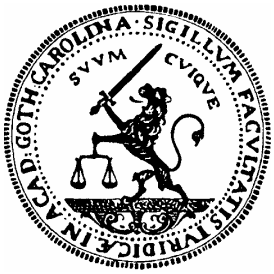

FACULTY OF LAW
University of Lund

Niklas Tideklev

Implementation deficit within the environmental sector – Sweden's non –compliance with Environmental Directives

Master thesis
30 credits

Supervisor
Xavier Groussot

Field of study
European Community Law

Fall 2008

Contents

Summary

The topic of this thesis deals with the implementation deficit in the environmental sector that exists within the EU. According to the 25th annual, report from the Commission, there were over 3400 complaints and infringement files under 2007. The environmental sector was the area with the highest number of open cases that concerned non-compliance in 2006

Sweden is however one of the best Member States when it comes to the implementation of Directives. Nonetheless, even Sweden has either failed to transpose Directives in time, to implement them correctly or failed to apply them correctly within the environmental area. This thesis has therefore investigated why Sweden, as one of the biggest proponents of environmental issues, has failed to implement Environmental Directives.

This thesis has investigated three Directives: the Bathing Directive, the Directive on the disposal of Waste Oils and the Wild Birds Directive, in order to reach some conclusions as to why Sweden failed to implement these Directives correctly. Before it was possible to argue that they had failed it was primarily important to establish that the Commission had sent a letter of formal intent, a reasoned opinion and finally referred Sweden to the ECJ. In all cases, Sweden was subject to a referral to the ECJ and failed in that sense with its implementation.

This thesis used explanatory factors from the Community level as from the Member State level. The Community level explanation investigated whether the enforcement procedures, the letter of formal intent and the reasoned opinion under Art 226 and 228 as well as the ruling from the ECJ, had any impact on the non-compliance of the Directives. Sweden received a letter of formal intent under article 228 as they were not complying with the judgment for its non – compliance with the Bathing Water Directive. Sweden followed the letter of formal intent immediately and the enforcement procedure had in that sense an impact since Sweden was not willing to receive penalty payments. The following Directives did not go as far, which indicates that Sweden was more inclined to comply with Directives and not receive sanctions.

Explanations from the Member State level were the ability to understand the Directive, willingness to implement it and capability to implement it. Sweden was willing but had difficulties in understanding them since they were vague. This led to different interpretations at different administration levels, which caused the institutions to be inefficient. When the Directives at the same time did not fit the national legislation and Sweden had not prepared itself before they had to implement the Directives it was perfectly clear that they would fail with the implementation.

Sammanfattning

Temat för denna uppsats är det miljörättsliga underskott som finns inom EU. Enligt statistik från kommissionen var det 3400 klagomål och överträdelser under 2006. Det miljörättsliga området var det område med flest överträdelser under 2006. Sverige är dock en av de medlemsstaterna med bäst statistik gällande implementering av Direktiv. De har dock misslyckats att följa Direktiv och implementera dem korrekt i vissa fall inom det miljörättsliga området. Denna uppsats har därför undersökt varför Sverige, trots en av de medlemmar som brinner mest för miljön, har misslyckats att implementera dessa Direktiv.

Denna uppsats utgår från tre Direktiv, Badvattendirektivet, Direktivet om omhändertagandet av spilloljor och Fågeldirektivet, för att kunna komma fram till tänkbara orsaker till varför Sverige misslyckades att implementera dessa Direktiv på ett korrekt sätt.

Innan det gick att utröna huruvida Sverige misslyckats eller inte så var det först och främst viktigt att konstatera att Kommissionen skickat formell underrättelse, motiverat yttrande och slutligen blivit hänvisade till Europadomstolen för en laglig prövning. I alla dessa fall konstaterades det att de blev de hänvisade till Europadomstolen och frågan är då varför Sverige misslyckades.

Denna uppsats utgick från förklaringsfaktorer på EG – nivå och nationell nivå. På EG – nivå undersökte uppsatsen huruvida de olika förfaranden för verkställighet, formell underrättelse och motiverat yttrande under artikel 226 och 228 samt utslag från domstolen, hade någon betydelse för varför Sverige inte implementerade dessa Direktiv på ett korrekt sätt. Efter att Badvattendirekt avgjorts i Europadomstolen och Sverige inte följt utslaget så fick de en formell underrättelse under artikel 228. Sverige följde då genast Kommissionens och förfarandet kan därmed sägas ha haft betydelse eftersom Sverige antagligen inte var villiga att betala vitesföreläggande. De följande Direktivet nådde inte så långt vilket tyder på att Sverige var mer benägna att följa Direktiven och slippa sanktioner.

De förklaringar som kan ges på nationell nivå var uppdelade enligt följande; möjligheter att förstå Direktivet, vilja att implementera Direktivet och förmåga att implementera Direktivet. Sverige hade viljan att implementera dessa Direktiv men hade svårigheter att förstå dem då de var vaga. Detta ledde till att olika institutioner på olika nivåer tolkade Direktiven olika vilket i sin tur gjorde att de inte kunde utnyttja sin administrativa kapacitet och blev ineffektiva. När Direktiven samtidigt var väldigt olika den nationella lagstiftningen och Sverige inte hade förberett sig ordentligt innan de blev tvungna att implementera stod det klart att de skulle misslyckas att implementera Direktiven.

Preface

Firstly, I would like to thank Magnus Jerneck and Karin Bäckstrand at the Institution of Political Science for developing my interest in environmental difficulties and environmental politics through the outstanding course Environmental Governance.

I would also like to thank my supervisor Xavier Groussot for developing my interest in the different enforcement procedures available to the Commission through the inspirational course Enforcement of European Community law.

These courses combined led to an interest in non-compliance with Environmental Directive. Without these courses, this master thesis would not have come into being.

Finally, but not lastly, I would like to thank Marie Wahlin, for her constant encouragement and unconditional support.

Abbreviations

Art	Article
AG	Advocate General
EC	(Treaty Establishing the) European Community
ECJ	European Court of Justice
E.C.R.	European Court Reports
EU	European Union

1 Introduction

According to the 25th annual report from the Commission, the European Union suffer from an implementation deficit. In 2007, there were over 3400 complaints and infringement files and the total number of files increased with 5.9% from 2006.[1] Although the Member States have made great efforts to improve implementation, unimplemented Directives remain a serious problem and the Commission has therefore considered unimplemented Directives the main obstacle to efficient enforcement of Community law.[2]

This deficit has been notorious and persistent, especially when it comes to the implementation of EC Environmental law. [3]About one fifth of the total number of open cases concerned non-compliance with the environmental sector in 2006.[4] The total number of open cases at the end of 2007 was 739, which was the highest number of cases for failure to comply with EU legislation. Moreover, out of 461 cases opened 113 regarded complaints submitted by citizens and nongovernmental organisations. In addition to the high number of complaints highlighting potential breaches in EC environmental legislation, the Commission services have been receiving an increased number of enquiries on issues related to implementation. [5]

The specific factors relevant to EC Environmental law such as the extent and complexity of environmental legislation and, in particular, the high level of public interest have been recognised as more than 20% of all Commission enforcement dossiers are devoted to the environment. Lee states that the implementation of EC Environmental law has therefore become an important issue and gained the status of a strategic priority with the Sixth Environmental Programme.[6]

In order to produce the full effects of EU legislation it is necessary to implement and transpose the EU laws into the national legislation. Failure to apply it correctly or not implement the law at all can lead to lack of trust and predictability in the legal system as well as endanger the credibility and the effectiveness of EC law. Despite the importance of implementing Environmental Directives and the fact that transposition, implementation and compliance of Directives are unique, it seems odd that the Member

[1] The European Commission, *25th Annual Report from the Commisson on monitoring the Application of Community law*, (2007), p. 4.
[2] Lampinen, Risto & Uusikylä, Petri, *Implementation Deficit – Why Member States do not comply with EU drectives*, (1998), p. 233.
[3] The European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on implementing European Community Envuronmental Law*, (2008), p.3.
[4]The European Commission, *24th Annual Report from the Commission on monitoring the Application of Community law*, (2006), p. 7.
[5] Ibid, p. 7.
[6] Lee, Maria, *EU Environmental Law – Challenges, Change and Decision – Making*, (2005), p. 49.

States often are not able or willing to transpose or implement EU Directives. Some Member States are however better than others when it comes to the implementation of Directives. Sweden is one of the best Member States when it comes to transposing and implementing Directives.[7]

Nonetheless, even Sweden has either failed to transpose Directives in time, to implement them correctly or failed to apply them correctly. The question therefore remains why Directives within the environmental sector are not implemented or implemented correctly in Sweden since they are one of the biggest proponents of environmental issues and one of the best Member States in implementing Directives.

1.1 Purpose and Research question

The first purpose with this thesis is to explain why Sweden seems to have an implementation deficit in the environmental sector despite its outstanding record of accomplishment of implementing Directives. If the thesis is able to reach some relevant conclusions as to why an implementation deficit exists in Sweden when it comes to Environmental Directives then these explanation factors could perhaps be applicable on other Member States as well.

The second purpose is to reach some general conclusions as to why a Member State can have an implementation deficit. Is the deficit caused by factors stemming from the Member State itself or is it caused by flaws in the enforcement procedures stemming from the Community?

The research questions are therefore:

What factors are causing Sweden's implementation deficit in the environmental sector?

What factors can cause implementation deficit in Member States in the environmental sector?

1.2 Implementation

It is necessary to understand and define implementation before there can be possible explanations of the implementation deficit. Snyder provides a simple definition of the concept and states that implementation is "*the process and art of deliberately achieving social change through law*". According to Snyder, this definition is sufficiently broad to encompass perspectives at different levels and the implementation is thus more of a continuous process rather than a fixed state of affairs. [8]

[7] The European Commission, *24th Annual Report from the Commission on monitoring the Application of Community law*, (2006), statistical annex.
[8] Snyder, Francis, The *Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques*, (1993), p.26.

The concept of implementation can however be developed in a more detailed way, which is necessary for the purpose of the thesis. It is possible to divide the implementation process into two parts: the legal implementation and the practical or final implementation. [9]

The legal implementation process also constitutes two different types; the first type is when the Member State transposes or incorporates the Community law into national law. A Member State decides the form and method of implementation itself and the non-compliance with the implementation is when the Member State fails to issue the required national legislation. The second type is when the transposition of Directives may be wrong. Non-compliance takes the form of either incomplete or incorrect incorporation of Directives into national law. This can depend on the non-implementation of certain parts of the Directive or on the deviation of national regulations from European obligations because they have not amended and repealed them.

The practical or final implementation of Directives contains the third and final type. Even if the legal implementation of the Directive is correct and complete it still may not be practically applied. Since the practical implementation focus on the administrative operations at the practical level, such as the actual application of EU laws, it can be difficult to apply it. Non-compliance with the Directive involves the active violation of taking conflicting national measures or the passive failure to invoke the obligations of the Directive. [10]

In practice, these different types are not always clear and it can therefore be difficult to understand which type of failure has occurred. National measures implementing only some of the Annex 1 projects in the Environmental Impact Assessment Directive could be a failure to transpose the Directive or a failure to ensure conformity of those national measures with the Directive. Furthermore, it could be a non-application case if the Member State does not carry out an assessment because the project due to the lack of transposition in national legislation. [11]

In this thesis, it does not matter if the Member State failed the legal implementation or the practical implementation. If it has failed either of these, the Member State has an implementation deficit. It is however necessary that the Member State is subject for any of the enforcement procedures for an implementation deficit to be present.

---

[9] Börzel, Tanja, *Non-compliance in the European Union: pathology or statistical artefact*? (2001), p. 805f.

[10] Ibid, Lampinen, Risto & Uusikylä, Petri, *Implementation Deficit – Why Member States do not comply with EU drectives*, (1998), p. 233.

[11] Hattan, Elizabeth, *The Implementation of EU Environmental Law*, (2003), p.274.

1.3 Previous research

Theories explaining the implementation deficit have been numerous. In the 1980's, the arguments were diverse and lacked strong theoretical frameworks. They combined insights from implementation research, international relations theory and legal studies. Most of this literature portrays compliance as a rather a-political process, which the government can slow down by its inability to live up to EU policy demands due to legal or administrative reasons. [12]

A second wave occurred in the late 1990's with a stronger theoretical character containing a key hypothesis suggesting that successful compliance depends on the fit between European policy requirements and existing institutions at the national level. This "goodness of fit" had two aspects were the first concerned the distinction between institutional and policy misfit. The policy misfit had a relation with the content of the policies while the institutional had a relation to the regulatory style and structure of a particular policy sector. The second aspect concerned the difference between the legal and practical status quo, as it may be the case that certain rules just exists informally and not in any law.[13] The hypothesis was not always accurate and researchers showed that a good fit was neither a necessary nor a sufficient condition for smooth compliance and vice versa. There was thus a need to provide explanations that were more dynamic. Most scholars therefore maintained the hypothesis while introducing auxiliary hypotheses allowing for a change of the domestic policy.[14]

A third wave of possible explanations emerged in the 1990's with its focus on domestic politics. It was characterised by attempts to theorise and research the role of national domestic politics on the process of implementation. Some of the explanatory factors were the country's stage of liberalisation, reform capacity and dominant belief system. Other factors were the effect of domestic opposition and the presence or absence of veto players.[15]

[12] Mastenbroek, Ellen, *EU Compliance: Still a 'black hole'*? (2005), p. 1104ff.
[13] Ibid p.1108ff, *Kaeding, Michael, In Search of Better Quality of EU Regulations for Prompt Transposition: The Brussels Perspective*, (2008), 587ff.
[14] Mastenbroek, Ellen, *EU Compliance: Still a 'black hole'?* (2005), p. 1109.
[15] Kaeding, Michael, *In Search of Better Quality of EU Regulations for Prompt Transposition: The Brussels Perspective*, (2008), 588ff.

2 Method and material

2.1 Methodological approach

The methodological approach in this thesis is not the classic dogmatic method of traditional legal analysis with the aim to describe the legal aspects and make a thorough traditional legal analysis. The approach rather takes its starting - point from different theories or factors in order to explain the implementation deficit in Sweden. In this sense, the thesis has more of a combined dogmatic and scientific approach. First, the thesis will explain what constitutes implementation and make a legal analysis of the enforcement procedures in the EU. Thereafter, it will present the different theories and apply them on empirical material, in this case Environmental Directives, and thus using a combined methodological approach,

2.2 Theory Selection

The previous research focused on the implementation deficit as a problem stemming from the Member States where the political and administrative systems could render them incapably of implementing EU environmental policies effectively. Most research contributions explicitly referred to Member State-level policy design-related factors in their explanatory statistical models of national transposition processes across Member States. Only a few contributions regarded explanatory factors from a European level. Kaeding therefore suggests that scholars should investigate explanations stemming from the Community rather than from the Member States. Mastonbroek agrees but points out that it is better to use a multi-method research using theories from both the Member State level and the European level. [16]

In this thesis, theories from both the European and the Member State level are in use with the aim of explaining the implementation deficit in Swedish environmental law. This thesis recognises, like Kaeding, the need to focus on explanations stemming from the Member States as well as explanations stemming from the Community. Furthermore, this thesis recognises the need to have several explanation factors complementing each other, as the implementation deficit problem is complex and can be difficult to explain by a single factor.

Explanation factors regarding why there is an implementation deficit stemming from the Member States can be numerous. They can be lack of administrative capacity, fragmentation of the political system, a low-level of socio-economic development, lack of environmental awareness and political

[16] Kaeding, Michael, *In Search of Better Quality of EU Regulations for Prompt Transposition: The Brussels Perspective*, (2008), p. 589 , Mastenbroek, Ellen, *EU Compliance: Still a 'black hole'?*, (2005), p. 1113, 1115f.

activism. They can also be liberalisation, reform capacity and dominant belief system, the role of civil society and its pivotal role in embedding, mobilizing and sanctioning normative obligations at the domestic level.[17] Other factors can be whether the institutions are stable and effective and whether a corporatist system exists that integrates interest organizations into political decisions and thus have the best capabilities to implement EU directives. Other factors can be whether the political system has high legitimacy, citizens are satisfied with democracy, the degree of social fragmentation is low, individual rights are highly respected and the attitudes towards the EU are positive. [18]

All the explanatory factors mentioned above will fall under three broad categories in order to investigate whether they have an impact on Sweden's implementation of certain environmental directives. The first category is the ability to understand the Directive where two important factors are recognised: free from vagueness/difficulties in interpret it and different interpretations in different administration levels.

The second broad category concerns the willingness to implement the Directive. The first factor is the norms and dominant belief system within the Member State. This factor encompasses whether the attitudes towards the EU are positive and whether the political system has high legitimacy. The second, and closely related factor, is the role of civil society and its pivotal role in embedding, mobilizing and sanctioning normative obligations at the domestic level. The third factor concern the political culture of the Member State and the fourth factor recognises the reputation the Member State has within the EU.

The third broad category is the capability to implement the Directive. The first factor is the "goodness of fit" which is chosen because of its strengths in precise empirical expectations and in empirical diligence. The second factor is the administrative capacity and whether there are administrative constraints in implementing the Directive. The third factor is if the institutions responsible for implementing the Directive are effective and stable and the final factor is whether a corporatist system exists that integrates interest organizations into political decisions. That type of system has the best capabilities to implement EU directives.

Regarding theories stemming from the Community level this thesis will mostly touch upon the enforcement procedures that exist and whether they have an impact in preventing implementation deficit or whether they are not sufficient enough and thus increasing the non-compliance with Directives.

[17] Börzel, Tanja, *Why there is no 'southern problem'. On environmental leaders and laggards in the European Union*, (2000), p. 145ff.
[18] Kaeding, Michael, *Determinants of Transposition Delay in the European Union*, (2006), 234ff.

2.3 Case selection

Since the implementation of Directives is difficult to explain, this thesis will use a case study to enhance the understanding of non-compliance and non-implementation by studying the implementation of Environmental Directives in Sweden. A case study gives the researcher the possibility to identify and measure the different explanations that best corresponds to the theoretical aspects. [19]

According to Yin, a case study can be explanatory, descriptive or explorative.[20] This case study is explanatory since the purpose of the thesis is to explain why there is an implementation deficit in Sweden. By explaining the deficit in Sweden, it can be possible to come up with possible explanations for the implementation deficit in general.

The Directives in this thesis are those in the areas of Nature and Biodiversity, Water and Waste. These areas are interesting to study since Sweden has failed to implement directives within these areas and thus been subject to different enforcement procedures. The Nature and Biodiversity area is the area with the highest number of open environmental cases. Sweden is one of the contributors as it has received a reasoned opinion as well as a referral to the Court of Justice in its implementation of the Wild Birds Directive.

In the Water area, Sweden has also been subject to enforcement procedures. The Commission referred Sweden to the ECJ due to its failure to implement the Bathing Directive and the ECJ therefore came with a ruling in June 2001. Regarding the final area, the Waste area, Sweden was once again subject to a referral to the ECJ due to its non-compliance to implement the Directive of disposable Waste Oils. Because of Sweden's non-compliance with these three Directives, they are suitable candidates for an empirical analysis in this thesis. The Bathing Directive is the first that is analysed since it was the first of these Directives where Sweden was subject to a referral to the ECJ. There is also more empirical material available regarding the Bathing Directive, perhaps because it was an important environmental case, which may have affected how Sweden acted in the other two Directives. There is a need to analyse three Directives in order to reach plausible explanations for the existence of an implementation deficit in order to eliminate the risks of coincidental explanation factors.

2.4 Material

This thesis will use academic articles and other doctrine in order to develop and explain different theoretical standpoints and factors that could have an impact on the implementation deficit. Furthermore, the doctrine as well as

[19] George, Alexander & Bennet, Andrew, *Case Studies and Theory Development in the Social Sciences*, (2005), p. 19.
[20] Yin, Robert K, *Case Study Research: Design and Methods*, (2003), p. 3.

the relevant case law of the ECJ will be in use to explain the enforcement procedures in the Treaty Articles 226-228. To provide the empirical material this thesis will use the arguments from the reasoned opinions, the letters of formal notice and the responses of these procedures from the Swedish government. This material was not available due to its limited public access in the analysis of all Directives. Therefore, this thesis has used additional information such as writings from the Swedish government to the Swedish parliament and Press Releases from the Commission.

2.5 Delimitation

The thesis will focus on the implementation deficit in Sweden regarding Environmental Directives. This thesis will compare the Directives mentioned in order to draw conclusions regarding what kind of factors are most relevant for non - compliance with the directives.

There are however other Environmental Directives that could be analysed but the ones mentioned above belongs to three important and different areas, Nature and Biodiversity, Water and Waste, with useful information available. These Directives should also be sufficient in making some general conclusions regarding why Sweden has an implementation deficit in the environmental area.

This thesis will, as stated above, only investigate Sweden and these Directives but it has the ambition to draw some general conclusions as to why Member States have an implementation deficit in the environmental area.

2.6 Disposition

The next chapter will give a description of the enforcement procedures available to the Community in order to make Member States comply with the Directives. The fourth chapter will introduce the different theories from the Member State level that can explain why there can be an implementation deficit.

Chapter five through seven are dedicated to the empirical analysis of the three Directives. The fifth chapter will analyse the implementation of the Bathing Water Directive. The sixth chapter will analyse the implementation of the Directive on the disposal of Waste Oils. Finally yet importantly is the Wild Birds Directive that will be up for an empirical analysis in chapter seven.

In chapter eight, the thesis will draw some general conclusions as to why Sweden was not able to implement these Directives. In chapter nine the results from thesis will be summarised, the questions and purpose of the thesis once again discussed as well as insights as to how to develop the thesis further and what would be interesting for future research.

3 The enforcement procedures within EC Community law

3.1 Art 226

The main enforcement procedure in the Community law is article 226, which has the objective to reach compliance as quickly as possible. This can be the called first round action since it provides the legal basis for the Commission to take action against a breach of the Community law. [21] The procedure consists of three steps that lead from an initial decision to a launch of legal action and eventually to a judgment by the ECJ. The steps belong to two phases or categories, the administrative or pre-litigation phase and the judicial or litigation phase, in order to make the Member State comply and fulfil its obligation. [22]

3.1.1 The Pre - litigation Phase

The first phase is the administrative or the pre-litigation phase, which consists of two written warnings to the defendant Member State. These two written warnings are the letter of formal notice and the reasoned opinion. The Commission issues these warnings to the Member State after they have gathered sufficient evidence that a breach of environmental law has occurred. [23] The first paragraph describes the administrative phase of the Art 226 procedure, which begins by sending a letter of formal notice to the Member State and thus letting it know that it has failed to fulfil its obligations.

3.1.1.1 The Letter of Formal Notice

When the Commission suspects a Member State is infringing the Community law they notify the Permanent Representative of the State in Brussels or send an informal letter to the government of the Member State. [24] The Member State gets the opportunity to communicate with the Commission and supply them with useful information and point out their opinion of the matter. The Commission then initiate a preliminary investigation and prepare a letter that they send to the Member State. The administrative, legal and the political level have to agree on the letter word by word before it they send it to the Member State. The extent of the preparation is necessary in order to define the object of litigation for subsequent proceedings at the ECJ. [25] If it not contains all the charges that

[21] Hedenmann – Robinson, Martin, *Enforcement of the European Union Environmental Law Legal Issues and Challenges*, (2007), p. 45.
[22] Ibid, p. 47.
[23] Ibid, p. 48.
[24] Dashwood, Alan & White, Robin, *Enforcement Actions Under Articles 169 and 170*, (1989), p. 396.
[25] Krämer, Ludwig, *EC Environmental Law*, (2007), p. 434.

might be relevant, it is possible that the ECJ does not consider it in the proceedings. [26] After the Commission has sent a letter of formal notice, a reasonable period has to follow in order for the Member State to have time to respond to the Commission. Normally, the Member State has two months to reply to the letter, but the period available can be even longer since the Commission only decides on cases under Art 226 every 6 months.[27] The reasonable time can in other words vary but is in some instances relatively short, when the subject of the matter calls for it. [28] There is no obligation on the Member State to respond to the letter of formal notice at all [29] but if the initial negotiations based on the letter of formal notice are fruitless, the Commission issues a reasoned opinion.

3.1.1.2 The Reasoned Opinion

The reasoned opinion is the key document setting out the complaint of the infringement. It gives a detailed and comprehensive picture of the case and describes how the Member State breached the Community Environmental law. The reasoned opinion is produced in the same way as the letter is the letter of formal notice but the do not have to be identical. [30] The core points of the complaint must however be the same in the letter of notice, the reasoned opinion and in the application to the Court for reasons stated above. [31] Due to its crucial status, the Commission cannot amend it when the case has come before the Court. If the Commission would like to add anything to the content of the reasoned opinion, it must restart the procedure from the beginning. [32] However, a limitation in the application to the Court of the points in the reasoned opinion is acceptable. [33]

The Commission usually sets a deadline for compliance, normally two months. If the Member State does not comply before this deadline, the Commission is free to bring the matter to the Court. Should the Member State comply after the deadline, the Commission can still bring the matter to the Court. The question for the Court is then to decide whether the Member State was in breach at the time of the end of the deadline set in the reasoned opinion. [34]

If a Member State has complied before the Court proceedings but after the time limit in the reasoned opinion, there is still a possibility of continuing judicial proceedings. The incentive is to prevent Member State from undermining the infringement proceedings by complying just before the

[26] Steiner, Josephine et al, *EU Law*, (2006), p. 229.
[27] Krämer, Ludwig, *EC Environmental Law*, (2007), p. 434.
[28] Arnull, Anthony et al, *Wyatt and Dashwood's European Union Law*, (2006), p. 421.
[29] Case 293/85 *Commission* v *Belgium* [1988] E.C.R. 305, para. 14.
[30] Krämer, Ludwig, *EC Environmental Law*, (2007), p. 434.
[31] Case C-191/95 *Commission* v. *Germany* [1998] E.C.R. I-5449, para 54; Case C-365/97 *Commission* v. *Italy* [1999] E.C.R. I-7773, para. 26.
[32] Craig, Paul & De Búrca, Gráinne, *EU Law: Texts, Cases and Materials*, (2008), p. 439.
[33] Case C-191/95 *Commission* v. *Germany* [1998] E.C.R. I-5449; under Art 228 Case C-177/04 *Commission* v. *France* [2006] E.C.R. I-2461.
[34] Wennerås, Pål, *The Enforcement of EC Environmental Law*, (2007), p. 256f.

judicial phase and then possibly continuing its behaviour afterwards. [35] The workload of the Court is heavy, but it is at the same time important such behaviour result in repercussions. If the behaviour is without repercussions, the Member States get incentives for waiting to comply until the last minute.

The purpose of the reasoned opinion and the pre-litigation phase in general is to give the Member State a chance to justify its position or to comply, and in the case of non-compliance, to define the issue at hand for the later stage in Court. [36]

Infringements often settle before reaching the ECJ. As much as 2238 case out of 2551 cases were close before they reached the judicial phase in 2006. [37] In proportion to the number of complaints, the number of the infringement cases that reach the Court is small. Approximately 70 % of the complaints are closed before a letter of formal notice is sent out, 85 % are closed before the reasoned opinion is issued and as many as 93 % are closed before the Court delivers a judgment. [38]

3.1.1.3 The Discretion of the Commission

For the Commission, the principal objective with the infringement procedure is compliance by the Member State. The Commission believes that it is more likely that compliance is quicker if there is no publicity. They argue that making the letter of formal notice or the reasoned opinion public would in fact disturb the relations between the Commission and the Member State, thus making a solution to the problem difficult. Therefore, the administrative phase is very much within the control of the Commission and what occurs during this stage of the process is, in principle, not revealed to the public. The Commission merely issues press releases on those disputes that are politically or environmentally important.[39]

Since the measures during the administrative phase are not legally binding, they cannot be subject to the annulment proceedings under Art 230 EC. They can, however, be reviewed by the Court during the 226 proceedings, if the case reaches the judicial stage. [40] The Court can declare the application to them inadmissible if the Commission do not follow the procedural rules laid down by the Court.

Attempts by the Commission to include complaints found in the formal letter but not in the reasoned opinion, have been declared inadmissible by

[35] AG Lagrange in Case 7/61 *Commission* v. *Italy* [1961] E.C.R. 317 at 334.
[36] Case C-3/96 Commission v. Netherlands [1998] E.C.R. I-03031, para 16, Case C-135/01 *Commission* v. *Germany* [2003] E.C.R. I-2837, para. 21.
[37] The European Commission, *Commission Communication to the European Parliament and the European Ombudsman On Relations with the Complainant in respect of Infringements of Community Law*, COM (2002) 141 final, Annex II p. 15.
[38] The European Commission, *Communication A Europe of Results – Applying Community Law*, COM (2007) 502 final, para II.
[39] Harlow, Carol & Rawlings, Richard, *Accountability and Law Enforcement: The Centralized EU Infringement Procedure*,(2006) p. 454-455, Krämer, Ludwig, *EC Environmental Law*, (2007), p. 434
[40] Joined Cases 76 and 11/69 *Commission* v. *France* [1969] E.C.R. 523, para. 36.

the Court based on the premise that the Member State did not have a chance to stop the infringement or submit observations on the issue before the Court proceedings was started. [41] Even though the wording of the Art 226 EC contains the word "shall", there is no obligation on the Commission to issue a reasoned opinion. There is also no obligation on the Commission to bring the matter before Court, even if the Member State in question has not complied with the reasoned opinion. [42]

The Commission's full discretion of the procedure means that it is entirely the Commission's decision whether to commence or continue any legal action against a Member State on a suspected infringement. [43] Even though Art 226 states that the Commission "shall deliver a reasoned opinion on the matter", it does not mean that the have to deliver a reasoned opinion in every infringement case. The word "shall" is most likely intended instead to refer to the reasoned opinion as being a mandatory step before judicial proceedings can commence. [44]

The Commission relies on complaints from individuals in order to discover Member State infringements. Therefore, it is contradictory that individuals or complainants cannot take part in the proceedings. The individuals only receive information about the outcome of the complaints.[45] The Commission also publish the way they handle the complaints in the Official Journal.[46] The Commission will also inform the complainant after every decision taken in the case. They will also give prior notice to the complainant before they close the case stating the reasons of the closure and inviting the complainant to submit comments on the issue.

Despite this access to information, there are no possibilities for an individual with a failure-to-act procedure under Art 232 EC if the Commission does not act on a complaint of infringement. The decision by the Commission to act on a complaint and beginning judicial proceeding are within the Commission's discretion and they are not bound to begin proceedings. [47] Member States are the only ones who can intervene in the infringement proceedings. The only remaining alternative for complainants who are unsatisfied with the work of the Commission are thus to turn to the European Ombudsman and submit a complaint about maladministration.

---

[41] Case C-350/02 *Commission* v. *Netherlands* [2004] E.C.R. I-6213, para. 28.
[42] Arnull, Anthony et al, *Wyatt and Dashwood's European Union Law*, (2006), p. 422.
[43] Hedenmann – Robinson, Martin, *Enforcement of the European Union Environmental Law Legal Issues and Challenges*, (2007), p. 59.
[44] Schermers, Henry & Waelbroeck, Denis, *Judicial Protection in the European Union*, (2001), p. 633.
[45] Arnull, Anthony et al, *Wyatt and Dashwood's European Union Law*, (2006), p. 419.
[46] The European Commission, *Commission Communication to the European Parliament and the European Ombudsman On Relations with the Complainant in respect of Infringements of Community Law*, COM(2002) 141 final.
[47] Case 247/87 *Star Fruit* v. *Commission* [1989] E.C.R. 291.

3.1.2 The Litigation Phase

If a Member State does not comply with a reasoned opinion, the Commission can bring the proceedings to the Court of Justice. It is within the discretion of the Commission to decide whether to refer the case to the Court. The Commission also has discretion in deciding how long they can wait before they refer the case but the right of defence might threatens, if they take too long. [48] The Commission still has the discretion to decide which date may be appropriate to bring an action to the Court, which can be as long as six years after the publication of the national legislation. [49]

The burden of proof for the existence of the infringement lies with the Commission. The Commission has to prove that the Member State has not fulfilled its obligations by providing detailed facts and circumstances of the specific situation as well as the legal basis. [50] If the Commission is successful, the ECJ declares the Member State has failed to fulfil its obligations. Then the Member State has to "take the necessary measures to comply with the judgment", according to Art 228(1). These measures have to be in place as soon as possible [51] and if the Member State fails to do so, it can be subject to further proceedings under Art 228.

3.2 Art 227

Art 227 allows a Member State to initiate infringement proceedings concerning breaches of Community law committed by another Member State. The proceedings must go through the Commission and the Member State that has allegedly breached the Community law has the opportunity to submit its observations and respond to the accusations. The Commission can then issue a reasoned opinion to the Member State, if it so wishes. If the Commission has not issued a reasoned opinion within three months of the notification of the complaint, the initiating Member State may still bring the matter before the Court.

The admissibility for bringing the matter to the Court is dependent on the notification to the Commission and that three months had passed or they had sent a reasoned opinion. The burden of proof lies with the complainant Member State and the Commission can choose to intervene on whichever side it prefers. As for the effect of the judgment, it is the same as under Art 226 EC. [52]

---

[48] Case C-96/89 *Commission* v. *Netherlands* [1991] E.C.R. I-2461; Case C-187/98 *Commission* v. *Greece* [1999] E.C.R. I-7713.
[49] Case C-422/92 Commission v. Germany [1995] E.C.R. I-1097, para 18.
[50] E.g. cases C-347/88 *Commission* v. *Greece* [1990] E.C.R. I-4747; Case C-55/99 *Commission* v. *France* [2000] E.C.R. I-11499; Case C-458/00 *Commission* v. *Luxemburg* [2003] E.C.R. I-1553, paras. 44-45.
[51] Eg joined cases 227 to 230/85 *Commission* v. *Belgium* [1988] E.C.R. 1, para. 11; C-387/97 *Commission* v. *Greece* para. 82 [2000] E.C.R. I- 5047
[52] Dashwood, Alan & White, Robin, *Enforcement Actions Under Articles 169 and 170*, (1989), p. 409.

Art 227 procedures are rare and they have only occurred a few times. [53] The Member States seem to prefer to rely on the Commission to initiate proceedings and instead intervene in the proceedings if wanting to express their opinions.

3.3 Art 228

In the majority of the infringement cases, the Member State complies, even though that often occurs after a lengthy procedure. However, there are cases where the Member State, after having received a judgment under Art 226, still fails to comply with its obligations. This is where the Commission can issue the second round proceedings of Art 228 on the Member State. Art 228 (1) lays down the basic legal duty for the Member States to comply with the judgment of the ECJ while Art 228 (2) focuses on the different stages the Commission can use to enforce legal action against the Member State.[54]

In the 1980's, there was no Art 228 (2) but with increases of non-compliance in the 1980's an amendment of the second paragraph of Art 228 necessary. The purpose of the amending paragraph was to combat the increase of infringements and make it possible for the Court to impose financial sanctions in the form of a penalty payment or a lump sum. Before the introduction of financial sanction, the only means of enforcing the Art 226 judgment was by another declaratory judgment merely stating that the infringement persisted. [55]

A Member State must initiate compliance with a judgment immediately and the implementation completed as soon as possible. [56] Nevertheless, the Commission cannot initiate the Art 228 proceedings until a State has a reasonable time to comply with the Art 226 judgment. The procedure under Art 228 EC is similar to the procedure under Art 226, with a reasoned opinion issued before the judicial proceedings starts. As in the 226 procedure, the relevant time for determining if a breach persists is at the time when the deadline of the Art 228 reasoned opinion expiries. [57] So far, there have been just a few cases decided under Art 228. The Commission seems, however, to be putting the procedure more to use. Through the case law, the scope and the limits of the procedure are materializing.

[53] Case 141/78 *France* v. *United Kingdom* [1979] ECR 2923; Case C-388/95 *Belgium* v. *Spain* [2000] ECR I-3123; Case C-145/04 *Spain* v. *United Kingdom* [2006] E.C.R. I-7917.
[54] Hedenmann – Robinson, Martin, *Enforcement of the European Union Environmental Law Legal Issues and Challenges*, (2007), p. 113ff.
[55] Ibid, p. 113ff.
[56] Case 69/86 *Commission* v. *Italy* [1987] E.C.R. 773.
[57] C-119/04 *Commission* v. *Italy* [2006] E.C.R. I-6886, para 27.

3.4 Impact of the enforcement procedures

The enforcement procedures above can have an impact on the Member State in the sense that the State is hesitant to breach the Community law because of possible fines and penalty payments. They can also have an impact in the sense that they are not strong enough to impose a threat on the Member State. The State can therefore decide not to implement the Directive because it feels that the cost of compliance with the Directive is higher than the cost of possible fines and penalty payments.

4 Theoretical background

4.1 Community level explanation

The Community level explanation focus on the enforcement procedures in Art 226, 227 and 228. The Commission has discretion in investigating whether a Member State has failed in its implementation of the Directive with these enforcement procedures. These procedures can have an impact on the non-compliance of a Member State in two separate ways. They can prevent a Member State from breaching a Directive by imposing these procedures or they can make the Member State breach a Directive if the costs of implementation are too high and the Member State deem the procedures as insufficient.

4.1.1 Impact of the enforcement procedures

This thesis will thus analyse whether the procedures had an impact of the non - compliance by Sweden in the sense that they were insufficient or if they rather had an impact in making Sweden implement the Directive correctly in the end due to its sanctions in form of fines, trial costs or penalty payments.

4.2 Member State level explanations

This thesis will use different explanatory factors or variables stemming from the Member State in order to investigate whether they have an impact on the implementation deficit on the Directive studied. Such explanatory factors can be numerous but share the fact that they relate to something dependent on the Member State itself. There are in other words characteristics in the Member State that explains the implementation deficit. These explanations can relate to three broad and general categories: ability to understand, willingness and capability to implement Directives. There could possibly be more explanatory factors but the factors below are some of the most common and agreed upon between scholars.

4.2.1 Ability to understand the Directive

If a Directive is vague or subject to different interpretations it can be difficult for the Member State to implement it correctly since it cannot understand the intentions behind. Since Directives often relates to different and joined areas with significant national legislation there can be several difficulties if the Member State do not understand them.[58] Therefore, the

[58] Falkner, Gerda et al, *Complying with Europe – EU Harmonisation and Soft Law in the Member States*, (2004) p. 453f.

Directive must be easy to interpret and not be vague in order for the Member State to comply with the Directive.

4.2.1.1 Vagueness

The process leading to the implementation of a Directive is long and full of compromises between the Member States. It is therefore important that the Member States have a similar interpretation of the Directive and it therefore needs to be clear in order to avoid misunderstandings. Directives can however have several different interpretations that can be possible. It is therefore up to the Commission and its enforcement procedures to decide which interpretation is correct.[59]

4.2.1.2 Different interpretations at different administration levels

It can furthermore be problems with different interpretations in the Member State. If different parts of the administration interpret the Directive in different ways, it can lead to harm and incorrectly implementation. To avoid this problem it is necessary to have an internal culture within the administration to develop a joined interpretation of the Directive.

4.2.2 Willingness to implement the Directive

In order to implement the Directives the Member States must be willing to implement them. If a Member State is hesitant to implement a Directive, it can lead to a delay or a failure in the implementation. Several factors can have an impact on the Member States willingness to implement Directives. This thesis will investigate and analyse four factors: norms and dominant belief system, role of civil society, political culture and reputation within the EU.

4.2.2.1 Norms and dominant belief system

A possible explanation regarding the willingness to implement directives can be norms inherent in the Member State. Börzel claims that positive citizen values, attitudes and beliefs towards Europe enhance the domestic legitimacy of EU. In that sense they increase political actors acceptance of EU legal norms and the implementation of directives therefore become a matter of normative obligation.[60]

Norms, beliefs and rules can guide the implementation of a Directive in the sense that they collectively provide the foundation for a political actor's interest. Therefore, compliance happens when legalized norms are deeply rooted in the Member State and become institutionalized into accepted practice. This suggests that if the public and the Member State are

[59] Falkner, Gerda et al, *Complying with Europe – EU Harmonisation and Soft Law in the Member States*, (2004) p. 463f.
[60] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 24f.

supportive of the EU there will be fewer infringements for non-implementation of environmental directives. [61]

This leads to the hypothesis that implementation of environmental directives will be better the higher the approval rate of the EU in a Member States population. [62] The attitude towards the EU plays an important role in determining the cooperative conditions during the process of implementing European policies in member states. The lower the overall support of EU the higher the probability that a member state will face difficulties in implementing European policies.[63]

4.2.2.2 Role of civil society

The role of civil society shares some aspects with the norms and dominant belief system towards the EU. Since the civil society has an important role in shaping the publics attitude towards the EU, they can perhaps be an important factor when it comes to the implementation of a Directive. Börzel states that they have an important role in the embedding, mobilizing and sanctioning normative obligations at the domestic level. [64] This thesis will therefore investigate whether civil society had an impact in the political process and whether they tried to be active in the decision-making process. If they are negative against the implementation of a specific Directive and the Member State does not comply with the Directive then there can perhaps be a correlation.

4.2.2.3 Political culture

The political culture can also have an impact in the willingness to implement Directives. Börzel argues that there can be a north-south dilemma where the northern Member States have better implementation record than the southern. Sverdrup also argues that the northern, Scandinavian, countries are better in implementing Directives because they pursue a more consensus-seeking approach with limited use of Courts. [65] Börzel agrees and argues that implementation more likely to run into opposition and/or delays where legal systems are more litigious, complex or tolerant of non-compliance. Disputes will often settle quickly in the northern Member States since they are respectful of international law and are compliance-oriented. Therefore, implementation will proceed more smoothly.[66]

---

[61] Ibid, p. 23ff.
[62] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 24.
[63] Lampinen, Risto & Uusikylä, Petri, *Implementation Deficit – Why Member States do not comply with EU drectives*, (1998) p. 239, Kaeding, Michael, *Determinants of Transposition Delay in the European Union*, (2006), 240.
[64] Lampinen, Risto & Uusikylä, Petri, *Implementation Deficit – Why Member States do not comply with EU drectives*, (1998) p. 239f.
[65] Sverdrup, Ulf, *Compliance and Conflict Management in the European Union: Nordic Exceptionalism*, (2004) p. 27.
[66] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 25f.

4.2.2.4 Reputation within EU

The fourth and final factor when it comes to the willingness to implement directives is the reputation. Perkins and Neumayer argue that Member States will comply with legal obligations when they anticipate that the long-term costs from non-compliance in terms of damage of their reputation outweigh any short-term gains. Compliance also offer states the possibility to prove their credentials as reliable and legitimate partners. The reputation is especially important for recent entrants. Since they are often keen to prove their credentials, they will make greater efforts to implement environmental directives. They will furthermore be concerned about reduced political influence if they have a poor publicized record of non-compliance.[67]

On the other spectrum, long-established member states are unlikely to rely heavily on compliance for their legitimacy, standing and reputation. They therefore have a strong position as legitimate members. Furthermore, powerful Member States are more autonomous in the way that they are better able to resist pressure to comply. These insights suggest that more powerful member states are in a better position to defy costly and/or disruptive EU environmental laws. Their economical, political and environmental weight means that influence in EU affairs is unlikely to depend greatly on their reputation as faithful implementers.

This leads to two hypotheses: Recent entrants into the EU will have a better record of implementation of environmental Directives. Second, that more powerful member states are likely to have a worse record of implementation. [68]

4.2.3 Capability to implement the Directive

In order for implementation of a Directive to be successful, it is not only necessary for the Member State to understand the Directive and be willing to implement it. It is also necessary that the Member State is capable to implement it. The thesis will use four factors when it comes to investigate Sweden's capability to implement the four environmental Directives. These factors are the goodness of fit, administrative capacity, efficiency of the institutions and degree of corporatism.

4.2.3.1 Goodness of fit

One of the most common explanations for implementation deficit is as stated above the concept of the goodness of fit. It focuses on the "fit" between EU level processes, policies and institutions and those found at the domestic level. The main idea is that this misfit has an impact on the

[67] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 21f.
[68] Ibid, p. 21ff.

domestic level. In order to produce domestic effects, EU policy must be somewhat difficult to absorb at the domestic level.[69]

When adjustment pressure is low because the content of EU policy is already present in a member state, there is no need to change the domestic institutions. In those situations, there is a good fit between national policy and the EU policy. On the other side, when the distance between EU policies and national ones is very high, Member States will find it very difficult to implement the European policy. [70]

The more a policy or a Directive challenges or contradicts the corresponding policy at the national level, the higher the need for a Member State to adapt its legal and administrative structures in the implementation process. Legal and administrative changes involve high costs, both material and political, which political authorities are little inclined to bear.[71] These adjustment costs imposed on domestic stakeholders are a key factor influencing the implementation of legal commitments. As the cost of implementing a policy rise actors face growing incentives to delay, dilute or even ignore their legal obligations. [72]

Three elements have an impact on the misfit between the EU policy and the national policy: the problem-solving approaches, policy instruments or policy standards. If an EU Environmental policy challenges one (two, or all) of these elements, its implementation give rise to problems for the administration. If an environmental policy gives rise to these problems, it does not have to lead to implementation failure and non-compliance. [73]Mobilization of domestic actors who pull the policy down to the domestic level by pressurizing the public administration to apply it properly may persuade national public actors *"to give priority to environmental policy and to embrace new directions"* [74]

As stated above, the hypothesis has had problems in explaining the deficit and the reasons for the limitation could be that the hypothesis is rather static in nature and that actors will not always maintain the status quo. It is therefore necessary to introduce auxiliary hypotheses allowing for a change of the domestic policy positions. [75]

---

[69] Bulmer, Simon & Lequesene, Christian (eds), *The Member States of the European Union*, (2005) p 346.
[70] Featherstone, Kevin & Radaelli, Claudio (eds), *The politics of Europeanization*. (2003) p 44f.
[71] Börzel, Tanja, *Why there is no 'southern problem'. On environmental leaders and laggards in the European Union*, (2000) p. 145ff.
[72] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 20f.
[73] Börzel, Tanja, *Why there is no 'southern problem'. On environmental leaders and laggards in the European Union*, (2000) p. 148.
[74]Pridham, Geoffrey, *National environmental policy-making in the European Framework: Spain, Greece and Italy in comparison*, (1994) p. 84.
[75] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 20f.

4.2.3.2 Administrative capacity

One of these auxiliary hypotheses or factors could be the administrative capacity of the Member State. Of particular relevance is the ability of government departments, agencies and personnel to facilitate and/or enact the steps to implement the directive. Therefore, a state with weak or bureaucratic capacity expects to encounter more difficulties in implementing EU environmental law.[76]

4.2.3.3 Efficiency of the institutions

The third factor focus on whether the Member State have stable, effective political institutions that integrates interest organizations into political decisions making have the best capabilities to implement EU directives. The efficiency relates to the administrative capacity. If a Member State has a weak or bureaucratic capacity, it probably is inefficient as well. However, a Member State can have a weak bureaucratic capacity but at the same time use its resources well and be very efficient.

4.2.3.4 Degree of corporatism

Interest groups play an important role in the decision-making and in the implementation of European policies. Corporatist agreements increase the stability and degree of institutionalization of policy networks at the national level. Therefore, Lampinen assumes that a high degree of corporatism improves the conditions for successful implementation.[77]

Other scholars agree and suggest that the fit between the Directive and the organization of interest groups also is important. These scholars focus on the cooperative relationship between government and interest groups, a constellation, which is necessary for implementation of EU law. Such agreements increase the stability and degree of institutionalization of policy networks at the national level and set more rigid rules for inter-organizational bargaining, which may facilitate the implementation process. A close and cooperative arrangement between the state and the interest group can therefore improve implementation.[78]

[76] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 25f.
[77] Lampinen, Risto & Uusikylä, Petri, *Implementation Deficit – Why Member States do not comply with EU drectives*, (1998) p. 239.
[78] Kaeding, Michael, *Determinants of Transposition Delay in the European Union*, (2006), 240.

5 Empirical analysis of the implementation of the Bathing Water Directive

5.1 The Council Directive 76/160 EEC of 8 Decmber 1975 concerning the quality of bathing water

The Bathing Directive is important for public health with its aim to ensure that the bathing waters meet minimum quality criteria. Therefore, a set of binding and guiding EU standards for a range of key parameters and requirements on the Member States to carry out regular water quality monitoring were established. The Directive also has the aim to protect the environment and people's health by decreasing the pollutions in the bathing water. [79]

Every year the Member States report the results from the samples taken of the water quality to the Commission. They make thereafter an assessment of the results and present them in a collective report. The Commission publish these reports on their homepage and lists every place and their respective quality of the bathing water.[80]

In the Directive, the following definitions are important:

a) "Bathing water" means all running or still fresh waters or parts thereof and sea water, in which: - bathing is explicitly authorized by the competent authorities of each Member State, or - bathing is not prohibited and is traditionally practised by a large number of bathers;

b) "Bathing area" means any place where bathing water is found;

c) "Bathing season" means the period during which a large number of bathers can be expected, in the light of local custom, and any local rules which may exist concerning bathing and weather conditions.

5.2 The legal background

In April 1996, Imir sent a complaint to the Commission regarding Sweden's transposition of, and compliance with, a number of Environmental Directives related to water and air quality. Amongst those Directives was the Bathing Directive. [81] Imir argued that the Swedish law did not have any

[79] Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water.
[80] http://ec.europa.eu/environment/water/water-bathing/index_en.html, 2008-12-15.
[81] http://www.imir.com, 2008-11-05

knowledge regarding the designation of water areas for purposes such as bathing water. The Swedish government could therefore not designate bathing areas in a way that resulted in a legal effect compatible with relevant directives. Furthermore, they argued that Swedish laws are normally very brief and vague.

Swedish regulations are normally precise and rely on preparatory notes in a large extent. It does however not matter if Sweden is precise and relies on preparatory notes since it is normally a discretionary matter if there is a need to issue regulations within a certain context. The notes can also be contradictory and generally difficult to use for narrowing down the otherwise vague law.

Moreover, the complainant argued that Swedish authorities and the Swedish Courts had very limited knowledge and understanding of EC law, at the time. This would call for extra care when transposing EC Directives to Swedish law. It was therefore especially important that the transposition of the Directive was precise.

The specific critique against the Directive regarded the fact that there were no regulations implementing the directive in April 1996 and that no mandatory quality standards for bathing areas had been set. Furthermore, the transposition of article 3 into the Swedish national legal system did not cover all the cases capable of arising. [82]

Following the complaint the Commission began an investigation and sent a letter of formal intent to Sweden in August 1999. The basis of the letter was that the Commission was not satisfied with the reported amounts and that Sweden had breached article 4.1 and 6.1 by not acting appropriately to make sure that the quality of the bathing water corresponded with the limits set by the Directive. Furthermore, they had breached the articles by not completing the amount of samples that the Directive prescribes. As many as 146 bathing areas of 840 had too low sample –taking frequency in 1998, while 31 bathing areas at the same time had a bad water quality. [83] The Commission therefore urged the Swedish government to supply their position on the matter.

Sweden argued that the Bathing Water in Sweden was in general of very high quality and that the arrangement for taking samples was not suited to Scandinavian conditions. The Directive demanded that mineral oils, phenol and surface-active substances would be analysed. These parameters are very uncommon in Swedish bathing waters and the Directive may therefore have

[82] http://www.imir.com, 2008-11-05

[83] The European Commission, *Press release from the Commission*, 29 July 1999, IP/99/599, Regeringens skrivelse 1999/2000:60, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 1999*, (2000).

felt obsolete for Sweden in 1995. Sweden hoped for a new Directive that would take better concerns for Swedish conditions.[84]

Furthermore, Sweden responded to the criticism by letting the Commission know that a program was to be set up in order to correct the flaws. This program had primarily the ambition to develop and executing the sampling to reach the sufficient levels. The Environmental Agency received the task to be in charge of the action program and identify the measures to fulfil the Directive. The Commission believed that it was positive that Sweden had decided to take measures but stressed that a Member State cannot omit to fulfil obligations according to their national legislation with reference to the preparation of a new Community legislation. [85]

The foreign department did however receive a reasoned opinion from the Commission regarding the quality of the bathing water in the January 2000, which meant that Sweden had two months to take care of the problems before the Commission would refer them to the Court. [86] They had not taken the action program of the Agency into consideration, probably because it was not finished until March 2000 when the Agency presented it for the Swedish government. Ironically, this was the same day as the Commission referred the case to the Court. The agency could in their action program however establish that the bathing areas that had had recurring problems with the water quality only represented 0, 8% of all bathing areas 1998.[87]

The reasoned opinion was as the letter of formal intent based on Sweden's non-compliance with article 4.1 and article 6.1. According to article 4.1, the Member States shall take measures that are necessary to ensure that the quality of bathing water will correspond with the limits of the Directive. The deadline for compliance with the parameters of the Directive was in 1995 and the Commission was concerned that Sweden had not improved the quality of the water despite being a member for four years. Since nothing had happened, the Commission thought that Sweden had failed to take the necessary measures according to article 4.1. [88]

Moreover, Sweden had failed to implement article 6.1 since they had failed to take a sufficient amount of samples of the bathing water. According to article 6.1, it is up to each member to take samples of the water. These samples cannot be below the frequency stated in the annex. Since Sweden's frequency was below the frequency stated, the control was insufficient and Sweden had therefore violated the purpose of the Directive and article 6.1.[89] The Commission decided ultimately to refer Sweden to the Court of Justice to ensure that bathing waters comply with the limit values set out in the

[84] Sweden's response to the letter of formal intent: EUM1999/2532/R.
[85] Sweden's response to the letter of formal intent: EUM1999/2532/R.
[86] The European Commission, *Reasoned opinion*: SG(2000) D/100855.
[87] Naturvårdsverket, *Redovisning av uppdrag om kvaliteten på strandbadvatten*, (2000), p. 7.
[88] The European Commission, *Reasoned opinion*: SG(2000) D/100855, p. 12-18, The European Commission, *Press release from the Commission*, 29 July 1999, IP/99/599.
[89] The European Commission, *Reasoned opinion*: SG(2000) D/100855, p. 19-25.

Bathing Water Directive. In the Commission's opinion, Sweden failed to ensure such compliance and furthermore failed to sample bathing waters correctly. The Commission's annual report published in May 2000 showed that the situation in Sweden was still not satisfactory.[90]

In June 2001, the ECJ ruled that Sweden had failed to fulfil its obligations under the Bathing Water Directive. Sweden had not ensured that all of its 370 coastal water-bathing areas and 400 fresh water - bathing areas were monitored as often as stipulated by the Directive. They had furthermore not taken necessary measures to secure that the quality of the bathing water would correspond with the obligatory limits in the Directive. They had neither followed the demands of the least frequency of sample – taking. Sweden ultimately admitted that they had breached article 4.1 and article 6.1[91] and they therefore received sanctions by replacing costs for the trial. [92]

While the situation improved after the ruling, the monitoring of a small number of bathing areas, mainly freshwaters around the country, were still not sufficient way. The Commission thus decided to send an inquiry to Sweden just nine months after the ruling regarding the measures taken to follow the ruling. Sweden did not respond and the Commission decided to send Sweden a new Letter of Formal Notice in 2002 under Article 228 of the Treaty to make Sweden comply with the Directive. [93] Sweden responded by giving a report of the quality of the bathing water and the measures taken, which were liked by the Commission.[94]

The Commission also decided to present a proposal for a new bathing directive in October 2002, with the intent of replacing the bathing directive from 1975. This proposal has its background in strong Swedish pressure for adjusting the Directive to the varied geographic conditions within the EU. The new proposal has fewer demands on the frequency of the sample – taking when the quality of the bathing water is good and stable and it has decreased the number of parameters that needs to be controlled.[95] The proposal eventually culminated in a new bathing Directive, which came in 2006.

---

[90] The European Commission, *Press release from the Commission*, 27 July 2000, IP/00/871, Regeringens skrivelse 2001/2002:30, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2000*, (2001).

[91] Case C-368/00 *Commision v. Sweden* ECR [2001] I-4605, Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 200*1, (2002).

[92] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002).

[93] The European Commission, *Press release from the Commission*, 21 January 2003, IP/03/84, The European Commission, *Letter of Formal Intent*: SG(2002) D/221034.

[94] Sweden's response to the Letter of Formal Intent: EUM2002/1382/R.

[95] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002), Regeringens skrivelse 2002/03:60, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002*, (2003).

5.3 Community level explanation

Regarding whether the Community level had an impact in Sweden's non-compliance with the Bathing Water Directive is difficult to investigate since the empirical material is limited and the thoughts of the government at the time difficult to know anything about. There are arguments that suggest that the enforcement procedure under Art 226 were insufficient and causing Sweden's non-compliance, while the possible sanctions under Art 228 may have caused Sweden to comply.

5.3.1 Impact of the enforcement procedures

It is difficult to know whether the enforcement procedures made it more or less likely that Sweden would fail in its implementation of the Bathing Directive. The Commission made, as stated above, a referral to the ECJ because of Sweden's non – compliance. It is entirely possible that Sweden as a new Member State tested the Commission and the ECJ in order to see how far they could breach the Directive and what kind of sanctions the ECJ would pose on Sweden. Sweden had to pay the costs for the trial but when they did not comply with the judgment, they received a new Letter of Formal Notice in 2002 under Article 228 of the Treaty to make Sweden comply with the Directive. [96]

They may therefore also have tested the Commission and the ECJ under Art 228 but realized that the risks for non – compliance was too high and sanctions such as fines and penalty payments too costly to bear. This latter argument can be confirmed by the fact that Sweden responded to the letter of formal notice swiftly by giving a report of the quality of the bathing water and the measures taken, which the Commission liked.[97]. It is thus possible that they wanted to test the Commission under Art 226 and 228 but were more afraid of the effectiveness under Art 228 since the sanctions were more costly.

5.4 Member State level explanations

Several factors can explain the non-compliance with the Bathing Directive on the Member State level. The first interesting factor falls under Sweden's ability to understand the Directive.

5.4.1 Ability to understand the Directive

Directives can often be vague in order to cover and be suitable to all parties involved. This can lead to problems since the actors responsible for implementing the Directive are not sure how to interpret the Directive.

[96] The European Commission, *Press release from the Commission*, 21 January 2003, IP/03/84, The European Commission, *Letter of Formal Intent*: SG(2002) D/221034.
[97] Sweden's response to the Letter of Formal Intent: EUM2002/1382/R.

Sweden had problems regarding its ability to understand the Bathing Water Directive. They had problems with both its vagueness and the fact that different administrations interpreted the Directive in different ways.

5.4.1.1 Vagueness

The Environmental Agency was responsible for the supervision of the 290 municipalities regarding the implementation of the Bathing Water Directive. To convey the content and the demands of the Bathing Directive the Environmental Agency therefore composed provisions regarding the bathing water on behalf of the government. [98]

It was however difficult for the municipalities to receive sufficient information regarding how the provisions and public advises provided by the Environmental Agency should be interpreted, especially since they were supposed to be in place as soon as soon as Sweden joined the EU in 1995. The provisions defined bathing area, bathing water and bathing season the same way the Directive defined them. The provisions also defined the frequency of the sample - taking the same way. The sample - taking should start two weeks before the bathing season began and be continuous every two weeks during the season.

The formulation in the provisions did not make the municipalities wiser since the definition of bathing area, bathing water and bathing season had not been specified properly or been adjusted to Swedish conditions. Therefore, the municipalities did not know how to adjust to the demands in the Directive.[99] Moreover, the definition of bathing areas stated that a bathing area was an area where the placement of certain equipment made it apparent that the area had its purpose as a bathing area. These vague formulations made the interpretation of the Directive problematic, which in turn made the implementation difficult.

Besides the provisions, [100] there was public advice that would serve as a support for the municipalities since they could explain how to implement the provision. The public advice 89:4 defined the bathing season as "the period when the average numbers of bathers are relatively big, at least 75 - 100 bathers each day". This definition made the definition of the bathing season to correspond with the Directive, thus making the Bathing Directive applicable. [101]

Most of the municipalities did not however have any statistics regarding how many people were bathing on average during the bathing season at respective bathing area.[102] They simply presupposed the interpretation that

[98] SNFS 1999:6, *Statens Naturvårdsverks föreskrifter om strandbadvatten*, (1999).
[99] Sveriges Kommuner och Landsting, *Kommuner följer Badvattendirektivet*, (2006), http://www.skl.se/artikel.asp?A=22137&C=6721 2008-12-20.
[100] SNFS 1999:6, *Statens Naturvårdsverks föreskrifter om strandbadvatten*, (1999).
[101] Naturvårdsverket, *Ändring av Allmänna Råd 89:4 Strandbad, Vattenkvalitet och kontroll*, (1996).
[102] Sveriges Kommuner och Landsting, *Kommuner följer Badvattendirektivet*, (2006), http://www.skl.se/artikel.asp?A=22137&C=6721 2008-12-20.

the bathing season was comprised of sunny summer days. Therefore, they reported all the baths within the community that had 75-100 bathers when the prerequisites for bath were the biggest to the Commission. The point was however that they should report an average of bathers during the complete bathing season, not just when the prerequisites for baths were the biggest. The municipalities did not know how the Commission and the Swedish government expected them adjust to the Directive. The municipalities did not consider the Directive clear and unequivocal, which made them report areas that they in reality did not have to report.[103]

According to the Environmental Agency, the municipalities had also shown uncertainty regarding execution of the provisions. The municipalities argued that the public advises were not explanatory and clarified enough to follow the Directive correctly.[104] In combination with vague formulations, it made the implementation difficult. The interpretation by the municipalities of the Directive was, as previously stated, in principle that every bathing platform was a bathing area. The Environmental Agency also interpreted the Directive the same way since the bathing area in the Directive was interpreted as "every place where bathing water exists" It was therefore not until 1996 when the public advice 89:4 was amended that the bathing platforms were excluded from the interpretation of bathing areas.

5.4.1.2 Different Interpretations at different administration levels

As shown above, the Environmental Agency had the same interpretation of the Directive as the municipalities. The change of the public advice 89:4 led to slightly different interpretations at different administration levels since the old view of what the municipalities meant by bathing area did not correspond to the new definition.

The Environmental Agency therefore believed that a starting point would be the numbers of bathers and if public or commercial interests actively promoted bathing. The Swedish Association of Local Authorities and Agencies believed that the 800 - 900 bathing areas concerned by the Directive were too many. The demands from the EU regarding control of the Bathing Directive should therefore not have been applicable on all of the 800 bathing areas in Sweden. It should instead have been applicable in bigger bathing areas. They were also convinced that the municipalities had reported too many bathing areas to the Commission with Sweden's introduction in EU.[105]

---

[103] Sveriges Kommuner och Landsting, *Kommuner följer Badvattendirektivet*, (2006), http://www.skl.se/artikel.asp?A=22137&C=6721 2008-12-20.
[104] Naturvårdsverket, *Redovisning av uppdrag om kvaliteten på strandbadvatten*, (2000), p. 14.
[105] Sveriges Kommuner och Landsting, *Kommuner följer Badvattendirektivet*, (2006), http://www.skl.se/artikel.asp?A=22137&C=6721 2008-12-20.

5.4.2 Willingness to implement the Directive

Regarding the willingness to implement the Directive there are some factors that could be capable of having an impact. These factors are as previously mentioned the norms and dominant beliefs, role of civil society, reputation within the EU and political culture.

5.4.2.1 Norms and dominant belief system

Sweden joined the EU in 1995 after a referendum in which the difference between the majority voting for EU were merely a few per cent more than the minority who did not want to join the EU. The norms and belief system for supporting and being a part of the EU system was thus not overwhelming. It is possible that this factor could have had an impact since the Directive had to be implemented the moment Sweden joined. Sweden did therefore not have the opportunity to influence the content of the Directive. It is possible that they therefore were resistant in implementing the Directive since it was not suitable to Swedish conditions. [106]

The municipalities were perhaps not willing to execute sample – taking in the extent that the Commission wanted. It is thus entirely possible that they neglected the quality of the bathing water and did not report the results in the extent the Commission wanted. The municipalities are autonomous in relation to the government and could therefore not be accountable. It is therefore possible that there existed a silent resistance from the municipalities. This hypothesis is however very difficult to investigate in this thesis since it demands a lot of resources and time but it can still be a possible factor.

Since there was no expressed resistance against the Directive in the form of formal veto, blockade or opposition from national actors, the conclusion must be that there was no resistance despite the possibilities for a silent resistance.

5.4.2.2 Role of civil society

The civil society did not have an impact in the political process and were not active in the decision-making process. They were neither positive nor negative against the implementation of the Directive. The majority voted for Sweden's inclusion in the EU and were thus positive for the membership and in the extent positive for the introduction of Directives into national legislation.

5.4.2.3 Reputation within the EU

Perkins and Neumayer argue, as seen above, that reputation is especially important for recent entrants. Since they are often keen to prove their

[106] Sveriges Kommuner och Landsting, *Kommuner följer Badvattendirektivet*, (2006), http://www.skl.se/artikel.asp?A=22137&C=6721 2008-12-20.

credentials, they will make greater efforts to implement environmental directives.[107]

Sweden had already taken samples of the quality of the bathing water before they joined the EU. They argued that the bathing water was in general in very good condition and that the arrangement for taking samples in the Directive was not suitable to Scandinavian conditions. This suggests that they had thought that their efforts were just and that they had prepared for the implementation of the Directive. They were in other words aware of their reputation as new members. Is it thus possible that Sweden's reputation within the EU cannot explain the lack of implementation? Since the arguments by the Swedish government were mostly that the Directive was not suitable to Swedish conditions it seems that the non-compliance had more to do with the lack of fit between the Directive and the national legislation rather than Sweden's reputation.

5.4.2.4 Political culture

Sverdrup argues that Scandinavian countries are better in implementing Directives because they pursue a more consensus-seeking approach with limited use of Courts. [108] Why did Sweden then not comply with the Directive and why did the non-compliance reach all the way to the Court where Sweden had to pay the costs of the trial?

These leads to two different interpretations: Other countries can be better than Scandinavian countries regarding implementation of Directives. This hypothesis fails since there are statistics from the annual reports that show that the Scandinavian countries are better in implementing Directives. The second hypothesis is that Sweden can fail to comply with Directives due to other factors. This hypothesis seems more likely since it is clear that Sweden's ability to understand the Directive had an impact on the non-compliance.

5.4.3 Capability to implement the Directive

So far, it is possible to draw the conclusion Sweden's ability to understand the Directive was low because of difficulties in the interpretation. Sweden's willingness to implement it are however more difficult to draw any conclusions about, since there is nothing substantial that shows a resistance in implementing the Directive. The last category that can have had an impact on the non-compliance is Sweden's capability to implement the Directive. Were there any factors in Sweden's capability to implement the Directive that influenced the non-compliance?

[107] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 21f.
[108] Sverdrup, Ulf, *Compliance and Conflict Management in the European Union: Nordic Exceptionalism*, (2004) p. 27.

5.4.3.1 Goodness of fit

Sweden joined the EU in 1995 and had therefore no opportunity to influence the content of the twenty-year-old Bathing Directive. Instead, they had to take the necessary measures to secure the quality of the bathing water before they joined. The Environmental Agency, the Environmental Department and the Swedish Local Authorities and Agencies all believed that the content in the Directive were not suitable to Swedish conditions, regarding both the weather and the relevant parameters that should be sampled.[109]

The Directive was misfit with the Swedish legislation and there was no national legislation that could be "matched" with the Directive. The institutions had not prepared themselves enough; they had not developed any new routines and they had not put a new authority in place in preparatory purpose. They regarded such types of measures not necessary.

Sweden received pressure from above and forced to try to put new legislation in place to fit the political content in the Directive. Sweden therefore notified the Commission about the national measures put in place in order to fulfil the commitments in the Directive. The Environmental Department thereafter notified the Commission in February 2000 that The Environmental Code had replaced the Law on Health Protection (1982:1080) and that the Constitution (1998:899) about Environmental Hazardous Operations and Health Protection had replaced the Health Protection Constitution (1983:616).[110]

At the time of these replacements, Sweden had already received a letter of formal intent from the Commission.[111] The Environmental Department responded to the letter of and argued that Sweden for a long time had supervised the quality of the bathing water. According to their experiences, the quality of the bathing water was in general in very good condition.[112]

These standpoints had its basis on the long tradition in Sweden to measure the quality of the Bathing Water already before the membership in the EU. The problem was rather that the 31 bathing areas that had been red - marked, i.e. that the water had a low quality, were not necessarily bad. 13 of these red – marked areas were red due to the fact that Sweden had neglected to report those areas with the parameter of "total number of coliforma bacteria", which was necessary according to the Directive. This parameter gave the Department a picture of the biological activity in the

---

[109] Sveriges Kommuner och Landsting, *Kommuner följer Badvattendirektivet*, (2006), http://www.skl.se/artikel.asp?A=22137&C=6721 2008-12-20, Miljödepartementet, *Rådets direktiv 76/160/EEG om kvaliteten på badvatten*, (1999), p. 3, Naturvårdsverket, *Redovisning av uppdrag om kvaliteten på strandbadvatten*, (2000), p. 11.

[110] Miljödepartementet, *Underrättelse om nationella åtgärder för att uppfylla Sveriges förpliktelser i Europeiska unionen*, (2000).

[111] The European Commission, *Press release from the Commission*, 29 July 1999, IP/99/599.

[112] Miljödepartementet, *Rådets direktiv 76/160/EEG om kvaliteten på badvatten*, (1999), p. 3.

water since it could have been a breakdown of plants and algae that was not a symptom of pollution. Moreover, Sweden had not report the three physical-chemical parameters, mineral oils, surface-active substances and phenol. They are however very unusual in Sweden and a very rare cause for bad bathing water quality and were therefore not reported according to the Environmental agency.[113]

Furthermore, if a sample - taking showed bad limits the Member States had to take samples again. To show that the water was beneficial many samples were necessary and at each area twenty sample - takings were necessary at different times to show the good quality.[114] Since the bathing season in Sweden is merely one to three months it is difficult to take that many samples. It is thus possible to argue that the difference in the bathing seasons between the Member States need to be taken into consideration and that the demands should be differentiated in relation to the number of bathers and the risk for pollution at respective bathing area.

The department also gave the explanation that the problem in implementing the Directive was not the quality of the bathing water. The problem was rather how they could show the good quality. Furthermore, the Department referred to the fact that the Commission actually were working on a new proposal to a new Directive, which would suit Nordic weather conditions and length of the bathing season.

All these arguments are examples of how the Bathing Water Directive was not suitable to fit the Swedish legislation at all.

5.4.3.2 Administrative capacity

When the Commission notified Sweden with the letter of formal intent in August 1999, the Swedish government decided that the Environmental Agency would have the assignment to identify the measures necessary to fulfil the Directive. Furthermore, they received the task to develop and suggest an action program. This program declared that the critique from the Commission regarding the frequency of the sample - taking had different causes, amongst others the municipalities' lack of economic and personal resources. The lack of resources led to low priority of the sample - taking and that sampling sometimes was down when the staff has had vacation.[115]

The Swedish Local Authorities and Agencies were also of the opinion that it was hard for the municipalities in the short period to learn how to interpret the action program from the Environmental Agency. Moreover, some municipalities decreased their sample - taking by referring to article 6 in the Bathing Water Directive. It was however the Commission that should

[113] Naturvårdsverket, *Redovisning av uppdrag om kvaliteten på strandbadvatten,* (2000), p. 11.
[114] Miljödepartementet, *Rådets direktiv 76/160/EEG om kvaliteten på badvatten,* (1999), p. 2.
[115] Naturvårdsverket, *Redovisning av uppdrag om kvaliteten på strandbadvatten,* (2000), p. 11.

decide which bathing areas that could decrease their sample -taking. [116] This could likely depend on the lack of economic or personal resources or of a misinterpretation of article 6.

The Environmental Agency was of the opinion that several of the identified problems with implementation of the Directive were lack of information. The available information for the municipalities were in the public advises and the homepages of the Agency and the Commission. The difficulties for the municipalities to interpret the content led to poor execution of the Directive. The municipalities therefore argued that they needed knowledge and information on how they should take samples and report the results.

With this background, the Agency suggested that a supplement to the information available to the municipalities was necessary as well as the strengthening of the channels for information strengthened. The Agency also realised that they had to improve the communication between the Commission and the Agency and have continuous feedback between them and the municipalities. This feedback could then give the Agency a foundation for local action programs. Theses local action programs took consideration to local measures, in order to improve the quality of the bathing water and giving the municipalities increased knowledge.

The municipalities still had lack of knowledge due to general personal movement. They constantly had to teach the new staff which were demanding in terms of both time and money. This could be a probable explanation for how the lack of competence negatively affected the frequency of the sample - taking of the bathing water. The municipalities expected that the vacation substitutes were able to maintain the competence during the season but they did not have adequate information how to perform the sample - taking and how to report the results.[117]

Moreover, the County administrative boards did in general not participate in the management of reporting, follow-up and evaluation of the quality of the beach bathing water during this period. The County Administrative Boards were responsible for the supervision the County according to the Constitution on supervision and they would actively act for the coordination regarding the information sustention.[118] The Environmental Agency proposal to take care of the problem was that the role as a supervisory guidance authority would instead be taken care of the municipalities in cooperation with the Environmental Agency. Moreover, they argued that they should transfer the information and knowledge that existed at the County administration boards to the municipalities.

---

[116] Sveriges Kommuner och Landsting, *Kommuner följer Badvattendirektivet*, (2006), http://www.skl.se/artikel.asp?A=22137&C=6721 2008-12-20

[117] Naturvårdsverket, *Redovisning av uppdrag om kvaliteten på strandbadvatten*, (2000), p. 17.

[118] Naturvårdsverket, *Redovisning av uppdrag om kvaliteten på strandbadvatten*, (2000), p. 16.

Concerning the arguments developed above it was clear that the authorities responsible for the sample – taking and reporting, the municipalities, did not have sufficient administrative capacity due to lack of knowledge, information and personal resources.

5.4.3.3 Efficiency of the institutions

It could still be possible for the municipalities to be in taking samples and reporting the results to the Commission, despite their insufficient administrative capacity.

They had been responsible for the sample - taking of the bathing water a long time before Sweden joined the EU. The local level was responsible for the execution of the sample – taking due to the possibility to make local distinctions regarding the extent and the frequency of the sample - taking. With the implementation of the Directive, the capacity of the municipalities decreased since it was not suitable to Swedish conditions and did not take sufficient regard to the short bathing season compared to the bathing season in southern Europe.[119]

Since they had not accommodate the Directive to Swedish conditions, the interpretation was difficult and the Directive did not "fit" Swedish legislation, it was the difficulties to be efficient, take sufficient amount of samples, and report the results correctly. Especially since the competent authorities would execute sample - takings when the daily numbers of bathers were the biggest and the initiation of the sample - taking had to take place two weeks before the beginning of the bathing season.[120] When the Commission did not respect anomalies in the measured limits when caused by floods, other natural disasters or abnormal weather conditions, it posed even more problems for the efficiency of the municipalities.

All these burdens on the municipalities led to problems in their implementation of the Directive. This thesis therefore argue that it should be mandatory to coordinate the work between the municipalities and the counties since coastal stretches overlap several municipalities and demands coordinated efforts to improve the quality of the water. Since this coordination did not exist, the implementation of the Directive was not sufficient and the efficiency decreased.

5.4.3.4 Degree of corporatism

A number of actors were involved in the process such as the Environmental Department, the Environmental Agency and the municipalities in the implementation of the Directive. The Agency received the responsible to define and regulate how the municipalities would apply the Directive. The cooperation were thus at the local, regional and the central level. Furthermore, they were in different ways active in planning and executing

[119] Sveriges Kommuner och Landsting, *Kommuner följer Badvattendirektivet*, (2006), http://www.skl.se/artikel.asp?A=22137&C=6721 2008-12-20.
[120] Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water.

of the Directive. The agency had the total responsibility for the supervision of the bathing water and worked as an expert group both up (in the work groups of the Commission and with the department) and down for the municipalities. The Agency was responsible for the municipalities and would with their expertise guide them in the application of the Directive.[121]

Sweden has a long tradition of official forms of cooperation in the government in the type of institutional participant form of corporatism, where the government invites different parties in a governmental cooperation. The backside of that cooperation can be that opportunities for parties to block the implementation process arise. Corporatism cannot explain the failure to implement the Directive in this case since there were no interest groups represented in the implementation process.

5.5 Conclusion

Only a few factors can explain Sweden's non – compliance with the Directive. In the Community level, it is possible that the enforcement procedures were insufficient since Sweden had just been a member and wanted to test the Commission and the Court in order to know how far they could breach the Community law. When the received a letter of formal intent under Art 228 they complied immediately. This might be an argument for the effectiveness of Art 228 as well as the ineffectiveness of Art 226. It is however difficult to prove the correlation between the enforcement procedures and Sweden's non-compliance with the Directive. Some of the other factors may therefore provide results that are more conclusive.

There were three overarching factors in the Member State level. These were the ability to understand the Directive, the willingness to implement it and the capability to implement it. Regarding the ability to understand the Directive, it was both difficult to interpret it since it was vague and there were different interpretations at the different administration levels. The municipalities did not know what was expected of them because of interpretative problems with the vague formulations in the legislative text and in the action program and public advice. The bathing areas were as an example defined as "every place where bathing water exists", which made the municipalities to report excessively many bathing areas to the Commission. At all these bathing areas the municipalities had an expectation to perform sample - taking, which lead to fallacious results because some places that did not have to be measured were still measured. The vague formulations resulted in wide interpretations, which made the implementation of the Directive difficult.

Regarding the willingness to implement the Directive it is not entirely clear whether the Swedish institutions were unwilling to implement the Directive or not. Since the fact that the Swedish municipalities are autonomous in relation to the government, it can have had an impact on the frequency of

[121] SNFS 1999:6, *Statens Naturvårdsverks föreskrifter om strandbadvatten*, (1999).

the sample - taking and which parameters were reported. It is possible to interpret this as a silent resistance from the municipalities. The municipalities did however not express anything negative against the Directive. Unwillingness can therefore not be a clear factor for the non-compliance with the Directive.

Regarding the capability, it was clear that the administrative capacity and the efficiency of the institutions had an impact on the non-compliance. The administrative capacity was insufficient in the municipalities regarding competence and financial and personal resources. Regarding the financial resources, they did not receive full compensation from the government for the excess cost that the Directive implicated. The personal resources lacked regarding the number of staff that worked with the sample – taking and reporting of the results. They also lacked in competence since the municipalities suffered from a big personal movement and the substitutes lack of knowledge because of insufficient information. Moreover, they were not efficient due to previous mentioned inabilities in understanding the Directive as well as lack of knowledge, information and the lack in financial and personal resources.

The Directive did not fit the previous Swedish legislation since it could not be matched with Swedish legislation or put relevant demands of the sample-taking regarding adjustment to Swedish condition. The Directive rather put demands on parameters that were not applicable in Sweden. Furthermore, the Directive was written twenty years before Sweden joined the EU, which could mean that the parameters were relevant to measure in 1975 or never had been. This mean that the misfit between the Directive and the national legislation also had an impact while the degree of corporatism did not have an impact since there were not any interest organisations involved in the implementation process.

6 Empirical analysis of the implementation of the Directive on the disposal of Waste Oils

6.1 The Council Directive 75/439/EEC of June 16 1975 on the disposal of Waste Oils

The Directive on the disposal of Waste Oils has its aim to ensure the safe collection and disposal of waste oils in the Member States. In order to have a safe collection of Waste Oils the Member States had to take necessary measures to ensure that that they recycled in a correct way.

6.2 The legal background

The Member States had to incorporate the Directive by the end of 1990. Since Sweden was not a member in the EU at the time, the Commission granted them the opportunity to incorporate the Directive later. Sweden had however not incorporated the Directive in 2001, which led the Commission to send a letter of formal notice to Sweden in April 2001.

The Commission had previously sent Sweden a questionnaire regarding the measures taken to incorporate the Directive. The Commission argued that the answers of the questionnaire showed that Sweden had not taken measures regarding incorporation of the Directive in the national legislation. The Commission therefore send a letter of formal notice to Sweden.[122]

Sweden was criticised on two different aspects. They had not applied article 3.1, which stated that they had to treat waste oils primarily with regeneration. Secondly, they had not implemented article 11, which contained demands on documentation on the people that produce, apprehend and/or stack up waste oils.[123]

Sweden responded by stating that they had a legal framework in place with demands that waste oils will be treated with regeneration. They argued that the legal framework showed the appropriate measures taken. Furthermore, they had introduced a regulation with demands on documentation, which corresponded, to the demands in article 11. Moreover, they argued that the rules within the legal framework corresponded to article 3.1. [124]

[122] The European Commission, *Letter of Formal Intent*: SG (2001) D/287496 p. 3.
[123] The European Commission, *Letter of Formal Intent*: SG (2001) D/287496 p. 3f.
[124] Sweden's response to the Letter of Formal Intent: EUM2001/704/R.

In the reasoned opinion, the Commission stated that Sweden had fulfilled measures demanded in article 11. The explanations by Sweden regarding the lack of implementation of article 3.1 were however not sufficient according to the Commission. Sweden claimed that rules that corresponded to article 3.1 existed but the Commission argued that they were merely public rules on all types of waste while article 3.1 need a special rules on waste oils. The Commission therefore stated that Sweden would take the measures needed to fulfil article 3.1 within two months.[125]

In its response Sweden stated that they were about to introduce new provisions in its regulation of waste oils regarding how the waste oils will be taken care of through regeneration. Furthermore, they stresses that the Environmental Agency received the responsible to investigate what other management control measures were necessary. [126]

Since Sweden did not respond appropriately in accordance with article 3.1 according to the Commission, they were subject to a referral to the ECJ. Sweden gave an explanation regarding its non - implementation, where they stated that concerned authorities had considered which type of approach was the most appropriate. However, it seemed difficult to use the regeneration technique due to technical, economical and organizational limitations. Furthermore, they argued that they had introduced legislation to fulfil the demands according to the Directive but eventually agreed that the recycling between 1995 and 2000 been far too low. [127]

The Court stated that Sweden should still ensure that priority is given to the processing of waste oils by regeneration where technical, economic and organizational constraints so allow. Since Sweden did not give priority to the regeneration, they failed its obligations under the Directive. Furthermore, the Court stated that a Member State could not refer to national regulations, case law or relations in its internal legal framework as a basis to omit the implementation of a Directive within the time limit. [128] Sweden did therefore breach the treaty and did therefore receive a sentence in the ECJ with the sanction to pay the costs of the trial.

6.3 Community level explanation

The Community level explanation focus on the enforcement procedures and their impact. Were they insufficient and thereby causing Sweden's non-compliance or were they the reason that Sweden eventually complied? It is as difficult to prove with any certainty as it was with the Bathing Directive.

[125] The European Commission, *Reasoned opinion*: SG (2002) D/220209 p. 9-13.
[126] Regeringen skrivelse 2002/03:60, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002,* (2003).
[127] Sweden's response to the Reasoned Opinion, Regeringens skrivelse 2002/03:60, Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002, (2003).
[128] Case C-201/03 Commission v Sweden E.C.R. [2004] I-03197 para 5.

6.3.1 Impact of the Enforcement procedures

It is difficult to know whether the enforcement procedures made it more or less likely that Sweden would fail in its implementation of the Directive on the disposal of waste oils. It is possible that Sweden wanted to see what kind of sanctions the Court would pose on them, as they may have did in the implementation of the Bathing Directive, since they had to implement the Directive when they became a new member in the EU.

There is however an argument that shows the effectiveness of the enforcement procedures regarding the Directive. The Commission asked for information regarding the measures taken after the ruling. Sweden responded by stating that they changed their regulation on the disposal of waste oils in a way that it would correspond to article 3.1. The change led to the prioritisation of regeneration of waste oils as well as an application of regeneration in practice. This eventually led to an increase of waste oils taken care of through regeneration. This was possible with Sweden's cooperation with regeneration facilities in Germany and Denmark. Sweden concluded their response by stating they had fulfilled article 3.1 through these measures but they were at the same time prepared to take further measures if the positive development would decrease. [129] All these measures made the Commission satisfied. The extent Sweden was willing to take action is a sign of the effectiveness of the procedures under Art 228. Sweden was not willing to take the risk of being subject to fines or penalty payments.

6.4 Member State level explanations

When it comes to Member State Level explanations there are more factors that seem to explain the non-compliance with the Directive on the disposal of waste oils. The first factor that may have had an impact is Sweden's ability to understand the Directive, where it seems as the Directive was vague in certain instances.

6.4.1 Ability to understand the Directive

There can be problems when the Member State cannot understand the Directive correctly. This is plausible when the Directive is vague with the purpose to cover and be suitable to all parties involved. Sweden had difficulties regarding its ability to understand the Directive on the disposal of waste oils.

6.4.1.1 Vagueness

The Swedish authorities had a belief that the Swedish rules corresponded with the articles in the Directive. They argued in their response to the letter of formal intent that the existing legal framework in Sweden fulfilled the

[129] Regeringens skrivelse 2005/06:85, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2005*, (2006).

demands of the Directive in the sense that they recycled waste oils primarily by regeneration. The Commission however believed that the Swedish regulation was broad and contained more than just waste oil.[130]

When they then received a reasoned opinion they responded by claiming that rules corresponding with article 3.1 existed but the Commission argued that these rules were merely public rules on all types of waste while article 3.1 need a special rules on waste oils.[131] The Court referred in that argument to the case C-102/97 EC v. Germany were Germany defend themselves in the same way as Sweden, by stating that certain concepts in the Directive were vague. Germany believed that they had room for making their own interpretations of the concepts. They also stated that it is sometimes sufficient to incorporate Directives within a general legislative framework and that it was possible to incorporate article 3 in that sense. The Court however argued that just because a concept is vague does not mean that a Member state has exclusive interpretations rights since that would counteract the idea of a uniform adjudication process. Moreover, they argued that article 3 is not possible to incorporate within a general legislative framework.[132]

Despite the argument from the Court that the Member State cannot interpret the Directive in their exclusive interpretation rights, it still shows the vagueness of the Directive. When Member States do not understand the Directive, they try to interpret it themselves the best way they can. It therefore seems very likely that this factor had an impact on Sweden's non-compliance with the Directive. Particularly since Sweden did not comply with article 3.1 and had a broad and general regulation.

6.4.1.2 Different interpretations at different administration levels

The Swedish government developed, as stated above, a regulation with the intention to interpret the Directive that the authorities could follow. The authorities interpreted the regulation in a similar way since the legislation was broad and covered all types of waste. The authorities therefore followed the regulation and recycled the waste oils in the same way that they recycled the other waste. This led to problems since the waste oils were not intended to be recycled in the same way as the other waste. This has however more to do with the vagueness than different interpretations.

6.4.2 Willingness to implement the Directive

Regarding the willingness to implement the Directive, some factors could have had an impact. Since the circumstances regarding the Bathing Directive and the Directive on the disposal of waste oils are very similar

[130] Sweden's response to the Letter of Formal Intent: EUM2001/704/R.
[131] Sweden's response to the reasoned opinion issued by the Foreign Department May 14 2002 p. 1f.
[132] Case C-102/97 Commission v. Germany [1999] E.C.R. I-5051

they will have similarities in the lack of impact of these factors. The factors of the willingness are, as previously mentioned, norms and dominant beliefs, role of civil society, reputation within the EU and political culture.

6.4.2.1 Norms and dominant belief system

The Directive is from 1975 when environmental politics were different. Regeneration of waste oils was at the time seen as a good method to recycle the product. When Sweden was about to implement the Directive regeneration were no longer the friendliest for the environment. The Commission was therefore thinking about an overhaul of the Directive.[133] It is thus possible that there were an ”opposition through the backdoor”

There are arguments at the same time suggesting that the norms and belief systems did not have an impact on the non - compliance since Sweden changed their opinion and tried to implement the Directive correctly after they received a reasoned opinion. Moreover, Sweden did not dispute the fact that the provision had not been incorporated in Swedish legislation and their only defence in the trial was thus that the concerned authorities are working with the implementation of the Directive. [134]

Since there is no clear evidence for resistance, such as formal veto, blockade or opposition from national actors, against the Directive despite the possibility of a silent resistance, the conclusion must be that this factor does not have an impact in the thesis.

6.4.2.2 Role of civil society

The civil society did not have an impact in the political process since they did not express anything negative or positive regarding the Directive. There is however an argument for their impact regarding the positive referendum in 1995. With the referendum, it is possible to argue that they were positive in adopting Directives. It is in other words plausible to say that they were not against the adoption of the Directive on disposal of waste oils.

6.4.2.3 Reputation within the EU

Perkins and Neumayer argue, as seen above, that reputation is especially important for recent entrants. Since they are often keen to prove their credentials, they will make greater efforts to implement environmental directives.[135]

Sweden had already prepared for the adoption of the Directive by putting a regulation in place that would regulate the way that the waste oils were taken care of through regeneration. They argued that the regulation was sufficient and corresponded with the article. They had thought that their

[133] Regeringens skrivelse 2005/06:85, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2005*, (2006).
[134] Sweden’s response to the Reasoned opinion issued by the Foreign Department in May 14 2002, p.1f, Case C-201/03 *Commission v Sweden* [2004] E.C.R. I-03197
[135] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 21f.

efforts were sufficient and that they had implemented the Directive correctly. This is all signs on the willingness to implement a Directive by a member that is new and aware of his reputation. Since the arguments by the Swedish government were mostly that they had misinterpreted the Directive it seems that the non-compliance had more to do with the lack of fit between the Directive and the national legislation rather than Sweden's reputation.

6.4.2.4 Political culture

Sverdrup argues that Scandinavian countries are better in implementing Directives because they pursue a more consensus-seeking approach with limited use of Courts.[136] Why did Sweden then not comply with the Directive and why did the non-compliance reach all the way to the Court where Sweden had to pay the costs of the trial?

The political culture does not seem to have an impact as Sweden had prepared itself before the incorporation of the Directive. They responded to the letter of formal intent and to the reasoned opinion and took measures they thought were sufficient. If they did not want consensus then why did they respond to the written warnings and changed their provisions?

6.4.3 Capability to implement the Directive

So far, it is possible to draw the conclusion that Sweden's ability to understand the Directive was low because of difficulties in the interpretation. Sweden's willingness to implement it are however more difficult to draw any conclusions about, since there is nothing substantial that shows a resistance in implementing the Directive. The last category that can have an impact on the non-compliance is Sweden's capability to implement the Directive. Were there any factors in Sweden's capability to implement the Directive that influenced the non-compliance?

6.4.3.1 Goodness of fit

Regarding the fit between the Directive and the Swedish national legislation, it seems clear that Sweden had certain problems in complying with article 3.1. They had eventually cooperated with regeneration facilities in Germany and Denmark in order to comply with the article. This shows that there were a misfit between the Directive and the national legislation in that sense that Sweden was not prepared to dispose the waste oils in the sense that the Directive demanded. They thought that the measures they had taken were sufficient and had not count with the extensive regeneration measures. Another sign of the misfit was the fact that regeneration was a common method since it was environmental friendly. In 1995, when Sweden joined the EU, it was no longer a common method since it was no longer the friendliest for the environment. [137] It was therefore a misfit

[136] Sverdrup, Ulf, *Compliance and Conflict Management in the European Union: Nordic Exceptionalism*, (2004) p. 27.
[137] Regeringens skrivelse 2005/06:85, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2005*, (2006).

between the national legislation and the Directive since Sweden had to use a method that was no longer friendly for the environment.

6.4.3.2 Administrative capacity

The explanations by Sweden, as seen above, were that the concerned authorities investigated the non-compliance. That they investigated the non – compliance and was not already prepared to comply with the Directive can be an argument for lack of administrative capacity.

There is however nothing that expressly indicates that the non - compliance could have been avoided if the authorities had more resources. In the response to the reasoned opinion, Sweden argued for the first time that the concerned authorities considered how to incorporate the provisions of the Directive into Swedish legislation. This makes it likely that they had not prepared themselves and did not know how to implement the Directive and how the authorities should act in accordance with the Directive. [138]

6.4.3.3 Efficiency of the institutions

Despite Sweden's lack to comply with the Directive the institutions could probably not have been more efficient. They were not efficient enough themselves and had to cooperate with Germany and Denmark. This is an argument for the institutions efficiency. They realised that they could not manage themselves, acted swiftly and cooperated therefore with regeneration facilities in Germany and Denmark. The lack of administrative capacity that had an impact but the institutions counteracted the impact with cooperation.

6.4.3.4 Degree of corporatism

The degree of corporatism was low in the implementation process. In some instances, interest groups can have an impact and influence the government by causing them to breach the Directive and interpret the articles differently. In the case of Waste Oils there were no interest groups involved that had the impact to slow down the process and cause the non – compliance.

6.5 Conclusion

The failure to implement the Directive on the disposal of Waste Oils is explained by the combination of a few factors, much like the implementation of the Bathing Directive.

In the Community level, it is not likely that they were insufficient and influenced Sweden's non-compliance. It is more likely that Sweden tried to comply since it did not want a referral to the ECJ once again, pay the costs for the trial and perhaps be subject to enforcement procedures under Art 228 in the event of non-compliance with the judgment. The fact whether the

[138] Sweden's response to the reasoned opinion issued by the Foreign Department May 14 2002 p. 1f.

enforcement procedures had an impact in either way is however hard to prove why other factors can provide results that are more conclusive.

The three overarching factors in the Member State level provide better results. Sweden had difficulties in its ability to understand the Directive. It was vague which led to a misinterpretation of article 3. This misinterpretation caused problem when the responsible authorities applied the Directive incorrectly.

Regarding the willingness to implement the Directive it is not entirely clear whether the Swedish institutions were unwilling to implement the Directive or not. The fact that Swedish culture often has a consensus – seeking approach, that Sweden considered their reputation within the EU after its non – compliance with the Bathing Directive and the fact that a majority of the public were supporters of the EU are all signs of Sweden's willingness to implement the Directive.

Regarding the capability, it was clear that there existed a misfit between the Directive and the national legislation since Sweden was not prepared to dispose the waste oils in the sense that the Directive demanded. They thought that the measures they had taken were sufficient and had not count with the extensive regeneration measures. The administrative capacity also had an impact on the non-compliance. The concerned authorities investigated the non – compliance after they had received the written warnings. In the response to the reasoned opinion, Sweden argued for the first time that the concerned authorities considered how to incorporate the provisions in the Swedish legislation. This makes it likely that they had not prepared themselves and did not know how to implement the Directive and how the authorities should act in accordance with the Directive. This is an argument for Sweden's lack of preparing itself for the incorporation of the Directive. There is however nothing that explicit indicates that the non - compliance could have been avoided if the authorities had more resources.

The most likely explanation for Sweden's non-compliance with the Directive seems to be that article 3 was misinterpreted in the beginning. The misinterpretation had more to do with the vagueness of article 3 than the unwillingness to implement the Directive in Sweden since Sweden tried to correct the misinterpretation. This misinterpretation led to difficulties in Sweden's capability to implement the Directive as the concerned authorities were not prepared in a sufficient way.

7 Empirical analysis of the implementation of the Wild Birds Directive

The EU is committed to the protection of biodiversity and has a political commitment to halt biodiversity loss, primarily with the Natura 2000 network, the largest coherent network of protected areas in the world. The legal basis for the Natura 2000 network comes from two directives. The first is the Council Directive 79/409/EEC on the conservation of wild birds, more commonly referred to as the Wild Birds Directive. The second is the Council Directive 92/43/EEC on the conversation of natural habitats and of wild fauna and flora. These Directives constitute the backbone of the EU's internal policy on biodiversity protection.[139]

7.1 The Council Directive 79/409/EEC of 2 april 1979 on the conservation of Wild Birds

The Wild Birds Directive is the oldest piece of nature legislation within the EU and one of the most important, creating a comprehensive scheme of protection for all wild bird species naturally occurring in the Union. The Members States adopted it unanimously in 1979. The Directive was in some aspects a response to increasing concern about the decline in Europe's wild bird populations, which was caused by pollution, loss of habitats as well as unsustainable use. It was also in recognition that wild birds, many of which are migratory, are a shared heritage of the Member States and that their effective conservation required international co-operation. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species.[140]

The Habitats Directive forms the cornerstone of Europe's nature conservation policy, along with the Wild Birds Directive. The Directive has two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The Directive protects over 1.000 animals and plant species and over 200 so called "habitat types" (e.g. special types of forests, meadows, wetlands, etc.), which are of European importance.

[139] http://ec.europa.eu/environment/nature/index_en.htm 2009-01-06
[140] http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm 2009-01-06

7.2 The legal background

The legal background began with a complaint in December 1995 regarding the implementation of the Wild Birds Directive in Sweden. Imir sent the complaint and focused on Sweden's lack of implementing the Wild Birds Directive. The non-compliance was, according to the complainant, not caused by the lack of time for transposing EC law to Swedish law or to national legal context. The complaint was rather based on the incorrect implementation of different articles of the Directive. [141]

The complainant focused on the non-implementation of article 2 and 3 of the Directive since no effective measures were taken to keep the population of a number of species, to which article 1 applies, on a sufficient level. Many species included in Annex I have no special, sufficient protection regarding habitats and some other species with clearly declining populations are not in any way being included in any programme or other kind of policy for conservation. The non-compliance with article 2 is in many respects connected with non-compliance with other articles of the Wild Birds Directive.

Furthermore, the complainant argued that Sweden did not comply with article 4.1, article 4.4, not in all respects with article 5d) and probably not entirely with article 7. The complainant finished by arguing that Sweden had in fact not taken serious actions in order to implement the Wild Birds Directive with full observance of Annex I. Nor had Sweden protected sufficient and appropriate areas for all these species.[142]

The Commission decided to investigate the complaint and found that the Swedish legislation fell short of what the Directive required. There were detailed exchange between the Commission and Sweden and the latter submitted in 1999 new legislation, which addressed some previously identified shortcomings. However, the Commission's analysis indicated that problems with the Swedish legislation remained. In particular, Sweden did not guarantee that all plans and projects likely to have a significant effect on a special protection area would be subject to environmental impact assessment as required by the Directive. In addition, the legislation did not transpose the conditions relating to exemptions with enough precision. The Commission decided therefore in 1999 to send a reasoned opinion to Sweden for the failure of its legislation to comply with the Directive. [143]

Sweden sent a proposed legislation to deal with the defects, but the legislation had the intention to be applied in 2001, which was unsatisfactory according to the Commission. Therefore, the Commission decided to take steps against Sweden regarding the defects in the national legislation and

[141] http://www.imir.com/ 2009-01-09
[142] http://www.imir.com/ 2009-01-09
[143] The European Commission, *Press release from the Commission*, 25 October 1999, IP/99/789

referred Sweden to the European Court of Justice. The decision to make an application to the Court of Justice against Sweden concerned the outstanding weaknesses in the Swedish legislation, notwithstanding progress made in 1999. The Commission focused in particular on the inadequate Swedish habitat conservation safeguards, that the Swedish legislation did not ensure the assessment of all plans and projects that could affect special protection areas.[144]

Sweden was referred to the ECJ where the Commission stated that Sweden had not fulfil their obligations by failing to implement some of the aforementioned articles as well as failing to cooperate with Commission in the sense that article 6.3 demanded. The article had a demand on the Member State, which was an obligation to identify and declare which areas falls under specific criteria in the Wild Birds Directive. The purpose with these obligations was to make the Member States understand which areas that fulfil the criteria's. After these areas have been identified, the Member State had to make a special review of the plans and projects taken regarding the consequences they can have on these areas. The Commission argued that Sweden had not managed to complete the first step despite the declaration and identification of 403 bird protection areas between 1995 and 2001. [145]

The concerned authorities therefore tried to supplement these defects in order to finish the first step of its obligations and Sweden stated in the Court that these problems had been corrected through new legislation that were put in place in July 2001 and that full cooperation, by fulfilling both steps, with article 6.3 would be finished in October 2001. The Court decided to write off the case since the Commission withdrew their allegations. [146] The Commission was thus clearly satisfied with the changes Sweden had made.

7.3 Community level explanation

The Community level explanation focus on the enforcement procedures and their impact. Sweden had earlier failed to comply with the Bathing Directive and the Directive on the disposal of Waste Oils. Why did they not comply with the Wild Birds Directive? Were the enforcement procedures in the previous Directives inefficient causing Sweden to breach this Directive as well?

7.3.1 Impact of the enforcement procedures

It is difficult to know whether the enforcement procedures made it more or less likely that Sweden would fail in its implementation of the Wild Birds

[144] The European Commission, *Press release from the Commission*, 13 September 2000, IP/OO/1007

[145] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002).

[146] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002), Regeringens skrivelse 2002/03:60, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002*, (2003).

Directive. The most likely scenario is however that the procedures under Art 226 were sufficient since the Commission withdrew their allegations in the ECJ due to the changes Sweden made.[147] Sweden may have learned from the previous mistakes regarding the Bathing Water Directive and the Directive on the disposal of Waste Oils where they had to pay the costs of the trial. Sweden's compliance was thus gradually better and they refrained from its non – compliance most likely due to the financial burdens that could be imposed under Art 226 and in a later stage under Art 228.

7.4 Member State level explanations

When it comes to explanations from the Member State level there are even more factors that seem to explain the non-compliance with the Wild Bird Directive. The first factor that may have had an impact is Sweden's ability to understand the Directive, where it seems as the Directive was vague in certain instances.

7.4.1 Ability to understand the Directive

There can be problems when the Member State cannot understand the Directive correctly. This is plausible when the Directive is vague with the purpose to cover and be suitable to all parties involved. It is difficult to say whether the lack of compliance depended on the inability to understand the Directive or if it were other factors involved. It is possible that Sweden had difficulties in understanding the Directive due to its vagueness.

7.4.1.1 Vagueness

Regarding the vagueness of the Directive, it is possible that Sweden had difficulties in understanding it since they breached many articles according to the Commission. Sweden had most problems with the implementation of article 6.3 with the obligation to identify and declare which areas falls under specific criteria in the Wild Birds Directive. The purpose with these obligations was to make the Member States understand which areas that fulfil the criteria's. Sweden had identified and declared 403 areas but this was not sufficient according to the Commission. It seems that some municipalities had problems in interpreting article 6.3. This may have been caused by its vagueness since Sweden was not the only Member State that had difficulties in implementing article 6.3. [148]

[147] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002), Regeringens skrivelse 2002/03:60, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002*, (2003).
[148] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002).

7.4.1.2 Different interpretations at different administration levels

It can also be possible that Sweden did not comply with the Directive because the concerned authorities did not interpret the bird protection areas the same way. This factor also seem plausible since some of the concerned authorities had to identify more bird protection areas. In any case, Sweden had difficulties with its ability to understand the Directive, which was a factor that caused the non – compliance.

7.4.2 Willingness to implement the Directive

Regarding the willingness to implement the Directive, some factors could have had an impact. Since the circumstances regarding the Wild Birds Directive are similar the previous cases they will probably have some similarities regarding the lack of impact of these factors.

7.4.2.1 Norms and dominant belief system

The norms and dominant belief system was the same regarding the implementation of the Wild Birds Directive, as in the previous two cases. Sweden had to implement the Directive at the time they joined the EU and the norms of the EU were at the time positive. The ambition to protect Wild Birds is also the type of Directive that d not cause harm to companies or business the way a Directive on GMO's might do. Therefore, this factor do not seem to have any impact on the non – compliance. Since there is no clear evidence for resistance, such as formal veto, blockade or opposition from national actors, against the Directive, the conclusion must be that this factor does not have an impact in the thesis.

7.4.2.2 Role of civil society

The civil society did not have an impact in the political process since they did not express anything negative or positive regarding the Directive. There is however an argument for their impact regarding the positive referendum in 1995. With the referendum, it is possible to argue that they were positive in adopting Directives. Furthermore, the civil society is largely for a protection of birds making theme see the implementation of the Directive as a positive thing rather than negative.

7.4.2.3 Reputation within the EU

Sweden had prepared for the adoption of the Directive by trying to comply with the demands of identifying and declare which areas were bird protection areas. The preparation was however not sufficient but that has nothing to due with the reputation, it was more likely dependent on the lack of administrative capacity or the vagueness of the Directive. They had thought that their efforts were sufficient and that they had implemented the Directive correctly. Sweden had to be aware of their reputation as new members [149] as they had failed in its implementation in the two previous

[149] Perkins, Richard & Neumayer, Eric, *Implementing Multilateral Environmental Agreements: An Analysis of EU Directives*, (2007), p. 21f.

cases. They therefore wanted to show that they were able to implement the Directive correctly but failed again. This has most likely nothing to do with their reputation, it has more to do with their lack of ability to understand the Directive and the lack of capability.

7.4.2.4 Political culture

Scandinavian countries are better in implementing Directives because they pursue a more consensus-seeking approach.[150] It is therefore overwhelming why Sweden once again failed to implement an Environmental directive correctly. There are arguments that suggest that they had a consensus – seeking approach and tried to refrain from a referral to the ECJ. They responded once again to the written warnings and they even managed to make the Commission withdraw their charges by convincing them that they had applied and followed article 6.3 correctly. [151] This shows that Sweden did not want to be subject to any sanctions and rather wanted to solve the case by a consensus with the Commission.

7.4.3 Capability to implement the Directive

So far, it is possible to draw the conclusion that Sweden's ability to understand the Directive was low because of difficulties in the interpretation. Sweden's willingness to implement it are however more difficult to draw any conclusions about, since there is nothing substantial that shows a resistance in implementing the Directive. The last category that can have had an impact on the non-compliance is Sweden's capability to implement the Directive.

7.4.3.1 Goodness of fit

Regarding the fit between the Directive and the Swedish national legislation, it seems clear that Sweden had certain problems in complying with article 6. They had not identified sufficient amount of bird protection areas and they had not even begun the second step of their obligations. They misinterpreted the Directive in different authorities at the local level, thus causing the non – compliance. It was therefore nothing wrong with the fit between the Directive and the national legislation. When the Commission argued that the work on the bird protection areas was not sufficient Sweden acted swiftly and responded appropriately under a short span of time. This suggests that there was nothing wrong with the fit. It was rather something wrong with the interpretation and the administrative capacity.

7.4.3.2 Administrative capacity

The explanations by Sweden, as seen above, were that concerned authorities investigated the non-compliance. The mere fact that they investigated and not acted is an argument for the lack of the administrative capacity. There is

[150] Sverdrup, Ulf, *Compliance and Conflict Management in the European Union: Nordic Exceptionalism*, (2004) p. 27.
[151] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002), Regeringens skrivelse 2002/03:60, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002*, (2003).

however nothing that explicit indicates that the non - compliance could have been avoided if the authorities had more resources. In the response to the reasoned opinion, Sweden argued for the first time that the concerned authorities considered how to incorporate the provisions in the Swedish legislation. This makes it likely that they had not prepared themselves and did not know how to implement the Directive and how the authorities should act in accordance with the Directive.[152] They had not even fulfilled the first step of the two-step plan in order to protect the bird areas despite receiving a letter of formal notice and a reasoned opinion. It was not until they were subject to a referral to the ECJ they understood that they had to act appropriately. [153]

7.4.3.3 Efficiency of the institutions

Despite Sweden's lack to comply with the Directive the institutions could probably not have been more efficient. After the Commission had stated that Sweden did not fulfil their responsibilities and obligations under the Directive, the Institutions responded appropriately and corrected the defects.[154] This shows that they were efficient, acted swiftly despite having difficulties in the beginning in identifying the bird protection areas, and correct the defects in the legislation.

7.4.3.4 Degree of corporatism

Much like the two previous cases there were no interest groups represented in the implementation process that used influence to slow down the process and cause the non – compliance. Therefore, the degree of corporatism did not have an impact.

7.5 Conclusion

The failure to implement the Wild Birds Directive can be explained by the combination of a few factors, much like the implementation of the previous cases. In the Community level, it not likely that thee enforcement procedures were insufficient and influenced Sweden's non-compliance. It is more likely that Sweden tried to comply since it did not want to a referral to the ECJ once again. Sweden even managed to avoid a judgment which show that they were not willing to pay the costs for non – compliance. The fact whether the enforcement procedures had an impact in either way is however hard to prove why other factors can provide results that are more conclusive.

[152] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002), Regeringens skrivelse 2002/03:60, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002*, (2003).
[153] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002), Regeringens skrivelse 2002/03:60, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002*, (2003).
[154] Regeringens skrivelse 2001/2002:160, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*, (2002), Regeringens skrivelse 2002/03:60, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002*, (2003).

The three overarching factors in the Member State level provide better results. Sweden had difficulties in its ability to understand the Directive. It was vague which led to a misinterpretation of article 6. This misinterpretation caused problem when the responsible authorities applied the Directive incorrectly. Regarding the willingness to implement the Directive it is not entirely clear whether the Swedish institutions were unwilling to implement the Directive or not. The fact that Swedish culture often has a consensus – seeking approach and that they were worried about their reputation within the EU after it's non – compliance with the previous cases makes it plausible that they were willing to implement it.

When it comes to the capability argument, it is highly possible that a misfit existed between the Directive and the national legislation. It is however more likely that no misfit existed since Sweden were able to correct their defects in just a short period. The administrative capacity on the other hand seems to have an impact in the sense that the concerned authorities were not able to fulfil their obligations. It is possible that they had not prepared themselves in the way that was necessary in order to comply with the Directive. The most likely explanation for Sweden's non-compliance with the Directive seems to be that article 6 was misinterpreted in the beginning. The misinterpretation caused the concerned authorities to use their capacity the wrong way that led to difficulties in Sweden's capability to implement the Directive.

8 Conclusion

Of all these variables or factors, only a few can explain why implementation of the Directives was not correct.

8.1 Impact of the enforcement procedures

In the Community level, it is possible that the enforcement procedures were insufficient regarding the Bathing Water Directive since Sweden had just been a member and wanted to test the Commission and the ECJ in order to know how far they could breach the Community law. The fact that they received a letter of formal notice under Art 228 for not complying with the judgment could be an argument for the inefficiency of these procedures. When it comes to the Directive on the disposal of Waste Oils Sweden did however comply with the judgment immediately and did not receive any enforcement procedures under Art 228. This is an argument for the effectiveness of the procedures. Sweden probably wanted to comply as they did not want to be subject to any enforcement procedures under Art 228 in the event of non-compliance with the judgment.

Under the Wild Birds Directive there was not even a judgment as the Commission withdrew their allegations. This shows that Sweden had been better at complying with the Directives and was aware of their reputation and the costs and the risks of non – compliance. In total, the enforcement procedures were sufficient, as Sweden was better at complying with each Directive. They might just have wanted to test the Commission in the beginning with the Bathing Directive.

8.2 Ability to understand the Directive

In the Member State level, there were three overarching factors: the ability to understand the Directive, the willingness to implement it and the capability to implement it. When it comes to the ability to understand the Directive, Sweden had difficulties in interpreting the three Directives due to the vagueness or due to different interpretations at different administration levels. In the Bathing Directive, the municipalities did not know what were expected of them because of interpretative problems with the vague formulations in the legislative text and in the Agencies action program and public advice. The bathing areas were as an example defined as “every place where bathing water exists”, which made the municipalities to report excessively many bathing areas to the Commission. At all these bathing areas the municipalities were expected to perform sample - taking, which lead to fallacious results because some places that did not have to be measured were still measured. The vague formulations resulted in wide interpretations, which made the implementation of the Directive difficult. The Directive on the disposal of Waste Oils and the Wild Birds Directive

were also vague where a misinterpretation of article 3 in the Directive on the disposal of Waste Oils caused the responsible authorities to apply the Directive incorrectly. In the Wild Birds Directive article 6 was vague and was thus misinterpreted. The different administrations misinterpreted the article in different ways, which made a fulfilment of the demands under the article difficult.

8.3 Willingness to implement the Directive

Regarding the willingness to implement the Directives it is not entirely clear whether the Swedish institutions were unwilling to implement the Directive or not. In the Bathing Directive, it is possible that there was a silent resistance. Swedish municipalities are autonomous in relation to the government and it is thus possible that they did not care of the frequency of the sample - taking or which parameters were reported as it was the government that was blamed. Since they did not express anything negative against the Directive, the unwillingness cannot be a clear factor for the non-compliance with the Directive.

Regarding the willingness to implement the Directive on the disposal of Waste Oils it is not entirely clear whether the Swedish institutions were unwilling to implement the Directive or not. The fact that Swedish culture often has a consensus – seeking approach, that Sweden considered their reputation within the EU after its non – compliance with the Bathing Directive and the fact that a majority of the public were supporters of the EU are all signs of Sweden's willingness to implement the Directive.

It is the same argument when it comes to the implementation of the Wild Birds Directive. Sweden was probably even more aware of their reputation as they had failed in both previous Directives. They even complied with the Directive making the Commission withdraw their allegations. This can be seen as an argument of their willingness as they tried to avoid a judgment in the ECJ by struggling to finish the obligations of the Directive.

8.4 Capability to implement the Directive

Regarding the capability, it was clear that the administrative capacity and the efficiency of the institutions had an impact on the non-compliance. The administrative capacity was insufficient in the Bathing Directive regarding the municipalities regarding competence and financial and personal resources. Regarding the financial resources, they did not receive full compensation from the government for the excess cost that the Directive implicated. The personal resources lacked regarding the number of staff that worked with the sample – taking and reporting of the results. They also lacked in competence since the municipalities suffered from a big personal movement and the substitutes lack of knowledge because of insufficient information. Moreover, they were not efficient due to previous mentioned

inabilities in understanding the Directive as well as lack of knowledge, information and the lack in financial and personal resources.

The Directive did not fit the previous Swedish legislation since it could not be matched with Swedish legislation or put relevant demands of the sample-taking regarding adjustment to Swedish condition. The Directive rather put demands on parameters that were not applicable in Sweden. Furthermore, the Directive was written twenty years before Sweden joined the EU, which could mean that the parameters were relevant to measure in 1975 or never had been. This mean that the misfit between the Directive and the national legislation also had an impact while the degree of corporatism did not have an impact since there were not any interest organisations involved in the implementation process.

Regarding the capability of the Directive on the disposal of Waste Oils, it was clear that there existed a misfit between the Directive and the national legislation since Sweden was not prepared to dispose the waste oils in the sense that the Directive demanded. They thought that the measures they had taken were sufficient and had not count with the extensive regeneration measures. The administrative capacity also had an impact on the non-compliance. The concerned authorities investigated the non – compliance after they had received the written warnings. In the response to the reasoned opinion, Sweden argued for the first time that the concerned authorities considered how the provisions would be incorporated in the Swedish legislation. This makes it likely that they had not prepared themselves and did not know how to implement the Directive and how the authorities should act in accordance with the Directive. This is an argument for Sweden's lack of preparing itself for the incorporation of the Directive. There is however nothing that expressly indicates that the non-compliance could have been avoided if the authorities had more resources.

Regarding the capability of the Wild Birds Directive it is possible that there existed a misfit between the Directive and the national legislation but most likely not since Sweden were able to correct their defects in just a short period of time. The administrative capacity on the other hand seems to have an impact in the sense that the concerned authorities were not able to fulfil their obligations. It is possible that they had not prepared themselves in the way that was necessary in order to comply with the Directive. The most likely explanation for Sweden's non-compliance with the Directive seems to be that article 6 was misinterpreted in the beginning. The misinterpretation caused the concerned authorities to use their capacity the wrong way that led to difficulties in Sweden's capability to implement the Directive.

9 Results

9.1 Fulfilling the purpose

The first purpose with this thesis was to explain why Sweden seems to have an implementation deficit in the environmental sector despite its outstanding record of accomplishment of implementing Directives. The question was:

What factors are causing Sweden's implementation deficit in the environmental sector?

A study of the three Environmental Directives leads to the conclusion that they have some similarities that can explain the implementation deficit. First, it does not seem as the impact of the enforcement procedures were insufficient. The enforcement procedures rather had an impact on making Sweden comply the more times they were referred by the Commission.

Second, it does seem that the factors that had most impact were the abilities to understand the Directives, which influenced the capability and the administrative capacity. Sweden misinterpreted all these Directives, which caused them to apply the Directives incorrectly and use their administrative capacity the wrong way. Since they were concerned about their reputation as new members within the EU and they did not want to subject to enforcement procedures under Art 228 they got significantly better in implementing the Directives.

The second purpose was to reach some general conclusions as to why a Member State can have an implementation deficit. The research question was:

What factors can cause implementation deficit in Member States in the environmental sector?

It is difficult to draw any general conclusions after studying the single case of Sweden regarding three Environmental Directives. Some general conclusions can however be drawn. If a Member State has difficulties to understand the Directive due to its vagueness or because it is interpreted differently in different administrations then the administrative capacity of implementing it correctly is very difficult. If a misfit exists between the Directive and the national legislation it makes it even more difficult to comply with the Directive.

This can however be corrected if there exist a willingness to implement it in regards to the Member State being concerned about their reputation and concerned about the enforcement procedures in the sense that they are not willing to pay costs for the trial or in a later stage penalty payments under Art 228. If there at the same time are positive norms of the EU, it is possible

that the Member State can correct their mistakes in a swift way as in the case of Sweden regarding the Wild Birds Directive.

9.2 Multicausal explanations are necessary

In order to understand an implementation deficit it is necessary, as suggested above, to use several factors. If only the willingness criteria was used then there would be no correlation between the lack of implementation and the willingness in the case of Sweden as there were other factors that had an impact.

If this thesis only had analysed the deficit by using the capability criteria then there would be a correlation in the case of Sweden but what caused the incapability could not have been answered.

If the thesis only would be analysed with the ability criteria then there would also be a correlation since the vagueness or the different interpretations at the different administration levels were present in Sweden's implementation of the three Directives. Even if a Directive is misinterpreted or vague the institutions can be efficient. They can also have the administrative capacity to correct the mistakes as soon as they receive the first warning in form of Letter of Formal Notice as these Directives show. Therefore, other factors are also necessary to investigate.

If the deficit would only be investigated by the insufficiency of the enforcement procedures there might be a correlation but as is shown Sweden very better and better in complying with the Directives for each time they were referred to the ECJ. By only studying the enforcement procedures many other factors that could have had an impact are missing and then there is no comprehensive picture of the non – compliance.

9.3 Generated hypothesis and suggestions for future research

This thesis is ending with a hypothesis stating that a Member State has difficulties in implementing a Directive even if it is perfectly willing and have efficient institutions if the Directive is vague and there exist a misfit between the Directive and the national legislation. This hypothesis however needs to investigate more Directives both in Sweden and by comparing Sweden with other Member States in order to falsify it. There is therefore room for future research where the researcher can compare these three Directives with the implementation of Directives in other sectors in Sweden. The researcher can also compare these Directives with the implementation of the same Directives in another similar Nordic State in order to falsify or strengthen the conclusions in this thesis.

Bibliography

Books

Anthony, Arnull et al, 2006, *Wyatt and Dashwood's European Union Law*, 5th edition, Sweet & Maxwell: London.
Bulmer, Simon & Radaelli, Claudio, 2005, "The Europeanization of National Policy", in Bulmer, Simon & Lequesne, Christian, 2005, *The Member States of the European Union*, Oxford University Press: Oxford.
Craig, Paul & De Burca, Gráinne, 2008, *EU Law: Text, Cases, and Materials*, Oxford University Press: Oxford.
Falkner, Gerda et al, 2005, *Complying with Europe – EU Harmonisation and Soft Law in the Member States.* Cambridge University Press: New York.
George, Alexander L. och Bennett, Andrew (2005) *Case studies and theory development in the social sciences.* The MIT Press: Cambridge.
Hedenmann – Robinson, Martin, 2007, *Enforcement of the European Union Environmental Law Legal Issues and Challenges*, Routledge – Cavendish: New York.
Krämer, Ludwig, 2007, *EC Environmental Law*, 6th edition, Sweet & Maxwell: London.
Lee, Maria, 2005, *EU Environmental Law – Challenges, Change and Decision – Making*, Hart Publishing: Oxford.
Radaelli, Claudio, "The Europeanization of Public Policy", in Featherstone, Kevin & Radaelli, Claudio (eds), 2003, *The politics of Europeanization*, Oxford University Press: Oxford.
Schermers, Henry G & Waelbroeck, Denis F, 2001, *Judicial Protection in the European Union*, Kluwer Law International: Hague.
Steiner, Josephine et al, 2005, *EU law*, 9th ed, Oxford University Press: Oxford.
Wennerås, Pål, 2007, *The Enforcement of EC Environmental Law*, Oxford University Press: Oxford.
Yin, Robert K, 2003, C*ase study Research: Design and Methods.* Sage Publications: Thousand Oaks, CA.

Articles

Börzel, Tanja, 2001, "Non-compliance in the European Union: pathology or statistical artefact?", *Journal of Europan Public Policy*, Vol. 8, No 5, pp. 803-824.
Börzel, Tanja, 2000, "Why there is no 'southern problem'. On environmental leaders and laggards in the European Union", *Journal of European Public Policy*, Vol. 7, No 1, pp. 141-162.
Dashwood, Alan & White, Robin, 1989, "Enforcement Actions Under Articles 169 and 170, *European Law Review*, pp. 388-412.

Harlow, Carol & Rawlings, Richard, "Accountability and Law Enforcement: The Centralized EU Infringement Procedure" (2006
Hattan, Elizabeth, 2003, "The Implementation of EU Environmental Law", *Journal of Environmental Law*, Vol. 15, No 3, pp. 273-288.
Kaeding, Michael, 2006, "Determinants of Transposition Delay in the European Union",
Kaeding, Michael, 2008, "In Search of Better Quality of EU Regulations for Prompt Transposition: The Brussels Perspective", *European Law Journal*, vol. 14, No 5, pp. 583-603.
Lampinen, Risto & Uusikylä, Petri, 1998, "Implementation Deficit – Why Member States do not comply with EU drectives", *Scandinavian Political Studies*, Vol. 21, No 3, pp. 231-251.
Mastenbroek, Ellen, 2005, "EU Compliance: Still a 'black hole'?", *Journal of European Public Policy*, Vol. 12, No 6, pp. 1103-1120.
Perkins, Richard & Neumayer, Eric, 2007, "Implementing Multilateral Environmental Agreements: An Analysis of EU Directives", *Global Environmental Politics*, Vol. 7, No 3, pp. 13-41.
Pridham,Geoffrey, 1994, "National environmental policy-making in the European Framework: Spain, Greece and Italy in comparison", *Regional Politics and Policy*, Vol. 4, No 1, pp. 80-101.
Snyder, Francis, 1993, "The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques", *The Modern Law Review*, Vol. 56, No 1, pp. 19-54.
Sverdrup, Ulf, 2004, "Compliance and Conflict Management in the European Union: Nordic Exceptionalism", *Scandinavian Political Studies*, Vol. 27, No 1, pp. 23-43.

Commission Documents

The European Commission, *24th Annual Report from the Commission on monitoring the Application of Community law (2006)*, COM (2007) 398 final.
The European Commission, *25th Annual Report from the Commisson on monitoring the Application of Community law (2007)*, COM (2008) 777/4.
The European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on implementing European Community Envuronmental Law*, COM (2008) 773 final.
The European Commission, *Commission Communication to the European Parliament and the European Ombudsman On Relations with the Complainant in respect of Infringements of Community Law*, COM (2002) 141 final.
The European Commission, *Communication A Europe of Results – Applying Community Law*, COM (2007) 502 final.

The European Commission, *Letter of Formal Intent*: SG(2001) D/287496.
The European Commission, *Letter of Formal Intent*: SG(2002) D/221034.
The European Commission, *Reasoned opinion*: SG(2000) D/100855.
The European Commission, *Reasoned opinion*: SG(2002) D/220209.

The European Commission, *Press release from the Commission*, 29 July 1999, IP/99/599.
The European Commission, *Press release from the Commission*, 25 October 1999, IP/99/789
The European Commission, *Press release from the Commission*, 27 July 2000, IP/00/871.
The European Commission, *Press release from the Commission*, 13 September 2000, IP/OO/1007.
The European Commission, *Press release from the Commission*, 21 January 2003, IP/03/84

Swedish legislation and preparatory work

Miljödepartementet, 1999, *Rådets direktiv 76/160/EEG om kvaliteten på badvatten*, Regeringskansliets arkiv, Miljödepartementet, diarienr. EUM1999/2532/R. Stockholm.
Miljödepartementet, 2000, *Underrättelse om nationella åtgärder för att uppfylla Sveriges förpliktelser i Europeiska unionen*, Regeringskansliets arkiv, Miljödepartementet, diarienr. EUM2000/158/R. Stockholm.
Naturvårdsverket, 1996, *Ändring av Allmänna Råd 89:4 Strandbad, Vattenkvalitet och kontroll*, Stockholm.
Naturvårdsverket, 2000, *Redovisning av uppdrag om kvaliteten på strandbadvatten,* Diarienr. 722-5135-99 Mm. Stockholm.

Regeringens skrivelse 1999/2000:60, 2000, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 1999*. Stockholm: Riksdagens tryckeriexpedition.
Regeringens skrivelse 2001/2002:30, 2001, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2000*. Stockholm: Riksdagens tryckeriexpedition.
Regeringens skrivelse 2001/2002:160, 2002, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2001*. Stockholm: Riksdagens tryckeriexpedition.
Regeringens skrivelse 2002/03:60, 2003, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2002*. Stockholm: Riksdagens tryckeriexpedition.
Regeringen skrivelse 2005/06:85, 2006, *Årsboken om EU - Berättelse om verksamheten i Europeiska unionen under 2005*. Stockholm: Riksdagens tryckeriexpedition.
Swedens response to the Letter of Formal Intent: EUM1999/2532/R.
Swedens response to the Letter of Formal Intent:EUM2002/1382/R
Swedens response to the Letter of Formal Intent: EUM2001/704/R.
Swedens response to the Reasoned opinion issued by the Foreign Department in May 14 2002.
SNFS 1999:6, *Statens Naturvårdsverks föreskrifter om strandbadvatten; SNFS 1996: 6,* Stockholm.

Directives

The Council Directive 75/439/EEC of June 16 1975 on the disposal of Waste Oils.
The Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water.
The Council Directive 79/409/EEC of 2 april 1979 on the conservation of Wild Birds.

Internet Sources

http://www.imir.com, 2008-11-05, 2009-01-09
http://ec.europa.eu/environment/water/water-bathing/index_en.html 2008-12-15.
http://ec.europa.eu/environment/nature/index_en.htm 2009-01-06
http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm 2009-01-06
Sveriges Kommuner och Landsting, *Kommuner följer Badvattendirektivet*, 2006, http://www.skl.se/artikel.asp?A=22137&C=6721 2008-12-20.

Table of Cases