

Implementing and complying with EU governance outputs

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Accepted on 14 September 2006

Published on 9 November 2006

Living Reviews in European Governance

Published by
Connecting Excellence on European Governance (CONNEX)
and
New Modes of Governance (NEWGOV)
ISSN 1813-856X

Abstract

This essay takes stock of the literature on how European Union policies are being put into practice by the member states. It first provides an overview of the historical evolution of the field. After a relatively late start in the mid 1980s, the field has meanwhile developed into one of the growth industries within EU research. The paper identifies three different waves of EU implementation scholarship. The first wave considered implementation primarily a problem of institutional efficiency. In the second wave, the degree of compatibility between European demands and domestic policy legacies took centre stage. However, many second-wave scholars complemented the basic “misfit” argument with a set of additional explanatory factors to account for deviant cases. In the third wave, some researchers began to stress the role of domestic politics, while others re-discovered the importance of administrative capabilities. As an attempt to synthesise some of the partial explanations presented by earlier research, one group of scholars pointed to the existence of culturally-shaped country clusters, each with its own typical style of complying with EU legislation.

After this historical overview, the paper summarises the most important theoretical, empirical and methodological lessons to be drawn from existing studies and it discusses promising avenues for future research. First, most scholars seem to agree on the basic set of factors that may have an impact on transposition processes. The main task to be accomplished by future research is to establish under which conditions which configurations of factors prevail. While we already know that there are strong country-specific patterns, the importance of sector-specific patterns will need to be explored further. Second, much more research efforts will have to be devoted to the neglected area of enforcement and application. In theoretical terms, going back to the insights of traditional domestic implementation research seems to be most promising for this type of studies. Third, the paper cautions against the poor quality of the data employed by the growing number quantitative compliance studies. Unless the problems with the data can be solved, scholars are well advised to rely on comparative case studies, at least in addition to statistical analyses. To increase the number of cases to be covered by qualitative research, the paper makes the case for crafting collaborative qualitative research projects as a viable alternative to quantitative research.



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How to cite this article

Owing to the fact that a *Living Reviews* article can evolve over time, we recommend to cite the article as follows:

Oliver Treib,
“Implementing and complying with EU governance outputs”,
Living Rev. Euro. Gov., Vol. **1**, (2006), No. 1. [Online Article]: cited [<date>],
<http://www.livingreviews.org/lreg-2006-1>

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Contents

1	Introduction: What Is Implementation and Why Should We Care About It?	4
2	The Emergence and Evolution of EU-Related Implementation Research	7
2.1	The First Wave: Implementation and Institutional Efficiency	7
2.2	The Second Wave: Misfit and More	8
2.3	The Third Wave: Theoretical and Methodological Differentiation	10
3	Discussion: What Have We Learnt?	14
3.1	Implementation Phases and Policy Areas Studied	14
3.2	Methodology: Between Quantitative and Qualitative Approaches	15
3.3	Theoretical Progress Despite Little Cumulativeness	16
4	Conclusion	18
	References	19

1 Introduction: What Is Implementation and Why Should We Care About It?

This essay takes stock of the literature on how European Union¹ policies are implemented by the member states. The notion of policy implementation is tied to what has been called the “textbook conception of the policy process” (Nakamura 1987: 142). This conception assumes that the policy cycle may be divided into several clearly distinguishable phases, ranging from problem definition and agenda-setting to policy formulation, policy implementation, evaluation and finally to policy termination or re-formulation. Policy implementation thus refers to “what happens after a bill becomes a law” (Bardach 1977) or, as one scholar has aptly put it, to the process of “translating policy into action” (Barrett 2004: 251).

A similar, but slightly different concept is the notion of “compliance”. It has been prominent in international relations research among scholars studying the domestic fulfilment of international agreements (for an overview, see Raustiala and Slaughter 2002). Compliance refers to “a state of conformity or identity between an actor’s behavior and a specified rule” (Raustiala and Slaughter 2002: 539). Thus, the compliance perspective also starts from a given norm and asks whether the addressees of the norm actually conform to it. It thus focuses less on the process than on the outcome of implementation. Moreover, compliance can occur without implementation. For example, the current practice may already conform to the status required by a norm. Conversely, implementation does not necessarily have to result in compliance but may be incomplete or contrary to the prescribed goals (Raustiala 2000: 391–399). Irrespective of these semantic differences, most compliance and implementation research is interested in both the process of how a given norm is being put into practice and in the outcome in terms of rule conformity. In this sense, implementation and compliance are two sides of the same coin.

A third concept that is often used in the context of EU implementation research is the notion of “Europeanisation”, which points to the effects of European integration in the member states.² While both concepts, and the respective bodies of literature associated with them, have a considerable degree of overlap, it is important to keep in mind that there are also important analytical differences. The implementation of EU legislation usually entails certain policy or institutional changes at the domestic level. In this sense, implementation is one important mechanism of Europeanisation. However, the domestic effects of European integration are not confined to processes of policy transfer and the institutional adaptations associated with these. Instead, European integration may have many other, direct or indirect, intended or unintended, effects at the domestic level (Töller 2004). In this sense, Europeanisation research encompasses, but is broader than, EU implementation studies.

The following discussion will not focus on the wider field of Europeanisation research, as there is a separate Living Review on the “Europeanisation of national political systems” (forthcoming). Moreover, I will concentrate on implementation studies dealing with the fifteen “old” member states before Eastern enlargement, as there is a Living Review on “Europeanisation in new member and candidate states” by Sedelmeier (2006), which also discusses the policy-oriented literature on how these countries implemented the *acquis communautaire*.

Why should social scientists care about implementation? The answer is straightforward:

¹ Since the term “European Union” has established itself as the common label to denote the supranational European polity, I will use this notion throughout. This pragmatic decision disregards the fact that most of the research discussed in the paper deals with policy outputs of the first pillar, which would make it legally correct to use the term “European Community”. In order to avoid unnecessary complexity, I also use the term for the period before the Maastricht Treaty, which introduced the term “European Union” into the official language.

² A few Europeanisation researchers also use the term more or less synonymously with European integration (in particular, see Risse *et al.* 2001). Even these scholars, however, are interested in the domestic effects of European integration (or of “Europeanisation”, in this interpretation). The Europeanisation literature is thus marked by some confusion with regard to terminology, but still by great unity with regard to the object of research.

putting a piece of legislation or a government programme into practice does not happen automatically, nor is it a purely technical or apolitical affair. Instead, long delays and attempts at shirking seem to be a matter of everyday business in the field of implementation. In other words, if we are interested in the extent to which a particular polity is able to solve the problems with which it is confronted, we need to study not only the way it reaches decisions and the character of the resulting legal output, but also the way in which the law is executed in practice.

This is particularly true in a large and complex polity like the European Union. Due to the high number of veto players involved in policy formation, EU legislation often contains fuzzy concepts and “rhetorical compromises” in order to facilitate agreement. Moreover, EU legislation regularly leaves certain issues to the discretion of member states in order to take account of specific regional or local circumstances. In other words, crucial decisions that may decide on the success or failure of a particular policy are regularly taken at the implementation stage. What is more, it is far from self-evident that implementers will behave dutifully. The EU is marked by a highly decentralised implementation structure. It does not have its own administrative machinery to implement its legislation, but has to rely on the member states to fulfil this task. In that respect, the European multi-level system resembles the German system of co-operative federalism, in which federal legislation is carried out by the administrations of the Länder, much more than the US model of dual federalism, where each level has its own bureaucracy to put the respective laws into practice (Scharpf 1988).

The EU’s implementation structure appears to be even more precarious than the German one. Like in Germany, the lower level of governance is in charge of administrative enforcement. If we focus on the implementation of EU directives, one of the major legal instruments of the EU, however, it becomes apparent that also parts of the decision-making process are delegated to the domestic level. Directives only define goals that have to be incorporated into national law by member states within a certain period of time. It is only after transposition has been completed that the rules may be applied by societal target groups and enforced by administrations and the legal system at the domestic level (see Figure 1). The transposition phase thus adds another important “clearance point” (Pressman and Wildavsky 1973) to the decentralised implementation structure of the European Union. In other words, there is yet another point at which the realisation of the envisaged goals might fail.

Directives thus share important characteristics of traditional international agreements which need to be ratified by member states before they become effective. Unlike international agreements, however, the implementation of EU law by member states is supervised by the European Commission and the European Court of Justice (ECJ). If the Commission detects violations of EU law, it can instigate legal proceedings against the respective member state. These proceedings may ultimately lead up to a judgement by the ECJ and, in the event of continuing non-compliance, to follow-up proceedings as a result of which the Court may impose serious financial fines. However, there is no European police force that could compel member states to obey the rules. As a result, the level of legal obligation and the extent of actual enforceability place EU law somewhere between traditional domestic law on the one hand and traditional international law on the other.

This makes the European Union a particularly interesting object of study for implementation researchers. After a relatively late start, the literature on how EU policies are put into practice domestically has in fact proliferated over the last two decades. Given the considerable body of publications that have been produced to date and the almost complete absence of any overview articles (but see Mastenbroek 2005), it seems to be about time to take stock of the state of the art in the field. This paper thus provides a structured overview of EU implementation studies. The next section provides an overview of the emergence and evolution of the field. It identifies three distinct waves of research,³ each with its own theoretical and empirical focus. Afterwards,

³ I borrow the “wave” metaphor from one of my earlier publications (Falkner *et al.* 2005: 15). In the meantime, it seems to have found a certain degree of acceptance among scholars in the field (see e.g. Mastenbroek 2005).

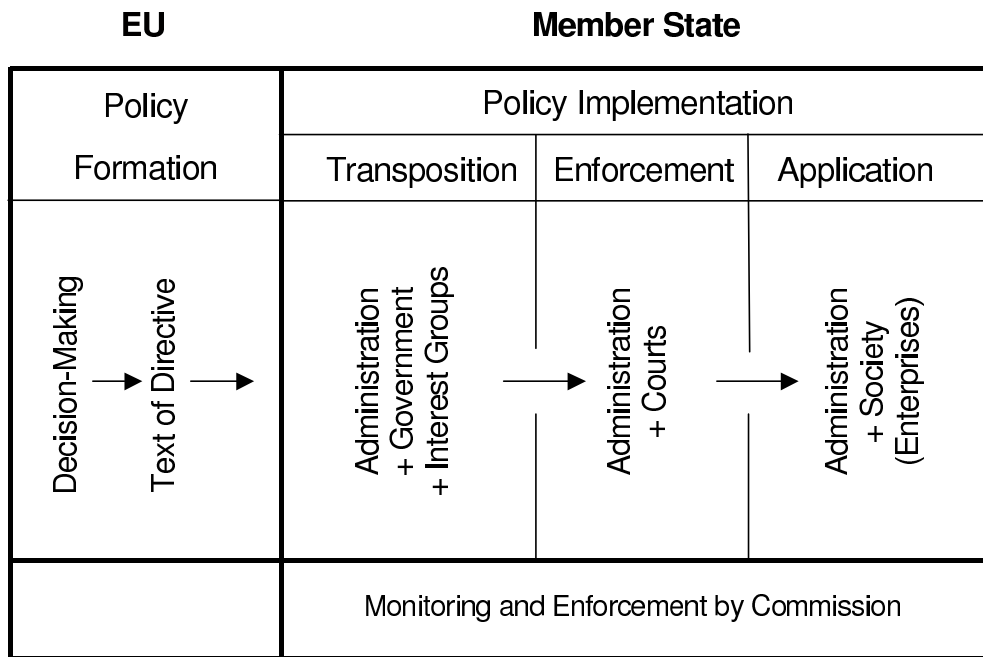


Figure 1: *Stages of the Implementation Process*

the paper discusses the most important theoretical, empirical and methodological lessons to be drawn from existing studies and highlights promising avenues for future research. The final section concludes by summarising the main findings.

2 The Emergence and Evolution of EU-Related Implementation Research

Scholars studying European integration, like their colleagues interested in domestic politics, have long been preoccupied with issues of policy formation and decision-making, thus neglecting the question of how policies are being put into practice. At both levels, it was ambitious legislative reform initiatives that spurred interest in policy execution. “Classical” domestic implementation research had its starting point mainly in two countries: the United States and Germany. In the US, Lyndon B. Johnson’s “Great Society” project of the 1960s, a package of federal initiatives aimed at combating poverty and racial discrimination, fuelled a set of research projects on the implementation of federal programmes (see e.g. Derthick 1972; Pressman and Wildavsky 1973; Bardach 1977). In Germany, the same effect was brought about by the bold reform initiatives of the grand coalition and the ensuing social-liberal government in the late 1960s and 1970s (Mayntz 1977, 1979, 1980, 1983; Scharpf 1978). Starting from these pioneer studies, domestic implementation research has produced a raft of mainly case-study based contributions. Most of this research revolved around the cleavage between two schools of thought: the top-down approach, which conceived of implementation as hierarchical execution of centrally-defined policy intentions, and the bottom-up camp, which emphasised instead that policies were decisively shaped by the everyday problem-solving strategies of the actors involved in policy delivery. A third group of scholars tried to bridge the gap between these opposing approaches by combining insights from both sides (for an overview, see Pülzl and Treib 2006).

2.1 The First Wave: Implementation and Institutional Efficiency

European integration scholars discovered the issue of implementation even later than this. Initially, the field focused almost exclusively on the supranational level. The debate between neo-functionalists and intergovernmentalists in essence revolved around the question of whether and to what extent nation states were willing to transfer crucial decision-making competences to the European level. When scholarly attention turned away from “grand bargains” and macro-level developments to an analysis of everyday decision-making, the underlying analytical approach did not change fundamentally. When looking at the interactions between supranational, national, sub-national and societal actors in European policy-making, the focus still lay on the relative influence of these actors in bringing about European policy solutions.

It was the Single Market Programme that acted as a stepping-stone to implementation studies in the EU context. The programme involved a raft of legislative measures whose even implementation was seen as a precondition for the completion and smooth functioning of a Europe-wide market until 1992. In the mid-1980s, these concerns gave rise to the *first wave* of EU-related implementation research. In theoretical terms, the main inspiration came from domestic implementation studies, most importantly from the top-down school (Pressman and Wildavsky 1973; Bardach 1977; van Meter and van Horn 1975; Sabatier and Mazmanian 1981; Mazmanian and Sabatier 1983). First-wave studies thus portrayed the domestic implementation of European law as a rather apolitical process whose success primarily depended on clearly worded provisions, effective administrative organisation and streamlined legislative procedures at the domestic level. At the same time, they also absorbed some of the insights of the bottom-up camp (Lipsky 1980; Hjern and Porter 1981; Elmore 1982), stressing the need for involving all relevant domestic actors (such as parliaments, important interest groups, or subnational entities) in the preparation of the countries’ European negotiating position and for co-ordinating the negotiation and implementation tasks within domestic administrations, ideally by attaching responsibility for both phases of the policy cycle to one person (Ciavarini Azzi 1985; Krislov *et al.* 1986; Siedentopf and Ziller 1988; Schwarze *et al.* 1990, 1991, 1993; From and Stava 1993). The absence of a ‘political’ conceptual-

sation of the implementation process among first-wave studies to some extent may be explained by the disciplinary background of the authors, who mainly came from legal studies and administrative science. This disciplinary background is also the reason why some contributions with a first-wave focus continued to be published even after the research mainstream had moved on to other theoretical shores (Demmke 1994, 1998, 2001; Pappas 1995; van den Bossche 1996; Ciavarini Azzi 2000; Bursens 2002).

Most of the first-wave studies covered transposition as well as application and enforcement. However, the authors did not draw a sharp distinction between legal incorporation and the later stages of the implementation process. Instead, the main explanatory variables for all stages were clearly stated policy objectives and the availability of a well-organised state apparatus. With regard to enforcement and application, the main conclusion was that “Community law, once it has been incorporated, is applied neither better nor worse than national law” (Ciavarini Azzi 1988: 199) since “street-level bureaucrats” (Lipsky 1980) and target actors are usually unaware of the European origins of a particular transposition law. However, the analysis of the domestic implementation of regulations revealed that specific problems occurred since the one-size-fits-all rules enshrined in EU regulations could not be adapted to specific domestic circumstances and traditions (Ciavarini Azzi 1988: 199).

2.2 The Second Wave: Misfit and More

In the late 1990s, a *second wave* of studies began to analyse the “Europeanisation” of domestic political systems. This broader perspective has hitherto produced a wealth of contributions dealing with the impact of membership in the European Union on such phenomena as national parliaments, party systems, state-society relationships, territorial state structures, or democratic structures of government (for an overview, see the forthcoming Living Review on the “Europeanisation of national political systems”). In this context, scholars have also returned to the narrower question of the domestic impact of European policies, as witnessed by the national implementation of European policy measures.

Focusing mainly on environmental policy, many of the second-wave scholars pointed to the degree of fit or misfit between European rules and existing institutional and regulatory traditions as one of the central factors determining implementation performance (Duina 1997, 1999; Duina and Blithe 1999; Knill and Lenschow 1998, 2000a; Börzel 2000, 2003a). The focus thus moved from administrative and procedural efficiency to the degree of compatibility between EU policies and domestic structures.⁴ This view ultimately rests on historical or sociological institutionalist assumptions about the “stickiness” of deeply entrenched national policy traditions and administrative routines, which pose great obstacles to reforms aiming to alter these arrangements (see e.g. March and Olsen 1989; Powell and DiMaggio 1991; Thelen and Steinmo 1992; Immergut 1998; Pierson 2000).

The basic rationale behind the misfit argument was to reduce the complexity of analysing implementation processes by exploring how far the “institutional filter” (Knill and Lenschow 1998: 610) provided by the compatibility between EU demands and domestic policy traditions *alone* could explain the implementation of particular pieces of EU legislation. The assumption was that further actor-based factors needed to be taken into account only if the institutional context was not able to explain the outcomes (Knill and Lenschow 1998: 610-611; Knill and Lenschow 2001: 121-124). The main problem with this approach was that only few cases could actually be

⁴ Interestingly, Dimitrova and Rhinard (2005) have recently presented a very similar argument. The major difference is that they use the language of sociological rather than historical institutionalism, as most of the original proponents of the misfit approach did. They distinguish between different levels of norms embedded in a society. The degree of compatibility between the norms enshrined in a directive and especially the higher-level domestic norms then has a decisive influence on whether the European norms are incorporated smoothly or whether they meet with domestic resistance.

explained by an exclusive focus on the “goodness of fit”. In the empirical analysis by Knill and Lenschow (1998), only three out of eight cases conformed to the expectations gained by looking at the degree of misfit. The remainder of the cases needed to be explained by additional actor-based factors. Later studies confirmed the limited explanatory power of the “goodness of fit” (see e.g. Haverland 2000; Héritier *et al.* 2001; Falkner *et al.* 2005). In the end, therefore, it turned out that not much analytical leverage could be gained from using this “institutional filter”. Instead, most cases required “a lower level of abstraction, namely the independent analysis of the given interest constellations and the strategic interaction of domestic actors” (Knill and Lenschow 2001: 126).

One of the main weaknesses of the second wave of research was that the logic of these interactions, and the preferences of domestic actors, remained seriously under-theorised. Instead, authors often offered individual accounts of the “deviant cases” (which actually made up the majority of cases) without offering systematic theoretical arguments. What is more, while an explicit discussion of the conditions under which we could expect governments and administrations to be willing to comply (even in the face of considerable misfit) is in short supply in this strand of literature, different contributions *implicitly* operated on the basis of quite divergent views. The misfit argument in principle implied that domestic governments and administrations are motivated by the desire to protect their existing policy legacies and are thus expected to drag their heels on fulfilling EU policies that require fundamental changes to the domestic status quo. When having to implement European policies, national governments, administrations, and parliaments are thus seen to act as “guardians of the status quo, as the shield protecting national legal-administrative traditions” (Duina 1997: 157). This view was based on the insights of earlier research on EU decision-making, which had demonstrated that domestic governments try to export their own policy models to the European level (Héritier 1996; Héritier *et al.* 1996). As a result, it was argued that governments who failed to “upload” their own policies to the EU level would try to resist during the “downloading” process, when the agreed-upon measures were to be implemented (Börzel 2002). Therefore, the implementation of policies with significant misfit was either doomed to fail altogether, due to reluctant domestic governments and/or administrations (Duina 1997, 1999; Duina and Blithe 1999; Knill and Lenschow 1998, 2000a), or the unwilling state machinery needed to be forced by societal actors to comply with mismatching EU policies, probably combined with outside pressure from the Commission (Börzel 2000, 2003a, 2006).⁵

Some of the misfit-centred contributions, however, also argued that the number of veto players or, alternatively, a consensual political culture, could help overcome resistance against EU policies that implied significant adjustment costs (Risse *et al.* 2001; Héritier 2001; Héritier and Knill 2001). While the veto player argument was usually presented in opposition to the misfit approach (Haverland 2000), this view tried to combine both factors. It still subscribed to the basic idea that the degree of misfit was an important determinant of implementation outcomes, with mismatching policies provoking fierce domestic opposition. In contrast to scholars like Börzel, Duina, or Knill and Lenschow, however, this approach implicitly assumed that resistance would not stem primarily from governments and administrations, but from negatively affected societal interests. The number of veto points then determined whether it was likely that these reluctant societal actors would be able to impede implementation or not. While this approach represented a big step away from the mechanistic conception of the basic misfit argument, laying much more emphasis on the political contestation between reform promoters and opponents at the domestic level, it still remained unclear when to expect which domestic actors to be in favour or against the implementation of certain types of EU policies.

Like the first wave of research, many of the second-wave contributions analysed not only legal but also practical implementation (see e.g. Knill and Lenschow 1998; Duina 1999; Knill and Lenschow 2000b; Börzel 2003a). Like their predecessors, however, the second-wave authors did not

⁵ A similar argument was recently presented by van der Vleuten (2005).

systematically distinguish between factors that influence transposition and causal conditions that have an impact on enforcement and application. Typically, these contributions tended to treat the whole process of implementation as following a single theoretical logic in which the “goodness of fit” played an important role. This also meant that they ignored the different actor constellations in the different phases. Thus, scholars frequently referred to opposition to mismatching policies by the “public administration” (Börzel 2000: 224 and 225) or to “administrative resistance” (Knill and Lenschow 2000a: 261) as the main reason for problems in the implementation process as a whole. At the transposition stage, however, administrations are certainly not the only crucial actors. Instead, government representatives and political parties seem to be at least as important in a process that differs from regular domestic law-making only in that it is substantively constrained by EU framework legislation (see Figure 1). This either means that these authors had a rather bureaucratic conception of the transposition process, that they simply failed to acknowledge that the different stages involve different actors and thus also require different explanatory models, or that they considered the main problems to occur not during transposition but at the enforcement and application stage, where administrations play a crucial role.⁶ At any rate, little could be learned from this literature about the *specific* problems associated with transposition, enforcement and application, respectively.

2.3 The Third Wave: Theoretical and Methodological Differentiation

It is conceptual shortcomings of this type, in conjunction with a growing uneasiness with the relatively narrow theoretical and empirical focus of earlier research that gave rise to the *third wave* of EU implementation studies. It is marked by a plurality of theoretical and methodological approaches. What ties the different contributions together is a desire to broaden the theoretical and empirical perspective in order to get a fuller picture of the conditions that drive domestic implementation processes.

A first new development was that qualitative researchers in particular began to discover the importance of domestic politics in determining the speed and correctness of legal adaptation to European directives. Along these lines, Treib (2003a,b, 2004) showed that party political preferences of governments may have a decisive impact on transposition outcomes. In particular, he takes issue with the behavioural assumptions underlying the mainstream misfit argument, notably that domestic governments will always try to defend their existing policy traditions. Instead, his empirical case studies show that governments may well accept wide-ranging deviations from the status quo if the direction of the required reforms is in line with their party political preferences. Conversely, government parties, who by definition hold veto power over transposition laws, may also drag their heels on the realisation of rather minor adaptations if these modifications go against the grain of their party political goals. Similarly, Mastenbroek and Kaeding (2005) argued that EU implementation research needs to go “beyond the goodness of fit” and instead focus more thoroughly on the preferences of crucial players in the domestic political arena. In an empirical case study on the transposition of two directives with significant misfit in the Netherlands, Mastenbroek and van Keulen (2006: 38) thus showed that favourable government preferences “may work wonders in overcoming misfit”.

The second remarkable development in the third wave was the growing popularity of quantitative studies. Thus, more and more scholars have come to use the easily available data on the Commission’s infringement proceedings against member states to measure the amount of non-compliance with EU law (Mbaye 2001; Börzel 2001, 2003b; Tallberg 2002; Börzel *et al.* 2004; Sverdrup 2004; Beach 2005). A second type of quantitative studies based their analyses on the

⁶ The last interpretation seems to be true for many of the second-wave studies addressing the implementation of EU environmental policy, where indeed many (but not all!) problems seemed to occur at the application rather than the transposition stage (see e.g. Knill and Lenschow 1998; Börzel 2000; Bailey 2002).

transposition measures that member states officially notify to the Commission. One strand of this literature used transposition rates (Lampinen and Uusikylä 1998), sometimes also in combination with infringement data (Giuliani 2003). These rates, which represent the share of transposed directives against all applicable directives at a certain period of time, are regularly reported in the Commission's annual reports on monitoring the application of Community law.⁷ Another group of scholars used the transposition instruments reported in the Celex database (Borghetto *et al.* 2005), in domestic legal databases (Mastenbroek 2003), or in a combination of both (Berglund *et al.* 2005), to determine when a particular directive was incorporated into national law.

In theoretical terms, most of these quantitative contributions are informed by compliance approaches developed in the international relations literature.⁸ These approaches revolve around the dichotomy between voluntary and involuntary non-compliance. Scholars stressing problems of voluntary non-compliance argue that the willingness of states to comply with international commitments depends on the domestic costs and benefits of adaptation and on the costs of defiance. Where the costs outweigh the benefits, states will try to evade these burdens by non-compliance. Therefore, effective monitoring and sanctioning by international supervisory authorities is required to force unwilling states into compliance. Therefore, this approach is known as the enforcement approach (see e.g. Downs *et al.* 1996). The management approach, in contrast, considers lacking administrative and financial capabilities at the domestic level or ambiguous norms the main sources of non-compliance. International organisations thus need to assist their members, by organising training programmes and by providing such things as financial aid and the like (see e.g. Chayes and Handler Chayes 1993).

The theoretical insights of these statistical studies have hitherto been rather inconclusive. Some find support for the argument that structural properties of domestic polities, such as the number of veto players, have a significant impact on legal compliance (Lampinen and Uusikylä 1998; Giuliani 2003; Linos 2006), others do not (Mbaye 2001; Börzel *et al.* 2004; Borghetto *et al.* 2005). Some conclude that support for European integration is an important factor that facilitates compliance (Mbaye 2001 with regard to public support; Linos 2006 with regard to support by government parties), others do not (Lampinen and Uusikylä 1998), while still others find a statistically significant *negative* correlation between these two variables (Börzel *et al.* 2004). Some find a significant effect of indicators meant to measure the degree of changes required by the policies to be transposed (Borghetto *et al.* 2005; Linos 2006), others argue that misfit is a variable that cannot be operationalised adequately for the use in quantitative studies (Börzel *et al.* 2004), and so on. The only factor that seems to find support in most quantitative analyses so far is various aspects of administrative capabilities (Mbaye 2001; Börzel *et al.* 2004; Linos 2006; Borghetto *et al.* 2005; Berglund *et al.* 2005).

This presents us with an interesting paradox: While qualitative studies in the third wave of research have increasingly come to embrace the political character of transposition, the results of quantitative research seem to point back to the arguments of the pioneers of EU implementation research, who had highlighted the importance of efficient and well-co-ordinated administrations.

As a first step towards solving this puzzle, Bernard Steunenberg has recently begun to develop an interesting formal model of the transposition process, which encompasses both a politicised and a more bureaucratic mode. He conceptualises the process of incorporating a directive as a strategic game among several domestic players with distinct policy preferences (Steunenberg 2006; see also Dimitrova and Steunenberg 2000 for an earlier version of this argument). Crucial factors in this game are the type of instrument that needs to be adopted to transpose a directive and the

⁷ Linos (2006) also uses the official information on transposition reported in the Commission's annual reports. She does not analyse transposition rates as such, however. Instead, she looks at 54 specific directives from the field of EU employment and social policy and tracks down the years when the member states were reported to have notified transposition of these directives. This results in a proxy for transposition delays.

⁸ It has to be noted, however, that there are also qualitative studies that use this kind of framework (for example, see Zürn and Joerges 2005).

preferences of the actors whose agreement is required for the adoption of this instrument. The type of legal instrument (legislation, decree etc.) decides on whether the actor constellation comprises the broad set of ministries, political parties and interest groups usually involved in enacting a piece of legislation (“horizontal coordination”) or whether the process is determined by a smaller set of actors, or even by a single ministry, as is sometimes the case if a ministerial decree is enough to transpose a directive (“hierarchical coordination”).

This model goes a long way towards a realistic conceptualisation of the variegated political constellations to be found in individual cases of transposition. However, it does not allow for theoretical expectations as to what typical processes of transposition in a given country and in a given policy sector might look like. Are there country or sector-specific patterns of the typical transposition instruments used? Does this result in typical patterns of rather politicised or rather bureaucratic transposition processes? And does a multi-actor constellation necessarily have to imply more problems than a single-actor constellation, or is it not possible that serious delays occur even if only one single ministry is in charge of transposition?

One answer to these questions was offered by a group of scholars who analysed the implementation of six directives from the field of EU social policy in the fifteen “old” member states prior to Eastern enlargement. The results of this study demonstrate that simple causal arguments, such as the misfit or veto player hypotheses, or the first-wave focus on administrative and procedural factors, do not hold across their cases. Instead, they argue that it is a complex web of administrative, institutional and actor-based factors that determines transposition outcomes (Falkner *et al.* 2002, 2004; Falkner *et al.* 2005: 277-316). Up to this point, the argument is not very different from Steunenberg’s model or from the heterogeneous results of quantitative studies.

However, the empirical results of this comparative research suggest that there are huge inter-country disparities, but strong similarities among members of different groups of countries, in the way they typically fulfil their EU-related duties.⁹ This results in a typology of three “worlds of compliance”. The three country clusters are characterised by the varying importance of a culture of compliance in member states’ political and administrative systems. In the world of law observance, which consists of the Nordic countries, the presence of a culture of respect for the rule of law among political and administrative actors usually ensures fast and correct transposition (Falkner *et al.* 2005: 317-341; see also Leiber 2005). In the world of neglect, the absence of such a culture in both the political and administrative systems typically leads to long phases of bureaucratic inertia and rather apolitical transposition processes. Greece, France or Portugal conform to this pattern (Falkner *et al.* 2005: 317-341; see also Hartlapp 2005). In the world of domestic politics, finally, administrations usually work dutifully, but since a culture of compliance is absent in the political realm, transposing EU law typically depends on the fit with the political preferences of government parties and other powerful players in the domestic arena. This is the largest cluster, involving countries like Germany, the Netherlands, Ireland and the UK (Falkner *et al.* 2005: 317-341; see also Treib 2003a,b, 2004).

This typology means that the controversial political interactions between political parties, powerful interest groups and other important political actors, which were described by scholars like Treib, or by Steunenberg’s mode of “horizontal coordination”, are only typical for a certain group of countries. In other member states, transposition is usually a rather apolitical, bureaucratic process, as in Steunenberg’s mode of “hierarchical coordination” or as suggested by some of the quantitative findings. In a third group of countries, the actor constellation may be similar to Steunenberg’s multi-actor co-ordination, but it does not give rise to deadlock and delays since all of these actors are culturally inclined to comply with the law no matter what the short-term disadvantages should be. This also suggests that many of the existing theoretical propositions are only “sometimes-true theories” (Falkner *et al.* 2007), which are relevant in certain countries, but not

⁹ This finding contrasts sharply with the findings of Dimitrakopoulos (2001), who identifies one single “European style of transposition” across all the member states.

in others. Political variables such as party political preferences, interest group pressure and veto players should have a major impact in the countries belonging to the world of domestic politics. Administrative factors should be particularly important in the member states forming the world of neglect. In addition, collectively shared cultural dispositions towards respecting the law should be able to explain the raft of transposition processes in the countries belonging to the world of law observance.

It remains to be established empirically whether and to what extent these country patterns hold beyond the specific cases studied by Falkner, Treib, Hartlapp and Leiber, especially whether they may be identified in other policy areas as well. However, some results derived from quantitative studies seem to point in a similar direction. First, the identification of a Nordic “world of law observance” ties in with the findings of Sverdrup (2004), who looked at infringement proceedings and showed that the Nordic countries are the subject of much less infringement proceedings and give in much faster than other countries to the pressure from the Commission. Second, a recent paper by Börzel *et al.* (2004) identified a statistically significant correlation between the number of infringement proceedings against a given member state and the level of public support for the rule of law among the citizens of this country. Although Börzel, Hofmann and Sprungk point out that the available opinion-poll data on public support for the rule of law are problematic since they are quite old and only refer to twelve member states, this result nevertheless lends some support to the argument that countries such as Denmark, where citizens strongly support the rule of law, are less non-compliant than countries where citizens do not take the issue of observing the law very seriously, such as in Greece, France or Portugal. Using a different, more indirect indicator for the acceptance of the rule of law within European societies, Berglund *et al.* (2005) also demonstrated that there is a significant relationship between the rule of law and member states’ transposition record.

The considerable proliferation of studies dealing with transposition should not conceal the fact that third-wave research has also looked at the later stages of the implementation process. Compared to earlier research, however, studies covering not only transposition but also enforcement and application have become a very small minority in recent years. Among the few exceptions is a study by Versluis (2003, 2004), whose explicit focus is on the enforcement of two directives from the field of chemical safety in four countries. She discovers major enforcement problems in some of her cases and argues that issue salience is crucial in determining whether domestic inspectors take a particular directive seriously or whether they ignore it (Versluis 2004).

The study by Falkner *et al.* (2005) also included not only transposition but also enforcement and application. Informed primarily by the insights of the top-down school in domestic implementation research, they present a set of institutional conditions that determine the effectiveness of domestic enforcement systems (“co-ordination and steering capacity”, “pressure capacity” and “availability of information”), and they distinguish between different types of enforcement for different types of norms (Falkner *et al.* 2005: 33-40). Applied to the fifteen member states included in their study, they find that the shortcomings of the domestic systems of enforcing labour law in four countries (Greece, Ireland, Italy and Portugal) “are so significant in overall terms that we regard these countries as neglecting their duty to ensure not only legal transposition, but also a reasonable level of practical compliance” (Falkner *et al.* 2005: 275). Based on a new study on implementation processes in four Central and Eastern Europe countries, Falkner and Treib (2006) have recently suggested that the combination of political contestation at the transposition stage and significant shortcomings at the stage of enforcement and application, which was already found to be characteristic of Ireland and Italy, might even call for a fourth world of compliance: the “world of dead letters”.

3 Discussion: What Have We Learnt?

After this historical overview of how the field of EU implementation and compliance research has evolved over the past decades, this section will discuss the main insights we have gained so far, and it will point to a number of problems and shortcomings that need to be addressed by future research.

3.1 Implementation Phases and Policy Areas Studied

As has already been outlined above, most of the research has hitherto focused on the transposition of EU directives. Despite a few notable exceptions, the tendency to neglect issues of enforcement and application has even increased in the third wave of research. One reason for this seems to be a methodological one: As more and more scholars have turned to quantitative approaches, enforcement and application issues have taken a back seat since there are simply no appropriate quantitative data for analysing the “street-level” aspects of implementation. This is rather unfortunate, since all qualitative studies that did include issues of practical implementation have demonstrated that the “law in the books” is not necessarily the same as the “law in action” (Verluis 2004: 13) – if that were otherwise, everything that was written in the context of domestic implementation research would have been superfluous. Along the same lines, it is remarkable that the implementation of EU regulations, which do not require domestic transposition, have so far attracted so little interest (but see Siedentopf and Ziller 1988). From the standpoint of EU policy-making, for example, one very interesting question to be addressed would be whether the instrument of regulations work better than directives, since they offer less opportunities for policy drift and shirking, as the huge transposition problems identified by many studies would imply, or whether it is even the other way round, since regulations are too inflexible to adjust to the diverse institutional and societal conditions in a polity that comprises so many different societies, as the Siedentopf and Ziller project suggested (Ciavarini Azzi 1988: 199).¹⁰ Such a perspective could also link implementation studies to the emerging field of research on different modes of governance (see e.g. Héritier 2002, 2003; Treib *et al.* 2005).

Another remarkable feature of existing EU implementation research is that studies with an explicit focus on cross-sectoral policy comparison are in short supply. Most qualitative studies have to date concentrated on one policy area. Particularly popular have been studies on environmental policy (Demmke 1998; Jordan 1999a,b; Knill and Lenschow 2000b; Haverland 2000; Börzel 2003a; Bugdahn 2005), labour law and gender equality (Hoskyns 1996; Duina 1997; Caporaso and Jupille 2001; Falkner *et al.* 2005; Dimitrova and Rhinard 2005), and internal market policies (Schwarze *et al.* 1990, 1991, 1993; Knill and Lehmkuhl 2000; Héritier *et al.* 2001). The few qualitative studies that spanned two or more policy areas (see e.g. Siedentopf and Ziller 1988; Duina 1999) did not follow a systematic comparative approach in the sense that they searched for systematic sectoral patterns in implementation. The same is true for the quantitative studies. Most of these cover cross-sectoral data, but none of them has as yet sought to test whether there are cross-sectoral differences in compliance patterns. If sectors are compared, this is usually done in a purely descriptive manner, in order to show which policy areas are ridden with the most problems (for example, see Börzel *et al.* 2004).

Therefore, EU implementation research is in need of cross-sectoral studies that could find out whether the strong evidence for country-specific implementation styles needs to be complemented with sector-specific (sub-)styles. Following the seminal article of Lowi (1972), domestic implementation researchers such as Mayntz (1977), Windhoff-Héritier (1980) or Ripley and Franklin (1982)

¹⁰ Within the Commission, there seem to be tendencies in favour of the former option. Thus, a “Commission staff working paper”, which was published in the run-up to the White Paper on European Governance, recommends that the Commission should, whenever possible, prefer regulations to directives (CEC 2001).

have in fact argued that different policy types imply different conflicts and problems and therefore lead to different types of implementation processes. Moreover, EU compliance research will need to broaden its perspective in order to cover policies that have hitherto attracted only scant attention, such as agricultural policy or issues belonging to the expanding area of justice and home affairs.

3.2 Methodology: Between Quantitative and Qualitative Approaches

While case study research was the standard method in the first two waves of research, quantitative analyses have become more and more popular in the third wave. The analytical advantage of these quantitative approaches is their broad empirical basis, which usually spans several decades and policy areas as well as all or almost all member states. This has to be regarded as an asset in itself, since case study research, while often times being able to establish interesting causal relationships, has problems in proving that the patterns identified are actually representative for other cases. At the same time, however, quantitative studies often struggle with finding appropriate indicators to measure the concepts that are considered theoretically relevant and with identifying causal relationships behind the correlations they find.

As indicated by the rather inconclusive results described above, quantitative EU implementation research seems to be ridden with similar problems. The main difficulties appear to be associated with the data employed to measure the dependent variable. Those studies that use the transposition information reported in the Commission's annual reports and the transposition measures reported in Celex and other databases have the first major drawback that these data are restricted to the legal phase of transposition. But even if we accept completely disregarding issues of enforcement and application, these data have a second major problem: they do not give any indication of the correctness of what has been officially notified by the member states. Cases where transposition is being notified on time are thus treated as if all (legal) requirements had been met dutifully no matter how incomplete or incorrect the notified laws may be. This method thus seriously underestimates the actual size (and probably also the shape) of the transposition deficit.

That this is a major drawback can even be shown by using other statistical data: A quick look at the official Commission data on infringement proceedings against non-compliant member states reveals that non-transposition is only part of the story. Among the 517 directive-related infringement proceedings that were transferred to the European Court of Justice between 2002 and 2004, only about 60 per cent concerned cases of non-notification (own calculation based on CEC 2005: Annex II). Scholars who look at transposition rates and notification data only thus turn a blind eye to the remaining 40 per cent of the cases. This alone should raise serious doubts as to the appropriateness of this kind of data.

This brings us to the second type of quantitative studies, which uses infringement data. These data are certainly less distorted than the official transposition data, as they include at least some of the actual cases of incorrect or insufficient transposition. However, in-depth empirical case studies have clearly demonstrated that these data are also far from perfect. Due to a serious lack of resources, the Commission is only able to systematically detect and pursue cases of late notification, while many cases of inaccurate transposition – and even more so cases of insufficient enforcement or wrongful application – slip past its attention. Thus, Falkner *et al.* (2005: 204-205) conclude that the Commission's infringement data only represent the “tip of the iceberg”, which does “not necessarily say much about the size or the shape of those parts that remain below the waterline”.

One way out of this unpleasant situation was suggested by Mastenbroek (2005: 1113). She makes the case for a combination of both statistical and qualitative methods, for example by conducting qualitative case studies to scrutinise the findings derived from statistical analyses. However, this would not solve the central problem. A few additional case studies will not suffice

to actually scrutinise the results of quantitative studies that are based on data of rather poor quality. Instead of starting with the weaknesses of statistical analyses and trying to eradicate them by qualitative studies, we could also proceed the other way round. Collaborative research projects, such as the ones carried out by Siedentopf and Ziller (1988) or Falkner *et al.* (2005), have successfully demonstrated that qualitative research does not have to be confined to a small-n setting. Unless the data problems associated with quantitative studies have been eliminated, trying to carry out more of these medium-n qualitative studies seems to be at least as worthwhile as the option of supplementing quantitative analyses with a few additional case studies. This is especially true if we want to learn more about enforcement and application, an area where no quantitative data are at hand at all.

3.3 Theoretical Progress Despite Little Cumulativeness

The methodological problems discussed in the previous section notwithstanding, we can conclude that the body of literature as it exists today has taught us a lot about the logic of implementing EU legislation.

As far as transposition is concerned, it seems to be commonly accepted by now that our theoretical explanations should be informed by well-established theoretical mechanisms from comparative politics and international relations research. In this context, scholars also seem to accept that we need to take into account both structural and agency-related factors, that is administrative and political capacity variables as well as factors determining the willingness of domestic actors. Among the former, the most significant variables appear to be administrative efficiency and veto players. With regard to the latter, many studies have pointed to the relevance of political preferences of governments and interest groups as well as cultural dispositions. Moreover, there seem to be different configurations and different relative weights of these factors in different cases. More research is still needed to determine which types of cases are marked by what type of typical transposition pattern. There is strong evidence suggesting that transposition styles differ between countries or, more precisely, between country clusters. In contrast, we know comparatively little about the cross-sectoral variance of transposition patterns within member states. For example, it seems quite plausible theoretically that transposition is different in rather technical policy areas than in highly politicised ones, at least in countries where politicisation in general is a typical feature.

With regard to enforcement and application, progress has been less pronounced. In fact, contributions addressing the crucial phase of practical implementation “on the ground” have decreased recently, compared to the first and especially the second waves of research. However, it seems to be clear by now that the theoretical models employed to explain the way member states translate the law into action need to be different from the approaches used to explain transposition. Future research will be well advised to make more extensive use of the theoretical insights gained from domestic implementation research since it does not seem to make a major conceptual difference whether we look at how domestic legislation stemming from a European directive or how purely domestic law is being put into practice.

One thing that could and should be avoided by future research is the lack of cumulativeness that has marked some of the literature so far. Keeping track of supportive or contradictory evidence in relation to certain hypotheses is not an easy task if scholars fail to relate their findings to these hypotheses. For example, compliance approaches derived from the international relations literature seem to have become more and more fashionable recently, especially in the area of statistical research. If these analyses find support for the argument that administrative capabilities are important determinants for (non)compliance, it is certainly interesting to discuss this finding in terms of the management approach. For the progress of EU implementation research as a whole, however, it would be even more desirable to link these results back to theoretical arguments

presented by Siedentopf and Ziller (1988) and others at a time when IR compliance approaches were not yet *en vogue*. Another example is a recent paper by van der Vleuten (2005), which presents evidence from a study on the implementation of EU gender equality policies in France, Germany and the Netherlands. The author argues that “the willingness to implement depends on the economic and ideological costs of policy change and on the amount of pressure exercised by societal actors” (van der Vleuten 2005: Abstract) (van der Vleuten 2005: Abstract). This interesting result would have been much easier to digest by the scholarly community if the author had pointed out that her findings are very much in line with Börzel’s pull-and-push model presented five years earlier (Börzel 2000).

In sum, EU implementation research has made considerable theoretical progress over the last decades. Future research will thus be able to start from a considerably broader set of knowledge than the early contributions of the 1980s. The extent to which further progress will be made, however, also depends on the ability of the scholarly community to organise its research in a constructive and cumulative way.

4 Conclusion

The process of implementing policies enacted at the EU level is a particularly interesting object of study. The EU is marked by a highly decentralised implementation structure that leaves responsibility for policy execution to the member states. Given the heterogeneity of interests among the actors involved in EU decision-making and the high consensus requirements, EU policies often contain fuzzy concepts and leave certain issues to the discretion of member states in order to facilitate agreement. What applies to implementation in general is thus particularly true for the domestic execution of EU policies: crucial decisions that may decide on the success or failure of a policy are regularly taken at the implementation stage.

It was not until the mid 1980s that EU scholars discovered this interesting issue. Since then, the field has developed into one of the growth industries within EU research. In light of the considerable proliferation of EU compliance studies, especially over the last couple of years, this essay has sought to provide a systematic overview of the historical development of the field, and it has endeavoured to identify the most important theoretical, empirical and methodological lessons to be drawn so far.

Despite some notable exceptions, research has until now focused to a remarkable degree on transposition, while comparatively little is known about issues of enforcement and application. Also, few studies have systematically explored processes of implementation in different policy areas, and certain important sectors have been neglected. There is thus a huge empirical field to be explored by future research.¹¹

With regard to transposition, scholars meanwhile seem to agree that we need to address factors that influence both the capacity of member states to comply and the willingness of domestic actors to fulfil the requirements stemming from EU legislation. The most important capacity variables appear to be administrative efficiency and veto players. With regard to willingness, the most significant factors seem to be political preferences of governments and interest groups as well as cultural dispositions. The main task to be accomplished by future research is to establish under which conditions which configurations of factors prevail. As a first step, there is strong evidence suggesting that the general transposition styles differ significantly between different country clusters. More research is needed to establish how far transposition patterns also vary between different sectors within member states.

Despite the relatively few research efforts explicitly devoted to enforcement and application, one insight gained so far is that research on the logics underlying the phase of practical implementation requires different theoretical approaches than those applied to transposition. Making more use of the theoretical insights gained from domestic implementation research would seem to be a particularly promising avenue for future research in this area.

In methodological terms, finally, the above survey of the literature has uncovered a number of problems associated with the steadily growing number of quantitative analyses. Unless these problems, which are mainly associated with the quality of the available data used to measure the dependent variable, have been solved, scholars are well advised to rely on comparative case studies, at least in addition to statistical analyses. Some of the earlier research has demonstrated that well-organised case study research does not have to be confined to small-n studies. Crafting collaborative research projects in which something between 50 and 100 cases would be analysed qualitatively by a group of scholars would thus seem to be a viable alternative to quantitative research. This is especially true for the study of enforcement and application, where no quantitative data are available.

¹¹ As for enforcement and application, there is an ongoing research project at the Institute for Advanced Studies in Vienna which focuses explicitly on the question of how the *acquis communautaire* is being put into practice in the new member states of Central and Eastern Europe (for more information, see IHS). For further research on how the new member states have adjusted to the body of Community law, see the Living Review on "Europeanisation in new member and candidate states" by Sedelmeier (2006).

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