

Chapter 2

EU Legislative Activities and Domestic Politics

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Much of the Europeanization debate revolves around the impact of Brussels on the domestic legislatures of the member states, in particular the domination of their legislatures by the binding and enforceable activities of the EU. Because this impact is a direct result of the amount of legislative activities at the EU level, this chapter documents EU legislative decision-making and explores the consequences of treaty revisions and enlargements, which have changed the goals and conditions for EU legislative decision-making over time. The famous prediction of the former Commission president Jacques Delors, claiming that 80% of economic legislation, perhaps of taxation and social legislation, would originate in Brussels (6.7.1988. EP 2-367/157), was made at the end of the 1980s when EU legislative activities had reached a peak in the attempt to complete the Common Market by the effective application of qualified majority voting in the Council of Ministers until the end of 1992.

Since then the EU has experienced further enlargement rounds with the accession of a large number of countries having diverse interests, which are considered to have made the adoption of EU legislation more difficult. Moreover, the Nice treaty (2003) complicated the rules for qualified majority voting in many policy areas, which led to a higher risk of gridlock in the Council of Ministers. This prompts questions as to whether EU legislative activities have slowed down due to accessions and consensus rules in the Council of Ministers. On the other hand, Brussels impact may be

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determined not only by the amount of legislative activities, but also by the type of instrument used. For example, it is possible that Brussels still produces a large number of legal obligations via directives, which member states must transpose into domestic law. Hence, this chapter reports on the amount of legislative activities, the type of instruments, and their area-specific application over the past 20 years.

In general, the level of EU legislative activities is determined by two crucial factors, the extent of material competencies of the EU and the motivation and ability of the Commission, the member states and the European Parliament to use them. Regarding the material competencies, the EU has integrated a large number of policy areas through several treaty revisions. After the creation of the ECSC, the EEC, and EURATOM in the 1950s, in particular the Single European Act (1987), Maastricht (1993), Amsterdam (1999), and Nice (2003) treaties have significantly raised the EU's material competencies in several policy areas. At the same time, these treaties have increased the ability of EU actors to use these competencies by introducing and expanding the application of qualified majority voting in the Council of Ministers. However, it is commonly believed that the accessions of new member states in the 1980s, mid-1990s, and beginning of 2000s have increased the diversity of interests in the Council of Ministers, which conventionally reduces the EU's ability to act (König and Bräuninger 2004). Furthermore, the European Parliament has been equipped with veto power under the shadow of qualified majority voting in the Council of Ministers, which should also lower the amount of activities (Schulz and König 2000).

These developments – the increasing level of material competencies on the one hand and the diversity of interests on the other hand, which are accompanied by the change of the Council of Minister's voting rules and the participation of the European Parliament – demand a closer inspection of the EU's legislative output (König et al. 2006). In particular, the number and range of directives that must be transposed by the member states into domestic law, is an important indicator for the extent to which domestic legislation originates in Brussels. Hereby, member states have the discretion to implement directives by legislative or executive measures and vary considerably in their use of these transposition instruments (Franchino and Hoyland 2009; König and Mäder 2007). As a consequence, the level of Brussels executive influence is also homemade by the in- or exclusion of domestic legislatures in the implementation of directives.

This chapter will take a closer look at the EU legislative activities from 1984 to 2007 using information from EURLEX. We will present the amount of binding legislation, which the EU adopts in the form of directives, regulations and decisions. These three types of legislation are adopted by the Council of Ministers under the consultation procedure, the Council of Ministers and the European Parliament under the cooperation and codecision procedures, or by the Commission alone (tertiary legislation). We will see how the use of these procedures has developed over time and across policy fields, which were concurrently complemented by treaty revisions and accessions. Furthermore, we will take a closer look at the application of qualified majority voting in the Council of Ministers and the participation of the European Parliament. In addition to these formal characteristics of EU legislative productivity, we also present indicators on the potential for conflict among the member states,

which provide additional insight into the nature of EU decision-making. Finally, we will pay special attention to directives, which can have a direct impact on domestic legislatures due to their required transposition into domestic law.

EU Legislation over Time

The history of EU legislative activities is characterized by distinct events of enlarging and deepening. As suggested in Fig. 2.1, the treaty revisions of the past 20 years deepened the relationship among the member states by increasing the material competencies of the EU across various policy fields and expanding qualified majority voting in the Council of Ministers, while also steadily increasing the influence of the European Parliament in EU legislative politics since the Single European Act in 1987. During this period, the EU also experienced several accession rounds with the Western and Southern enlargements until the mid-1980s, followed by the Northern in the mid-1990s and the Eastern enlargement rounds in 2004 and 2007. The Lisbon treaty marks the latest treaty revision, which came into force in 2009 after a 8-year reform effort. This final event clearly demonstrated the variation in the interests of the member states in the design of qualified majority voting and the composition of the Commission. Both topics were heavily disputed among the political leaders and the public of large and smaller member states leading to several conflicts and crises, including a perennial reflection period (Finke et al. 2012, forthcoming).

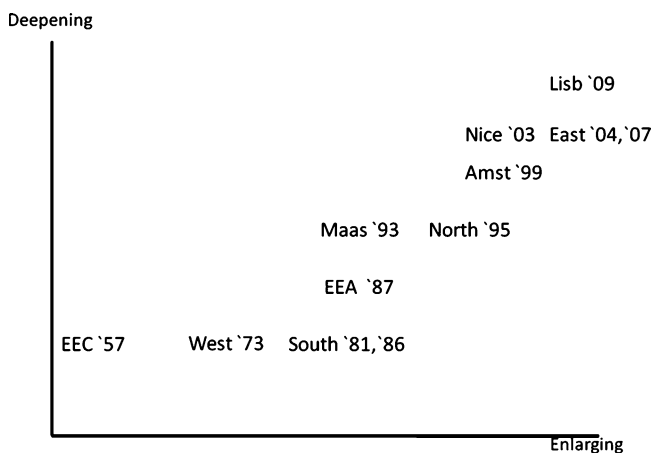


Fig. 2.1 Historical development by treaty revisions and enlargement rounds. Enlargement rounds: *West '73* accession of Denmark, Ireland and UK; *South '81&'86* Greece (1981), Portugal & Spain (1986); *North '95* Austria, Sweden & Finland; *East '04, '07* Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Malta & Cyprus (2004), Bulgaria & Romania (2007). Treaty revisions (year indicates its entry into force): *EEC '57* European economic treaty 1957; *EEA '87* Single European Act 1987; *Maas '93* Treaty of Maastricht 1993; *Amst '99* Treaty of Amsterdam 1999; *Nice '03* Treaty of Nice 2003; *Lisb '09* Lisbon Treaty 2009

Do we expect that these events of enlarging and deepening affected EU legislative activities and hence Brussels impact on the domestic legislatures of the member states? The answer to this question is not easy because some events have the potential for contradictory effects: while it is commonly expected that enlargement would make decision-making more difficult among the member states, the extension of qualified majority voting in the Council of Ministers could counter this enlargement effect (Schulz and König 2000). Similarly, the effects for the Commission remain an open question: on the one hand, the expansion of material competencies might overload the Commission's capacity to act; on the other hand, it can also facilitate the proposal of package deals which find consensus among the actors involved (König and Junge 2009). To determine these effects empirically, we need to take a closer look at the binding legislative activities of the EU across policy areas and over time.

Our numbers stem from the Eurlex database (<http://eur-lex.europa.eu/en/index.htm>) that is publicly accessible and run by the Publications Office of the Commission. Eurlex documents the history of decisions, directives, and regulations. Compared to regulations and directives, decisions are directed toward specific member states. Hence, we expect *the number of decisions to increase with membership size*. In contrast to regulations and decisions, directives are only binding "as to the result to be achieved." As a consequence, directives have to be transposed by member states into domestic law. This does not mean that regulations and decisions do not affect domestic legislatures (Töller 2008, 17). However, directives are the most direct measure for the impact of EU legislative activities on domestic legislatures, because they must be directly transposed and enforced under domestic law – either by domestic legislative or by executive measures. Compared to decisions, it is not easy to make a plausible prediction about the development of directives. If directives are more related to achieving common goals such as the completion of the internal market by providing more discretion to the member states, one would expect their heydays in the end of the 1980s.

Another important distinction for the evaluation of EU legislative activities concerns tertiary and secondary legislation. Compared to secondary legislation, which is adopted by the member states in the Council of Ministers and sometimes with the participation of the European Parliament, tertiary legislation is delegated to the Commission (COM) and mainly comprises implementation and administrative matters. One reason for this delegation is the technical nature of tertiary legislation, which requires more expertise than democratic legitimization. However, once the Commission has received this delegation power, it becomes more difficult to overrule tertiary legislation when the Council of Ministers is blocked. Hence, we expect that *tertiary legislation becomes more prominent when the level of conflict increases among member states*. Within secondary legislation, we distinguish between legislation adopted by the Council of Ministers and the European Parliament (CM & EP) from those acts, which are only passed by the Council of Ministers (CM). Council legislation is not exposed to parliamentary veto power, which can make a difference when dominating domestic politics. Table 2.1 provides an annual overview of all binding European legislation adopted between 1984 and 2007.

Table 2.1 Type of legislation and instrument by year of adoption from 1984 to 2007

| Year | Decision | | | Directive | | | | Regulation | | | | |
|-------|----------|-------|---------|-----------|-----|-------|---------|------------|--------|-------|---------|--------|
| | COM | CM | CM & EP | Total | COM | CM | CM & EP | Total | COM | CM | CM & EP | Total |
| 1984 | 453 | 81 | | 534 | 17 | 58 | | 75 | 911 | 426 | | 1,337 |
| 1985 | 311 | 77 | | 388 | 22 | 62 | | 84 | 907 | 500 | | 1,407 |
| 1986 | 378 | 171 | | 549 | 25 | 77 | | 102 | 1,091 | 550 | | 1,641 |
| 1987 | 340 | 110 | | 450 | 24 | 44 | | 68 | 1,121 | 480 | | 1,601 |
| 1988 | 396 | 105 | | 501 | 27 | 66 | | 93 | 1,059 | 477 | | 1,536 |
| 1989 | 387 | 151 | | 538 | 22 | 83 | | 105 | 961 | 416 | | 1,377 |
| 1990 | 349 | 144 | | 493 | 24 | 75 | | 99 | 1,115 | 411 | | 1,526 |
| 1991 | 431 | 125 | | 556 | 35 | 71 | | 106 | 1,127 | 336 | | 1,463 |
| 1992 | 387 | 134 | | 521 | 29 | 99 | | 128 | 1,137 | 391 | | 1,528 |
| 1993 | 508 | 155 | | 663 | 52 | 70 | | 122 | 1,072 | 329 | | 1,401 |
| 1994 | 648 | 173 | 2 | 823 | 30 | 29 | 20 | 79 | 992 | 302 | 1 | 1,295 |
| 1995 | 483 | 159 | 6 | 648 | 34 | 28 | 10 | 72 | 2,821 | 267 | 0 | 3,088 |
| 1996 | 513 | 141 | 10 | 664 | 39 | 40 | 17 | 96 | 2,277 | 247 | 4 | 2,528 |
| 1997 | 637 | 178 | 7 | 822 | 35 | 24 | 24 | 83 | 2,405 | 242 | 1 | 2,648 |
| 1998 | 449 | 221 | 9 | 679 | 43 | 31 | 28 | 102 | 2,612 | 230 | 0 | 2,842 |
| 1999 | 531 | 207 | 15 | 753 | 60 | 23 | 19 | 102 | 2,594 | 176 | 14 | 2,784 |
| 2000 | 504 | 205 | 15 | 724 | 40 | 11 | 42 | 93 | 2,573 | 181 | 23 | 2,777 |
| 2001 | 653 | 208 | 10 | 871 | 44 | 18 | 45 | 107 | 2,440 | 140 | 16 | 2,596 |
| 2002 | 503 | 204 | 16 | 723 | 44 | 14 | 39 | 97 | 2,202 | 143 | 25 | 2,370 |
| 2003 | 495 | 234 | 24 | 753 | 62 | 20 | 46 | 128 | 2,052 | 159 | 34 | 2,245 |
| 2004 | 470 | 298 | 16 | 784 | 60 | 19 | 36 | 115 | 1,965 | 177 | 41 | 2,183 |
| 2005 | 438 | 240 | 11 | 689 | 54 | 10 | 27 | 91 | 2,026 | 109 | 19 | 2,154 |
| 2006 | 513 | 237 | 19 | 769 | 76 | 28 | 40 | 144 | 1,804 | 167 | 45 | 2,016 |
| 2007 | 458 | 264 | 19 | 741 | 53 | 6 | 18 | 77 | 1,419 | 122 | 22 | 1,563 |
| Total | 11,235 | 4,222 | 179 | 15,636 | 951 | 1,006 | 411 | 2,368 | 40,683 | 6,978 | 245 | 47,906 |

COM commission legislation; *CM* legislation adopted by the Council of Ministers (implying no EP involvement or the application of the cooperation or consultation procedure); *CM & EP* legislation adopted by the Council of Ministers and the European Parliament (application of the codecision procedure)

According to Table 2.1, there is an upward trend in the total numbers of decisions and regulations, while the annual adoption rate of directives has remained almost stable over time. We find a similar trend for secondary legislation whereby the annual number of decisions has increased and that of regulations and directives has decreased. The goal of completing the Common Market by the end of 1992 seems indeed to account for the high numbers of directives between 1988 and 1993. While we correctly expected a higher number of decisions due to the larger number of member states, the increase in the competencies of the Commission stemming from the Maastricht treaty as well as the Northern enlargement explains the high numbers of Commission regulations since 1995. Additionally, a shift in decision-making toward the Commission may have been encouraged by difficulties within interinstitutional decision-making arising from more conflict in the Council or more power of the European Parliament.

Because the deepening of the EU has been accompanied by an increase in the powers of the European Parliament and in the application of Council qualified majority voting, the decrease in the annual adoption rate of secondary legislation could be a result of these changes in formal rules for interinstitutional decision-making. Interinstitutional decision-making is best documented in the PreLex database, which provides more detailed insight into the involvement of the European Parliament as well as Council decision-making. PreLex documents legislative processes that are interinstitutional, but excludes tertiary legislation.

Participation of the European Parliament in legislative decision-making has been brought forward as one of the remedies for the purported European democratic deficit. The involvement of the European Parliament, the application of qualified majority voting, and conflict in the Council of Ministers have changed with treaty revisions and multiple enlargement rounds. Looking at the empirical evolution of parliamentary involvement over time reveals that the share of legislative acts adopted under cooperation and/or codecision has steadily increased since 1984 but has not yet crossed the 30% mark. Compared to parliamentary involvement, the application of Council unanimity voting has decreased considerably. Thus, the application of unanimity as well as decision-making without parliamentary involvement has decreased, but the results suggest that this has not occurred to the extent that the treaty reforms might have intended. Nonetheless, these developments might explain the drop in adopted EU legislation.

Treaty revisions brought institutional reforms as well as an increase in the number of policy fields delegated to the EU level, and this might contribute to the observed patterns of EU legislative output. In order to enhance the comparability with the national chapters, we recoded the directory codes provided by Eurlex to 15 policy fields according to the scheme of the policy agenda project that are important for the EU. The different material focus of EU legislation is evident from the second largest category, “Macroeconomics,” which includes legislation relating to the Common Market whereas “Banking and Finance” only lists rules relating to banks and insurances. In the EU context, the policy field of “Government Operations” accommodates legislation on general affairs and institutional matters, e.g., institutional provisions. Legislation relating to “Judicial and Police Cooperation” is assigned to the category “law” of the policy agenda project. Table 2.2 shows the distribution of EU legislation across these policy fields and also indicates the type of legislation according to instrument and responsible institution.

Differences between policy fields are considerable in terms of numbers, institution involved, and type of instrument. Accordingly, the Common Agricultural Policy accounts for the largest share of EU legislation across all policy fields: 67.8% of all binding EU legislation adopted between 1984 and 2007 deals with “Agriculture and Fisheries.” The distribution over time even suggests that agricultural policy has grown in importance over the period under investigation, for which enlargement is a logical and probable explanatory factor. The large share of decisions that are member state-specific further underlines this. However, the widespread use of tertiary legislation in this policy field also points to the technical and regulative nature of this policy area. The second biggest policy field is

Table 2.2 European parliament (EP) involvement, council decision rule, and council conflict (adopted legislation in PreLex)

| Policy fields (AP) | No EP | | EP | | Missing | | Total | | QMV | | Unanimity | | Total | | Item A | | Item B | | Written procedure | | Not mentioned | | Total | | |
|-----------------------|-------|------|-------|------|---------|------|--------|-------|------|-------|-----------|--------|-------|-------|--------|------|--------|------|-------------------|------|---------------|---|-------|---|-----|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. |
| Macroeconomics | 1,844 | 78.0 | 453 | 19.2 | 67 | 2.8 | 2,364 | 1,831 | 77.5 | 533 | 22.5 | 2,364 | 2,065 | 87.4 | 179 | 7.6 | 49 | 2.1 | 71 | 3.0 | 2,364 | | | | |
| Civil rights | 47 | 79.7 | 12 | 20.3 | 0 | 0.0 | 59 | 30 | 50.8 | 29 | 49.2 | 59 | 45 | 76.3 | 2 | 3.4 | 1 | 1.7 | 11 | 18.6 | 59 | | | | |
| Health | 1 | 25.0 | 3 | 75.0 | 0 | 0.0 | 4 | 1 | 25.0 | 3 | 75.0 | 4 | 4 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 4 | | | | |
| Agriculture | 3,041 | 95.2 | 54 | 1.7 | 101 | 3.2 | 3,196 | 2,585 | 80.9 | 611 | 19.1 | 3,196 | 2,370 | 74.2 | 714 | 22.3 | 86 | 2.7 | 26 | 0.8 | 3,196 | | | | |
| Labor | 74 | 54.8 | 59 | 43.7 | 2 | 1.5 | 135 | 85 | 63.0 | 50 | 37.0 | 135 | 99 | 73.3 | 26 | 19.3 | 3 | 2.2 | 7 | 5.2 | 135 | | | | |
| Education | 19 | 26.8 | 48 | 67.6 | 4 | 5.6 | 71 | 54 | 76.1 | 17 | 23.9 | 71 | 45 | 63.4 | 16 | 22.5 | 5 | 7.0 | 5 | 7.0 | 71 | | | | |
| Environment | 115 | 39.4 | 154 | 52.7 | 23 | 7.9 | 292 | 187 | 64.0 | 105 | 36.0 | 292 | 215 | 73.6 | 51 | 17.5 | 4 | 1.4 | 22 | 7.5 | 292 | | | | |
| Energy | 93 | 68.4 | 34 | 25.0 | 9 | 6.6 | 136 | 65 | 47.8 | 71 | 52.2 | 136 | 116 | 85.3 | 14 | 10.3 | 3 | 2.2 | 3 | 2.2 | 136 | | | | |
| Transportation | 116 | 42.0 | 154 | 55.8 | 6 | 2.2 | 276 | 174 | 63.0 | 102 | 37.0 | 276 | 211 | 76.4 | 46 | 16.7 | 3 | 1.1 | 16 | 5.8 | 276 | | | | |
| Law | 36 | 73.5 | 11 | 22.4 | 2 | 4.1 | 49 | 31 | 63.3 | 18 | 36.7 | 49 | 42 | 85.7 | 6 | 12.2 | 0 | 0.0 | 1 | 2.0 | 49 | | | | |
| Social welfare | 57 | 74.0 | 17 | 22.1 | 3 | 3.9 | 77 | 35 | 45.5 | 42 | 54.5 | 77 | 62 | 80.5 | 12 | 15.6 | 1 | 1.3 | 2 | 2.6 | 77 | | | | |
| Banking & finance | 30 | 22.6 | 100 | 75.2 | 3 | 2.3 | 133 | 76 | 57.1 | 57 | 42.9 | 133 | 95 | 71.4 | 20 | 15.0 | 6 | 4.5 | 12 | 9.0 | 133 | | | | |
| Foreign trade | 2,306 | 83.4 | 231 | 8.4 | 227 | 8.2 | 2,764 | 2,435 | 88.1 | 329 | 11.9 | 2,764 | 2,489 | 90.1 | 68 | 2.5 | 181 | 6.5 | 26 | 0.9 | 2,764 | | | | |
| International affairs | 440 | 77.3 | 42 | 7.4 | 87 | 15.3 | 569 | 503 | 88.4 | 66 | 11.6 | 569 | 510 | 89.6 | 27 | 4.7 | 22 | 3.9 | 10 | 1.8 | 569 | | | | |
| Government operations | 205 | 68.6 | 28 | 9.4 | 66 | 22.1 | 299 | 197 | 65.9 | 102 | 34.1 | 299 | 233 | 77.9 | 18 | 6.0 | 32 | 10.7 | 16 | 5.4 | 299 | | | | |
| Total | 8,424 | 80.8 | 1,400 | 13.4 | 600 | 5.8 | 10,424 | 8,289 | 79.5 | 2,135 | 20.5 | 10,424 | 8,601 | 82.5 | 1,199 | 11.5 | 396 | 3.8 | 228 | 2.2 | 10,424 | | | | |

QMV qualified majority, simple majority, and unclear; *Item A* item A on council agenda; *Item B* item B on council agenda; *Written Procedure* use of written procedure in the council meeting

“Macroeconomics,” which accounts for 15.7% of legislation. Judged by the legislative output over time, this policy field has decreased in importance. It also includes a rather high share of tertiary legislation as well as regulations because it largely falls under Commission competence.

Further 7.3% of EU legislation belongs to the policy field of “Foreign Trade.” Similar to “International Affairs” and “Law” this policy field stands out by the absence of its directives and a low share of codecision legislation. This is in striking contrast to legislation on “Banking and Finance” with many directives and codecision legislation. “International Affairs” and “Government Operations” each account for 2.5% of EU legislation and are very similar to “Foreign Trade” with low share of directives as well as low involvement of the European Parliament. The annual output of the smaller policy fields has increased steadily over the period of investigation. The EMU is also reflected in the growth of legislation in “Banking and Finance” and “Government Operations” since the end of the 1990s.

First introduced by the Maastricht Treaty, Justice and Home Affairs differentiated into “Law” and “Civil Rights” presents the best example of a deepening in EU cooperation. These fields are characterized by a remarkable growth rate, whereas “Labor” and “Education” have stayed comparatively stable over time. “Law” and to a lesser degree “Civil Rights” include few directives and a large share of Council legislation. By contrast, environmental policy has been identified as one of the most Europeanized policy fields. This is reflected in the continually increasing output of environmental legislation over the years and the inclusion of a high share of Commission legislation (68.2%). Furthermore, 20.2% of environmental policies are adopted in the form of directives.

Empirically as well as formally, new policy fields have been included, which are likely to have caused more conflict and reduced the legislative output. The legislative output suggests that the deepening dimension is reflected in an increase in legislation and addition of new policy fields (e.g., Law) as well as an increase in parliamentary involvement in the more established policy fields. Investigating the agenda of the Council, which is divided into A and B points can assess the degree of conflict in this phase of deepening and enlargement. A-points are deemed not to need further discussion and have been resolved by national representatives previously in COREPER prior to the ministerial meeting. Proposals listed as B points could not be resolved in preparatory meetings by the national representatives (Rules of Procedure of the Council, Decision 2004/338/EC, EURATOM, Article 3) and can therefore be regarded as controversial. Table 2.3 shows the percentage of parliamentary involvement, the application of unanimity voting as well as Council conflict within the 15 policy fields.

The findings confirm that member states have protected their veto powers in some areas such as in Energy, Banking and Finance, Social Welfare and Health and that the European Parliament is represented in most legislation dealing with “Education,” “Environment,” “Banking and Finance,” and “Transport.” The numbers also suggest that the Common Agricultural Policy is contested with respect to the relatively high share of B-points. The same is true for Education.

Table 2.3 Instrument and type of legislation by policy fields (1984 to 2007)

| Policy fields (AP) | Type of legislation | | | Type of legislation according to document title | | | Total (%) |
|--|---------------------|---------------|----------------|---|--------|-------------|-----------|
| | Decision (%) | Directive (%) | Regulation (%) | COM (%) | CM (%) | CM & EP (%) | |
| Macroeconomics (<i>n</i> = 10,392) | 33.5 | 8.4 | 58.1 | 71.5 | 25.7 | 2.8 | 100.0 |
| Civil rights (<i>n</i> = 148) | 64.2 | 12.2 | 23.6 | 10.8 | 81.8 | 7.4 | 100.0 |
| Health (<i>n</i> = 13) | 0.0 | 100.0 | 0.0 | 23.1 | 69.2 | 7.7 | 100.0 |
| Agriculture (<i>n</i> = 44,483) | 15.2 | 1.7 | 83.0 | 91.6 | 8.3 | 0.1 | 100.0 |
| Labor (<i>n</i> = 216) | 33.8 | 43.1 | 23.1 | 26.4 | 59.7 | 13.9 | 100.0 |
| Education (<i>n</i> = 142) | 87.3 | 0.0 | 12.7 | 28.2 | 45.1 | 26.8 | 100.0 |
| Environment (<i>n</i> = 946) | 52.0 | 20.2 | 27.8 | 68.2 | 19.2 | 12.6 | 100.0 |
| Energy (<i>n</i> = 220) | 69.1 | 15.0 | 15.9 | 30.9 | 56.8 | 12.3 | 100.0 |
| Transportation (<i>n</i> = 638) | 26.5 | 30.7 | 42.8 | 49.2 | 35.9 | 14.9 | 100.0 |
| Law (<i>n</i> = 134) | 76.9 | 1.5 | 21.6 | 12.7 | 79.9 | 7.5 | 100.0 |
| Social welfare (<i>n</i> = 136) | 53.7 | 9.6 | 36.8 | 42.6 | 44.1 | 13.2 | 100.0 |
| Banking & finance (<i>n</i> = 225) | 24.9 | 62.7 | 12.4 | 29.8 | 39.6 | 30.7 | 100.0 |
| Foreign trade (<i>n</i> = 4,875) | 44.7 | 0.0 | 55.3 | 45.9 | 54.0 | 0.1 | 100.0 |
| International affairs (<i>n</i> = 1,690) | 33.7 | 0.0 | 66.3 | 48.2 | 50.6 | 1.2 | 100.0 |
| Government operations (<i>n</i> = 1,651) | 78.0 | 1.1 | 20.9 | 21.2 | 75.9 | 2.9 | 100.0 |
| Total (<i>n</i> = 65,909) | 23.7 | 3.6 | 72.7 | 80.2 | 18.5 | 1.3 | 100.0 |

Implementation of Directives

Different types of legislative acts have different consequences for domestic legislatures and thus for their Europeanization. Directives stand out because they are used to harmonize national legislation rather than equalize it, allowing the member states to adapt their national legislation to European policies. Directives also require transposition, application, and enforcement at the domestic level. The main data source to empirically evaluate transposition activities is provided by sector 7 of the Eurlex database (König and Luetgert 2009). Member states must notify the legal instruments they adopted in the course of transposing the directive to the Commission, and these are documented in the Eurlex online database. Even though this notification requirement only exists for directives, it allows us to investigate the level of Brussels impact on domestic legislatures from the viewpoint of EU legislative activities. For this purpose, we also disregard measures with an adoption date prior to a directive. Arguably, only an explicit reference guarantees legal accessibility for citizens.

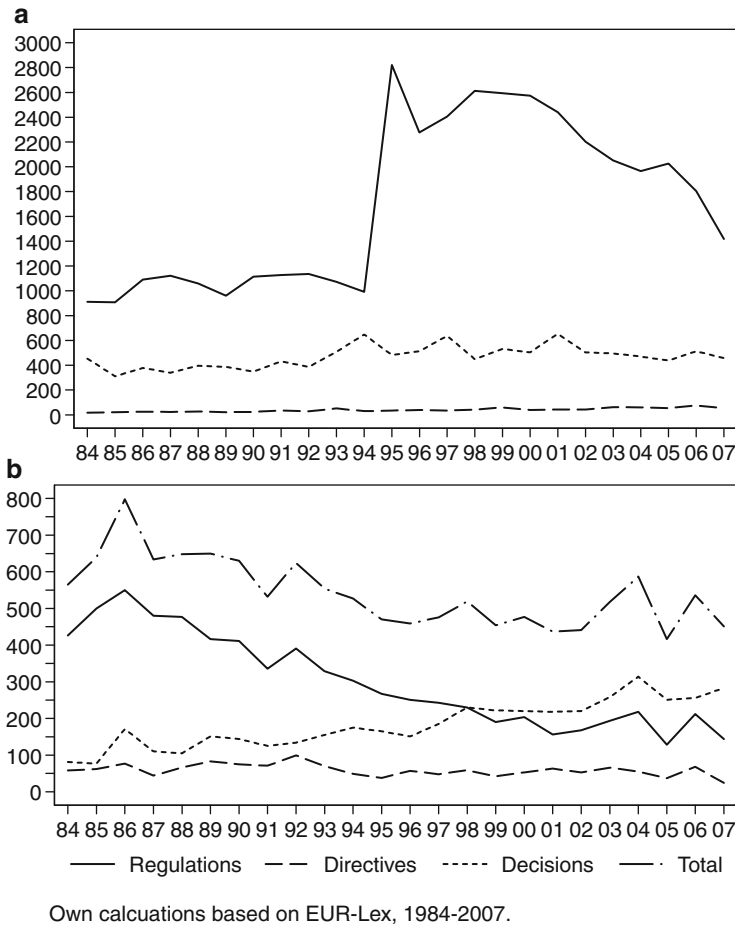


Fig. 2.2 (a) Adopted tertiary (Commission) legislation 1984–2007. (b) Adopted secondary European legislation 1984–2007

As a potential consequence of enlargement and the completion of the Common Market, the number of non-Commission directives has decreased slightly in the 1990s (Fig. 2.2a). At the same time, the use of regulations has also declined. Most likely reflecting the increase in conflict and the enlargement of the EU, the use of decisions within secondary legislation has increased (Fig. 2.2b). In contrast to policy fields that aimed at the completion of the Common Market, new EU competencies such as Justice and Home Affairs, Economic and Financial Affairs, and to some extent Education not only have low parliamentary involvement but are also dominated by decisions and regulations rather than directives. Another effect of the deepening is the increase of Commission legislation within directives, which was 25% in 1985 and constituted more than half of the adopted directives in 2006. In addition, this jump in Commission legislation, especially regulations, from 1995 onward may partially reflect the completion of the Common Market. For example,

the Maastricht Treaty granted the Commission more competence in the area of competition policy. This pattern is even more striking for regulations that nearly doubled from 1995 onward. Insofar, the numbers confirm our expectations about tertiary legislation and decisions, which have increased for secondary legislation.

Taking a closer look at the legislative process, as documented in Prelex, also reveals that directives stand out with regard to their conflict potential. First, they have the highest share of B points in the Council of Ministers. 16.8% of directives require continued discussion in the Council of Ministers compared to 6.3% (decisions) and 13.4% (regulations). Second, the average adoption speed of a directive takes far longer than that of other legislative acts. Third, directives experience the highest share of unanimity voting among adopted interinstitutional legislation and 35.8% of directives fall under unanimity compared to 24.3% of decisions and 18.8% of regulations. This supports the notion that directives include the more contested issues and cover salient legislation even though they fail to constitute the majority of European legislation.

As discussed earlier, the deepening of the EU has been accompanied by an increase in tertiary legislation and an increase of the power of the European Parliament that is most pronounced in the codecision procedure. Although the involvement of more actors on the EU level might lead to higher conflict and fewer adoption rates, another side effect could be easier transposition at the national level. The notion that legislation adopted by the codecision procedure faces fewer difficulties on the national level is supported by compliance research (e.g., Luetgert and Dannwolf 2009; Mastenbroek 2003). When looking at the share of directives that were transposed depending on the actors involved in European policy making, König and Luetgert (2009) find that the technical Commission legislation is adopted with the fewest difficulties in most member states (Austria being the only clear counter-example). A second finding of their transposition study is that directives adopted by codecision face less implementation difficulties on the national level than directives where the EP does not play a strong role. Finally, they show that transposition patterns highlight two countries where the involvement of actors during EU policy making does not seem to make a difference: Portugal and Luxembourg. This might suggest that implementation difficulties are rooted in national administrative difficulties, limited resources, and a lack of willingness.

Regarding the impact of this transposition on the domestic legislatures of the member states, there is no prerequisite by the EU that directives have to be implemented by legislative measures. From a legal perspective, the requirement is that the measure be publicly accessible and enforceable for private subjects within the national legal system. Besides restrictions introduced by the limited time prescribed by the deadline, there is no restriction to the involvement of a domestic legislature from the EU level. The extent to which domestic legislatures take part in the implementation process thus depends on institutional prerequisites, governmental preferences, and practices of parliamentary decision-making. Empirically, cross-country as well as cross-sectoral differences can be observed (see König and Mäder 2007; Franchino and Hoyland 2009). Figure 2.3 shows the percentages of directives that have been adopted with at least one legal instrument that formally requires the involvement of the domestic legislature.

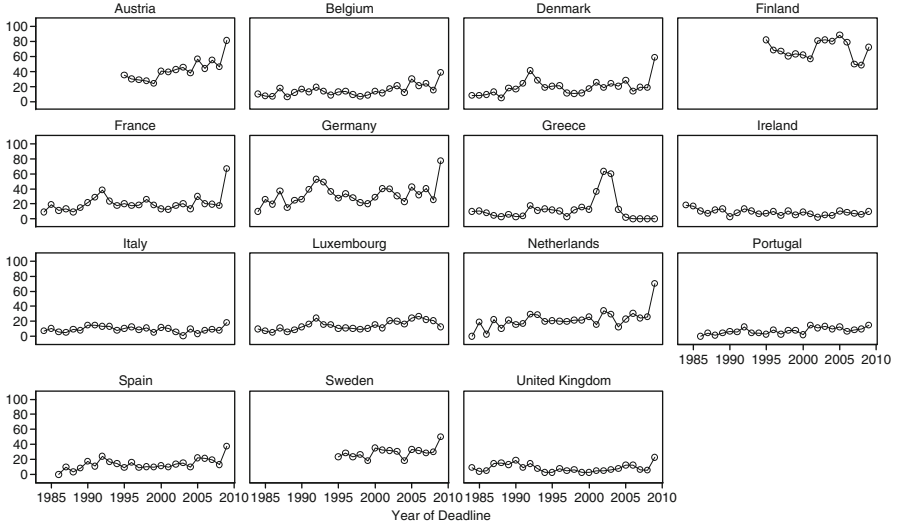
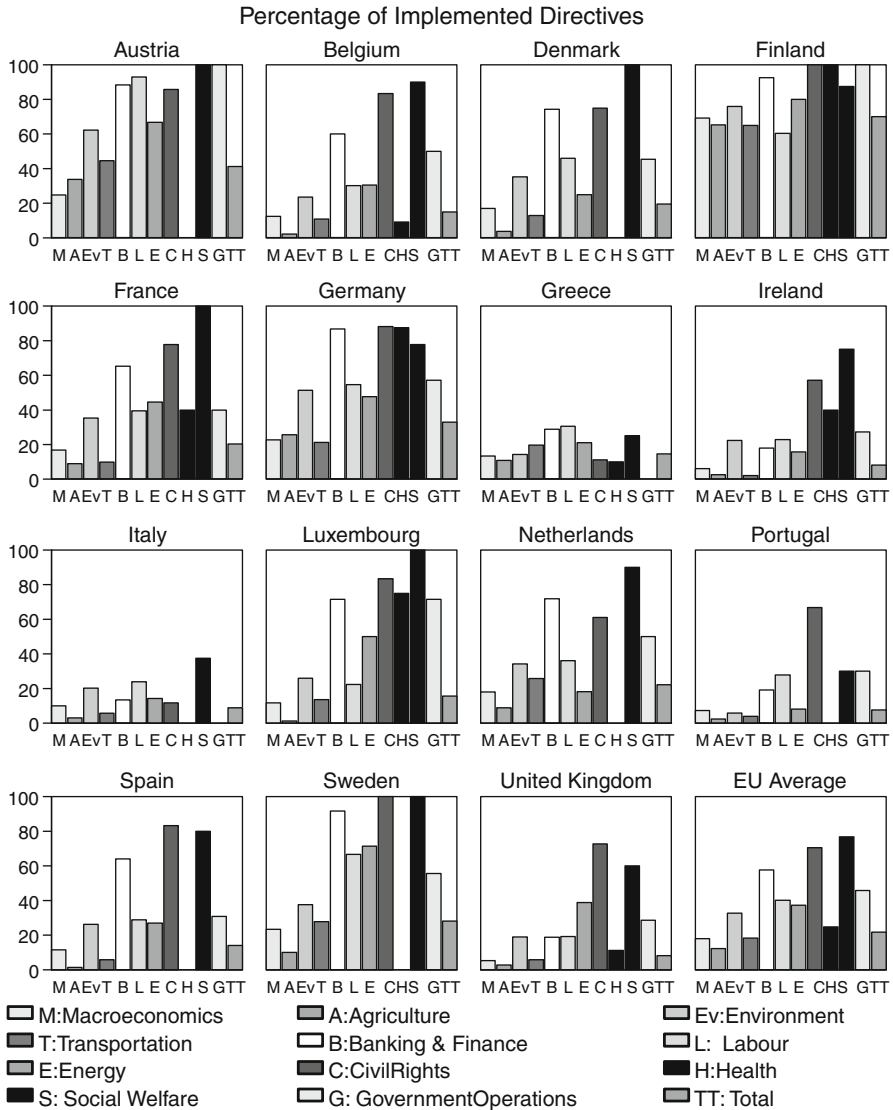


Fig. 2.3 Involvement of domestic legislatures over time

Finland, Austria, and Germany have the highest shares of formal involvement of their legislatures. Ireland, Italy, Portugal, and the UK are on the other end of the scale. However, this does not capture the rights of national parliaments to influence EU legislative decision-making by exerting influence on their government via binding orders. For example, Denmark is well known for rather strong involvement of the parliament in the preparatory stage of EU decision-making (e.g., Bursens 2002) but only has a rather low share of the Danish legislature’s involvement in implementation. Even more importantly, this does not take into account institutional prerequisites some countries have taken in order to speed up the transposition process that might involve the national parliaments indirectly. For example, the Italian parliament delegates transposition to the government by the *legge comunitaria* (see chapter on Italy). Notably, this reform has succeeded in speeding up the transposition process (Borghetto et al. 2006).

As a consequence of the deepening of the EU, an increase in the involvement of domestic legislatures could be expected due to the recent increase in new policy fields that more directly challenge issues of national sovereignty than regulative rules on agriculture. The deepening with respect to the policies decided on the EU level may also cause a rise in the importance and also the legal necessity of involvement of domestic legislatures. Looking at the share of the legislatures’ involvement in national transposition over time, we see that there is a minimal and gradual increase in their involvement in most member states. A clear increase is observable in Austria, Germany, France, the Netherlands, Belgium, and Denmark. The only country evidencing a slight decrease is Finland. Ireland, the UK, Italy, Portugal, and Luxembourg have maintained relatively stable rates of involvement of their legislatures.

Turning to cross-area differences, Fig. 2.4 illustrates that these differences across countries are considerable. Policy fields are approximately sorted according to size so that small policy fields are displayed on the right side. Some countries



Law and Foreign Trade are excluded due to a low number of directives. Basis for the calculations are directives with transposition instruments as indicated in EUR-Lex sector 7.

Fig. 2.4 Involvement of domestic legislatures in the completed implementation process of directives

stand out by few cross-area differences, such as Finland and Austria on the upper and Greece, Italy, and the UK on the lower end measured by shares of legislative acts. Despite these different patterns between countries, some policy fields stand out due to their relative proclivity for legislative involvement in the transposition of European directives. We would expect that legislative involvement is higher in policy fields that touch on sensitive issues such as the welfare system, labor or civil rights, and financial regulations.

In line with these expectations, legislatures seem to participate relatively more often in the transposition of directives in the area “Social Welfare,” “Civil Rights,” and “Banking and Finance” in all countries. Policy fields with relatively low legislative involvement in nearly all countries include “Macroeconomics,” “Agriculture,” and “Transportation,” which also are more established policy fields that have a high share of technical Commission legislation. Earlier, we identified “Environment” as a policy field with many European directives as well as a high share of tertiary legislation. The patterns for “Environment” are quite different across countries. In stark contrast to the UK, Portugal, and Spain, especially the Austrian and German legislatures take part in the transposition process more than in other policy fields. Differences between countries may be due to different priorities as well as different institutional conditions.

Conclusion

This chapter sets out to explore the developments of EU legislative decision-making and the consequences of the process of deepening and enlarging of the EU. We have identified three key developments at the EU level: First, there is a decrease in secondary and a slight increase in tertiary legislation. Within secondary legislation, decisions have become more prevalent whereas all other instruments have decreased in numbers. With respect to policy fields, agriculture is responsible for the bulk of EU legislation. These numbers confirm our expectation that enlargement affected the legislative activities of the EU. Most obviously, the number of decisions increased due to a larger membership size, while the increasing weight of tertiary legislation may also result from the fact that decision-making in secondary legislation has become more difficult by a larger number of member states with diverse interests.

Second, the deepening of the institutional rules of the EU is reflected in day-to-day policy making. We find that parliamentary involvement as well as the application of qualified majority voting in the Council of Ministers has increased. Our findings also suggest that conflict in the Council of Ministers increased after central developments, such as the completion of the Common Market, the inclusion of Judicial Politics, and the accession of new members. This confirms our previous result that decision-making in secondary legislation has become more difficult. However, this development also depends on the type of instrument: the number of decisions slightly increased, while the number of regulations decreased and the number of directives remained almost stable in secondary legislation.

Third, directives remain the instrument with the highest impact on domestic legislatures. Our results suggest that directives are more prone to conflict, e.g., take longer to adopt and have a higher share of B-points in the Council of Ministers. When measuring the Europeanization of domestic legislatures, directives are particularly important because their obligations must be transposed either by those legislatures or by executive measures into domestic law. We identified clear

country-specific patterns regarding the involvement of domestic legislatures in the transposition process. Generally, Finland, Austria, Germany, and Sweden are characterized by high formal involvement of their legislatures, although this differs across policy fields. As a result of the treaty reforms, we would expect the involvement of domestic legislatures to increase due to the inclusion of more significant policy fields. Investigating domestic legislatures' involvement over time confirms this expectation only to some degree.

Our results of EU legislative decision-making and the consequences of the process of deepening and enlarging of the EU emphasize the need for considering area-specific and cross-country differences particularly in formal institutional rules. Agricultural politics, followed by macroeconomics, considerably dominate EU legislative output. Environmental politics, by contrast, is relatively low in numbers but usually adopted with directives. Hence, we would expect an area-specific level of Europeanization in the member states. However, when the type of instrument is decisive for Europeanization, the influence of Brussels on the domestic legislatures is also homemade because they have the discretion to transpose directives either by legislative or by executive measures. From this point of view, we expect a country- and area-specific level of Europeanization which changes over time. The chapters on national policy making take the next step and clarify our expectations.

Appendix: Policy fields over time

| Year of adoption | Macro economics | | Civil rights | | Health | | Agri culture | | Labor | | Edu cation | | Environ ment | | Energy | | Trans portation | | Law | | Social welfare | | Banking & finance | | Foreign trade | | Inter national affairs | | Gov operation | | Total | |
|------------------|-----------------|-----|--------------|--------|--------|-----|--------------|-------|-------|-----|------------|-----|--------------|-------|--------|--------|-----------------|-----|-----|-------|----------------|-----|-------------------|-----|---------------|-----|------------------------|-----|---------------|-----|-------|--|
| | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | No. | |
| 1984 | 483 | 0 | 0 | 0 | 0 | 0 | 0 | 1,069 | 7 | 2 | 13 | 11 | 14 | 0 | 4 | 3 | 285 | 29 | 26 | 1,946 | | | | | | | | | | | | |
| 1985 | 416 | 0 | 3 | 1,146 | 3 | 5 | 18 | 15 | 25 | 0 | 15 | 6 | 188 | 15 | 24 | 1,879 | | | | | | | | | | | | | | | | |
| 1986 | 494 | 0 | 2 | 1,432 | 4 | 2 | 16 | 0 | 14 | 0 | 7 | 5 | 260 | 36 | 20 | 2,292 | | | | | | | | | | | | | | | | |
| 1987 | 502 | 0 | 0 | 1,346 | 7 | 3 | 7 | 4 | 15 | 0 | 4 | 4 | 170 | 36 | 21 | 2,119 | | | | | | | | | | | | | | | | |
| 1988 | 486 | 0 | 0 | 1,356 | 12 | 4 | 13 | 9 | 15 | 0 | 4 | 9 | 166 | 19 | 37 | 2,130 | | | | | | | | | | | | | | | | |
| 1989 | 474 | 0 | 2 | 1,232 | 8 | 6 | 15 | 7 | 20 | 0 | 14 | 10 | 168 | 24 | 40 | 2,020 | | | | | | | | | | | | | | | | |
| 1990 | 423 | 2 | 1 | 1,327 | 12 | 3 | 15 | 9 | 18 | 0 | 9 | 11 | 218 | 30 | 40 | 2,118 | | | | | | | | | | | | | | | | |
| 1991 | 444 | 0 | 0 | 1,304 | 10 | 10 | 19 | 7 | 23 | 0 | 5 | 10 | 229 | 31 | 33 | 2,125 | | | | | | | | | | | | | | | | |
| 1992 | 413 | 0 | 0 | 1,396 | 11 | 11 | 19 | 7 | 40 | 0 | 5 | 10 | 205 | 28 | 32 | 2,177 | | | | | | | | | | | | | | | | |
| 1993 | 555 | 1 | 1 | 1,245 | 9 | 2 | 67 | 7 | 35 | 0 | 4 | 8 | 162 | 41 | 49 | 2,186 | | | | | | | | | | | | | | | | |
| 1994 | 479 | 1 | 0 | 1,300 | 9 | 5 | 35 | 15 | 21 | 0 | 2 | 11 | 179 | 57 | 83 | 2,197 | | | | | | | | | | | | | | | | |
| 1995 | 366 | 4 | 0 | 2,986 | 8 | 6 | 23 | 7 | 15 | 0 | 4 | 7 | 176 | 119 | 87 | 3,808 | | | | | | | | | | | | | | | | |
| 1996 | 426 | 2 | 0 | 2,409 | 8 | 2 | 31 | 21 | 29 | 1 | 3 | 4 | 150 | 127 | 75 | 3,288 | | | | | | | | | | | | | | | | |
| 1997 | 549 | 1 | 1 | 2,525 | 9 | 3 | 43 | 10 | 17 | 0 | 4 | 6 | 195 | 117 | 73 | 3,553 | | | | | | | | | | | | | | | | |
| 1998 | 427 | 2 | 2 | 2,656 | 9 | 6 | 30 | 14 | 31 | 2 | 5 | 9 | 214 | 118 | 98 | 3,623 | | | | | | | | | | | | | | | | |
| 1999 | 456 | 2 | 1 | 2,679 | 12 | 7 | 54 | 14 | 28 | 7 | 4 | 5 | 173 | 121 | 76 | 3,639 | | | | | | | | | | | | | | | | |
| 2000 | 440 | 6 | 0 | 2,594 | 10 | 7 | 56 | 8 | 25 | 12 | 6 | 7 | 207 | 111 | 105 | 3,594 | | | | | | | | | | | | | | | | |
| 2001 | 501 | 21 | 0 | 2,545 | 8 | 1 | 68 | 5 | 28 | 12 | 5 | 13 | 207 | 93 | 67 | 3,574 | | | | | | | | | | | | | | | | |
| 2002 | 414 | 16 | 0 | 2,241 | 11 | 2 | 52 | 7 | 37 | 15 | 3 | 11 | 239 | 73 | 68 | 3,189 | | | | | | | | | | | | | | | | |
| 2003 | 363 | 20 | 0 | 2,113 | 17 | 14 | 60 | 7 | 38 | 14 | 4 | 19 | 241 | 114 | 102 | 3,126 | | | | | | | | | | | | | | | | |
| 2004 | 381 | 20 | 0 | 2,023 | 9 | 11 | 70 | 9 | 38 | 15 | 8 | 13 | 263 | 86 | 136 | 3,082 | | | | | | | | | | | | | | | | |
| 2005 | 286 | 10 | 0 | 2,082 | 10 | 8 | 68 | 4 | 25 | 14 | 3 | 9 | 200 | 103 | 112 | 2,934 | | | | | | | | | | | | | | | | |
| 2006 | 342 | 19 | 0 | 1,946 | 8 | 12 | 82 | 18 | 46 | 15 | 6 | 17 | 215 | 87 | 116 | 2,929 | | | | | | | | | | | | | | | | |
| 2007 | 272 | 21 | 0 | 1,531 | 5 | 10 | 72 | 5 | 41 | 27 | 8 | 18 | 165 | 75 | 131 | 2,381 | | | | | | | | | | | | | | | | |
| Total | 10,392 | 148 | 13 | 44,483 | 216 | 142 | 946 | 220 | 638 | 134 | 136 | 225 | 4,875 | 1,690 | 1,651 | 65,909 | | | | | | | | | | | | | | | | |

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