PART I

INTRODUCTION AND BACKGROUND
The European Union (EU) consists of member states. Over the last 50 years it has developed a complex and highly developed system of law that directly influences the legal systems of its member states (Snyder, 1993). There are three types of EU law. Primary law includes treaties. Secondary law includes interinstitutional agreements, such as regulations, directives, decisions, recommendations, and opinions. Tertiary law includes the decisions of the European Court of Justice (ECJ). These three types of EU law, otherwise known, cumulatively, as the *acquis communautaire* represent the full set of distributive, constituent and regulatory European policies.

Each of these policies has a ‘life cycle’. The EU policy cycle is composed of three phases (Zeff and Pirro, 2001), namely: development, decision-making, and implementation. In the policy development phase, the European Commission discusses, develops, and compiles new programs; it also drafts legislation, and, finally delivers a proposal to the decision-making bodies. These bodies are the Council of Ministers (Council) and the European Parliament (EP). In the decision-making phase, the Council and the EP co-decide in most policy fields that fall under the Community method (Hix, 2005). The third phase, implementation, is defined as ‘the process by which national law is modified in accordance with Community law’ (Eijlander and Voermans, 2000: 257). Member states involved in making EU legislation must implement Community legislation that induces policy change including the legal transposition, application and evaluation process (Prechal, 1995: 5-6; Kassim, Peters and Wright, 2000: 15; Dimitrakopoulos, 2005).

The first step, transposition, is defined as the process whereby European directives are incorporated into national law in order to make their objectives, requirements, and deadlines applicable in the member states. Application is defined as the process whereby full compliance with EU law is monitored and secured, and the effect posterior evaluated; in this step, non-compliance is systematically evaluated by national and supranational courts. Figure 1.1 presents the different stages and sub-stages of the EU policy-cycle.

As displayed in Figure 1.1, ‘adapting and implementing legal rules are two of the most important mechanisms through which European integration influences member states’ (Sverdrup, 2005: 6). Transposition, in particular, is the first step in the implementation phase because it is here that ‘the goals and the objectives of the EU result or fail to result in real change for European states’
(Zeff and Pirro, 2001: 16-19). More general, a swift coordination of the transposition process across member states appears to be a necessary condition for the functioning of the EU policy-cycle and especially of the internal market. Note, however, that transposition does not apply to the actual working practices, but only represent a change in formal law inducing policy change.

**Implementation of European law – positive and negative legal obligation for full compliance:**

Member states are obliged to comply with EC law, as dictated by Article 10 (formerly Article 5). In the spirit of this article, states must adopt necessary legislative and regulatory measures, apply or execute them, and supervise and enforce their proper application in their respective territories. Article 10 imposes the mandatory duties on member states, which have, however, some discretion in the carrying out of such actions. Failure to fulfill the duties of Article 10 can lead to infringement proceedings under Article 226 (formerly Article 169). Article 10 (2) also includes prohibitions for member states, who must to refrain from keeping or introducing any measure that might render ineffective the application of Community legislation. The ECJ has confirmed in numerous decisions that both the obligations and the prohibitions stated in Article 10 apply to all the authorities of member states, including the national courts for matters within their jurisdiction (de Búrca, 1992; Plata Martin, 1994). The European Commission’s (Commission) primary role is to propose and monitor the implementation of EU legislation. It also acts as ‘guardian of the treaties’, taking responsibility for initiating infringement proceedings at the ECJ against non-compliant member states, i.e. when national legislation breaches EU law.

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**Figure 1.1: European policy cycle: Three policy phases – development, decision and implementation.**
Introduction

1.1 Two big pieces of a puzzle

As a matter of fact, EU member states breach EU law – perpetually. For 2005, the Commission’s scoreboard recorded a 1.3 percent deficit (European Commission, 2006). The question, however, is whether this is a self-defeating figure. Should we bother? Why would the EU bother in the first place?

Indeed, this record appears vanishing small – at first sight. A closer look at the figures and the so-called fragmentation factor indicate, however, that the presence of an EU implementation problem seems clear and worth the research— the forest just in front. On the other hand, scholars have responded to the challenges of European law; have developed unique concepts and approaches in their studies of the EU. But despite the fact that the translation of EU legislation into national law has been a burgeoning area of interest over the last years there is still plenty of room for improvement. A closer look at the paperwork, hence, unveils mainly two puzzling elements of empirical and theoretical natures. While the recorded implementation deficit across EU member states becomes even more troublesome when contextually assessing it in more detail, it is the dissatisfactory state-of-art of the implementation literature that puzzles the interested scholar.

1.1.1 The empirical puzzle: ‘Cannot see the forest for the numbers’

Since 1989, the Commission as EU’s supervisor of policy implementation has regularly published figures and tables, so-called scoreboards, to point to member states that do not comply with Article 10, or to find benevolent rhetoric for those that do. These scoreboards, by both name and content, call to mind sport events rather than EU politics. Yet they have displayed recent figures that tell of the awe-inspiring and steady improvement of member state’s implementation records. Figure 1.2 presents aggregate data from 1989 to 2005, and shows that the average implementation rate has not only tremendously increased, but that ‘laggards’ including Greece and Italy, have caught up in implementing EU legislation. Differences between the best and the worst performing member states have decreased over the years from 25 percent to around 3 percent.¹

In 2005, the average transposition rate of internal market directives reached 98.7 percent, showing that the share of implemented directives is at a comforting high. At first sight, the trend over the last 16 years is good news, and the 1.3 per cent deficit appears vanishingly small.

¹ Note that the slump in 1995 is due to the enlargement with Austria, Finland, and Sweden.
At second sight, however, one begins ‘to discern the trees’. Figure 1.2 reveals some interesting findings and irregularities about the 2005 implementation figures. Accounting for the legal obligations in numbers and performances, it displays the results for the total number of directives in each member state of the EU 25. First, the Commission’s figures are based on the total amount of directives that have accrued over the last 50 years, which forms a rather conservative measure for the actual implementation performance across member states (Börzel, 2001; Mastenbroek, 2003). To put it differently, the enumerator varies little year by year. But the denominator increases steadily, which makes a deficit of 30 directives in 2005 with a denominator of 2570 (1.2 per cent) appear very small compared to the same amount of directives still requiring notification in early 1980s, with an average number of directives to be transposed of 1280 (2.3 per cent). Although the actual deficit of 30 non-implemented directives remains constant, the denominator has doubled since the early 1980s, which decreases the percentage for non-implemented legislation by 100 per cent.

Table 1.1, furthermore, shows that an EU-wide implementation backlog of 1.3 per cent means that, in 2005, each member state, on average, had 34 directives left to be implemented. Actually, this is a considerable number in a union where on average only 100 directives are adopted each year.2

Figure 1.2: Member States’ transposition record (1989 –2005).

The dashed line displays the best record, the middle line the average record of all member states, and the dotted line the worst performing member state record. Source: Information gathered from all Commission Internal market scoreboards published from 1989 to 2005.

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Introduction

At last, the total number of directives to be transposed (denominator) varies across member states, namely between 2547 in the United Kingdom and 2607 in Belgium – a difference of precisely 60 directives, which may have a warping effect on the results. In addition, table 1.1 shows that the numbers of delayed notification differ respectively, namely between 4 in Lithuania and 80 in Italy, which compounds the distorting effects of this scoreboard. It appears that with every closer look, the data tell a very different story than that of ultimate success. Do we begin ‘to see the forest for the trees’? Are the original appearances, then, deceiving?

Table 1.1: Transposition of EU directives in the member states on 18 July 2005.

<table>
<thead>
<tr>
<th>Country</th>
<th>Total number of directives</th>
<th>Delayed transposition</th>
<th>Percentage of non-transposed directives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lithuania</td>
<td>2601</td>
<td>4</td>
<td>0.15</td>
</tr>
<tr>
<td>Poland</td>
<td>2577</td>
<td>13</td>
<td>0.50</td>
</tr>
<tr>
<td>Denmark</td>
<td>2549</td>
<td>13</td>
<td>0.51</td>
</tr>
<tr>
<td>Finland</td>
<td>2548</td>
<td>18</td>
<td>0.71</td>
</tr>
<tr>
<td>Spain</td>
<td>2570</td>
<td>20</td>
<td>0.78</td>
</tr>
<tr>
<td>Germany</td>
<td>2553</td>
<td>20</td>
<td>0.78</td>
</tr>
<tr>
<td>Slovenia</td>
<td>2585</td>
<td>21</td>
<td>0.81</td>
</tr>
<tr>
<td>Hungary</td>
<td>2579</td>
<td>22</td>
<td>0.85</td>
</tr>
<tr>
<td>Malta</td>
<td>2582</td>
<td>25</td>
<td>0.97</td>
</tr>
<tr>
<td>Austria</td>
<td>2556</td>
<td>26</td>
<td>1.02</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>2547</td>
<td>28</td>
<td>1.10</td>
</tr>
<tr>
<td>Netherlands</td>
<td>2552</td>
<td>29</td>
<td>1.14</td>
</tr>
<tr>
<td>Belgium</td>
<td>2607</td>
<td>30</td>
<td>1.15</td>
</tr>
<tr>
<td>France</td>
<td>2552</td>
<td>30</td>
<td>1.18</td>
</tr>
<tr>
<td>Ireland</td>
<td>2565</td>
<td>31</td>
<td>1.21</td>
</tr>
<tr>
<td>Estonia</td>
<td>2561</td>
<td>35</td>
<td>1.37</td>
</tr>
<tr>
<td>Cyprus</td>
<td>2582</td>
<td>37</td>
<td>1.43</td>
</tr>
<tr>
<td>Latvia</td>
<td>2602</td>
<td>39</td>
<td>1.50</td>
</tr>
<tr>
<td>Sweden</td>
<td>2535</td>
<td>39</td>
<td>1.54</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>2584</td>
<td>40</td>
<td>1.55</td>
</tr>
<tr>
<td>Slovakia</td>
<td>2594</td>
<td>48</td>
<td>1.85</td>
</tr>
<tr>
<td>Portugal</td>
<td>2592</td>
<td>56</td>
<td>2.16</td>
</tr>
<tr>
<td>Greece</td>
<td>2556</td>
<td>67</td>
<td>2.62</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2557</td>
<td>70</td>
<td>2.74</td>
</tr>
<tr>
<td>Italy</td>
<td>2561</td>
<td>80</td>
<td>3.12</td>
</tr>
<tr>
<td>EU 25 average</td>
<td>2570</td>
<td>34</td>
<td>1.31</td>
</tr>
</tbody>
</table>

Source: European Commission 2005 (Asmodee II)

At last, the total number of directives to be transposed (denominator) varies across member states, namely between 2547 in the United Kingdom and 2607 in Belgium – a difference of precisely 60 directives, which may have a warping effect on the results. In addition, table 1.1 shows that the numbers of delayed notification differ respectively, namely between 4 in Lithuania and 80 in Italy, which compounds the distorting effects of this scoreboard. It appears that with every closer look, the data tell a very different story than that of ultimate success. Do we begin ‘to see the forest for the trees’? Are the original appearances, then, deceiving?

Fragmentation factor – Nine per cent deficit in the EU or 772 notifications awaiting A final look at EU data, however, may even exceed our earlier concern about an implementation deficit in the EU. Next to the chronological overview of the Commission scoreboards, and the recent figures for 2005, the so-called ‘fragmentation factor’ (European Commission, 2006: 15) has found its way to the implementation debate. It exemplifies the percentage of the overall outstanding directives that have not been implemented in at least one member state.
The fragmentation level for 2006 is 9 percent. This means that 9 percent of the internal market directives have not achieved their full effect. In absolute terms, this means that 144 Internal Market directives were not implemented in at least one member state. In 2006, hence, the Commission was still waiting for 772 notifications of national transposition measures. This fact is quite a bit more worrying than the 1.3 figure of success referred to in the scoreboards. The presence of an EU implementation problem seems clear – the forest directly in front of us. The problem has been noted by a considerable number of scholars in the field (Curtin, 1990; Mendriou, 1996; Sverdrup, 2004; Versluis, 2004; Börzel, Hoffmann and Dudziak, 2005; König, Luetergert and Maiöder, 2005; Falkner, Hartlapp, Leiber and Treib, 2005; Steunenberg and Rhinard, 2005; Børghetto, Franchino and Giannetti, 2006; Giuliani, 2006), seems clear – the forest just in front of us.

Image marring and costly
Regardless of which statistics the Commission goes by, the member states’ non-compliant behaviour is punished. Every year the Commission initiates hundreds of infringement proceedings against member states before the ECJ in an effort to induce them to comply with their legal obligations, which, in the end, may become both image damaging and pricy for the denounced.

Some member states have proclaimed to take implementation very seriously, because poor performance in this stage can stain one’s image. For example, French Prime Minister Raffarin (2004) declared implementation to be high on the political agenda, and set out to take care of France’s backlog, so as not to lose face in Europe. Nonetheless, despite such efforts by some member states, the latest available annual report of the ECJ (2004) tells that the Commission initiated 193 proceedings against member states. During the same year, Nicolaides and Oberg (2006) report that the ECJ found in 144 out of 155 cases that a member state had failed to fulfil its obligations. This means that in more than 90% of cases the Commission was right to take action against one or more member states. Failing to fulfil obligations, however, does not necessarily indicate that states are guilty of non-compliance with EU legislation. Few of those infringement proceedings culminated in an ECJ judgment, against a member state, of ‘guilty.’ But, fines will be imposed as a punishment for failure to fulfil obligations. The amount owed by member states in fines, in the meantime, has reached astronomical dimensions. It seems unlikely that most member states will be able to pay up in times of constraint budgets. Yet the Commission just recently announced an even tougher policy on the determination of fines for non-compliance.3

3 The ECJ has imposed fines on Greece, Spain, and France. In 2000, Greece became the first member state to adjudged a daily fine of 20,000 EUR. It took Greece six months to comply and ended up paying a total of 4.7 million EUR. In November 2003, Spain became the first member state to be fined twice for the same infringement. Its penalty was modest, only 625,000 EUR per year (Nicolaides and Oberg, 2006). In July 2005, France harvested the largest penalty in EU history, which was both a lump-sum of 20 million EUR and an additional biannual sum of 57.7 million EUR if it continued to ignore EU legislation relating to fishing - amounting to a daily fine of 321,000 EUR.
**Legal uncertainty**

Non-compliant behaviour implies legal uncertainty; this hampers the European regulatory framework in which businesses operate. Late and incorrect transposition can have reverberating effects on the EU legal zeitgeist. It frustrates further European integration, including the free movement of goods, persons, services and capital (Article 3(1)c). It jeopardizes market competitiveness, national growth, and employment performances in Europe and beyond.

To understand the importance of legal certainty, consider the case of France’s dealings with Directive 96/92/EC. In December, 1996, the energy ministers of the 15 member states adopted the directive, which concerns common rules for the internal market in electricity. However, France caused major irritations among its neighbouring countries. The French were heavily criticized for being very slow in opening their natural gas and power markets to competition. In December 2000, almost two years after the first transposition deadline, France passed legislation to only begin the electricity sector’s liberalization. The last transposing measure was adopted in February 2003. In total, it took France six years (four years after the deadline) to adopt the European directive on natural gas deregulation into French law.

These four years transposition delay has injured the internal market, in general, and the common electricity market, in particular. Critics claim that, in the meantime, France has benefited from European privatizations while keeping a protected share of its home market. *Electricité de France* (EdF), the French utility manager, in particular, has used the proceeds from its unchallenged market position in France to buy major assets across Europe. This behaviour has sparked hostility among member states, and in the Commission, too. The Commission ruled, lately that EdF had been charged unjustifiably low corporate income taxes, therefore EdF had an unfair competitive edge in the European energy market. EdF was condemned to repay a record sum of 889 million euros (Sprongenberg, 2006), plus interest.

**Renewed Lisbon strategy 2005: Better regulation for competitiveness, growth and employment**

Finally, non-compliant behaviour impairs day-to-day operations of the internal market which precludes the successful achievement of the so-called Lisbon strategy and of which the EU and member states plead guilty. On the European level, after successive summits (Lisbon, March 2000); Stockholm, March 2001; Gothenburg, June 2001; Laeken, December 2001; and Barcelona,

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4 EdF acquired major stakes in Germany’s EnBW, (*Energie Baden-Württemberg*), in Spain’s Hidrocanabrivo, in Italy’s Edison, and in a number of eastern European companies. It also owns the UK’s London Electricity Group, and other partnerships or acquisitions are currently being explored. Similarly, in 2001, *Gaz de France*’s (GdF) gas foreign sales rose 43 percent. More recently, GdF has bought a 24.5 percent stake in the Slovak company SPP for 1.4 billion euros and German assets of *Preussag Energie*, a subsidiary of the TUI group, for 859 million euros.
March 2002) and the devastating mid-term evaluation of the Lisbon strategy by the Kok report (2004), the Commission laid down an improved strategy, entitled *Better regulation for Growth and Jobs in the European Union*. One key objective of the renewed Lisbon Strategy, launched in 2005, is to focus exclusively on ensuring a simple and high quality regulatory environment, which is subsumed under the buzz word: *better regulation* (Radaelli, 2007).\(^5\) Simplification within EU competitiveness policy entails legislation (Barrosso, 2006) which carefully strikes the right balance between the cost and benefits of legislation. Since effective, timely transposition of internal market legislation affects the costs and benefits of the new policy, timely and correct transposition is the *first action point* falling under the Lisbon action plan (European Commission, 2005) adopted by the member states in February 2005. In line with Allio and Fandel (2006:7), I argue that better regulation cannot be achieved without serious attention to transposition, enforcement and evaluation.

In parallel, on the national level, most of the member states are seriously concerned about the persistent transposition deficit in the European Union, as well as its causes and consequences. This concern makes the transposition issue an interesting field of research. In the UK, the *Bellis report* (2003) lays out guidelines to improve the implementation of EU legislation in the United Kingdom. In Germany, a federal government modernising committee has made a lot of noise in its discussions about reforming German federal constitution; in particular, the committee has been pushing for expedited processes of implementing EC directives. In the Netherlands, in November 2004, the secretary of state of Foreign Affairs and the minister of Justice announced six recommendations on how to improve the speed of transposition on short notice. Even better performing member states, like Sweden, have reconsidered their coordination system (Kaeding, 2007) and moved the EU co-ordination secretariat from the ministry of Foreign Affairs to the Prime Minister’s office to better coordinate the policies towards the EU in general and to improve their transposition records in particular.

Obviously, from an empirical point of view, EU implementation is a puzzling phenomenon. On one hand, compliance with EU legislation stands reputedly high on governments’ agendas, which alone is crucial for the achievement of the Lisbon goals set for 2010. Furthermore, full implementation of EU legislation is a legal obligation enshrined in the treaties. Nevertheless, on the other hand, it is yet not followed by most member states. Demystifying the Commission’s implementation deficit figure of 1.3 per cent, the fragmentation factor uncovers that 9 percent of the internal market directives have not achieved their full affect in 2006, with more than 770 notifications still pending. At the

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\(^5\) The current EU initiative on ‘better regulation’ has its origins in the Edinburgh European summit of December 1992. EU heads of state decided to make the task of simplifying and improving the EU regulatory environment one of the Community’s main priorities.
same time, the ECJ recently set record fines for non-implementation, penalties that have the damaging effect on a ‘laggard’s image. ‘What’s the point of having new legislation if it remains dead in the water?’ Why do some member states refuse to comply with EU law, despite the image-marring effect and costly consequences?

1.1.2 The theoretical puzzle: ‘Plenty of room for improvement’

Interestingly, in EU studies, each component of the policy cycle has garnered different degrees of attention. For a long time, studies about European integration focused mainly on the coming about of European integration (Haas, 1958; Spinelli, 1972; Mitrany, 1966; Moravcsik, 1991; Sandholtz and Stone Sweet, 1997). In the mid-1990s, there was an upsurge in Europeanization studies dealing with the effects of European integration on the member states in general (for an overview see Olsen, 2002; Featherstone and Radaelli, 2003; Mair, 2004). However, it was not until a few years later that studies on the implementation phase became a burgeoning field of scholarly interest that they are today. Over the last couple of years, the field has grown out of childhood and entered adolescence.

Some puzzling features, however, indicate that additional scholarly efforts in the field are compulsory in order for it to finally reach maturity. Five areas of improvement are eligible. Each will be executed successively here, and in the literature review chapter in more detail. The improvements are: increases in empirical and conceptual strength; a lesson from the 1970s implementation literature; a straightforward combined methodological approach; a contribution to existing cumulative data; a theoretical motivated selection of cases.

Indeed, the first ‘two waves’ (Mastenbroek, 2005) of the implementation literature were either eclectic in nature or failed to facilitate the ex-post formulation of clear predictions. Only recent efforts of the so-called third wave (ibid) have started to engage in a more analytical research (Haverland, 2000; Héritier, Kerwer, Knill, Lehmkuhl, Teutsch and Dourillet, 2001; Giuliani, 2003; Treib, 2003; Falkner et al., 2005) by bringing in ‘political’ variables that may capture the overriding power of substantive positions of domestic policy makers. They have set in to leave aside the foremost ad-hoc legal and public administration explanations (Krislov et al., 1986; Siedentopf and Ziller, 1988; Pappas, 1995) and the spurious and deterministic goodness-of-fit argument (Duina, 1997; Börzel, 2003) which have been critically assessed in Mastenbroek and Kaeding (2006).

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6 For a detailed overview see Rosamond (2000).
When theorizing policy outcomes of the subsequent implementation phase, most existing EU implementation studies give no attention to the adoption phase of the EU policy-cycle. In other words, scholars have not taken on board Pressman and Wildawsky’s (1973) notion that ‘implementation should be part of design,’ suggesting that policy theory is formulated ‘with a view toward its execution’ (ibid: 189). Since we should consider ‘the EU as a laboratory [even] for testing and advancing theories and models of implementation in general’ (Sverdrup, 2005: 5), scholars may follow recent efforts (Mastenbroek, 2003; Kaeding, 2006) to include policy design-related and policy implementation-related factors in the theoretical models. Features of the European legislation adopted by the Council of Ministers in the decision-making phase may have considerable influence on the outcome of the subsequent national implementation process, such as national transposing instruments.

In terms of methodology, scholarly work in the field has been dominated by the use of monostrand research designs (Gabel, Hix and Schneider, 2002; Nyikos and Pollack, 2003; Jupille, 2005). The scholarly work on EU implementation has especially been been driven by case study oriented research (Versluis, 2004; Beach, 2005; among others). Some recent contributions have added quantitative research designs (Lampinen and Uusikyla, 1998; Börzel, 2001; Mbaye, 2001; Bursens, 2002; Sverdrup, 2002; Giuliani, 2003; Linos, 2007; Perkins and Neumayer, 2007). Nevertheless, these two methodologically divided groups often stand apart. In line with recent developments in other academic fields (Tashakkori and Teddlie, 2003) the implementation literature may improve its empirical and conceptual strengths using combined approaches. An integrated strategy may improve the prospects of making valid causal inferences in cross-national research by drawing on the distinct strengths of a so-called mixed-method approach. Lieberman’s article (2005) in the American Political Science Review may prove a helpful guide for carrying out such work.

In addition, more attention should be given to the improvement of the data quality of large-n studies. The limited number of scholars consists of two generations. Whereas the first generation relies exclusively on existing Commission scoreboards and infringement data, the second generation (Mastenbroek, 2003; Steunenberg and Rhinard, 2005; Berglund, Gange and van Waarden, 2006; Haverland and Romeijn, 2007; Kaeding, 2006) has started to improve the data quality by cross-checking; as a result, these studies have and replenished existing EU data with national sources.

Last but not least, implementation research may further profit from selecting untended but theoretically relevant member states and policy areas. Why is it that despite its importance for European integration and its theoretical relevance in terms of its centralist politico-administrative structure in Europe, France is rarely covered in comparative implementation projects? Even smaller member states, such as Austria, Finland, Greece, Luxembourg,
Introduction

Portugal and Sweden, have not attracted much scholarly attention (Mastenbroek, 2005). An additional look at the policy areas corroborates the selection bias found in the literature. As in the case for EU studies in general and the implementation literature in particular environmental and social policy are clearly the most-researched policy areas (Ostner and Lewis, 1995; Eichener, 1995; Knill and Lenschow, 1998; Haverland, 2000; Falkner et al., 2005; Haverland and Romeijn, 2007). For a better understanding of the EU policy outcomes, and in line with Franchino (2005), scholars may invest more time in older policies that are at the core of the Union and still follow the theoretically relevant regulatory style, such as transport (Alesina, Angeloni and Schuknecht, 2005).

All in all, the EU implementation phenomenon is puzzling in two ways. Although full implementation of EU legislation is a legal obligation enshrined in the treaties, and also a necessary step in meeting the Lisbon goals in 2010, it is yet not followed by most member states. More than 770 notifications still pending and coincide with ever new ECJ record fines. Why do some member states refuse to comply with EU law, despite the image-marring effect in posterior EU negotiations and costly consequences in times of tight budget-lines and swooning domestic confidence with the EU (Anderson and Kaeding, 2006)? Even more bewildering, existing EU implementation studies have left the research community with some additional inconsistencies. While a considerable number of studies lack empirical and conceptual strengths and do not draw from earlier findings such as the implementation literature of the 1970s or recent scholarly efforts to improve quantitative data. Moreover, this area of research yet has not attempted combined research designs that draw on the distinct strengths of the important approaches which at present divide the scholarly contributions along the artificial lines of rivalling quantitative and qualitative camps.

1.2 Research question

Until now, this paper applied the terms compliance, implementation and transposition interchangeably. However, in line with Giuliani (2005), I argue that the concept of compliance ‘goes well beyond the process of transposition of legal provisions’ (ibid: 1).7 In the remaining chapters, this current study will only refer to transposition as the term action that denotes the ‘process of transforming directives into provisions of national law by the competent national legislative body or bodies’ (Prechal, 1995: 5).

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7 It includes the implicit recognition of firmly-established ‘ways of doing things’, the observance of loosely-established pacts, rational compliance with self-interested agreements, the observance of appropriate conduct with the EU ‘club’, the fulfillment of rather severely controlled and sanctioned obligations and duties (Giuliani, 2005: 1).
Two transposition aspects, according to Articles 10 and 249 EC, are important, namely: timeliness and correctness. First, transposition of EU legislation entails that member states transpose legislation on time. Second, member states must adopt national legislation that is in line with the contents of the original EU law. Also, with regard to timely and correct transposition, directives are of particular interest. ‘A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.’ (Article 249 EC). Hence, directives are not directly applicable at the national level, but have to be incorporated into national law first.

This study focuses on the time aspect of national transposition processes of European directives across member states. Posed to unravel the implementation puzzles, the main and subsequent research questions are as follows:

Main question:
Why do member states miss deadlines when transposing EU internal market directives?

Subsequent questions:
What factors determine delays when transposing EU directives?
How do these factors influence the timeliness of the national transposition processes?
Under what conditions are transpositions of directives delayed?

To give a satisfactory answer to the main research question ‘Why member states miss deadlines when transposing EU internal market directives’ and its sub-questions, this study opts for a combined research design. To review, the first research sub-question (‘What factors determine delayed national transposition processes?’) calls for an investigation of the underlying correlations between the dependent and independent variables. The second research sub-question (‘How these determinants influence the timeliness of the national transposition processes?’) addresses the underlying causal effects. The third research sub-question (‘Under what conditions these national transposition processes are delayed?’) assesses the relative importance of the causal mechanisms identified by the second research sub-question and lying underneath the correlations specified with the first research sub-question.

1.3 The Theoretical argument

To address the abovementioned research question and in line with some recent burgeoning rationalist explanations for EU policy implementation outcomes (Dimitrova and Steunenberg, 2000; Franchino, 2005; Steunenberg, 2006; 2007) this study presents an actor-centred theoretical framework. The argument will be developed in subsequent chapters, at length, but can be succinctly summarized as follows:
To start, this study argues that a transposition process normally induces policy change at the member state level. Decisions on policy change are, quite often, fundamental bargaining problems about who gets what and when. Drawing from the war of attrition games in economics literature this study refers to the transposition outcome as a bargaining game between groups of actors who must agree, within an allotted timeframe, on a new national policy. National transposition actors, such as administrators and politicians, must, within a set deadline, agree on how to implement the policy in a manner complying with EU law. They are able to weigh every choice against its alternatives and they invariably choose the most preferred option. Assuming that the demands are incompatible, the actors can either reiterate the previous demand and wait for the opponent to lower his demand or actors can change their demand. Waiting (i.e. delaying national transposition processes) can be costly. Who ends the game and when, depends on the player’s expected payoff. There exist payoffs to certain actors that choose to wait for a particular waiting time. The expected flows of payoffs to an actor equals to the difference between benefits and costs, while both elements are affected by particular factors. Whereas both include the time component that determines the flow of benefits and costs, respectively, they vary in terms of additional elements: rent proportion, rent-seeking costs and discount factor.

Indulged by the new policy and the total amount of waiting time expected during the encounter, each player must choose a moment of agreement at which he plans to concede in the event that the other payer has not already conceded. The first player to quit the contest cedes the reward to the other side. Increasing the rent proportion decreases the benefits and increases the risk of waiting. Furthermore, it is the rent-seeking costs, i.e. the cost of the battle in the pursuit of these benefits that determine the flow of payoff. Increasing the cost determinant increases the cost-side of the difference and decreases the likelihood of a complicated and time-consuming negotiation process. In addition, increasing an actor’s waiting time increases the waiting costs with every additional unit per time. Therefore, payoffs decrease over time. Last but not least, players discount future payoffs. The higher the discount rate (the less players discount future payoffs), future cost/benefit payoffs are perceived as almost similar to the current ones.

In sum, three sets of explanatory factors for the timeliness of national transposition processes that influence the cost/benefit structure of the actors can be identified combining legal, administrative as well as political factors: EU-level, national-level and crises-related multipliers. While the European level indicators are policy-design related, national are policy-implementation related and crises-related factors stand on their own.
Policy-design related:
This study acknowledges that transposition actors cannot modify the policy in ways that are substantially different from the draft adopted by the Council. If already existing national measures lie within the margins of discretion controlled by the Commission, then no new national transposing instrument has to be agreed upon. If the national status quo lies outside the discretionary margins set by the directive, then, new legislation has to be adopted (Steunenberg, 2006). The higher the amount of discretion, ceteris paribus, the more difficult to settle an agreement on time.

Furthermore, delays can be minimized if sufficient time is allotted, that is, if the deadline gives member states ample time to act. A comfortable transposition timeframe extends the time-horizon and discounts future payoffs considerably which increases the likelihood of a swift transposition. The more time a member state has to transpose a directive, ceteris paribus, the swifter the national transposition process.

In addition, the fixed transposition deadline affects the rent-seeking costs per unit of time which are constant until the deadline. Only with its expiry the potential threat of a likely cumbersome, time-consuming and image damaging infringement procedure becomes real and adds an additional cost function to the payoff equation. Therefore, this study argues that there is a positive, unidirectional probability of a compromise at the transposition deadline-deadline effect (Carré, 2000). Actors come to an agreement around the date of expiry.

Policy-implementation-related:
Depending on the form of the national implementing instrument, the number of actors varies and affects the timeliness of transposition (Steunenberg and Voermans, 2005). The more actors that are involved, the more difficult it is to coordinate and to reach a settlement of the conflict (Shepsle and Boncheck, 1997). N-games are more complicated to resolve due to problems common to group interaction (Raiffa, Richardson and Metcalfe, 2002). Since delay is costly, this study suggests that countries with a good deal of political fragmentation commonly adopted policy change later (Haverland, 2000; Giuliani, 2003; Steunenberg, 2006). The fewer actors involved in the making of a legal instrument, ceteris paribus, the less likely a delayed transposition process.

Member states often use one national transposing measure to transpose a handful of EU directives at the same time, in what is known as a national transposition package approach. Depending on the position of the EU directive within the transposition package, which is determined by the package’s size and range of deadlines, the rent-seeking costs may remain low; however, they are raised tremendously after the expiry of the deadline of the first EU directives in the package. Due to actors’ cost function, a national transposition package increases the probability of delayed settlement of the first directive in the national transposition package, whereas, in turn, it accelerates a settlement of the last European directive.
Depending on its timing, a national general election can have either a retarding or accelerating effect. Its effect hinges on the value of the discount factor of the future. While general elections that fall at the end of a national transposition process increases the costs of waiting dramatically (threat of withdrawal or new introduction due to ‘legislative deadline’), the actor discounting future payoffs very marginally. If transposition is not concluded before the start of the next legislative term, a general election will shelf it, along with all other unfinished legislative projects. Hence, all non-adopted legislation in the concluding legislative term would have to be re-introduced in the forthcoming term, which would increase the discount rate unbearably, making transposition before the end of the legislative period more likely. Whereas a national general election falling at the beginning of the transposition procedure decreases the probability of a problem-free settlement, a general election at the end of a transposition process accelerates the adoption of new national legislation.

Crisis-related:
Exogenous shocks that aggravate economic conditions increase the cost of not adopting reforms and thus prompt a solution to the bargaining problem (Drazen and Grilli, 1993; Alesina and Drazen, 1991). Analogically, situational changes in member states also affect the progress of transposition. Such changes, for the purposes of this study, include accidents which occur relatively often in the transport sector – the later focus of this study. These accidents add additional costs to the constant rent-seeking costs additional costs, unbalancing the payoff equation and thereby increasing the probability of a fast settlement. An accident increases the probability of a timely settlement.

1.4 The research design

In order to answer the main research question and its three subsequent questions and to test the hypotheses derived from the study’s theoretical framework, different methods are required. Following Lieberman’s systematic guide (2005) for carrying out a combined design, I first test the correlations of explanatory variables with a large-n data set applying an ordered multinomial logistic regression analysis. This large-n analyses will guide case selection and provide direction for more focused case studies and comparisons. Then, four case studies are presented; they corroborate existing findings by the earlier technique, but also, uncover the causal mechanisms that lay beneath the correlations between the timeliness of the national transposition processes and the individual components of the theoretical framework. In particular these case studies are used to generate theoretical insights from off-liner cases. Finally, I end with a concluding test of the hypotheses (that is generated from the large-n and small-n research) by running an intermediate research technique: the fuzzy set technique. Next to its test for generalizability of the case studies’ findings, the fuzzy set technique develops better measurement strategies to bring the relative significance of single and combinations of conditions forward.
Generally speaking, this study will show that a ‘triangulation’ of research techniques can eventually result in a rich and well-rounded understanding of the national transposition processes. Quantitative analysis can offer overall trends in deceptively similar national transposition records that based upon coded national transposition instruments. Qualitative analysis can potentially explain ambivalent statistical results produced by those data. Special attention here is paid to the added value given by the diversity-oriented fuzzy set technique which has not found its way yet in EU studies, in general, or EU implementation, in particular.

More specifically, the population of cases to which the theory is meant to apply are all national transposition instruments. The dependent variable is timeliness of a national transposition process of a EU directive operationalized as transposition delay. In order to test the hypotheses, a selection of observations from this population is required. This study, therefore, will focus on the transport acquis communautaire adopted between 1995 and 2004. The largely ignored transport sector is selected because it represents, among other things, the predominantly regulatory character of EU policies with a comparatively high number of directives – the focus of this study. Since social science cannot be explained without comparison, this study opted to compare nine member states, namely: Germany, France, the United Kingdom, Italy, Spain, the Netherlands, Greece, Sweden, and Ireland. All dimensions of the explanatory variables are covered through these nine states.

Drawing from recent scholarly efforts the collected data on the dependent and independent variables are of second generation. First, I have tried to rely, as far as possible, on what Moravcsik (1998: 80) calls ‘hard primary sources’, with a strong preference for contemporary official European and national data bases available for citation and replication by other scholars. I supplement and cross-check these official data through additional political data provided by the European Journal of Political Research and newspapers. In addition, I carefully used insider publications, such as Agence Europe, and conducted interviews with key officials from EU, who are rich sources of behind-the-scenes information about the national transposition processes. Interviews with experts provide the possibility of obtaining the information required for the theoretical framework, and also provide deep and accurate information that cannot be expected from surveys or from data content analysis. The policy experts interviewed were selected according to their knowledge of the EU directives and the national transposition instruments, respectively. Generally, since they were active participants of the negotiation and the national transposition process, they had first-hand knowledge of the situations investigated.
1.5 Outline of the book

The book is divided into four parts. The first part is devoted to acquainting the reader with the several potholes in the existing EU implementation literature, and with the main characteristics of EU transport policy. A look at the inner-workings of the transport sector will support the application of an actor-centred theoretical framework to explain the timeliness of national transposition processes. This framework forms the second part of the study. The third part of the study is devoted to the analysis of the research. Some time will be devoted to present the ways in which one can improve the quality of existing EU data, which then will accurately assess the EU’s problematic implementation deficit. What follows is a broad array of quantitative and qualitative evidence aimed at testing the expectations derived in the theoretical chapter, measuring the timeliness of national transposition processes. A large-n analysis is succeeded by four case studies fleshing out existing findings and pinpointing an important missing factor. Then, the fuzzy set technique tests the hypotheses generated from the large-n and small-n research. Furthermore, it develops better measurement strategies to bring the relative significance of single and combinations of conditions forward. The fourth part of this study summarizes the findings and elaborates on their contributions and broader implications.

Part I – Introduction and background:

Chapter two: Literature review
This chapter provides a critical assessment of the existing body of literature that is most relevant to the theoretical, methodological, and empirical focus of this study. It announces major problematic characteristics that plague the literature on EU implementation: ad-hoc, little explanatory power, deterministic, myopic and biased. This chapter especially embraces the recent efforts of the so-called ‘third wave’ implementation studies by researching the role of domestic politics on processes of implementation, in order to generate clearer predictions that can be empirically tested. In the subsequent chapters, this study attempts to add to these recent improvement efforts and to address the theoretical, empirical, and methodological weaknesses of EU implementation studies.

Chapter three: Development of EU transport policy (1957-2006)
This chapter examines the historical development of the EU transport policy field. A look into this field will later inform the theoretical framework by explaining why member states miss the EU directive transposition deadlines. After reviewing the scarce political science literature on EU transport policy, the chapter presents the European institutional setting in terms of transport policy. Subsequently, it is put forth that the integration process can be characterized as recent, gradual, uneven, complex, and crises-driven. The EU’s subsequent rounds of enlargement, as well as the shifting of the Commission’s approach toward transport, have shaped the development of EU transport policy. Yet, it is reasoned that transport policy is particularly shaped by sub-sector specific crises.
Chapter 1

Part II – The timing of transposition:

Chapter four: Theoretical framework

Chapter four develops an actor-centred theoretical bargaining framework for the timeliness of national transposition processes. It offers a series of testable hypothesis tailored to the transport sector, but which can be generalised to any EU policy area. Drawing from the war of attrition logic, first, this chapter walks through the ways in which policy change occurs; a look at the effects of change follows. Next to European directive specific and national forms and methods of implementation, which form the first two parts of the theoretical framework, this chapter also identifies the particular role of transport-related accidents in the transposition phase. All these factors affect timeliness of national transposition processes. Who ends the bargain and when, depends on the players’ expected payoff, i.e. the cost/benefit structures of the actors for waiting a particular time. Whereas the flow of benefits to actors is positively related to the rent proportion and negatively related to time, the flow of costs is determined by the players’ cost determinant and time. Furthermore, discounting the future benefits shadows on the players’ decisions on whether to delay, wait and hold out for the reward in question, i.e. waiting in the hope that the other will make some significant concession.

Part III – Analysis within a combined research design:

Chapter five: EU 1995-2004 transport transposition data set

This chapter presents a high quality data set of basic variables that helps us make a deductive, systematic, empirical, and analytical study of the EU transposition performance of member states. This new, more reliable data set covers almost two-third of the full population of the EU transport acquis from 1995 to 2004. It includes EU directive specific features, and the characteristics of the national implementing instruments of nine member states, namely: France, Germany, the UK, the Netherlands, Greece, Spain, Ireland, Sweden, and Italy. First, this chapter addresses the choices on selection of, among others, the policy field, the member states, and the time period of investigation. Subsequently, it presents the sources of information and assesses the completeness of the data set, devoting some attention to missing values. It then conducts first descriptive analyses of the national implementing instruments.

Chapter six: Transposition deficit – Statistical illusion or reality?

This chapter offers a more advanced assessment of the new data set. It shows that especially the Netherlands, France, Italy, Ireland, Greece, and Germany have serious transposition problems in their transport sectors. Based on the information of 367 national implementing measures, this chapter shows that EU transposition deficit is more than just a statistical illusion. Almost 50 per cent of the national transposition instruments are not transposed on time, and in fact are delayed up to almost five years. Cross-country variance is respectable, the difference between the laggard the Netherlands and the champion Sweden, remarkable. Furthermore, differences in median and mean values of delay uncover that 70 percent of delayed directives are more than six months tardy (mean value).
Consequently, this chapter identifies three groups of outcome: on time, delayed by less than six months, and delayed by more than six months.

Chapter seven: Determinants of transposition delay
In this chapter, the independent variables are operationalised and the following research methods presented. With a dependent variable coded trichotomously (no delay, short and long delay) this study runs an ordered multinomial logistic regression and discusses its results. By these, existing arguments in the current literature are confirmed and challenged. Comparing three groups of transposition outcomes it shows that EU directive specific characteristics explain short delays, but national level explanatory variables explain long delays. The statistical results strongly support the central argument that European level, national level, and crises-related factors together account for transposition delays and that an actor-centred model has some explanatory power.

Chapter eight: Case selection
There are clear benefits of using large-n and case study research designs concomitantly in EU implementation studies in particular. As an example of how to undertake such a challenge, this chapter deals with case selection for the subsequent case study chapter which will help to further fine-tune the findings and address some remaining limitations of the prior results. First, it presents the criteria for case selection. A case is eligible if the fit of the statistical model is relatively satisfying or not, depending on the calculated deviant residuals. This study opts for carrying out a model-testing and -improving approach. A most-similar/most-different design, then, guides the selection of four national implementing measures: two well-explained (on-the-line) cases and two outlying (off-the-line) cases. The four cases include three countries and two transport sub-sectors.

Chapter nine: Four case studies – Two on- and two off-liners
This chapter carries out the case study analysis. The structures of the four case studies, which are traced back, are outlined. They include: the French implementing process of Directive 1998/55/EC of July 1998 on minimum requirements for vessels, the Spanish transposition process of Directive 2001/14/EC on the allocation of railway infrastructure capacity, the German transposition process for Directive 2002/59/EC on Community vessels traffic monitoring and information system, and the French implementing process of Directive 2001/53/EC on marine equipment. The evidence from these cases shows that the process-tracing method is a helpful research tool and contributing to the underlying mixed-method research design of this book. It strongly confirms overall expectations about the conditions under which member states miss transposition deadlines. It also pinpoints a missing explanatory variable: political priority assigned to the specific transposition process.
Chapter ten: Necessary and sufficient conditions for timely transposition

Since it would be problematic to account for political priority in 365 cases a third method is presented. Completing the combined design, chapter ten provides an additional test of the extended list of hypotheses generated from the small-n research for a ‘middle range’ set of data. Furthermore, in addressing some limitations of the earlier analyses, it is the so-called fuzzy set technique, which, eventually, identifies usually necessary and sufficient set of conditions for timely transposition. Its ‘calibrated data’ of the outcome and the causal factors, individually, can show that logic of partial membership conveys the diversity of the real world, rather than the artificial research dichotomies of yes/no assignments. The results of four usually necessary conditions, which exert their effect independent of all other factors and are present in all instances of an outcome, are discussed.

Part IV: Conclusions:
Chapter eleven: Discussion, conclusion and outlook

In this chapter, the findings of the empirical examination are synthesised. The evidence bearing on the hypotheses of the transposition framework is assessed. The findings of this study are mainly twofold, namely: empirical, and methodological. It is argued that the EU has a multifaceted implementation problem. Seven driving factors crucial to the timeliness of national transposition processes of EU legislation are identified. They are subsumed under three broader groups: policy design-related (EU level), policy implementation related (national level), crisis-related factors. Potential generalisations, from the empirical data to the broader range of EU legislation, are suggested. From a methodological point of view, it is suggested that, despite epistemological inconsistencies, one can employ the correlational, case study and the fuzzy set techniques, which is not yet used in EU studies, to enrich knowledge on the implementation of EU legislation. Whereas regression analysis is concerned more with the effects of a cause and case studies on the causes of the effect, the diversity-oriented fuzzy set method allows asking under which assumptions given causal factors might be necessary or sufficient for an outcome. Hence, the mixed-method approaches, in general and the fuzzy set technique, in particular, are, in EU implementation studies, heralded as ‘diamonds in the rough’.