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The implementation of EU environmental policy: a policy problem without a political solution?

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Abstract. Implementation lies at the 'sharp end' of the European Union (EU) environmental policy process. The success of the EU's policies must ultimately be judged by the impact they have on the ground, but despite many institutional initiatives, poor implementation remains a fact of life in Europe. In this paper the author investigates why the issue of poor implementation was neglected during the first decade of EU environmental policy, outlines the responsibilities and interests of the main actors involved in putting policies into effect, and discusses possible solutions to the well-publicised 'gap' between policy goals and outcomes. Implementation deficits will be difficult to eradicate completely because they serve to maintain the delicate 'balance' between governmental and supranational elements in the EU.

> "The Community is at a crucial point in its environmental policy. The first stage of its policy, that of legislating... has developed substantially as a result of the Community's work in the past two decades ...We are now moving into a second stage of strengthening and consolidating the *acquis communautaire* through bringing about changes in current trends, practices and attitudes... Achieving the goal of a high level of environmental protection is only possible if our legal framework is being properly implemented. If the strong *acquis communautaire* on the environment is not properly complied with and equally enforced in all Member States, the Community's future environmental policies cannot be effective ...The environment will either remain unprotected or the level of protection in different Member States and regions of the Community will be uneven and might, *inter alia*, lead to distortions of competition."
>
> (CEC, 1996, page 1)

> "To govern is not to write resolutions and distribute directives; to govern is to control the implementation of the directives."
>
> (Joseph Stalin)

Implementation is very much at the 'sharp end' of the European Union (EU) environmental policy process. The success of EU policies—and with them the whole integration project—must ultimately be judged by the impacts they have on the ground. If, as the Commission warns above, the *acquis* is not fully implemented, EU environmental policy risks becoming a paper exercise with little tangible effect on environmental quality.

Krislov et al (1986, page 68), authors of one of the first systematic studies of EU environmental policy, noted a "growing problem of compliance" across all sectors of EU law. A special investigation by the EU's Court of Auditors (*OJ* 1992b) revealed that environmental directives were "being implemented slowly" and pointed to a "significant gap between the set of rules in force and their actual application". A damning report by the highly regarded House of Lords Select Committee on the European Communities (HOLSCEL, 1992a, page 35) in the United Kingdom concluded that:

> "Implementation and enforcement of environmental legislation go to the heart of Community policy. But Community environmental legislation is being widely

disregarded, and the Community has paid insufficient attention to how its policies can be given effect, enforced or evaluated. The time has come to redress the balance" (page 35).

In this paper I investigate why implementation was neglected throughout most of the first decade of EU environmental policy, I outline the responsibilities and interests of the main actors involved, and I discuss possible solutions to the 'gap' between the stated aims of policies and their practical impact on the ground in member states. Recent years have, however, witnessed a new willingness on behalf of member states to remedy past failings and give higher priority to making new policies fully implementable. The paper is concluded with a comparison of the Commission's recent communication on implementation with other popular recommendations for closing the implementation 'gap' afflicting EU environmental policy.

Implementation: the 'missing link' in policy analysis?

Why should a seemingly well-conceived policy that has the political blessing of every state go adrift during the process of being implemented? In one of the first systematic studies of policy implementation, Pressman and Wildavsky (1973) showed why a politically popular federal employment programme in the United States failed to live up to prior expectations. The subtitle of their book paraphrases its central message: "How great expectations in Washington are dashed in Oakland; or, why it's amazing that federal programmes work at all ...". They showed how successful implementation requires linkages to be built between the bewilderingly large number of actors whose cooperation is needed to turn a policy statement into action (what they termed the "complexity of joint action"). Using relatively simple arithmetical calculations they concluded that, even where there is a high chance of obtaining clearance from a single participant at a given "decision point" in the implementation chain, when all the probabilities are multiplied together the overall chances of success are extremely slender. In a revised edition, they warned politicians not to promise what they could not deliver; to do so leads only to "disillusionment and frustration" with the policy process (1984, page 6).

However, if there is one thing the EU is unequivocally good at, it is producing large quantities of highly ambitious regulation.[1] The Commission in particular is a precocious entrepreneur, constantly on the lookout for opportunities to expand its competence in areas regarded as peripheral by the member states. But when it comes to putting the *acquis communautaire* into effect at the national level, the Commission is on a steep upward slope, possessing neither the political resources nor the legal competence to delve substantially into national affairs. This begs the question of why the architects of the EU constructed an international organisation with an inbuilt "pathology of non-compliance" (Mendrinou, 1996)—in other words, a political entity with insufficient capacity to achieve its objectives. More puzzling still, far from creating political disillusionment in the policy process, EU environmental policy continues to be one of the few elements of the European project that enjoys genuine public appeal, despite being poorly implemented. And instead of reducing the output of new legislation and concentrating on strengthening policy delivery structures, with the exception of a few recent blips, the tide of new environmental regulation emanating from Brussels remains as strong as ever (Haigh, 1997, section 2.2; Zito, 1999).

What explains these paradoxical features? A major contributory factor is the EU's institutional structure, which shares out power unevenly between the main actors. This structural imbalance ensures that the EU's constituent bodies, namely the Commission,

[1] In 1960 the Community adopted just 10 legal instruments; in 1993 it adopted 546 (Rometsch and Wessels, 1996, page 33)

the European Court of Justice (ECJ), and so on, are geographically and politically dissociated from what goes on at the ground level in member states. In Pressman and Wildavsky's terms, the 'complexity of joint action' required to give effect to European rules framed at the supranational level is many orders of magnitude more elaborate than that required to give effect to a national statute. Majone (1996) argues persuasively that, partly by accident and partly by conscious design, the states of Western Europe have created a *regulatory* state at the pan-European level. Possessing only very limited 'tax-and-spend' powers of its own (and virtually none in the environmental field), maximalist actors such as the Commission and the European Parliament have a powerful incentive to disregard Pressman and Wildavsky's admonition and propose ambitious pieces of legislation which impose their primary costs on the actors, namely member states and private organisations, charged with implementing them. The need, moreover, to secure agreement among the many actors in the EU policy process leaves the Commission with little incentive to point out the full implications of its proposals.

Given these incentive structures it is hardly surprising that so many 'great' environmental expectations in Brussels and Strasbourg are dashed by weak and inconsistent enforcement at the national level. In fact, conflicts surrounding the speed and scope of implementation are an integral part of the political game playing between state and nonstate actors, described by Zito (1999) in this issue. Supranational actors propose legislation which is deliberately ambitious in an attempt to upgrade the common interest and further integration; states resist when policies fail to fit their national interests.

The accumulation of such a sizeable implementation 'deficit' during the past twenty-five years raises grave doubts about the overall effectiveness of EU environmental policy at resolving, as distinct from simply addressing, environmental problems. In this paper it is argued that the gap between the declared objectives of EU environmental policies and their political effect raises interesting theoretical questions about the process of task expansion (Jordan, 1997a; 1997b; 1999b). Systematic noncompliance poses a particularly awkward problem for those who claim that European integration has developed its own expansive logic, which states struggle to control even when they act in concert (see Zito, 1999). On the contrary, by controlling the speed of implementation states seem able to fine-tune European regulations to domestic political and economic exigencies, thereby checking the speed and scope of the integration process. For 'new' realists the implementation deficit plaguing EU environmental policy is no accident—it is the *inevitable* corollary of developing an elaborate multilevel environmental governance system. However, it is not immediately clear why there should be compliance problems at all if the EU is, as realists claim, dominated by states.[2] Specifically, why do states not "erode" (Hogwood, 1987, page 180) policies they regard as unfavourable at the decisionmaking phase rather than undergo all the uncertainties and political embarrassment associated with protracted infringement proceedings?

What is an implementation deficit?

The EU was by no means unique in neglecting the implementation of policy. Implementation has often been the poor relation of policy analysis, only emerging as a separate focus of sustained academic study in the late 1960s (Jordan, 1996). Those that rushed to respond to Pressman and Wildavsky's cri de coeur discovered that the enunciation of a policy was not a predictable, bureaucratic operation, but was often just the beginning of a decisive process of determining what actually happens on the ground (Sabatier, 1986). More often than not, implementation involves intense political interaction between those who framed the policy in the first place and those charged

[2] Krislov et al (1986, page 61) refer to this as the "paradox of non-compliance".

with implementing it. Accordingly, it is misleading to think of there being a sharp distinction between policymaking and implementation—the two are interconnected. What is especially curious about implementation in the EU, however, is that, in sharp contrast to national policies, member states are simultaneously the policymakers—the power to adopt policies rests with the Council of Ministers—and the primary implementing agents (although many functions are performed by subcentral actors and in some policy areas the Commission enjoys substantial management powers of its own).

The terms implementation 'deficit' and 'gap' are normally used in 'top-down' accounts of implementation (see Ham and Hill, 1993, pages 97–113) to describe the shortfall between the goals embodied in particular directives and their practical effect in member states. But there are other, equally valid, perspectives on implementation. Weale (1992, page 45) has developed a simple 2 × 2 matrix which differentiates between four different types of deficit (table 1). Following Easton (1965) he distinguishes between policy outputs ["the laws, regulations and institutions that governments employ in dealing with policy problems" (Weale, 1992, page 45)] and policy outcomes ("the effects of those measures upon the state of the world"). Most implementation analyses are designed to investigate the extent to which policy outputs conform to the objectives set out in legislation (cell 1). In other words, was the necessary implementing legislation enacted or were new government agencies put in place? In the EU, this involves transposing European policies into national law and nominating national competent authorities. Many of the 'black-letter' accounts of implementation by lawyers fall into this category.

Table 1. Types of implementation failure.

Orientation to problem	Focus of analysis	
	policy output	policy outcome
Orientation to policy goals	1	2
Orientation to policy problem	3	4

What such studies conspicuously fail to address, however, is the 'real' implementation problem: delivering political outcomes. Accordingly, implementation studies can also investigate whether policy outcomes match the goals set out in a policy (cell 2). Important research questions here include establishing whether polluting emissions were reduced by the required amount and calculating the corresponding impact on environmental quality. Intuitively, these seem more pertinent given that the ultimate purpose of EU policy is to safeguard the environment. Sabatier (1986) argues that such an approach usefully reveals whether the causal theory embodied in a policy is sound. Studies undertaken from the 'bottom up' have shown that some policies are ineffective not because they are poorly implemented but because they are poorly conceived (Hill, 1997).

In this paper I am mainly concerned with cells 1 and 2, but it is important to be aware of at least two other types of deficit which receive less recognition in the continuing debate about implementation in the EU. These relate to situations in which policy outputs (cell 3) and outcomes (cell 4) are insufficient to address the underlying policy problem. In other words, do the chosen policy outputs represent a *sufficient* response to the problem, given other possible alternatives? Is it, for instance, possible to conceive of a better package of outputs which, for whatever reason, was not adopted? For Weale, this somewhat wider perspective is justified because "sins of omission may be as important as sins of commission" in explaining why things are not achieved by the

policy process (page 46).[3] The questions suggested by cells 3 and 4 are not only normative but also somewhat hypothetical. The likelihood of reaching clear answers is not going to be that great. Take type 4 implementation deficits, for example. First, the analyst would need to specify a desirable mix of policy instruments to tackle a particular problem, then he or she would have to investigate the likelihood of their being implemented: not easy!

Many analysts would instinctively shy away from such questions on the grounds that they are speculative or too normative. This wider, more political, perspective does, however, raise profound questions about the ability of the policy process to solve problems, about where 'policy' should be determined (that is, whether in the Environment Council or during the process of implementation), and about how goal shortfall should be interpreted. For instance, does the Habitats Directive provide a sufficient response to biodiversity loss in Europe? Is the EU's climate-change strategy sufficiently stringent in the light of the best scientific predictions of future damage? Lenschow's account (1999) in this issue of the barriers to environmental policy integration is a good example of a type 3 implementation failure.

Scharpf (1988) argues that the multilevel arrangement of the EU renders it vulnerable to "joint decision making traps" which drag policies down to the lowest common denominator of state preferences. Although history shows that joint decisionmaking has not retarded the development of the environmental *acquis*, it is important to remember that possibly the most fundamental, but elusive, implementation 'problem' of all is the loss of the most progressive policy proposals during the process of policy framing. And, of course, gaps between the 'ideal' mix of policy outputs and what eventually emerges from the policy process stand a good chance of being widened still further by member states if they choose to sabotage the policy during the implementation process proper.

The 'unpolitics' of implementation

In political science it is just as important to explain why certain issues fail to make the political agenda for debate and decisionmaking (the 'unpolitics' of policymaking) as it is to account for what actually emerges from the policy process in the form of laws and policies (Crenson, 1971). Until relatively recently, the implementation of the environmental acquis was a taboo subject, rarely discussed in policy circles. None of the major players had any reason to raise its political profile, so a conspiracy of silence prevailed. For obvious reasons states prefer not to advertise their own failings and there is a well-established 'gentleman's agreement' not to draw attention to one another's failings. I explained in my introductory paper (Jordan, 1999b) that the Commission had good reason to concentrate on building a framework of environmental law given the absence of a firm treaty base for the environment. Writing in the mid-1980s, Rehbinder and Stewart (1985, page 238) observed that the Commission had "never tried to probe into the actual implementation and enforcement activities of Member States". The Third Environmental Action Programme (*OJ* 1983) dealt with implementation in just three lines, and the first ever book written on EU environmental policy by a well-known 'insider' devoted only two pages to formal compliance and said nothing at all about practical compliance (Johnson, 1979).[4] According to one British Minister, David Trippier, it was not until an Environment Council meeting in 1991 that the states

[3] Jordan and Richardson (1987, page 238) make the telling point that there are "probably more policies which are never introduced because of the anticipation of resistance, than policies which have failed because of resistance".

[4] At the time Johnson, who was formerly an official of the Environment and Consumer Protection Service, was Vice-Chairman of the European Parliament's Environment Committee. He later became a special adviser to the Director-General of DG XI.

"actually studied what had gone on in the past; what was already on the European statute book; how it was being monitored and enforced" (HOLSCEC, 1992b, page 185).

There are at least four interlinked reasons why implementation languished in the political doldrums throughout the 1970s and early 1980s: political symbolism, the extent of European integration, bureaucratic politics, and institutional power relations.

Political symbolism

In the past, EU environmental policy was commonly appraised on the basis of the amount of legislation adopted rather than its effectiveness at solving environmental problems. During his long tenure in the UK Department of the Environment (DoE), William Waldegrave (HOLSCEC, 1987, page 12) observed that the sharing of the Presidency of the EU among the member states on a rotating six-monthly basis created an unhealthy competition to agree as much legislation as possible. In the 1970s and early 1980s the political profile of the environment remained low, and public pressure on the Commission to track the implementation of directives was not that great.

Extent of European integration

According to Macrory (1992a, page 350) many of the first laws were adopted when directives were commonly viewed as a "commitment of policy intention" rather than a "genuine legal obligation". In advance of a firm indication from the ECJ that directives were binding in their entirety, a distinctly *de minimis* view of European law prevailed. The British in particular regarded environmental directives as "flexible instruments, the implementation of which could take considerations of finance, time and vested interests into account" (Haigh and Lanigan, 1995, page 23). However, if Pierson (1996) is to be believed, the tendency for national politicians to claim the political credit for EU policies without inquiring too closely into the possible long-term implications is not unique to environmental policy.

Bureaucratic politics

During the first decade of EU environmental policy, the Commission concentrated upon establishing Community competence and enhancing its own bureaucratic position, leaving the economic and technical aspects of implementation to member states. Communitywide compliance-cost assessments were rarely, if ever, undertaken (Pearce, 1998). Other Directorates-General of the Commission regarded DG XI as a weak and peripheral player and did not scrutinise its proposals as carefully as they do now. Significantly, the policy process at the European level was institutionally 'thinner' and much more technocratic than it is today, so many of the first directives sailed through the adoption phase relatively unopposed (see Jordan, 1999b, this issue).

Institutional power relations

Responsibility for implementing EU law is apportioned by the founding Treaties. Article 155 identifies the Commission as the legal 'guardian of the Treaties' with responsibility for ensuring their provisions are applied. The Commission may take action under Article 169 against noncompliant states. But the Treaties leave open the matter of how cases of noncompliance are to be processed. Consequently, the Commission has developed its own informal enforcement procedure.[5] However, Article 130r(4) makes it abundantly clear that, subject to strictly limited and carefully delineated exceptions, member states are primarily responsible for undertaking the implementation of measures adopted

[5] This now has four stages, the first three being administrative, the final one legal: (1) writing informally to the state in question seeking clarification (a 'pre-Article 169 letter'); (2) issuing an 'Article 169 letter' to which the state in question is obliged to reply; (3) issuing a formal 'reasoned opinion', setting out the legal justification for commencing legal proceedings against a member state; (4) bringing a case before the ECJ.

by the Council. As far as environmental protection is concerned, the EU, therefore, breaches Stalin's first law of 'sound' governance; its primary task is to propose and to adopt policy, not to implement it. This unequal sharing of competences leaves the Commission, which is not directly elected, in a weak and 'invidious position' (Williams, 1994). It prefers not to stir up trouble with noncompliant states in case it endangers the wider integrationist project or offends the publics which elected them. The common exceptions are when a particular state's behaviour is plainly egregious or when national groups strongly support enforcement action (Puchala, 1975, page 513). It is only when the Commission senses an opportunity to 'cultivate' political spillover by responding to national political demands for fuller implementation that it directly and openly confronts states (Jordan, 1999a).

The politicisation of implementation

Since the mid-1980s, a number of factors have pushed the issue of implementation up the political agenda in Europe. These include the following ten factors.

The internal market programme: in the 1980s awareness grew, particularly within industry circles, of the need for comparable regulatory effort in order to promote free and fair competition (Anderson, 1988; Weiler, 1988). It was immediately obvious to Lord Cockfield, the chief architect of the programme, though not, it seems, to state officials, that the internal market would remain a paper exercise unless and until the 300 proposals mentioned in the Commission's 1985 White Paper were put fully into effect. But in supporting the programme, sceptical states were forced to acknowledge, perhaps unwittingly, the need for the EU to be vested with greater regulatory powers than had hitherto been the case.[6] The programme also underlined the need for evenhanded enforcement by supranational agents, especially the Commission.

The growth of the environmental acquis: a body of binding legislation is a vital prerequisite for an implementation 'problem'. By the mid-1980s, the EU had adopted over 200 environmental statutes.

Greater unity of purpose: the 1980s witnessed an increasingly common environmental agenda among member states, covering cross-border issues such as acid rain, ozone depletion, and marine pollution. Only when this was established could actors supporting the inclusion of high environmental standards in legislation turn their attention to the achievement of policy outcomes.

Rulings by the European Court: from the 1960s the Court sought to emphasise the supremacy and 'direct effect' of EU legislation (Macrory, 1992a, page 351).[7] According to neofunctionalist legal scholars, its rulings followed a much more 'maximalist' interpretation of EU law and were made against the wishes of states (Alter, 1998).

Institutional crises: the disappearance of several drums of chemical waste from a chemical factory in Seveso, Italy, in 1982, prompted the European Parliament to establish its first ever committee of inquiry (ENDS, 1984). The committee pushed the Commission to take a much tougher line and to publish and disseminate information.

[6] Even previously sceptical states became firm supporters of better implementation. Lord Cockfield (1994, page 88) recalls that Margaret Thatcher, a redoubtable opponent of European political union, dispatched a note to each and every member state government during the United Kingdom's 1986 Presidency encouraging them to speed up implementation of internal market measures.

[7] Put simply, a directive may be enforced against the state or its 'emanations' (for example, local authorities and pollution-control agencies) in national courts if it is sufficiently precise to the rights granted and the ends to be achieved and if the date for implementation has passed (Krämer, 1996b). The direct effect doctrine is supposed to prevent states frustrating the objectives of policy by failing to enact implementing legislation. In a word, it gives EU law *autonomy*: unlike international law, EU law does not rely on the legal constitutions of the member states.

Pressure from EU institutions: members of the European Parliament were instrumental in forcing the Commission to develop improved surveillance apparatus and to publish annual reports on implementation, starting in 1983.
Growing public concern: the number of official complaints submitted by individuals and pressure groups to DG XI about poor compliance mushroomed from just 9 in 1984 to over 460 in 1989 (Wägenbaur, 1990, page 462). The Commission designated 1987 'European environment year' in recognition of the growing public interest in environmental matters.
Environmental campaigning: as well as submitting complaints, national environmental pressure groups began to publicise suspected breaches and to call governments to account.
Passing of deadlines for full compliance: many of the water directives adopted in the 1970s were to have been fully implemented by the mid-1980s.
Greater academic interest in the impact of the acquis: Haigh's handbook (1984) established a new research agenda which others soon followed (Siedentopf and Ziller, 1988).

Above all, the fundamental transformation of EU environmental policy in the 1980s (Jordan, 1999b) profoundly altered the *nature* of the commitments that states had willingly entered into when environmental concern and support for integration were much less pronounced. Weiler (1988) ascribes the subsequent tightening of the legal and political context of directive framing and implementation to "judicial activism" ("law without political consensus") on behalf of the Court. The 'supremacy' and 'direct effect' doctrines, which were not included in the Treaty of Rome but derive from Court judgments in the 1960s and 1970s, have, Macrory believes (1991, page 227), helped to blur the traditional distinction between regulations and directives:

> "Member states can no longer consider the commitments contained within Directives as representing best intentions similar to those contained within conventional international treaties. Instead, they must be considered as real legal obligations, giving rise to potential legal action both before national courts and the European Court."

Heightened public expectations, more strenuous pressure-group campaigning, and greater public support for EU environmental policy also played a big part in making noncompliance a live political issue in Europe. The internal market programme in particular galvanised political support for fuller implementation. The Commission's influential 1985 White Paper on the completion of the internal market drew attention to the "large volume of complaints" received about poor implementation and argued that efforts to ensure the free movements of goods and services would "be in vain if the correct application of rules is not ensured" (CEC, 1985, page 12).

Individual personalities were also important. The environment commissioner in the period 1985–89, Stanley Clinton-Davis (4 July, 1996, interview with author), a lawyer inculcated with a strong respect for the 'sanctity' of the law, began to raise at Environment Council meetings the issue of poor implementation, encouraged the Commission's Legal Service to push the most serious breaches, and tried to rationalise enforcement procedures by dealing with groups of cases rather than dealing with cases individually. He favoured a more *proactive* and interventionist approach, and targeted *practical* compliance problems rather than simply 'paper' failures of transposition and notification (table 2).

His successor, the flamboyant and outspoken Italian socialist Carlo Ripa di Meana, was equally unwilling to engage in bargaining games with errant states (Haigh and Lanigan, 1995, pages 24–25). Rather than following the convention of keeping correspondence between the Commission and national governments confidential, both he and Clinton-Davis publicised cases—even holding press conferences in some cases.

Table 2. European Union environmental policy: infringement proceedings, 1982–90 (source: Jordan, 1997a).

Year	Incomplete transposition	Nonnotification[a]	Poor application[b]	Total
1982	1	15	0	16
1983	10	23	2	35
1984	15	48	2	65
1985	10	58	1	69
1986	32	84	9	125
1987	30	68	58	156
1988	24	36	30	90
1989	17	46	37	100
1990	24	131	62	217
Total	163	509	201	873

[a] A failure to inform the European Commission of national implementation measures.
[b] A failure to achieve the necessary practical policy outcomes.

A standard form was produced to streamline the official complaints procedure. The arrival of Ludwig Krämer, a German environmental lawyer, in DG XI's enforcement section was an equally important factor in the politicisation of implementation. Well known for his green attitudes, he disliked secrecy, believed strongly in public participation, and refused to compromise on issues of legal principle (Krämer, 1989). Krämer set about the task of enforcing environmental directives with much greater vigour than any of his predecessors, embroiling the Commission in a series of politically controversial standoffs with member states, over polluted water and environmental impact assessment.

These mounting levels of concern provoked a range of institutional responses. The June 1990 European Summit of state leaders in Dublin declared that "Community environmental legislation will only be effective if it is fully implemented and enforced by Member States". A political declaration attached to the Maastricht Treaty emphasised that "each Member State should fully and accurately transpose into national law the Community Directives addressed to it within the deadlines laid down", to ensure that EU law is "applied with the same effectiveness and rigour [as] ... national law" (see Wilkinson, 1992, page 233).

Since 1984 the Commission has presented an annual report to the European Parliament on the application of EU law, though they say more about transposition than practical implementation. Implementation was a cornerstone of the Fourth (1987–92) Action programme (*OJ* 1987), and the Fifth (1993–2000) (*OJ* 1992a) devotes a full chapter to implementation and enforcement issues.

The causes of the implementation 'deficit'

In many respects, the tension—or what Weiler (1981) terms the 'dualism'—between the intergovernmental and supranational aspects of the EU is more starkly revealed in the implementation phase than in any other. Somehow, a *supranational* legal order spun by actors with maximalist beliefs has to be reconciled with a state-dominated system of policy implementation. Scharpf (1994, pages 221–222) argues that the EU's capacity for autonomous action is severely curtailed. In stark contrast to fully federated states such as Germany or the United States, it lacks a common political culture and public opinion, political parties operating at both levels of governance, and a high degree of economic and cultural homogeneity. It also has a relatively

small and largely nonexecutant bureaucracy. In contrast to other policy fields such as competition, merger control, or fisheries protection,[8] DG XI does not have direct powers of enforcement; in the very places that EU environmental policy is supposed to 'bite'—in factories and on river banks and beaches—it has little or no physical presence.

The Commission is also disadvantaged by the preferred tool of EU environmental policy—the *directive*. Directives are so called because they direct member states to legislate or take other effective action. They are binding in terms of the overall objective to be achieved but leave states to determine the detailed arrangements for putting them into practice. Not surprisingly, member states almost always prefer directives to other forms of regulation because they offer sufficient flexibility to address local peculiarities. EU law is thus deliberately *flexible* to allow for adjustment to national circumstances. Crucially, directives are primarily addressed to member states. In legal parlance, they have a direct effect on states or their 'emanations' (vertical direct effect) as distinct from the private bodies or persons (horizontal direct effect) upon whom compliance often depends. Even the Commission's ultimate sanction, a reference to the ECJ, is a relatively blunt weapon. Although the ECJ can rule that member states are in breach of EU environmental law, it has virtually no power to enforce its decisions, being, for instance, unable to send erring ministers to prison. There are member states who have still not complied with environmental rulings issued by the Court in the early 1990s (see Macrory and Purdy, 1997, appendix 1).

That said, states remain under a legal obligation to implement EU legislation. Crucially, the power to determine the extent of that obligation rests with supranational bodies—ultimately the ECJ—not states. Given that complete disavowal of EU obligations is illegal and often politically unfeasible, most enforcement disputes between the Commission and member states therefore centre on the precise timing and extent of implementation rather than on whether it should proceed at all. Enforcement, therefore, is not top-down but is informal, involving bargaining and negotiation. The Commission cannot command national or subnational actors, public or private, and it normally only resorts to court proceedings when it has exhausted every diplomatic avenue (Snyder, 1993).

Several other features of EU environmental policy exacerbate implementation problems, as follows:

Policies tend to have vague and/or contradictory objectives: this is in many respects inevitable given the need to reach consensus in the Council of Ministers, and the Commission's tendency to concentrate on getting laws adopted without worrying too much about problems buried away in the fine print (Collins and Earnshaw, 1992, page 225; Wyatt, 1998).

Issues pertinent to implementation are disregarded during the process of negotiation: the Commission allegedly proposes, and some states accept the principle of, legislation without paying sufficient attention to the practicalities of implementation (HOLSCEC, 1992a; 1997). Their Lordships believe that the EU should think in terms of a 'regulatory chain' through which implementation and enforcement issues are considered when policies are designed and adopted.

Legislation is poorly drafted and prepared: specialist legal draftspeople are not always involved as early or as intensively as they might be (Bennett, 1993, page 27; Macrory and Purdy, 1997, page 46).

[8] The Commission can act on its own initiative to investigate anticompetitive situations, prevent governments subsidising their industries if it prevents free and fair competition, and impose fines where it finds the law has been broken.

The body responsible for proposing legislation, the Commission, is not substantially responsible for its application and implementation: this may explain why some proposals are not as well drafted as they might be (Weiler, 1988, page 352) and the absence of comprehensive compliance-cost assessments.
There is an absence of powerful and committed 'vested interests': it is a common characteristic of environmental politics that the interests fighting for public goods such as environmental quality are politically weak and geographically dispersed (HOLSCEC, 1992b, page 5).
There is too little consultation with affected parties: the Commission does not always use advisory committees as well as it might (HOLSCEC, 1992a, page 9), and much of the scientific and technical advice used to prepare proposals is not made public (HOLSCEC, 1997, pages 15 – 18). The activities of the hundreds of COREPER (Committee of Permanent Representatives to the European Communities) and comitology committees which frame, implement, and amend policies are shrouded in secrecy (for a more detailed analysis, see Docksey and Williams, 1994; Dogan, 1997).
Enforcement proceedings are slow, secretive, inflexible, complex, and dominated by states and the Commission: following the tradition in international diplomacy, the legal correspondence between the Commission and member states remains strictly confidential.[9] Complainants are not always notified and the Commission is under no obligation to explain the reasons for its decisions.[10] Individuals and pressure groups have limited means of redress, being unable to take public interest cases against noncompliant states before the ECJ, unless they are directly and individually concerned (that is, when they can establish *locus standi*).[11]

How big is the implementation deficit?
The fifteen member states of the EU are large, mature democracies with relatively well-developed bureaucracies. Therefore one would imagine that estimating what has or has not been achieved is a relatively straightforward task; after all, a directive is either implemented or it is not implemented. Nearly three decades of implementation research has, however, revealed that the size of the deficit is hugely dependent upon the normative standpoint of the observer and the criteria used (Hill, 1997). Indeed, the very word 'deficit' implies that policy distortion is somehow undesirable when it may be an unavoidable corollary of, inter alia, unforeseen events and changing political priorities.

[9] Williams (1994, pages 384 – 394) provides a fascinating 'insider' perspective on the Commission's politically charged confrontation with the United Kingdom over the application of the environmental assessment directive.
[10] Williams (1994, pages 399 – 400) explains that the Commission's dual role as both the political 'motor' of European integration and the impartial enforcement authority put it in an "invidious" position with regard to noncompliant states. He makes the case for "radical" changes to restore public faith in the system, centring on an independent, open, and accountable body with sufficient clout to conduct on-site investigations and confront states.
[11] In a typically bullish article on the restrictions upon public interest litigation, Krämer (1996a) argues that the Commission is required by the Treaties to open proceedings when it detects an infringement. It *only* has the discretion to decide whether or not to seek a ruling from the ECJ. Correspondence between states and the Commission is not normally disclosed to third parties. Neither individuals nor the European Parliament can compel the Commission to open proceedings against a state. Their role is restricted to bringing suspected breaches to its attention. Without a more formal and better resourced system of enforcement, coupled to greater opportunities for public interest action by individuals, Krämer believes that the Commission will be "over exposed" to political pressures in trying to fulfil its role as "'guardian of the environment'" (1996a, page 9).

In his manual of EU environmental policy, Haigh (1992, section 1.4) distinguishes between *formal* compliance (the legal process of transposing EU law into national legislation) and *practical* compliance (determining whether the ends specified in the directive are actually achieved). These two correspond with cells 1 and 2 in table 1. Consequently, there are two main implementation gaps: the first relating to *legal transposition*, the second to the *practical implementation* and enforcement of laws. Macrory (1992a, page 354) argues that the first are difficult but by no means impossible for the Commission to detect,[12] requiring scrutiny of the relevant national legislation, whereas the latter can be extremely difficult to identify. This is because the Commission is almost entirely dependent upon member states reporting back on what they are actually doing, on costly and time-consuming consultancy reports, or on whatever national environmental groups and private actors choose to submit via the formal complaints procedure (Wilkinson, 1994). A recent House of Lords report concluded that the problems of collecting and assessing information "make any comprehensive assessment of Member States' compliance with EU obligations virtually impossible at this stage" (HOLSCEC, 1992a, page 26).[13] DG XI's powers of inquiry are limited to seeking comments from member states. On-site visits and other 'spot checks' by Commission officials are of limited value: they are usually extremely time-consuming, politically fraught, and can easily be blocked by member states who are under no legal obligation to cooperate. Consequently, they tend to be undertaken infrequently.[14] The Commission's reliance on other actors to flag lapses in compliance is amply reflected in the figures presented in table 3.

Table 3. Suspected infringements, 1988–94: origins (sources: *OJ* 1991; 1995).

Origin	Year						
	1988	1989	1990	1991	1992	1993	1994
Complaints	929	1199	1274	1052	1185	1040	1145
Parliamentary questions	82	46	32	126	45	30	5
Petitions	8	105	18	18	33	23	6
Cases detected by Commission	752	962	268	237	282	247	277
Total	1771	2312	1592	1433	1545	1340	1433

Even if the Commission had access to all the information it needed, it is debatable whether it has the resources to chase up every errant member state.[15] There is one 'desk officer' in DG XI's enforcement unit [about 0.002% of the total work force (490 in 1996–97)] assigned to deal with all suspected cases of noncompliance in each member state. It is no wonder that there is an average delay of six years between the Commission first receiving a complaint and a judgment by the Court (Krämer, 1995, page 136). Nor is it surprising that the Commission concentrates on areas where it can achieve some success, namely enforcing formal rather than practical compliance, and combating what it considers to be the most egregious breaches of the law.

[12] This is not always the case. Some Directives are transposed into national law by up to 50 or 60 separate pieces of legislation (HOLSCEC, 1992a, page 2).

[13] Of the fifteen states, only three, Denmark, Finland and Sweden, regularly submit 'concordance tables' to the Commission, specifying the measures taken to transpose EU legislation into national law (CEC, 1997, page 94).

[14] In the period to 1987, only three had been undertaken (HOLSCEC, 1987, page 12). Krämer (1995, page 143) argues that they amount to little more than 'fact-finding missions' because their purpose is to clarify points rather than investigate instances of suspected noncompliance.

[15] The EU has a total budget of less than 1.2% of Community gross domestic product (GDP), 70% of which is swallowed up by the Common Agricultural Policy and the structural funds.

The situation changed markedly in the late 1980s, although restrictions on private enforcement action still leave the Commission to shoulder most of the responsibility.[16] Proceedings relating to practical compliance grew significantly, reflecting both Clinton-Davis's desire for stronger enforcement and vocal demands from national pressure groups for the law to be fully and, perhaps more importantly, consistently enforced. It is notable, however, that the majority of environmental cases that reach the ECJ have tended to be brought by the Commission under the Article 169 procedure, rather than by individuals (Article 173) and member states (Article 170), or via references from national courts (Article 177) (Sands, 1990, page 694).

It is unwise to rely too heavily on the Commission's data when searching for trends and patterns (Macrory and Purdy, 1997, page 39; Williams, 1994, page 374). First and foremost, the recent rise in complaints and infringement proceedings may simply reflect the Commission's determination to tighten up on enforcement rather than increasing lawlessness among member states. The Commission routinely acknowledges that failures are more often the product of inefficiency and incompetence on behalf of states than deliberate disobedience. It is also significant that the majority of cases still relate to failures of formal rather than practical implementation. Second, just as in national and local contexts, legal enforcement is an exceedingly complicated activity, involving bargaining and the application of discretion. Consequently, many potential or 'real' implementation problems fail to appear in the Commission's figures. Snyder (1993, page 29) shows that the Commission relies heavily on the tried and tested techniques of quiet negotiation and bargaining to accelerate compliance in spite of the rhetorical commitment to tougher enforcement. For instance, an Article 169 letter sent to Britain in 1991 regarding compliance with the drinking water directive was apparently preceded by no less than ten written exchanges and three meetings (Collins and Earnshaw, 1992, page 228). In fact, a guide from the UK Department of Environment, Transport and the Regions (DETR) to negotiating in the EU openly extols the benefits of quiet persuasion to lobby Commission officials:

> "Infraction cases are more like civil than criminal proceedings. Discussion, compromise and the application of reason are all permitted. Therefore informal channels of communication are kept open.... This is one of the more occult areas of the infraction system and should not be discussed openly, particularly with colleagues from other Member States (who seem to make much less use of such channels). [DETR] officials can have an important role to play in convincing the Commission that the UK Government's case is a good one" (Humphreys, 1996, pages 131 – 132).

Even when formal proceedings are initiated, something like 80% are settled before they go to court (CEC, 1997, page 8). Court cases tend to be long-winded, extremely complicated, stretch the Commission's meagre resources, and endanger the goodwill of states. Decisions to take cases to the Court are not taken lightly; they must be sanctioned by the Commission's Legal Services and receive the support of the College of Commissioners. Being so political, recourse to court proceedings is normally considered as a very last resort.

For obvious reasons, the Commission adopts a tougher stance in relation to high-profile cases which have been the subject of complaints from the public (Krämer, 1989, page 246). Pressure groups provide DG XI with the 'eyes and ears' it needs to detect infringements and the political legitimacy to confront recalcitrant states. But as Krämer (1995, page 142) himself admits, a public demand-led approach, although in some respects inevitable, is biased towards the most politically contentious issues which are "not necessarily the most serious or the most urgent cases".

[16] Holder (1996, pages 324 – 325) outlines the limits on the applicability of the direct effect and Francovich rulings in the environmental sphere.

Attempts to draw cross-national comparisons should also be interpreted with caution as they often say more about a particular state's internal administrative culture and political relations with the Commission than about the actual quality of the environment (see tables 4 and 5). Other important factors include the energy of national pressure groups and the appetite of different national media for environmental stories. Krämer's (1995, page 143) comment about infringement proceedings making a bigger splash in Britain with its "outstanding, highly sensitive journalism" reveals a lot about the Commission's political strategies. Longitudinal analyses are also made difficult by the Commission's reluctance to adopt a consistent approach to reporting its findings (see Macrory and Purdy, 1997).

Table 4. Progress in notifying environmental directives, 1996 (source: CEC, 1997, page 107).

Country	Directives applicable on 31 December 1996	Directives for which measures were notified	
		number	percentage
Denmark	136	133	98
Netherlands	136	133	98
Luxembourg	136	131	96
Germany	138	132	96
Ireland	136	130	96
Sweden	134	127	95
UK	136	128	94
Austria	132	124	94
Portugal	140	131	94
Spain	140	131	94
France	136	126	93
Greece	141	128	91
Belgium	136	117	86
Finland	134	115	86
Italy	136	116	85

Table 5. Progress in notifying environmental measures, 1994–96 (sources: CEC, 1997, page 107; *OJ* 1995; 1996b).

Country	Directives applicable on 31 December for which measures were notified (%)			Average
	1994	1995	1996	
Denmark	100	98	98	98.7
Netherlands	98	98	98	98.0
Ireland	97	95	96	95.0
Sweden	na	94	95	94.5
France	94	95	93	94.0
Germany	91	94	96	93.4
Luxembourg	93	92	96	93.4
Austria	na	92	94	93.0
Spain	86	90	94	90.0
UK	82	93	94	90.0
Greece	85	88	91	88.0
Portugal	82	87	94	87.7
Finland	na	87	86	86.5
Belgium	85	83	86	84.7
Italy	76	85	85	82.0

na not applicable

Bearing in mind these complicating factors, can we say whether implementation is comparatively worse in the environmental field than in other policy areas? The Commission's own figures suggest that they are (*OJ* 1996b), although there is a long tradition of poor compliance in the areas of competition and the internal market. Between 1988 and 1992, the ECJ made more rulings on environmental matters than in any other field except the internal market (DG III), and customs and indirect taxation (DG XXI) (*OJ* 1993b, page 108). This is relatively high bearing in mind that the Commission normally prioritises breaches relating to internal market legislation. Again, official figures should be treated with caution. Obvious distortions include the conflictual style of national environmental politics in some countries and the limited means of legal redress at the national level.

Closing the implementation gap

A number of measures have been proposed to ease the EU's implementation problem. These include, inter alia:

1. creating a centralised environment inspectorate with powers to investigate alleged breaches and levy fines;
2. allowing the Commission to take proceedings against local implementing officials and subnational actors;
3. devolving justice to the national level by allowing citizens to take action in national courts;
4. creating an enforceable right to environmental quality on a par with the right to free movement of goods enshrined in Article 30;
5. making greater use of regulations rather than directives;[17]
6. improving the poor record of reporting both by member states and by the Commission;
7. improving the legal and technical drafting of directives;
8. making greater use of nonregulatory instruments such as taxes, tradable permits, and voluntary agreements;
9. reducing the national veto by extending the application of qualified majority voting (QMV);
10. providing greater financial assistance to the 'cohesion' states in the south of the EU;
11. making the Article 169 procedure more transparent and open to independent scrutiny.

Many of these are deeply at odds with the realpolitik of the EU which, despite all the evidence of greater supranationality, is still dominated by fifteen member states, each with its own political culture, set of legal traditions, administrative practices, economic structures, and environmental circumstances. Given this heterogeneity, slow or at least *differential* implementation is probably inevitable. The question, then, is one of determining precisely how far national practices should be allowed to deviate from European norms. From DG XI's perspective, striking the right balance is extremely difficult:

> "The legal culture is different from one Member State to the other and inevitably where you have a uniform product, an EEC made Directive, and it meets this different legal culture it is differently absorbed, differently integrated and also differently perceived which makes it rather difficult sometimes to get the right balance between ... national considerations and the purposes and spirit of what was decided at Community level" (Krämer, in HOLSCEC, 1992b, page 12).

These dilemmas will be instantly familiar to those who subscribe to a more bottom-up view of implementation. For them, implementation involves bargaining and negotiation,

[17] The Sutherland Report recommended that all directives be transformed into regulations after a period of harmonisation (CEC, 1993).

not rigid, top-down control. 'Bottom-uppers' would tend, therefore, to take a more sanguine view of the implementation 'crisis' in the EU, viewing it as the inevitable outcome of trying to squeeze a diverse group of states into a common framework.

Of course, the Commission understands full well the political constraints it is under and has learnt to think tactically and to act cautiously. One only has to look at the chapter on implementation in the Fifth Action Programme to see this. This Programme contains a number of proposals to: strengthen consultation (via the creation of a number of 'strategic groups' linking national inspectorates and interest groups); increase national reporting; enhance auditing; and promote the use of nonregulatory instruments. Reflecting the post-Maastricht demands for greater subsidiarity, the overarching theme is one of fostering 'joint responsibility' among actors, complementing the traditional top-down approach to enforcement (*OJ* 1993a). Directives on standardised national reporting [Directive 91-692 (Haigh, 1992, section 11.6)] and public access to environmental information, a British-inspired commitment to discuss implementation issues more regularly in the Council of Ministers, and an informal network of national inspectorates (IMPEL) were some of the main institutional initiatives designed to improve the flow of information. The Commission has also attempted to make the Article 169 process more transparent, by issuing press releases at each stage.

Some progress has been made in developing alternative instruments—the ecomanagement and audit scheme (EMAS) and ecolabelling schemes being prominent examples—but legislation remains the principal form of action. For the time being, the continuing need for unanimity in the Environment Council on all fiscal matters remains a formidable impediment to ecological tax reform. The continuing Auto-oil programme aside, voluntary agreements are still conspicuous by their absence. IMPEL has concentrated on exchanging information on large industrial plant and is still a long way short of becoming what the United Kingdom once described as an 'inspectorate of national inspectorates'. A European Environment Agency (EEA) was established in 1994 after Jacques Delors campaigned for an environmental inspectorate. The prospect of Brussels bureaucrats taking water samples and scrutinising environmental records was greeted with great suspicion and even outright hostility by member states. The establishment of the EEA was delayed for two years by a bitter dispute between states about where it would be sited. The information collected by the EEA will help clarify the precise situation in every member state, but its remit is restricted to gathering and disseminating data. Despite strong pressure from MEPs, states were very careful to prevent it becoming involved in frontline enforcement and implementation activities. For the time being, it is almost entirely reliant on what member states submit, being unable to undertake its own fact-finding missions.

Wilkinson (1992, page 226) observes that better consultation and the use of soft (that is, nonlegislative) instruments allows the Commission to achieve its environmental objectives without being seen to interfere directly in the affairs of member states. There has, however, been no let up in its determination to enforce the acquis across all policy areas, despite a sharp decline in the number of public complaints (down 29% in the period 1994–96) (CEC, 1997, pages 6–7).[18] In 1996, the Commission issued 435 reasoned opinions (a 224% increase on 1995), made a record number of referrals to the ECJ (93 cases), and dispatched 1142 Article 169 letters (a 7% increase on 1995).

Three macrolevel initiatives were introduced by the Maastricht Treaty in 1993 (see Jordan, 1999b) which may help remedy the situation in the medium to long term, as follows.

[18] The number of environmental complaints received by the Commission fell by 27% in the same period.

Financial penalties for noncompliance: Article 171 was amended to allow the ECJ to fine states that persistently disregard its rulings. The delay in ratifying the Treaty delayed their use and it was a further two and a half years before DG XI issued a communication explaining how it would calculate the level of daily fines (*OJ* 1996a, page 6). The first applications were made by the Commission in 1997, but none has been the subject of a ruling by the Court. However, the fact that the majority of cases for which requests were made have been quickly settled does suggest that the new article is already having some practical impact.

Financial assistance for poorer states: a cohesion fund was established to help the 'cohesion' member states meet the cost of environmental improvements. Implementation of the urban wastewater treatment directive has been a major priority for the fund but, as Andrea Lenschow (1999) explains, investments are not subject to environmental safeguards and there is persistent criticism that individual projects are not always designed with sufficient environmental sensitivity.

Extension of QMV: majority voting could prove to be a double-edged sword as far as implementation is concerned. On the one hand it may substantially upgrade the adoption of environmental legislation by ameliorating the 'joint decision trap'; on the other hand any improvement in the level of protection may be undone if states are forced to implement legislation they consider to be unacceptable. Implementation problems could in other words worsen not improve if states are robbed of the first part of their 'double veto' over European affairs (see Jordan, 1999b).

It is notable that none of these initiatives significantly disturbs the institutional balance of power as far as implementation is concerned; vital questions will continue to be resolved by states and supranational actors, with little direct input from private actors. Despite the best efforts of the ECJ to establish a 'new legal order', conferring judicially enforceable rights and obligations on all legal persons, public, and private,[19] the opportunities for public interest litigation to protect the environment remain extremely limited. The Treaty does not provide for individuals to bring public interest litigation in environmental matters before the Court, many impediments prevent environmental laws having direct effect at the national level (Holder, 1996), and, despite much speculation, individuals have found it very difficult to obtain compensation under the Frankovich[20] ruling for damages suffered where a member state has failed in its environmental duties.

In 1996 the Commission issued a communication (CEC, 1996) setting out its thoughts on how to improve implementation after the Commission and Parliament had coorganised public hearings in 1996. The tenor of the document is cautious and discursive; rather than announcing new policy interventions, many items are simply flagged for further discussion. As one might expect, the document is peppered with references to subsidiarity, shared responsibility, and deregulation. Three new policy ideas are discussed in some detail, as follows.

Development of EU-wide minimum criteria for inspection tasks in the member states: these would address matters such as site visits, inspection plans, and public access to information.

[19] See especially the Court's ruling in *Van Gend en Loos* (C-26/62, ECR [1963], page 1). For good accounts of the 'constitutionalisation' of EU law see Wincott (1995), and Burley and Mattli (1993).

[20] The Court's ruling in Frankovich permits individuals who have suffered losses as a result of a member states' failure to implement directives to sue them in national courts for financial compensation for any damages thereby incurred. For Frankovich to apply, the directive in question must grant 'rights' to individuals, the content of those rights must be identifiable, and there must be a clear causal link between the failure to implement the directive and the damage for which compensation is being sought (see Somsen, 1996).

The setting of minimum criteria for handling complaints and carrying out investigations in member states: overloaded by complaints from the public and MEPs, the Commission is keen to devolve some of the burden of enforcement to the national level. It will, therefore, 'consider' the need for new ad hoc bodies, including national-level 'ombudsmen'.
The issuing of guidelines on access to national courts: the Commission has been actively exploring opportunities to widen public access to environmental justice at the national level for some time. On this occasion, legislation is rejected in favour of 'soft' interventions such as granting *locus standi* to nongovernmental organisations 'recognised' by states, improving the clarity of EU rules, and raising awareness among national judges.

So far, there has been little administrative follow-up. The Environment Council duly adopted a resolution on implementation in 1997 reaffirming previous pledges to consider implementation matters more regularly, and the Belgian government appended a declaration on improving access to national courts [which gained the support of only three other states (*Europe Environment* 1997)]. At the time of writing, the only legislative proposal to emerge relates to minimum criteria for site inspections. Although this will greatly enhance IMPEL's institutional position, it seems likely to be opposed by some member states on the grounds that it interferes with subsidiarity (ENDS, 1998).

Future challenges

The EU has travelled a long way from the essentially intergovernmental structure established by the Treaty of Rome, but states remain deeply reluctant to address the underlying cause of the implementation deficit, namely the structural imbalance in the institutional makeup of the EU. Clinton-Davis (1992, page 201) is of the view that the only viable, long-term answer is to vest the Commission with the same powers it enjoys in the field of competition, fisheries, and agriculture. However, persistently poor performance will only feed demands, which are currently muted, for greater EU competences. It is not, of course, inconceivable that the EEA will eventually develop into a centralised inspectorate with the same powers as those in the fisheries and competition fields, but for the moment the main levers of power remain firmly in the hands of states.

This decidedly informal and low-key political response to implementation will face its stiffest challenge as and when the EU enlarges eastwards to encompass parts of the former Eastern Bloc. A recent Communication from the Commission warned that "none of the candidate countries of Central and Eastern Europe will be able to achieve full compliance with the environmental *acquis* in the short to medium term" (CEC, 1998). Early indications suggest that the environment will be the single most expensive policy area in the context of enlargement.[21]

To force the new entrants to achieve existing standards at a stroke would result in massive levels of noncompliance that could fatally undermine political confidence in the acquis communautaire. The Commission outlines two possible options:
(a) negotiate strategies to align current national practices gradually with the acquis;
(b) mobilise public and private resources to assist the new entrants leapfrog polluting and resources-intensive technologies.
At the time of writing, entry negotiations are still at a very early and delicate stage. Decisions will eventually have to be made about which countries to invite first and which areas of legislation to give primacy to.

[21] Provisional estimates put the cost of harmonisation with existing environmental standards at ecu 120 billion—around a third of the total cost (ecu 300–400 billion) of implementing the acquis communautaire in new entrant states (Bjerregaard, 1998, page 5).

There is, of course, another line of argument which suggests that now implementation is so deeply politicised the gap will endure regardless of what is done to close it. On this view, which has obvious affinities with the neofunctionalist literature (see Zito, 1999), the implementation deficit is regarded as a symbol not of policy failure but of success measured in terms of heightened public expectations of higher environmental quality. Armed with handbooks explaining how to exploit EU law (EEB, 1994; Macrory, 1992b), domestic pressure groups in the existing member states have come to expect higher levels of performance and will harass states that try to disavow their commitments. If this experience is replicated in the candidate countries of Eastern Europe over the next 25 years, we may have to accept large implementation deficits as a fact of life in the wider and more devolved Europe of the future.

In many important respects, the troublesome implementation of EU environmental policies is a microcosm of the wider story of integration and the conflicting forces and contradictions which have characterised the EU throughout its journey from an intergovernmental agreement to a multilevel polity. These contradictions include the maintenance of unity in diversity, the competition between national priorities and supranational imperatives, and the distribution of powers between actors at different spatial levels of government. If anything, they are more starkly revealed in the implementation phase when the EU's policies are put to the test than at earlier stages in the policy process, where symbolic gestures and rhetorical commitments are more likely to secure consensus. Implementation is at the sharp end of the EU policy process, where a burgeoning supranational legal order meets a decentralised policy delivery system dominated by states.

In this paper I have argued that implementation deficits are built into the structure of the EU; they help to maintain the delicate 'balance' between governmental and supranational elements (Sbragia, 1993). It is significant that 'maximalist' agencies such as the Commission and the Parliament have been at the forefront of attempts to publicise and resolve failures of noncompliance, whereas member states have sought to maintain a tight grip over policy delivery and ensure that it remains "the last strong-hold of national control" (From and Stava, 1993). By setting the question of implementation in a wider political context, I hope to offer in this paper a corrective to the common perception that EU policies are necessarily 'good' and that poor implementation is necessarily pernicious. Rather, 'postdecisional' (Puchala, 1975) politics are an integral part of the continuing struggle between actors at different administrative levels to control the integration process.

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