Responding to the challenges of European law, scholars have developed unique concepts and approaches in their studies of the EU. Both the EU’s effects on member states (Europeanization), in general, and the EU’s effects on the translation of EU legislation into national law, in particular, have been areas of interest.

2.1 Introduction

This particular body of literature will be screened to assess its potential to answer the research question: ‘Why do member states miss deadlines when transposing EU internal market directives?’ Reviewing this implementation literature accordingly, I identify five puzzling main features. First, while all three neo-institutionalisms have offered ‘potential’ explanations for policy change, the sociological has clearly attracted the most scholarly attention. Absorbed in the so-called goodness-of-fit literature, however, this perspective has limits. A clear problem is its overly deterministic nature: it presupposes that national governments and parliaments want to maintain the status quo (Duina, 1997). Second, the methodological approach is biased toward mono-method designs (small-n qualitative case studies), with an exclusive focus on a handful of member states and very few policy areas. In addition, most studies are recent and isolated from the decision making process on the European level in Brussels. This study, however, argues that we must engage in the carry-over of the development and decision-making phases to the implementation phase. This amalgamation of ideas is important in the sense that states may be more or less likely to transpose depending on the extent to which the European directive agreed upon at the European level conforms with national forms and methods of implementation, capacity, and interests.

The chapter is structured as follows. First, it sketches the bottom-up European integration literature and then the top-down Europeanization literature, which closes the loop of the three-step EU policy cycle by bringing back the domestic level to EU studies. Then, I review the comparative politics implementation literature in light of the research question. In particular, I assess

8 Note that I do not address the IR compliance literature, which has been reviewed extensively elsewhere (Haas, 2000; Tallberg, 2002; Mbaye, 2001; Börzel, Hoffman and Dudziak, 2005, Linos, 2007). For an assessment of potential theoretical approaches to compliance see Giuliani (2005).
the main contributions to the rich scholarly field, and identify five puzzling main characteristics. To conclude, the study summarizes the findings that will further guide the current study’s line of argumentation.

2.2 European integration and Europeanization

For the past several years, the main focus of comparative politics has been on the bottom-up process of institution-building and political integration at the European level. There exist two inter-related processes at the European level. First, policy competences are delegated to the supranational level to achieve particular policy outcomes. Second, a new set of political institutions are established, with executive, legislative, and judicial powers (Goetz and Hix, 2000). Different integration theories have emerged over the last decades (Rosamond, 2000), namely: neo-functionalism (Haas, 1958; Lindberg, 1963), intergovernmentalism (Hofmann, 1966; Taylor, 1982), federalism (Spinelli, 1972), liberal-intergovernmentalism (Moravcsik, 1993; 1998), multi-level governance (Marks, Hooghe and Blank, 1996), historical institutionalism (Sandholtz and Stone Sweet, 1997), and sociological constructivism (Risse in Diez and Wiener, 2003). Scholars who have systematically applied one, two, or all three new institutionalisms to European integration have been reviewed extensively elsewhere (Pollack, 2001; Jupille and Caporaso, 1999; Aspinwall and Schneider, 2000; Dowding, 2000).

Less attention, however, has been paid to the reverse top-down relationship, namely how European integration might impact EU member states. However, with the re-launch of the integration process in the mid-1980s, the European Community (EC) had become a polity – a political system that can be analyzed with the tools of most domestic systems. In the end, the term ‘Europeanization’ was coined to mean the effects of integration. Europeanization represents a response to the challenge to bring the domestic level back to European studies and, consequently, ‘closes the loop’ (see Figure 2.3).

Generally speaking, Europeanization is a recently expanding field of research as well as a ‘highly contested concept’ (Kassim, Peters and Wright, 2000: 235). Europeanization, like globalization, is not one thing. The impact of Europeanization varies across countries, sectors, and regions (Börzel, 2003). Furthermore, Europeanization is not political integration, which belongs rather to the ontological stage of research. Instead, Europeanization is concerned with what happens once EU institutions are in place and produce their effects (Caporaso and Wittenbrinck, 2006; Featherstone and Radaelli, 2003: 35). Europeanization is not tantamount with convergence (Ladrech, 1994), which can be a consequence of Europeanization; nor, in fact, is it synonymous to harmonization, which reduces regulatory diversity.
But, then, what is Europeanization? Recent studies (Olsen, 2002; Featherstone and Radaelli, 2003; Buller and Gamble, 2002; Green Cowles, Caporaso and Risse, 2001; Knill and Lehmkuhl, 2000; Vink, 2003; Giuliani, 2004) identify a number of understandings, as follows. First, Europeanization is the development of institutions of governance at the European level (Green Cowles et al, 2001). Whereas Sbragia (2001) focuses on policy changes, Risse (2001) on normative changes, and Checkel (2003) on constitutional changes, Cowles focuses on state-society relations. Much of this literature, hence, deals with both direct and binding pressures of EU legislation more specifically for national adaptation and the implementation of EU legislation in particular. Second, it is the end goal of political unification in Europe. Third, Europeanization is the European form of organization and governance that is being exported from Europe. Fourth, it is a process in which domestic politics becomes increasingly subjected to European policy-making. Finally, Europeanization is a ‘smokescreen for domestic policy manoeuvres’ (Buller and Gamble, 2002).

Later, a considerable part of the Europeanization literature review that follows deals with the implementation of EU legislation, which is defined as the processes through which European norms are transposed, enforced, and evaluated. In this context, scholars have turned their attention to the institutional patterns of adjustment to European policies, and in particular to the national implementation of EU law, the latter of which is central in this book and will be the focus of the remaining literature review.
2.3 Literature on EU implementation: relatively recent, with little explanatory power, myopic and biased

Some scholars put the impact of European integration, understood here as the impact of the EU on national legal output, in perspective (Bovens and Yesilkagit, 2004; van Kersbergen and Lauwers, 2005). Testing the ‘80% thesis’ figures for the Netherlands uncover that only about 12.5 per cent of Dutch legal measures were influenced by EU law. UK figures reveal that, for example, in 2002/2003, 41 per cent of regulations originated in the EU. Irrespective of the broader debate about whether implementation is an interesting and important field of research in political science, the literature in the area has flourished since the late 1980s. The literature on EU implementation is comprised of a mixture of studies that offer ‘potential’ theoretical explanations of the extent to which Europeanization occurs. Mastenbroek (2005) identifies three waves of scholarship on EU implementation which inherently have the following characteristics (see also Treib, 2006).

2.3.1 Recent and ad-hoc explanations with little explanatory power:

The first wave (Mastenbroek, 2005) was rather eclectic in nature, proposing numerous legal and politico-administrative explanations about the implementation deficit in member states (Krislov, Ehlermann and Weiler, 1986; Siedentop and Ziller, 1988; Metcalfe, 1994; Pappas and Arpino, 1995; Ciavarini Azzi, 2000; Demmke, 2001; Lampinen and Uusikylä, 1998; Mastenbroek, 2003). Pappas (1995) examines the implementation of Commission decisions by national administrations and identifies the role of national parliaments, the seniority and level of centralization of coordination units across the national ministries crucial. Siedentop and Ziller (1988) study the implementation of 17 European directives in various member states look for ‘national patterns of enforcement of EC law’ (ibid: 57). More particularly, the variables that these studies invoke to explain regulatory dynamics are usually located at the national level. For example, national legislation and legal framework (Peacock, 1988), national policy-making processes and such as the consultation of national representatives of workers and employers (Richardson, Gustafsson and Jordan, 1982: 1-26), national business cultures (Vogel, 1986), national regulatory agencies (Kelman, 1988), the national civil service (Vogel, 1986), national public (Vogel, 1986).

The second wave has focused on the goodness-of-fit hypothesis and has resulted in contradictory findings. The goodness-of-fit can be usefully presented as a historically institutionalist argument (Mahoney, 2000; Pierson, 2004). The cen-

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9 According to several scholars in the field (Hix, 1999: 3), at least 80% of member states’ legislation is derived from EU legislation, suggesting a very high impact of the EU on national legislation and administration.
The central claim is that existing institutional paths are resistant to change. If European policy demands can be accommodated within the confines of the path already taken, adaptation will be smooth. Conversely, if a directive requires profound changes of the existing institutions, EU adaptation will be time-consuming and initially incorrect. Underpinning this relationship are one of two mechanisms depending on whether the, rational choice or sociological institutionalism perspective is ascribed to. Some focus on the cost-awareness of national actors (Duina, 1997; Börzel, 2003; Knill and Lenschow, 1998). Others suggest normative notions, bringing the logic of appropriateness to the forefront (see Héritier et al., 2001; Börzel and Risse, 2003; Knill, 2001).

Although a handful of scholars have argued that successful implementation depends on the fit between European policy requirements and existing institutions at the national level (Duina, 1997; Duina and Blithe, 1999; Green Cowles et al, 2001; Börzel, 2003; Börzel and Risse, 2003), studies have shown that a ‘good fit’ is neither a necessary nor a sufficient condition for problem-free implementation (Knill and Lenschow, 1998; Haverland, 2000; Héritier et al., 2001; Falkner et al. 2005; Mastenbroek and Van Keulen, 2006). Focusing on national administrative traditions, Knill and Lenschow (1998), for example, hypothesize that implementers’ responses to EU requirements are institutionally framed. Striking a more critical note, Haverland (2000) finds that the goodness-of-fit is not pivotal in explaining the implementation of a directive on packaging waste. Despite a high misfit, the UK, for example, implemented the directive relatively on time and correctly. Germany, on the other hand, only faced moderate adaptation pressure, but implemented the directive two years late. The key to these puzzling results, according to Haverland, are the institutional veto points.

Despite these examples most of the second wave models of the implementation literature, however, do not facilitate the formulation of clear predictions, but formulate any ex-post explanations of virtually every implementation pattern, which often jeopardizes their necessary explanatory power (Mastenbroek and Kaeding, 2006). The connections between the research and the theoretical, substantive, and political concerns that motivate such research have little meaningful connection to the actual empirical process (unit of analysis and unit of observation problematic). In addition, the second wave models are very often overdetermined by adding more and more variables to the initial hypothesis. This clearly is not helpful because it leads to overly complex models, which do not allow for ex ante hypothesizing on implementation outcomes lacking parsimony (Mastenbroek and Kaeding, 2006).

All in all, the goodness-of-fit models lack empirical and conceptual strength. Often the relationship between the status quo and the response to the EU is spurious, as both variables are contingent upon the preferences of domestic political and administrative actors. This shortcoming in strength has been recognized by advocates of the thesis, who have crafted more dynamic
frameworks revolving around the goodness-of-fit by bringing in ‘political’ variables that may capture the overriding power of substantive positions of domestic policy makers.

The third wave of the implementation literature is characterized by its attempts to theorize and research the role of domestic politics on the process of implementation (Mastenbroek, 2005) paving the way for future research in the field. Héritier et al. (2001) identify a country’s stage of liberalization, its reform capacity, and its dominant belief system as explanatory factors. Haverland (2000) argues that the presence or absence of institutional veto positions allow domestic actors to hamper implementation. Along these lines, Mbaye (2001) and Giuliani (2003) investigate the effects of the number of veto players; Treib (2003) argues that a party’s political preferences of national governments shape transposition records of member states. Falkner et al. (2004) posit that the effect of domestic opposition on timely transposition is mediated by a member state’s culture of implementation.

More general, rationalist explanations are only recently burgeoning, and are still very limited. An insightful example of an institution-based model, that focuses on the role of domestic politics on processes of implementation, is a model of implementation developed by Dimitrova and Steunenberg (2000) based on insights from game theory and analytical politics. A second promising application is Franchino’s (2005) work on formal models of delegation in the European Union, which are closely linked to the issue of implementation. Last but not least, Steunenberg (2006; 2007) analyses the transposition problematic by focusing on an actor-oriented approach of transposition coordination in the domestic policy arena. Domestic actors are taken as policy-specific veto players, which is illustrated by two cases of decision-making on EU directives in the Netherlands, namely: the cocoa and chocolate products directive, and the laying hens directive. These studies provide empirical and conceptional strong research in the field.

2.3.2 Myopic:

Another investigative look at the existing literature on EU implementation unveils that scholars have not been inspired by the 1970s public policy implementation studies (Pressman and Wildavsky, 1973; Bardach, 1977; Berman, 1978; Mazamanian and Sabatier, 1981). ‘This field of research gradually lost academic prominence’ (Giuliani, 2005: 5). However, its rich contributions include an interesting finding that may prove helpful for theoretical approaches that model national implementation processes: the link between the adoption phase and the subsequent implementation phase. Pressman and Wildavsky (1973: 189) argue that ‘implementation should be part of design,’ suggesting that policy theory is formulated ‘with a view toward its execution’ (ibid: 189). So far, only few recent contributions (Jonsson and Tallberg, 1998; Mas-
tenbroek, 2003; Kaeding, 2006 among others) explicitly refer to policy design-related and policy implementation-related factors in their explanatory statistical models.

2.3.3 Methodological divide:

Another characteristic of the EU implementation literature is a clear methodological divide, namely: qualitative work and quantitative contributions. This study shows that the implementation literature has not used a so-called mixed-method approach, such as, for example, the welfare state literature, but primarily uses monostrand designs.\(^\text{10}\) The scholarly work on EU implementation, which aims at developing and testing explanatory factors for the implementation deficit in member states and in particular policy sectors, has been dominated by case study oriented research (for example, Knill and Lenschow, 1998; Haverland, 2000; Héritier et al., 2001; Falkner et al., 2005). Here, the thorough selection of cases is crucial. Poorly applied, one of the greatest pitfalls in the exploratory study involves premature conclusions: the findings may seem convincing enough for their inappropriate title of ‘conclusions’. Another hazard of case study analysis is the tendency to extend the exploratory phase, and to inadequately represent diversity. Only recently contributions have added quantitative research designs to the implementation debate, with the aim of drawing more generalizable findings.

2.3.4 Statistical data of first and second rounds:

Nevertheless, quantitative research on the implementation of EU law is still ‘wet behind the ears’. The group of scholars consists of two rounds. Whereas the first generation relies exclusively on existing EU data, the second generation has further improved the quality of the data.

First generation: (a) Commission scoreboards and infringement proceedings

Commission scoreboards: The first proxy for non-implementation of EU law is the Commission’s records that monitor the application of Community laws that are implemented.\(^\text{11}\) Relying on scoreboards published by the EC, Lampinen and Uusikyla (1998) show that critical mass opinion towards the EU does not influence implementation behaviour. On the other hand, member states traditionally labelled as corporatist succeed better than non-corporatist

\(^{10}\) These design use a single research method or data collection technique and corresponding data analysis procedures to answer research questions. They are also known as single-phase designs. (Tashakkori and Teddlie, 2003: 711).

\(^{11}\) Since the late 1970s, under the Jenkins’ Presidency, the Commission started pursuing a rigorous policy of enforcement by gradually establishing CELEX, which grew into an indispensable interinstitutional information source for non-implementation.
ones. In line with Bursens (2002), Giuliani (2003) and Sverdrup (2004), who tested implementation performance in different countries, Borghetto et al. (2006) assess the causes of noncompliance with the transposition deadlines of 2179 EU directives, using the Commission data adopted by the Italian authorities. In the same vein, but for all EU 15 member states, König, Luetgert and Mäder (2005) gathered procedural information on all directives initiated by the Commission between 1984 and 2002. In total, they piled up 21,227 cases. Their findings reveal that the larger the level of EU conflict, the more EU legislative actors involved: moreover, the findings suggest that the more qualified majority voting is applied in the Council, the higher the probability is for compliance. The more controversial a directive is, the more likely the Commission and other member states will demand compliance: but meeting the prescribed deadline may be slightly eased in these cases if the member states government welcome EU legislation as an opportunity to circumvent the domestic legislative arena by means of secondary instruments.

Commission data, however, have serious shortcomings. The data are very unreliable because the scoreboards depend entirely on the notification of the national implementing measures by the member states to the Commission (Börzel, 2001). Moreover, the validity of the Commission’s data, in light of the alleged transposition deficit, is deceptive. By the end of 2003, 2553 directives were part of the *acquis communautaire* (Commission, 2003). Most of the directives are in force for many years leading to considerable ‘upward bias’ (Mastenbroek, 2003).

*First round: (b) Infringement proceedings*

The number of infringements within the different stages is usually taken as the second indicator of member state performance when implementing Community law. Scholars and policy-makers alike base their assessments on statistics published in the Annual Reports on Monitoring the Application of Community Law. Focusing on the determinants of the opening up of infringement proceedings (Börzel, 2001; Tallberg, 2002; Sverdrup, 2004; Beach, 2005; Perkins and Neumayer, 2007; Linos, 2007), Mbaye (2001) gathered infringement data from 1972 to 1993. She broadens the horizon by systematically drawing from the implementation literature in IR, EU studies, and American federalism. She argues that cases of non-implementation in the EU rise with bargaining power in the Council, length of membership, and regional autonomy. Börzel et al. (2005) and Tallberg (2002) have also collected data on infringement proceedings, resulting in large-n data sets, with the goal of garnering more reliable data on implementation. Sverdrup (2002) takes the Nordic countries as a focus and points at a ‘Nordic model’ of good implementation culture. However, these scholars focus solely on explaining infringements, which implies a different empirical focus, and is only a crude proxy for timely and correct implementation.
Again, there are a few reasons to question whether infringement proceedings are valid and reliable indicators of implementation deficit. Infringement proceedings are ‘no indicator of the actual or absolute level’ of non-implementation in the EU (Börzel, 2001: 808). Since they only cover a fraction of the violations of Community law in the member states, infringement proceedings can only serve as indicators of relative non-implementation (Bursens, 2002). Mbaye (2001: 268) argues that a selection bias could even lead us to question the representativeness of the infringement data. The Commission may strategically select cases to be brought before the ECJ (Börzel, 2003).

All in all, the shortcomings of the existing data show that the Commission’s records would be helpful only if the non-implementation cases prosecuted by the ECJ and the Commission were a random sample of all non-transposition cases. Börzel (2001) concludes that there are no existing data that allow us to draw any valid conclusions about whether the EU has an implementation problem.

Second round of statistical data:
More recent larger-n work, which still represents an exception in the case study dominated field of EU implementation studies (Gabel, Hix and Schneider, 2002; Nyikos and Pollack, 2003), has succeeded in improving the quality of existing EU data. In line with the notion that the Commission’s data on member states’ infringements and its scoreboards on monitoring the application of Community law, in particular, can serve as indicators for non-compliance (as long as scholars carefully control for potential selection bias), Mastenbroek (2003) created a more reliable database on non-transposition. She constructed a database, derived from Celex, containing all EC directives enacted in the Netherlands from 1995 to 1998. In addition, she consulted extra overviews from the Ministry of Foreign Affairs, a list of measures notified to the Commission by the Dutch government, and a database compiled by the TMC Asser Institute (see also Steunenberg and Kaeding, 2007) for all 229 directives. In the end, she and others following her example (Steunenberg and Rhinard, 2005; Berglund, Gange and van Waarden, 2006; Haverland and Romeijn, 2007; Kae- ding, 2006), have demonstrated that around 60 per cent of the acquis is not notified on time. Although cross-checking with national data is cumbersome and time-consuming, it is, for the sake of data quality, necessary. Furthermore, it shows the direction by which further quantitative studies in the field can enrich and further improve the mainly small-n scholarly work in the field.

2.3.5 Bias in selection of member states and policy areas:

A final characteristic that resonates throughout the remainder of the book is that existing implementation literature covers only a marginal number of policy areas and member states alike. As is the case for EU studies, in general
(Franchino, 2005), environmental policy and social policy clearly rank highest as the most-researched policy areas in the implementation literature (Ostner and Lewis, 1995; Eichner, 1995; Knill and Lenschow, 1998; Haverland, 2000; Falkner et al., 2005; Haverland and Romeijn, 2007; Linos, 2007; Falkner, Hartlapp and Treib, 2007; Toshkov, 2007).

Although they clearly represent a considerable percentage of all EU directives (environment 9.3%, social policy 8%) there are ‘some worrying signs that we are spending too much time and resources on some clearly secondary policies and ignoring core ones.’ (Franchino, 2005: 246). Some important areas, such as free movement, agriculture, transport and competition deserve at least as much attention as do social policy and environment. For a better understanding of the EU policy outcomes, scholars may invest more in older policies that are at the core of the Union. While agriculture represents on average 23.4% of all EU directives, transport directives represent 6% of the total amount of EU directives (Alesina, Angeloni and Schuknecht, 2005). Acknowledging the requirement of a theory-driven case selection of policy areas, transport follows the regulatory style underlying the well-researched policy areas such as environment and social policy.

Next to the dominance of environmental and social policy areas in the implementation literature which are exemplary for the regulatory style of EU policies, a group of member states is almost always part of comparative research designs, namely: the UK, Italy, and Germany. The smaller member states, such as Austria, Finland, Luxembourg, Portugal and Sweden, have attracted almost no scholarly attention (Mastenbroek, 2005). France, despite its importance for European integration and its theoretical relevance in terms of its centralist polico-administrative structure in Europe, is, relatively, not often covered in comparative implementation projects. However, Mbaye’s study (2001), for example, would have been more powerful had Greece not been dropped out of the analysis because the unavailable data on veto players for Greece. To account for the number of veto player shaping both the speed and the quality of implementation of EU law (Haverland, 2000) Greece would have been a theoretically interesting case scoring, between 1974 and 2000, unspectacularly ‘1’ such as the UK and Spain.12 The UK and Spain have performed well in terms of EU implementation, whereas Greece has been one of the main laggards since its membership to the EU.

Outstanding in the field, however, is the work by Falkner et al. (2005; 2007), who held numerous in-depth interviews for six social policy directives in all 15 ‘old’ Member States. Their study, therefore, represents the first research that provides first-hand evidence to suggest that the EU suffers a pan-European implementation problem.13

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12 The figures differ only in 1989 (1,50) and 1990 (1,24).
13 For a critical assessment see Toshkov (2007).
2.4 Conclusion

This literature overview has given a critical assessment of the mainstream Europeanization literature that discusses the implementation of EU policies across member states in particular. Screened to assess its potential to answer the research question Why do member states miss deadlines when transposing EU internal market directives?, this chapter distilled five theoretically major problematic characteristics that will be subsequently addressed in the remainder of this study.

In order to advance the scholarly understanding of why member states miss deadlines while transposing EU directives, a well-founded conjecture needs to be put forward for scrutiny. Since ontological debates about perspectives that are not meant to be refuted seem good at inspiring scholars to think in new ways, such debates, however, must not be taken for advances in knowledge (Goldman, 2005). Methodologically speaking, whatever the connection may be between factors, on the one hand, and outcomes, on the other hand, the relationship between a factor and an outcome are logically independent of each other (synthetical). Thus, the relationship is not only an analytical one, but an empirical regularity. Second, the nature of that regularity can only be discovered by means of empirical research, for example, by testing hypotheses against a body of data. Thus, there is no a priori valid knowledge about the relationships between factor and outcomes, as any hypothesis about such a link can be refuted by empirical evidence.

The assessment of the implementation literature shows that there is still area for improvement. The third wave of the implementation literature points to a promising direction for improvement. Scholarly work may further elaborate particular frameworks within the third wave of the implementation literature by researching the role of domestic politics on processes of implementation, in order to generate clear predictions that can be tested empirically to answer the research question. Therefore, more attention may have to be given to data quality improving designs, following the study by Mastenbroek (2003). Research should include often untended but theoretically relevant member states and address under-researched and theoretically relevant policy areas, however well fitting the regulatory character of EU policies under which environment and social policy can be subsumed. Last but not least, this review realises that the implementation literature has not yet profited from a so-called mixed-method research design which, however, has brought some helpful insights to other fields of research (Brady and Collier, 2004) and therefore seem well worth the effort of following here.

Before sketching a theoretical framework to explain why member states miss the deadlines while transposing EU Internal Market directives, I, however, assess the characteristics of the development of another regulatory policy area (Lowi, 1964; Hood, 1983), namely: EU transport policy. Whereas the
selection of the sector will become fully clear when discussing the data set in chapter five, these policy-related characteristics will guide the set-up of the theoretical framework in chapter four, in particular, and the overall analysis, more generally.