

Gold-Plating' in implementing EU law

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1. "LegImpact" – Research Project
 2. Origin and development of 'gold-plating'
 3. The problem with 'gold-plating'
 4. Definition of 'gold-plating'

"LegImpact" – Research Project

- **Legislative drafting as a means of implementing public policies: quantitative, qualitative, and socioeconomic analysis**
 - **Creation of the Portuguese Legislation Observatory (2005) - evaluating legislation through a quantitative assessment of the Portuguese legislative production**
 - **Now the aim is to go beyond the quantitative approach.**
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- **The aim is to create a mechanism to evaluate if the meeting of public policy goals by assessing the net aggregate costs of specific national legislation acts**
 - **By comparing the situation before and after a certain legislative act enters into force in terms of the eventual creation of red tape costs and friction costs, it will be possible to verify if the measure is detrimental or not to meeting those goals**
 - **One of the focus is the transposition of directives – namely ‘gold-plating’**
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- Definition of 'gold-plating'**
 - Practical examples of bad practices**
 - Problems and answers**
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Origin and development of 'gold-plating'



Concept of 'Gold-Plating': Origin and Development

- **Deregulation Programs**
 - **United Kingdom: One-In/One Out; “No more Gold-Plating” (Michael Fallon)**
 - **Netherlands: National Toppings**
 - **European Union: “Member States could report more transparently on national measures taken to implement EU law, in particular when such measures go beyond what is required by EU law (so-called ‘gold-plating’)”.**
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In the UK, the concept covers cases in which:

- **national, regional or local authorities extend the scope of EU legislation beyond what is required;**
 - **national legislators fail to take full advantage of exemptions allowed by the EU legislation;**
 - **introduction of sanctions, control mechanisms, and burdens of proof which go beyond what is required according by to EU legislation;**
 - **auditing practices and rules that do not meet the rules of proportionality.**
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The problem with 'gold-plating'

- **Member States use their discretion when transposing EU Directives and implementing EU regulations to:**



- Increase reporting obligations;**
- Add procedural requirements;**
- Apply more rigorous penalty regimes**
- Etc.**

**Lawful, but beyond
what is required by
the EU legislation**



Gold-Plating?

- **'Gold-plating' is not, per se, unlawful**
 - **Member States retain discretion to regulate areas not covered by EU obligations**
 - **However...**
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- More administrative costs and/or burden for citizens and companies 
 - Negative impacts on corporations, competition, and economic growth
 - Presented as a consequence of EU obligations when they derive from national choices 
 - Over-regulation being exploited by anti-European Union political movements
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- **Gold-plating ≠ general imposition of administrative costs and burdens**
 - **Political reasons and actual impacts may not be simple to identify and evaluate because they are hidden from view and mistaken as consequences of EU obligations**
 - **The Member States should be transparent when going beyond EU obligations in order to allow impact assessment and to answer politically for their choices**
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Definition of 'gold-plating'

Definition:

Establishment of administrative (or other) burdens or costs, which go beyond what is needed to comply with the EU legal order and are presented as an unavoidable consequence of a European imposition.

- **Not illegal → bad practice → avoidable costs and burdens**
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Thank you very much!

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