Part IV

Summary of findings, conclusions and outlook
Chapter 11: Summary of findings, conclusion and outlook

‘The European Council underlines the importance it attaches to Better Regulation at national and European level as a core element in achieving the goals of the Partnership for jobs and growth and urges all institutions and the Member States to implement their respective commitments.[…] The European Council recalls that better regulation is also a matter for Member States to implement in their domestic law-making and in the transposition of Community law and reaffirms its commitment to making progress in all of these areas.’ (Presidency Conclusions 23/24 March 2006, p.22 indent 61 and 62).

The purpose of this book was to find out why delays are so common in national transposition processes, where member states are supposed to configure ways to implement policies handed down by the European Commission. Toward this goal, it was necessary to comprehensively review current literature on EU implementation studies. A close look was given to the development of EU transport policy from 1957 to the 2006 mid-term review of the White Paper on European transport policy for 2010. Next, an actor-centered theoretical bargaining framework on the timeliness of national transposition processes of EU law was expounded upon. Then, aggregate data were presented and studied and endorsed by four, highly scrutinized, case studies. The fuzzy set technique closed the loop and completed the analysis, conceding equal space to large-n, small-n and fuzzy set methodologies.

My ambitious goal in this area was to contribute a meaningful and informative piece of work to the existing field of implementation literature. This final chapter draws together the most important elements of the study’s academic relevance which are mainly twofold: empirical, and methodological. First, it summarizes the main empirical findings. Following this is a discussion of the generalisability of the data on national transposition processes of EU transport directives. And second, this chapter presents the methodological contribution of the book, focusing on the potential added value of mixed-method research designs in social science, more generally, and EU implementation studies, in particular. Moreover, it is argued that there is a strong necessity for cumulative data in EU studies, a relatively young field of research with considerable potential in terms of data triangulation. In completion, I summarize the findings below in the course of discussing their relevance for thinking about transposition processes and compliance issues specifically and its societal consequences more broadly. Implications for more thoroughly understanding the causal dynamics underlying the transposition outcome in light of broader national and European discourses are discussed.
11.1  Empirical contribution

11.1.1  The European Union has a serious transposition problem

Above all, the study illustrates that the EU has a serious transposition problem. The empirical findings suggest that problem in transposition processes occur in almost 66% of all national implementing measures. Furthermore, seven driving factors invariably influence the timeliness of national transposition processes of European legislation. They can be arranged into three groups: European-level, national-level, and crisis-related variables. Tardiness can result from particular circumstances in any of these groups.

- Transposition delay is common: The EU 1995-2004 transport transposition data offers new evidence that the EU has a transposition problem. 47 percent of national implementing measures have been notified late to the Commission, of which 70 percent recorded delays of more than six months, with a maximum delay of 4.8 years. The time length of missed deadlines varies significantly between member states and between transport sub-sectors. Furthermore, the mean and median transposition delays across member states indicate that ‘delay’ is not a simple, but instead a complex entity. Whereas the median of the 367 national implementing measures lies with zero months, the mean is 6 months. This denotes that a number of national implementing measures have considerable transposition delays, a finding that was paramount in later analyses.

- Gold-plating is common: Yet, it is not only the commonness of tardy transposition that raises major concerns about efficient and effective policy-making. Following the discussion of ‘gold plated’ EU legislation in EU member states which is embedded in the broader EU better regulation discourse (for example the Davidson Report in the UK, 2006), the picture is even worse.74 Not only late transposition but also early transposition is problematic. Early transposition requires national businesses to adapt to new legislation before their European counterparts, an action that may lead to a competitive disadvantage in the Single Market (Stephen, 2004). The EU 1995-2004 transport transposition data uncover that 20 percent of the national implementing measures had been in force more than six months before their deadlines. In the end, not only a 47 percent of the national implementing measures jeopardize the effectiveness of the internal market because of its tardiness. No, in sum, almost 70 percent of all national legal measures transposing the EU transport acquis in nine member states, cause problems,

74 A gold plate is any burden placed on national businesses that is not strictly required by the original EU directive. In other words, anything beyond the minimum requirements necessary for meeting a directive can be considered gold plate (Bellis, 2003; Ambler, Clittenden and Obodovski, 2005).
either because they are transposed too late, risking the opening of an infringement proceeding, or because they are too early, risking warping effects on the regulatory environment for business and citizens in the EU alike.

All in all, the EU has a transposition problem, both in terms of delay and over-implementation – a problem which has yet not found its way into the scholarly debate. Next to the Commission scoreboards and the ECJ infringement data, both of which represent rather conservative measures of the transposition problematic in the EU (Börzel, 2003; Mbaye, 2001), this new data is much more reliable.

In line with the second round of implementation data in the field (Mastenbroek, 2003; Berglund et al., 2006; Haverland and Romeijn, 2007; Kaeding, 2006) this book has also provided some progress regarding the conditions under which transposition performance of member states could be improved. This progress is in the identification of seven potential European and national drivers and constrainers for timely transposition. These factors should especially interest those people in power, because some of the drivers and constrainers may have a bearing on underlining that better regulation is ‘also a matter for Member States to implement their domestic law-making and in the transposition of Community law’ (Council of the European Union, 2006: 22).

11.1.2 Driving and constraining forces for timely transposition in the EU:

- Policy design and implementation affect each other
  Focusing on EU transposition delays, this study identifies three sets of catalysts for policy change (see table 11.31). In line with the implementation studies from the 1970s (Pressman and Wildavsky, 1973: 178), this study, in particular, shows that we must not separate policy design from implementation. That is, we consider European directive specific characteristics as well as national transposition instrument features; we also recognize the different effects on the timeliness of national transposition processes. Differentiating between policy design-related (European-level), policy implementation-related (national-level) and crises-related, the study argues that each set has a different impact on the dependent variable: timeliness. It seems that serious delays, those longer than six months, are homemade in the capitals of member states. The specific features of European directives, on the other hand, especially their technical aspects, account for short term delays: those of six or less months. Crises, which are understood as sudden situational changes of the internal or external environments, account for both short and long delays. In this sense, this study agrees that ‘implementation should be part of design’, suggesting that policy theory is formulated ‘with a view toward execution’ (Pressman and Wildawsky, 1973: 189).
Transposition delay is caused by legal, administrative and political factors. Furthermore, the study has illustrated that transposition is more than just a legal or administrative process run by civil servants in public administrations. *Next to legal and bureaucratic practices and procedures it is politics that matter.* To put it differently, this study has shown that ‘implementation is the continuation of politics by other means’ (1973: 189) (to paraphrase a famous Clausewitz dictum), so to say the continuation of ‘who gets what, when, where, and how’ (Lasswell).

Table 11.31: Driving and constraining forces for timely transposition in the EU.

<table>
<thead>
<tr>
<th>Factor</th>
<th>Effect</th>
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<td>Transposition time constraints</td>
<td>Delays &lt; 6 months</td>
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<tr>
<td>Problem of discretion</td>
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<tr>
<td>Political priority</td>
<td>Accelerating and retarding effect</td>
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<td>Election timing</td>
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<tr>
<td>Number of transposition actors</td>
<td>Delays &gt; 6 months</td>
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<td>National transposition package</td>
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<td>Transport related accidents</td>
<td>Accelerating effect</td>
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EU-level factors causing short delay (< 6 months) – Policy design related

- Transposition time constraints
  Administrations must always act under time constraints, regardless of whether administrators like them. The fact that administrations are obliged to act within a legally fixed periods compels them to improve their co-ordination and organization to respect deadlines (Gil Ibáñez, 1998: 165). From the equally important legal point of view, time constraints are required by the principle of legal certainty. This study has found that the transposition time set in the directive is significant and, moreover, the deadline is usually a necessary condition for apt transposition. Furthermore, the importance of a generously set transposition deadline is clear. In the German case (case study 3), it was discussed that the EU Directive 2002/59/EC guaranteed a comfortable 18 month deadline, compared to the average transposition time of 13 months for maritime directives. Interestingly, as interview partners have uncovered, apparently, the deadline could be traced back to the Commission. It was especially the ‘Commission’s colloquial approach towards member states’ (IP12) that allowed member state’s to raise concerns and thereby in-
fluence the content and the transposition deadline considerably. Substantial consultation efforts by the Commission, hence, guaranteed that the deadlines imposed on member states could sufficiently reflect the internal constraints of those states, i.e. decentralized political structures. The right to be heard in the national context means that the prescribed transposition time should be long enough to allow member states to: ‘present an available defense, consult the central, regional, or local public entities involved, co-ordinate the administrative actions of the different entities involved, and confirm or rebut every piece of evidence presented by the Commission’ (Gil Ibáñez, 1998: 196).

More surprisingly, despite their great significance in national policy-making, there is no clear rule about how transposition deadlines should be determined. It is the Commission’s job to set the transposition deadline in a proposal sent to the Council and Parliament. This starts the European legislative process. Here, however, much depends on an individual civil servant in the Commission to gather information about national member states’ potential problems with the draft proposal. The transposition deadlines, then, are often integral parts of the negotiation process (Häge and Kaeding, 2007).

Transposition deadlines receive different levels of consideration, varying from case to case. The Commission, being part of the recently valorized impact assessment studies (Renda, 2006), may first make an evaluation of the transposition’s complexity by conducting a tour d’Europe. Then, after this tour, a deadline will be imposed. More complex cases require longer time-limits. Interestingly, this study’s figures, covering the early 1980s until 2004, display, however, that since the mid-1980s to the late 1990s, the average guaranteed transposition time has steadily decreased from 18 to 13 months. Despite the 84 percent increase in numbers of directives to be transposed over the years (Wessels, Maurer and Mittag, 2003: 46-47), the average transposition time agreed upon in the Council has decreased by 24 percent (Kaeding, 2006). Thus, in periods of high legislative output, all things being equal, transposition delays seem inevitable.

– Problem of discretion

Discretion is a difficult concept to define in general terms. Discretionary power may be defined as the margin of freedom granted to an administration to take action; power is granted, explicitly or implicitly, by the law. Discretion depends on several factors, such as: types of rules, a member state’s legal culture, and the social and personal values and traditions that surround the

75 The recently adopted energy efficiency directive illustrates this point nicely. Whereas the Commission proposal foresaw a one year transposition deadline, the member states drafted their common position with a deadline set for two years. The EP disapproved, contending that two years was too long a deadline for such an urgent issue. Ultimately, the Council and the EP agreed on a one year deadline, but added derogation arrangements for some of the directive’s provisions.
relevant person or organization (Gil Ibáñez, 1998: 199). The statistical analysis shows that the level of a member state’s discretion in transposing an EU directive is a significant positive indicator for short delays. The Spanish case (case study 2) highlights the potential problem with a relatively high level of discretion. While European Directive 2001/14/EC left considerable leeway of interpretation to the member states, it resulted in a ‘wait and see’ attitude in the Spanish transport ministry and railway body. Before taking any transposition actions, the Spanish watched and consulted other member states’ transport ministries and railway companies ‘to see which interpretation was pursued’ by them (IP6), and later to finally cut their own path.

Despite what EC law, and some ECJ case law, says, it is clear that some degree of national discretion is unavoidable. Since the Commission does not have enough resources to control them, member states have a lot of discretion in the day-to-day applications of transposition. In other words, member states de facto already have a wide discretion in enforcing EC law. It should be taken into account, however, that national enforcers can sometimes be better placed than Commission officials to assess the optimal level of discretion, and to recognize the problems of enforcement and application of Community law. In fact, it may be said that Commission action reduces the capacity of national governments to respond to divergent and changing problems with appropriate flexibility. On the other hand, if member states do not respect the goals of EC law, then they could risk future restraints in discretionary power (Gil Ibáñez, 1998: 25). Whatever either side contributes, the Commission and member states must strike a balance of power to determine suitable levels of discretion.

National-level factors causing long delay (> 6 months) – Policy implementation related

- **Political priority**
  When a directive is attributed with high political priority, timely transposition is a natural outcome. With the assumption that cabinet ministers behave as perfect agents of their parties and are able to act as virtual dictators in the policy areas they control (Laver and Shepsle, 1996), this analysis showed that it is the ministers who assign levels of priority to the transposition process. While coalition governments, which rule in 18 of the 25 member states, provide considerable discretion to ministers in drafting legislation (Gallagher, Laver and Mair, 2001; Laver and Shepsle, 1994; 1996), it is the minister in charge of the relevant department who presents the policy proposal at cabinet, giving him or her a privileged position in the policy area in question (Gallagher, Laver and Mair, 2001: 56). Ministers set the government agenda in their policy (Mar-
Summary of findings, conclusion and outlook

Political priority represents a significant usually-necessary condition for timeliness because it denotes a change in the usual order of things in the political realm. That is, under special circumstances, the political priority of transposing a directive is unusually high, for any number of reasons. But, sometimes directives simply do not garner much priority – for electoral, economic and strategic reasons.

This analysis showed that the most important concern for ministers is pleasing their electorate. The Spanish and German cases showcased ministers who were involved with priorities other than transposing directives. The Spanish transport minister, Magdalena Alvarez, extended the reflection time needed after the Atocha bombings by one year, in order to also consult with the stakeholders affected by the railway reform. Because Alvarez was indebted to these stakeholders for helping her and her party group to win the elections, she prioritized their needs and put the transposition of Directive 2001/14/EC on the backburner. Ultimately, because it was not high in political priority, the directive was transposed two years late. In the German case, the 2002 elections gave the newly appointed minister of transport, Stolpe, an added portfolio – that of a special appointee for the new federal Länder. This new portfolio attracted most of his attention because it had special meaning on the heels of the devastating hundred-year flood. It was the flood afflicted new German Länder that tipped the scales in favor of the ruling socialist-green government. After efforts in this area, Stolpe had little time to focus on the transposition of Directive 2002/59/EC. Low in priority, the directive was ultimately transposed one month late, despite the Pallas accident on German waters that was still strong in sentimental and political presence at the transport ministry.

Besides electoral concerns, economic and strategic considerations also influence the priority assigned to a particular transposition procedure. This was evident in the second French case study. In 2002, Directive 2001/53/EC was set for transposition by a ministerial order, which called for the involvement of the transport ministry and the notified body (Bureau Veritas). This directive had the unwavering attention of both departments, for it was considered a ‘terrible weapon for the industry’ (IP10) of the marine equipment industry. The notified body controls the certification of marine equipment for France which makes it a powerful and profitable organization. For obvious reasons, Directive 2001/53/EC was given a very high political priority.

The third case study, however, illustrates how rapidly a political and economic issue can be buried in oblivion. Despite the ecological disaster caused by the tanker Erika in December 1999 breaking in two 40 miles off the coast of
Brittany (France) and spilling about 10,000 tones of heavy fuel, the Commission had to initiate legal proceedings against ten member states for failure of compliance with the Erika I package that had been adopted by the Ministers of transport in December 2001. Only Spain and France who had been directly affected by the ecological disaster adopted national implementing measures for the Erika I package ahead of time – six months and five months respectively. The reason for the delayed action by the other member states can be found in the lack of political priority attached to the dossiers by the administrative apparatus headed by the minister. A minister’s signature on a directive, however, ‘should be a firm commitment’ for a swift and problem-free transposition process and not just ‘a vague aspiration’ (McCreevy, 2005).

– Election timing and change of minister
Election timing is another strong indicator, and a necessary condition, for the timeliness of national transposition processes. In line with Smith and Stam (2004: 125) who argue that election timing affects both the outcome of elections and the government’s subsequent performance, this study sees a relationship between the timing of general elections and transposition performances of member states. Depending on whether an election falls at the beginning or end of the fixed transposition period, the national transposition process is either retarded or accelerated. The argument is that ministries and agencies are bound by the legislative program for the whole year, or sometimes even an entire legislative term. In Denmark, for example, because of the way the parliamentary year is organized, all bills must be dealt with within one and the same parliamentary year. All outstanding bills must be withdrawn, and then submitted again in the new year (Mandrup, Raudi and Pennings, 2002: 6).

Furthermore, the fuzzy set techniques unveiled that it is not simply the timing of general elections but specifically the reshuffle of minister portfolios that matter because electoral campaigns or major government crises affect the national transposition records. Linking ministers’ resignations with transposition performance, this study showed that before a minister resigns, open files are sought to be closed. Alternatively, a new minister and his or her entourage require a period of vocational adjustment before business-as-usual can take off.

So, elections, in general, and government reshuffles77, in particular, accelerate transposition processes that are already in their last months. However, for transposition processes that have only just begun, elections and government reshuffles actually yield a delaying effect. For example, the Spanish legislative act transposing Directive 2001/14/EC was introduced near the end of the

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77 For push and pulls of ministerial resignation see, for example, Fischer, Kaiser and Rohlffing (2006).
Aznar government on 17 November 2003. However, the national transposing instrument was not to come into force before 18 May 2004 – six months later – which is referred to as the so-called *vacatio legis*. Hence, the Aznar government never got around to enforcing the instrument before the general elections in March 2004. With the change of government, it was the responsibility of the newly elected party, and specifically of the newly appointed transport minister, to transpose the directive. By the time the new minister learned the ropes, Directive 2001/14/EC had been on the backburner for a long time. In the end, the national transposing instrument for Directive 2001/14/EC was selected on 18 May 2004, two years after the deadline.

– Coordination problem (Number of veto players)

The analysis corroborates earlier findings in the field (Haverland, 2000; Giuliani, 2003; Treib, 2003; Steunenberg, 2006) that the number of veto players affect implementation outcomes. Depending on the type of legal instrument chosen to transpose a directive, the numbers of ministries involved differs, as does the requirement of the parliament’s approval, and so on and so forth. Legislative acts, for example, which rank highest in the hierarchy of legal instruments, are lengthy processes. Some studies argue that in some countries, parliament may be hesitant to cooperate with a legislative act if not consulted at an early stage (Krislov et al., 1986: 80). Since there is such variation, the speed of the national transposition processes can be affected in many ways. The first French case (case study 1) exemplifies the importance of the number of national transposition actors. Whereas all signs pointed to a swift and problem-free transposition, the large number of ministries directly involved in the ministerial order ultimately retarded the final adoption of the French transposing measure by several months.

Earlier public policy scholars, who wrote in the 1970s and 1980s, have shown that ‘problems of coordination and communication are to be expected when the implementation of a statute involves the participation of several implementing agencies with varying degree of commitment to the achievement of statutory objectives’ (Mazmanian, and Sabatier, 1981: 13). In addition, recent evaluations of national administrative models for implementing EU legislation (Kassim, 2005) argue that the number of veto players is a reoccurring but unavoidable (because legally enshrined) problem. Another unavoidable problem is this of ‘Chinese walls’ – a metaphor referring to the practice of making sure that preparation and transposition divisions of ministries and across ministries are kept apart so that information does not circulate freely and to prevent conflict of interests (From and Stava, 1993: 65; Ciavarini Azzi, 2000; Dimitrakopoulos, 2001: 447) – is a reoccurring but unavoidable (because legally enshrined) problem. More specific, in France, for example, although compulsory hearings and consultations of interest groups cannot change any text of the national legislation, they cause considerable delays. This is because these institutionalized meetings are very infrequent, and administrations may have to wait a long time before one actually occurs. For
example, the special committee Commission spéciale des installations nucléaires de base secrètes and the Agence française de la sécurité sanitaire des aliments meet only once a year (Steunenberg and Voermans, 2005: 116). On average, delays caused by the infrequency of advisory committee meetings are between three and six months (Philip, 2004).

– Occurrence of national transposition package

Member states often use one national implementing measure to transpose a handful of EU directives at the same time, in what is known as a national transposition package. Member states commonly use transposition packages to implement EU directives that cover similar policy issues to reduce redundancy and complexity. The package approach, however, affects the timeliness of the notification of national implementing measures to the Commission. Depending on the number of EU directives included in the package, and the parameters of their different deadlines, the package approach has either a significant delaying affect, or a significant accelerating affect.

This study qualified national transposition packages as a significant usually necessary condition for the fast transposition of the last directive in a package. Furthermore, two out of four of the case studies in this research illustrated the relevance of the package approach in affecting the timeliness of transposition. In the German case study (case study 3), the German ministry of transport transposed four European directives, whose transposition deadlines differed between 25 months, with one national instrument. In the end, the decision to apply a transposition package caused a considerable delay for the first measures in the package (almost 15 months), but had a speeding effect on the last directive in the package (about 1 month). The first French case study highlights the delaying effect of the first EU directive in the package (3 months delayed), and the accelerating effect of the last directive (8 months early).

But because of the characteristics of a national transposition package, particularly its size and the difference between deadlines, matter, we are not able to say, for example, that using one invariably produces late transposition of the directive with the earliest deadline. As a case in point, in the Spanish case study (case study 2), it was shown that although railway policymakers transposed three railway directives with one legal instrument, no effect whatsoever was found to affect the timeliness of transposition. This was because all three EU directives went into the package with the same transposition deadline.

From a broader point-of-view, however, the national package approach definitely distorts the regulatory framework in which businesses operate. According to the Commission’s simplification policy (2005) that ensured that EU legislation is ‘clear, understandable, up-to-date and user-friendly’, national rules must also be addressed. In doing so, it is thereby important to acknowl-
edge the distorting effect of national transposition packages for the timeliness of national transposition processes in particular and the regulatory environment which affects the competitiveness, growth and employment performances in general. Generating a high quality of regulatory environment with legal certainty for consumers and business requires simplification of national measures falling under the responsibility of the member states. The problem with national transposition packages is, however, that the number of directives included are applied arbitrarily. National transposition packages, in terms of a high quality of the regulatory environment, appear counterproductive.

- Effects of external shocks
Events that, quite suddenly, drastically change the external or internal environments affect the political, cultural, economic, and legal climates of member states. Over the last two decades, the relationship between crises and reform, in particular, has found its fervent advocates in economics (Drazen and Grilli, 1993) and political science literature (Almond, Flanagan and Mundt, 1973; van Waarden, 2006). For the purposes of this study, another important factor accelerating the national transposition process is transport-related accidents.

The accelerating effect of national transport-related accidents
In terms of national transposition processes, transport-related accidents occur in two dimensions: time and space. They occur before, during, or after a transposition process, and they occur either near or far from national soil. The timing of a transport-related accident is, of course, important. Events that occur during a transposition process invariably accelerate transposition times; critical junctures (Jones and Baumgartner, 2005) in which existing policies come under pressure may even ‘jeopardize their self-evident legitimacy and de-institutionalize governance ‘(Boin, ’t Hart, Stern and Sundelius, 2005: 122-123). But the more important variable of crises is where they occur. Transport-related accidents on national soil are usually necessary conditions for swift and problem-free transpositions. This is because such crises require immediate reactions from political actors in a particular member state. Windows of opportunity, such as these, must be taken (Keeler, 1993; Kingdon, 1995; Cortell and Peterson, 1999) to affect policy change; like general elections, crises make it possible for the government elites to reshuffle an action that would have not been politically feasible in normal times. If a crisis happens near national soil, it strongly accelerates transposition times. Even if a crisis occurred years ago and, was near national soil, it can and does have the effect of speeding up transposition. In combination with high political priority and an election set at the end of the transposition period, the combination of conditions represents a sufficient factor for timeliness.

Consider, for example, the case study of the German transposition of EU directive 2002/59/EC. This directive was about a Community vessel traffic monitoring and information system. Two crises were linked to this trans-
position process. The first was an ecological disaster of Galacia, Spain that occurred during the transposition process. The second was also an ecological disaster, but it occurred much closer to Germany, in the North Sea, about four years before the transposition process of 2002/59/EC. Despite the facts that the Galacia accident attracted lots of German media attention and was so pertinent to directive 2002/59/EC, it had no effect on the timely completion of the transposition process. It was, instead, the 1998 Pallas accident in the North Sea that expedited Germany’s transposition of EU directive 2002/59/EC. By all accounts, and despite a four year time-lag, the Pallas accident, so close to German soil, was still very present in administrators’ minds. The accident was referred to by all of this study’s German interviewees.

II.1.3 To what extent will our findings on the national transposition processes of transport policy generalize to other EU policies?

In the past, studies in the area of EU implementation have focused on environment and social policy. But, since I wanted both to broaden the implications of my research and to look at a somewhat ignored but theoretical interesting area, I opted to study transport policy. Besides being another area that represents the dominant regulatory nature of EU policies, the transport sector simply deserves more attention.

Little is known about EU transport policy. In political science and public administration edited volumes that cover a wide variety of EU policy processes, information about transport policy is poignantly amiss (Wallace, Wallace and Pollack, 2005). Therefore, this study started from the beginning. It explored the development of EU transport policy and the five transport sub-sectors, and this exploration, in turn, informed the case study selection and timeframe for this analysis. The uncovered five-fold characteristics of EU transport policy (recent, gradual, uneven, complex, and crisis-driven), then, guided the theoretical framework for apt transposition.

Furthermore, there is almost nothing exceptional in the transport case that would make the study’s findings non-generalizable to other policy areas. The European-directive specific and national legal instrument specific variables all hold for the different domains of EU policy-making where we find a considerable number of directives (for an overview of EU legislative output see Alesina, Angeloni and Schuknecht, 2005: 298). Only regional aid does not dispose any directive, whereas the numbers of EU initiatives in all other EU policy areas range between 1 (international relations and foreign aid) to agriculture and fishery (484), sectoral business relations (650) and common market (890). Transport (121) claims the middle-field with environment (193) and with social policy (178). In terms of the crisis component, most policy areas are also endowed with internal or external situational changes, a trick that ‘creates in the minds of the incumbent decision-makers of a state a perceived
threat from the external environment to the basic values to which a responsive decision is deemed necessary’ (Brechner, 1977: 32). Money and fiscal policy are vulnerable to financial market crises, like we have experienced in East Asia in 1997-1998 and its disastrous consequences for Europe, crises, like those experienced in East Asia in 1997-1998 and its disastrous consequences for Europe. However, crises in, for example, the field of environment and consumers’ protection (BSE, SARS…) are very much present in peoples’ mind.

Lastly, from an empirical point of view, the Lisbon goals, drafted in 2000, were intended to make the EU ‘the most competitive and dynamic knowledge-driven economy by 2010’. Transport policy may differ in economic, numeric, and organizational terms from other industrial sectors, but it is definitely crucial to understand in order to achieve the ambitious Lisbon goals on economic competitiveness and employment. If your transport system does not work you cannot move goods around the country/Union and you will not be economically viable. A fundamental catalyst for the fulfillment of these goals until 2010 is the timely transposition of EU directives – not only to meet the ambitious goals, but to appear credible. This study of the transport area does not cover the entire range of European policies. But, it does identify and stress those systematic aspects of regulatory policy that are heuristically significant in all EU policies.

11.2 Methodological contribution

In order to initiate a more valid and reliable account of transposition variations across member states in the EU, this research combined two assets for comparative social research. Both are methodological in nature. The first goal was to answer the research question about: determinants of transposition delay, the causal mechanisms lying beneath them and necessary and sufficient conditions for transposition delay. In order to increase the model’s strength of inference and robustness, this study followed Lieberman’s guide (2005) for carrying out a combined research design, which is often found in behavioral sciences (Tashakkori and Teddlie, 2003), but which has hardly been applied in EU implementation studies. While statistical analyses guided the case selection and provided direction for more focused case studies and comparisons, it was also used to provide, thereafter, an additional test of the adjusted theoretical model generated from small-n research. The second asset concerns data. In line with Denzin’s (1978) term ‘triangulation,’ which involves combining data sources to study the same social phenomenon, this study relies on different sources of data and adds to existing data in the field (Gabel, Hix and Schneider, 2002). In the end, this book follows a truly mixed-method approach, incorporating multiple approaches in all stages of the study, namely: the research question, data collection and inference.
11.2.1 ‘Dictatorship of the research question’:

In an ideal world, the paradigmatic position of the researcher would not determine what design will be used in a study. And, the selection of methods would not be made before the research question is formulated; a method would be chosen on the basis of it being the best way to answer the question. Tashakkori and Teddlie (1998) refer to the ‘dictatorship of the research question,’ which, however, requires scholars to use research tools for a variety of research questions, such as the one driving this study.

The study was driven by the three sub-questions: what, how and to what extent. The first research question of my study was what determines transposition delays in member states? To best address this question, the statistical analysis of the quantitative data analysis (ordered multinomial logistic regression) uncovered the effects of explanatory variables on the timeliness of the national transposition procedures of legal instruments. The second research question was how do these determinants influence the timeliness of national transposition processes? The third research question was about the relative significance of the single effects and combinations of them. These last two questions were mainly answered by the process-tracing efforts for four case studies and further tested by the middle-range-n fuzzy set technique.

This analysis presents an alternative way to understand the transposition problematic across EU member states by leaving aside the qualitative/quantitative divide in the field. Whereas scholars have applied either quantitative (Mbaye, 2001; Bursens, 2002; Giuliani, 2003; Mastenbroek, 2003; König, Luetgert and Mäder, 2005; Borghetto, Franchino and Giannetti, 2006; Perkins and Neumayer, 2007) or qualitative research tools to explain EU implementation outcomes (Knill and Lenschow, 1998; Haverland; 2000; Héritier et al., 2001; Falkner et al., 2005; Berglund, 2007), this study makes a call for combined designs. Starting with a regression-based method focused primarily on the problem of estimating the independent effect of each variable included in the analysis in the outcome I continued with process-tracing of four case studies – representing well-explained and deviant cases. Four comparative advantages make case studies almost ‘a part of a social scientist’s complete armamentarium’ (Yin, 1993: xi), namely: (1) great potential for achieving high conceptual validity of dependent and independent variables; (2) strong procedures for fostering new hypotheses; (3) value as a useful means of closely examining the hypothesized role of causal mechanisms in the context of individual cases; and (4) capacity for addressing causal complexity. It is the case study based on earlier statistical findings that provides greater in-depth analysis, in which cases are more easily comparable, and causal mechanisms of the national transposition processes (microfoundations) are more clearly elucidated through process-tracing.

However, the case study method also has its Achilles’ heel. Specifically, ‘it suffers from the inability to support broad and well-bounded propositions, it tends to lack representativeness, and causal effects and probabilistic causal relations
cannot be estimated’ (Franchino, 2005: 250; George and Bennet, 2005; Gerring, 2004). In order to examine the extent to which the previous findings were unique to the initial four cases, or relevant to a wider group of cases, therefore, I applied the diversity-oriented fuzzy set approach. It helped shed additional light on the correlational and small-n analyses in this study. If we can observe a strong correlation in one set of data, then, it is far from certain that the same correlation will be observed in other data. Only if one assumes that regularities remain unchanged into infinity, the approach is a valid inference. Political priority, a variable derived from the case study analysis, has remained a significant variable explaining the timeliness of national transposition processes.

In addition, the fuzzy set technique offers some interesting alternative when one is confronted with coding problems linked with dichotomization. The conception of variables in terms of fuzzy set membership (Ragin, 2000) provides a way to operationalize and typologize phenomena that stick closer to theoretical discourse (Rhioux, 2006: 691). Indeed this study demonstrated how fuzzy set can be used to perform precise operationalizations of theoretical concepts such as timeliness. In line with the findings of Katz, vom Hau and Mahony (2005) it enriched the conclusions reached by prior analysis while focusing on necessity and sufficiency and combination of conditions.

However, fuzzy set should not be used in isolation. It is in combination with large-n and small-n studies that the fuzzy set research technique can resolve problems related to the quantitative and qualitative approaches, such as: autocorrelation, multicollinearity, selection bias, heteroscedasticity, and idiosyncrasy (Pennings, 2002). So, fuzzy set is a compatible technique and can be combined more systematically with other techniques. Surprisingly, the fuzzy set methodology has not yet been widely addressed in EU research.

To summarize, mixed strategy designs added ‘breadth or depth to our analysis’ (Fielding and Fielding, 1986: 33) by increasing ‘scope, depth and consistency in methodological proceedings’ (Flick, 1998: 230). Different vantage points, provided by the mixed method, allowed a fuller and more complete picture of the phenomenon concerned. It was, for example, not only the occurrence of national general elections, but also the reshuffling of government portfolios that hampered timely transposition. The identification of a correlation established that a relationship exists between general elections at the end of a national transposition process and the timeliness of the latter. But unless we understand the underlying mechanisms that caused it, we would have not known how the variable affects the other. In this respect, despite some limitations of the fuzzy set methodology (for references see Rhioux, 2006), the debate on implementation performance of member states in the EU profited from the capacity of fuzzy sets ‘to capture the causal patterns behind complex and vague phenomena which remain largely invisible or are even misrepresented when conventional quantitative and qualitative approaches are used’ (Pennings, 2002: 18).
Ultimately, this study is in line with Lieberman (2005) that the mixed-method approach is particularly well suited to cross-national analysis, where investigators tend to be interested not only in general patterns but also in the analysis of specific country cases. In this respect, the mixed-method design was further developed, especially by combining information from different data sources to understand the same phenomenon.

### 11.2.2 ‘Who is afraid of cumulative data?’

As a relatively young polity, however, the EU has until recently offered only few ready-made empirical resources, such as extensive databases, available to scholars. It has been noted that, ‘although the study of EU politics has developed considerably, we still lack scientific maturity in the key area of data accumulation and integration … few research communities [in the many areas of EU research] have built a common data set that is sufficient to advance knowledge’ (Gabel, Hix and Schneider, 2002: 482). Generally speaking, ‘European integration studies have found it difficult to produce cumulative research’ (Hooghe, 2001: 1).

This study is a good example of several pioneering projects across EU implementation studies that have begun to further develop the vastly untapped, but collectable or collected, EU data (Steunenberg and Rhinard, 2005; EUP special issues in 2005 and 2006). To address the concern of missing systematic collected data on EU politics, this study provided a collection of different data sources that accumulate knowledge about EU politics, in general, and national transposition processes across EU member states, in particular. The exercise is part of the second round of quantitative studies in the field, whose intention is to improve the quality of existing EU implementation data.

This study opted to focus on only recent cases of EU national implementation instruments in the area of transport. In doing so, it covered almost ten years (1995-2004) and nine member states, namely: France, Germany, Greece, Italy, Ireland, Spain, Sweden, the Netherlands, and the UK. Despite highly theoretically relevant for this study, about some of these states, little work had been done in implementation research before.

Furthermore, this study conducted data triangulation, which is the use of multiple cross-checked sources. For the statistical analysis, information about the EU transport directives was taken from the official legal EU databases – Celex and Eurlex. To compare and control for the quality of the existing EU data, each Transport Ministry in the nine Member States was contacted. From them, a full list of transport acquis from their national transposition databases was obtained. These lists dated back to the very first directive, which helped

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78 Gabel, Hix and Schneider (2002)
me compile an almost complete data set. In order to translate the crisp scores of the dependent and independent variables into fuzzy set partial membership scores, information was again derived mainly from Celex, Eurlex, and national transposition databases. Also, information was added from official government websites of the selected five Member States, from the annual review of national politics by the European Journal of Political Research, and from five major national newspaper archives, namely: The Guardian (UK); Le Monde (France); Frankfurter Allgemeine Zeitung (Germany); Corriere della Sera (Italy); and El País (Spain). The data for process tracing included, in addition to aforementioned EU legal data bases, information from press accounts, European official documents, and interviews. Information about negotiation phases were found in Prelex. Information on the timing of national elections and the change of transport ministers were again found in the annual political data provided by the European Journal of Political Research. Information on national-level transport related accidents was studied through content analysis (Krippendorf, 2004) of newspapers. For cross-checking purposes and the procurement of additional data for these theoretical informed case studies, a total of thirty interviews in Brussels and in different member states were conducted between January 2003 and November 2006.

11.3 The outlook

As it stands, this study attempts to address some shortcomings in the existing transposition literature while representing another step in improving existing knowledge in the field of EU implementation studies. For future studies that build on its results and aim at understanding the transposition of EU legislation and Europeanization more generally, two elements in particular deserve attention. Based on the study’s findings, the first element relates to the theoretical framework used to model national transposition processes; the second centers around issues of research design.

From a theoretical point-of-view, the EU implementation literature will benefit from attempts like this to theorize and research the role of domestic politics (Treib, 2003; Steunenberg, 2006; 2007) and administrations (Knill, 2001; Hille and Knill, 2006) on the process of implementation. A more theory-guided evaluation of the different stages of the implementation process will help further strengthen our understanding of EU implementation, in general, and its efficiency, efficacy and efficiency. Scholars (Falkner, Causse and Wiedermann, 2006) have shown that adapting to EU law will remain a EU-wide ambition, at least on the level of the statute books, including the new member states after the 2004 enlargement where the transposition of EU legislation remains dead letters instead of becoming living rights (Treib and Falkner, 2007). Whereas here the effect of domestic opposition on timely transposition is mediated by a member state’s culture of implementation, studies will further profit acknowledging that policy design as well as policy implementation related variables matter.
Inspired by the 1970s public policy implementation studies and in line with the recent implementation study by Falkner, Treib, Hartlapp and Leiber (2005) this contribution argues that the link between the adoption phase and the subsequent implementation phase is crucial; i.e. that ‘implementation should be part of design’ (Pressman and Wildavsky, 1973: 189). Explanations of implementation outcomes should consider, among other things, policy design related factors.

While, until recently, regulations and directives have been the dominant policy instruments in the EU, new modes of EU governance that are not based on legislation have increased in salience in European policy-making (Héritier, 2003; Caporaso and Wittenbrinck, 2006). The newly adopted open method of coordination, for example, which is applied in a number of EU policy fields (Borràs and Jacobson, 2004), entails clear procedural mechanisms; it also includes a high-level of political participation, including the monitoring phases, and involves more mutual commitments and peer pressure mechanisms, where political priority plays an important role. Future studies comparing implementation patterns in hard and soft law traditions will need to engage in an intricate web of politics, economics and law. European Community law virtually cries out to be understood by means of interdisciplinary, contextual approach to law. Explanatory factors will be by nature administrative, legally and political motivated.

Last but not least, this study is somewhat forward-thinking in relation to the relatively young EU research community. From a methodological point-of-view, and in line with a relatively large number of studies in social and behavioral sciences in general (Tashakkori and Teddlie, 2003), this study has shown that the use of a mixed-method design (Lieberman, 2005) may improve results of simple mono-strand designs. In order to answer the initial questions about the timeliness of national transposition processes, this contribution subjected the theoretical framework to a battery of tests, including ordered multinomial logistic regression, process-tracing and fuzzy set analysis. In addition, it has sought to use as wide a variety of existing and new evidence as possible by accumulating existing data. It is important for the quality and scope of the implementation debate that not only the data, but also the methods that are used to analyze them, are as adequate. The results of the efforts are promising, and may strongly encourage EU scholars to consider moving beyond methodological dichotomies and leave some of the cut-and-dried opinions behind. To date, little effort has been done to accomplish this. Particular attention may be paid to the fuzzy set methodology, a research technique that has been widely applied elsewhere, but may be still an underestimated treasure for EU studies.

In any case, in terms of an ever important European project, and before we get lost in translation, it is time again to go full steam ahead in response to the challenges of EU law. After transposition, as generally known, is before transposition, with a European Commission having just issued 111 additional internal market directives in 2004 and 89 in 2005 respectively.  

79 I am greatful to Dimiter Toshkov who provided the data.