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The Implementation Deficit of the Environmental Policy of the European Union

An Analysis of the Policy Instruments Deployed by the European Commission

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Abstract

Despite a relatively highly institutionalized and developed policy field, the EU environmental legislation suffers from a persistent implementation deficit. Although the challenges concern the supranational actors of the EU as well, the academic focus has been on the Member State level and in attempts explaining the challenges the national authorities face while implementing the EU environmental legislation. Since a rather comprehensive understanding of the problems on the Member State level exists, the focus of this thesis is on the less researched aspect of the implementation phase of policy processes: the role of the supranational level. The analysis concentrates on categorizing programs and instruments deployed by the Commission while attempting to improve the implementation of the environmental policy. The categories include concepts from the enforcement, management and Implementation-Management Capacity approaches. The findings suggest that although the Commission is using a variety of strategies, the infringement procedure remains as the key instrument in ensuring proper implementation. The alternative instruments mainly represent problem solving strategies and are used to support the infringement procedure. Furthermore, this thesis includes general reflections about the Commission's role and possible vulnerability in the complex EU policy process.

Key words: European Commission, EU policy process, environmental policy, implementation deficit, resource-dependence theory

Word count: 17750

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Abbreviations

CJEU	Court of Justice of the European Union
EAP	Environment Action Program
EEA	European Environment Agency
ECHA	European Chemicals Agency
EFSA	European Food Safety Agency
EIR	Environment Implementation Review
EP	European Parliament
EU	European Union
IMC	Implementation Management Capacity
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
MS	Member State(s)
RDT	Resource-Dependence Theory
SEA	Single European Act
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

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1.Introduction

The environmental legislation of the European Union (EU) emerged in the 1970s and since then it has developed into one of the EU's most substantial policy fields (Knill & Liefferink, 2013, p. 11). The development can be characterized by policy expansion, institutionalization, competitive dynamics between actors involved and societal interests (Lenschow, 2015). Since 1973, the EU environmental policy has been guided by the Environment Action Programs (EAP), with the latest program coming into force in 2014 (European Commission, 2019c). Today, the EU has competences to act in all areas of the environment policy and it has introduced some of the world's strictest environmental laws. Approximately 80% of national environmental legislation has its origins in EU level policy-making (Dittrich, 2019).

Due to the institutional development and the large amount of policies produced, the EU level environmental policy-making has "moved from obscurity to center stage" and has often been described as an "institutional success story" (Haigh, 2016; Lenschow, 2015). There are many studies indicating that, despite the vast economic-growth, the EU has managed to introduce efforts reducing environmental pressure and compared to many other parts of the world, Europeans can enjoy a relatively safe and clean environment (Lenschow, 2015). On the other hand, there are also several studies stating that the achievements *on the ground* have not been as promising as the highly developed policy-making should suggest (EP & the Council, 2013). There are persistent environmental challenges and problems that remain unresolved. For example, around 400,000 premature deaths occur in the EU area, caused by bad air quality and a report by the European Environment Agency (EEA) has stated that "[d]espite falling emission levels and reductions of some air pollutant concentrations in recent decade, the report demonstrates that Europe's air pollution problem is far from solved" (2019). In addition, only 17% of species and habitats have favorable conservation status despite the EU's Habitats Directive adopted in 1992 (EU, 2013).

The persistent environmental challenges have been, at least partly, explained by varying or poor implementation of the EU legislation (Lenschow, 2015, p. 334). Although, variation occurs between different environmental areas, such as water pollution and climate change, as well as within specific policy areas, the field of environment as a whole is one of the EU policy fields with the largest number of detected problems (EP, 2017; EU, 2013). As an example, regardless of the significant improvements in air quality, air pollution remains on a dangerously high level across Europe, as demonstrated above. Although the most recent studies have pointed out that the implementation deficit in the environment legislation is actually decreasing, in 2017 environment was the policy area with the most open infringement cases (measure often used to pinpoint an implementation deficit). Out of the 716 open cases, 173 represented the field of environment (European Commission, 2018a). Moreover, in 2018 the Commission estimated that poor implementation causes the Union additional 50 billion euros in health and environmental

costs per year (European Commission, 2018c). This means that although the problem might be slowly improving, it is still prominent and requires attention. Improvement of implementation performance is important for Europe in terms of achieving a cleaner and healthier nature as well as for the Commission to show that it is more than 'an impressive array of pieces of paper' (Haigh, 2016, p. 177). Since many environmental issues are in fact cross-border issues, EU wide solutions and effective implementation of these solutions are needed. Furthermore, EU wide standards reduce the risk of mixed national standards and help to secure a level playing field for businesses (IEEP, 2013). Regardless of these advantages, there have been a number of instances of implementation problems of environmental legislation since the beginning of EU wide environmental policy. The level of engagement at the supranational level during the implementation phase of the policy process is particularly interesting as there seems to be competing assumptions about the Commission's role in the process. Some actors claim that the Commission is a rather weak actor in the implementation phase, whereas, some see that it has managed to improve the situation in this field, which is traditionally considered to be solely the Member State's (MS) responsibility. In any case, the important notion is that the persistent challenges in the implementation of EU environmental policy serves as part of the explanation why, in spite of the highly institutionalized policy field and impressive policy output, there are still notable problems in the state of the European environment (Lenschow, 2015).

1.1 Research Purpose & Research Question

The purpose of this thesis is to bring understanding to the role of the supranational level in the implementation phase of EU policy. The focus is on the Commission's response to the implementation deficit of the environmental policy. I understand response as the policy instruments and strategies deployed by the Commission, which can also be defined as implementation policy. I do not aim to offer a full understanding of the implementation of environmental legislation, rather, to offer more insights into the Commission's activity in the light of the persistent implementation deficit. By shedding more light on one aspect of the policy process, it is possible to bring more understanding to the *bigger picture.*

The implementation of the EU environmental policy is according to Article 192 of the Treaty on the Functioning of the European Union (TFEU) and the subsidiary principle considered to be under the MS responsibility. Therefore, much of the academic focus has been on understanding the reasons behind the difficulties on the MS level implementation. The role and the responsibility of implementing EU legislation is clearly highly important for the MS and the attention put on that level is understandable. However, there are several reasons why there should be more focus on the supranational involvement during this phase of the policy process. First, the problems of implementation are often said to begin during the drafting and the adoption of EU legislation, which the Commission has a significant role in (Haigh, 2016, p. 164). Second, many of the distributive policies have been running for decades now and constitute a large part of the EU budget, thus it is to be expected that the main body behind these policies would have a genuine interest in how they are implemented and applied (Bauer, 2006, p.

718). Third, the Commission has a vulnerable role because as the main agenda-setter and policy formulator it is often held responsible for the implementation problems, without having a lot of formal powers in national policy execution. Thus, the role of the Commission requires more attention than previous research suggests, and more varied studies devoted to the supranational level's involvement in the implementation phase are needed. Environment is an area that has particularly suffered from persistent and relatively severe implementation challenges, which is why it deserves its own analysis.

Due to the gap in research about the Commission's role in the post-decisional phase in policy process combined with the importance of environmental issues in the light of the severe climate crisis threatening all aspects of environment, the research question of this thesis is:

> **How has the European Commission responded to the implementation deficit of the EU environmental policy?**

The question is answered by identifying the EU level response to the implementation challenges, specifically concentrating on the Commission's role and its current actions in the field. In addition, this thesis includes reflections about why the Commission is interested in the implementation in the first place.

1.2 Historical Development and Legal Framework

In 1972, the MS declared that the EU should have an environmental policy and during the following year, the first EAP was published, marking the year when the EU environmental policy truly started developing and institutionalizing (Haigh, 2016, p. 3). Since then, many significant developments have shaped the EU's environmental policy into its current stage. Today the EU has competences to act in all areas of environment policy, including air, water, waste and climate change. However, in fiscal matters, town and country planning, land use, quantitative water resource management, choice of energy sources and structure of energy supply the Union has a more limited room for maneuver due to the principle of subsidiarity and the requirement for unanimity in the Council of the European Union (the Council) (EP, 2018).

As the initiator of most of the environmental legislation, the Commission is arguably one of the key actors in this policy field (Carter, 2018). The College of Commissioners has several formal tasks, including proposing new EU legislation, monitoring implementation of EU laws, enforcing actions against the MS failing their obligations, managing the budget and representing the EU in the international fora (Selin & VanDeveer, 2015). Due to these formal tasks, the Commission plays a crucial role in all the EU policy fields and is often referred to as the *driving force* behind or *motor for* integration (Cini, 2015, p. 130). In addition to the motor for integration role, it is often treated as the *guardian of treaties* whose responsibilities include the promotion of integration and further harmonization of common standards.

In addition to the Commission, the Council, the European Parliament (EP), the Court of Justice of the European Union (CJEU), among other actors, serve an important role in the EU's environmental policy. For example, the Environment Council is one of the most important actors shaping the EU's external environmental policy (Wurzel, 2013, p. 87). The EP also has an important role as the co-legislator. Furthermore, the EEA, European Chemicals Agency (ECHA) and the European Food Safety Agency (EFSA) represent an important EU level activity in, for example, by providing information and assisting the Commission's work (EP, 2016).

Although the environmental legislation started in the 1970s, it took over a decade before implementation got any significant political attention. In 1984, a Committee of Inquiry, established by the EP, accused the Commission of failing at its duties as the guardian of the treaties. Consequently, the fourth EAP, published in 1987, was the first program that properly addressed the issue of implementation. In the 1990s, the discussion was taken to the highest political level when the European Council adopted the *Declaration on the Environmental Imperative* which stated that in order for the environmental legislation to be truly effective it needs to be fully implemented in the MS (Haigh, 2016, p. 174). In 1996, the Commission published its first official Communication about implementation challenges, which stated that in order to ensure effective implementation there is a need for multiple mechanisms and that the Commission itself bears responsibility as the guardian of treaties (2016).

Hence, as outlined here, the discussion about the importance of proper implementation of EU environmental policy has been ongoing since the 1980s. Nevertheless, there have been persistent complaints that implementation has never gained enough attention and that the focus of the EU institutions are still today too focused on producing new legislation rather than improving the implementation of it (Haigh, 2016).

From a legal perspective, Article 4(3) of Treaty on the European Union (TEU) (n.d.) states that the MS shall comply with obligations arising from treaties and acts issued by the EU institutions. Hence, this Article functions as the basis for the MS having to comply with EU legislation, which is then fortified in Article 17 of TEU. Article 17 states that the Commission shall promote the general interests of the Union, as well as that it should ensure the application of the treaties, thus grants the Commission its guardian of treaties role. The specifics of the infringement procedure lie in Articles 258, 259 and 260 TFEU which include the details of what actions the Commission or a MS can take against another, non-complying, MS.

The EU's environment policy has its basis in Articles 11 and 191-193 TFEU. Article 11 TFEU represents a provision having general application across EU legislation and states that "environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development". Articles 191-193 deal specifically with environmental objectives, such as combatting climate change. Moreover, Article 3 of TEU guarantees that sustainable development is an overarching priority for the Union. The EU has laid down some more specific objectives, which the MS are obliged to comply with on the basis of Article 4(3). The EU policies, based on these objectives, mainly take the form of directives or regulations. Thus, the MS level implementation

activity varies based on the used legal instrument: directives need to be transposed into the national legislation based on individual plans, whereas, regulations are directly applicable uniformly across the MS (Schütze, 2015, p. 128). On the basis of the treaty articles, the policy field is based on the principles of precaution, prevention, rectifying pollution at source and on the idea of 'polluter pays' (EP, 2016; TFEU Article 191(2)).

1.3 Thesis Outline

In order to answer the question posed above, the thesis is structured as follows: Chapter 2 consists of a literature review of the policy processes both in general and in the EU context. Chapter 3 presents the theoretical framework of this thesis: EU policy process and resource-dependence theory. In chapter 4, I lay down the relevant methodological issues related to this study. The methodology chapter ends with a practical analytical framework which will guide the analysis in chapter 5. The analysis consists of the more descriptive part in which I categorize the policy instruments related to implementation as well as a discussion with more broader reflections. Finally, chapter 6 consists of a short conclusion of the findings.

2. Literature Review

The purpose of this chapter is to assess the relevant literature related to the topic of this thesis: the role of the supranational level in the implementation phase of the EU policy process. The chapter is divided into four parts, each dealing with previous research about policy processes and about EU specific research.

2.1 Approaches to Policy Process

The field of policy studies has a long history and includes various analytical approaches. Policy processes are extremely complex, thus, a large amount of the scholarly focus on policies has focused on the simplification of the processes (Sabatier, 2007). One of the most well-known policy simplification processes is the *stages heuristic* developed by Lasswell (1959), Jones (1970), Anderson (1975) and Brewer and deLeon (1983) (as cited in Sabatier, 2007). In the traditional stages heuristic approach, policy process is divided into different stages: agenda-setting, policy formulation and legitimation, implementation and evaluation. These stages are then studied by focusing on each stage at a time and in the factors influencing that stage of the policy process. There are disagreements amongst scholars whether policy stages should be analyzed as separate units or to focus on the process as a whole (see Sabatier, 2007; and Versluis, Keulen, & Stephenson, 2011) The stages approach has been criticized for being overly simplifying and for treating policies as they would exist in a void, when in reality there are multiple connected policies operating at the same time in different levels of governance (Sabatier, 2007). Based on the criticism, a number of different analytical approaches have been developed in order to explain the individual policy stages: "There is, however, no agreement on a 'grand theory' of policy making" (Young, 2015, p. 49).

Ever since the stages approach was introduced, several newer theoretical frameworks of policy process have emerged. Sabatier (2007) has identified six other promising models, in addition to the stages heuristic, for policy analysis: institutional rational-choice, multiple-streams model (Kingdom, 1984), Punctuated-Equilibrium framework (Baumgartner & Jones, 1993), the Advocacy Coalition Framework (Sabatier & Jenkins, 1988, 1993), Policy Diffusion Framework (1990, 1992), and a variety of comparative studies including a large number of cases (Blomquist, 2007). This list can be complemented with a number of other theories, such as policy feedback theory and narrative policy framework, identified in more recent work edited by Weible and Sabatier (2017). As seen an above, the policy process literature is broad and multiple approaches have been used both in the studies *of* policy and studies *for* policy (Gordon, Lewis, & Young, 1999; Hill, 2013). However, the works reviewed above focus on the general policy process literature and not specifically on the EU, which is why we need to shed light on the more specific EU literature in order to understand the possible additional complexities of EU context.

2.2 The EU Policy Process Literature

The studies of EU policy process have often started with the assumption that it is more complex than the *traditional* policy-making (Zahariadis, 2013; Young, 2015). This complexity has resulted in researchers creating simplifying frameworks and lenses to study EU policy process, much in a same way as in traditional policy-making, as described by Sabatier. The following approaches have been identified by Zahariadis as common ways to study perspectives and complexities of EU policy: multilevel governance, punctuated equilibrium, principal-agent, policy learning, advocacy coalitions, multiple-streams, constructivism and normal power Europe (Zahariadis, 2013). These approaches aim to simplify the EU policy process by having the main focus on either issue complexity or institutional complexity. While this thesis does not rely on these perspectives, it is useful to understand the traditions of EU policy studies in order to place this study into a context of a wider policy process framework.

Regardless of the suggested additional complexity, it seems that EU policy-making has often been studied by using traditional tools of political science (Young, 2015). Few examples of studies that connect EU policy-making with traditional political science tools include: Blom-Hansen (2005), as well as Tallberg (2003), which have used the principal-agent framework to study EU policies. Spendzharova and Versluis (2013) have focused on issue salience in agenda-setting and decision-making in European policy process. Cini and Šuplata have focused on the Commission's policy leadership as a form of political leadership (2017). Ackrill, Kay and Zahariadis have used multiple streams framework to assess the policy change and institutional and issue complexity of the EU (2013). Finally, Steineback and Knill have connected the policy dismantling research with the Commission's work (2017).

Additionally, overall social science literature has often been described as being actor-centric (Selin & VanDeveer, 2015). The same issue can be identified with much of the EU literature. A number of studies have focused on the evolving roles of and the relationships between the different actors, namely official EU bodies, MS and interest groups. For example, Callacan (2011) has focused on interest group's influence in EU policy-making and Eising (2004) has focused on domestic interest groups and the conditions which enable them to influence EU decision-making in the earlier policy stages as well as the implementation stage. Furthermore, Eliantonio (2018) has an interesting take on the issue of NGO's role in the environmental implementation conflicts and the infringement procedure.

2.3 Implementation in Policy Process Literature

One of the first studies specifically about implementation phase in policy process is the classic case-study by Pressman and Wildavsky, 1973 (3rd ed. 1984). It focused on implementation in the US multi-level governance and on different mechanisms how to

make implementation more successful. Since this classic work, research on implementation has grown massively (see Hill & Hupe, 2009). Despite decades of implementation studies, theoretical consensus describing the process of public policy implementation seems to be missing. Suggested by DeGroff and Cargo (2009), there have been two popular approaches to implementation in policy studies: viewing it as a top-down process that sees implementation as a product of strong bureaucratic management (Mazmanian & Sabatier, 1983) or viewing it as a bottom-up process that sees implementation as a process in which the actors need to participate in all stages of the policy process and the focus is mostly on the actual implementors (Berman, 1978).

2.4 Implementation in EU Policy Process Literature

As noted by Bauer (2006), Lafflan (1997) as well as Mazmanian & Sabatier (1983) a majority of studies about EU policy seem to focus on the Commission's role as agenda-setter and policy formulator. In other words, the focus has been on the *beginning* of the policy cycle, while the post-decisional policy phase remains understudied from the supranational point of view. While some research has been carried out on the implementation phase of EU policy, there is rather little scientific understanding on the Commission's role in this crucial policy phase. The majority of the studies have focused on identifying implementation deficit of the EU legislation and on the MS level activity causing the deficit. Especially in the field of environmental legislation, case-studies about implementation of the EU policies on the ground have been relatively popular since the late 1990s (see Baun & Marek, 2013 about Czech Republic; Börzel, 1998 about Spain and Germany; Leventon, 2015 about Hungary; Popeschu, 2015 about Romania). Some authors have identified a turn in the EU's environmental policy development in the mid 1990s describing it as a change from the traditional regulatory mode of policy-making to the adopting *new instruments* including bottom-up and network-styles of policy formulation. Knill and Lenschow have focused on this turn by studying the new instruments and their relationship to the traditional legislation (2000).

The poor implementation of environmental legislation has also been noticed and studied at the EU level, for example by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) which has produced a study about the national environmental authorities indicating some underlying factors causing poor implementation. These include: lack of resources, insufficient capacity in the organization responsible for environmental regulations and enforcement and the feeling of inadequate sanctions (IMPEL, 2015). One of the most recent studies in the field is a study by Börzel & Buzogány (2019), in which the authors identify the implementation deficit in the field of environmental law and show that the deficit it slowly declining.

Jordan and Tosun (2013) suggest that public and academic understanding of EU implementation is limited due to a number of reasons. For example, it has been argued that, in historical terms, none of the main players of the policy process, such as the MS, had a great incentive to raise the issue of poor implementation because they did not want

to draw negative attention back to themselves. The Commission's silence on the issue has been explained by the fact that it did not want to *pick fights* with certain MS while it was trying to establish the basic framework of environmental law (Jordan & Tosun, 2013, p. 252). These reasons have collectively influenced the limited research conducted on the matter. Scholars such as Jordan (1999) argue that that, since the mid-1980s a number of issues have made the poor implementation more politicized, such as the increasing involvement of bodies like the EP and growing number of NGOs. Nevertheless, the research is still limited, and a lot of the focus remains on the MS level in the form of case-studies. Although studying the causes for poor implementation in MS remains important (see Bondarouk & Mastenbroek, 2018), what deserves more attention is the role of the Commission in the implementation phase of the EU legislation.

An additional complexity to EU implementation also stems from the fact that there are a number of different definitions for implementation. For example, Bondarouk & Mastenbroek focus on the *practical* implementation as: "the stage between the transposition of EU directives and the enforcement of these directives by European or national actors" (Bondarouk & Mastenbroek, 2018, p. 16). Whereas, authors such as Bauer (2001, 2006) and Haigh (2016) have treated it with a broader definition, often including the transposition phase in the discussion as well.

Apart from Bauer (2001, 2006), Hartlapp (2007) and Tallberg (2002, 2003) there seems to be a general lack in research about theorizing, categorizing and explaining the Commission's response to the implementation deficit of its policies. The three authors have focused on the EU supranational level actions in the implementation phase. Bauer by conceptualizing the Commission's role in the implementation of EU structural funds in Germany. Hartlapp by abandoning the *sui generis* approach of the EU by comparing the different logics (enforcement, management and persuasion) of implementation between the EU and the International Labor Organization (ILO) (2007). Likewise, Tallberg focuses on identifying enforcement and management strategies in the EU compliance activity. As argued by Hartlapp, much of the EU compliance literature focuses on enforcement measures by using infringement procedures data. Although the infringement procedure is highly important as the principal instrument, a more multidimensional take on the Commission's implementation policy is needed. Apart from Koops' (2011) study on the EU compliance mechanisms from a practical perspective, there seems to be limited research done about Commission's alternative implementation instruments.

The above-mentioned studies of implementation in the EU will function as the basis for this research, they will therefore be presented in more detail in chapter 3 of this thesis.

3. Theoretical Framework

The purpose of this chapter is to present the theoretical framework that will guide the analysis of the Commission's response to the implementation deficit of the environmental legislation. The chapter starts with a general conceptualization of the EU policy process, implementation and implementation deficit. After this the resource-dependence theory (RDT) is presented, which helps to understand the Commission's interests in the implementation phase. This will be followed by an explanation of more specific dimensions which will be used in the analysis: enforcement, management and Implementation Management Capacity (IMC).

3.1 EU Policy Process

The focus of this thesis is the EU environmental policy field, therefore, aspects of policy process function as overarching theoretical understanding behind the analysis. Policy process is understood as the process in which "problems are conceptualized and brought to government for solution; governmental institutions formulate alternatives and select policy solutions; and these solutions get implemented, evaluated, and revised" (Sabatier, 2007, p. 3).

The EU policy process is often characterized by its complexity (Sabatier, 2007; Zahariadis, 2013). As Zahariadis states, "Given the complexity of EU rules, procedure, and jurisdictional boundaries, what is surprising is not the rightfulness (or not) of EU decisions but the fact that any decisions are made at all" (Zahariadis, 2013, p. 811). One of the key factors that makes the EU policy process complex is the number of actors in the system. Most of the policies have the MS as objects, which means that the policy process includes dealing with 28 different national systems with their own traditions, institutions, styles, values and timetables (2013). Another complexity in the EU system is the interaction between the actors which occurs both vertically and horizontally. Vertical interaction occurs between the EU and national actors, whereas horizontal interaction occurs across EU institutions and across the MS (2013).

Zahariadis identifies different implications that this complexity has for the study of EU policy process, which are useful to realize when trying to understand the Commission's actions in field of the environmental policy. First, a higher number of actors involved means increasing financial costs, among other challenges. Second, complex systems with a high number of actors leads to additional complexity because "it is politically less contentious to add new or more bureaucratic structures, protocols, rules, or fail-safe systems than it is to remove or reduce existing structures" (Zahariadis, 2013, p. 812). In other words, significant changes into policy are politically riskier than adding new layers onto already existing policies, even if it means adding extra costs. Third, complexity might lead to increased political conflict because "venue-shopping, contested policy frames, and strategic inconsistency complicate, and may hinder co-operation" (Zahariadis, 2013, p. 812). Lastly, complexity can be used to secure national differences

between the MS. National authorities have an incentive to sustain complexity and diversity in the EU because it facilitates national differences, in comparison to fully harmonized situation. Although Zahariadis' approach to complexity does not function as a fully-fledged theory, it is useful to understand the implications deriving from the complexity of the EU system. This is because it functions as a condition that guides both the MS and the Commission's actions. Thus, with the complexity of the EU policy process in mind, this thesis will treat policy process as an ongoing cycle in which different actors are trying to pursue their goals and deal with the possible problems in order to stabilize and secure their position in the system

3.2 Implementation

The focus of this thesis lies on the EU level and how it deals with the non-compliance of its policies rather than in attempts to explain the MS' poor implementation activity. Therefore, the analysis will not rely on the stages approach or delve into the discussion if it is fruitful or not to study policy stages individually. Policy implementation is understood as: "a complex change process where government decisions are transformed into programs, procedures, regulations, or practices aimed at social betterment" (DeGroff & Cargo, 2009, p. 47). Although the implementation stage is interconnected with the policy outcome stage, there should be a distinction between the stages. While policy outcomes refer to the actual impact the selected policy action has had on the problem, implementation process requires action on behalf of the policy (O'Toole Jr., 2000). In a similar manner as the whole policy process, the implementation phase can be understood as an ongoing process with continuous adjustment and political bargaining (Jordan & Tosun, 2013).

Furthermore, drawing from the work of Haigh, implementation is understood as a concept in its broadest sense. Haigh places implementation into the spotlight and states that implementation includes more than narrow legal or technical matters and that it should be seen as the link between what is desirable and what is achievable (2016). A broad understanding of implementation includes, for example, seeing the drafting of the legislation as the first step of implementation because problems later in the process usually imply problems in the beginning of the process. The link between the policy drafting and implementation is especially interesting in the case of the Commission, as it is the institution behind the majority of the policies formulating environmental legislation in Europe, but in the majority of the cases has to rely on the MS for the implementation of the legislation. Although the policy stages are somewhat similar in the EU system and on a national level, this thesis relies on Bauer's idea that the "traditional notions of 'policy implementation' should be refined to account for the different character of EU implementation with its frail center, actor interdependence [and] cross-national supervision problem" (Bauer, 2001, p. 5). In other words, the implementation process in the EU can be understood as a policy stage in which the policy is agreed on the supranational level and then implemented through different methods in the national level. However, the process includes more complexities than a traditional process since it includes transposition, adjusting and additional decision-making on the ground on another scale than national legislation. Thus, the EU policy process, including

implementation, is understood as traditional policy process, with some additional constraints arising from the multi-level nature of the EU (Wallace, Pollack, & Young, 2015).

3.2.1 Implementation deficit

In order to analyze the Commission's response to the *implementation deficit,* the concept needs to be conceptualized. A general understanding of implementation deficit is that it is a mismatch between the specific goals of a policy and the practical effect it achieves on the national level. More specifically it can imply any type of problem in the implementation phase. Based on the Commission's own Communication, it can be argued that from its perspective it sees non-communication, non-conformity and bad application as the key challenges for implementation (European Commission, n.d.-a; IMPEL, 2015). More specifically, based on the reasons behind opened infringement cases the implementation challenges can include: non-conformity of transposition, bad application of directives, wrong application of treaty articles, regulations and decisions or late transposition of directives (European Commission, 2018d).

Implementation deficit is a problematic concept in the sense that it is perhaps impossible to define the ultimate level of implementation, thus difficult to pinpoint a deficit as well. Since the actual effects of a policy on the ground are extremely difficult to measure as well as require long time spans and because the focus of this study is on the Commission's response to the problem, this study focuses on analyzing the deficit from the Commission's own perspective. Whether or not it is possible to identify a certain *ideal* extent of implementation in which we could expect no harm done for nature, this thesis understands the implementation deficit as the various identified challenges the MS have while implementing EU environmental legislation.

3.3 Resource-Dependence Theory (RDT)

The RDT has its roots in the rationalist institutionalism (Börzel & Risse, 2007). Developed by Pfeffer and Salancik in 1978, RDT originally belongs to the organizational theory and strategic management research domain but is often applied more broadly across different research fields (Metz, 2015, p. 23). Although, originally developed to mainly explain the behavior of businesses and companies, in the same manner governmental organizations and EU bodies are dependent on their environment and behave similarly to private sector actors. The interdependence stems from the multiple responsibilities and complexities of the policy processes that no organization can manage on their own (Metz, 2015). Based on the similar characteristics of organizations and EU bodies, this study treats the Commission as an organization.

Since the late 1970s the theory has been used to explain how organizations are trying to reduce environmental interdependence and uncertainty, in order to increase their stability

and survival (Hillman, Withers & Collins, 2009). One of the core ideas behind the RDT is that in order to understand why organizations behave in a certain way, it is crucial to understand the behavior of the other social actors in the same environment (Metz, 2015). As an example, Bauer (2006) uses a revised version of the RDT theory while researching the role of the Commission in the implementation phase of EU structural funds in Germany. His core argument is that an implementation deficit affects and threatens the *earlier* stages of the process because, as stated above, the EU policy process is a complex ongoing cycle in which different stages are highly interconnected. Based on this core assumption, the revised version of the RDT provides a suitable theoretical framework for the analysis of the Commissions implementation policy in response to the challenges occurring in the environmental policy.

The RDT assumes that, when applied to an institutional setting, actors are rational and use welfare-maximizing strategies in order to reach the ultimate goal of safeguarding long-term organizational survival (Bauer, 2006). The theory assumes that organizational change is based on an external threat, however, it can also lead to a proactive strategy. In other words, organizations are not purely reacting to threats but might actively seek to manage their environment in order to achieve desired goals. In most cases an organization cannot acquire all the necessary resources it needs in order to survive, thus it must enter into transactions and relations with others that can supply the required resources. "Thus, the crucial driving force behind organizational behavior is the desire to acquire the needed resources in order to accomplish the task(s) assigned to them when created" (Bauer, 2006, p. 720). In order to stabilize or enhance their position organizations are assumed to interact with others. In addition to being dependent on these other actors to provide resources to the organizations, they are also trying to influence their environment to the desired direction. Hence, according to RDT, organizational behavior (internal decision-making) is affected by the surrounding environment, in which it is trying to acquire the needed resources in order to stabilize or ensure its existence. This behavior is influenced by environmental constrains, contingencies and anticipation, as well as by more opportunistic behavior. Bauer thus introduces an idea that in RDT "the benefit-maximizing individual of rational choice becomes an influence-maximizing organization which interacts with other organizations, since it can no longer produce all the required goods internally" (Bauer, 2006, p. 721).

To summarize, RDT functions as an interesting and suitable perspective to analyze the Commission's link to policy implementation. It assumes that the Commission's role as an agenda-setter and policy formulator is connected to the policy implementation. Its organizational survival is thus under threat if its policies are not implemented correctly. In order to minimize this threat and stabilize or enhance its position, the Commission is expected to try to influence the implementation stage of the policy process (Bauer, 2006).

3.3.1 Limitations to Resource-Dependence Theory

As seen above, RDT enables us to conceptualize the Commission's role in the EU policy process. The focus of the theory is to explain the reasons why the Commission is interested in the implementation process, although implementation is traditionally seen

as the responsibility of the MS. However, when trying to analyze more specifically what type of behavior is expected from the Commission, the RDT is not providing detailed enough answers (Bauer, 2006). Since the focus of this thesis is to analyze the Commission's response to the implementation deficit of the environmental policy, it is essential to complement it with more specific mechanisms that will help in exploring the Commission's actions in a more detailed manner.

3.3.2 Implementation Management Capacity (IMC)

The organizational environment in which the Commission has to accomplish its tasks comprises of the other EU institutions, national and regional governmental actors, citizens and NGOs. As explained in the introduction, the Commission suffers from a state of vulnerability caused by the fact that as the main agenda-setter and policy formulator, it is often also held responsible for implementation as well. It is mainly the other institutions that pose this responsibility to the Commission, but perhaps to a degree the MS, citizens and the Commission itself.

It is this vulnerability that leads the Commission to seek what is called Implementation Management Capacity (IMC) (Bauer, 2006). Bauer defines the IMC mechanism as "the Commission's ability to institutionalize and exploit supranational linkages with policy execution in terms of supervision, information and participation (…)" (2006, p. 723). Based on this idea, the Commission is dependent on the possibility to be involved in and to get information about the policy execution, because it is a way to reduce the accountability pressures deriving from the organizational environment. Bauer presents key assumptions of the Commission's behavior based on its need to improve its capacity in implementation management: First, the Commission is expected to seek direct presence in implementation networks. Second, the Commission is trying to co-opt interested third parties (NGOs, economic and social partners) depending on the particular differences between supranational and national policy objectives. In practical terms, the IMC refers to the mechanisms, competences, relations or skills the Commission uses to influence, supervise, monitor or assess the implementation (Bauer, 2001, p. 5)

To summarize, the IMC mechanism allows for a more precise analysis of the Commission's actions and what type of procedural changes we should expect as an indication for growing supranational involvement. For example, the Commission is expected to create more institutionalized information channels and co-opt interested third parties into these implementation networks (Bauer, 2006).

3.3.3 Enforcement & Management

Enforcement and management are perhaps the two most commonly used perspectives for studying compliance in the EU. These two perspectives present different claims about the reasons behind non-compliance and what is the most effective method in addressing it (Tallberg, 2002). To some extent, the enforcement-management analysis has replaced the traditional realist-liberal debate on institutions. Traditionally enforcement and

management approaches have been addressed as competing explanations. Both in theory and in practice these approaches have often been used by comparing their explanatory power. Differing from the traditional way of handling enforcement and management as competing strategies, Tallberg (2002) finds that, firstly, it is possible to combine these mechanisms and, secondly, they are more effective when deployed in combination. In other words, instead of being alternatives, in international cooperation enforcement and management strategies are complementary and mutually reinforcing.

The enforcement approach has its roots in the political economy tradition of game theory and collective action theory. Enforcement approach sees states acting as rational actors and assumes that the reason behind and the solution for non-compliance is in the incentives presented to states. To ensure compliance, the Commission is assumed to rely on "increasing the likelihood and costs of detection through monitoring and the threat of sanctions" (Tallberg, 2002, p. 611). Hence, monitoring and sanctions are the two main elements of enforcement strategy. Monitoring is used to increase transparency and expose possible violators, whereas sanctions are used to decrease the attractiveness of non-compliance. From the MS' perspective, the enforcement approach assumes that the states choose not to comply based on their cost-benefit calculations (Hartlapp, 2007, p. 655). Thus, compliance is dependent on the possible size of political or financial losses and gains.

The management approach assumes that the reasons behind non-compliance are capacity limitations and rule ambiguity or even unintended misinterpretation, rather than deliberate decisions as assumed by the enforcement theorists. Therefore, from the management approach point of view, to ensure compliance the Commission is expected to improve capacity building, rule interpretation and transparency. By rule interpretation Tallberg refers to the clarification of common norms through interpretation and adjudication as a way for dispute settlement (2002). The main assumption of the approach is that political and economic capacity limitation is the key reason behind non-compliance. The management approach thus assumes that non-compliance is "(…) a problem to be jointly solved by the international organization and the state (…)" (Hartlapp, 2007, p. 654).

As stated above, Tallberg argues that both enforcement and management strategies are utilized by the Commission. He argues that monitoring, sanctions, capacity building, rule interpretation and transparency measures all coexist as means to ensure that states comply and implement EU policy correctly (2002, p. 614). Therefore, Tallberg's approach on the interaction between enforcement and management, enables us to categorize and analyze the Commission's implementation policy by assuming that it includes both enforcement and management instruments.

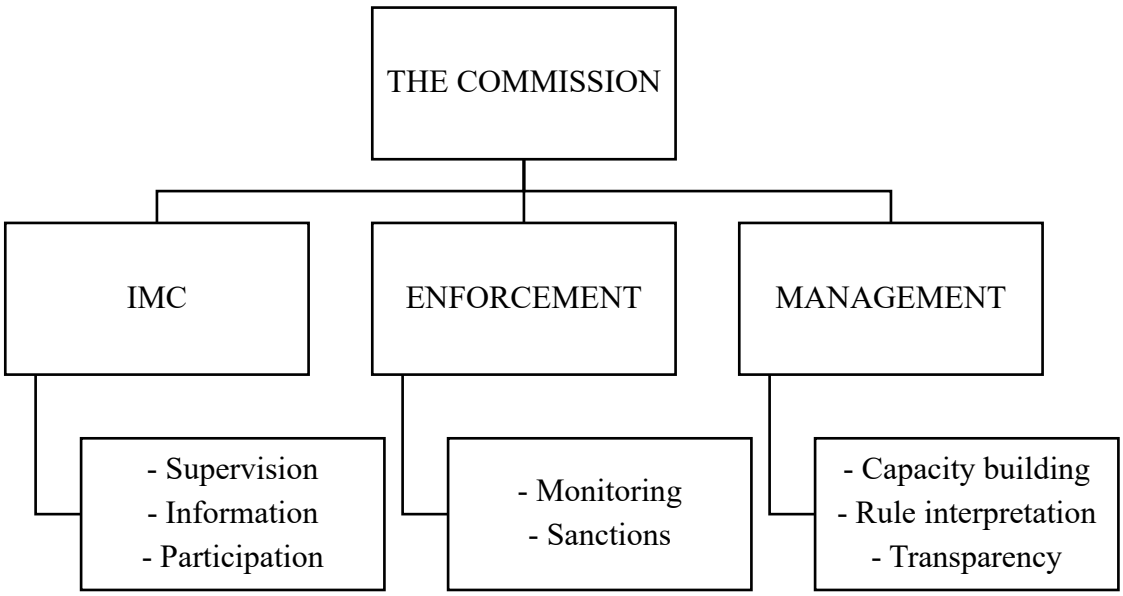
3.3.4 Conceptualizing a Model for the Analysis

As presented above, the RDT theory helps us to understand the organizational behavior of the Commission in a more comprehensive manner and why it might be strategically interested in the implementation phase of EU legislation, although that stage is

traditionally considered to be the responsibility of the MS. Therefore, the complex EU policy process and the RDT functions as the overarching theoretical framework for the analysis.

However, as already mentioned, the RDT lacks the ability to specifically address what type of behavior is to be empirically expected from the actors in focus (Bauer, 2001). To overcome this limitation, Bauer originally developed the IMC mechanism, by combining the RDT with principal-agent theory[1] in order to conceptualize "actor interaction as a researchable 'trinity' of European peers, the Commission and national administrations" (Bauer, 2001, p. 5). However, the focus of this thesis lies on the supranational level response rather than on the trinity of MS, the Commission and national administration. Therefore, in order to better answer the research question of this thesis, the RDT will be operationalized by combining the Bauer's IMC mechanism with the concepts of enforcement and management as strategies possibly deployed by the Commission. The Commission's response to the implementation deficit of the EU environment policies will thus be analyzed by using the key concepts from the above discussed approaches. The model below represents the theoretical framework that will guide the analysis:

Figure 1 - Theoretical Framework; source Bauer (2006) & Tallberg (2002)



[1] Principal-agent theory assumes that in a situation in which two actors have different resources, they agree to work together in order to reach the common objectives that would not be possible to achieve individually. In a situation like this the other actor usually acts as an *agent* on behalf of the *principal* (see further Bauer, 2001, p. 7; Blom-Hansen, 2005, p. 629).

Based on this model, I expect that the Commission will use strategies connected to the IMC, enforcement or management approaches. First, the core concepts in the IMC model includes *supervision*, *information* and *participation*. In order to defend itself from the accountability pressures coming from the organizational environment, the Commission is expected to want to be involved in (participation) as well as get information about (supervision) the execution of EU policies. Information retrieval strategy refers to not only supervising activities but also to the development of additional information systems (Bauer, 2006).

Second, from the perspective of the enforcement model the core concepts are *monitoring* and *sanctions*. Monitoring is linked to supervision assumed in the IMC model, which suggest that elements of all these models can be combined while conducting the analysis (Tallberg, 2002). Sanctions are used in order to pressure the actors to behave accordingly.

Third, the core concepts of the management model, *capacity building, rule interpretation* and *transparency* represents a more *problem-solving* type of strategy of implementation of policies. Capacity building refers to actions targeted to improve technical knowledge, bureaucratic capability and financial resources. Rule interpretation refers to formal or informal and non-binding activities aimed at solving challenges arising from ambiguous treaty language, it can take a form of, for example, dispute settlement as a way to clarify common norms. Transparency refers to managerial strategy by which coordination on the treaty norms are being facilitated and the behavior of actors is being shaped by social pressure instead of through coercive measures (Tallberg, 2002).

To summarize, the above presented concepts are to an extent overlapping or have very fine differences. Therefore, this research does not expect to find results creating a clear division between these models but assumes that the different concepts can be interrelated. As suggested by Tallberg, enforcement and management are not seen as competing approaches, but accepted as complementing strategies used at the same time (Tallberg, 2002).

4. Methodology

The purpose of this chapter is to first, briefly account for the philosophical worldview underlying this study. Second, describe the chosen research design and method of this thesis (qualitative case study and document analysis). Third, explain the data selection process and introduce the selected documents, and finally present the practical analytical framework which will guide the analysis.

4.1 The Philosophical Worldview

Before going in depth in the practicalities of the research method, the underlying philosophical worldview proposed in this study should be clarified, as it guides the actions made while conducting research (Creswell & Creswell, 2018). This research takes interpretivism as its epistemological position, because it seeks to understand the studied phenomenon: the Commission's actions in the implementation (deficit) and assumes that the surrounding world (organizational environment) affects the Commission's actions. Thus, the underlying assumption behind this study is that history, culture, norms and beliefs affect the Commission's behavior and the strategies it chooses to deploy. This research accepts that we can make sense of the reality only through meanings which are socially constructed, even if an external reality exists independent of our beliefs and understanding. This understanding follows the ontological stances defined by Ritchie and Lewis (2014), which they call subtle or critical realism. Furthermore, the role and background of the researcher is acknowledged as it also affects the understanding and interpretation of the topic, theories and results of this research. Pure objectivity is impossible to achieve, nevertheless the goal of this study is to gain more understanding about the studied topic, while striving to be as neutral and transparent as possible.

4.2 Qualitative Case Study

Case study research in policy studies is used to deepen the understanding of the policy-making process. By using a case study design it is possible to gain important insights into political and organizational environments from which policies emerge (Mills, Durepos, & Wiebe, 2010). Therefore, the chosen research design for this study is a case study. As mentioned previously, policy processes are extremely complex and researchers often seek to simplify the process in different ways (Sabatier, 2007). A case study design is a suitable method for simplifying the EU policy process because it enables the narrowing down of this broad research field into more researchable examples. In addition, Mills et al. state that "Case study research in public policy is an important analytical tool that can illuminate the actions of various policy actors in attempting to influence the policymaking

process" (2010, p. 3), which is what this study intends to do by looking at the Commission's actions.

Case studies have often been described as having a holistic nature, trying to understand the wholeness and complexity of a case (Punch, 2013). This study intends to produce a sophisticated description of what the Commission is doing and what type of strategies it is using in the field of implementation of environment legislation in EU.

4.2.1 Reliability, Validity & Generalizability

In spite of the fact that reliability and validity as research concepts were originally developed in natural sciences, they hold value in qualitative studies as well (Ritchie & Lewis, 2014).

Reliability, as understood by Ritchie and Lewis (2014), is connected to the replicability of the study. Although some scholars argue that a full replicability of qualitative studies is not possible nor desirable, due to the unique nature of studied phenomena and role of the researchers in the external reality, some measures can be taken in order to ensure reliability (Ritchie & Lewis, 2014, p. 272). Since this study is a qualitative case study conducted through a document analysis, the relevant issues to consider are about systematic and transparent data selection process, comprehensive analysis, well supported evidence for the interpretation and ensuring the possibility to include multiple perspectives in the study.

Validity on the other hand refers to the *correctness* or *precision* about the aim of the research and the execution of it (Ritchie & Lewis, 2014, p. 273). In general, it means that all the parts of the research design are suitable and connected. To ensure validity I have made careful considerations about the research method chosen for this thesis and if it is suitable to answer my research question. Hence, the advantages and limitations of document analysis will be discussed in the following subchapter (4.3.1).

The issue of generalizability has been contested especially in the context of case studies since many argue that a study designed to understand one case cannot be generalized into other cases (Punch, 2013). Although some studies do not even seek to be generalizable, for example due to uniqueness of the case, there are types of case studies that can aim to be generalized by either conceptualizing or developing propositions (Punch, 2013). Since this study is more focused on describing a phenomenon than developing new concepts to explain the studied topic, developing propositions seems like a more possible way to generalize the results gained from the analysis. Generalizability is not the main goal of this study, however, since the complex processes behind policy-making in the EU can be seen to include similar characteristics across policy fields, the Commission's actions are possibly not entirely unique in the field of environmental policy. Thus, perhaps the results of this study can indicate some type of propositions about the nature of the Commission's actions that can be used in order to understand the Commission's implementation policy in a broader sense. On the other hand, institutions behave rather differently across diverse policy issues which makes it difficult to generalize findings from one policy field to another (Zahariadis, 2013).

4.3 Document Analysis

The study of existing documents is a suitable research method when the research aims to "understand their substantive content or to illuminate deeper meaning which may be revealed by their style and coverage" (Ritchie & Lewis, 2014, p. 35). Document analysis refers to a systematic procedure for reviewing documents, including a close examination and interpretation of the data in order to gain understanding and develop empirical knowledge (Bowen, 2009). It is often used for studies in which the written communications are central to the research, for example in organizational research. The process of document analysis includes finding, selecting, appraising and synthesizing data found from the documents. It can be seen as combining methods from content and thematic analysis (Bowen, 2009).

Since the aim of this research is to identify, categorize, and through that give understanding, to the Commission's actions, document analysis functions as a suitable research method. By analyzing the documents produced by the Commission concerning the implementation of its environment legislation, it is possible to produce a description of the current scope and nature of the Commission's actions and perhaps gain a more holistic picture of its role in the EU policy process.

4.3.1 Advantages and Limitations of Document Analysis

As seen above, the document analysis method has many advantages. It is considered to be efficient, cost-effective, exact and a rather stable method. *Exactness* derives from the fact that documents often include names, references and details of events (Bowen, 2009, p. 31). *Stability* actualizes from the ideas that documents are stable and non-reactive to the presence of the researcher, in contrary to interview method for example. This makes documents suitable for repeated studies (2009, p. 31).

On the other hand, documents can also be limited in detail since they are not produced for the purpose of the research. This is why there is a risk that the documents do not provide sufficient information in order to answer the research question (Bowen, 2009). In addition, document analysis poses a risk for *biased selectivity* (2009, p. 32; Yin, 2009, p. 72). According to Bowen "[i]n an organizational context, the available (selected) documents are likely to be aligned with corporate policies and procedures and with the agenda of the organization's principals" (2009). Therefore, a carefully produced data selection is increasingly important when conducting a study which only uses documents as the data.

The above-mentioned limitations about lack of relevant details in documents and biased selectivity reflect a broader limitation of this study. Document analysis is often used in studies which combine different qualitative research methods, such as in-depth interviews, in order to reduce the risk of potential bias. The risk is that by using a single method, the results of the research are not as comprehensive as it would be possible to get with the use of multiple methodologies to study a phenomenon (Bowen, 2009). This

research uses document analysis as a stand-alone method because it is suitable to answer the posed research question about the Commission's response. However, since the selected documents represent the Commission's own material, the bias of this study exists in the fact that the result possible to get from the analysis of the official statements and programs represent only the Commission's *side of the story*. The document analysis was chosen to be used as a stand-alone method because the aim is to identify and describe in a sophisticated manner the Commission's current approach to the implementation deficit of the environmental policy, hence the analysis of the official documents was selected as sufficient and appropriate method to answer the research question. However, it is important to keep in mind that "we cannot treat documents – however 'official' – as firm evidence of what they report", thus a careful selection and detailed analysis is needed to uncover the Commission's actions when analyzing its official documents (Bowen, 2009). In other words, the same way as with other data, there is a need for a thorough analysis in order to produce any type of results, merely presenting the data is not enough.

4.4 Data Selection Criteria

For the purpose of the data selection I have constructed the following criteria:

- **Type of documents:** The documents should represent Commission's official documents.
- **Time period:** The documents should reflect programs and instruments that are active in the time of writing this thesis (2019).
- **Scope and purpose:** The documents should reflect activities that take place in the field of environmental policy and that are targeted at improving implementation. The activities can be solely targeted for environment policies or deal with environment among other policy fields.

As seen above, the analyzed data is naturally occurring, thus not generated by the researcher, and are produced by the Commission itself. The criteria were constructed as presented above, based on the objective of this study and the research question. Considering the time and space constrains for this thesis, also the number of analyzed units is limited, thus there is a need to narrow down the number of analyzed units. It should be noted that the concept of *document* is understood in its broad definition, including more than *text on paper*. In other words, in this study I understand programs and other policy instruments as documents. This decision was made because in addition to producing documents such as press releases, legislative papers and speeches, much of the Commission's work also includes establishing programs and other activity of a similar kind. Since the purpose is not to produce a text analysis, in which issues such as vocabulary are highly important, the method of analyzing multiple different types of documents seems appropriate, focusing on their function and purpose. Although, I have selected some actual text on paper- documents to represent each analyzed instrument, the focus is on the function of the instrument and not the vocabulary used in them.

4.4.1 Data Selection

The units for the analysis have been selected based on the extensive literature review about the implementation in EU policy process and from a Commission's official Communication released in 2017: "EU law: Better results through better application" (2017/C 18/02, see appendix 1). The purpose of the communication is to address the issues of implementation and how they can be better addressed at the EU level. Since the focus of the thesis is on the Commission's actions, a communication from the institution itself is an appropriate place to identify what it considers to be the key actions concerning the implementation deficit. In addition, the background research and the reviewed literature supports the selection of programs from the Communication. It should be noted that the Communication includes references to a number of different programs, but only the programs that have a direct relevance to environment were selected. Following the data selection criteria presented above, the units selected for the analysis identified from this communication are:

- Infringement procedure
- EU Pilot Program
- European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)

Additionally the following two programs were identified as the Commission's key activities in the implementation of EU environmental legislation, therefore included in the analysis s (EPRS, 2016):

- 2018 EU Action Plan
- Environment Implementation Review (EIR)

These policy instruments will be presented in more detail in the analysis chapter.

4.5 Operationalization

The qualitative document analysis is conducted by analyzing the selected documents through the theoretical lens of resource-dependency that provides an understanding of the Commission's implementation activity in the field of environment. More specifically the analysis is structured around the practical analytical framework presented below (figure 2). The framework is based on the theoretical model presented in chapter 3 and explains what type of actions are expected from the Commission. Thus, in the main part of the analysis I will review the selected policy instruments by using the specific categories derived from the enforcement and management approaches (Tallberg, 2002) and the IMC mechanism (Bauer, 2006). To clarify, the different programs and instruments dealing with implementation will be carefully examined, with a focus in their purpose, function and message, and categorized according to the categories.

It should be noted that the analyzed documents purely function as examples of the Commission's activity. Reviewing all policy instruments and actions connected to the

implementation management in the field of environment would require a longer and more extensive research than this thesis allows. Therefore, to make it clear that the selected documents do not represent the full picture, the analysis is constructed around the analytical model in which the instruments function as supporting examples.

This study mainly has a deductive approach as I am attempting to apply the practical analytical framework (see below) to the Commission's actions and assume that the actions contain characteristics of strategies deriving from enforcement, management and IMC approaches. By actions I mean the programs and instruments listed in the previous subchapter (4.4.1).

However, it should be noted that, following the tradition of qualitative research, it is accepted that the data might not *fit* the model and there is a possibility that new concepts emerge from the analysis (Ritchie & Lewis, 2014, p. 30). Since the literature on the Commission's strategies as policy implementor is rather limited (Bauer, 2001), it is highly plausible that the analytical model created based on the existing literature, does not cover all possible aspects of the Commission's activity. Furthermore, as already mentioned in the theory chapter, I assume that the different concepts used in the analysis are interrelated and that the documents might not only represent one type of activity.

Figure 2 - Practical Analytical Framework; Constructed from Bauer and Tallberg's works.

CONCEPTS & STRATEGIES	POSSIBLE COMMISSION ACTIVITY
ENFORCEMENT	
Monitoring	*Monitoring, through different channels and methods, the MS performance in implementing legislation + exposing defectors*
Sanctions	*Imposing penalties on the MS for poor implementation*
MANAGEMENT	
Capacity Building	*Improving technical knowledge, bureaucratic capability and financial recourses*
Rule interpretation	*Developing formal or informal and non-binding activities to solve ambiguous treaty language, e.g. dispute settlements*
Transparency	*Assuring Member States that they are not being taken advantage of + raising awareness of effects of alternative national strategies*
IMC	
Supervision	*Supervising the MS implementation on its own or with the help of third-parties*
Information	*Developing additional information systems that monitor policy process and assess policy outcomes*
Participation	*Seeking presence in implementation networks + co-opting interested third parties into implementation networks*

5. Analysis: The Commission's role in the Implementation of Environmental Policy

The chapter starts with a brief introduction to the EU level instruments and programs established to improve the implementation challenges of environmental legislation (5.1). It will function as an explanatory note about the content and structure of this chapter. It is followed by a more in-depth analysis of the programs and instruments. The in-depth analysis is structured around three dimensions: enforcement (*monitoring, sanctions*), management (*capacity building, rule interpretation* and *transparency*) and IMC (*supervision, information* and *participation*) (see figure 2). The chapter ends with a more general discussion that will draw conclusions from the analysis and discuss the idea of the Commission as a resource dependent organization.

5.1 The Infringement Procedure and Alternative Instruments

"Effective enforcement of EU rules — from the fundamental freedoms, food and product safety to air quality to the protection of the single currency — matters to Europeans and affects their daily lives. It serves the general interest. Often, when issues come to the fore — car emission testing, water pollution, illegal landfills, transport safety and security — it is not the lack of EU legislation that is the problem but rather the fact that the EU law is not applied effectively. That is why a robust, efficient and effective enforcement system is needed to ensure that Member States fully apply, implement and enforce EU law and provide adequate redress for citizens."

(European Commission, 2019a, p. 11)

In 2016, the European Parliamentary Research Service (EPRS) published a briefing about public expectations concerning different EU policy fields based on a Eurobarometer survey. It showed that in the field of environment protection, 67% of EU citizens would like the EU to intervene more than at present and 52% of the citizens felt that the current level of EU action is insufficient (EPRS, 2016, p. 1). These figures reveal a pressure for the EU to do more in the field of environment. From a simplified perspective it means that the EU needs to come up with new improved legislation and other instruments or improve the existing ones to achieve better results. Indeed, the EPRS briefing states that "[t]he Commission could also provide more compliance support to Member States, while enforcing EU legislation further through infringement procedures" (EPRS, 2016, p. 3).

Hence, the infringement procedure retains its status as one of the main instruments in the EU level implementation management. In its guardian of treaties role the Commission will monitor and take action, hence start an infringement procedure if a MS does not incorporate a directive into its national law by the provided deadline or does not apply

EU law correctly. In practice this means that the MS must keep the Commission informed about the enactment of the legislation. In the case of missing or insufficient information the Commission asks for additional reports in the form of informal inquiry. If these proceedings do not help, the Commission will start an official infringement procedure including several stages.

However, according to the EPRS briefing, there seems to be a demand for alternative instruments as well. For example, the briefing identifies the Environmental Implementation Review (EIR) as a *new EU tool* which can help in solving implementation challenges. The EIR was launched in 2017 by the Commission and it functions as a tool intended to improve implementation through preventive measures and by publishing country reports (European Commission, 2017b). In addition to the infringement procedure and the EIR, other examples of alternative instruments in the field of environment can be identified from various different EU official communications and briefings (see EPRS, 2016; EU, 2013; European Commission, 2017a). These examples are: the EU Pilot program established in 2008, the IMPEL network established in 1992 and the 2018 EU Action Plan (hereafter referred as Action Plan).

Based on the above-mentioned examples, it is possible to establish that the Commission has been building a role in the implementation phase of environmental policy. However, what deserves more attention is what type of activity these instruments represent. The following sub-chapters focus on analyzing the instruments by trying to find indications of specific strategies that could fit the categories under the enforcement, management and IMC approaches (figure 2).

5.2 Enforcement

Enforcement approach assumes that the MS behave as rational actors weighting the costs and benefits of alternative decisions when deciding about implementing EU legislation (Tallberg, 2002). Thus, the MS need strong incentives for deciding to implement EU environmental legislation. Presenting EU policy as a cost-efficient option or increasing the possibility of receiving sanctions, could be plausible examples of strong incentives. Therefore, the Commission is expected to deploy actions that increase the likelihood of MS *getting caught* through monitoring and making the detection costly in terms of sanctions.

5.2.1 Monitoring & Sanctions

As described in figure 2, monitoring and sanctions are the two central concepts in the enforcement approach. As stated earlier, monitoring ideally leads to increased transparency and exposing the defectors, whereas, sanctions raise the negative aspects of not-complying making it more costly, thus less attractive for MS not to comply (Tallberg, 2002).

In terms of the implementation deficit, the infringement procedure functions as the principal instrument to improve compliance of the Member States. Article 258 of TFEU states:

> *If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.*

In other words, as already stated, in Article 258 the Commission brings an enforcement action against a non-complying MS. The procedure starts with an informal inquiry to the MS about the possible problems with implementing EU legislation. Thereafter the procedure includes various different stages, including a *formal letter* in the beginning, followed by a *reasoned opinion* and finally a court case in the European Court of Justice which can lead to financial penalties (European Commission, n.d.-b).

A crucial function of the infringement procedure is the monitoring of MS, which takes place before the formal procedure starts. Before sending the informal inquiry or the formal letter, the information about a possible violation in implementing legislation must reach the Commission. This represents a type of a monitoring activity and its actions can be triggered by a complaint from citizens and NGOs, petitions and questions by the EP (Börzel & Buzogány, 2019). The Commission is thus rather dependent on the other actors in its organizational environment for monitoring and information providing purposes.

Interestingly, it has been argued that the environmental NGO's have an especially important role in providing information and monitoring services for the Commission (Eliantonio, 2018). However, their role is to an extent rather paradoxical due to the reason that although they provide the Commission with important MS level infringement information, they do not have an official role in the procedure. It is only the Commission and the MS that can take the cases in front of the CJEU, leaving the NGO's highly dependent on the national courts or the Commission and their political will to take cases forward (Eliantonio, 2018). The Commission seems to rely rather heavily on the NGO's to function as watchdogs on behalf of the EU and report to the Commission about MS level violations. On the other hand, it has been argued that it has also "(…) cut them out of any forms of involvement in the discussion with the Member States concerning those very infringements" (Eliantonio, 2018, p. 754). The role of the NGOs seems to be especially important in the field of environment because many violation cases often take place in areas of which individuals do not have knowledge or interests of, which is why specialized NGO's are needed to conduct research and inform interested parties about environmental violations. For example, in the field of air quality "(…) individual citizens who suffer from the pollution are generally ill-informed, geographically dispersed and insufficiently motivated to mobilize as a group in defense of their own interests" (Carter, 2018, p. 181). Thus, it seems that the Commission is dependent on the NGOs, and to a an extent the citizens or even other MS to assist in the monitoring process. Consequently, it has set up a number of programs that help the citizens and NGOs to report infringements in a seemingly easier manner, such as the EU Pilot program.

It could be argued that the role of NGOs providing the Commission with information could be seen as an example of information retrieval belonging to the IMC category: "Developing additional information systems that monitor policy process and asses policy outcome" (see figure 2). However, as seen above the Commission seems to consider the NGOs as purely assisting in monitoring but then leaving them outside from the official process, therefore, I interpret this activity as strictly monitoring, which includes using different channels but not co-opting other actors fully into the process.

As mentioned, after receiving information about a possible violation through one of the possible channels, the Commission sends an informal inquiry to the MS. This activity functions as a highly important tool for the Commission to improve implementation because "more than two-thirds of all cases in which the Commission sends a warning letter gets settled before it officially opens proceedings by issuing reasoned opinion" (Börzel & Buzogány, 2019, p. 5). Such a high number implies that it is possible to identify aspects of some type of problem-solving strategies within the infringement procedure which in general represents a more traditional enforcement strategy including elements of monitoring and sanctioning. Perhaps, it can be argued that the EU infringement procedure functions better as a threat of sanctions than as an instrument bringing MS to court. Based on this logic, from the Commission's perspective the effectiveness of the informal inquiries is beneficial because it can save large amounts of money and time. Thus, it is logical why the Commission sets up instruments to improve the informal stage that takes place before the formal procedure.

As a summary, the EU infringement procedure functions as a good example of the enforcement strategy. It includes attributes from monitoring and sanctioning, in other words, monitoring the MS' performance and exposing defectors as well as using a threat of sanction in order to decrease the number of violations in implementing environmental legislation. On the other hand, the infringement procedure does not solely include aspects of enforcement strategy, but also attributes belonging to the IMC approach, such as supervision.

5.3 Management

The management approach assumes that the implementation deficit results from capacity limitations and rule ambiguity (Tallberg, 2002). Thus, the logic behind is rather different from the enforcement approach which believes that the root causes for poor implementation lies in the lack of political willingness which depends on the cost-benefit thinking of the MS. Interestingly, based on the management logic, the field of EU environment policy should thus be more complex than many other EU policy fields due to the high number of opened infringement cases. As seen in the practical analytical framework (figure 2) the management approach includes the strategies of capacity building, rule interpretation and increasing transparency.

5.3.1 Capacity Building

According to Tallberg, capacity building refers to the activity of improving technical knowledge, bureaucratic capability and financial resources (2002). Based on the logic that one major reason for implementation challenges stems from capacity limitations, the Commission is assumed to devote more money and other resources to help the MS level.

Launched in 2018 by the Commission, "[t]he Environmental Implementation Review (EIR) is a tool to improve implementation of the EU environmental law and policy. It aims to address the causes of implementation gaps and tries to find solutions before problems become urgent" (European Commission, 2019b). It represents one of the Commission's alternative activities in managing implementation better, with a specific focus in the fields of waste management, nature and biodiversity, air quality, water quality and management which are identified as the most pressing issues in Europe. In February 2017, the Commission adopted the first EIR package. It includes 28 country reports and suggested actions and has the purpose of describing challenges and opportunities on environmental implementation. In addition to the challenges connected to individual MS, one of the main objectives of the package seems to be identifying common challenges and the reasons behind them. The purpose of identifying the root causes behind poor implementation is to use the information to help tackle the challenges. The EIR identifies issues such as, "[s]ystemic issues causing poor implementation of Nature Directives are the absence of management plans for Natura 2000 sites or their management", as the root causes visible across the EU (European Commission, 2017b, p. 7).

At first glance, the EIR could function as an example of capacity building strategy, since its main objectives include identifying gaps and presenting solutions (European Commission, 2019b). However, when taking a closer look at the 2017 package it seems that the main purpose is to shed light on the implementation gaps, while providing rather limited practical solutions.

The report includes the individual country reports as well as chapters dealing with the specific policy fields with the most pressing problems, such as waste management. The country reports include information about the challenges and opportunities connected to an individual country. As an example, the country report about Finland includes a chapter about waste management, including facts and figures about how waste management is handled. The report shows that Finland remains below the EU recycling targets (33% vs. 50%) and based on this information the Commission suggests action to improve the situation. However, the suggested action seems to remain in a rather general level. An example suggestion to Finland is: "[i]ntroduce new policies, including economic instruments or produce responsibility schemes, to promote prevention, make reuse and recycling more economically friendly" (European Commission, 2017b, p. 249). Another example could be the country report about Sweden. It is identified that in 2013 almost 50% of habitats were under an unfavorable bad conservation status. Consequently, the suggested action is "[i]mprove the conservation status of forest, grassland and dune habitats" (European Commission, 2019b, p. 760). Thus, it can be argued that the Commission is positioning itself in a role where it shares information and urges MS for action without giving specific guidance. It should be noted that the package of reports is long and includes a variety of guidance, in which some are more detailed than other.

Nevertheless, the overall impression of the message from the package is that it remains on a rather general level. Without detailed policy guidance, the EIR cannot really be seen as a capacity building strategy at least based on Tallberg's (2002) definition.

An example of a more clear cut capacity building strategy can be found from the Action Plan (European Commission, 2018c). The 9-point Action Plan includes tailored actions to address needs identified from the EIR reports. Hence, the Commission's activity in the field of improving implementation seems to be somewhat interconnected and intended to be complementary. The second of the proposed actions in the plan is "[i]dentify necessary professional skill-sets and training needs for environmental inspectors (…)", the sixth "[p]repare technical guidelines for inspections or extractive waste facilities", and the eight "[b]uild up the capacity and use of geospatial intelligence for compliance assurance and promote good practice projects (e.g using Copernicus data)" (European Commission, 2018c, p. 6). These are examples of improving technical knowledge and bureaucratic capability. In general, it is stated that after careful consideration of various options, the Commission has identified the Action Plan with its 9 targeted support measures as the best option to improve the delivery of results (European Commission, 2018c, p. 5). It thus, represents one of the newest environmental implementation instruments adopted. Interestingly, it relies on the similar strategies as some of the other programs such as sharing of good practices and identifying needs. The document states that the Action Plan was established as a response to demands for practical support in the field of environment (European Commission, 2018c, p. 8). This shows that the Commission is willing to accept some level of responsibility over the issue by responding to the complex problem that presumably requires both practical and political solutions.

5.3.2 Rule interpretation

Rule interpretation refers to actions such as dispute settlements that are intended to solve challenges arising from ambiguous treaty language. Interestingly, while reviewing the selected documents, I could not find indications of formal dispute settling as such. It thus seems that the Commission is relying on other strategies in its implementation policy.

On the other hand, Tallberg adapts a rather broad definition for dispute settlement, including negotiations as well as adjudication, "[t]he mechanism of rule interpretation need not to be formal adjudication in international courts; informal and non-binding mediative processes can also clarify treaty rules" (2002, p. 614). Therefore, with the broader idea of dispute settling in mind, it can be argued that the infringement procedure and the informal inquiry sent before the official procedure can function as rule interpretation. The main functions of the infringement procedure are the monitoring and sanctioning, as established earlier. However, the infringement judgement can also be seen as clarifying legal uncertainty (2002, p. 614). Hence, the informal inquiry the Commission sends before opening a formal procedure, functions as a form of a negotiation, since it clarifies the rules for the MS and intends to make the MS comply without a need for a costly court case. As mentioned before, the EU Pilot program functions as an informal dialogue between the MS and the Commission that takes place before the infringement procedure, as "EU Pilot involves the use of an online database

and communication tool through which the Commission and the national governments share information on the details of particular cases" (European Commission, 2018e). The program is intended to provide relatively quick answers to questions that are assumedly often deriving from ambiguous treaty / policy language. By offering help in understanding unclear treaty language in the stage before the infringement procedure starts, the EU Pilot clearly includes characteristics of problem-solving strategies. Thus, from the perspective of understanding rule interpretation as negotiations, the EU Pilot program functions as an example of this type of strategy, since it provides a channel through which the Commission can guide and negotiate with the MS.

5.3.3 Transparency

Tallberg defines the strategy of increasing transparency more specifically than simply increasing openness and information. It includes "[a]ssuring MS that they are not being taken advantage of and raising awareness of effects of alternative national strategies" (Tallberg, 2002, p. 614 and figure 2). In other words, from this perspective the Commission is expected to deploy actions that promote the advantages of harmonization of EU policies by showing that, ideally, implementing EU legislation will be less costly than national alternatives.

When reviewing the selected programs, I found that none of their main functions referred to calculations about comparing the costs and benefits of implementing EU or national policies. However, some of the programs can be seen as containing characteristics of the Commission attempting to make sure that the MS are not being taken advantage of. As an example, the earlier mentioned EIR package includes individual country reports including the main challenges, main opportunities and points of excellence (European Commission, 2017b, p. 271). Although, not publishing calculations of the possible additional costs of national strategies, by collecting the country information together the package can be seen as a way to reassure the MS that all countries have problems and that they are treated equally by the Commission. The same can be said about EU Pilot program, which publishes information about the MS comparisons based on the response time to a Commission query about a possible violation in implementation (European Commission, 2018e). Furthermore, in a more general level the EIR package is promoting the EU level legislation although not comparing it specifically to the national actions. For example, the beginning of the package states that "[t]he EU's environmental policy and legislation bring undeniable benefits: they protect, preserve and improve the environment for present and future generations, and preserve the quality of life of EU citizens" (European Commission, 2019b, p. 2)

Another interesting perspective to the Commission's actions, that exists outside the analytical model used in this analysis (figure 2), is the *naming and shaming* strategy used by the EU as a way to pressure the MS to perform better. Börzel and Buzogány (2019, p. 10) use the example of Internal Market Scoreboard functioning as a naming and shaming mechanism by comparing the MS' performance in implementing EU legislation and putting the countries that perform badly in the spotlight. By publishing specific country

information about their performance, the EIR and EU Pilot programs can, in addition to providing transparency, be seen as examples of naming and shaming.

5.4 Implementation Management Capacity (IMC)

As introduced in the theoretical framework chapter, the concept of IMC refers to the variety of mechanisms and strategies the Commission uses to manage implementation of EU legislation (Bauer, 2001). The core concepts under the mechanism are supervision, information and participation. Interestingly, these concepts seem to, at least partly, combine some logics behind the enforcement and management approaches. There seems to be indications of both logics for poor implementation (enforcement and management) behind the IMC: implementation deficit caused by the lack of political or economic will or deficit caused by rule ambiguity and unintentional reasons.

5.4.1 Supervision

By reviewing the analytical framework (figure 2), I argue that monitoring under the enforcement category and supervision under the IMC category refer to similar activities. As already discussed, the vulnerability caused by the pressure from other actors in the same organizational environment, the Commission is expected to want to increase its supervision powers (Bauer, 2006). In a simplified way: without information about cases of breach, an infringement procedure cannot be launched. The policy field of environment is especially important since it represents the majority of the cases opened (European Commission, 2018d). To repeat, out of the reviewed programs and mechanisms, the infringement procedure and the EU Pilot program include characteristics of supervision. It is worth noting that neither EIR nor the Action Plan include indications for plans to increase the Commission's supervision powers, since the focus of these programs is in the sharing of best practices and supporting national authorities and experts. It is good to keep in mind that the MS are considered to have the main responsibility of implementation, thus it is understandable that the Commission is following this line. I will come back to this idea in the final chapter of the analysis in which I will discuss the reasons behind the Commission's interest in implementation in the first place.

The enforcement and management approaches have traditionally been treated as opposites in their explanatory power. However, as the category of supervision shows, the IMC model includes both aspects of enforcement and management. Tallberg (2002) expects that strategies from both *sides* coexist in the EU system as means to ensure MS level compliance. Hence, the EU Pilot serves as a good example of an instrument that includes both aspects of enforcement (monitoring, supervision) as well as management (rule interpretation, transparency). Interestingly, it has been argued that the combination of these strategies is the most effective way to manage implementation.

5.4.2 Information & Participation

As already established, receiving information about the implementation challenges is highly important for the Commission. Through the infringement procedure and the EU Pilot program, it monitors and supervises the MS about their implementation progress. The concept of information, as based on Bauer's IMC mechanism refers to a different type of activity than simply gathering information (figure 2). It refers to the Commission developing additional information systems that will produce the information about the policy processes and policy outcomes. In addition, an important aspect of the information systems is that the Commission is expected to want to seek participation of these networks. Thus, I am combining the information and participation concepts because they seem to be connected.

Arguably, taking part in a network ensures better control and might reduce the dependence on third-parties providing information. In the case of environment policy, the interesting example that was discussed above is the role of environmental NGOs and how dependent the Commission is on the information they provide about the infringement incidents. The IMPEL network can be seen as functioning as an example of the Commission developing and seeking presence in an information system. The IMPEL is a network for the environmental authorities of the MS, acceding countries, candidate countries and Norway. It is identified in the Commissions website as an activity that supports more effective implementation of the environmental legislation. It was set up in 1992 and the Commission became its co-chair in 1994. As a co-chair, it shared some financial costs and for a few years in the late 1990s it hosted the IMPEL secretariat in DG Environment. Thus, the IMPEL seems to be a fitting example of an IMC activity and as stated in 1996 "[t]he Commission will consider the existing position of the informal IMPEL network as a useful instrument of cooperation and capacity building, and will make proposals for improving, developing and reorganizing its tasks" (IMPEL, 2019, p. 1).

On the other hand, the Commission's role in the IMPEL has changed since the 1990s and today, the network functions as an international non-profit association with a less prominent role for the Commission. The network's history document describes the development of the organizational relationship as a mutual decision, in which the network wanted a more independent and legal status and the Commission wanted to redefine its role in IMPEL. The current status of network is that it carries out enforcement tasks for the Commission. Therefore, the role of the Commission in IMPEL has decreased in terms of that it does not have as strong role in the network as it used to have. Although decreased level of cooperation, IMPEL is still closely connected to the Brussels based EU institutions (IMPEL, 2019, p. 2). The development of the relationship between the Commission and IMPEL is interesting because it actually contradicts the assumption of Bauer, that the Commission is expected to seek more participation and create information systems in order to reduce the vulnerability. On the other hand, since the IMPEL keeps on providing enforcement tasks (monitoring in terms of inspections on the ground), perhaps a closer cooperation is not needed from a cost-benefit perspective (IMPEL, 2015; Keating, 2012).

A better example of building an information system can be found in the Action Plan. In connection to the Action Plan, the Commission has made a decision to set up an expert group called *Environmental Compliance and Governance Forum* (European Commission, 2018b). It was decided that the group's tasks include

"to assist the Commission in the coordination and monitoring of the implementation of the actions to improve environmental compliance and governance as well as in the preparation of legislative proposals or policy initiatives in the field of environmental compliance and governance (...)" (European Commission, 2018b, p. 2)

On many levels, this extension of the Action Plan seems to include very similar practices as most of the other reviewed programs, such as sharing of best practices. However, the reason why I ague that it specifically functions as a good example of an information system is that the group is composed of representatives of the MS and EU level networks together with visiting representatives from the Council, the EP, the Committee of the Regions and the European Economic and Social Committee. An interesting interpretation of this is that by including the other EU level actors in the process, the Commission is trying to reduce the accountability pressures coming from its peers.

In addition, the Action Plan states that the Commission "will also seek to involve other interested stakeholders, including NGOs and business organizations" (European Commission, 2018c, p. 7). As discussed earlier, the NGOs seem to have a rather complex role in the EU policy process, not least in the implementation phase. Thus, it remains to be seen if they will be granted a more prominent role in the future.

5.5 The Commission as a Resource Dependent Organization

Above I have analyzed the traditional (infringement procedure) and alternative (EIR, EU Pilot, Action Plan and IMPEL) instruments with the enforcement, management and IMC approaches providing different predictions for the Commission's strategies. The logic behind the approaches vary to some extent, in terms of explaining why implementation challenges occur in the first place. The analysis has shown that the Commission mostly relies on strategies that stem from understanding poor implementation as a challenge caused by managerial challenges such as rule ambiguity. In other words, the management and IMC approaches seemed to provide most suitable categories for the analyzed programs. However, it is important to note that these results do not imply that these are the only strategies deployed on the EU level. As discussed above, the infringement procedure represents a somewhat traditional enforcement strategy with monitoring and sanctioning activities. Furthermore, the infringement procedure is the principal instrument to ensure better compliance and it seems that much of the Commission's activity in the field of implementation environmental legislation revolves around the procedure. For example, the EU Pilot program functions on the stage before the formal procedure starts. Since there seems to exist a level of disagreement in the academia if poor implementation is a result of administrative problems (management) or of lack of

political will (enforcement), it is important to understand how the Commission itself views the problem. The scope of this analysis is rather narrow which is why it is impossible to draw comprehensive conclusions on this issue. Yet as mentioned above, the Commission's strategies in their current form point at a direction that improved administration would be the most promising remedy to the problem.

The reviewed programs seem to be targeted to assists in the *practical* implementation and to lesser extent in the *formal* implementation. The practical implementation refers to the "steps including strengthening competent authorities, drawing up plans, following procedures, meeting standards, designating areas, providing information and granting authorisations" (Haigh, 2016, p. 165). The formal implementation refers to the actual transpositioning the EU legislation into the national law. This is rather logical because the improvement of formal implementation is perhaps an issue best tackled in the drafting and formulating phase of the process. Meanwhile the reviewed programs are best are helping in the practical aspect of issues.

Figure 3 - Findings from the analysis

Program / Concept	**Infringement procedure**	**EU Pilot**	**EIR**	**IMPEL**	**Action Plan**
Monitoring & Sanctions	A lot of indications	-	-	-	-
Capacity Building	-	-	-	Only few indications	Some indications
Rule Interpretation	Some indications	Some indications	-	-	-
Transparency	-	Only few indications	Only few indications	-	-
Supervision	A lot of indications	Some indications	-	-	-
Information & Participation	-	-	-	Some indications	A lot of indications

The chart above shows that the instruments and programs include characteristics of a variety of different strategies. In addition to these findings, it is important to discuss the more general issue of why the Commission seeks to have a role in the field of

implementation, which is traditionally considered to be in the MS' realm. Therefore, the following part of this chapter discusses the idea of the Commission as a resource-dependent organization, which is an interesting aspect when trying to bring understanding to the role of the supranational level in implementation.

It has sometimes been argued that the Commission is more interested in producing new legislation, rather than making sure to follow up on the already existing one, perhaps because intervening during implementation has often been seen as politically and financially risky (as cited in Hartlapp & Falkner, 2009, p. 19). On the other hand, it has also been argued that, adding new bureaucratic structures, protocols, rules and fail-safe systems is actually politically safer than removing existing structures (Zahariadis, 2013, p. 812). In other words, significant changes in the existing structures are open to an increased opposition compared to sticking with a slightly modified status quo, even if it is financially more costly. Following the rationale of the latter argument, the programs representing the Commission's alternative instruments could be seen as signs of politically safer activity of adding new structures on top of old ones.

An interesting example of (not-)creating new structures is from 2012 when the Commission stated that it is rejecting the idea of establishing a new EU agency which would accompany bodies such as the EEA (Keating, 2012). There had been calls for a new environmental agency dedicated to waste management since the 2008 Campania waste crisis, in which the Italian region was not able to handle its waste problems despite of the Commission issuing infringement charges. First it looked like the idea could get enough support from the Commission, although there was resistance from certain MS, fearing increased costs and additional harmonization. However, as stated above in 2012 the Commission also rejected the idea and proposed that the EEA and the IMPEL network would adopt additional duties in assisting in implementation (Keating, 2012, p. 1). Thus, this case would serve as an example of the Commission rather adding new layers into the existing system, rather than creating a completely new system. It should be noted that in this particular case, opening a new EU agency would have been more costly than to give additional duties to the EEA and IMPEL, thus, not confirming the idea presented above that the Commission is more likely to stick with existing structures despite of additional costs.

From the RDT perspective, the Commission is seen as an influence-maximizing organization which is dependent on the other actors in the same organizational environment (Bauer, 2006). The dependency stems from a situation in which the EU's general purpose is to produce collective goods, which Bauer understands as specific policies, and there is a need for inter-organizational coordination in order to achieve that (2006). For example, the Commission is dependent on the EP and the Council to accept (although after amending) the proposed legislations. In addition, only the delivery of policies is not enough to fulfil the purpose of the EU, but the delivery must be effective to achieve results and ensure political support. In other words, the Commission is dependent on the other actors in its organizational environment to enable effective policy delivery. Effective policy delivery helps it to ensure its organizational survival by offering justification and legitimatization. The pressure coming from the European citizens for the EU to do more in the field of environment and to improve its actions as the guardian of treaties forces the Commission to both pool its resources and at the same time try get

more involved and more control over the policy outcomes. In other words, the underlying assumption of this study is that the Commission, as the powerful guardian of treaties, has an intrinsic motivation to overcome the challenges concerning implementation of the EU policies since it undermines its core role as the agenda-setter and policy formulator. As seen from the analysis, the Commission seems to have some level of motivation to act in the field, relying rather lot to the programs tackling the practical challenges, however, leaving the main responsibility to the MS.

The RDT theory helps us to understand that the Commission suffers from a vulnerability due to its complex role in the EU policy process (Bauer, 2006). As stated in the Action Plan, the Commission functions in a system in which it has "a key role in ensuring the full and correct application of EU environmental law under the control of the European Court of Justice", while at the same time, it is the MS that have the main responsibility of proper implementation of EU legislation (European Commission, 2018c, p. 7). In addition, the other actors often perceive the Commission as responsible for the implementation failures, which further increases the vulnerability. As the example mentioned in the introduction show, already in the 1984 the EP accused the Commission of failing in its duties as guardian of treaties after not being able to ensure the proper application of a toxic waste directive (Haigh, 2016, p. 163)

Consequently, this vulnerability should explain why the Commission is strategically interested in the implementation phase of EU legislation. Arguably, the prominent problems in the field of environmental policy, namely the recorded implementation deficits of environment legislation, have only increased the Commission's determination to play a role in the implementation because it possibly reduces the vulnerability. Based on the analysis, the Commission is taking a role in the implementation of environmental legislation through the different instruments. However, rather surprisingly, the analyzed programs seem to be mostly supportive and not suggesting any significant changes in the Commission's role. As mentioned earlier, the infringement procedure has been and remains as the main instrument.

Another interesting assumption of the Commission as a resource-dependent organization is that, according to the revised RDT theory as conceptualized by Bauer (2006, p. 720), being dependent on the other actors in its organizational environment does not only lead to reacting to threats but also to more proactive strategies in order to have a better control of the situation and to achieve desired goals. As revealed by Börzel and Buzogany, the implementation deficit of environmental policy is prominent and relatively large, however, slowly decreasing (2019, p. 20). In other words, the *crisis* (deficit) can perhaps slowly be said to be declining. However, at the same time the public awareness of environmental issues is intensifying which makes it difficult to assess if the Commission's actions are more reactive or proactive. To an extent, it can be argued that the instruments such as the EU Pilot and IMPEL which are intended to prevent environmental crimes and solve problems before the need for a court case can be seen as proactive measures. Does this imply that the Commission has a wider political agenda in assuming a role in the implementation phase of the EU policy process, at least in the field of environment as the RDT suggest? Which leads to an interesting question about the true motives behind the involvement in the field such as the environment. More specifically, does the Commission's will to decrease the implementation deficit stem from the will to

improve the state of European environment, or simply "(…) to safeguard its genuine position in drafting and agenda-setting" as argued by Bauer (2006, p. 721). The EIR package states that full implementation of the EU environmental requirements would bring a lot of positive changes cross the EU. For example, full compliance with EU waste policy and the Natura 2000 network could create and additional 574,00 jobs (European Commission, 2017b, p. 2). The creation of jobs combined with the financial savings deriving from the improved implementation of environmental legislation shows that it is not surprising that the Commission has both a practical interest in the issue as well as a *deeper* motivation to use it in order to stabilize and secure its organizational survival.

6. Concluding Remarks

To conclude, the purpose of this study was to bring understanding to the role of the supranational level in the EU environmental policy implementation. The specific research question was formulated as "how has the European Commission responded to the implementation deficit of the EU environmental policy?". To answer this question, I used the RDT framework and reflections on policy process as the overarching theoretical framework in order to understand the Commission's motivations to act in this field as well as the complexities of the implementation phase. The analysis was conducted by using a model, which derived from the overarching theoretical framework, including categories indicating strategies that the Commission is expected to use.

The analysis showed that some of the instruments and programs included more straightforward examples of strategies belonging to an enforcement, management or IMC approaches, whereas some suggested only few indications. For example, the infringement procedure proved to be a fitting example of monitoring and supervision. In a similar straightforward manner, the Action Plan included a lot of indications of information and participation strategies. On the other hand, some strategies were harder to identify from the programs (transparency). Moreover, some programs turned out to indicate for a variety of strategies in them. As an example, the analysis found that the infringement procedure included some characteristics of *softer* strategies (negotiation) in addition to the enforcement strategies, thus confirming Tallberg's assumption of the Commission using both strategical approaches (2002).

The fact that it was possible to identify characteristics from all strategies from the analyzed instruments and programs is interesting and could be interpreted as the Commission deploying a broad variety of strategies. On the other hand, is important to note that the strategies were analyzed with a broad definition in mind. Strictly speaking there were no visible traces of rule interpretation in terms of official dispute settlements. However, with a broad perspective in mind, it was possible to identify characteristics of negotiations in the infringement procedure and the EU Pilot which can be understood as a rule interpretation strategy. Furthermore, as noted in chapter 4, it was accepted that the analyzed data might not fit the model and the possibility for new concepts emerging was kept open. For most parts, the concept that derived from the theoretical model were adequate to categorize the Commission's actions. The only example of a strategy that was not included in the model was naming and shaming, which I interpreted to be an example strategy used through the EIR and Action Plan.

As for more general conclusions, it was established that the Commission is clearly using alternative instruments in the field of environmental policy implementation. The analysis revealed that all of the alternative programs included characteristics of the management and IMC approach, which are considered to represent softer strategies compared to the enforcement strategies. Furthermore, all alternative programs seem to be connected to the infringement procedure. Therefore, I argue that the alternative programs are meant to complement the infringement procedure and function as a problem-solving and capacity

building mechanisms. Their main functions seem to revolve around strategies such as sharing of best practices and in assisting and simplifying the infringement procedure.

In the last chapter of the analysis I discussed the Commission's role as a resource-dependent organization and argued that it is challenging to determine if the Commission is behaving purely as an influence-maximizing organization in the field of environment policy implementation. The EU policy process is extremely complex and includes a high number of actors among other challenges, which makes the Commission dependent on the other actors in its environment. Implementation in the field of environment includes many challenges, such as the expectations of the public and the difficult task of detecting the compliance violations and crimes. To ensure proper implementation there is a need for a lot of cooperation and a diverse set of tools. For example, it seems that the Commission is dependent on the environmental NGOs to report about violations. Furthermore, as examples have shown there is a pressure coming from the other EU bodies and citizens for the EU to do more in the field of environment and specifically during implementation. The RDT assumes that the Commission is trying to increase its influence in the field of implementation because the deficit questions its legitimacy and role as the policy formulator and drafter as well. Although I found some traces of this type of expected activity in the field of environment, such as building information systems and co-opting third parties such NGO, the big picture still points at the direction that in general terms the Commission leaves the main responsibility for the MS and takes the role of a monitoring actor with occasional sanction. It should be noted that due to the chosen scope and focus, this thesis only focuses on the current state of affairs. In other words, the analysis is limited to the instruments that are currently deployed, which is why it is impossible to track the development over time.

One possible function for document analysis is that it can produce suggestions for questions that needs to be asked or point to situations that need to be observed either as part of the study or as a guide for future research (Ritchie & Lewis, 2014). Thus, although this research used document analysis as a stand-alone method, ideally the findings from the analysis could guide the future research about implementation in EU policy process more broadly. For example, an interesting continuation for this study would be to conduct interviews with MS level actors about how they perceive the Commissions actions and strategies.

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Appendix 1

COMMUNICATION FROM THE COMMISSION

EU law: Better results through better application

(2017/C 18/02)

1. Introduction

The European Union is founded on the rule of law and relies on law to ensure that its policies and priorities are realised in the Member States (1). The effective application, implementation and enforcement of the law is a responsibility entrusted to the Commission by Article 17(1) of the Treaty on European Union. It is a high political priority for the Juncker Commission and part of the Commission's strengthened drive for better law-making (2).

Effective enforcement of EU rules — from the fundamental freedoms, food and product safety to air quality to the protection of the single currency — matters to Europeans and affects their daily lives. It serves the general interest. Often, when issues come to the fore — car emission testing, water pollution, illegal landfills, transport safety and security — it is not the lack of EU legislation that is the problem but rather the fact that the EU law is not applied effectively. That is why a robust, efficient and effective enforcement system is needed to ensure that Member States fully apply, implement and enforce EU law and provide adequate redress for citizens.

Members of the public, businesses and civil society contribute significantly to the Commission's monitoring by reporting shortcomings in the application of EU law by the Member States. The Commission acknowledges the crucial role of complaints in detecting infringements of EU law.

The Commission's current enforcement policy involves monitoring how EU law is applied and implemented, solving problems with Member States so as to remedy any possible breaches of the law, and taking infringement action when appropriate. The policy has evolved and been strengthened progressively over the past 15 years. Key Communications in 2002 (3) and 2007 (4) provided the framework for enhancing monitoring, strengthening partnerships and problem solving, improving the management of infringement cases and increasing transparency.

Beyond infringement management, the Commission has developed the Rule of Law Framework (5) which it has applied where the 'national rule of law safeguards' no longer seem capable of effectively addressing a systemic threat to the rule of law in a Member State, and where such a threat cannot be addressed through infringement proceedings.

This reflects the fact that upholding the rule of law is a prerequisite for upholding all rights and obligations deriving from the Treaties.

The Juncker Commission has also adopted a more focused approach to policy and law-making. It has a streamlined work programme which is underpinned at all stages of policy preparation by high-quality analysis and public consultation of stakeholders. This new way of working, the core of the Better Regulation agenda, aims to ensure that every measure in the EU's rulebook is fit for purpose, easy to implement and enforced across the EU. In its Communication 'Better Regulation: Delivering better results for a stronger Union', the Commission committed to promoting more effective application, implementation and enforcement (6).

Under the recently signed Inter-institutional Agreement on Better Law-Making (7), the European Parliament, the Council and the Commission recognise their joint responsibility in delivering high-quality Union legislation. The Joint Declaration on the EU's legislative priorities for 2017 reiterates the commitment to promoting the proper implementation and enforcement of existing legislation (8).

Notwithstanding these efforts, applying and enforcing EU law remains a challenge and calls for a stronger focus on enforcement in order to serve the general interest. Enforcement supports and complements the delivery of policy priorities. In identifying its policy priorities, the Commission will pay attention not only to bringing forward new legislation but also to its enforcement. The work done to ensure the effective enforcement of existing EU law needs to be recognised as being of equivalent importance to the work devoted to developing new legislation. The partnership between the Commission and the Member States, who play a crucial role in implementation, needs to be strengthened to deliver the benefits of EU law to the public. At the same time, citizens, trade and business associations, the social partners, the Economic and Social Committee and Committee of the Regions as well as civil society are encouraged to help the Commission to identify problems in a more structured way.

This Communication sets out how the Commission will step up its efforts on the application, implementation and enforcement of EU law in line with the Juncker Commission's commitment to be 'bigger and more ambitious on big things, and smaller and more modest on small things' (9). This means a more strategic approach to enforcement in terms of handling infringements. It also gives an overview of other action the Commission will take to help the Member States and the public ensure that EU law is applied effectively.

2. Working with Member States in enforcing EU law

The Member States have the primary responsibility for transposing, applying and implementing EU law correctly (10). They also have to provide sufficient remedies to ensure effective legal protection in the fields covered by EU law. This means that, where citizens' rights under EU law are affected at national level, the public have to be granted access to rapid and effective national redress mechanisms. These must comply with the principle of effective judicial protection set out in the Treaty (11). National courts are 'the common courts' for upholding EU law and contribute effectively to enforcing it in individual cases. They have the competence to uphold the actions of individuals seeking

protection against national measures that are incompatible with EU law or financial compensation for the damage caused by such measures.

To assist Member States in their efforts to implement EU law, and to ensure that they live up to their responsibilities in correctly applying EU legislation, the Commission deploys a wide array of tools. These range from preventive measures and early problem-solving to pro-active monitoring and targeted enforcement. The following sets out how current support actions will be enhanced.

Dialogue

Infringements of EU law are not routine matters and should be discussed at an appropriately high level and in a timely manner. High-level bilateral meetings between the Commission and Member States to proactively discuss compliance with EU law are encouraged and will be made more systematic across the range of legislative areas. For example, as envisaged in the Single Market Strategy (12), the Commission will organise compliance dialogues with Member States. These dialogues may cover infringement cases as well as broader enforcement issues.

The Commission will continue to take advantage of the various committees and expert groups already in place, as well as the valuable support of European agencies, to foster implementation and assess how this legislation is implemented in practice. Discussions in these fora have proven to be an effective way of ensuring that the Member States commit to the implementation of EU law, and are an expression of the basic principle of sincere cooperation between the Commission and Member States. Furthermore, the dialogue on the enforcement of specific provisions of EU law, which is also a pre-condition for the effective use of European Structural and Investment Funds (13), helps ensure the full and timely transposition of EU law.

Infringements must be dealt with promptly. The Commission and the Member States need to proceed expeditiously in investigating breaches of the law. The structured problem-solving dialogue between the Commission and Member States, known as EU Pilot, was set up to quickly resolve potential breaches of EU law at an early stage in appropriate cases. It is not intended to add a lengthy step to the infringement process, which in itself is a means to enter into a problem-solving dialogue with a Member State Therefore, the Commission will launch infringement procedures without relying on the EU Pilot problem-solving mechanism, unless recourse to EU Pilot is seen as useful in a given case (14).

Capacity building in Member States

The Commission will encourage and help Member States to improve their capacity to enforce EU law and provide remedies in order to ensure that the end-users of EU law — whether private individuals or businesses — can fully enjoy their rights (15). Networks and the exchange of best practice are key aspects of this effort. The Commission will continue to work in partnership with national authorities through a number of networks to ensure that EU rules are applied effectively and consistently. For example, in the area of the internal market for electronic communications networks and services, the Body of European Regulators for Electronic Communications assists and advises the Commission and the national regulatory authorities in implementing the EU regulatory framework for electronic communications. Similarly, the European Competition Network contributes to

the effective and coherent implementation of competition rules. The European Union Network for the Implementation and Enforcement of Environmental Law plays an important role, in particular by facilitating the exchange of best practice in enforcing the environmental *acquis* and respect for the minimum requirements for inspections. The work of this network will feature in forthcoming initiatives to support Member States in securing compliance with EU environmental law (16). The Working Party on the protection of individuals with regard to the processing of personal data (so called 'Article 29 Party') plays an important role in the application of the data protection legislation. With the entry into application of the new EU data protection framework (17), it will be replaced by the European Data Protection Board.

Independent administrative authorities or inspectorates required by EU legislation (e.g. in the area of data protection, equality, energy, transport, financial services) play an essential role in implementation and enforcement. The Commission will therefore pay particular attention to their being sufficiently and adequately equipped to perform their tasks. For example, the Commission considers that national competition authorities should be empowered to be better enforcers of the competition rules. One way to do this is to ensure that they act independently and that they are equipped with sufficient tools and resources to enforce competition more strongly in Europe, make markets more competitive and give consumers a better choice of goods and services at lower prices and of better quality. Another focus is the independence of national regulatory authorities in electronic communications services, the energy sector, rail regulatory bodies and national financial supervisory authorities (18). In the financial sector, the European Supervisory Authorities can investigate and take further action concerning the failure of a national competent authority to comply with its obligations under the applicable legislation (19). The Commission will encourage the modernisation of enforcement authorities through the European Semester, the EU's annual cycle of economic policy coordination, and when necessary through specific legislation. For example, the Commission has presented a proposal to revise the Regulation on consumer protection cooperation (20) which aims to boost Member States' ability to address infringements of consumer law, in particular in the online environment.

The Commission will also continue to help Member States improve the effectiveness of their national justice systems through the European Semester and to support justice reforms and judicial training with EU funds. The EU Justice Scoreboard (21) feeds into this process by providing a comparative overview of the quality, independence and efficiency of national justice systems. This makes it easier to identify shortcomings and best practices and keeps track of progress. The Commission will increase its support for strengthening national judicial systems. Training programmes for national judges and other legal professionals will continue to be promoted. The Commission and national judges successfully cooperate in ensuring compliance with the competition rules (22), environmental legislation (23)and facilitating judicial cooperation in civil and commercial matters through the European Judicial Network (24). This shows that there is potential to improve the sharing of experience. A Commission interpretative communication on environmental access to justice will contribute to the efforts mentioned (25).

The Commission will strengthen its cooperation with the European Network of Ombudsmen, which is coordinated by the European Ombudsman and brings together

national and regional Ombudsmen to promote good administration in the application of EU law at national level.

Better law-making helps better application and implementation

The political will to improve the quality of law-making, review existing laws and update them where necessary is shared by the Parliament, the Council and the Commission. The Interinstitutional Agreement on Better Law-Making confirms their commitment to ensure the quality of regulation and to make sure it responds to the needs of citizens and businesses. Clear legal drafting and accessible texts contribute to legal certainty and better application. If legislation is clear and accessible, it can be implemented effectively, citizens and economic actors can more easily understand their rights and obligations and the judiciary can enforce them.

That is why it is essential that certain aspects of the implementation and application of EU law are taken into account at the stage of policy development. The Commission's Better Regulation Guidelines (26) guide the Commission's services in how to prepare 'implementation plans' to identify possible difficulties the Member States face in implementing EU law and suggest ways to mitigate these risks. The Commission, when preparing proposals for directives, also works with Member States to determine whether explanatory documents setting out the relationship with national transposition measures are needed (27).

Transparency is essential to ensure that EU law is correctly transposed, applied and implemented. The Interinstitutional Agreement on Better Law-Making calls on the Member States to inform their respective publics when they transpose EU directives and to make clear in the national transposing act (or an associated document) where elements that are in no way related to that EU legislation are added.

3. A more strategic approach to the Commission's enforcement actions

Setting priorities

The Commission promotes the general interest of the Union and ensures the application of the Treaties. As guardian of the Treaties, it has the duty to monitor the Member States' action in implementing EU law and to ensure that their legislation and practice complies with it, under the control of the Court of Justice of the European Union (28).

In exercising this role, the Commission enjoys discretionary power in deciding whether or not, and when, to start an infringement procedure or to refer a case to the Court of Justice (29). As a consequence, the case-law recognises that individuals will not succeed in actions brought against the Commission where it declines to pursue an infringement procedure (30).

Being 'bigger and more ambitious on big things, and smaller and more modest on small things' should be translated into a more strategic and efficient approach to enforcement in terms of the handling of infringements. In implementing this approach, the Commission will continue to value the essential role played by individual complainants in identifying wider problems with the enforcement of EU law affecting the interests of citizens and businesses.

It is important that the Commission use its discretionary power in a strategic way to focus and prioritise its enforcement efforts on the most important breaches of EU law affecting the interests of its citizens and business. In this context, the Commission will act firmly on infringements which obstruct the implementation of important EU policy objectives (31), or which risk undermining the four fundamental freedoms.

As a matter of priority, the Commission will investigate cases where Member States have failed to communicate transposition measures or where those measures have incorrectly transposed directives; where Member States have failed to comply with a judgment of the Court of Justice as referred to in Article 260(2) TFEU; or where they have caused serious damage to EU financial interests or violated EU exclusive powers as referred to in Article 2(1) TFEU read in conjunction with Article 3 TFEU.

The obligation to take the necessary measures to comply with a judgment of the Court of Justice has the widest effect where the action required concerns systemic weaknesses in a Member State's legal system. The Commission will therefore give high priority to infringements that reveal systemic weaknesses which undermine the functioning of the EU's institutional framework. This applies in particular to infringements which affect the capacity of national judicial systems to contribute to the effective enforcement of EU law. The Commission will therefore pursue rigorously all cases of national rules or general practices which impede the procedure for preliminary rulings by the Court of Justice, or where national law prevents the national courts from acknowledging the primacy of EU law. It will also pursue cases in which national law provides no effective redress procedures for a breach of EU law or otherwise prevents national judicial systems from ensuring that EU law is applied effectively in accordance with the requirements of the rule of law and Article 47 of the Charter on Fundamental Rights of the EU.

Beyond these cases, the Commission attaches importance to ensuring that national legislation complies with EU law since incorrect national legislation systematically undermines citizens' ability to assert their rights including their fundamental rights, and to draw fully the benefits from EU legislation. The Commission will also pay particular attention to cases showing a persistent failure by a Member State to apply EU law correctly.

In light of the discretionary power the Commission enjoys in deciding which cases to pursue, it will examine the impact of an infringement on the attainment of important EU policy objectives, such as breaches of the fundamental freedoms under the Treaty which create particular problems for citizens or businesses wanting to move or carry out transactions between Member States, or where there may be a systemic impact beyond one Member State. It will distinguish between cases according to the added value which can be achieved by an infringement procedure and will close cases when it considers this to be appropriate from a policy point of view. The Commission will exercise such discretion in particular in cases where preliminary ruling proceedings under Article 267 TFEU are pending on the same issue and Commission action would not significantly accelerate the resolution of the case and those where pursuing the infringement would be in contradiction with the line taken by the College of Commissioners in a legislative proposal.

Certain categories of cases can often be satisfactorily dealt with by other, more appropriate mechanisms at EU and national level. This applies in particular to individual

cases of incorrect application not raising issues of wider principle, where there is insufficient evidence of a general practice, of a problem of compliance of national legislation with EU law or of a systematic failure to comply with EU law. In such cases, if there is effective legal protection available, the Commission will, as a general rule, direct complainants in this context to the national level.

Strengthening compliance assessment

This approach necessitates a more structured, systematic and effective assessment of the transposition and conformity of national measures implementing EU law. New techniques will be applied in these assessments. For example, the Commission is developing a data analytics tool to improve the monitoring of Single Market legislation (32). This tool should speed up the assessment of the compliance of national measures with EU law, identify gaps and incorrect transposition, and possibly detect 'gold plating' measures which are not related to the transposition of directives. Complaints may raise Member States' shortcomings in transposing a directive in a general way without raising particular aspects affecting the complainant. Such complaints are normally covered by a compliance assessment and the Commission will normally treat them in the wider context of the compliance assessment rather than pursuing the individual complaint.

Sanctions for non-communication of transposition measures

The Commission attaches high importance to the timely transposition of directives. In this context, the Commission for its part has set itself a target of 12 months to refer infringement cases to the Court of Justice if the failure to transpose a directive persists (33). In line with the priority it gives to ensuring timely communication of transposition measures, the Commission intends to fully utilise the possibilities laid down in Article 260(3) TFEU to strengthen its approach to sanctions for such cases.

The Lisbon Treaty introduced important provisions on financial sanctions to motivate Member States to transpose directives adopted under a legislative procedure (Article 260(3) TFEU) into their national legal order in timely fashion. Nevertheless, Member States continue to miss transposition deadlines. At the end of 2015, 518 late transposition infringement cases were still open, a 19 % increase on the 421 cases open at the end of 2014 (34). In certain cases, Member States fail to take action to transpose a directive until very late in the court proceedings brought against them by the Commission, thus obtaining substantial extra time in which to fulfil their obligations.

In its 2011 Communication on the implementation of Article 260(3) of the Treaty (35), the Commission announced that, in infringement cases concerning failure to transpose a legislative directive, it would usually request the Court to impose only a penalty payment. It also said, however, that it reserved its right in appropriate cases to ask the Court to impose a lump sum fine as well. It also announced that it would review its practice of not generally asking for lump sums, depending on how the Member States responded to its approach of asking only for periodic penalty payments.

In the light of experience, the Commission will now adjust its practice in cases brought to the Court of Justice under Article 260(3) TFEU, just as it has done in cases referred to the Court of Justice under Article 260(2) TFEU (36), by systematically asking the Court to impose a lump sum as well as a periodic penalty payment. When determining the amount

of the lump sum in accordance with its practice (37), the Commission will take into account the extent of transposition when determining the seriousness of the failure to transpose.

The logical consequence of the approach concerning the lump sum payment is that, in cases where a Member State rectifies the infringement by transposing the directive in the course of the court proceedings, the Commission will no longer withdraw its action for that reason alone. The Court of Justice cannot take a decision to impose a penalty payment because such a decision would no longer serve a useful purpose. However, it can impose a lump sum payment penalising the duration of the infringement up to the time the situation was rectified because this aspect of the case has not lost its purpose. The Commission will endeavour to inform the Court of Justice without delay whenever a Member State terminates an infringement, at whatever stage in the judicial process. It will do the same, when, following a judgment delivered under Article 260(3) TFEU, a Member State rectifies the situation and the obligation to pay a penalty thus comes to an end.

As a transitional rule, the Commission will apply its adjusted practice as set out above to the infringement procedures for which the decision to send the letter of formal notice will be taken after the publication of this Communication.

Finally, it is to be recalled that as already set out in its 2011 Communication, the Commission will take particular care in distinguishing between incorrect transposition and the (partial) lack of transposition.

4. Bringing the benefits of EU law to citizens: advice and redress

Better enforcement benefits citizens and businesses alike. They are looking for simple, practical advice on their rights under EU law and how to make use of them. When their individual rights are breached, it is important that they be guided towards easily finding and making use of the most appropriate redress mechanism available at EU or national level.

The Commission will help citizens by raising their awareness of their rights under EU law and of the different problem-solving tools available to them at national and EU level. The Commission will guide, advise and encourage citizens to use the most appropriate problem-solving mechanism. In this context, it is fundamentally important that citizens understand the nature of the infringement process and set their expectations accordingly. Many submit complaints, expecting that they may obtain financial or other redress for a breach of EU law. They are disappointed to discover that, whilst being designed to promote the general interest of the Union, the infringement process may not be in all circumstances the appropriate vehicle through which to respond to such situations. The primary purpose of the infringement procedure is to ensure that the Member States give effect to EU law in the general interest, not to provide individual redress. National courts are competent to uphold actions by individuals seeking the annulment of national measures or financial compensation for the damage caused by such measures. National authorities also play an important role in securing rights of individuals. This needs to be clearly communicated to complainants who are seeking individual redress.

Given that complaints are an important means of detecting infringements of EU law, the Commission will step up its efforts to improve the handling of complaints. To improve the basis for assessing the merits of a complaint and facilitate better handling and

response, complainants should from now on use the standard complaint form. The Commission is committed to informing complainants about the follow-up to their complaints. This requires a revision of the existing administrative procedures for the handling of relations with the complainant on these points [38] (see Annex).

The Single Digital Gateway [39] will provide a single access point for citizens and businesses to all Single Market-related information, assistance, advice and problem-solving services at EU and/or national level. It will also include national and EU-wide procedures needed to operate in the EU. This Gateway will inform citizens and businesses about what the Commission can and cannot do, the estimated length of procedures and the potential outcomes. It will also point them towards personalised advice and problem-solving services.

This effort will require the Commission and Member States to work together to develop an inventory of the mechanisms of redress available at national level to which citizens may turn to seek remedies in individual cases. This inventory will include existing EU mechanisms, such as SOLVIT (which provides information and assistance to citizens and deals with problems of misapplication of EU law by national authorities in cross-border situations) and the European Consumer Centres Network (which provides advice and assistance to consumers on their rights concerning purchases made in another country or online and on settling relevant disputes with businesses).

The SOLVIT action plan, reinforcing SOLVIT's role in handling complaints concerning EU law, will show the Commission's commitment to further strengthening the role of such mechanisms. The Commission plans to upgrade the SOLVIT network. The Commission is also exploring the possibility of introducing a Single Market Information Tool to collect quantitative and qualitative information directly from selected market players and better target cooperation with Member States to improve enforcement. Such administrative cooperation with Member States [40] should continue to help solve individual problems and improve the exchange of best practices. It will also be used to encourage national authorities to offer better information through all existing platforms, such as the E-JUSTICE portal [41].

The Commission will ensure the full application of the EU legislation on mediation and alternative dispute resolution. Alternative dispute resolution mechanisms play an important role in enabling consumers and traders to resolve their disputes in an easy, fast and inexpensive way without going to court. The Commission launched an online dispute resolution platform in February 2016 providing EU consumers and traders with a tool to solve their contractual disputes over online purchases through alternative dispute resolution. In the financial sector, the Commission established the Financial Dispute Resolution Network, aiming to facilitate the resolution of cross-border disputes between consumers and financial services providers in financial services. Other EU legislation provides for common standards on complaints handling and redress mechanisms in all Member States (e.g. Passenger Rights Regulations [42], public procurement [43], Small Claims Regulation [44]).

5. Conclusions

The uniform application of EU law throughout all Member States is essential for the success of the EU. The Commission therefore attaches high importance to ensuring the

effective application of EU law. The challenge of applying, implementing and enforcing European Union legislation is shared at EU and Member State level. To deliver policy results, a more strategic approach to enforcement is essential, an approach which focuses on problems where enforcement action can make a real difference. In line with the priority the Commission gives to ensuring timely communication of measures transposing a directive, the strategic approach to enforcement is accompanied by a review of its approach on sanctions as laid down in Article 260(3) TFEU. The Commission will help Member States to ensure that citizens and business are able to exercise their rights and receive legal redress at national level. The combined effort of all involved, at the level of the Union and the Member States, will ensure better application of EU law, for the benefit of all.

The approach set out in this Communication will be applied as from the date of its publication in the Official Journal.

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(1) Article 2 TEU: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

(2) Political guidelines for the next European Commission of 15 July 2014 and mission letters of 1 November 2014 from the President to Vice-Presidents and Commissioners.

(3) Communication 'Better monitoring of the application of Community law', COM(2002) 725/final/4 of 16.5.2003.

(4) Communication 'A Europe of Results — Applying Community Law', COM(2007) 502 final of 5.9.2007.

(5) Communication 'A new EU Framework to strengthen the Rule of Law', COM(2014) 158 of 11.3.2014.

(6) Communication 'Better Regulation: Delivering better results for a stronger Union', COM(2016) 615 final of 14.9.2016.

(7) Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123 of 12.5.2016, p. 1).

(8) Joint Declaration on the EU's legislative priorities for 2017 signed by the Presidents of the European Parliament, the Council and the Commission on 13 December.

(9) Political guidelines for the next European Commission of 15 July 2014 and mission letters of 1 November 2014 from the President to Vice-Presidents and Commissioners.

(10) Article 4(3) TEU, Articles 288(3) and Article 291(1) TFEU.

(11) Article 19(1) second subparagraph TEU and Article 47 Charter of Fundamental Rights.

(12) Communication Upgrading the Single Market: more opportunities for people and business COM(2015) 0550 final of 28.10.2015.

(13) Article 1 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

(14) The working arrangements with the Member States on EU Pilot will now be adjusted accordingly.

(15) As announced in the Single Market Strategy Communication (COM(2015) 550 final), the Commission will launch a comprehensive set of actions to further enhance efforts to keep non-compliant products from the EU market by strengthening market surveillance and providing the right incentives to economic operators.

(16) See Commission Communication COM(2016) 710 final, Commission Work Programme 2017, Delivering a Europe that protects, empowers and defends, Priority 10.

(17) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

(18) See Article 3(3a) of the Framework Directive 2002/21/EC for electronic communications and Article 55 of Directive 2012/34/EU establishing a Single European Railway Area and Article 4(4) of Directive 2013/36/EU (CRD IV) and Article 27 ff of Directive 2009/138/EC (Solvency2), Recital 123 of Directive 2014/65/EU (MIFID II).

(19) Regulation (EU) No 1093/2010 establishing the European Banking Authority, Regulation (EU) No 1094/2010 establishing the European Insurance and Occupational Pensions Authority and Regulation (EU) No 1095/2010 establishing the European Securities and Markets Authority.

(20) Proposal to revise the Regulation on consumer protection cooperation, COM(2016) 283 final of 25.5.2016.

(21) Communication 'The 2016 EU Justice Scoreboard', COM(2016) 199 final of 11.4.2016.

(22) Communication from the Commission — Amendments to the Commission Notice on the cooperation between the Commission and courts of the EU Member States in the application of Articles 81 and 82 EC (OJ C 256, 5.8.2015, p. 5).

(23) http://ec.europa.eu/environment/legal/law/training_package.htm.

(24) Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174 of 27.6.2001, p. 25).

(25) Commission Work Programme 2017, Delivering a Europe that protects, empowers and defends, COM(2016), 710 final, Priority 10.

(26) Communication 'Better regulation for better results - An EU agenda', COM(2015)215 final, 19.5.2015.

(27) The policy is contained in a (1) Joint Political Declaration of 28 September 2011 between the Commission and the Member States (OJ C 369, 17.12.2011, p. 14) and (2) a Joint Political Declaration of 27 October 2011 between the European Parliament, the Council and the Commission (OJ C 369, 17.12.2011, p. 15).

(28) Article 17(1) TEU.

(29) See in particular: judgment of 6 December 1989 in Case C-329/88, Commission v Greece [1989] ECR 4159; judgment of 1 June 1994 in Case C-317/92, Commission v Germany [1994] ECR I 2039; judgment of 6 October 2009 in Case C-562/07, *Commission v Spain* [2009] ECR I-9553; judgment of 14 September 1995 in Case T-571/93; Lefebvre and others v Commission [1995] ECR II 2379; judgment of 19 May 2009 in Case C-531/06, Commission v Italy [1009] ECR I 4103.

(30) See judgment of 14 September 1995 in Case T-571/93; Lefebre and others v Commission [1995] ECR II 2379.

(31) In particular as presently set out in the Strategic Agenda of the European Council of 27 June 2014 and the Political Guidelines for the next European Commission of 15 July 2014.

(32) Single Market Strategy Communication (COM(2015) 550 final).

(33) Communication from the Commission – A Europe of results – applying Community law, COM(2007) 502 final.

(34) See the 33rd Annual Report on monitoring the application of EU law, p. 27.

(35) OJ C 12 of 15.1.2011, p. 1.

(36) Re-cast Communication on the application of Article 228 of the EC Treaty, SEC(2005) 1658 of 9.12.2005, points 10 to 12 which refers to case C-304/02 Commission v France, [2005] ECR I-6263, paragraphs 80-86, 89-95, where the Court confirmed that both the penalty payment and the lump sum can apply cumulatively for the same infringement.

(37) The amount of the lump sum will be calculated using the method set out in points 19 to 24 of the 2005 Re-cast Communication on the application of Article 228 of the EC Treaty, SEC(2005) 1658.

(38) Communication 'Updating the handling of relations with the complainant in respect of the application of Union law', COM(2012) 154 of 2.4.2012.

(39) As announced in the Digital Single Market Communication (COM(2015) 192 final, p. 17) and the Single Market strategy Communication (COM(2015) 550 final, p. 5 and 17).

(40) Under Art. 197 TFEU.

(41) This portal helps individuals to enforce their fundamental rights to identify the competent national non-judicial bodies with human rights remit. It will be extended in 2017 by a European Consumer Law Database providing information on the application of EU consumers' law by courts and authorities.

(42) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1); Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14); Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1); Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

(43) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33); Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14).

(44) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1).