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The implementation of EU environmental policy: Why the scope conditions have improved?

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Abstract

Implementation gaps of European Union (EU) environmental policy are explained, inter alia, by shortcomings in knowledge, a lack of administrative capacities and weak enforcement practices. However, this article presents evidence that the scope conditions have improved, based on document analysis and semi-structured interviews with actors involved in the implementation process. Four main factors are considered. First, the Commission's monitoring capacities benefit from an improved access to data sources other than those provided by the member states, and from a reduced legislative agenda, allowing for a more intense focus on implementation. Second, subnational actors have improved their implementation capacity through knowledge transfers and strategic planning, facilitated by improved statistical data. Third, inspection networks benefitted from technical advances, such as the access to satellite images, presenting new opportunities for the detection of environmental crimes, and new software programs facilitating risk-based inspections. Finally, citizens' and non-governmental organizations' improved access to justice in environmental matters contributes to a stricter enforcement of EU law.

Keywords: networks; European Union; software programs

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1. Introduction

Major implementation deficits exist in the field of environmental policy. According to the European Commission, the size of gaps in implementation vary across different sectors and member states. Challenges are linked to persistent environmental problems, such as diffuse water pollution, poor urban air quality, unsatisfactory waste treatment and species and habitats in decline. Furthermore, there is also a serious incidence of environmental crime, and a high number of environmental complaints to the Commission and petitions to the European Parliament. The annual costs of non-implementation are estimated at 50 billion Euros (European Commission, 2018a, p. 1). The reasons for implementation gaps are manifold, including shortcomings in knowledge and awareness, lack of administrative capacities, weak national and regional enforcement policies and practices and insufficient or delayed investment in necessary pollutionabatement infrastructure (European Commission, 2018a, p. 2).

The Commission is formally responsible for overseeing the member states' implementation of European Union (EU) law. However, the implementation and compliance literature is sceptical regarding the Commission's ability to enforce compliance. In theory, in the case that an EU country fails to communicate measures that fully transpose the provisions of directives, or does not rectify the suspected violation of EU law, the Commission may launch a formal infringement procedure and refer the matter to the European Court of Justice (ECJ). Yet, there are important limitations to this enforcement instrument. Constantly, pressure on certain member states to implement community laws might endanger their political support for further ambitious, legally binding environmental policy (Burgin, 2015; Jordan & Tosun, 2013, p. 251). Furthermore, it takes many years for cases to appear before the ECJ (Jordan & Tosun, 2013, p. 258). Moreover, the Commission does not have the necessary human resources to monitor and follow up every case of non-compliance (Hartlapp & Falkner, 2009, p. 296), as the member states have been wary of delegating administrative capacities to the Community level (Martens, 2008, p. 640). In addition, the Commission has to rely on data are based on notification by the member states, which may have incentives to report less than honestly (Mastenbroek, 2005, p. 1104). The alternative is on-site visits and spot checks by Commission officials, which are of limited value: they are usually extremely time-consuming, politically fraught and can be easily blocked by member states (Jordan & Tosun, 2013, p. 250). Consequently, because the supranational legal order meets a decentralised policy delivery system dominated by the member states, implementation deficits seem to be built into the EU structure, which is a delicate balance between governmental and supranational elements (Jordan, 1999, p. 87).

Capacity building is a softer mechanism than the infringement procedure to ensure compliance. To this end, coordination between different levels of government increased, and new institutions have been established for the compliance promotion. Including, in 1992, the establishment of the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL), composed of national and European environmental authorities. It aims to ensure a more effective application of environmental legislation through awareness raising, capacity building, peer review and the exchange of implementation-related information (Jordan & Tosun, 2013, p. 260). Another example is the European Environment Agency, established in 1993 for the provision of sound, independent information on the environment, to improve the level of information for more effective monitoring of implementation. Concerned that more assertiveness would only increase member states' resistance to ambitious EU environmental legislation, the Commission became an active driver of such capacity-building measures, and, inter alia, promoted the exchange between non-governmental organizations (NGOs) and subnational actors, providing both with financial aid and access to the policy formulation process (Kern & Bulkeley, 2009, p. 312).

Scholars are divided on the basis of the effectiveness of such capacity-building and awarenessraising measures. On the one hand, Knill and Lenschow argue that, compared with former command and control approaches, 'hardly any improvements in policy performance can be observed

yet' (2000, p. 7). Based on an analysis of 91 case studies, Falkner, Hartlapp & Treib (2007, p. 397) argue that the national reform capacity, shaped by factors such as fit or misfit between European rules, and existing institutional and regulatory traditions, or the number of veto players, has only a weak explaining power for the compliance of member states. On the other hand, Borzel and Buzogany (forthcoming) argue that the development of new instruments strengthening member state capacities in implementing EU environmental legislation have contributed a narrower implementation gap; however, their argument is based on the exclusion of other explanations rather than an empirical analysis of changes in the implementation capacity of the member states.

Moreover, scholars are also split as regards the effects of multilevel and participative governance on member states' implementation performance (Gollata & Newig, 2017, p. 1308). Some argue that the inclusion of multiple actors with potentially conflicting interests and priorities may be detrimental to effective implementation (e.g., Leventon, 2015; Thomann & Zhelyazkova, 2017). According to Newig and Fritsch (2009, p. 197), a highly polycentric governance system comprising many agencies and levels of governance yields higher environmental outputs than rather monocentric governance, but they were not able to identify correlations between governance effectiveness and a decision-making scale. In contrast, other scholars argue that the involvement of the subnational level and non-state actors, in fact, increases policy effectiveness due to mutual monitoring, learning and adaptation (Ostrom, 2010, p. 55; Pridham, 1996).

Against this background, this article aims at contributing to the implementation and compliance literature by a two-stage inductive exploration of recent trends in the implementation of EU environmental policy. In the first stage, I analysed the scientific studies on implementation and compliance, as well as the documents, reports and statements originating from the actors involved in the implementation process, such as NGOs, local and regional authorities, and their transnational network organisations, national authorities and the European Commission. The second stage consisted of semi-structured interviews conducted during my participation at the Green Week in Brussels in May 2018, where local and regional decision-makers and Commission officials and scientists met at invitation from DG Environment, and telephone interviews in September and October 2018. The interviewees were with officials from the Commission, national and local authorities, the European Energy Agency, digitalisation experts from EIONET as well as representatives from NGOs.

A general finding is that capacity building is a gradual process, and it seems that the time has come that this process shows signs of promoting improvement in implementation performance. This positive trend is in particular explained by recent technical innovations and advances in digitalisation, which contributed to the spread of easily accessible, understandable and comparable data on the environment and on member states' compliance. The relevance of knowledge in the policy process has frequently been confirmed. Knowledge can contribute to learning processes and can be used to exercise pressure on other actors by naming and shaming their behaviour or position (see, e.g., Haas, 2004; Radaelli, 1995). Knowledge gains enabled by new software technologies, big data, online platforms and new forms of data harvesting are opening up new possibilities for promoting sustainability (Gijzen, 2013; Hampton et al., 2013, Seele & Lock 2017; Helbing, 2012, Heemsbergen, 2016). However, so far, the effects of these recent trends on implementation performance have not been sufficiently studied; most implementation studies were conducted before these new dynamics came into effect.

More specifically, my findings suggest that the scope conditions for more effective implementation and implementation control have improved in recent years in four regards. First, the monitoring capacity of the Commission has benefited from a reform of the existing reporting system and the development of new data-harvesting methods. Second, national inspectorate networks have also benefitted from technical innovations, such as new software systems for risk-based inspections, and the use of satellite images for the detection of environmental crimes, such as illegal landfills and illegal deforestation. Third, improved statistical information on pollutants at local level facilitated strategic

planning and mutual learning in national and transnational city networks. In turn, the increased expertise gained by local decision-makers contributed to their influence in policy and implementation coordination at national and EU level. Finally, better available environmental data, and facilitated access to national courts, two results of the implementation of the Aarhus convention on public access to information and to justice, had the effect of enlarging the scope conditions for citizens' influence on the member states' compliance. In the following, these four arguments will be explained in detail.

2. The capacity of the commission

Until recently, the commission's monitoring capacity depended on.

3. The capacity of local and regional authorities

As implementation and implementation control of EU environmental law it is often the task of cities and regions, their implementation capacity is crucial for the overall compliance of a member state (Kern, 2014).

4. The capacity of networks of compliance assurance practitioners

An efficient system of inspection controls is crucial for compliance with environmental rules by natural or legal persons for activities that involve emissions, or other physical impacts on the environment. Inspections are carried out by various authorities, such as the police, prosecutors or audit bodies. In order to improve the EU-wide exchange between national inspectors, the informal network IMPEL was set up in 1992.

5. The capacity of non-governmental organisations and citizens

Recent developments have strengthened the role of citizens in monitoring the implementation performance of the member states. The 2001 Aarhus convention, ratified on 17 February 2005, was an important milestone in citizens' access both to environmental data, and to national courts in environmental matters (UNECE, 1998). In order to implement the Aarhus convention, the EU passed the Inspire directive in 2007, implemented in stages, with full implementation by 2021. It obliges member states to.

6. Conclusion

Many sceptical accounts have been published in the EU implementation literature regarding the ineffectiveness of enforcement mechanisms and capacity-building measures. In contrast, this study demonstrated that, in fact, the scope conditions for a more effective implementation of EU environmental law have improved significantly in recent years, in particular, due to advances in digitalisation and technological innovations. Without denying the ongoing implementation deficits and the structural problem of a division of legislation at EU level and implementation at national level, this study has traced the positive effects of new capacity-building measures in four regards. First, the Commission's monitoring capacities have been strengthened by a reform of the reporting system, relying increasingly on data from sources other than the member states, and a reduced legislative agenda, allowing Commission officials an intensified focus on the implementation part of the policy cycle. Second, subnational actors have enhanced their implementation capacity by horizontal learning from best practice, and a stronger focus on strategic planning and evaluation of policy that is performance indicator-based, partly enabled by an improved availability of statistical data. Third, inspection networks also benefitted from technical advances such as new opportunities for the detection of environmental crimes via satellite images, and new software programs that facilitate risk-

based inspections. Finally, citizens and NGO's benefit from a better access to comprehensible and comparable environmental data with the potential to increase the pressure on member states by highlighting non-compliance, or through legal action.

These findings support those studies arguing that new software technologies, big data, and online platforms open up new opportunities to promote sustainability. Furthermore, they suggest that capacity-building measures have a significant role in balancing the EU's structural constraints in implementation and monitoring of EU law. Further research, in particular case studies, are required in order to explore the extent to which these improved scope conditions are able to bring about concrete improvements in the implementation of EU law. In this regard, especially the recently implemented and evolving coordination structures between different levels of governance deserve attention.

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