowers the risks and therefore makes the issue less prominent. This difference in risk perception, and thus in salience, is the major explanation for why there is domestic change in Catalonia and not in the other Communities.

A second element that influences the attention paid to a topic – and thus its salience – is linked to what Kingdon (1995) refers to as ‘*focusing events*’. According to Kingdon the reason why some potential problems are picked up and why others are ignored is to a large extent to be found in focusing events that push problems onto the agenda or drive them into ‘greater prominence’ (Kingdon, 1995: 93). Such focusing events can be pressure campaigns or dramatic events such as accidents, disasters or crises. Dramatic events can induce domestic change: ‘In the aftermath of a televised hotel fire, a death-dealing tunnel collapse, or a highly-visible oil spill, political leaders often respond by holding hearings, replacing agency heads, and calling for new, more rigorously enforced regulations’ (Kagan, 1989: 108). Also in the case of the Seveso II Directive, focusing events increase its salience. In recent years, various accidents related to Seveso II occurred: a cyanide spill into the Tisza River in Baie Mare, Romania, in January 2000, the explosion of a fireworks storage facility in Enschede, the Netherlands, on 13 May 2000 and the blast in a petrochemical and fertiliser factory in Toulouse, France, on 21 September 2001. These accidents led to a wave of attention for stricter enforcement in all member states. Especially in the Netherlands ‘Enschede’ led to an obvious change: ‘One inspector who was interviewed before the accident clearly expressed the ‘gedoog-culture’ in the Netherlands: ‘Of course we have to be strict, but in some cases it is much more efficient for us and for the companies to sustain situations that, according to the law, should be changed.’ None of the inspectors who were interviewed after the accident agreed with this. They all stated that this used to be the situation but each inspectors individually claimed to now have changed his or her own enforcement style’ (Versluis, 2003: 224). Such accidents do not automatically lead to long-lasting attention since attention as a result of focusing events is faddish (Kingdon, 1995: 113). The combination of several accidents in a short period of time, however, increases the likelihood that attention for a topic is tenable. It again emphasized the underlying reason for regulation of this topic; after all the name of the directive is derived from the major accident in Seveso, Italy, in 1976.

## 5.2. How high issue salience stimulates available mediating factors

The cases of the Seveso II enforcement practice in Germany and Spain show a stronger change than would be expected based on the presence of mediating factors. While there is a misfit and an absence of strong mediating factors, slow transformation is noticeable in these countries. The fact that the enforcement practice does (slowly) change can be explained by a change in the formal institutions. In both countries, the formal institutions necessary to induce change – the enforcement agencies – were not in the position to promote domestic adaptation at the time when the directive was introduced. The German enforcement agencies did not have the expertise and experience necessary to inspect management systems and in Spain no enforcement agencies ready for such inspections existed at all. In both countries the presence of veto-points and the absence of strong change agents or a cooperative political culture hindered a change in these formal institutions.

So why did Germany then slowly but surely change its enforcement style from rather technical oriented inspections to more managerial inspections? And why did Catalonia decide to appoint private and foreign enforcement agencies even though the formal requirements were not yet developed? Both countries only showed a change from the moment the Seveso II directive gained more attention. It seems that the increased salience due to accidents such as those in Enschede and Toulouse stimulated the European Commission to act as a change agent by issuing more and more guidance material via its ‘Major Accident Hazards Bureau’ and by organizing a joint inspection project. Increased Commission attention in its turn induced change agents in the member states. The development of EU guidance material triggered the already present German formal institutions to start providing the ‘material and ideational resources necessary to (...) promote domestic adaptation’ (Börzel and Risse, 2003: 65) in the form of handbooks and computer programs for

inspectors. The Seveso II case seems to demonstrate that the salience of a topic stimulates or triggers the facilitating function of mediating factors.

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### 5.3. How low issue salience constraints available mediating factors ↑

Where the Seveso II example showed a stronger than expected change, the Safety Data Sheets Directive brought about less change in the domestic enforcement practices (of Germany, the United Kingdom and Spain) than would have been anticipated based on the presence of mediating factors. Why does the misfit not lead to change, even though there are no veto-points, sufficient formal institutions and no sign of an uncooperative political culture? Is this all to be explained by the absence of change agents? To a large extent, yes. The fact that the SDS Directive simply is not enforced in these three countries can be attributed to the absence of change agents. This absence of change agents, or norm entrepreneurs, is, however, strongly connected to the topic of issue salience. The analysis of this directive seems to show that the main reason why no change agents are available – and thus why no change takes place at all – is precisely the low salience of the topic that the directive regulates. The SDS Directive is simply not considered to be important enough to trigger change agents or to stimulate the available formal institutions in the form of enforcement agencies to provide the resources necessary to induce change. The low salience seems to constraint the facilitating effect of mediating factors.

The fact that choices have to be made with regard to the regulations that are being enforced, and that these choices are influenced by issue salience, is clearly visible in the ‘Health and Safety Executive’ in the United Kingdom. Inspectors in this enforcement agency are responsible for all British occupational safety and health legislation. This implies that these inspectors have to enforce an enormous body of legislation in which both the Seveso II and the SDS Directive are situated. All nine inspectors interviewed for their enforcement practice related to these two directives indicated that even though they on paper are responsible for both directives, they only pay attention to the Seveso II Directive in reality. When asked for the underlying reason, it was often indicated that the topic of the SDS Directive only lies in the margin of safety regulation. One interviewee stated that ‘(...) some regulations clearly can’t be avoided and are pushed for by our management as nowadays is the case with COMAH [British regulation that transposed Seveso II]. I tried to push for more national attention for the sheets as well, you know, but when COMAH came along all minor topics had to be pushed aside.’ (15)

### 5.4. Conclusion ↑

‘An issue becomes a burning issue when it reaches crisis proportions. Until there’s a crisis, it’s just one of many issues. Governmental policy always has been, and always will be, a function of crisis’ (Kingdon, 1995: 95). The same seems to some extent apply to enforcement as well. In the two examples analyzed in this article it is almost as if a crisis of some sort is necessary to draw the attention to the need for enforcement of a particular directive.

Issue salience especially seems to be related to the mediating factor of change agents. Such change agents pressure to initiate change. Kingdon argues they do more than ‘push, push, and push’; they wait ‘for a window to open’ (Kingdon, 1995: 181). Especially in the example of the Seveso II directive, the combination of both the Enschede and Toulouse accidents seems to have opened this window for change agents. For example in the case of Germany, the increased salience made individual inspectors in several Länder push for more detailed enforcement tools in order to be able to check managerial aspects and this in turn stimulated existing enforcement agencies to change their style of inspections.

Checkel (2001) also already noticed a change in German institutions due to persuasion by change agents in the case of citizenship. This link between change agents and issue salience is rather logical in the sense that change agents, of the four identified mediating factors, are the least institutionalized. Whereas the other three factors are more institutionally embedded, and thus more change resistant, change agents are more likely to be influenced by the factor issue salience.

The statement by Kingdon that ‘crises, disasters, symbols, and other focusing events only rarely carry a subject to policy agenda prominence by themselves. They need to be accompanied by something else’ (Kingdon, 1995: 98) seems to be applicable to domestic change in enforcement as well. High salience as such is not enough to guarantee domestic change in enforcement practices. Without the presence of mediating factors, issue salience alone will not lead to change. Without the presence of, for example, formal institutions or change agents a highly salient issue is unlikely to lead to domestic change in existing enforcement practices. High issue salience merely seems to function as a catalyst that triggers already present mediating factors. On the other hand, low salience alone seems to be sufficient to hinder a potential process of domestic change; even with the presence of mediating factors, low salience as such can obstruct their function to facilitate change.

## 6. Conclusion <sup>↑</sup>

Domestic change in implementation differs per member state and per directive. In order to genuinely identify domestic change one has to ‘descend’ to the working floor level of enforcement (and compliance). Especially the case of the Safety Data Sheets Directive shows that without taking actual enforcement practices into account wrong conclusions about the level of domestic change can be drawn. This specific directive shows the importance of looking at the enforcement *practice*. Domestic change of the ‘law in the books’ does not necessarily mean domestic change of the ‘law in action’ as well. Enforcement practices do not change easily. There is a kind of institutional conservatism that needs to be overcome.

The mediating factors identified by both rational choice and sociological institutionalism only seem to explain the presence of domestic change in some of the cases. The absorption of the Seveso II Directive into the Dutch and British traditions can very well be explained by either rational choice or sociological institutionalism. The lack of multiple veto-points and presence of facilitating institutions in the form of enforcement agencies result in a redistribution of the resources and lead to domestic change. It could as well be argued that the presence of change agents and a political culture based on consensus induce socialization and social learning. Also the example of the Netherlands in the case of the SDS Directive could be explained by both variants. Both the lack of veto-points and presence of facilitating institutions and the presence of change agents and a cooperative political culture explain why a slight absorption is noticeable. However, these identified mediating factors are not sufficient to explain why Germany and Spain changed their Seveso II enforcement despite the presence of veto-points and the absence of sufficient facilitating institutions, change agents and a cooperative political culture. Nor do they make clear why the SDS Directive leads to a state of inertia in the United Kingdom, Germany and Spain even though there are no major obstacles to change.

The case studies of the implementation of the Seveso II and Safety Data Sheets Directives in the Netherlands, Germany, the United Kingdom and Spain seem to hint in the direction of issue salience. A salient directive appears to facilitate domestic change and a non-salient directive seems to impede this. The salience of the Seveso II Directive might form an explanation for why Germany and Spain did change their enforcement practice. Non-salience as well might explain the lack of change in relation to the SDS Directive. According to Radaelli inertia ‘may simply happen when a country finds that EU political architectures, choices, models, or policy are too dissimilar to domestic practice’ (Radaelli, 2003: 37). The SDS case, however, appears to show that inertia also takes place when a topic is simply not important enough to induce change.

The concept of issue salience still remains vague and intangible and thus needs further operationalization. What triggers attention for a topic? Do indicators indeed have to be sought in elements such as risks and focusing events, or are more or other indicators at stake? As well, the case studies of implementation of only two directives in four member states are insufficient to come to far-reaching conclusions. However, issue salience might be taken into account as a complementary factor that emerges and interacts with the existing mediating factors, especially with ‘change agents’; it seems to function as a *constraining or impeding factor* in case of low salience and as a *stimulating or strengthening factor* in case of high salience. Further operationalization and application is required to test this hypothesis.

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## Endnotes <sup>↑</sup>

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(1) The empirical results described in this article are drawn from an implementation study conducted for my dissertation (Versluis, 2003). The information on the implementation of two directives in four member states is mainly obtained via 106 in-depth interviews and 210 questionnaires. Respondents were representing the European Commission, national and regional governments, enforcement agencies, industry associations and chemical companies. Since responsibility for the enforcement of legislation in Germany and Spain lies with the 16 Länder and 17 Autonomous Communities, it is in these countries necessary to select cases: 3 Länder (North-Rhine Westphalia, Baden-Württemberg and Bavaria) and 3 Autonomous Communities (Catalonia, Valencia and Madrid) have been selected as examples.

(2) For the background of the analysis of the goodness of fit and the presence of domestic change in relation to Seveso II, see Versluis (2003), chapter 3. For the analysis of Safety Data Sheets see [chapter 5](#).

(3) The other two mechanisms of Europeanization are 'changing domestic opportunity structures' and 'framing domestic beliefs and expectations'.

(4) Knill and Lehmkuhl argue that the misfit must not be too fundamental since this will lead to domestic persistence (Knill and Lehmkuhl, 2002: 260). Thus only in case of a 'moderate misfit' domestic change is possible. A problem with this argument, however, is that the degree of fit or misfit is extremely hard to measure. There is no universal or absolute scale on which to compare. Cases and countries can only be compared with each other and thus the degree of fit always seems to be relative.

(5) Recently Falkner operationalized the concept of 'misfit' in which she added a third dimension of costs that concern the economic consequences of a required reform (Falkner, 2003: 3-4).

(6) OJ No L 10, 14/01/1997, p. 0013-0033.

(7) An establishment, according to Article 3 of the Seveso II directive, is 'the whole area under the control of an operator where dangerous substances are present in one or more installations'. An installation, according to this Article, is 'a technical unit within an establishment in which dangerous substances are produced, used, handled or stored'. An establishment usually houses more than one installation. Large establishments can, for example, even have more than 50 installations.

(8) OJ L 076, 22/03/1991, p. 0035-0041.

(9) Transposition is understood as the ‘conversion on paper of international commitments to domestic law’ (Haas, 1998: 18), whereas enforcement refers to ‘the degree to which the relevant authorities seek to ensure compliance and bring those responsible for non-compliance into line’ (Matthews, 1993: 2).

(10) This article only focuses on ‘enforcement’ and will therefore leave out the element of ‘compliance’.

(11) The United Kingdom had one project on SDS in 1997/1998 in the Northern Region only. In Germany the three studied Länder executed one small project on this topic in 1995 (North-Rhine Westphalia) or 2000 (Baden-Württemberg and Bavaria). In Spain, Catalonia and Valencia never paid special attention to this topic; only Madrid introduced a small project that covers safety data sheets.

(12) For example, Knill and Lehmkuhl talk about ‘prevailing actor constellations’ and ‘opportunity structures’ (Knill and Lehmkuhl, 2002: 259), whereas Cowles, Caporaso and Risse indicate ‘veto-points’, ‘facilitating institutions’ and ‘cooperative cultures’ (Cowles, Caporaso and Risse, 2001: 9).

(13) Attention, in his view, consists of actor attendance (where do they spend their time?), actor attention (what subjects are they concerned with?) and issue attention (which aspects do they focus on and how do they react?).

(14) Seveso II companies located close together show an increased risk due to the danger of a possible ‘domino effect’ after an explosion.

(15) Interview in the Hazardous Installations Directorate (Northern Region) of the Health and Safety Executive, 6 December 2000.

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## Table I

### Seveso II: the degree of fit

	degree of policy misfit	degree of institutional misfit
<b>The Netherlands</b>	low	none
<b>United Kingdom</b>	low	none
<b>Germany</b>	high	medium
<b>Spain</b>	high	high

## Table II

### SDS: the degree of fit

	degree of policy misfit	degree of institutional misfit
<b>The Netherlands</b>	high	medium
<b>United Kingdom</b>	high	medium
<b>Germany</b>	medium	medium
<b>Spain</b>	high	medium

## Table III

### Domestic change in enforcement

	Seveso II Directive	Safety Data Sheets Directive
<b>The Netherlands</b>	absorption	slight absorption
<b>United Kingdom</b>	absorption	inertia
<b>Germany</b>	slow transformation	inertia
<b>Spain</b>	slow transformation (Catalonia)	inertia
	inertia (other Communities)	

## Table IV

### Seveso II: rational choice mediating factors

	<b>veto-points</b>	<b>facilitating institutions</b>
<b>NL</b>	few with little impact (industry)	yes
<b>UK</b>	few with little impact (industry)	yes
<b>D</b>	many (Länder, federal ministries & industry)	partly (agencies are available, yet no tradition of expertise)
<b>E</b>	many (Autonomous Communities)	hardly (only installed late, no tradition of expertise)

## Table V

### Seveso II: sociological mediating factors

	<b>change agents</b>	<b>cooperative political culture</b>
<b>NL</b>	yes	yes
<b>UK</b>	yes	yes
<b>D</b>	to some extent	after some debates
<b>E</b>	to some extent	to some extent

## Table VI

### SDS: rational choice mediating factors

	<b>veto-points</b>	<b>facilitating institutions</b>
<b>NL</b>	no	yes
<b>UK</b>	no	yes
<b>D</b>	no	yes
<b>E</b>	no	yes

## Table VII

### SDS: sociological mediating factors

	<b>change agents</b>	<b>cooperative political culture</b>
<b>NL</b>	yes	yes
<b>UK</b>	no	yes
<b>D</b>	no	yes
<b>E</b>	no	yes

## Table VIII

### Seveso II: explaining domestic change

	<b>misfit</b>	<b>presence mediating factors</b>	<b>expected change</b>	<b>actual change</b>
<b>NL</b>	low	yes	absorption	absorption
<b>UK</b>	low	yes	absorption	absorption
<b>D</b>	medium/high	partly	inertia/absorption	slow transformation
<b>E</b>	high	hardly	inertia	slow transformation

## Table IX

### SDS: explaining domestic change

	<b>misfit</b>	<b>presence mediating factors</b>	<b>expected change</b>	<b>actual change</b>
<b>NL</b>	medium/high	Yes	transformation	slight absorption
<b>UK</b>	medium/high	yes (except change agents)	absorption/transformation	inertia
<b>D</b>	medium	yes (except change agents)	absorption/transformation	inertia
<b>E</b>	medium/high	yes (except change agents)	absorption/transformation	inertia

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