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## Introduction

In spring 1990 Greece had a new conservative government after eight years of socialist rule. One of the electoral pledges of the conservative party (Nea Dimokratia) concerned the radical improvement of the country's poor record in the implementation of European legislation<sup>1</sup>. The pledge of the conservative party had a wider symbolic significance because it was a previous conservative government that had taken Greece into the then EEC in January 1981.

Nevertheless, what they actually meant was a rather different story. The basic idea behind this new political priority concerned the adoption of legislative measures for the transposition of European legislation into national law. In other words, the rapid and timely adoption of national legislation was the tool that was going to be used for the improvement of the country's implementation profile. However, if transposition was the only or even the most important source of the problem, what had impeded any Greek government from doing something about this problem earlier?

Most post-accession single-party Greek governments had enjoyed the support of robust parliamentary majorities. Moreover, political dissent was almost completely absent from the Greek Parliament in the post-dictatorial era. The presence of numerous lawyers in Parliament, the Athenian bureaucracy and consecutive cabinets was

overwhelming. In other words, there was not much that could impede previous governments from achieving their objective. Furthermore, one could, perhaps, use PASOK's anti-EC rhetoric as an explanation of the country's poor implementation record only between 1981 and 1985 because the end of its first period in office marked a quite clear change in the direction of a much more positive, albeit quite critical, stance. Moreover, Greece had problems implementing European policies before *and* after 1990 and the electoral victory of the conservative (and traditionally 'pro-European') party. Even if the decision of the conservative government to focus on the legislative dimension of the problem went in the right direction, it was not a sufficient step for the improvement of the country's implementation profile. This begs the question: what can national governments do to resolve this problem? Are there any tools that may be used in that respect? Furthermore, during the same period (early 1990s) the EU's implementation deficit was beginning to emerge as a key issue in the development of European integration. If the attitude of the government was a powerful explanatory factor of this systemic phenomenon, why did a country with an unquestionably defining input to European integration, such as France, contribute to the collective so-called 'implementation deficit', whereas an 'awkward partner' such as Britain did much less so?

Placing emphasis on the transposition of EU legislation into national legal orders and – more specifically – focusing on the capacity of governments to push these reforms through parliaments would be surprising since modern parliaments in Europe are not exactly the hotbed of political dissent. Moreover, reducing the issue of implementation to one of producing laws that appear to give effect to European legislation ignores the

fact that effective transposition is just a part of a wider process. Getting a legislative act through parliament is one thing. Preparing this act and - above all, ensuring that it accurately reflects the spirit of the European policy that it embodies, is another.

Consequently, a *dynamic* rather than static view of the transposition process must be adopted. This means that, on the one hand, we should examine the links between this stage of the process and what precedes it. Does the formulation of policy contain evidence that may illuminate problems in the subsequent stages of the EU policy process? Does formulation constitute an opportunity for the choice of methods and tools that may at least help us foresee some of the difficulties that may appear later, thus facilitating their timely resolution?

On the other hand, once a law has been passed, turning its provisions into concrete reality is not only a matter of coping with different and often competing interests. Rather, it entails first and foremost the involvement of political and administrative institutions. This, in turn, raises once more, the issue of the national governments' margin for action. What can they do in order to ameliorate their implementation record? Are there any strategies and tools that could be used to steer post-transposition implementation?

Two broad strategies can be envisaged. First, governments may seek to be more proactive by taking account of the exigencies of implementation in previous stages of the EU policy process. This would allow them to transpose more effectively and finally set up *national* strategic mechanisms and procedures that facilitate monitoring and problem-solving *during* as well as *immediately after the transposition phase*. Second,

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they may adopt specific measures such as the recruitment of more and better trained staff, which will seek to ensure better implementation at *street-level* (Lipsky 1971).

Following the second strategy as a platform for the analysis of the implementation process is likely to provide rich insights about the relations between front-line implementers and the relevant target groups and other actors, but would be inadequate for the analysis of the *national* actions regarding a country's implementation profile.

Discussing the implementation of the EU's environmental policy in Greece Giannakourou (1996, 7) identified the creation of an independent body for the delivery of 'eco-labels' as a significant innovation. Who assessed the need for this body, who decided to create it and which tools have been used in that process? Street-level implementation analysis is not likely to answer these questions.

This book sets out to examine the first strategy in an effort to draw wider lessons regarding the development of the process of European integration. Specifically, it seeks to examine the way in which national central governments deal with the exigencies of the implementation of EU public policy. Focusing on the central governments of Greece, France and the UK and the case of public procurement, it provides an institutionalist account of the *dynamics* of implementation<sup>2</sup>.

### ***The significance of implementation***

There are many reasons why the implementation of public policy – construed as the process of forging links in a causal chain so as to obtain a policy’s desired results (Pressman and Wildavsky 1984, xxiii) - deserves systematic analysis. First, the politics of implementation is also an essential aspect of the operation of any democratic system. Citizens assess democratically elected politicians (and the officials who act on their behalf) on the basis of the policies that they make *and* implement. The legitimacy of a democratic polity that enacts but does not implement policies is likely to suffer. Conversely, politics does not end when a law is enacted. Rather, ‘implementation is the continuation of politics by other means’, as a pioneer of implementation analysis put it (Bardach 1977, 85) and the EU is not an exception (Jordan 1997; Dimitrakopoulos 2001c, 2001b).

Second, implementation can be seen as a credibility test for individual member states, the EU and the integration process as a whole. Indeed, more than six decades after the end of the last destructive war on its soil, the EU (one of the organisations that contributed to post-war lasting peace and prosperity) is assessed not only on the basis of the motives of its creators (peace figuring prominently among them) but, increasingly, on its capacity to contribute to improvements in the daily lives of its citizens. This, in turn, means that we need to have a better grasp of the factors that affect the way in which EU policies are turned into reality. For example, since much of European integration is about market-making, the ‘level playing field’ which is the purported objective of this process will not come to existence if there is a significant implementation deficit. Moreover, to the extent that European integration involves

social regulation, a significant implementation deficit will undermine improvements in social standards. As Guy Peters put it (1997, 200),

[t]he capacity to implement policy is one central defining feature of any political system, and if in the future the EU is to be a functioning government then implementation becomes a crucial question.

Third, as existing literature points out, the EU is not dissimilar from the member states in that they too have an ‘implementation deficit’; there is a gap between proclaimed objectives on the one hand and reality (and process) on the other. Indeed, for the EU<sup>3</sup> this is a systemic issue (Mendrinou 1996; Dimitrakopoulos and Richardson 2001).

Fourth, the presence of robust national institutions capable of coping with the exigencies of membership is one of the criteria for accession to the EU. The initial broad reference to ‘stability of institutions guaranteeing democracy, the rule of law [...] as well as the capacity to cope with competitive pressure and market forces within the Union [and] the candidate’s ability to take on the obligations of membership’ found in the so-called ‘Copenhagen criteria’ (European Council 1993, 13) has been strengthened with explicit reference to the candidate countries’ need to adjust their administrative structures in view of accession (European Council 1995, section III A).

Fifth, new issues and controversies have emerged as a result of the development of the study of European integration. The so-called ‘Europeanisation’ of the nation state – which is usually construed as domestic institutional and/or policy convergence as a

consequence of membership of the EU - features prominently amongst them. Given that the analysis of implementation entails the systematic discussion of the translation of policies into practice, it can contribute to the assessment of the claims made about the domestic impact of EU policies<sup>4</sup>.

Finally, despite the importance of the implementation stage, relatively little is known about the EU as an implementation structure because EU scholars have devoted overwhelming attention to the formulation of EU public policy. Unsurprisingly, this reflects the development of the study of public policy making in nation states.

Implementation began to attract systematic<sup>5</sup> scholarly attention only in the 1970s (Derthick 1972; Pressman and Wildavsky 1973; Hargrove 1975; Van Meter and Van Horn 1975; Hood 1976; Bardach 1977; Rein and Rabinovitz 1977; Berman 1978; Dunsire 1978; Gunn 1978). Although the study of implementation of EU policy has in the past been seen as a 'black hole' (Weiler 1991, 2465) this area has been attracting increasing attention. So, what do we know about the factors that affect the implementation of EU public policy? What are the strengths and the limitations of the existing literature?

### ***Implementation in the European Union***

There are two generations of scholarship on what can be broadly construed as the study of the implementation of EU public policy. The first generation has the unquestionable merit of raising<sup>6</sup> implementation to the level of a question that is worthy of the attention

of EU specialists (Ciavarini Azzi 1985; Siedentopf and Ziller 1988a, 1988b; Schwarze *et al.* 1990; Schwarze, Becker and Pollak 1991, 1993; Snyder 1993; Pappas 1995). Five general trends can be identified in this literature. First, it is often (though certainly not always) characterised by a degree of terminological confusion<sup>7</sup> since the term ‘implementation’ is often used interchangeably with the terms ‘enforcement’ and ‘application’. Second, existing studies of the transposition of EU legislation into national legal orders construe this stage rather statically and thus fail to underline the importance of what precedes and what follows it. Third, it has the merit of highlighting (Siedentopf and Ziller 1988a, 1988b) the potential impact of the link between formulation and implementation in line with the wider literature on implementation (Bardach 1980; Mayntz 1980b; Berman 1980; Barrett and Hill 1984). Fourth, it underlines the importance of departmental attitudes in the formulation and implementation of EU policy. Finally, the lessons for the wider integration process that can be drawn from these analyses of implementation and its national dimension have remained relatively underdeveloped despite the comparative nature of some existing studies.

The second generation of the literature appeared after the re-launch of the single market project and the 1992 ‘deadline’ for its completion. In that literature, three kinds of explanations<sup>8</sup> have been put forward in an effort to account for the EU’s implementation deficit (Dimitrakopoulos and Richardson 2001). They are interest-based, culture-based and institutionalist explanations<sup>9</sup>. *Interest-based explanations* typically highlight the fact that coalitions of actors whose interests are likely to be affected by a new policy often mobilise at the implementation stage in an effort to promote or obstruct it, for

example, because they want to minimise or even eliminate adaptation costs

(Dimitrakopoulos and Richardson 2001) or because they agree or disagree with it

(Jordan 1997; Falkner *et al.* 2004, 458). *Cultural explanations*<sup>10</sup> point in the direction of the impact of cultural attitudes towards authority in general, or law in particular.

Here, implementation is contested not necessarily because of the content of a policy but often as a result of cultural attitudes towards its sources. In a law-intensive organisation (Page and Dimitrakopoulos 1997) like the EU, attitudes towards the law can affect implementation patterns. As a result, implementation patterns can vary as a result of the presence of different attitudes towards the law<sup>11</sup>. Moreover, if one focuses on the narrower concept of legal culture, variation can be expected as a result of the co-existence of different legal cultures within the EU (Sverdrup 2005, 15). Furthermore, aspects of political culture appear to affect implementation. For example, Nordic states ‘pursue a more consensus-seeking approach with limited use of courts’ (Sverdrup 2004, 23). Although interests and culture play a role in the implementation of public policy, both are mediated by *institutions*, i.e. the focus of the third group of explanatory factors. Indeed, between interest-based and cultural explanations, there is a growing and diverse body of literature that discusses the impact of *institutions* on patterns of implementation. This is unsurprising since both interests and culture are mediated and channelled through institutions.

Institutionalist explanations highlight the importance of not only the EU as an implementation structure (Peters 1997; Dimitrakopoulos 1998, chap. 2; Tallberg 2003) but, more importantly, the impact of domestic institutional arrangements on patterns of implementation. Unsurprisingly, this literature reflects the diversity of the broader

literature on the notion of the ‘institution’ and the impact of institutions on political outcomes. A wide variety of explanations have been put forward. It has been argued that states with high levels of regional autonomy ‘perpetrate more infractions’ (Mbaye 2001, 276). Institutional veto points have been found to shape the timing and quality of implementation at the national level: though domestic opposition can be mobilised as a result of pressure for adaptation to EU requirements, ‘whether it is successful or not depends on the availability of veto points’ (Haverland 2000, 100). More specifically, in a study of the implementation of the EU’s Packaging Waste Directive in Britain, Germany and the Netherlands, it has been demonstrated that, despite the presence of different policy legacies, what mattered most was the role of institutional veto points:

[u]nconstrained by institutional veto points, the British and Dutch government adapted to Europe relatively timely and properly. Germany, facing opposition in the Bundesrat, implemented rather late and inappropriately

(Haverland 2000, 100).

Moreover, the extent of the institutionalisation of core executive rules regarding the monitoring of ministers and departments has been found to affect the timeliness of the transposition of EU law into domestic legislation which is an important aspect of the implementation process (Zubek 2005).

In addition to the use of the notion of an ‘institution’ in the formal sense of the term, institutionalist analyses of implementation have also relied on a broader meaning of the

same concept - one that encompasses, for example, patterns of interest intermediation as well as policy legacies. In this vein, it has been argued that

[i]mplementation is driven by the demands that a directive imposes on two domestic institutions that are deeply rooted in the histories of member states: the legal and administrative traditions of a country, and the organization of interest groups. When demands are big, i.e. when the costs of institutional transformation are high, directives are not well implemented. When demands are low, and the directive in fact strengthens the current national institutional landscape, then proper implementation takes place

(Duina 1997, 175).

This theme is at the heart of the burgeoning literature on the so-called ‘Europeanisation’ of the nation state, a topic that is often (though certainly not always) discussed in ways that require an understanding of implementation patterns. European integration is seen as a source of pressure that often challenges both domestic policies and institutional arrangements. For example, it has been argued that ‘unification implies or actually requires the partial homogenization of European countries. [...] In a sense, unification requires the rejection of nations’ histories’ (Duina 1999, 122). As a result, extant literature highlights the centrality of the concept of ‘goodness of fit’ (Risse, Cowles and Caporaso 2001; Börzel 2002; Bailey 2002): the closer domestic institutions and policies fit with EU requirements, the smaller the pressure for change will be. Indeed, it has been argued that ‘even very small misfits may lead to non-compliance’ (Falkner *et al.* 2004, 466).

The first common feature of the two generations of the literature on implementation of EU public policy is that often they do not draw on the significant theoretical literature on the implementation of public policy. This is perhaps, in part, due to the fact that the study of aspects of implementation in the EU is often motivated by an interest in a particular element of the process of integration, i.e. a sector, a member state or even more specific issues such as patterns of territorial governance<sup>12</sup>. From this stems two additional characteristics that inform this book. On the one hand, as a result of their interests in ‘compliance’, scholars have quite often not made enough of the characteristics of implementation as a *process* – despite the lessons discussed in early work on implementation (see, e.g. Derthick 1972; Pressman and Wildavsky 1973; Berman 1978) - that unfolds over *long periods* of time. Indeed, compliance and implementation are often used interchangeably despite the major differences that exist between them. The former is a state of affairs whereas the latter is a process. The former is static whereas the latter is dynamic<sup>13</sup>. More importantly, compliance is one of the potential outcomes of implementation. From this conceptual distinction flows a key question: assuming that one adopts the ‘compliance perspective’, what precisely constitutes compliance? Concretely, given that much of the literature on compliance in the EU has focused on (a) the protection of the environment, (b) social regulation and, to a lesser extent, (c) the single market, how do we know that a member state has complied with EU policy? For example, assuming that there are a hundred environment or labour inspectorates in a given member state, how many of them ought to fulfil EU requirements - at a given point in time - for one to conclude that this state complies with these requirements? Moreover, even if one were to identify a defining point of this

kind, in how many cases (and for how long) should each of these inspectorates comply for one to conclude the inspectorate as a whole complies? Crucially, even if a conceptually sound and empirically robust state of compliance were to be defined, how do we get there? This book is couched in the belief that it is much more useful and interesting to examine the implementation process as it unfolds over long periods of time.

On the other hand, despite the focus on institutions - which is a useful characteristic of the existing literature - surprisingly little light has been shed on the impact of the internal operation of national central governments<sup>14</sup>. The impact of both interests and culture is channelled through (and filtered by) institutions that subsequently affect political outcomes. This is a key reason why the emphasis on institutions is likely to produce useful insights. However, institutions possess two cardinal characteristics that have often been ignored in the EU-related literature that touches on the issue of implementation. First, when they are confronted with a novel situation or demand, institutions predominantly rely on standard operating procedures and repertoires – sometimes revised at the margins - in an effort to cope. This means that they often cope by absorbing novel functions or demands in their daily routines<sup>15</sup>. Second, institutional change is a very demanding process whose outcome is – more often than not – uncertain (March and Olsen 1989). Indeed, although many reform efforts remain incomplete, others succeed (even for a brief period of time) or fail and this is one of the reasons why theoretical accounts of implementation have always construed it as a *dynamic process*, one that cannot be captured in terms of the static logic of ‘the goodness of fit’.

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This book focuses on the comparative longitudinal analysis of the role of central governments. It covers Greece, France and Britain by means of a case study, namely public procurement. These choices are explained in the next section.

### ***Central governments, co-ordination and implementation***

There are four reasons (theoretical as well as empirical) that account for the focus on central government institutions. First, implementation theory highlights the crucial importance of the link between formulation and implementation (Majone and Wildavsky 1984, 174). Only central government officials are involved in both of these stages though the nature of this involvement varies (*infra*, chap. 1). The making of public policy entails the choice of theories that link a given understanding of reality and a desired outcome (Majone 1980) and the implementation of a policy entails the testing of the hypotheses that have been built into the policy (Browne and Wildavsky 1984, 254). Thus, the formulation of policy entails decisions that directly affect the implementation process. Sometimes officials formulate policies whose objectives are so ambitious that turn a degree of failure into a certainty (Derthick 1972, 90). Moreover, formulation often entails decisions regarding the choice of the organisations that will be involved in implementation. So, making this decision is an important means to shape implementation because ‘different agencies have characteristically different approaches to programs in the same subject area’ (Rein and Rabinovitz 1977, 26). Second, institutionalist accounts of politics highlight the importance of central governments by underlining the usefulness of the concept of ‘state capacities’ (Skocpol

1985, 17, 21). The organisational configuration and the instruments at its disposal affect a state's capacity to define and pursue policy objectives. Third, in the context of the study of European integration, a significant part of the theoretical debate concerns the role of national (central) governments. In terms of 'grand theories', both the liberal intergovernmentalist and the neo-functionalist arguments are based (implicitly or explicitly) on claims regarding the capacity of central governments to participate in the process of integration. Liberal intergovernmentalism highlights the importance of interest aggregation, negotiation at the European level and delegation to supranational institutions (Moravcsik 1993; 1998). These functions are performed by central governments whose credibility (i.e. their capacity to honour their commitments) affects both European integration as a whole and their own involvement therein. Neo-functionalists do not deny (Haas 1968) the significant role performed by central government officials. Rather, they relativise and contextualise it by claiming – rightly – that national governments are one of a *number* of important actors. This is a similarity that they share with multi-level governance and historical institutionalist (i.e. meso-level) approaches that contest the capacity of central governments to perform the Herculean task ascribed to them by liberal intergovernmentalists, especially before and after intergovernmental conferences (Marks, Hooghe, and Blank 1996; Pierson 1996). Finally, the EU's institutional configuration places particular importance on the role of central governments. They are involved not only in the formulation of EU policy (especially through the Council's groups) but its implementation as well<sup>16</sup> (Peters 1997; Dimitrakopoulos 1998, chap. 2). Most of EU policy is implemented at the national level by the administrations of the member states, in line with the principle of indirect administration. The EU's reliance on national administrations justifies the presence of

common arrangements for the regulation of the operation of the latter. In formal terms, the principle of *Bundestreue* (federal loyalty, i.e. the obligation to ensure that commitments made in Brussels are honoured at the national level) enunciated by Art. 5 of the Treaty of Rome<sup>17</sup> governs the relationship between the Union and its members whose wishes are formally expressed by their central governments<sup>18</sup>. Moreover, in the context of ‘comitology’ (Rideau 1987; Blumann 1993; Pollack 2003) i.e. the executive committees that assist the Commission in the adoption of executive measures, the role of central government officials is predominant. This offers them yet another opportunity to shape the patterns of the broader implementation process. In terms of informal arrangements, the Commission raises with central governments issues regarding potential infringements rather than sub-national authorities even when the latter are responsible for them. More importantly, given that EU policies (and the legislation that embodies them) are often the result of compromises reached by national negotiators who – in most policy areas, most of the time – are central government officials, only they can provide the guidance that implementing agencies often need when policies agreed on in Brussels are turned into concrete reality.

The increasing diversity that characterises the membership of the EU and differences in terms of implementation records provides the main motive for the use of a comparative analysis. Given that they are involved in the making of EU policies that they are subsequently expected to implement, what accounts for the different implementation records? Moreover, given the importance that has been ascribed to institutional convergence in the literature on the so-called ‘Europeanisation’ of the nation state, what evidence is there to suggest that this pattern exists and – more importantly – that it has a

bearing on implementation? In the light of (a) the aforementioned link between formulation and implementation, and (b) the cardinal role performed by central governments, it is important to examine the way in which the latter have coped with the exigencies of their involvement in the EU policy process. Involvement in the EU policy process has generated significant demands for national central governments and the officials who operate therein.

These demands concern, first and foremost, the imperative of co-ordination. This is important for a number of reasons. The expansion of the scope of European integration has placed significant emphasis on the capacity of central governments to define and promote coherent views across a whole range of sectors and issues. In the past, some sectors (e.g. agriculture or regional development) did not appear to have a developed ‘international’ dimension. Nevertheless, the involvement of the EU therein has turned intra- and cross-sectoral co-ordination into a necessity despite (or because) of the tendency towards the establishment and preservation of sectoral logics that is inherent in modern governments. In addition, EU policy in a given sector cannot be streamlined easily through the traditional functional lines that characterise the division of labour between the various parts of the national administrative machineries. For example, elements of the common agricultural policy concern external trade, financial affairs, food safety and food production, i.e. issues are often dealt with by different national ministries. This further enhances the need for co-ordination. Furthermore, the imperative of co-ordination at the intra-ministerial level has been enhanced dramatically. The participation of a wide range of ministerial actors in the committees that meet under the auspices of the Council of the European Union generates the need to

improve co-ordination between as well as within the political and the administrative level in each government department<sup>19</sup>. Moreover, central administrations must cope with the exigencies of the involvement of national parliaments in the EU policy process because of the increasingly explicit politicisation of European integration<sup>20</sup>, the operation of national parliaments as arenas for political debate, and their potential involvement in the transposition of EU legislation into national law. Finally, in many cases, EU policies have led to significant policy changes at the domestic level. The involvement of central government officials in the negotiations that led to these changes increases the pressure on them for the provision of guidance in the implementation stage. As a result, the way in which national central governments have dealt with these issues – that is (i) the adaptation of the politico-administrative structures, (ii) executive-legislative relations and (iii) the exigencies of transposition - can be expected to affect their capacity to shape implementation patterns.

Given the aforementioned patterns of internal differentiation and the exigencies of policy formulation and implementation, the imperative of co-ordination indicates that it is important to examine the extent to which national central governments are integrated (March and Simon 1958; Timsit 1987; Hood 1976; Berman 1980, 219). When the centre of a centralised system is ‘divided’, ‘paralysed’ or ‘inept’, the system as a whole becomes dysfunctional (Wright 1996, 161). In the opposite case, it is more likely to provide the basis for the co-ordinated operation of the system. This, in turn, is mirrored by the steering capacity of the system. Although in many cases implementation is quite unproblematic, the total absence of problems is neither a realistic expectation, nor is it useful for the assessment of a system (Berman 1978, 160). Rather, it is more useful to

discuss implementation in terms of the steering capacity of the system (Lundquist 1972; 1987). It is expected that the greater the degree of system integration – as indicated by the presence and operation of co-ordination machinery, timely and effective problem detection and problem solving through the deployment of appropriate tools of government - the greater its capacity will be to steer implementation in the desired direction.

In the light of the conceptual link between formulation and implementation, the capacity of the central government of a member state to steer the latter can be expected to reflect its involvement in the former. In other words, problematic involvement in formulation marked by the lack of co-ordination is expected to be followed by problematic involvement in implementation. However, the way in which central governments participate in the formulation of EU policy can be expected to reflect the way in which they have responded to the exigencies of membership of the EU (Kassim *et al.* 2001; Kassim, Peters and Wright, 2000; Laffan 2006). States where the central government apparatus has managed to handle the exigencies of membership in an effective manner are more likely to be able to cope with the exigencies of implementation. Therefore, it is important to assess this response prior to the discussion of the dynamics of implementation. Has the pattern of the operation of a national central government remained unchanged despite a country's involvement in European integration (or at least the most advanced stages thereof) or has it been reformed as a result of this critical juncture?

Historical institutionalism offers a flexible framework for the discussion of this question because it provides the tools for the analysis of both continuity and change (Krasner 1984). In a historical institutionalist framework, the expectation of long periods of institutional stability (*stasis*) is coupled with the expectation of change when a critical juncture is reached.<sup>21</sup> To what extent did membership of the EU alter existing patterns of organisation and operation in national central governments? This line of reasoning that links patterns of implementation with formulation and the capacity to cope with the exigencies of membership generates two constraints regarding the choice of (a) the member states and (b) the policy that will be examined.

First, the central governments of Greece, France and the UK have been chosen because they have responded in different ways to the exigencies of membership, and have different implementation records, despite their initial similarities. These similarities concern the (sectoral) patterns of ministerial responsibility and the predominantly internal mobility of most career civil servants. Ministerial responsibility facilitates sectorisation. Low external mobility (coupled with the tendency to rely on generalists, as opposed to specialist civil servants) facilitates the emergence of an administrative ethos. The combination of these two characteristics enhances the need for co-ordination (the first between sectors, the second between the political and the administrative level)<sup>22</sup>. When Greece joined the then European Communities in January 1981 the reform proposals regarding the management of membership-related issues by its central government centred on the British and the French systems as a result of (a) their perceived effectiveness in terms of the handling of EC policy (especially formulation) and (b) the similarities of the Greek, French and British central governments (*infra*,

chap. 2). Nevertheless, only a small part of the reform proposals were adopted and even fewer became part of the actual operation of the Athenian bureaucracy. Thus, accession to the EC did not serve as a critical juncture for institutional reform. As a result, of the three states examined here, Greece has the least integrated central government whilst the UK occupies the other extreme of the continuum and France is in the intermediate position where the presence of a robust system of co-ordination intensifies the pressure for and indicates the need for co-ordination. Arguably, the same can be expected in terms of their implementation records<sup>23</sup>.

Second, public procurement has been chosen for a number of reasons. Most important of all is the fact that the EU's policy in this domain has introduced significant changes in all three states. Moreover, this policy has remained constant over time: it essentially relies on a small number of *procedural* requirements. This allows the discussion of the way in which their central Greek, French and British governments have coped with the exigencies of implementation. In addition, its economic importance was and remains very significant<sup>24</sup> and this is one of the reasons why it is a key part of the effort to establish the single European market. Finally, it is a classic example of regulation on the basis of directives, which is the main way used by the EU in its effort to shape policy outcomes.

Unlike most existing studies which usually cover a short period of time and focus on compliance with individual directives, this book covers a 25-year period (1981-2006)<sup>25</sup> in an effort to capture the dynamics of implementation. This also reflects the need to capture the dynamics of institutional change (where it occurred) not only in terms of the

emergence of new structures but also in terms of their capacity to become a fully functioning part of the institutional terrain in which they were initially established. This reflects the view that institutional change is a process that unfolds over long periods of time (March and Olsen 1989; March, Schulz and Zhou 2000).

The research reported here is based on documentary evidence and 48 strictly non-attributable interviews with officials based in Athens (Ministry of Development; Ministry of Foreign Affairs; Ministry of Health, Welfare and Social Security; Ministry of National Economy; Ministry of the Environment, Spatial Planning and Public Works; Secretariat General of the Cabinet; Special EC Legal Service/Ministry of Foreign Affairs), Paris (Commission Centrale des Marchés; Commission des Marchés Publics de l'Etat; Ministry of Agriculture, Fisheries and Food; Ministry of Economy and Finance; Ministry of Equipment, Housing, Transport and Tourism; Ministry of Industry, Post and Telecommunications; Ministry of Foreign Affairs; Ministry of Employment and Social Affairs; Secrétariat Général du Comité Interministériel pour les questions de coopération économique européenne; Secrétariat Général du Gouvernement), the UK (Department of Trade and Industry; European Secretariat/Cabinet Office; Foreign and Commonwealth Office; Kingston upon Hull City Council; Treasury; Office of Government Commerce; Scottish Procurement Directorate) and Brussels (European Commission, DG Internal Market and Financial Services; Permanent Representation of Greece to the EU; Permanent Representation of the UK to the EU). Semi-structured questionnaires have been used in the interviews which were conducted initially between March 1996 and June 1997 and then in December 2006 and January 2007.

## ***The argument and the structure of the book***

This book draws on the theoretical literature on implementation and historical institutionalism and seeks to demonstrate that national central governments can – indeed *do* – shape the patterns of implementation. These patterns mirror the way in which these actors participate in the formulation of EU public policy. In turn, the involvement of the Greek, French and British central governments in the formulation of EU public policy reflects the way in which these institutions have dealt with the exigencies of membership. More specifically, it will be demonstrated that the impact of key characteristics of the institutions of central governments – in particular, the capacity to co-ordinate their activity – extends beyond formulation to the stage of policy implementation. Governments that have difficulty dealing with formulation, also have problems when EU policy is implemented – in particular, their capacity to detect the need for and subsequently effect change through the use of the tools of government will suffer as a result of difficulties in co-ordinating their action. Secondly, the book also demonstrates the dynamic nature of patterns of implementation. They change over time and change is driven by learning and fixing at the national level. As a result, the confirmation of the initial expectation (i.e. that implementation would be particularly problematic in Greece and much less so in France and Britain) in terms of the specific case of public procurement highlights only one facet of this complex process. Indeed, empirical evidence indicates that, despite initial problems, sector-specific reforms aiming to improve the capacity of the centre to steer implementation have (in spite of their fragility) borne fruit.

Chapter 1 outlines the framework upon which this study is based. Drawing on implementation theory, the concept of *macro-implementation* is introduced in an effort to give more specific meaning to the involvement of central governments in the implementation stage of the EU policy process. Given the extent of horizontal and vertical differentiation that characterises modern governments, it would be wrong to ascribe to central governments the Herculean role of implementing public policy. This means that a more refined definition of the concept of ‘implementation’ is required - one that captures the role of central governments. This is why the concept of macro-implementation (Berman 1978) is introduced. Their steering capacity is discussed on the basis of their vertical and horizontal integration. This capacity is then linked to a historical institutionalist account of the way in which national central governments have been organised in an effort to cope with the exigencies of membership. Chapter 2 examines the patterns of institutional change in the concrete cases of Greece, France and the UK. Chapter 3 presents the EU’s public procurement policy and maps the institutional terrain in the three central governments with a focus on the handling of public procurement policy. Chapter 4 discusses the transposition of EU public procurement directives in Greece, France and the UK and chapter 5 discusses their macro-implementation between 1981 and 2006<sup>26</sup>. The concluding chapter examines the empirical findings in the light of the overall argument, discusses alternative explanations as well the implications of the argument presented here for our understanding of European integration and its impact on the nation state.

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- <sup>1</sup> This idea reflected the political will to remedy what had become a major problem for the Greek state. The fraudulent use of European subsidies (Mendrinou 1994, 86) by the Greek state had made a significant contribution to the national political turmoil that led to the downfall of the socialists in the electoral contests of 1989 and 1990.
- <sup>2</sup> For an institutionalist discussion of compliance with EU environmental policy see Knill and Lenschow (2000).
- <sup>3</sup> The systemic importance of this issue is demonstrated by the fact that this deficit has contributed directly to institutional development at the European level. Indeed, the Maastricht Treaty endowed the EU with the capacity to impose sanctions (fines) on member states that fail to implement judgements of the European Court of Justice.
- <sup>4</sup> Indeed, it has been claimed that '[t]he implementation of EU Directives is but an example of the wider phenomenon of Europeanisation' (Falkner *et al.* 2005, 11).
- <sup>5</sup> Of course, it is important to add that concerns regarding implementation were present in other classic works – Selznick's book on the Tennessee Valley Authority ([1949] 1966) is a good example.
- <sup>6</sup> It is important to note that Puchala (1975) was the first scholar to use the term 'postdecisional politics' in his discussion of 'episodes of non-compliance in the EEC system'.
- <sup>7</sup> Up to a certain extent this characteristic is shared by the second generation of literature in this area.
- <sup>8</sup> They vary significantly in terms of the extent to which they have been used or discussed in the literature.
- <sup>9</sup> For an alternative classification of explanations of 'compliance' with international agreements see Underdal (1998). For excellent discussions of compliance with international agreements see Chayes and Chayes (1993) as well as Zürn and Joerges (2005).
- <sup>10</sup> For example, Falkner *et al.* refer to a 'world of law observance', a 'world of domestic politics' and a 'world of neglect' (2005, 319, 322).
- <sup>11</sup> For example, as the House of Lords Select Committee on the European Communities put it 'there are Member States that seem to treat their obligation to translate Directives into national law by a certain date as little more than an indicative deadline' (cited in Weiler 1991, 2465 fn. 178).
- <sup>12</sup> The literature on the 'Europeanisation' of the nation state is a good example of this trend.
- <sup>13</sup> As Neyer and Wolf rightly argue, compliance should not be confused with implementation (which they construe as the process of administering authoritatively public policy directives and the concomitant changes that they undergo during that process) and effectiveness which they construe as the 'efficacy of a given regulation to solve the political problem that preceded its formulation' (Neyer and Wolf 2005, 41-2). Rather, they define the focus of compliance research as the degree to which the provision of an accord and the implementing measures that have been instituted are adhered to by the addressees of a rule. Thus, perfect compliance, imperfect implementation and zero effectiveness may well co-exist (Neyer and Wolf 2005, 42).
- <sup>14</sup> Zubek's article (2005) is an exception.
- <sup>15</sup> For example, discussing the impact of membership of the EU on Whitehall's legislative output, Page demonstrates that '[t]he ongoing Whitehall process continues to be a Whitehall process (1998, 808).
- <sup>16</sup> This structural characteristic mirrors the important role that national administrations play in the formulation stage thus establishing what has been accurately called 'bureaucratic interpenetration' or 'intermingling' (Scheinman 1966, 751; Wessels 1985, 17).
- <sup>17</sup> Blanquet (1994) provides an excellent legal analysis of the wider implications of this provision for the EU legal order.
- <sup>18</sup> This is much more than the enunciation of a principle or a declaration of intent. The most frequently used expression of this obligation is the clause, almost invariably incorporated into EU directives, stipulating that the member states must communicate to the Commission the texts of the national implementing measures that they have adopted. This is a *conditio sine qua non* for the successful fulfilment of the Commission's role as guardian of the Treaty. The importance attached to this function is demonstrated by the ECJ's acknowledgment (case C-96/81) that failure to fulfil this obligation may of itself justify recourse to the procedure under Art. 169/226 of the EC Treaty. This positive obligation to facilitate the control of the implementation process is mirrored by a symmetrical obligation focusing on the national level. This obligation involves the creation of the mechanisms for control and the wider *obligation de diligence*, a concept which is frequently used by the ECJ. This entails the obligation to organise the controls (administrative or judicial) and the obligation of the relevant (implementing)

authorities to actively utilise them in the pursuit of the *effet utile* (Blanquet 1994, 52). Despite these obligations, the member states maintain a significant degree of autonomy with regards to the way in which they fulfil common objectives. This is the essence of the *principle of institutional autonomy* that has been acknowledged by the ECJ (Rideau 1972; Dimitrakopoulos 2001c). This autonomy is not unfettered. Indeed, the ECJ ruled when it comes to implementing EU policy, mere administrative practices do not necessarily constitute an appropriate way to meet EU objectives because they may be altered at the whim of the administration (case C-96/81). The ECJ has also ruled that ‘national institutions’ (as opposed to sub-national institutions) have a duty to ensure the co-ordination of the implementing measures so as to avoid jeopardising the operation of the market (case C-240/78).

<sup>19</sup> In some sectors one can also add the need to co-ordinate the action taken by government ministries on the one hand with quasi autonomous non-governmental agencies on the other.

<sup>20</sup> This includes institutional and policy-specific issues as well the question of a state’s membership of the EU.

<sup>21</sup> For an application of this argument to the national Parliaments of the UK, France and Greece see Dimitrakopoulos (2001a).

<sup>22</sup> Of course, this is not to deny that there are differences between the two systems. For example, the French executive is often described as ‘bicephalous’ because the French President is responsible for foreign policy and defence. However, he is usually not directly involved in the daily management of issues regarding the formulation and the implementation of EU directives. By contrast, the President is directly involved in more ‘heroic’ moments of the process of integration, e.g. in IGCs. In more general terms,

<sup>23</sup> For example, in 2005 the ECJ issued a total of 136 judgements concerning failure of member states to fulfil their obligations. Twenty of them concerned Greece, thirteen concerned France and only seven concerned the UK (European Court of Justice 2005, 197). For a discussion of the extent of the problem of ‘non-compliance’ see Börzel (2001).

<sup>24</sup> The European Commission estimates that in 2002 public procurement accounted for about 16% of the EU’s GDP ([http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm))

<sup>25</sup> More specifically, analysis covers the period until the end of January 2007, i.e. a year after the deadline for the transposition of Directive 2004/18 that consolidated, simplified and updated existing public procurement directives (excluding procurement in utilities which is not examined in this book).

<sup>26</sup> More specifically, the book covers developments up until the end of January 2007, i.e. a year after the deadline for the transposition of Directive 2004/18 that simplifies, consolidates and updates previous directives on public procurement.